

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM RICHLAND COUNTY

Clifton Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT

V.

ALAN DALE SMITH,

APPELLANT

APPELLATE CASE NO. 2013-002524

RECORD ON APPEAL

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	)	
COUNTY OF RICHLAND	)	Case No(s) : 2011GS4002789,
	)	2011GS4002790,
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	)	2013GS4004172,
Plaintiff,	)	2013GS4004173,
	)	2013GS4004174,
-VS-	)	2013GS4004175,
	)	2013GS4004176
Alan Dale Smith,	)	
	)	
Defendant.	)	TRANSCRIPT OF RECORD
	)	

July 22-25, 2013
Richland, South Carolina

B E F O R E:

HONORABLE CLIFTON B. NEWMAN, Judge.

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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 22nd day of July, 2013.)

MS. BODMAN: Your Honor, just as an initial issue before the clerk goes to get the indictments, we have an issue with two of the indictments. Up front, I'll tell the Court that I'm asking you to, I guess, essentially order the clerk to bring the Court two of the indictments, that there is -- well, all of them, but specifically two of them that there's an issue with.

Uh, we initially charged the defendant with two counts of Sexual Exploitation of a Minor in the third degree. Those were indictment numbers 2011-GS-40-2789 and 90. Subsequently, in June, uh, we presented to the Grand Jury 28 additional indictments of Sexual Exploitation of a Minor in the third degree. Those are all of the other GS numbers that are on our potential witness list, the 2013 numbers. And it's basically, I guess, 4171 through 4176, 4178, 4180 and then 4182 through 4201.

Uh, last week, at the Grand Jury, we amended all of those indictments. All 30 of them. We added -- and this was based on pretrial conferences that we had. We added to each of those indictments

1 individual file names, the names of the image. So
2 each indictment has a specific image that is related
3 to that indictment number.

4 Apparently when those were sent to the Grand
5 Jury last week, all of the 2013s had on top of them
6 -- the words "amended" were typed. Apparently, on
7 the two 2011 indictments, the word "amended" was not
8 typed up there. And so in going to the clerk's
9 office this morning and making sure that all the
10 indictments made it to the file because it just
11 happened last week, I was informed that because it
12 doesn't have those two -- that single word on it,
13 the words "amended" typed on it, the clerk's office
14 is not recognizing those two indictments and will
15 not, uh, put it into their computer system as having
16 gone to the Grand Jury and then true billed last
17 week.

18 I have arguments as to why I believe that it's
19 ministerial. It does not go to the substance of the
20 indictment, but they are valid indictments. But at
21 the very minimum at this point, I'm just asking
22 that, uh, in addition to the 28 that were amended
23 last week that have the word "amended" on the top of
24 it, that those other two indictments be brought to
25 the courtroom for, uh, Your Honor to rule on this

1 issue and decide whether or not we would be able to
2 proceed on those and just to, uh, amend them by the
3 way of adding the word "amended" to it.

4 **THE COURT:** All right. Mr. Collins?

5 **MR. COLLINS:** Your Honor, as the defense, I
6 can't consent to just allowing the indictment to be
7 changed. Obviously, it's in Your Honor's
8 discretion. I think given the fact that this case
9 has been pending since August of 2010, uh, I don't
10 feel that they should be given leeway with minor
11 things considering that the final indictments were
12 just done last Friday. So I would ask that if the
13 Clerk of Court finds that's not a recognizable
14 indictment, that's not an indictment that they can
15 proceed on. They have 28 other indictments that
16 they can move forward on.

17 **MS. BODMAN:** These changes to the indictments
18 were done at Mr. Collins' request. He asked us to
19 amend them in this manner and the State agreed in
20 chambers with Judge Benjamin that we would amend it
21 as requested, uh, as long as he was not going to,
22 uh, ask for a continuance essentially this week
23 cause they'd only be amended last week. So they
24 were amended at his request, at his specific
25 request.

1 **THE COURT:** All right. The State would call.
2 the case for trial, your case for trial, State
3 versus Alan Dale Smith. Is that right?

4 **MS. BODMAN:** Yes, Your Honor.

5 **THE COURT:** I need the indictments in the
6 case.

7 **MS. BODMAN:** Yes, Your Honor.

8 **THE COURT:** The amended and unamended or
9 everything. I have nothing before me but a piece of
10 paper, uh, potential witness list, pretrial motions,
11 voir dire.

12 **THE CLERK:** Do you have copies?

13 **MS. BODMAN:** The copies? I'm sorry. I
14 thought you were asking for originals for the file.
15 (Pause.)

16 These are all the State's copies, and the top
17 two are the 2011-GS-40-2789 and 2790 that were
18 presented last week in the July Grand Jury.

19 **THE COURT:** The record does not reflect --
20 the records do not reflect that the Grand Jury
21 amended. You have two original indictments and then
22 these additional indictments?

23 **MS. BODMAN:** The two 2011 ones were the
24 original indictments that were presented back in
25 2011. Then we amended those along with the 28.

1 They were called and amended together last week, all
2 30 of them.

3 **THE COURT:** You have handed to me 28?

4 **MS. BODMAN:** I apologize?

5 **THE COURT:** You've handed to me 28 documents
6 here?

7 **MS. BODMAN:** I thought I counted all -- out
8 all 30.

9 **THE COURT:** Well, I didn't count them or
10 anything.

11 **MS. BODMAN:** I believe they are all 30 of
12 them. They are the two 2011 ones and then 28 2013
13 ones.

14 **THE COURT:** Okay.

15 **MS. BODMAN:** For a total of 30.

16 **THE COURT:** Are you including in those that
17 you handed to me the two that you have a problem
18 with?

19 **MS. BODMAN:** Correct. They don't say the
20 word "amended" under the docket number. Under the
21 indictment number 2011-GS-40-2789 and 2790, the
22 words "amended" were not typed on there.

23 **THE COURT:** Okay.

24 **MS. BODMAN:** Although, uh, I do see that the
25 clerk's office did stamp it certified true copy.

1 It's just my understanding they are not -- when I
2 went to go check on them this morning, they were
3 saying they were not going to put it into their
4 system as having been amended last week, uh, and not
5 put it into the file to be brought to court.

6 **THE COURT:** Okay.

7 **MS. BODMAN:** I can hand the Court copies of
8 the two original with the true bill date of June
9 16th of 2011 on the two 2011 ones.

10 **THE COURT:** Well, first, we are not here to
11 try to -- I'm here for the trial of the case, not to
12 correct any problems in the clerk's filing system or
13 registration system. You've handed to me these
14 indictments that were true billed by the Grand Jury
15 and these are the ones that you've called to trial.

16 **MS. BODMAN:** I'm calling all 30 of them to
17 trial.

18 **THE COURT:** Whichever number you've handed me
19 the true billed for trial, whether they are stamped
20 "amended" or not.

21 **MS. BODMAN:** I wasn't sure as to, uh, the
22 actual originals that the clerk pulled. If those
23 were not delivered to --

24 **THE COURT:** They must present the original
25 indictments to the court.

1 **MS. BODMAN:** Right. And that's my issue is
2 my understanding is the clerks are not going to
3 bring those two indictments to court.

4 **THE COURT:** Where are they?

5 **MS. BODMAN:** They are in the clerk's office.

6 **THE COURT:** They must bring them to court.

7 **MS. BODMAN:** Okay.

8 **THE COURT:** The clerk is not a -- I mean, the
9 clerk is the caretaker of the indictments but only
10 for the purpose of bringing them to court. You
11 might recall, uh, up until about 10 years or so ago,
12 the Solicitors kept all the indictments. The clerks
13 had no role in keeping any indictments until the
14 supposedly more improved system was devised whereas
15 the clerk, as the caretaker of the records, hold the
16 indictments and present at the time the Solicitor
17 calls them for trial. It doesn't give the clerk any
18 special authority over the indictment.

19 **MS. BODMAN:** That was exactly my issue in
20 bringing it up to make sure that the clerk knew that
21 she was to find and bring those other two 2011
22 indictments. Thank you, Your Honor.

23 **MR. COLLINS:** Your Honor, my only concern is
24 now the Clerk of Court has two identical indictment
25 numbers for two different indictments. We would

1 just ask if they would go forward on the -- I
2 believe if they want to go forward, that they nolle
3 pros the other two under the same indictment number
4 because it would be confusing to have two
5 indictments, different indictments under the same
6 indictment number with the Clerk of Court.

7 **THE COURT:** All right. That's
8 understandable.

9 **MS. BODMAN:** Well, they are not identical.
10 One has the true billed date of June 16th of 2011.
11 The other two, uh, supercede that with true billed
12 dates of July of 2013. And in addition, the
13 amendment that we made very clear on the back page
14 with, uh, the specific item that we've added, the
15 image name that we've added. So the date in and of
16 itself of the true billed supercedes the other one.

17 **THE COURT:** Okay.

18 **MR. COLLINS:** It's the indictment number
19 that's identical. If you'd look up that number
20 through the Clerk of Court, you're going to have two
21 different indictments. We're asking that if they
22 are not going to proceed on the first set that's
23 currently indicted under that number, to have those
24 nolle prossed by the Solicitor. We have two
25 indictments under each numbers. I'm a little

1 confused. The Clerk of Court right now has four
2 indictments for the same two indictment numbers.
3 They are different indictments.

4 **THE COURT:** Mr. Collins' argument is that if
5 you are proceeding on those two that were amended
6 but not stamped amended that the original of those
7 two should be disposed of some kind of way.

8 **MS. BODMAN:** They are being disposed of by
9 proceeding on the superceding indictment that was
10 presented to the Grand Jury as of July of 2013. The
11 argument that there other indictments with the same
12 number go to the direct presentment ones, the other
13 28 as well. Those all have indictments sitting in
14 the clerk's office, 28 additional indictments
15 sitting in the clerk's office with that same
16 indictment number. It's that this is being -- uh,
17 it has been amended. We're proceeding on the
18 amended and true billed version of that indictment.
19 That is what we are proceeding on to trial.

20 **THE COURT:** All right. What else do y'all
21 have before we select the jury?

22 Where is the jury, by the way?

23 **THE CLERK:** I can find out. My understanding
24 was that we were going to pick at 2:30, but I'll be
25 certain.

1 **THE COURT:** All right. Regarding the
2 requested voir dire, the defendant's requested voir
3 dire, any objection by the state?

4 **MS. BODMAN:** I guess just in regards to some
5 of the requests, we would ask the Court to, uh, ask
6 the reverses. For instance, on number 5, has any
7 member of the jury panel ever testified for the
8 state in any criminal prosecution. We'd want to
9 know if they've ever testified for the defense.

10 **THE COURT:** All right. Testified for the
11 state or the defense in any criminal case. All
12 right.

13 **MS. BODMAN:** I'm a little -- I'm concerned
14 about the questions involving personal or religious
15 beliefs about ---

16 **THE COURT:** Which number is that?

17 **MS. BODMAN:** --- alleged sexual assault --
18 Number 9 -- alleged sexual assault and molestation
19 that would affect your ability to be fair. Uh, I
20 think it should be made clear that, you know, it is
21 okay that people believe but that we still have to
22 prove, uh, the allegations beyond a reasonable
23 doubt. A lot of people, their gut reaction is, oh,
24 well, this is terrible. It's terrible to do this.
25 But that's okay. We all should think that murder is

1 wrong.

2 **THE COURT:** Well, any time you add into any
3 question that affect your ability to be fair --

4 **MS. BODMAN:** I don't particularly understand
5 number 10 about your ability to be fair and
6 balanced.

7 **THE COURT:** Does any member of the jury panel
8 have any personal or religious beliefs that would
9 affect your ability to be fair and balanced in a
10 case involving -- you want to change the words?

11 **MR. COLLINS:** Change that to impartial.

12 **THE COURT:** Fair and impartial?

13 **MR. COLLINS:** Yes, Your Honor.

14 **MS. BODMAN:** The same with number 11. It has
15 fair and balanced.

16 **THE COURT:** What do you want me to tell the
17 jury as far as what this case is about, what is
18 alleged in this case?

19 **MS. BODMAN:** Uh, I mean, I don't have a
20 problem with, uh, either just reading the generic
21 portion. All the indictments read exactly the same
22 with the exception of the to wit and then the name
23 of the image.

24 **THE COURT:** So he's basically accused of
25 doing what in this case?

1 **MS. BODMAN:** Possessing child pornography in
2 a generic sense. But you know, since we don't call
3 it that specifically in our indictment, so I was
4 going to say, either way, either to read, uh,
5 generically the language in the indictment that he
6 possessed material, uh, contained a visual
7 representation of a minor engaging in sexual
8 activity or if you wanted to say, in other words,
9 Ladies and Gentlemen, uh, possession of child
10 pornography, that's fine with me also.

11 **THE COURT:** What do you think about that, Mr.
12 Collins? He's charged with possession of child
13 pornography.

14 **MR. COLLINS:** I would prefer the terminology
15 used in the statute and in the generic part of the
16 indictment. He's charged with possessing material
17 that contains visual representation of a minor
18 engaging in sexual activity. Child pornography can
19 be conceptualized in a lot of different ways that
20 aren't -- may not necessarily be illegal under this
21 statute.

22 **THE COURT:** What else before the jury comes?

23 **MS. BODMAN:** On number, the last -- number 14
24 of their requested voir dire, uh, I think that one
25 is just already covered in the do you have personal

1 or religious beliefs that you would not be able to
2 be fair and impartial.

3 **THE COURT:** Okay.

4 **MR. COLLINS:** Maybe I can specify by adding
5 the word adult before pornography. I think there is
6 potential in this case that either the State would
7 seek to introduce or that it would come out that
8 there was regular pornography on his computers. I
9 think that's a valid question to ask a jury.

10 **THE COURT:** You believe that possession of
11 adult pornography is morally wrong? What do you
12 think about that?

13 **MS. BODMAN:** I don't have any objection. I
14 don't know how many people.

15 **THE COURT:** Well, we'll see. All right.
16 We'll ask that question.

17 **MR. COLLINS:** In addition to my voir dire
18 request, Your Honor, in my pretrial motions, one of
19 the motions, in every case, I like to ask for
20 attorney-led voir dire. I understand that our state
21 doesn't do that yet. But we are in the minority
22 with that across the country.

23 The case Your Honor does not grant that, I
24 would ask that number 8 through 14 in our request
25 for voir dire be done individually with the jurors.

1 That they be allowed to approach the bench and it's
2 on the record with the court reporter.

3 We've had experience in this county with, uh,
4 sexual cases, especially involving either
5 representations of minors or actual minors or
6 assaults, that some of the jurors don't feel as
7 comfortable with the entire panel in the courtroom
8 talking about private experiences. We've had
9 several mistrials here in Richland county where we
10 find out after the trial that jurors had actually
11 been assaulted as a child and relayed that to the
12 rest of the jury. So out of abundance of caution,
13 if you don't grant attorney-led voir dire, that we
14 do individual --

15 **THE COURT:** Well, I'm not going to grant the
16 attorney-led voir dire. So what do you want to do?

17 **MR. COLLINS:** I would ask that we do the
18 general voir dire with the panel with the basic
19 questions from Your Honor that you requested from
20 the defense through 7, number 7. Then starting with
21 number 8, if we just do 8 through 14, each
22 individual juror approaches and Your Honor asks 8
23 through 14 of the defense requested voir dire.
24 Approach the bench in front of the court reporter so
25 that if they disclose anything of a personal nature

1 regarding sexual --

2 **THE COURT:** If they are, if the question
3 applies to them to come forward? We have like 35 or
4 40 people to voir dire. Do we repeat that 40 times
5 on each question?

6 **MR. COLLINS:** Yes, Your Honor. We've done
7 that previously and gotten a lot more responses
8 individually than we've gotten from asking with the
9 entire panel and people having to raise their hands
10 in front of the rest of the panel. If Your Honor
11 won't do that, at the very least, we ask that if
12 they have an answer to any of these questions, that
13 they be allowed to raise their hand then approach
14 Your Honor.. But the defense would much rather
15 prefer having each individual juror from the panel
16 come up and answer these questions in private and on
17 the record.

18 **THE COURT:** What do you say about that, Ms.
19 Bodman?

20 **MS. BODMAN:** Well, Judge Cooper started this
21 practice after we had one particular case. Many,
22 many years, one particular case where, uh, I guess
23 it was one juror did not disclose in front of the
24 whole group. So we went into this practice of
25 having them fill out a little piece of paper. He

1 would ask two questions, you know, have you ever
2 been a victim and, uh, of sexual assault and I can't
3 remember what the second question was. They were to
4 put yes or no and check it off. They handed in the
5 little pieces of paper and then we showed each and
6 every juror back to a jury room and asked them
7 individually. I think I've been involved in maybe
8 two cases where we did that. Sure enough, even with
9 that extra special effort that we've made, we had a
10 case where a juror at the end of the trial said that
11 she had been abused and she didn't disclose it to
12 us. So they are human beings. My experience is the
13 process in asking the question and trying to weed
14 out that information made zero difference at all.

15 I think if you asked the questions, you could
16 put a few of them together, ask them to think about
17 them and then say does anybody wish to approach.
18 And if you coach it in terms of either you, a family
19 member or a close friend, then they're going to be
20 less likely to be embarrassed about it. They could
21 be standing up because it's somebody else and not
22 necessarily they are not pointing out that it's
23 them. I found that the process of trying to be, you
24 know, extra confidential about it really didn't make
25 any difference whatsoever.

1 **THE COURT:** All right. Anything else?

2 **MR. COLLINS:** No, Your Honor.

3 **THE COURT:** Well, the -- uh, I'll do it my
4 way. Certainly, I appreciate the defense's concern
5 to try to get as much information out of them as
6 possible to ensure the best that I can. With regard
7 to the defense filing a motion to quash the
8 indictment or indictments, you want to acknowledge
9 at this time that we deal with the jury selection?

10 **MR. COLLINS:** I can deal with it now or we
11 can deal with it after selecting the jury as long as
12 they are not sworn in, I believe.

13 **THE COURT:** All right. We'll do that. So we
14 ready for the jury panel now?

15 **MR. COLLINS:** Just for scheduling issues.
16 Mr. Smith was diagnosed Friday with pre-diabetic
17 condition. His thyroid levels are at 0. He has to
18 use the restroom probably every 30 minutes or 45
19 minutes. I would just ask that if there comes a
20 time that I may have to stand up and we may have to
21 take repeated bathroom breaks throughout.

22 **THE COURT:** All right. We'll accommodate
23 him. He can go now if you would like.

24 **MR. COLLINS:** Thank you, Your Honor.

25 **THE COURT:** I think we're ready for the jury

1 panel to come in. We'll be at ease for a couple of
2 minutes while they come in.

3 **MR. COLLINS:** Oh, Your Honor.

4 **THE COURT:** Yes, sir.

5 **MR. COLLINS:** I apologize. In jury
6 selection, the Solicitor's office has a printout
7 that they give the Clerk of Court for jury
8 qualifications that has all the RAP sheets of all
9 the potential jurors on the panel. I specifically
10 asked for one. They declined to let me have a copy.
11 I'd ask the Court to -- if I could have a copy.

12 **THE COURT:** All right. I'm ordering the
13 State to give them a copy.

14 **MR. COLLINS:** Thank you, Your Honor.

15 **MS. BODMAN:** Uh, Your Honor, can I respond?

16 **THE COURT:** Yes.

17 **MS. BODMAN:** Before you order, there is a
18 state case on this, State versus Howard Nelson Casey
19 that says this is not something we are required to
20 disclosed to the defense.

21 **THE COURT:** Well, you have a list of the
22 jurors' records, right?

23 **MS. BODMAN:** Uh, --

24 **THE COURT:** You have a list of the juror's
25 criminal histories?

1 **MS. BODMAN:** We do.

2 **THE COURT:** All right. I'm overruling that
3 case, Howard Nelson, whatever the case was. I think
4 it's fair that they should know if the person has an
5 arrest record. It's unfair to have the State know
6 more than the defense at the same time. I don't say
7 that that's unfair precedent either.

8 **(WHEREUPON, a short recess is taken.)**

9 **(WHEREUPON, the jury enters at approximately**
10 12:56 p.m.)

11 **THE COURT:** If the state would, call its
12 case.

13 **MS. BODMAN:** Your Honor, may I approach
14 briefly?

15 **(WHEREUPON, a bench conference is held off the**
16 record.)

17 **MS. BODMAN:** Your Honor, at this time, the
18 state calls the State versus Alan Dale Smith for
19 indictment numbers 2011-GS-40-02789 and 90, 2013-GS-
20 40-4171, 72, 73, 74, 75 and 76, 2013-GS-40-4178,
21 2013-GS-40-4180 and 2013-GS-40-4182 through 4201.
22 This is for 30 counts of Sexual Exploitation of a
23 Minor in the third degree.

24 **THE COURT:** All right. Ladies and Gentlemen,
25 my name is Clifton Newman. Next to me is Judge

1 start with our pretrial motions. We'll start with
2 number 1 from our list. For the record, renew our
3 Rule 5 motion and Brady request. If there's any new
4 material, evidence, testimony that the Solicitor's
5 office is in control of or should be in control of
6 that is material to his guilt or innocence.

7 **THE COURT:** All right.

8 **MS. BODMAN:** Your Honor, just prior to Your
9 Honor taking the bench, I advised counsel that there
10 were three items of evidence that were seized from
11 the defendant's home. There were two computer
12 towers and one modem. We asked law enforcement to
13 bring those items of evidence to the courtroom,
14 excuse me, to the courthouse today. The two towers
15 were brought. But at this point, they can not
16 locate the modem itself. There was no analysis or
17 anything done with that modem. There are no
18 reports. Nothing is done with it. I did disclose
19 that. I'll just make sure it's on the record.

20 Uh, in preparation for our direct testimony
21 with our expert, we have prepared certain, I guess,
22 diagrams that are screen shots of the, uh, -- some
23 of the computer information. I don't know. I'm not
24 a computer expert. We have, uh, someone in our
25 office that's making a copy of those exhibits that

1 we're going to be using with the jury. All the
2 exhibits contain just the same information that's
3 already been provided and given the defense access.

4 **THE COURT:** You have a copy of the exhibits
5 for the court?

6 **MS. BODMAN:** Uh, they are on disk. We were
7 going to do it electronically. But I will have --
8 we will print them out so that you will have a copy
9 of them.

10 **THE COURT:** Whatever it is, we don't intend
11 to get us -- govern the jury to see whatever is
12 presented. The last trial we had, someone put a
13 screen up in the middle of the floor. We can't see
14 the evidence.

15 **MS. BODMAN:** We will print those out so that
16 you can have paper copies of what we're showing
17 them.

18 **THE COURT:** All right.

19 **MS. BODMAN:** That's everything dealing with
20 their first pretrial motion.

21 **MR. COLLINS:** Yes, Your Honor. That was
22 specifically what I was referencing. What we have
23 from their potential expert is a list of, uh,
24 suspicious files, I believe, is how he referenced
25 it, from each tower. We don't have any report

1 outside of that. We have a forensic imaging sheet
2 that said there were 1,220 read errors that is
3 included in the EnCase report. We don't have that.
4 They tell me that there is no report. But it's
5 specifically referenced. We don't have any further
6 information specifically about those read errors.

7 I believe that she said that she was going to
8 give us a copy of any diagrams or visual aids that
9 they intend to use. I would need that as soon as
10 possible to let my expert review that. We're
11 talking about massive amounts of information from
12 these computers. If they're going to have visual
13 aids with charts, we're going to need time to cross-
14 reference and go back and make sure they are
15 accurate. It could take some time. I wouldn't want
16 to have to delay the trial to be able to then take
17 what they have, go confer with my expert and compare
18 all the numbers. If we could have it ahead of time,
19 that's something I could do outside of court time.

20 **THE COURT:** All right. So what do you think?
21 Is that something you are able to provide? EnCase
22 report?

23 **MS. BODMAN:** Uh, I might need one of my co-
24 counsel to explain the EnCase report. EnCase is
25 essentially a program that allows the expert to look

1 at the hard drives without, uh, -- they take an
2 image of the hard drives, of the evidence. They
3 image it and they make a duplicate so that the hard
4 drives are not touched. EnCase allows them to
5 basically manipulate through this data on the
6 computer without changing any of the information so
7 that the access dates don't change, the deleted
8 dates don't change.

9 It is -- and you can maneuver through the
10 computer to see it in different ways. He, as an
11 expert, could generate a number of different reports
12 if he wanted to. If you wanted a report for X
13 information, he'd generate a report for that, Y
14 information. He has -- the defense has all of the
15 quote, unquote, reports that were made by this
16 expert.

17 In addition, we have given access to their
18 expert to go to SLED. He has gone numerous times to
19 also use EnCase and to look by himself at
20 everything. The reference to the read errors, that
21 obviously was in -- I don't know if you'd call it a
22 report or a document or a piece of paper, but it was
23 disclosed to them in their 1221 or something like
24 that, read errors. So that's been given to them and
25 disclosed to them.

1 We would be happy to -- I hesitate to reexplain
2 myself what the expert says the read error is
3 because I'm not a computer person. I don't want to
4 get it wrong. We'd be happy to let, you know, when
5 we finished with our pretrial motions, to let Mr. --
6 Agent Cave explain to Mr. Collins what that meant,
7 what those read errors, uh, meant. But it was all
8 -- everything has been disclosed. Every report or
9 piece of paper, memorandum, has been provided to the
10 defense.

11 **THE COURT:** All right.

12 **MR. COLLINS:** Number two, we move that any
13 new information obtained through any new material
14 information gained from interviewing their witnesses
15 in preparation for trial, specifically the lay
16 witnesses, Michael Walling, Casey Jeffords and
17 Michelle -- Michelle Sullivan. We have brief
18 statements from them.

19 We have gotten additional information in
20 regards to Casey Jeffords. Ms. Bodman provided a
21 FaceBook conversation from back in 2010 between Mr.
22 Smith and Ms. Jeffords. Other than the Facebook
23 conversation that was printed out, we have not been
24 provided with any new information. We just want to
25 put on the record that if anything new was relayed

1 to the solicitors from these witnesses that that
2 should be turned over.

3 **THE COURT:** All right.

4 **MS. BODMAN:** There is no Brady information
5 gotten from the witnesses that we talked to.

6 **THE COURT:** All right.

7 **MR. COLLINS:** Your Honor, next, I believe
8 we've already taken care of, number three, that will
9 take me to number four on the defense pretrial
10 motions. The statute that we're dealing with, 16-
11 15-410, there's only one case that cites the statute
12 under state law. It's not a heavily litigated
13 statute. Typically, these type of charges go to
14 federal court.

15 Your Honor, in federal court, the old law, the
16 language was similar to what we have now here in
17 state court. What it said is it is illegal to have
18 possession of a visual depiction that is or appears
19 to be a minor. That went to the Supreme Court,
20 Ashcroft v. Free Speech Coalition.

21 The Supreme Court of the United States ruled
22 that that was unconstitutionally overbroad language.
23 That is substantially limited --, it limited a
24 substantial amount of legal activity because they
25 said that the appears to be language also

1 encompasses things like the movie, "American
2 Beauty", where they have an adult actor playing a
3 juvenile involved in sexually explicit type
4 activity. The court did a very good analysis of how
5 that was overreaching and how it would have a
6 chilling effect and when it does affect such a
7 substantially large amount of legal activity and
8 makes that illegal, it's a strict scrutiny analysis.

9 I think what we have here with the South
10 Carolina law, it doesn't have the appears to be
11 language. However, it just says visual
12 representation of a minor engaged in sexual
13 activity. When you look at the plain meaning of
14 visual representation, that is, putting something
15 up, representing something else that it is not. The
16 federal law made the amendments to make it very
17 specific that it must be proven that an actual minor
18 was used in developing the pornography that it's
19 charged with.

20 Under the state law, we don't have that. What
21 we have is the plain language that it is a visual
22 representation of a minor engaged in sexually
23 explicit or sexual activity. This would also
24 include all of the things addressed in Ashcroft that
25 is legal activity that would fall under the statute

1 and make it -- this statute would make that activity
2 legal, including movies like "American Beauty",
3 "Romeo and Juliet", anything where adult actors are
4 set forth as to being minors engaged in sexual
5 activity. Just the plain meaning of our statute
6 encompasses that.

7 I think because of that, without additional
8 addendums to this statute, the more requirements
9 were put in there, specifically, that it has to be a
10 minor. Like the federal charge, this whole statute
11 is unconstitutional. Nobody can be prosecuted under
12 it.

13 I would direct the Court's attention to the
14 Supreme Court case of Plummer versus City of
15 Columbus, 414 US 2. In that case, it deals with a
16 city ordinance about types of speech. The important
17 part of the decision is that someone's activity, the
18 defendant's activity, doesn't have to fall under the
19 legal part. That's not a requirement to challenge a
20 statute for the substantially over broad. We don't
21 have to, as a defendant, prove that each and every
22 image or video that they are seeking to use to
23 prosecute him falls under the legal category. We
24 simply have to show that the statute on its plain
25 meaning and on its face is unconstitutionally over

1 broad.

2 When you read this statute, it says a visual
3 representation of a minor engaged in sexual
4 activity. That outlaws a substantial amount of
5 legal activity that the Supreme Court addressed in
6 Ashcroft. So I don't see how a prosecution could go
7 forward under this statute the way it's written. It
8 can easily be amended just like the federal courts
9 amended their statute, but it hasn't been amended
10 yet. The way it's written, it's unconstitutional.

11 **THE COURT:** All right. Ms. Bodman.

12 **MS. BODMAN:** Your Honor, I would just ask the
13 Court for a little time for us to go pull Ashcroft
14 so that I can read it myself. The motion didn't --
15 it was a very general motion about quashing. So if
16 I could just -- if we could move on to some of the
17 other motions and go pull that case and then perhaps
18 I can distinguish it for the Court.

19 **THE COURT:** You have a copy of the case for
20 the Court?

21 **MR. COLLINS:** I have one copy.

22 **THE COURT:** You have cited a case. You want
23 me to just take your word for what it says or do you
24 have something to show me?

25 **MR. COLLINS:** I could have a couple of copies

1 made, Your Honor. I apologize. Uh, this is
2 preeminent case dealing with sexual exploitation
3 laws. I should have -- I have a copy for Your
4 Honor, but I don't have a copy for the prosecutor's
5 office at this time. But I can make a copy.

6 **THE COURT:** All right.

7 **MR. COLLINS:** Would you like for me to?

8 **THE COURT:** Sure.

9 **MR. COLLINS:** I apologize. My co-counsel has
10 some extra copies. If I may approach.

11 **THE COURT:** Yes, sir.

12 (WHEREUPON, there is a pause.)

13 **THE COURT:** Mr. Collins, what did the court
14 mean when they referenced virtual child pornography?

15 **MR. COLLINS:** Computer-generated. High level
16 cartoons essentially. Computer animated.

17 **THE COURT:** Like Morph?

18 **MR. COLLINS:** Yes, Your Honor. There's other
19 cases that discuss -- and it won't come in our case
20 because we don't have the experts to testify. It
21 doesn't come up with our set of facts. But there's
22 been cases, uh, where defense experts have been able
23 to show certain images generated by computers
24 related to real photographs. You can not tell the
25 difference between the two.

1 Certain circuits have ruled that, uh, that
2 makes it really hard to prosecute under the loss.
3 However, that's in the 10th Circuit. There's also a
4 lot of circuits that ruled that that's something
5 that can be testified to as an expert and tell the
6 difference between a virtual image and a non-virtual
7 image.

8 What we have in South Carolina is more general
9 and more broad than what's included in the federal
10 statute. The federal statute has been upheld since
11 it was amended after the Ashcroft decision. That's
12 where they put in detail what needs to be found in
13 the order for it to qualify. That's the language
14 that's not been added to our state statute.

15 **THE COURT:** Do we have any of that in this
16 case? You're not contending that the evidence in
17 this case deals with the same type that they
18 referred to in this case. They said it appears to
19 depict minors but were produced by means other than
20 using real children. For example, computer-
21 generated images or images of adults who look like
22 minors. Are you contending that in this case, we
23 have the same type of scenario or just based on the
24 fact that the, as a result of the ruling in this
25 case, other states amended their statute that made

1 it acceptable in South Carolina?

2 **MR. COLLINS:** Your Honor, my argument is that
3 the Ashcroft decision rules that that federal
4 statute was substantially overbroad. I cited
5 Plummer versus City of Columbus and other Supreme
6 Court cases that I had copies of that details the
7 way the Court handles when a statute is
8 substantially overly broad.

9 Our position is that we don't need to get into
10 any of the facts of this case. We're examining the
11 statute on its face. If it is ruled
12 unconstitutionally overbroad, he can't be prosecuted
13 under that statute.

14 **THE COURT:** This statute in South Carolina is
15 not the same statute that the Supreme Court ruled
16 unconstitutional?

17 **MR. COLLINS:** It is not the same statute. I
18 allude to the case for the line of reasoning. It's
19 the same line of reasoning that our statute simply
20 says a visual representation of a minor engaged in
21 sexual activity. That encompasses the exact same
22 group that the Supreme Court addressed in Ashcroft.
23 Without any clarification or any requirement that a
24 minor -- it actually be a minor used in the
25 production, it encompasses all the legal activity

1 that's included in Ashcroft.

2 **THE COURT:** All right. I'm going to ask you
3 another question. Does the circuit court have the
4 authority to declare a state statute,
5 unconstitutional?

6 **MR. COLLINS:** Your Honor, my position is yes.

7 **THE COURT:** Your position is based on what
8 authority? Based on what precedent or what
9 authority?

10 **MR. COLLINS:** Constitutionality is always
11 subject matter jurisdiction. If you find it's
12 unconstitutional, there is no jurisdiction for the
13 circuit court. It's something that can be appealed,
14 but I believe it's in your discretion.

15 **THE COURT:** Immediately appealable,
16 interlocutory?

17 **MR. COLLINS:** I believe it would be a --

18 **THE COURT:** I thought I'd give you a little
19 time there, Ms. Bodman.

20 **MS. BODMAN:** Uh, counsel tried to say that
21 our statute is broader than this one in Ashcroft.
22 But actually our state statute is -- in a number of
23 different areas, one, just the type of sexual
24 activity involved. Federal law allows, you know,
25 non-penetrated acts and those types of things to be

1 prosecuted, that we have to have very specific acts
2 that the child has engaged in. But the one
3 particular here is the section that they are
4 referring to as the visual, virtual pornography
5 section that says, uh, any visual depiction
6 including any photograph, video, picture, computer-
7 generated image or picture that is or appears to be
8 -- That is or appears to be is the virtual
9 pornography, I guess, what they are talking about --
10 that portion of it, or appears to be, is what was
11 found to be unconstitutional.

12 We don't have that in our statute. We very
13 specifically say that it is a digital representation
14 of a minor. Then when you go to the definition
15 section in 16-15-375, a minor means an individual
16 who is less than 18 years old. There is zero
17 reference in our law to virtual images, virtual
18 representations, virtual pornography. It is a
19 visual representation of a minor. A minor is an
20 individual who is less than 18. The federal statute
21 is completely different than our state statute.

22 **THE COURT:** You know what state the South
23 Carolina statute is modeled after? What other
24 states? Typically, with these statutes, states
25 don't create, uh, unique statutes. They are

1 typically part of a group of states and they model
2 one state statute after another state statute.
3 Assuming that the South Carolina statute is modeled
4 after statutes in other states, 15 other states, the
5 question would be whether any of those state
6 statutes have been reviewed for constitutionality or
7 rationality. What rationality they used to uphold
8 or overrule those statutes?

9 **MS. BODMAN:** I do not know what states we --
10 maybe other states modeled their statutes after us.
11 But we can certainly do the research and get back to
12 Your Honor.

13 **THE COURT:** This case was argued in 2001, was
14 cited in 2002. We're now in 2013. This is a
15 federal case, did you say that? What word did you
16 use?

17 **MR. COLLINS:** Federal case.

18 **THE COURT:** If it is, then there's a case in
19 2001 that has the impact of Mr. Collins' argument.
20 There should be some history from then until now
21 that we should be able to look at.

22 **MR. COLLINS:** Under federal law, they amended
23 the statute immediately in 2003. That superceded
24 the Ashcroft opinion because they took out the
25 language that it was held to be unconstitutional and

1 added specific requirements that it be an actual
2 minor used to make the visual depiction.

3 Under state law, I'm sure Your Honor is aware
4 it's not very often that there is a state case for
5 sexual exploitation of a minor. It typically does
6 go to federal court. We don't have that many cases.
7 The only case that addresses this statute in South
8 Carolina since it was adopted, I believe, is
9 Hendricks versus State PCR, an application opinion
10 where the defendant represented himself pro se and
11 brought up the Ashcroft decision years after his
12 original guilty plea. I don't have that cite in
13 front of me, but they address the situation and said
14 that it didn't apply.

15 However, my argument would be that a PCR, pro
16 se PCR application, when we don't have the record of
17 how it was argued or anything of that nature, I
18 don't believe we have any opinion that is reliable
19 enough or any opinion that that is on point enough
20 for us to get a ruling. I think what we have here
21 is the US Supreme Court opinion on Ashcroft and then
22 just the plain meaning of our statute.

23 What it comes down to is what's the definition
24 of representation. That's the key issue here. You
25 just look up Merriam-Webster, representation is

1 putting something forward to representing something
2 else. It's kind of hard to get around the plain
3 meaning that a visual representation of a minor
4 depicting sexual activity is going to included all
5 of the activity that was addressed by the U.S.
6 Supreme Court.

7 **THE COURT:** All right.

8 **MS. BODMAN:** It does appear that our state
9 statute did undergo some amendments in 2008 after --
10 I'm sorry. 2004 and 2008 after the Ashcroft
11 decision. It also appears our statute mirrors North
12 Carolina. They -- right now, it's still standing.

13 **THE COURT:** All right. Well, unless there is
14 something else, we'll take this issue under
15 advisement and look at it some more overnight and
16 we'll press on to any other matters.

17 **MR. COLLINS:** That's all for the defense,
18 Your Honor, other than, I guess, at some point, we'd
19 like to clarify the ruling on the two indictment
20 issue that we asked just to determine exactly which
21 two indictments under those numbers the jury will be
22 going forward on.

23 **THE COURT:** What two indictment numbers we're
24 going forward on?

25 **MS. BODMAN:** I'll state for the record again,

1 we're going forward on the most recently presented
2 indictments to the Richland County Grand Jury which
3 was returned on July 2013 that contain the specific
4 names of images that was added to those two
5 indictments.

6 **THE COURT:** Do you have anything else pending
7 regarding Jackson v. Deno or anything like that?

8 **MS. BODMAN:** Uh, we do have a statement. So
9 we do have Jackson v. Deno to present, Your Honor.

10 **THE COURT:** All right.

11 **MS. BODMAN:** The State would call Lieutenant
12 Bryant Hinson.

13 **BRYANT HINSON**

14 having first been sworn, testifies as follows:

15 **THE CLERK:** Please have a seat. State your
16 full name please.

17 **THE WITNESS:** My name is Bryant Lee Hinson,
18 Jr.

19 **DIRECT EXAMINATION**

20 **BY MS. BODMAN:**

21 **Q** And with whom are you employed?

22 **A** Forest Acres Police Department.

23 **Q** And in what capacity?

24 **A** Lieutenant over the Investigations Division.

25 **Q** How long have you been there?

1 **A** Just over 23 years.

2 **Q** All right. And how did you become involved in
3 this case involving the defendant, Alan Dale Smith?

4 **A** Uh, Ms. Jeffords came in and filed a police
5 report with the Forest Acres Police Department. One of
6 our uniform officers took that report. The next day, uh,
7 I got involved. I pulled all the reports and signed
8 them. That's how I got it.

9 **Q** Okay. So you assigned it to yourself?

10 **A** Yes, I did.

11 **Q** Okay. Essentially, did you go out to the
12 defendant's residence?

13 **A** I did. First, I interviewed, uh, some other
14 people that were listed on the report, took a statement
15 from them. Based off of the statements that had been
16 obtained the day before and the statements that were
17 obtained on that day, uh, I did obtain a search warrant
18 and contacted SLED since it was involving computers and I
19 have no expertise with computers. They agreed to go
20 along with us. Got a signed warrant. Uh, we met with
21 SLED and went to that residence.

22 **Q** Okay. Did you contact the defendant at the
23 residence?

24 **A** Yes, we did.

25 **Q** Do you see him in the courtroom today?

1 **A** Yes, the gentleman right here.

2 **Q** Okay. Tell us basically how that contact
3 happened at the apartment.

4 **A** We knocked on the door. He came to the door.
5 He answered the door. He was the only individual at the
6 residence. We advised why we were there, entered the
7 residence, searched with the search form and advised what
8 we were there to do. He had no problem with that. He
9 consented. At which time, Agent Cave, uh, began looking
10 at the computers which were right there in the one-bed --
11 it was just a one-bedroom apartment.

12 **Q** Okay. Uh, did you -- at any point, while you
13 were at the apartment, did you advise the defendant of
14 his rights?

15 **A** Verbally, at that stage, during -- I don't know
16 exactly when, but during the time we were there, yes.
17 And then afterwards, I had asked Mr. Smith to come to the
18 Forest Acres Police Department. He was told he was not
19 under arrest, however, I did want to take a statement
20 from him, which he agreed to. In fact, I brought him to
21 the police department.

22 **Q** Okay. Let's back up. We're still at the
23 apartment. Uh, so you said you did advise him of his
24 rights at the apartment?

25 **A** Verbally.

1 Q Verbally. Do you have those rights -- do you
2 have them memorized or do you do it off a card?

3 A Typically, do them off of a card.

4 Q Okay. Do you have the card with you?

5 A I probably have it in my wallet.

6 Q Okay.

7 A I have it right here.

8 Q Okay. Can you tell us then, uh, what rights
9 did you advise the defendant of verbally there at the
10 apartment?

11 A The Miranda rights.

12 Q Okay. Specifically, what rights?

13 A Uh, you have the right to remain silent.
14 Anything you say can and will be used against you in a
15 court of law. You have the right to speak to an attorney
16 and have an attorney present during any questioning. If
17 you can not afford a lawyer, one will be provided for you
18 at the government's expense. Knowing this -- knowing and
19 understanding your rights as I have explained them to
20 you, are you willing to answer questions or answer
21 without an attorney present.

22 Q Uh, and did he respond to that, to your last
23 question?

24 A Yes, he was okay with that and had no problem.

25 Q Okay. So did you engage in a conversation with

1 the defendant there at the apartment?

2 **A** We -- there were some questions asked as far as
3 was there any porn on his computer. He acknowledged that
4 there was. Of course, we asked him, uh, if he -- how he
5 -- how this had gotten there because we did find child
6 pornography. He indicated there that he didn't know how
7 it got there and then later gave me a statement that it
8 would pop up and come up at various times when he would
9 go to various sites.

10 **Q** Okay. And I don't want to talk about what he
11 says later. I just want to talk about there at the
12 apartment.

13 **A** Right.

14 **Q** So when you said initially your very first
15 question was something about do you have porn, did you
16 state it just porn or, at that point, did you qualify it
17 as child pornography or was it just do you have
18 pornography?

19 **A** To be honest with you, I can't say which one.

20 **Q** Okay. Uh, what else -- what else did he tell
21 you at the scene?

22 **A** The only thing really I could remember is the
23 fact that it was there, that there were two computers,
24 one of the computers had a virus on it, so he was no
25 longer using that and he brought a new computer several

1 months before that. That was the computer that he was
2 using now.

3 Q Okay. Do you remember about how long you
4 stayed at the defendant's home?

5 A I would guesstimate maybe 45 minutes.

6 Q Then at that point, what, if anything, do you
7 ask him or advise him about -- you said that at some
8 point, you go back to the station.

9 A That's correct. At that stage, I advised him
10 that I would like to take a statement from him, get his
11 side of the story. He agreed. I advised him that I
12 would drive him down to the police department. He was
13 not under arrest. Then I would bring him back when he
14 was done. He came to the police department. He was
15 advised of his rights with the form at that stage, which
16 he signed. Took a written statement from him at the
17 office. Then afterwards, of course, took him back to his
18 house.

19 Q Okay. So at the office, describe for us where
20 do you physically take him. To a room by himself?

21 A No, it was in my office, which consists of
22 three other desks for other investigators aside from
23 myself. Investigator Morrison was there. He was doing
24 some paperwork. As far as the items that we had seized
25 from the residence, he was doing paperwork on that.

1 There was another SLED agent there as well as Agent Cave.

2 (WHEREUPON, State's Exhibits 1 and 2 are marked for
3 identification purposes.)

4 BY MS. BODMAN:

5 Q Okay. This one, I'm just going to show you
6 State's Exhibit 1 for identification and ask you if you
7 recognize that.

8 A Yes, that's the Forest Acres Police Department
9 Advisement of Rights form.

10 Q And specifically, what Advisement of Rights
11 form is this one?

12 A Uh, --

13 Q Is it filled out or is it blank?

14 A Yes. Yes, it's filled out. He's initialed
15 each item that we went through and as well as signed the
16 Waiver of Rights.

17 Q So this is the actual form that you filled out
18 with the defendant?

19 A Correct.

20 Q So go through for us, if you can, you are in a
21 larger room with a few desks, other people, how do you
22 sit down with him and go over this?

23 A I was at my desk. There is a chair next to my
24 desk that he was sitting in. I read these rights to him.
25 The reason why I do that, I had a case one time where a

1 gentleman indicated that he could read and he couldn't.
2 It was thrown out. Therefore, I always read the rights.
3 I went over it. It says, your rights. Before we ask you
4 any questions, you must understand your rights. You have
5 the right to remain silent. There was a place to put
6 your initials saying you understand. Anything you say
7 can and will be used against you in court. Again,
8 there's a place to put your initials.

9 You have the right to talk to a lawyer for
10 advice before we ask you any questions and have him or
11 her with you during questioning. And another place to
12 put initials. If you can not afford a lawyer, one will
13 be appointed for you before any questioning if you wish.
14 A place to put your initials. If you decide to answer
15 questions now without a lawyer, you will still have the
16 right to stop answering questions at any time. You also
17 have the right to stop answering questions at any time
18 until you talk to a lawyer.

19 Below that is a waiver of rights. It says I
20 read the statement of my rights and understand what my
21 rights are. I'm willing to make a statement and answer
22 questions. I do not want a lawyer at this time. I
23 understand and know what I'm doing. No pressure -- no
24 promises or threats have been made to me. No pressure or
25 coercion of any kind has been used. Then I allow him to

1 look at that and initial those that he understands that
2 and he signs at the bottom waiving his rights.

3 Q Okay. So you read the whole form and then
4 basically turned it over to him to...

5 A To look at and initial and sign at the bottom.

6 Q And did he initial on the Advice of Rights
7 form?

8 A Yes, he did.

9 Q And where all did he initial?

10 A All to the left.

11 Q Okay. So after each individual right?

12 A Correct.

13 Q Okay. Just not one initial but --

14 A Each individual.

15 Q Okay. And then the waiver of rights, what
16 happened there?

17 A After you read that, he signs at the bottom as
18 the person waiving rights.

19 Q Indicating that he wants to talk to you, is
20 willing to talk to you?

21 A That he had no objection and he knew he could
22 stop at any time.

23 Q Okay. Uh, so then what happened after you got
24 the signature on the Advice of Rights form?

25 A Uh, I was at my computer. I was typing

1 questions. I was asking him the answers. I was typing
2 in those because you wouldn't want me to write it out.
3 My handwriting is not that good. I use the computer. I
4 did that. Then I would type in his answers whatever he
5 told me.

6 When I completed, I would print it and allow
7 him to review it while it was still there and ask him to
8 look at it, make sure it's correct. If it's not correct,
9 I went back in and changed it. He reviewed it.
10 Indicated that it was all correct. Then I would ask him
11 to sign it, which he did.

12 Q Was there any type of, I guess, conversation
13 before you started doing the question and answer on your
14 form? Do you, hey, buddy, you're in a really tight spot
15 here, talk to me? This is -- I mean, do you have any
16 conversation about this is what we found, this is what we
17 saw or did you go directly to typing a question and
18 asking for an answer?

19 A Exactly what was said, I couldn't tell you. We
20 did discuss it. These things were found on your
21 computer. It didn't just get there. We discussed a
22 little bit, yes.

23 Q So there's a head's up about what -- where
24 you're going in the question and answer.

25 A Right. Why are we asking this and why you're

1 here in the first place, what we found thus far.

2 Q Okay. So then after you finished the questions
3 and the answers, uh, typing them up, what did you do
4 next?

5 A Went over them with him. Allowed him to review
6 them. He indicated that's correct. He signed it. After
7 signing it, shortly thereafter, I believe I took him home
8 and dropped him off.

9 Q So you returned him back to his home?

10 A Correct.

11 Q I'm going to show you State's 2 there. Do you
12 recognize that?

13 A Yes, that would be the statement that I would
14 have typed up.

15 Q Okay. And whose signature is on that
16 statement?

17 A The defendant's.

18 Q Anybody else's?

19 A Uh, I notarized it.

20 Q Okay. Uh, any other conversations that you
21 remember with him other than, okay, let's go, my car's
22 out here? Anything, I guess, non-related to the case?
23 Anything else that you remember?

24 A We had conversation on the way back there. I
25 really don't recall what was said. Don't think that we'd

1 drive the whole way without saying anything, but I don't
2 recall.

3 Q Okay. At any point, did you coerce him into
4 making a statement?

5 A No, absolutely not.

6 Q Did you make him any promises in exchange for
7 giving up his rights and giving you a statement?

8 A No, I did not.

9 Q Did he appear, uh, to understand everything
10 that was going on?

11 A Absolutely.

12 Q Appear to understand the English language?

13 A Yes.

14 Q Did he appear to be under the influence of any
15 alcohol or drugs, uh, anything like that?

16 A No, he didn't.

17 Q Did he appear to, in any way, have any type of
18 mental impairment?

19 A No, he did not.

20 Q State's 3 for ID. Uh, I asked you earlier
21 about, uh, the conversation at the house that you had
22 with him and whether or not you remembered specifically
23 about just referencing porn or if you specifically -- uh,
24 there was a specific reference to child porn, correct?

25 A Yes.

1 Q And let me make sure, you do not recall at this
2 point what the specifics were?

3 A Sitting here, I don't recall whether it was
4 porn or child porn.

5 Q Okay. Did you write, I guess take notes or
6 write reports in relation to your involvement in this
7 case?

8 A I did.

9 Q Would it help you to be able to refresh your
10 memory?

11 A Yes.

12 (WHEREUPON, State's Exhibit 3 is marked for
13 identification purposes.)

14 BY MS. BODMAN:

15 Q Okay. I'm going to show you State's Exhibit
16 number 3. I guess, look at the second paragraph after
17 listing of the items and just read the first sentence
18 just to refresh your memory.

19 A Child porn or pornography was seen on the
20 computer at the scene by SLED with the owner's consent
21 and the suspect admitted to downloading porn and seeing
22 some child porn but never saving it.

23 Q So admitted to downloading porn and admitted to
24 seeing child porn?

25 A Correct.

1 Q But never downloading it?

2 A But never saving it.

3 Q Never saving it. Excuse me. Okay. I have no
4 further questions at this time.

5 THE COURT: Cross-examination.

6 MR. COLLINS: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. COLLINS:

9 Q Do you specifically remember reading Mr. Smith
10 his rights at his apartment or do you testify that that's
11 what you usually do?

12 A I believe I read him his rights at the
13 apartment when we spoke to him.

14 Q You said -- you said "we", who is we? You?

15 A Well, I did.

16 Q So you have a specific memory of talking with
17 him at the apartment?

18 A I recall giving -- reading him his rights.

19 Q Did you take your card out or did you read it
20 from memory?

21 A I would have taken it out.

22 Q You wouldn't have taken it out?

23 A I would have taken it out.

24 Q All right. But do you have a memory of taking
25 it out?

1 **A** I recall reading him his rights. Do I remember
2 specifically pulling the card out? That's what I
3 normally do, so that's what I would assume I did.

4 **Q** Okay. Because those are two completely
5 different answers here. There's what you normally do and
6 what you actually remember. Do you actually remember --

7 **A** I remember reading him his rights.

8 **Q** Okay. Now, you told Ms. Bodman that before you
9 got the search warrant, you went and interviewed a couple
10 of people. Who did you interview?

11 **A** The -- actually they came to my office. There
12 were other individuals listed on the report. There was
13 another individual listed on the report. She also
14 brought somebody with her. It was Monica Walling, I
15 believe. It was one other. I think Michelle Sullivan.

16 **Q** And is that the date you took the statements
17 from them?

18 **A** Let me see. (Reviewing.)

19 No, that was actually taken on 3/10.

20 **Q** Okay. Uh, when you served the search warrant,
21 your testimony is you went to the apartment. Correct me
22 if I wrong. It was you, Agent Hampton with SLED, right?

23 **A** Yes.

24 **Q** Agent Cave with SLED?

25 **A** Correct.

1 Q And Morrison?

2 A Correct.

3 Q Was there anybody else with you guys?

4 A I don't recall if we had a marked officer with
5 us.

6 Q You don't remember?

7 A I don't remember.

8 Q You remember how many cars y'all drove in to go
9 over there?

10 A I do not.

11 Q Uh, do you -- now, when you do a search
12 warrant, you sign a property report to list what's taken
13 from the place where the search warrant is served, right?

14 A On the final page.

15 Q That's what you sign as you are leaving the
16 apartment?

17 A That's what you are saying you removed from the
18 residence. An inventory of what you take.

19 Q All right. So that's typically done when you
20 are leaving the residence after a search?

21 A Correct.

22 Q Okay. Uh, now, then you took Alan back to
23 Forest Acres Police Department and you did the written
24 statement?

25 A That's correct.

1 Q And the timing of the written statement is the
2 exact time that's on the Advice of Rights, right?

3 A I won't say exact time.

4 Q You can take a look at the -- 2:25 on both,
5 correct?

6 A Actually, I don't have those. They are in
7 evidence.

8 Q This is State's Exhibit 1 and 2.

9 A Okay. That's correct. They are both listed as
10 2:25.

11 Q And you would admit that you can't do both of
12 those at exactly the same time, correct?

13 A That's correct.

14 Q Why didn't you get an arrest warrant for Mr.
15 Smith until August of 2010?

16 A Cause I wanted the computers to be looked at
17 through SLED. This is not a type of case that -- that's
18 the first time I've ever worked a case like this. That's
19 why I had SLED with us. Therefore, SLED came along and
20 returned to SLED -- I wanted SLED to do a complete review
21 of them so we can determine what was on the computers.
22 There was no need to just jump to conclusions and go out
23 and rush out and get an arrest warrant. I'd rather have
24 everything that was there before we made that decision.

25 Q Okay. When y'all were interviewing Alan at

1 Forest Acres Department, do you have any memory outside
2 of what's written in that statement that you typed up?
3 You remember actually interviewing him at Forest Acres?

4 A Yes.

5 Q Uh, did anybody ask him about Hot Spots down at
6 the apartment complex? Do you remember any conversation
7 about that?

8 A Not that I recall but I wasn't in the room with
9 him at all.

10 Q Who all was in the room?

11 A All of us that you've already listed there.

12 Q Okay.

13 A If somebody would have asked him something when
14 I wasn't in the room, I wouldn't know necessarily what
15 was asked, if anything.

16 Q Who was asking the questions when you were
17 writing or typing the statement?

18 A I was.

19 Q Was anybody else asking questions at that time?

20 A The other agent from SLED may have been. I
21 know he was there during the whole interview. He was
22 talking with him.

23 Q Let me back you up just a little bit to the
24 time you were at the apartment. You said Agent Cave got
25 on the computer at that time.

1 **A** Correct.

2 **Q** Was he pulling up images on the computer?

3 **A** I don't know exactly how he did it, but yes, he
4 did find images on the computer.

5 **Q** Okay.

6 **MR. COLLINS:** Beg the Court's indulgence.

7 (Pause.)

8 No further questions.

9 **MS. BODMAN:** No further questions, Your
10 Honor. I would just tender to you for your
11 consideration State's Exhibits 1 and 2 which are the
12 Advice of Rights statement forms.

13 **(WHEREUPON, there is a pause.)**

14 **THE COURT:** Next witness.

15 **MS. BODMAN:** No other witnesses on this
16 issue, Your Honor.

17 **THE COURT:** By the defense.

18 **MR. COLLINS:** Your Honor, as long as the
19 other officers aren't going to testify as to
20 anything that Mr. Smith said, I'm fine with them not
21 calling any other witnesses. But if they are
22 seeking to introduce the testimony from the other
23 officers that were present, I think we're entitled
24 to hear, especially considering Lieutenant Hinson
25 just testified he wasn't in the room the whole time

1 with Mr. Smith. He doesn't know what the other
2 people asked him. So if they are not intending to
3 introduce anything, obviously, we don't have an
4 issue. But I don't want to have this come up in
5 front of the jury.

6 **MS. BODMAN:** We have offered the statements
7 that we intend to introduce.

8 **THE COURT:** I recognize you as to whether you
9 have any witnesses, you can call any witnesses that
10 you might want to.

11 **MR. COLLINS:** Uh, out of abundance of
12 caution, Your Honor, we'll call, I believe, Agent
13 Cave is the only person available right now.

14 **BART CAVE**

15 having first been sworn, testifies as follows:

16 **THE CLERK:** Please have a seat. State your
17 full name for the record.

18 **THE WITNESS:** Bartley Cave.

19 **MR. COLLINS:** Please the Court?

20 **THE COURT:** Yes.

21 **MR. COLLINS:** Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 **BY MR. COLLINS:**

24 **Q** Uh, you just heard the testimony of Lieutenant
25 Hinson, were you -- were you present when the search

1 warrant was served on Alan Smith's apartment?

2 A Yes, sir. I was.

3 Q All right. Do you remember anyone reading his
4 Miranda rights to him at that time?

5 A No, sir.

6 Q Where were you?

7 A Searching the bedroom and other parts of the
8 house, computers.

9 Q You were with the other officers as they
10 entered the residence?

11 A Yes.

12 Q You don't remember hearing anybody read Miranda
13 rights to Mr. Smith?

14 A We went got there, we went into one room. Me
15 and Agent Hampton searched the apartment.

16 Q Uh, it's a two-room apartment, correct?

17 A Yes.

18 Q One bedroom and a common area?

19 A Yes, sir.

20 Q Okay. Were the doors closed in between those
21 two rooms?

22 A Uh, no, sir.

23 Q And you didn't hear anything?

24 A I was focused on searching.

25 Q Okay. It's okay to say if you didn't hear.

1 **A** Yes.

2 **Q** Uh, as you were searching the computer, did you
3 pull up any images at that time?

4 **MS. BODMAN:** I'd object to beyond the scope.
5 The purpose of this motion is the voluntariness of
6 any statements.

7 **MR. COLLINS:** I'll move on, Your Honor.

8 **BY MR. COLLINS:**

9 **Q** Uh, did you ask Mr. Smith any questions about
10 the apartment?

11 **A** No, sir.

12 **Q** You did not. Did you hear him say anything to
13 any other officers at the apartment?

14 **A** I heard them speaking, but I don't recall
15 anything they were talking about.

16 **Q** So you don't know what he said at the
17 apartment?

18 **A** No, sir.

19 **Q** Did you participate in the interview at the
20 Forest Acres Police Department?

21 **A** No, sir.

22 **Q** You didn't ask Mr. Smith any questions about
23 hot spots at the apartment?

24 **A** No, sir.

25 **Q** Were you present throughout the interview at

1 Forest Acres Police Department?

2 A Yes.

3 Q Did you take any notes?

4 A I was the one that signed along with the other
5 officer from Forest Acres. They were signing a chain of
6 evidence.

7 Q Did you hear any of the conversation that was
8 happening at the Forest Acres Police Department?

9 A They were talking but I don't remember what was
10 discussed.

11 Q All right. And you didn't ask any questions?

12 A No, sir.

13 MR. COLLINS: No further questions.

14 THE COURT: Any by the State?

15 MS. BODMAN: No questions.

16 THE COURT: All right. Thank you, sir.

17 Next witness.

18 MR. COLLINS: Your Honor, I don't believe the
19 other two officers that were present are here at
20 this point.

21 THE COURT: You have any more witnesses you
22 want to call?

23 MR. COLLINS: I don't at this time. I guess
24 we can address it if it comes up during the trial as
25 to whether they have any testimony as far as

1 defendant's statements.

2 **THE COURT:** All right. Any argument
3 regarding the voluntarily by the State?

4 **MS. BODMAN:** Uh, well, Your Honor,
5 Investigator Lieutenant Hinson stated that at the
6 house, he advised him of his rights. He recalls
7 reading the rights to him, reading them. The fact
8 that he doesn't remember actually pulling the card
9 out, which is the question that Mr. Collins asked is
10 do you remember actually pulling the card out of
11 your pants, he might not have a memory of that act,
12 pulling it out of his pants, but he does have a
13 memory of reading the rights, uh, to the defendant
14 in that apartment.

15 In addition, Agent Cave is then -- his
16 responsibility is to go actually look for the
17 computers and search for evidence. So he is in the
18 bedroom. He hears people talking but does not know
19 what they are saying. So he doesn't say the rights
20 weren't read. He just says I hear talking. I'm in
21 the other room. My responsibility is to be looking
22 for computers.

23 I think it's reasonable to assume that he and
24 Agent Hinson are probably talking to each other in
25 the bedroom about here is why we are here, have you

1 found one over there. Let's unplug them. Let's do
2 this, whatever he's supposed to be doing to then
3 move them to do their previews. So it's completely
4 consistent and reasonable that Agent Cave has no --
5 didn't hear, has no memory or, uh, firsthand
6 knowledge that the rights were read.

7 Then, down at the Forest Acres Police
8 Department, he indicates again that he sat down,
9 read the rights. The defendant's initials are on
10 the Advice of Rights form, the signature is on the
11 Advice of Rights form and Lieutenant Hinson clearly
12 said he knew what he was doing. He never promised
13 him anything, never coerced him, did not appear to
14 be under any type of alcohol or drug affects. He
15 clearly understood and knew what he was doing. And
16 then after taking a statement, uh, he returned the
17 defendant back to his home. We believe he met the
18 burden of proving that they are voluntary and were
19 given the rights.

20 **THE COURT:** Mr.. Collins?

21 **MR. COLLINS:** Your Honor, I think our biggest
22 problem is whether or not Mr. Smith was detained.
23 That is weakness in our argument. I would point out
24 that the Advice of Rights form was not witnessed by
25 the officer. The testimony that we heard from both

1 officers is extremely vague on actual memories and
2 extremely strong on what they normally do. I would
3 just argue that they haven't met the burden based on
4 the testimony and their very vague memories of what
5 actually happened that day.

6 **THE COURT:** All right. With regard to the
7 proof regarding the voluntariness of the statement
8 by the preponderance of evidence, I find that the
9 State has met its burden of proof. The defendant
10 freely and voluntarily gave this statement after
11 being advised of his constitutional rights.

12 **MS. BODMAN:** Does that also go to the oral
13 statements that were made back at the apartment,
14 specifically, admitting to downloading porn and
15 seeing some child porn but never saving it?

16 **THE COURT:** Any statements made after he was
17 advised of his rights. All right. What's next?
18 You have a lot of exhibits you said you will be
19 introducing.

20 **MS. BODMAN:** Yes.

21 **THE COURT:** Has the defense seen these
22 exhibits?

23 **MS. BODMAN:** We have -- the exhibits that we
24 are using tomorrow in front of the jury, uh, one of
25 them on the disk has the image of the child

1 pornography. I had forgotten about that when I
2 asked them to go make a copy for the defense. We do
3 need to just black out that, uh, child pornography
4 image. We can show them what we have on our disk,
5 but we can not distribute that image. So we're
6 going to black out that one screen and give them
7 everything else. Then we'll let them see what we
8 have created that includes the image on it.

9 **THE COURT:** The point is that if you are
10 offering exhibits, they have the right to see it.
11 If there's a question regarding the admissibility of
12 anything that you intend to show the jury at 10
13 o'clock tomorrow morning, it's best to address the
14 Court rather than expecting the jury to be sent out
15 and waiting while these issues are addressed
16 tomorrow.

17 **MS. BODMAN:** Absolutely. It was just that
18 one -- the one image that's on the disk. If they
19 were printed out separately, I'd have no problem
20 handing them what I am legally allowed to hand them.
21 I can not hand them this disk with an image of child
22 pornography on it. We'll get that as soon as
23 possible.

24 **THE COURT:** Okay.

25 **MS. BODMAN:** The 30 images that are listed in

1 the indictments, what we have done is the
2 photographs that we have printed out and placed in
3 these folders so that they are covered, they are not
4 just sitting out in the courtroom. So if they want
5 to look at each of these, they are the ones that we
6 clearly gave them notice in the indictments that we
7 are proceeding on. They can take a look at those.

8 The movies we have burned to a disk, but also
9 as I said, the images themselves are listed on the
10 indictments. They have notice of them. They've had
11 access to go look at these. If they want to -- I
12 apologize. Apparently, they've already seen the
13 photographs.

14 **MR. POTTS:** Excuse me, Your Honor. Last
15 Thursday, I believe it was, Mr. Collins came in my
16 office and looked at the 10 photographs, Your Honor.
17 At that time, I asked him for a half hour so I could
18 prepare the videos if he wanted to look at those.
19 He told me at that time, he didn't want to.
20 However, if he wants to at this point, I'll be glad
21 to take him back to my office and show him the
22 videos one by one.

23 **MR. COLLINS:** All I need are the visual aids.
24 I don't need to look at the porn, Your Honor.

25 **THE COURT:** All right. Do y'all agree that

1 these exhibits are to be admitted as far as any
2 objection to admitting?

3 **MR. COLLINS:** We agree to the 30 images that
4 are referenced in the 30 indictments. We do not
5 agree to images outside of that at this point.

6 **THE COURT:** Whatever are agreed upon can be
7 marked. Whatever are disagreed on or where there is
8 no agreement, we can worry about that at another
9 time.

10 **MS. BODMAN:** We will get these marked with
11 the court reporter as soon as we -- at the break and
12 when she is able to, I guess, write all that down
13 and document it.

14 Uh, with regard to the other images, uh, we do
15 have a, I guess, a Lyle motion or a motion to admit,
16 uh, essentially all of the pornographic images that
17 are on this computer and that were discovered by
18 Agent Cave. We believe that they are admissible
19 under Lyle for a couple of reasons. One is absence
20 of mistake and accident to, uh, rebut those two
21 defenses. These were, one, intentionally saved.
22 There were literally thousands of images on, uh, the
23 two computers. They were everywhere within the
24 computer in all sorts of different folders, not just
25 a single folder. Not a single location, but

1 everywhere, all over both of his computers.
2 Essentially, he says, you know, I saw porn but I
3 didn't save any of it. It's a, I don't know how it
4 got there. It just downloaded onto my computer.
5 This goes directly to showing that it is absence of
6 mistake and accident that these images got there.

7 **THE COURT:** And your witness will testify as
8 to what as to how they got there?

9 **MS. BODMAN:** The expert will testify to it.
10 Essentially, he goes to the --

11 **THE COURT:** Will testify as to what? The
12 expert will testify to what?

13 **MS. BODMAN:** To exactly where all these
14 images are, the number of them. They are
15 intentional saves and not in some temporary file
16 folder that where a file would temporarily be saved
17 from looking at some website. They are
18 intentionally saved.

19 In addition, the names of, uh, the majority, if
20 not all of the images, uh, say what it is. It
21 doesn't say my, you know, autumn vacation in
22 Asheville and then you open it up and it's a child.
23 So he thinks, oh, that's my autumn vacation in
24 Asheville. It actually says things like pre-THC,
25 pre-teen hard core, six-year-old, uh, sex with

1 three-year old. Things like that. The names
2 themselves are everywhere.

3 Agent Cave goes to the home. They go to do
4 what's called, I guess, a preview of the computer
5 just to see what's there. He says within 30
6 seconds, he's got it all over the computer. He
7 knows there is child porn in this computer. It goes
8 directly to this accident. I was on other websites
9 and these must have just been accidentally saved by my
10 computer. They are intentional saves. And as I
11 said, the amount of it. You can't not know that
12 it --

13 **THE COURT:** These are child pornography
14 depictions or adult?

15 **MS. BODMAN:** There is adult pornography on
16 there, but we are asking to bring in the child
17 pornography.

18 **THE COURT:** In addition to what's on the
19 indictments?

20 **MS. BODMAN:** In addition to the 30 but
21 reference to -- not necessarily printing out. We
22 didn't want to print out thousands and thousands of
23 images. But it goes to prove the other images that
24 are on there that are child pornography go to the
25 absence of mistake and accident.

1 **THE COURT:** All right. Mr. Collins?

2 **MR. COLLINS:** Again, I'd like to renew my
3 Rule 5 and Brady motions. The information Mr. Cave
4 saw all these images within the first 30 seconds of
5 looking at computers have never been disclosed to
6 the defense. That's something that would be
7 material to guilt or innocence. I would like to be
8 able to know more information about what he saw
9 initially because we have none other than what's
10 been made to the court.

11 **THE COURT:** You want to review the evidence?

12 **MR. COLLINS:** I believe it falls under Brady.

13 **THE COURT:** You want him to tell you what he
14 saw or you want him to write you a report of what he
15 saw or what do you want? What do you want?

16 **MR. COLLINS:** I'd like to know all the
17 information that he disclosed to the Solicitors
18 about what he saw, the first 30 seconds of what he
19 saw when he did the initial review of the computer.
20 That hasn't been disclosed to us.

21 **THE COURT:** So you want to talk to him?

22 **MR. COLLINS:** I think we're going to need to
23 before we start trial, yes. But as far as the other
24 pictures, I don't believe they should be allowed if
25 they're going to try to trash his character by

1 showing everything possible on the computer that
2 they can show. And what they are basing it on is a
3 statement where he's saying he saw child porn on the
4 computer and they are taking that completely out of
5 proportion of what it was actually in referenced to
6 of pop ups on certain pages.

7 If you read the written statement that they
8 submit to the court that has -- if you will look at
9 it, at a site called Show No mercy, which is not a
10 child porn site. It's not a family site either.
11 It's more like faces with death and show gruesome
12 images but there were pop ups of child porn that
13 would come up on that page. He always maintained he
14 did not know that child porn was on his computer.
15 There is a lot of pornography on the computer.
16 There are a lot of images that don't fall under this
17 statute of potential minors in various degrees
18 disrobement but not engaging in sexual activity
19 which is required for sexual exploitation of a minor
20 in the third.

21 They already have 30 indictments. They have 10
22 images and 20 videos. If they could relate each
23 image to a specific time as to why its absence of
24 mistake or if they have an actual reason other than
25 we just found it on the computer, I don't think

1 they've satisfied enough of a burden to introduce
2 all this highly prejudicial information.

3 **THE COURT:** All right. I've heard the
4 arguments of both sides. We'll see how it shakes
5 out when the evidence is presented, when the
6 evidence is offered.

7 **MS. BODMAN:** Your Honor, it is important for
8 us to know the Court's ruling in terms of what we're
9 able to reference in opening statements.

10 **THE COURT:** What I have before me -- the only
11 thing I have before me is the statement. You want
12 me to rule based on your argument or based on this
13 statement or based on some evidence that will be
14 presented during the case?

15 **MS. BODMAN:** Well, in support of our Lyle, we
16 would call Agent Bart Cave. Your Honor, we're
17 prepared for Agent Cave to testify specifically
18 about what he saw to give Your Honor a little bit
19 more information.

20 We'll also point out to defense counsel, in
21 Agent Cave's report, he does speak to the preview
22 where he viewed several downloads. Also it's
23 referenced in Investigator Hinson's investigative
24 notes where he talks about how they pulled it up in
25 the apartment. Tons of images came up. We'll also

1 reference the initial exam report from Agent Cave
2 which shows the file path for tons of other images.
3 He ended up just charging for two. When we found
4 out we were going to trial --

5 **THE COURT:** Is Agent Cave the expert?

6 **MS. BODMAN:** He is, Your Honor.

7 **THE COURT:** All right.

8 **MS. ALL:** If it please the Court, we call
9 Agent Cave to the stand. Thank you, Your Honor.

10 **BART CAVE**

11 having previously been sworn, testifies as follows:

12 **DIRECT EXAMINATION**

13 **BY MS. ALL:**

14 **Q** Agent Cave, please state your name and your
15 employer and your profession on the record.

16 **A** My name is Agent Bart Cave. I work for the
17 South Carolina South Carolina Law Enforcement Division.

18 **Q** And what are your duties in that position?

19 **A** I'm the Evidence Custodian, Network
20 Administrator, Cell Phone Forensics Analyst, Computer
21 Forensics Analyst and Computer Forensics Imagery.

22 **Q** Okay. What's involved in those
23 responsibilities? What's your involvement in criminal
24 cases?

25 **A** Whenever local, state and federal agencies need

1 our assistance with working cases, they'll bring it in.
2 We'll log into our evidence system. We'll log it into
3 our evidence. As the case comes available, our agent
4 will request an image be made. We'll do a forensics
5 image and save that out to our server for them to work.
6 If the case is assigned to me, whether it cell phone or
7 computer, at that time, I will work that case.

8 Q Have you been qualified as a digital forensics
9 expert in court before?

10 A Yes, ma'am.

11 Q How did you come to be involved in the case
12 against Alan Smith?

13 A We received a call for Forest Acres for our
14 assistance. My captain assigned me and Agent Hampton to
15 go and assist. We contacted to let them let us know what
16 they had. We went over there to assist.

17 Q Please discuss the preview of the material on
18 the scene and your basis for that preview.

19 A Whenever we got there, he explained to us that
20 they had a request that there was child porn on site and
21 they weren't sure how to proceed with that and wanted to
22 know if we could assist. Our normal process is we do a
23 preview on the scene. We got there and we found two
24 computers in the bedroom.

25 What our process is is we open up the computer

1 and we take the hard drive out of it. We hook it up to a
2 write-blocker. Once we hook it up to a write-blocker, we
3 have a laptop that has an EnCase forensic program on it.
4 What we do is hook it up to computer. Once we hook it up
5 to computer and did a preview, that's when we were able
6 to find the child pornography.

7 Q Did you access the defendant's computer when
8 you did this computer?

9 A We accessed the defendant's hard drive.

10 Q Did you use his computer to view the material
11 on it or change it in any way?

12 A No, ma'am.

13 Q And what did you use to access the computer?

14 A We take the hard drive out and we use a write-
15 blocker. It prevents any changes from being done to the
16 drive. That connects into a laptop used for a preview
17 that has EnCase Version 6 on it. That allows us to go in
18 and look at the drive so no changes are made to the
19 drive.

20 Q What did you observe on your laptop screen?

21 A In our preview, just seconds of scrolling down
22 through the gallery was child porn images of children
23 engaged in a sexual act.

24 Q And about how many did you see at that time?

25 A Uh, 50 to 60 images.

1 Q And how long were you looking?

2 A Less than a minute.

3 Q At that time, what did you do?

4 A We stopped and I called Agent Hinson. I said,
5 uh, if you'll come in here, I'll show what we found. I
6 showed him what we found. He said, uh, -- that's when we
7 stopped the preview at that time. We put everything
8 back. You know, packaged it up so we could take it.

9 Q What kind of files did you find on the preview?
10 Was it just pictures or pictures and video?

11 A When we first scrolled, we found pictures. We
12 looked at the file path and saw the pictures were in
13 folder structure.

14 Q Uh-huh.

15 A We found those folders that were saved. Stuff
16 had been downloaded and saved. Would found movies also
17 listed.

18 Q How many movies did you find?

19 A Hundreds.

20 Q Okay. Did you have any -- were you involved in
21 any forensic exam that was conducted on the defendant's
22 computers?

23 A Yes, ma'am.

24 Q And what's involved in that exam? What does
25 that mean?

1 **A** Uh, we go within the scope of the search
2 warrant, we'll go through and we'll do a search items
3 listed. That's how we find the images and movies of
4 children depicted in sexual acts. It's under the statute
5 for child porn. We went through and we found numerous
6 images that are listed there. After multiple weeks of
7 going through and scrolling and finding ones that met the
8 statute, my active lieutenant reviewed it and she told me
9 I had more than enough to come to the solicitor's office
10 so I stopped at that time.

11 **Q** How many of those, of child porn images where
12 they were engaged in sexual acts did you observe when you
13 were conducting your examine?

14 **A** At the time that I bookmarked, it was over 80
15 images and 40 movies.

16 **Q** And how did you select those?

17 **A** Viewing them, viewing the file structure where
18 they were located at and making sure they met the statute
19 for being child porn which was a violation of South
20 Carolina law.

21 **Q** When you are conducting the exam on a computer,
22 are you able to view everything on the entire hard drive?

23 **A** Yes.

24 **Q** So you were able to look at all the child porn
25 on the entire hard drive?

1 **A** Right.

2 **Q** There were more than a thousand images of
3 minors depicting sexual acts?

4 **A** Images and movies combined, yes.

5 **Q** Okay. So you say there were thousands?

6 **A** Yes, ma'am.

7 **Q** How were the 30 that were selected here for
8 indictment, how were those selected?

9 **A** Uh, going through and looking at the file
10 structure. Those were the most, I guess, obvious ones.

11 **Q** Okay. And when you say the file structure,
12 obviously, you are looking at the file paths. You are
13 able to see the location of the documents and where they
14 were saved?

15 **A** Yes.

16 **Q** And generally, what were the locations of all
17 of these different images and videos of child porn?

18 **A** They were located on the D drive. They were
19 saved in different locations. Some were under program
20 files called Limewire. Some were under another folder
21 called User Data. Just different places.

22 **Q** You referenced two computers that you located
23 where the search warrant was conducted. Did you conduct
24 an exam on both computers?

25 **A** Yes, ma'am.

1 Q And what did you find? Did you find child porn
2 on both computers?

3 A Yes.

4 Q And about how much on both computers?

5 A There were thousands of images and movies on
6 both.

7 Q Okay. The names of the files, were you able to
8 tell the content of the material from the name of the
9 file?

10 A Yes. A lot of the name and structure was
11 similar to what we had in other cases. It was pretty
12 much they were looking for that certain type of material.
13 We looked at those files. That's what's located within
14 the files.

15 Q Would you be able to tell from the names of the
16 files that it was child porn? How explicit were the file
17 names?

18 A Very explicit. THC, Daddy, daughter, three-
19 year-old, four-year-old. It was very specific for age
20 ranges and when you looked picture of the video, it was
21 very easy to determine that was the name of the file.

22 Q Could you explain the difference between a
23 temporary download and other download, permanent
24 downloads?

25 A Normally, if you go in to do like a flash play

1 or something, you click on something and it goes to a
2 temporary folder. But if it's an intentional download,
3 if he goes to folder structure and it's located in a
4 certain place. It's not located in like you're My
5 Documents or a set location.

6 Q Where would pop ups be saved?

7 A You have to go to your temporary downloads.

8 Q Do you even search his temporary internet
9 history?

10 A Yes, ma'am.

11 Q Did you use any of those in your exam report?
12 Any of the temporary internet history files?

13 A We didn't. A lot of times, you'll get a false
14 positive.

15 Q Okay. Were all the files that were used, the
16 child porn, the thousands, were those all intentional
17 downloads?

18 A The majority of them were. They were in a hard
19 file structure.

20 Q And how could you tell from the file structure
21 that it's an intentional download?

22 A It was not a common folder for a Windows
23 operating system. It was a folder that was added.

24 Q So when you examined the computer, there was
25 more images and videos of child porn than just the 30

1 that were indicted?

2 A Yes, ma'am.

3 Q Do you have an estimate of the ratio of adult
4 porn that was in there? I mean, how much adult porn in
5 comparison to child porn?

6 A I would have to say there was 80 percent was
7 child porn and 20 percent was adult porn.

8 Q Okay. Were there also personal photos and
9 personal documents saved in with the child porn?

10 A There were.

11 Q So there was child porn throughout the computer
12 in the thousands?

13 A Yes.

14 MS. ALL: Beg the Court's indulgence, Your
15 Honor.

16 BY MS. ALL:

17 Q Agent Cave, obviously, the point of this
18 hearing is for the State to be able to reference an
19 existence of many other examples of child porn and how
20 they were throughout the computer aside from the 30 files
21 that were specified in the indictments. Can you describe
22 the locations and how varying they were all of the other
23 images besides just the 30 we've indicted here?

24 A Yes, ma'am. There were in different file
25 structures, different folders, different areas of the

1 drive. We did our search. We would hit on there showing
2 different folders. They were in different locations.

3 Q Would it have been possible for you to charge
4 him for every single one of the images that you found
5 because there were so many?

6 A It would be possible, yes.

7 Q But it would be in the thousands?

8 A Yes.

9 Q Thank you, Agent Cave. Answer any questions
10 from Mr. Collins.

11 A Yes, ma'am.

12 MR. COLLINS: Please the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. COLLINS:

16 Q So your initial review of the computer was done
17 at the apartment?

18 A Yes, sir.

19 Q You have any record, any kind of documentation
20 of what was observed at the apartment on that review?

21 A All we were able to do there is a, we do a
22 preview worksheet which just is saying what we're looking
23 at, how we are connecting it. And what we do there is
24 see if there's something there to further our
25 investigation. At that time, we found something to

1 further our investigation. That's what I put in my
2 statement memorandum that was turned in to show that we
3 did find child porn on his computer.

4 Q In that statement, you don't have any numbers
5 of any pictures you observed?

6 A No, sir.

7 Q And no numbers of any videos you observed?

8 A No, sir.

9 Q And no documentation about what file folders
10 you looked at?

11 A No, but we did find a number of them.

12 Q And your EnCase program that you use, it does
13 not automatically store data that's observed through it,
14 does it?

15 A Uh, no, sir.

16 Q All right. Uh, and your testimony here today
17 is that nobody got on the computer and opened it up and
18 you guys were there for a search warrant?

19 A No.

20 Q And how long were you guys at the apartment?

21 A Less than an hour.

22 Q Less than an hour?

23 A Yes.

24 Q You have any documentation about what time you
25 got there?

1 A No, sir. We were just assisting Forest Acres.

2 Q All right. So you remember if it was in the
3 morning or the afternoon?

4 A I believe it was the afternoon.

5 Q All right. You never cross-referenced that
6 time to what you saw on the computer?

7 A The time our initial search was for to see if
8 there was, uh, any child porn.

9 Q So you never did?

10 A No, sir.

11 Q Now, you just testified that you looked into
12 the internet search history?

13 A During the full examine of the computer.

14 Q Did you take any notes or do any kind of
15 reports? Is there any documentation about what you found
16 here today?

17 A The internet history?

18 Q Yes.

19 A Yeah.

20 Q There is documentation about that?

21 A We were doing the -- when I was doing the exam,
22 looking for the child porn images and movies, I was just
23 looking to see the stuff that was in the file structure
24 compared to what was in the temporary internet files.

25 Q You have a report that details the search

1 history of the browser?

2 **A** No, sir.

3 **Q** All right. So there is no report under search
4 history?

5 **A** No.

6 **Q** But you are testifying that you did look at
7 that?

8 **A** Yes.

9 **Q** All right. You cited off a number of numbers,
10 80 images, 40 movies. Is that what you saw initially?

11 **A** We were doing the -- once we, once we did the
12 full examination, I was going through and I was asking if
13 there any child porn movies. That was my first initial
14 report that I did when I turned it in to the Solicitor's
15 office back in 2011.

16 **Q** Okay. And, uh, the thousands and all the
17 numbers you were telling us, that's just an estimation
18 because you don't have a report with the total number, do
19 you?

20 **A** It was too much for us to put markers on them.

21 **Q** All right. You had to view vault everything?

22 **A** Yes.

23 **Q** And do you -- did you keep a written report of
24 counts of images?

25 **A** No, cause they told me to stop after I got to a

1 certain amount because it was too much to put on a disk.

2 Q So you're guessing when you are guessing
3 numbers?

4 A When we did the images, it gives you a count.
5 It counts up and shows you how many images were there.
6 They went back and said only bookmark so many.

7 Q Did you view each image that was bookmarked?

8 A Yes.

9 Q You didn't keep a number or a list of what you
10 viewed?

11 A That was three years ago.

12 Q So there is no list? Now, there's dates
13 associated with all these files that are turned in,
14 right?

15 A Yes, sir.

16 Q There's dates of dates accessed, dates created,
17 date modified and date deleted, right?

18 A Yes.

19 Q Can any of these dates be manipulated before
20 you see them?

21 A Of course.

22 Q Do you have any journal or any kind of log of
23 these dates as they pertain to each one of these images?

24 A We do our report, once we select the files,
25 that's what goes into the report. It will show when the

1 file was created, last access, last modified, if it was
2 deleted.

3 Q Okay. And these thousands of images, there is
4 no report with the date attached with those at this time,
5 is there?

6 A No.

7 Q All right. Uh, the read errors in the computer
8 that was not being used, what does that mean?

9 A When we image the drive and it reads the drive,
10 every time it comes up, it has a read error, it marks
11 that sector saying it's not readable. And then it
12 continues imaging the rest of the drive.

13 Q Is that typical for a computer that's got a
14 virus on it?

15 A No, actually it's typical for a drive that's
16 failed.

17 Q A drive that's failed?

18 A Yes or having technical issues or that could
19 possibly be going bad.

20 Q And does a virus cause a computer to go bad?

21 A Sometimes.

22 Q So that would be consistent with a potential
23 virus?

24 A It could be.

25 Q All right. With your experience, how many

1 cases have you worked as a forensic interviewer?

2 A I'll say several hundred.

3 Q Several hundred. How many in state court? All
4 of them?

5 A Pretty much.

6 Q How about with the Fifth Circuit Solicitor's
7 Office?

8 A This will be my first one.

9 Q First one? Uh, now, a virus, that can upload a
10 document to a computer without the user's consent, right?

11 A It can.

12 Q Malware, I believe?

13 A Right.

14 Q You said that you found these images and these
15 movies all over the computer. You know exactly how many
16 folders you found it in?

17 A Not an exact count.

18 Q Okay.

19 A Multiple different locations.

20 Q Multiple locations, one of which was Limewire,
21 correct?

22 A Yes.

23 Q That's a shareware operation?

24 A It is.

25 Q If you start to download and then turn the

1 computer off, then it will start downloading again when
2 you turn the computer back on, right?

3 A Depends on what it's set on.

4 Q Do you know how this one was set up?

5 A Not specifically.

6 Q All right. The other location, I believe there
7 was a file labeled My Files. Those were some of the
8 images and videos you submitted for the indictments,
9 correct?

10 A I'm not sure. I think one was in My Stuff.

11 Q My Stuff. I'm sorry. My Stuff. That was
12 embedded into another folder, right?

13 A I think folder within a folder.

14 Q Okay. So it was not visible from the desktop?

15 A We weren't able to view it from desktop.

16 Q And your EnCase program, what that does is it
17 kind of breaks down the computer, right?

18 A Uh-huh.

19 Q You're not looking at the home screen or the
20 computer when that program is working, are you?

21 A Correct.

22 Q You're looking at a whole bunch of different
23 files, right?

24 A It's very similar to Windows Explorer.

25 Q And you can put in screening capabilities to

1 search for different types of files?

2 A Correct.

3 Q And what were you searching for in your initial
4 review?

5 A Uh, gallery view just for JPEG images. Once we
6 did that, we found the images that meet the statute. We
7 look at the files to see where they are located at to see
8 where they were actually showing up, in an allocated
9 space or unallocated space. Also, we were asked to look
10 for movies, since that was one of the things that hit
11 once we did the preview.

12 Q Did either one of those computers have any
13 software similar to the EnCase?

14 A Not like that.

15 MR. COLLINS: I don't have any other
16 questions, Your Honor.

17 MS. ALL: Just quickly, Agent Cave.

18 REDIRECT EXAMINATION

19 BY MS. ALL:

20 Q Regarding the location, uh, Mr. Collins
21 referenced the structure of EnCase and how several of the
22 files were not visible from the home screen. In your
23 experience with computer crimes, is it normal for child
24 porn to be camouflaged?

25 A Yes.

1 **Q** Is it normal for the defendant to label a file
2 on his desktop child porn?

3 **A** Not normal.

4 **Q** Is it normal for him to say that any drive
5 other than the D drive, so as to hide it from people who
6 might have found it on his computer?

7 **A** Yes.

8 **Q** So would you say that it's normal for it to not
9 be visible from the home screen and to being obscure,
10 random, unlikely locations?

11 **A** Yes.

12 **Q** Thank you.

13 **THE COURT:** Anything further?

14 **MR. COLLINS:** I don't have any more
15 questions.

16 **THE COURT:** All right. Thank you, sir.

17 Anything else today?

18 **MS. BODMAN:** No, Your Honor. I'll be glad to
19 summarize our Lyle argument if Your Honor would like
20 to hear it now.

21 **THE COURT:** I'll be happy to hear it now.

22 **MS. BODMAN:** Okay. We would like to be able
23 to reference the existence of these other images on
24 his computer. Given the requirement of the
25 particularity of an indictment, we had to name

1 certain file folders so that we could explain
2 exactly which one we were talking about.

3 That being said, there were thousands on the
4 computer. We might be able to reference the
5 presence of all these videos and images because part
6 of what we're required to prove is knowledge that he
7 was aware of the content. The structure of the
8 files, the file paths and the names themselves all
9 go toward his knowledge. It also goes to show how
10 it permeated throughout the entire hard drive of two
11 different computers as opposed to a presentation to
12 the jury that he, in fact, only had these 30 images,
13 which is not the case. Rather, we just had to
14 indict a specific 30 and chose the 30 more obvious
15 ones. The evidence of the other wrongs and acts, we
16 need those to show the absence of the mistake or
17 accident.

18 Bart was testi -- Agent Cave was testifying and
19 is prepared to testify about how these were random
20 throughout the computer, the different places that
21 they were saved, how some were in obscure locations,
22 how some were deleted and how they were all kept for
23 different periods of times which shows repeated
24 access to those files. We feel that by his
25 testimony and also the observance during the preview

1 by other law enforcement who've shown by clear and
2 convincing evidence that they do exist.

3 And also as a forensic examiner, very thorough,
4 he testified that he spent several weeks and worked
5 on this case for a really long time, that he was
6 really familiar with all the material in it. We
7 simply couldn't indict thousands. But given how
8 much of this was on his computer, we'd like to be
9 able to reference it to go toward his knowledge with
10 the existence of just these 30.

11 **THE COURT:** All right. Mr. Collins?

12 **MR. COLLINS:** Your Honor, first of all, I
13 think this is premature to argue this. It's going
14 to be dealt with when we hear the testimony to see
15 what it's actually probative of. At this point, we
16 have a very vague description of a bunch of images
17 and videos that he saw on the computer that he can't
18 connect to specific dates and times. Can't connect
19 to even specific folders where he found them. He
20 just argued how obscure and how hidden all these
21 files are.

22 They've indicted under 30 different file paths,
23 10 images and 20 videos. They can establish the
24 absence of mistake through those 30 paths. We have
25 the specific dates that they were created, the dates

1 that those were accessed and they indicted.

2 Therefore, it's relevant.

3 To simply enter in everything that was on the
4 computer, I think we have to look at individual file
5 and access each individual file that they seek to
6 introduce on its on. Is it more probative than it
7 is prejudicial? All of these images are going to be
8 highly prejudicial. Until we hear more testimony,
9 we don't know what they are really probative of. I
10 don't think they should be allowed in just through a
11 blanket, we saw thousands of images and videos on
12 this computer, when we have no specific report on
13 these things they are seeking to introduce. We have
14 no specific times. He's just going from memory.

15 I don't think that we've gotten to the point
16 that there probative value is high enough to get
17 over the highly prejudicial nature. We already have
18 30 things that are coming in. That's more than
19 enough for the jury to consider when they are
20 considering this issue.

21 And just lastly in regards to they can't indict
22 a thousand things, yes, they can. They absolutely
23 can indict as many indictments as they want to
24 indict. They chose to indict these 30 for a reason.
25 This is what they prepared for and I think they

1 should be limited to what they've indicted.

2 **THE COURT:** What -- the evidence Ms. All
3 presented wasn't the same as what Ms. Bodman asked,
4 she seemingly was asking for a ruling of all these
5 other offenses. I would agree with most of what
6 both of you have said. I agree that the State
7 should be able to reference the facts as the officer
8 testified to in his examination a moment ago. I
9 also agree with the defense that the previous jury
10 decided the admissibility of all these things. The
11 state can make references and hopefully what is
12 admitted subsequently will be what is presented
13 during the course of the trial.

14 **MS. BODMAN:** Thank you, Your Honor. Just so
15 we understand, in opening, we're only to reference
16 the 30 that we plan to --

17 **THE COURT:** You can reference whatever you
18 want to.

19 **MS. BODMAN:** Oh, okay. Thank you, Your
20 Honor.

21 **THE COURT:** All right.

22 **MS. BODMAN:** One final issue, Your Honor, is
23 there was a search warrant in this case. In their
24 pretrial motions, they've not attached the search
25 warrant. I just wanted to make sure that, uh, we

1 don't want to start the trial, swear the jury in and
2 there is an attack to the search warrant. We are
3 prepared to defend that.

4 **THE COURT:** Is there an attack to the search
5 warrant or do you acknowledge that they had probable
6 cause to search?

7 **MS. BODMAN:** We didn't put it on our pretrial
8 list for a reason, Your Honor.

9 **THE COURT:** All right. He's not challenging
10 the search.

11 **MS. BODMAN:** Thank you.

12 **THE COURT:** All right. 9:30 tomorrow
13 morning. Before that time, you all will have these
14 marked where there are no objections. We'll deal
15 with objectionable matter as they come up. All
16 right.

17 **MS. BODMAN:** Thank you, Your Honor.

18 **MR. COLLINS:** Thank you, Your Honor.

19 **THE COURT:** And I'll rule on your statute
20 issue in the morning. If anyone has anything that
21 they want me to look at, email it to me and I'll
22 look at it.

23 **MR. COLLINS:** Your Honor, for scheduling
24 purposes ---

25 **THE COURT:** Yes, sir.

1 **MR. COLLINS:** --- I believe the state
2 indicated in chambers that they are very likely
3 going to finish their case tomorrow. We have been
4 in touch with our witnesses. I just want to make
5 sure that we're clear for the court that we're
6 indicating all our witnesses to be here Wednesday
7 morning at 8:30 or 9 o'clock, whenever we start. Is
8 that okay for us to tell our witnesses to get off
9 work for Wednesday?

10 **THE COURT:** I mean I don't know how -- you're
11 going to take up most of the day tomorrow, I would
12 assume.

13 **MS. BODMAN:** I expect so. I mean, my guess
14 is that it will go through the day. I don't know
15 how extensive any of their cross-examinations are
16 going to be. I didn't expect it would go into
17 Wednesday unless cross-examinations run long.

18 **THE COURT:** We're not intending to push the
19 envelope and stay here late tomorrow.

20 **MR. COLLINS:** And Your Honor, our witnesses
21 will be available for the rest of the week. They
22 wanted to know if they could work tomorrow. I just
23 wanted to make sure they were cleared for tomorrow.
24 Then we also -- one of the pretrial motions was the
25 defense seems to waive their opening statement to

1 the start of the defense case.

2 **THE COURT:** Anything the State has to say
3 about that?

4 **MS. BODMAN:** I haven't had it happen. I
5 tried to look it up. I couldn't find anything on
6 point about it.

7 **THE COURT:** You've got a case about it?

8 **MR. COLLINS:** Your Honor, this is the State
9 v. Brown case saying that it's in the trial judge's
10 discretion as far as the timing. So it is
11 completely in your discretion, Your Honor.

12 **THE COURT:** With regard to the defendant
13 being out on bond, uh, Mr. Smith, you understand
14 that you have the obligation to be present during
15 the trial?

16 **MR. SMITH:** Yes, Your Honor.

17 **THE COURT:** You understand that should you
18 fail to appear, this trial will proceed in your
19 absence?

20 **MR. SMITH:** Yes, sir.

21 **THE COURT:** And you understand that if you
22 fail to appear, you could also be held in contempt
23 of court?

24 **MR. SMITH:** Yes, Your Honor.

25 **THE COURT:** You also understand that should

1 you fail to appear, you can be indicted for the
2 separate offense of failure to appear?

3 **MR. SMITH:** Yes, Your Honor.

4 **THE COURT:** All right. We'll see y'all
5 tomorrow.

6 **MR. COLLINS:** Thank you, Your Honor.

7 **MS. BODMAN:** Thank you, Your Honor.

8 **(WHEREUPON, State's Exhibits 4 through 36 are marked**
9 **for identification purposes.)**

10 **(WHEREUPON, the Court recessed for the day.)**

11

1 receive the proper law. Your role is to listen, to
2 play attention to the testimony and to pay attention
3 to the evidence so that you will be in a position to
4 deliberate and to participate in the deliberations
5 in deciding this very important case.

6 I certainly look forward to working with you.
7 Later during the process, one of you will be
8 appointed to serve as the foreperson of the jury,
9 that is, to be the spokesperson for the jury. That
10 same person would have the responsibility of
11 presiding over the jury deliberations and completing
12 the verdict form at the end of the case.

13 At this time, the State will give opening
14 statement. The defense may or may not give opening
15 statement.

16 The State.

17 **MS. ALL:** Thank you, Your Honor.

18 **THE COURT:** Ms. Bodman.

19 **MS. ALL:** Six-year old Favia, beautiful, very
20 willing angel-faced little girl relieved.
21 Kidsneedsextoo!.mpg is an over 15-minute long video
22 of child pornography. Medley of scenes, four-year-
23 old to eight-year-old pedo like a monkey.mpg is
24 almost seven minutes long. Nine-year-old Jenny
25 sucking daddys dog, naked.jpg is a photograph of

1 bestiality performed on the family pet by a nine-
2 year-old girl. Anya, 11-year-old child
3 prostitute.mpg. These are a few of the thousands of
4 movies and videos police found on the defendant's
5 computer showing children --

6 **MS. DAVIS:** Your Honor, objection.

7 **THE COURT:** Objection overruled.

8 **MS. ALL:** A few of the thousands of videos
9 and images the police found on the defendant's
10 computer showing toddlers and elementary school aged
11 children, preteens, boys and girls, both giving and
12 receiving oral, vagina, anal and bestial sex.
13 Thousands. Some, the defendant saved for years.
14 Some, for months. Some, he saved just long enough
15 to watch them all the way through and decided they
16 weren't worth saving after all.

17 Alan Smith took precautions to protect his
18 secret. He hid the downloads in obscure uncommon
19 file locations. He camouflaged the material in
20 innocent sounding file names, desktop files, files
21 labeled for work in the C drive with the operating
22 system in sample pictures folders.

23 You will hear how police searched two hard
24 drives that they seized in his apartment where he
25 lived alone and found child porn rampant throughout.

1 You will hear how they found downloads all
2 throughout the old hard drive and all throughout the
3 second hard drive he purchased when the old one
4 broke.

5 Why all the precautions? Because he knew it
6 was wrong to have them. So why the downloads? So
7 he could have the images, possess them, access them
8 whenever he wanted so that he didn't have to jump
9 through the hoops of finding them again on the
10 internet.

11 Alan Smith was good at keeping his secret safe.
12 He learned how to live a double life. He was
13 successful at work as a manager at Applebee's by
14 day. He lived alone in his one-bedroom apartment in
15 Forest Acres. He had a close group of three
16 girlfriends. He knew their families. He knew their
17 friends. He knew their children. They were like
18 family themselves.

19 As the years went by, he gathered more and more
20 material. His secret snowballed. One day, after
21 years of secrecy and after so much careful planning,
22 he was found out. His secret was out. He's
23 standing trial for it today.

24 Ladies and Gentlemen, my name is Britton All.
25 I'm an Assistant Solicitor for the Fifth Judicial

1 Circuit. This is my co-counsel, Assistant
2 Solicitors Margaret Bodman and Carter Potts. We
3 prosecute all crimes that occur in Richland and
4 Kershaw counties.

5 One of those crimes is Sexual Exploitation of a
6 Minor third degree which is the possession of
7 material showing a minor engaged in the visual
8 representation of a sexual act while knowing the
9 content of such material. Of those thousands of
10 images, we have charged him with the possession of
11 30 of them. We've listed each file name on the
12 indictment. The ones that I read were the more
13 innocuous.

14 As part of the state's case, we must prove the
15 sexual nature of each data file as well as the
16 presence of the minor. It's part of our burden to
17 prove that the minor was engaged in sexual activity.
18 We'll do everything we can to keep your exposure
19 short and the minimize that discomfort. It's our
20 responsibility to prove beyond a reasonable doubt
21 that the defendant possessed this material.

22 Now, proof is not the absolute certainty of
23 guilt. We are not required to produce proof that
24 overcomes every possible doubt. If, at the
25 conclusion of the case, you are firmly convinced of

1 the defendant's guilt, then it's your duty to find
2 him guilty. You determine his guilt by weighing the
3 evidence in the trial. There will be testimony from
4 the stand and there will be the physical evidence.

5 With the testimony, the evidence will show that
6 after years of hoarding child pornography, the
7 defendant was found out. On February 20th, 2010, the
8 defendant forgot to close a window that he left open
9 on his computer with images of child pornography on
10 it. One of his best friends borrowed his computer
11 that day and stumbled upon the most horrifying
12 disturbing images she had ever seen. There were so
13 many, they were so disturbing, they were so
14 pervasive that she felt compelled to report to
15 police. His own best friends reported him to
16 police.

17 The next day, the Forest Acres Police
18 Department and computer crimes experts with the
19 South Carolina Law Enforcement Division, SLED,
20 executed a search warrant on his apartment and
21 seized both of his drives. Within seconds of
22 accessing his computers, police found thousands of
23 images and videos depicting child pornography.

24 The computer forensic expert for SLED, Agent
25 Bart Cave, will testify today. He conducted an exam

1 on these hard drives. He spent weeks filtering
2 through the material. The majority, if not more, of
3 those hard drives were used for child pornography.
4 His examination revealed that the defendant
5 downloaded the material to his computer.

6 His report shows when the images were
7 downloaded. It shows when the files were created.
8 It shows where the files were saved. His report
9 shows when they were last opened, the file paths
10 with the names of the defendant assigned to the
11 different files, when they were modified, if they
12 were deleted. It shows of the files were last
13 accessed days, months and years after the file was
14 created. It shows some of his favorites were
15 downloaded twice. Once on his old computer and
16 after his old computer broke, again on his new one.

17 The forensic examination shows that the
18 defendant did not come across these files by
19 accident. It shows that he actively saved them. It
20 was intentional that he accessed them, that he
21 modified them, that he kept them and that he watched
22 them. He wasn't ignorant of their existence. These
23 are huge media files that use a lot of space.

24 In his computer, each one has explicit
25 thumbnails depicting the act so that his friend --

1 it was immediately apparent to her that these were
2 child pornography. The file names are unambiguous,
3 vulgar, descriptive. They give the ages, the
4 genders of the children involved, words like incest,
5 XXX. There are no temporary file folders. These
6 are not cookies. These are not pop ups. These are
7 intentional saves to his computer.

8 Child porn is not easy to come by. It's
9 illegal on every level. It's illegal to create.
10 It's illegal to distribute. It's illegal to
11 possess. So people are careful about what they do
12 with it. There's an underground market with a
13 secret language of terms that people that are
14 looking for it know to use. Terms that,
15 unfortunately, you'll hear today. Terms like hussy
16 fan, ray gold, mafia sex, ptsc, preteen hardcore,
17 pthc -- ptsc, preteen softcore, pthc, preteen
18 hardcore. All of those terms are included in the
19 file paths in the download names.

20 Permanent downloads. Named, modified,
21 accessed, deleted, written. There's no explanation
22 here but the truth that Alan Smith seeked out this
23 material and he saved it to his computer. He saved
24 medley of scenes, four-year-old to eight-year-old,
25 pedo like a monkey. He saved Vicky best VJ with

1 music and sound.

2 These weren't an accident. There's no
3 conspiracy. There's no blackmail. There's no
4 fathom computer user. There's just the truth that
5 the defendant kept these images of children engaged
6 in visual representations of sexual acts and he
7 saved them to his computer. This was his secret for
8 years. These were his treasures. They are his
9 guilt.

10 These images that he saved are of real children
11 being sexually assaulted. It's real toddlers that
12 belong in preschool. It's real little boys and
13 girls that are elementary school aged.

14 Every time the defendant downloaded another
15 image, he encouraged the creation of more child
16 pornography. People like Alan Smith are the reason
17 the producers keep creating media of child
18 pornography when they should be getting potty
19 trained. He's the reason that it keeps getting
20 generated. He's the reason that they are being
21 videotaped the whole time so that it can be watched
22 over and over and downloaded over and over by men
23 like him. It is his demand that causes this supply.
24 It's simple economics. If you stop the demand, you
25 stop that supply.

1 We submit to you that he's guilty of all 30
2 counts of exploitation of a minor third degree. We
3 submit to you that he knew exactly what he was
4 doing.

5 **THE COURT:** The defense?

6 **MR. COLLINS:** Your Honor, we preserve our
7 opening statement.

8 **THE COURT:** All right. You may call your
9 first witness.

10 **MS. BODMAN:** The state calls Frances Casey
11 Jeffords.

12 **FRANCES CASEY JEFFORDS**

13 having first being duly sworn, testifies as follows:

14 **THE CLERK:** Please have a seat. State your
15 full name for the record.

16 **DIRECT EXAMINATION**

17 **BY MS. BODMAN:**

18 **Q** If you could, introduce yourself to the jury.
19 Your name?

20 **A** Frances Jeffords.

21 **Q** And what do you go by?

22 **A** Casey.

23 **Q** Uh, Ms. Jeffords, can you tell, I guess, the
24 jury just a little bit about yourself in terms of, I
25 guess, where were you born and where did you grow up,

1 where did you go to school?

2 **A** I was born in Columbia, South Carolina. I
3 lived in Myrtle Beach for a while. Then I moved back up
4 here. Been here ever since.

5 **Q** Okay. Do you have any children?

6 **A** I do. I have an eight-year-old daughter.

7 **Q** Tell the jury a little bit about how you met
8 the defendant, Alan Smith.

9 **A** I met him through a mutual friend.

10 **Q** I guess, tell us just a little bit about that.
11 He was your friend. Where were you working?

12 **A** I was working at D's on Clemson Road. I
13 wrecked my car so I needed a job more closer to town
14 because I lived off Rosewood. He introduced me to Alan
15 because he was a manager at Applebee's and had a job.

16 **Q** Okay. And do you remember what year that was?

17 **A** I want to say it was like 08.

18 **Q** 2008. Okay. So then, uh, did you get a job at
19 Applebee's?

20 **A** Yes, ma'am.

21 **Q** Okay. Did you work with the defendant?

22 **A** Yes, ma'am.

23 **Q** Just so to make sure we are clear, do you see,
24 uh, Alan Smith who gave you that job at Applebee's? Do
25 you see him in the courtroom?

1 **A** Yes, ma'am.

2 **Q** Okay. Can you point to him and describe, I
3 guess, where he's sitting or what he's wearing so that we
4 know who you are talking about.

5 **A** He's sitting here with the yellow shirt on.

6 **Q** Okay. There are three people -- oh, with the
7 yellow shirt on?

8 **A** Uh-huh.

9 **MS. BODMAN:** May the record reflect the
10 witness has identified the defendant.

11 **BY MS. BODMAN:**

12 **Q** Uh, so he did get you a job at Applebee's.

13 **A** Right.

14 **Q** What location?

15 **A** Devine Street.

16 **Q** All right. And how long did you work there
17 with him?

18 **A** I want to say about six, seven months. Maybe
19 eight.

20 **Q** And is this then still in 2008 or is it in
21 2009?

22 **A** It was -- it was kind of like mid-summer, I
23 want to say. I think I left there December.

24 **Q** Of 2009 or 2008?

25 **A** I want to say 2008.

1 Q Okay. Okay. So then, did you remain friends
2 with him or what was your relationship, I guess?

3 A We stayed friends after that.

4 Q Okay. Did you all have a circle of friends
5 that you hung out with?

6 A Yeah, it was usually me, Alan, Monica, Michelle
7 and sometimes her husband and, you know, the people we
8 associated with.

9 Q Okay. People that worked at Applebee's and, I
10 guess, other restaurants?

11 A Yeah, the people that were regulars that we
12 went to a lot.

13 Q Did you ever go to Alan's, uh, -- Alan Smith's
14 home?

15 A Yes, ma'am.

16 Q Okay. Tell us about that. What was your
17 access to the home? Why did you go there?

18 A Uh, he moved to the apartments. I went over
19 there frequently. You know, I'd do some laundry and
20 things like that and also to get away because I lived
21 with my grandmother. He worked all the time. So I would
22 go over there. He did give me a key to his house.

23 Q Okay. And you said the Biltmore apartments.
24 What street is that on?

25 A On Beltline, right across from Richland Fashion

1 Mall.

2 Q Okay. Did he live with anybody?

3 A No, ma'am.

4 Q At times, did he have people staying there?

5 A He had a few people over the couple of years
6 stay there.

7 Q Like who do you remember staying there?

8 A He had a kid named Josh staying there and he
9 had another guy that worked at Applebee's staying there.

10 Q And Monica or Michelle, did either of them stay
11 there?

12 A Yeah, Monica lived there for about two months,
13 three months.

14 Q And who did she live there with?

15 A Her daughter Abby.

16 Q Okay. Anybody else?

17 A Her mom was there. Her mom was there.

18 Q Uh, so I guess, for what period of time did you
19 have a key to the apartment? Was it just for a month
20 that you had a key or was it for --

21 A Just like a few months.

22 Q And you said that you would go and do laundry
23 and things like that?

24 A Yes, ma'am.

25 Q Okay. Would you do any work for him?

1 A I mean, it was his house. It was his laundry.
2 I'd clean up his house and stuff. I was there.

3 Q And why would you do that? Why would you clean
4 his house and do his laundry?

5 A He'd help me out financially if I needed stuff
6 or be there to talk to me. Things like that.

7 Q So he had lent you some money, I guess, at
8 different times?

9 A Yeah. He would lend me money if we'd gone out
10 drinking or eating or something. He'd help out.

11 Q Okay. So at the apartment, what kind of -- you
12 said you would do laundry or things like that. What else
13 would you do at the apartment?

14 A We would just hang out, chill out.

15 Q Was there a swimming pool at the apartment?

16 A Yes. We would come out with the kids and let
17 them swim.

18 Q Did you notice any computers in his apartment?

19 A Yes.

20 Q Did you have regular access to those, I guess,
21 one computer or two computers?

22 A It was one?

23 Q Did you have access to that?

24 A I didn't ---

25 Q Did you at any --

1 **A** --- regularly, I didn't get on it.

2 **Q** Regularly. So at any point, did you get on
3 that computer?

4 **A** Yes, I did.

5 **Q** Okay. So tell us about that, how that came
6 about?

7 **A** I was working at Labrasca's Pizza. I got off
8 work on a Saturday night. I went by there to use his
9 computer to burn the wedding march onto a CD. My sister
10 was getting married the next day. I went by there to
11 burn the wedding march onto a CD to take with me. That's
12 the only time I really used it.

13 **Q** Okay. Did he know you were going to use the
14 computer that night?

15 **A** Yes, ma'am.

16 **Q** Was he home when you went to go do that?

17 **A** No, ma'am.

18 **Q** So tell us then what, what happened?

19 **A** I got to his house. I got on his computer.. I
20 pulled up where he had downloaded the wedding march, a
21 couple of different versions for me. I went through and
22 found the one that I was looking for. That's when I
23 proceeded to burn the CD.. I put the CD in and a message
24 box popped up and told me the file was open in a
25 different spot. I had to close it so I could burn it.

1 That's when I went clicking at the bottom of the screen
2 to see where else I had it open and it pulled up his
3 pictures. It was thumbnail pictures. I thought one of
4 the girls looked kind of young so I expanded the picture.

5 Q At the point that you initially see it, show
6 with your fingers about how big that thumbnail was.

7 A Uh, the average little thumbnail.

8 Q Maybe a couple of inches?

9 A Maybe like half an inch to an inch.

10 Q Okay. And so the photo that you're looking at
11 was very small.

12 A It was small.

13 Q But even looking at that small image, you
14 thought that it looked like a young girl. Okay. So then
15 what did you go do?

16 A I double clicked on the picture to open it up
17 bigger to view it. It was a young girl. It started a
18 slide show of pictures.

19 Q Okay. And when you say that it was a young
20 girl, what was your estimation of what you were looking
21 at of how young this girl was.

22 A 9, 10.

23 Q Okay. And you said it started a slide show?
24 What do you mean?

25 A The pictures started by themselves, you know,

1 switching, I guess, through the gallery.

2 Q Okay. So then what were you looking at as the
3 slideshow started through?

4 A It was various pictures. Looked like young
5 girls to me. Some of them had makeup on them and
6 lingerie.

7 Q And what were these young girls doing? What
8 were the photos of?

9 A You know, I guess you would say sexual poses,
10 sexy-type poses.

11 Q Were any of them unclothed, naked?

12 A Yes.

13 Q And how many pictures do you think you viewed
14 in that slide show just at that time?

15 A 15 to 20.

16 Q So what did you do at that point?

17 A Uh, you know, I sat there and I just looked at
18 it in shock. I was just like, Oh, my God. So it took me
19 a minute. I sat there. The first thing I just thought
20 to do was to call Monica because she lived there.

21 Q Okay. So then what did you do?

22 A I got up. I left. I called Monica on the way
23 out to my sister's house which was about a 20-minute
24 drive back home. I told her what I had seen.

25 Q Okay. So when you are at that computer, what,

1 if anything, did you do to the computer before you left?

2 A I just X'd out of everything.

3 Q So you didn't minimize the photos back down.

4 You just closed it out?

5 A I don't think I did, but I'm not 100 percent. I
6 think I just X'd out of everything.

7 Q Did you call the defendant at all and tell him
8 what you saw?

9 A No.

10 Q So you immediately then called Monica and told
11 her what you saw. What was your next plan? What did you
12 do next?

13 A I went to my sister's house and talked to my
14 sister. You know, it was a little devastating. I kind
15 of was like, oh my God, I can't believe I seen this. I
16 have to do something. I can't just let it go. I can't
17 let it go. I talked to her.

18 Q So then did you go to the police to report to
19 make a statement?

20 A Yes.

21 Q Do you remember about -- actually, did you ever
22 go back to Alan's house before you went to report it?

23 A Yes, I did.

24 Q Okay. Tell us about that.

25 A After I seen it, I went there on two different

1 occasions. I went there, uh, the day after or two days
2 after to take Monica so she could see it to verify, you
3 know, that I was telling the truth. I took her there to
4 see it. Then I went back, uh, before I went to make the
5 report, I returned the money I owed him and the key I had
6 to his house and left.

7 Q Did you leave any kind of note or did you tell
8 him still at any point what you had seen?

9 A No.

10 Q Uh, so then you went to the police station. Do
11 you remember what law enforcement agency you went to?

12 A Forest Acres.

13 Q And essentially what happened at Forest Acres?

14 A I walked in and said, you know, what I had,
15 that I had seen, that I needed to file a report so that I
16 had someone that would talk to me. I just wanted to
17 write down every detail, what I had seen and things like
18 that. They asked me questions and that was it.

19 Q State's 36 for ID. I'm going to show you
20 what's been marked as State's Exhibit 36. Look through
21 that, all the pages and see if you recognize that.

22 A The statement.

23 Q Okay. The statement that you gave to Forest
24 Acres Police Department?

25 A Yes.

1 Q Okay. I'm going to show you what is marked as
2 State's Exhibit 33 for identification. Look at these
3 pictures and just see do you recognize. Don't say what
4 it is, but do you recognize what's in these photographs?

5 A Yes, ma'am.

6 Q Okay. Does it fairly and accurately depict
7 what you recognized these photos to be?

8 A Yes.

9 MS. BODMAN: I offer into evidence State's
10 Exhibit 33.

11 MR. COLLINS: There is no testimony as to the
12 relevance of what is being offered. No foundation.

13 BY MS. BODMAN:

14 Q The computer that you talked about in
15 testimony, do you see that computer in the photographs
16 here?

17 A Yes, ma'am.

18 Q Is that where the computer was located when you
19 saw it?

20 A Yes, ma'am.

21 Q And when you -- I'm sorry.

22 A I'm sorry. Yes, ma'am. It was in the corner.

23 Q And do you know whose room this is?

24 A It's Mr. Smith's.

25 Q Okay.

1 **MS. BODMAN:** Offer into evidence State's
2 Exhibit 33.

3 **MR. COLLINS:** No objection. No objection.

4 **THE COURT:** It's admitted.

5 **(WHEREUPON, State's Exhibit 33 is admitted into the**
6 **record.)**

7 **MS. BODMAN:** May I ask Ms. Jeffords to come
8 down?

9 **THE COURT:** You may.

10 **BY MS. BODMAN:**

11 **Q** Okay. If you can, the computer that you were
12 downloading the wedding march on, show us where that is.

13 **A** Right here.

14 **Q** It's on -- let's switch sides. Stand right
15 there so that your voice is going to go to the court
16 reporter so she can get everything down, okay?

17 **A** Okay.

18 **Q** So essentially, what room are we looking at?

19 **A** It was Alan's bedroom.

20 **Q** And this is the door to his bedroom?

21 **A** Yes.

22 **Q** So you walk in. Where is essentially this
23 computer? You walk in. It was sitting in the corner
24 over here.

25 **Q** And it's just there on the floor?

1 A Yes, ma'am.

2 Q What do you sit on while you are working on
3 that computer?

4 A On the floor.

5 Q Any other computers that you saw in his room?

6 A No.

7 Q Okay. Thank you. Uh, you've used a few words
8 in terms of thumb nails and I guess closing out, getting
9 a message box. Can you tell the jury a little bit about
10 what is your computer knowledge? How much do you know
11 about computers?

12 A I can work on a computer fairly well.

13 Q Okay. Can you -- do you know how to alter or
14 change, I guess, the file properties as to when files
15 were access?

16 A No, I didn't know you could do any of that.
17 Not the date. I mean, I know you can change the name and
18 location of pictures and things like that. But I didn't
19 think you could change the date.

20 Q The date it was accessed or anything like that?

21 A Right.

22 Q Okay. The second time that you went back with
23 Monica, what did you all look at that day?

24 A The same pictures that I seen.

25 Q Okay. And the same pictures. So you went to

1 the computer. What did you do?

2 **A** I pulled up the My Documents and I pulled up My
3 Pictures.

4 **Q** So you knew where those specific pictures had
5 been saved and you went back to that location?

6 **A** Yes, ma'am. When I was looking to close out
7 the file, you know, like I said, I started flipping,
8 trying to bring up the windows to exit it out.

9 **Q** Okay. Do you remember what you and Michelle,
10 excuse me, Monica did after you left?

11 **A** I met her at the same bar we hang out. I
12 picked her up and I went and showed her and then we went
13 back down there to the same bar.

14 **Q** Okay. And did you talk to anybody else? Not
15 what you said, but did you talk to anybody else at the
16 bar once y'all got there?

17 **A** Uh, we talked a little bit with Michelle.

18 **Q** Okay. So you did talk to Michelle?

19 **A** Uh-huh.

20 **Q** You said you were upset. What do you remember
21 about that -- how upset? Describe for us.

22 **A** It was a shock for us. You know, this was
23 supposed to be my friend, good friend, person that I
24 trusted. So it was upsetting. I was crying. I was
25 hurt. That's the -- I have a little girl. So that's, you

1 know, a mother's biggest fear. I was upset and hurt.

2 Q Thank you. No further questions at this time.
3 Just answer any questions the defense may have.

4 THE COURT: From the defense.

5 MR. COLLINS: May I approach?

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

8 THE COURT: Ladies and Gentlemen, I'll ask
9 you go to the jury room for just a few minutes.
10 Please do not discuss the case at all while you are
11 in the jury room. Thank you.

12 (WHEREUPON, the jury exits at approximately
13 10:37 a.m.)

14 THE COURT: We'll break. Step down please
15 and not discuss your testimony with anyone. Do not
16 discuss your testimony. We'll take a five-minute
17 break.

18 (WHEREUPON, a short recess is taken.)

19 THE COURT: We're ready for the jury if they
20 are ready.

21 THE BAILIFF: You ready?

22 THE COURT: Yes, sir.

23 (WHEREUPON, the jury enters at approximately
24 10:57 a.m.)

25 THE BAILIFF: Jury's present, Your Honor.

1 **THE COURT:** Cross-examination.

2 **MR. COLLINS:** Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 **BY MR. COLLINS:**

5 **Q** How are you?

6 **A** Fine. How are you?

7 **Q** At the end of your testimony with Ms. Bodman,
8 you were talking about how upset these images made you.
9 The images made you upset, right?

10 **A** And there was some videos also.

11 **Q** Now, since this happened, you've communicated
12 with Alan, haven't you?

13 **A** I have.

14 **Q** You told him you hope that he forgives you if
15 this isn't true, correct?

16 **A** I mean if someone else put it there, yeah.

17 **Q** Someone else put it there. Uh, you testified
18 that Josh Pickles stayed at that apartment?

19 **A** Yeah, he slept on the living room floor.

20 **Q** Slept where?

21 **A** On the living room floor.

22 **Q** You stated that another guy stayed there as
23 well?

24 **A** Yeah, he was not there very long.

25 **Q** This was all during the period of time that you

1 were working for Alan as his assistant?

2 **A** Yeah. I'd known Alan for a few years. It was
3 sometime that span.

4 **Q** So about 2008 to 2010?

5 **A** (Nods head.)

6 **Q** Is that a yes?

7 **A** Yes, sir.

8 **Q** She just has to write it down. That's the only
9 reason. So about a two-year span, we have Josh Pickles
10 and another guy lived there, right?

11 **A** Yes, sir.

12 **Q** We have Monica Walling. She lived there,
13 right?

14 **A** Yes, sir.

15 **Q** Her daughter stayed there with her, right?

16 **A** Yes, sir.

17 **Q** They slept in the bedroom, didn't they?

18 **A** Right.

19 **Q** Alan slept on the couch when they lived there.
20 You said Monica's mom also stayed there for a period of
21 time?

22 **A** Maybe two weeks.

23 **Q** Okay. Alan had a brother who lived in the same
24 building at the Biltmore, right?

25 **A** Uh, --

1 Q His brother Jason?

2 A His brother Jason stayed with him here and
3 there.

4 Q All right. You know about Jason's drug use?

5 A Yes, I do.

6 Q Periodically, he would come and stay with Alan?

7 A Here and there, yeah.

8 Q Did you know about all his evictions?

9 A His?

10 Q Evictions?

11 A Like getting evicted from his homes?

12 Q Yes.

13 A Yeah.

14 Q And that's when he would come and stay with
15 Alan, right?

16 A (No response.)

17 Q Yes?

18 A Yeah. But it was nothing permanent. Maybe a
19 day or two.

20 Q Okay. You never stayed with Alan permanently,
21 did you?

22 A Me? No.

23 Q Uh, you never saw Alan looking at child porn?

24 A No, sir.

25 Q Now, you testified these pictures were in the

1 My Documents, My Pictures folder?

2 A Yes.

3 Q Is that true? Are you positive that's what you
4 were looking at?

5 A Was I positive I was looking in My Pictures?

6 Q In that particular file or was it possibly
7 embedded in a different type of file?

8 A No, I went under My Documents under My
9 Pictures.

10 Q And that was on February 20th?

11 A Right.

12 Q I believe you put in your statement right at
13 10:30 p.m.?

14 A Yeah, because I got off work at 10:00. I went
15 by Walgreens which is right across the street from
16 Labrasca's Pizza and then about two miles up the street
17 to his house.

18 Q Okay. Uh, you talked with Alan since he was
19 arrested for this, correct?

20 A Right.

21 Q He told you he didn't know this stuff was on
22 the computer, right?

23 MS. BODMAN: Objection, Your Honor. That's
24 hearsay.

25 THE COURT: Mr. Collins?

1 **MR. COLLINS:** It's the defendant's statement.

2 **MS. BODMAN:** Can not --

3 **THE COURT:** Objection is hearsay.

4 **MR. COLLINS:** I offer it for the truth of the
5 matter.

6 **THE COURT:** Objection sustained.

7 **MS. BODMAN:** And ask the jury to disregard
8 the question.

9 **THE COURT:** Objection sustained. You may
10 proceed.

11 **BY MR. COLLINS:**

12 **Q** Do you know when Alan moved to the Biltmore
13 Apartments?

14 **A** I mean, it was at least maybe six months before
15 that happened. Maybe longer. I'm not sure.

16 **Q** Do you know where he lived before he moved to
17 the Biltmore Apartments?

18 **A** Yes.

19 **Q** With who?

20 **A** I mean, I never seen anyone there.

21 **Q** Was it is father's house?

22 **A** Yes, it was his dad's house.

23 **Q** You never saw Jason living there as well?

24 **A** I never seen him. I only went there like twice
25 though.

1 Q So the two times you were there, you didn't see
2 anybody?

3 A I didn't see anybody.

4 Q Uh, now, Alan gave you a key to his apartment?

5 A Correct.

6 Q You called to ask him if you could go use his
7 computer to download files for a wedding, right?

8 A Right.

9 Q He didn't have a password on that computer?

10 A I don't really remember.

11 Q You got on it, right?

12 A I got on it but, I mean, I was texting him. He
13 was telling me what program I needed to go under to burn
14 it and stuff.

15 Q Have you told anybody about those texts before
16 today?

17 A I said I had talked to him, yes.

18 Q Okay.

19 A I stated that I talked to him after the claim,
20 yes.

21 Q Did he ever -- was it your understanding that
22 you didn't have permission to use his computer when you
23 had free reign of his apartment?

24 A I mean, I never asked him about his computer
25 because I had internet on my cell phone.

1 Q All right. But you used his computer a couple
2 of times.

3 A I used it one time to burn CDs, that CD and
4 that was it.

5 Q All right. Uh, when you logged on, you don't
6 remember if you had to put a password in or not?

7 A I couldn't tell you 100 percent yes or no.

8 Q Do you remember giving an interview back in
9 March of 2010?

10 A I'm sorry?

11 Q Do you remember the statement that you gave
12 back in March of 2010?

13 A Yeah, I mean that was three years ago, three
14 and a half years ago.

15 Q Would it refresh your memory if you get to look
16 at that statement?

17 A I mean, I can look through it, yeah.

18 Q Take your time.

19 A (Reviewing.)

20 Q I'm just going to refer you to the last page of
21 that statement.

22 A Okay.

23 Q Does that refresh your memory about whether
24 there was a password or whether you had to enter a
25 password to gain access to that computer?

1 A Okay. No.

2 Q Your statement says he usually leaves the
3 computer on and the start screen. No password was
4 required to gain access. Those were your words, correct?

5 A Right.

6 Q This was back right around the time you talked
7 to the police?

8 A Right.

9 Q Okay. And when you originally viewed these
10 images and then you showed Monica, you didn't report this
11 to the police for two weeks, right?

12 A Uh, I don't believe it was two weeks later. I
13 think it might have been like a week later.

14 Q Uh, February the 20th and 21st.

15 A Okay.

16 Q Is that when you first ---

17 A Yes.

18 Q --- viewed? And it was March 4th when you went
19 to the police, correct?

20 A That's correct.

21 Q Uh, --

22 A So about a week and a half.

23 Q All right. And why did you wait so long?

24 A I'm sorry?

25 Q Why did you wait so long?

1 **A** I mean, that was a devastating thing to find
2 from someone that I did trust. You know, so it took a
3 minute to take it all in. I was just scared. I never
4 experienced anything like that in my life and I had my
5 daughter around this man. So it was a hard thing. It
6 was devastating.

7 **Q** And you still cared for him. That's what you
8 told him over Facebook, right?

9 **A** And I hate that.

10 **Q** You're unsure if he knew that it was on there.

11 **A** I'm pretty positive he'd have to know. It was
12 pretty evident. It was under my pictures along with his
13 personal porn pictures.

14 **Q** You went digging further?

15 **A** When I found them?

16 **Q** Yes.

17 **A** Yeah, I went looking through all of them to
18 make sure I'm seeing what I see.

19 **Q** All right. And this would come up on the
20 computer.

21 **A** I'm sorry?

22 **Q** This was February 20th?

23 **A** Yeah.

24 **Q** You Facebooked him and said if it's not true, I
25 hope you forgive me, correct?

1 **A** Right.

2 **Q** Thank you.

3 **REDIRECT EXAMINATION**

4 **BY MS. BODMAN:**

5 **Q** You said Monica's daughter stayed there as
6 well? How old is she?

7 **A** I would say -- my daughter was five. So she
8 was four. She was about a year younger than Monica.

9 **Q** Okay. And the time period that you knew the
10 defendant is starting in 2008, correct?

11 **A** Yes.

12 **Q** Okay. And, uh, when we're talking about
13 February 20th of you, the day that you saw this stuff,
14 that is of 2010, correct?

15 **A** Yes, ma'am.

16 **Q** Okay. And do you remember about the time of
17 year it was in 2008 that you met him if it was early in
18 the year or late in the year?

19 **A** I want to say I believe it was summertime.

20 **Q** So we're talking about less than two-year time
21 that you knew the defendant, I guess, hung out with him?

22 **A** I would say yeah.

23 **Q** Okay. Uh, and then at what period of time was
24 it again that you started going over to his apartment?
25 When you, uh, -- well, I guess in most relationships, you

1 get to know each other first. He was going to help you
2 get a job. You don't necessarily immediately, hey, the
3 first day you meet someone, here's my key. Come over and
4 have access to my home.

5 A It wasn't until after I left Applebee's that we
6 started hanging out more frequently and became closer.

7 Q Okay. And so that was -- when did you leave
8 Applebee's?

9 A I want to say it was the end of 08, around
10 November or December.

11 Q Okay. So we're talking about, uh, a little
12 over a year to maybe a year and a half that you all had a
13 close relationship, you were going over to his apartment?

14 A I mean, I didn't immediately afterwards I left
15 Applebee's.

16 Q Okay. I'm just trying to get that time, you
17 know, just a general idea of that time frame. We're
18 talking something about a year give or take ---

19 A Yes, ma'am.

20 Q --- that you would have gone over to his
21 apartment and seen who was staying there, seen kind of
22 who was coming in and out, that sort of situation, right?

23 A (Nods head.)

24 Q Okay. And he asked you about you never saw him
25 looking at porn on his computer, but this screen is faced

1 in what direction?

2 **A** When you walk through the door, you would have
3 seen the back of the computer.

4 **Q** Okay. So if you come into the bedroom to talk
5 to him, you are not going to see what is on that monitor.

6 **A** Not at all.

7 **Q** Okay. And how often that you went over there
8 to hang out, I mean, how often was he there? Were there
9 times that --

10 **A** I mean, he would work like 2:00, 3:00 to 11:00,
11 12:00 at night. So I might see him for a little bit
12 before he went in or after depending on what time.

13 **Q** So there -- were there times that you were
14 going over there to either hang out by yourself or with
15 Michelle, Monica, swim with the kids, cook out?

16 **A** Yes.

17 **Q** Okay. And he would have been at work?

18 **A** Yeah. I been over there with him at work.

19 **Q** Okay. Uh, the defense asked you about y'all
20 did have, I guess, a Facebook conversation. The general,
21 I guess the defendant's general attitude, not anything
22 that he said to you, but his general attitude towards
23 you, was it anger, uh, revenge or was it --

24 **A** No, ma'am. He was nice.

25 **MR. COLLINS:** Objection, Your Honor.

1 Objection.

2 **THE COURT:** Objection sustained.

3 **BY MS. BODMAN:**

4 **Q** Your comment to him about if this is true or if
5 it's not true, I'm sorry, do you have any personal
6 knowledge of the examination that was done by the State
7 Law Enforcement Division on the defendant's computer?

8 **A** What do you mean by that?

9 **Q** Did you go and assist with the examination at
10 SLED? Have you sat down and looked with any type of
11 programs at what all was on the computer other than you
12 sitting in that room, seeing the photos, closing it down,
13 leaving?

14 **A** No, ma'am.

15 **Q** So no examinations, no reports as to the
16 details of the entirety of these two computers?

17 **A** No, ma'am. I made the report and up until a
18 couple of weeks ago, that's the last I heard about it.

19 **Q** Okay. No further questions. Thanks.

20 **RECROSS EXAMINATION**

21 **BY MR. COLLINS:**

22 **Q** Going back to February 20th, 2010, Alan was at
23 work that night, right?

24 **A** Right.

25 **Q** And you didn't get over to his apartment until

1 about 10:30 at night?

2 A Right.

3 Q I believe you said you were working, right?

4 A Right.

5 Q You don't know who was at Alan's apartment that
6 day?

7 A I don't.

8 Q All right.

9 A As far as I'm aware, I was the only one in and
10 out with a key.

11 Q And when you got there, no password was needed
12 and the computer was up and running?

13 A I said in my statement. You know, three years
14 ago, it was a little more fresh in my memory.

15 Q Okay. Thank you.

16 THE COURT: You may step down.

17 THE WITNESS: You want me to leave this?

18 THE COURT: Your next witness?

19 MR. POTTS: The state calls Monica Walling.

20 MONICA WALLING

21 having first being duly sworn, testifies as follows:

22 THE COURT: All right. Thank you. Be
23 seated. And tell us your full name.

24 THE WITNESS: Monica Walling.

25 THE COURT: They couldn't hear you.

1 **THE WITNESS:** Monica Walling.

2 **THE COURT:** All right. Pull that mic a
3 little closer. A little closer. All right. Thank
4 you.

5 **DIRECT EXAMINATION**

6 **BY MR. POTTS:**

7 **Q** How are you doing, Ms. Walling?

8 **A** Doing good.

9 **Q** Do you mind if I call you Monica?

10 **A** That's fine.

11 **Q** Thank you, Monica. Could you briefly describe
12 yourself to the jury as to where you work and what do you
13 do?

14 **A** Uh, I'm a stay-at-home mom.

15 **Q** And when you say stay-at-home mom, you have
16 kids?

17 **A** Yes, sir.

18 **Q** Tell me about them.

19 **A** My little girl, she's seven now.

20 **Q** Does she go to school?

21 **A** Yeah, she goes to school. Going into the
22 second grade.

23 **Q** And, uh, so you stay at home most of the day
24 especially during the summer?

25 **A** Yes, sir.

1 Q Were you always a stay-at-home mom?

2 A No, I was a waitress.

3 Q Okay. Why don't you tell me about, I guess, do
4 you know Alan Smith?

5 A Yes, sir.

6 Q Tell me about how you met him?

7 A I put in for a job at Applebee's in Orangeburg
8 and he was the manager there. I went to Applebee's in
9 Orangeburg.

10 Q Okay. Did he hire you?

11 A Yes, sir.

12 THE COURT: Ma'am, pull the mic further
13 toward the jury and then speak into it.

14 THE WITNESS: Yes, sir.

15 BY MR. POTTS:

16 Q So he was your boss?

17 A Yes, sir.

18 Q Did y'all ever become -- did he always stay
19 your boss? Tell me about that.

20 A He was my boss until I transferred to another
21 Applebee's. Then he also transferred so we weren't at
22 the same Applebee's after that.

23 Q Did y'all lose contact at that point?

24 A No, sir.

25 Q So tell me, so y'all stayed in contact. Were

1 you friends?

2 **A** Yeah, we were friends.

3 **Q** Describe that relationship to me a little bit.

4 **A** We always hung out. It was just kind of like
5 we were always like the best of friends. We just always
6 hang out and do stuff together.

7 **Q** Just the two of you?

8 **A** No, me, him and Casey.

9 **Q** And Casey? Ms. Jeffords?

10 **A** Yes, sir.

11 **Q** Okay. Now, you mentioned a car accident you
12 were in. Tell me a little bit about that.

13 **A** I was T-boned. I was in a wheelchair for a
14 little while.

15 **Q** Uh, now, did you -- when you were in the
16 wheelchair, how did you get back and forth to the
17 hospital?

18 **A** I stayed with Alan for a few weeks afterwards
19 when I was in the wheelchair. All my doctors were right
20 there in Richland and my dad would go and pick me up from
21 there and take me to the doctors. Just in case anything
22 went wrong, I was closer to the hospital.

23 **Q** Closer to the hospital than what?

24 **A** Then where my dad lived. My dad lived out
25 there in Hopkins.

1 Q And where did Mr. Smith live?

2 A Forest Acres.

3 Q At Biltmore?

4 A Biltmore Apartments, yes, sir.

5 Q You said this was in September of 2009?

6 A Yes, sir.

7 Q Uh, how long were you in the hospital?

8 A I believe either 18 or 20 days. I'm really not
9 sure.

10 Q And you lived with Mr. Smith for a few weeks?

11 A Yes, sir.

12 Q Was it just you there?

13 A Me and my daughter.

14 Q Okay.

15 A And my mom came and stayed a little bit.

16 Q How long did your mom stay?

17 A Maybe about a week.

18 Q Where did y'all stay in the apartments?

19 A Me and my daughter and my mom stayed in the
20 bedroom. Most of time, Mr. Smith slept on the couch.

21 Q Okay. Now, while y'all -- excuse me. Y'all
22 slept in the bedroom while he slept on the couch during
23 those few weeks?

24 A Yes, sir.

25 Q How long do you think it lasted from? End of

1 September until about when?

2 **A** By November, I was staying with my dad.

3 **Q** Okay. By the holiday season, you were out?

4 **A** Yes, sir.

5 **Q** Okay. During that time, you see anyone use his
6 computer?

7 **A** No, sir.

8 **Q** He owned the computer, didn't he?

9 **A** Yes, sir.

10 **Q** Did he use his computer?

11 **A** Yes, sir.

12 **Q** But that was located in the bedroom where y'all
13 were sleeping?

14 **A** Yes, sir.

15 **Q** I'm going to show you what's been marked as
16 State's Exhibit 33.

17 Your Honor, may she step down for a second?

18 **THE COURT:** All right.

19 **BY MR. POTTS:**

20 **Q** All right. So I'm pointing at the top right
21 picture, what would that be?

22 **A** That's where his bed was and the computer was.
23 Like the foot of the bed on the lefthand side kind of.
24 On the floor in the corner.

25 **Q** Is that how these pictures reflected?

1 A Yes, sir.

2 MS. DAVIS: I can't hear them, Judge. I'm
3 sorry.

4 MR. POTTS: Okay. I'll speak up.

5 BY MR. POTTS:

6 Q Is that how these pictures reflected?

7 A Yes, sir.

8 Q Okay. You can take a step back.

9 A (Witness complies.)

10 Q While you were staying there, did you ever use
11 his computer?

12 A No, sir.

13 Q The only person you saw use his computer was
14 him?

15 A Yes, sir.

16 Q Can you describe his computer use?

17 A He was on it kind of everyday sometimes mainly
18 listening to music is what I thought.

19 Q That's fine. Now, how old was your daughter
20 back then when you were staying with them?

21 A Four.

22 Q Four years old? Uh, can you -- let me take you
23 back to February 21st, 2010, can you describe to me any
24 interactions you had with Casey that day?

25 A Yes, sir. I met up with her. We went to his

1 apartment. She showed me videos and pornographic
2 pictures of children on the computer.

3 Q Now, I hate to do this but I've got to ask you.
4 Can you describe for the jury in detail the kind of
5 images and what you saw?

6 A The title of the video I viewed was Four-year-
7 old Being Raped by her Father.

8 Q Okay.

9 A There were pictures of young girls posing in
10 sexual ways, with their hands behind their head. It was
11 just unreal. I mean, there were more images there. I
12 didn't see too many pictures. There were more than 50 of
13 them that I saw on the computer.

14 Q Did you go through that whole computer or just
15 that one place Casey showed you?

16 A Just that one place Casey showed me.

17 Q Okay. Now, can you describe for me what you
18 did at that point. Why did she want you to -- why did
19 you want to go see this?

20 A The three of us were so close. It just hurt so
21 bad. She wanted to make sure she wasn't, you know, in a
22 state of shock. She wanted somebody to verify that she
23 did see it.

24 Q Okay. And just to be crystal clear, in that
25 video you saw that said Four-year-old -- what was it

1 again?

2 **A** Four-year-old getting raped by her father.

3 **Q** Is that what the content appeared to be when
4 you actually opened the movie?

5 **A** Yes.

6 **Q** Okay. Now, when you lived with him, did you
7 ever have any need to use the computer?

8 **A** No, sir.

9 **Q** Okay. What do you do if you need to use a
10 computer?

11 **A** I had online access on my phone. I didn't need
12 to use the computer.

13 **Q** So you used your phone? You're a phone person?

14 **A** Yes.

15 **Q** Now, you didn't go to law enforcement right
16 away, right?

17 **A** No.

18 **Q** Can you describe why?

19 **A** It was so much to take in. Truthfully, I
20 didn't want to believe it. I just didn't know what to
21 do.

22 **Q** What did you do when you and Casey left that
23 apartment that day?

24 **A** We went Leesburg Party Shop.

25 **Q** Was anyone else there?

1 A Yes, sir.

2 Q Who else was?

3 A Michelle Sullivan was there.

4 Q Okay. Now, but you did, in fact, go to law
5 enforcement March 10, 2010?

6 A Yes, sir.

7 Q You went -- where did you go?

8 A Forest Acres.

9 Q Now, this happened 18 days before, right?

10 A Yes, sir.

11 Q From February 21st until the 10th?

12 A Yes, sir.

13 Q Can you describe why that was to the jury?
14 Part of the reason why you waited so long.

15 A It's hard for me.

16 Q Okay. Beg the Court's indulgence one second.
17 (Pause.)

18 Thank you. No further questions. Please
19 answer any questions they have for you.

20 A Yes, sir.

21 **MS. DAVIS:** Thank you, Your Honor. May it
22 please the Court?

23 **THE COURT:** Yes.

24 **CROSS-EXAMINATION**

25 **BY MS. DAVIS:**

1 Q Good morning.

2 A Good morning.

3 Q Uh, so my understanding is you lived with Alan
4 for a couple of months?

5 A A few weeks.

6 Q You testified from September to November?

7 A I didn't get out of the hospital until the end
8 of September.

9 Q Okay.

10 A And I was out by November.

11 Q Okay. Do you remember giving a statement to
12 the Forest Acres Police Department?

13 A Yes, ma'am.

14 Q Okay. Do you remember telling them that you
15 lived with him for about three months, from October to
16 December of 2009?

17 A I looked back on it. I was out by November
18 whenever I was released.

19 Q And you lived with him during the time that you
20 were injured?

21 A Yes, ma'am.

22 Q And how did that come up? I assumed he offered
23 to let you come stay with him?

24 A Yes, ma'am.

25 Q Okay. Is that when y'all still worked together

1 at Applebee's?

2 A No, I was working at Shoney's at that time.

3 Q Okay. You guys maintained your friendship and
4 when he found out you had been injured, he offered to let
5 you come stay with him?

6 A Yes, ma'am.

7 Q And also at that time, your mother came to stay
8 with y'all for a little bit?

9 A Yeah, I believe my mother was with us.

10 Q Okay. Did your boyfriend also come and live
11 there?

12 A I didn't have a boyfriend at the time.

13 Q You did not have a boyfriend at the time?

14 A No.

15 Q Okay. You weren't dating Robert Rucker at that
16 time?

17 A No.

18 Q Uh, while you lived at that house, you stated
19 that you and your daughter stayed in his bedroom?

20 A Yes, ma'am.

21 Q And that he slept on the couch?

22 A Yes, ma'am.

23 Q So any computer use he would have had would
24 have had to have been in that bedroom, correct?

25 A Correct.

1 Q Because the computer stayed in that room?

2 A Yes, ma'am.

3 Q During the time you lived there, you and your
4 daughter -- essentially, y'all lived in that room in
5 terms of where you slept.

6 A Yes, ma'am.

7 Q Uh, you stated that you never seen Alan
8 download any sort of child pornography.

9 A No, ma'am.

10 Q You never witnessed him watch any child
11 pornography.

12 A No, ma'am.

13 Q And you were friends with him for several
14 years, correct?

15 A Yes, ma'am.

16 Q Before and after you lived with him?

17 A Yes, ma'am.

18 Q Now, when he worked -- how long did y'all work
19 together at Applebee's?

20 A Probably about seven or eight months, I believe
21 it was.

22 Q Seven or eight months? And when he worked
23 there, he was the manager, right?

24 A Yes, ma'am.

25 Q So he had worked some times up to 70 hours a

1 week?

2 A Yes, ma'am.

3 Q So he worked a fair amount?

4 A Yes, ma'am.

5 Q So there is a lot times that you were living
6 there that you would be the only one at the house?

7 A No, ma'am. Not really. There was always
8 somebody to go with me. It was Casey or Michelle.
9 Whenever I stayed with him, somebody was always there
10 with me.

11 Q Okay. During the time that you knew him for
12 those couple of -- well, I know you've known him since.
13 But during the time when y'all first were hanging out,
14 other people stayed with him as well, right?

15 A Me and Casey would spend the night over there
16 occasionally. One other guy stayed with him some. Josh
17 Pickles stayed with him a little bit.

18 Q So you knew that he had stayed there as well,
19 Josh?

20 A Uh-huh.

21 Q Did you know about -- did you know his family?

22 A I've met his family, yes, ma'am.

23 Q You know who Jeannette Smith is?

24 A Yes, ma'am.

25 Q And you know who Jason Smith is?

1 A Yes, ma'am.

2 Q And Jason was someone that -- that's his
3 brother, right?

4 A Yes, ma'am.

5 Q And he would come over there and stay from time
6 to time, right?

7 A Yes, ma'am.

8 Q And you knew about Jason getting evicted
9 frequently?

10 A Yes, ma'am.

11 Q And when he did, Alan would let him come stay
12 with him?

13 A Yes, ma'am.

14 Q And so during those, that early time, did you
15 -- during the time you and Alan were friends, there were
16 multiple people who stayed at his house throughout that
17 time?

18 A Yeah, I mean, occasionally.

19 Q And people would be staying there while he was
20 at work as well?

21 A Yes.

22 Q Now, when -- we can just move to February of
23 2010. When Casey called you, she hadn't told you what
24 she had seen on the computer?

25 A Yes, ma'am.

1 Q And then at that time, you went over there with
2 her to look at it again?

3 A Yes, ma'am.

4 Q Do you remember exactly what she did when she
5 got to the computer and pulled up any of the images?

6 A No, ma'am. I mean, as far as I knew, he had a
7 password on his computer. You couldn't get into it.

8 Q Okay. That was because you said you always
9 used your phone. So you never really tried to even
10 access his computer?

11 A No, I never tried to.

12 Q So it wasn't you asked him to use it and he
13 wouldn't let you. You just always used your phone?

14 A Yeah, I always used my phone.

15 Q Okay. So when Casey sat down, you didn't see
16 what she did?

17 A No, ma'am. I can't recall what she did.

18 Q After you saw these images, you said that y'all
19 went to Leesburg Party Shop?

20 A Yes, ma'am.

21 Q And at that point, you said, I guess, y'all had
22 some drinks, had some shots?

23 A Yes, ma'am.

24 Q After that, that was the 21st of February?

25 A Yes, ma'am.

1 Q The 20th or 21st? Uh, after that, you didn't
2 go to the police?

3 A No.

4 Q Did they end up contacting you?

5 A Yes, ma'am.

6 Q And that's when --

7 A Yes.

8 Q And that's when you went down there and talked
9 with the police?

10 A Yes.

11 Q And what you said earlier when Mr. Potts was
12 talking to you, you said there is nothing bad you can say
13 about Alan other than what you saw that day?

14 A Yes, ma'am.

15 Q But you have no personal knowledge about how
16 those images got on his computer?

17 A No, ma'am.

18 **MS. DAVIS:** Beg the Court's indulgence.

19 (Pause.)

20 Nothing further, Your Honor.

21 **THE COURT:** Any redirect?

22 **REDIRECT EXAMINATION**

23 **BY MR. POTTS:**

24 Q Did you say about when you started -- when you
25 met Alan, when you got that job at Applebee's?

1 **A** Yes, sir. I believe it was around September of
2 08 or something like that. Maybe a little before that.
3 I really can't remember it was so long ago. I can't tell
4 you the exact date.

5 **Q** But approximately September of 2008?

6 **A** Yes, sir.

7 **Q** So about a year before you came to live with
8 him?

9 **A** Yes, sir.

10 **Q** And then 18 months before the February
11 incident?

12 **A** Yes, sir.

13 **MR. POTTS:** Beg the Court's indulgence.

14 (Pause.)

15 No further questions.

16 **THE COURT:** You may step down, ma'am.

17 Next?

18 **MS. BODMAN:** The state calls Michelle
19 Sullivan.

20 **THE COURT:** Ladies and Gentlemen, we'll take
21 another short break. Please go to the jury room.
22 Please do not discuss the case.

23 **(WHEREUPON, the jury exits at approximately**
24 11:32 a.m.)

25 **(WHEREUPON, a short recess is taken.)**

1 **(WHEREUPON,** the jury enters at approximately
2 11:36 a.m.)

3 **MS. ALL:** Thank you, Your Honor. We call
4 Michelle Sullivan.

5 **MICHELLE SULLIVAN**

6 having first being duly sworn, testifies as follows:

7 **THE COURT:** Please be seated.

8 **DIRECT EXAMINATION**

9 **BY MS. ALL:**

10 **Q** Good afternoon, Ms. Sullivan. Could you please
11 introduce yourself to the jury and tell them a little bit
12 about yourself and where you're from and where you work?

13 **A** My name is Michelle Sullivan. I'm originally
14 from the Hopkins, Columbia area. I have a daughter.

15 **Q** Do you know Alan Smith?

16 **A** Yes.

17 **Q** You mind moving yourself a little bit closer to
18 the microphone. Do you see him in the courtroom today?

19 **A** Yes.

20 **Q** Can you identify him please?

21 **A** He's at the table in the middle.

22 **Q** In the middle?

23 **A** Yeah.

24 **Q** Let the record reflect she identified the
25 defendant. How do you know Mr. Smith?

1 **A** We were good friends. I work at the bar we all
2 hung out at.

3 **Q** What bar was that?

4 **A** Leesburg Party Shop.

5 **Q** And when you say we all, who is that?

6 **A** A huge group of us. But for here today,
7 Monica, Casey, Me and Alan.

8 **Q** And did y'all hang out regularly?

9 **A** Yeah. I was bartending a lot. We'd hang out
10 outside of the bar some too.

11 **Q** What did you do with Casey and Monica and Alan?

12 **A** Every Wednesday night, we used to go to Max on
13 Main. We used to meet at Alan's apartment and then go
14 hear live jazz music at night and have a couple of
15 drinks.

16 **Q** Okay. Were you at work at the Leesburg Party
17 Shop on February 20th, 2010?

18 **A** Is that when Casey and Monica saw the videos?
19 Is that the day?

20 **Q** Yes.

21 **A** Then yes, I was.

22 **Q** Okay. And what happened that day?

23 **A** I was bartending. Monica called me on, I think
24 it was my cell phone, and was crying hysterically over
25 the phone. Both of them were in the car telling me what

1 they saw. They came up to the bar and told me everything
2 that they had seen. They were trying to debate on
3 whether it was really real what they saw or not.

4 Q And what kind of things did they tell you?

5 MR. COLLINS: Objection, Your Honor.

6 MS. ALL: Present sense impression, Your
7 Honor.

8 THE COURT: Objection sustained.

9 BY MS. ALL:

10 Q What was their demeanor at the bar? How were
11 they behaving?

12 A Uh, they were in hysterics, crying, real
13 nervous. I know Monica was shaking really bad. Tears
14 coming out of their eyes. They couldn't believe what
15 they had seen from a good friend.

16 Q Okay. Have you spoken with Mr. Smith since
17 then?

18 A No, ma'am.

19 MS. ALL: Beg the Court's indulgence.

20 (Pause.)

21 BY MS. ALL:

22 Q How often were you at the defendant's
23 apartment?

24 A Every Wednesday night.

25 Q At his complex or apartment, did you ever use

1 his computer?

2 **A** Uh, I asked to use his computer one time. I
3 don't even remember what it was for. Monica was -- that
4 was after her wreck when she was staying there for a
5 little while. We called him and he said, yeah, that was
6 fine. I went over there to use it. There was a password
7 on his computer. So I called and told him the password
8 was on his computer. I was told that there was a virus
9 on it, that I can't use it. That's the only time I
10 attempted to.

11 **Q** Okay. Thank you, ma'am. Answer any questions
12 Mr. Collins has for you please.

13 **A** Yes, ma'am.

14 **CROSS-EXAMINATION**

15 **BY MR. COLLINS:**

16 **Q** When he told you there was a virus on the
17 computer, do you remember when that was?

18 **A** Whenever day that was I went over to use his
19 computer. That was three years ago.

20 **Q** 2008, 2009, 2010? Do you have any idea?

21 **A** It was -- honestly, no. I know it was before
22 this situation came up.

23 **Q** So more than six months before this came up or
24 less than six months?

25 **A** I would think less than six months. But I

1 can't honestly answer that 100 percent.

2 Q You remember what the computer looked like?

3 A I know it was on the floor. As soon as you
4 went to his room, his bed was against the left wall
5 facing to the right. His computer was on the floor on
6 the other side of the bed. There was a lot of papers or
7 magazines or movies or something around it. That's all I
8 remember.

9 Q That was the only computer in the room at that
10 time?

11 A Yes.

12 Q You didn't -- he told you that that computer
13 had a virus on it?

14 A Yes, sir.

15 Q Were you aware of when he got his new computer?

16 A I know at one point he said he had to get his
17 computer worked on.

18 Q That was after he told you he had a virus on
19 the old one?

20 A I can't honestly answer that one way or the
21 other on that one.

22 Q Thank you.

23 MS. ALL: Nothing further for this witness.

24 THE COURT: Thank you. You may step down.

25 MS. ALL: Thank you, Your Honor. The state

1 calls Officer Lewis.

2 **JAMES LEWIS**

3 having first being duly sworn, testifies as follows:

4 **THE CLERK:** Please have a seat.

5 **DIRECT EXAMINATION**

6 **BY MS. ALL:**

7 **Q** Officer Lewis, would you please introduce
8 yourself to the jury.

9 **A** My name is James Lewis. I work in Columbia,
10 South Carolina. I'm a retired police officer from the
11 city of Forest Acres.

12 **Q** When were you a police officer for Forest
13 Acres?

14 **A** The better part of 17 years.

15 **Q** So you were an officer during February 2010?

16 **A** Yes, ma'am. I was.

17 **Q** And how did you come to be involved in this
18 incident on February 20th, 2010?

19 **A** I was on uniform patrol, road duty and was
20 called to headquarters that someone had come in to file a
21 police report.

22 **Q** What does uniform patrol road duty mean?

23 **A** Answer all calls on the street, accidents,
24 incidents, anything that occurred on the streets and also
25 have to take reports.

1 Q So it was your turn?

2 A It was my turn.

3 Q What happened when you got to headquarters?

4 A I met Ms. Jeffords in the courtroom where we
5 have people sit. She stated that she had been in a
6 gentleman's apartment and was using his computer to, uh,
7 download a CD for her sister's wedding and child
8 pornography had come up on it.

9 Q Do you remember the location of the apartment?

10 A Biltmore Apartments on Beltline Boulevard.

11 Q And is that located in Richland county?

12 A In Richland county, yes, ma'am.

13 Q What did you do -- can you identify the
14 witness, the complainant that came in that day?

15 A Miss -- I think her last name is Jeffords?

16 Q Casey Jeffords.

17 A Casey Jeffords.

18 Q What did you do after she gave you that
19 information?

20 A I started an incident report. I went and
21 notified my supervisor of the situation and the severity
22 of the accusation. I also picked up some statement
23 forms. I wanted her to write out a complete statement.

24 Q What happened next?

25 A She continued to write out -- she wrote out her

1 statement. I told her to be as detailed as she possibly
2 could. Get everything in there that she could think of.
3 After she finished, we did a Q&A, question and answer to
4 try to get a little bit more.

5 Q Why would you do a Q&A? Can you explain that?

6 A If anything I could think of that the
7 investigators might want to -- you know, give them a
8 heads up or help them with their situation or anything
9 that I didn't see in the report that might come up.

10 Q At that point, were your duties associated with
11 the case over?

12 A Yes, ma'am.

13 Q So what happens to the case next?

14 A I took the incident report or the statement and
15 the incident report had to be typed up. I took the
16 statement and entered it into evidence locker. It was
17 assigned to an investigator.

18 Q Have you had any involvement with the case
19 since then?

20 A No, ma'am.

21 MS. ALL: Beg the Court's indulgence. Thank
22 you, Officer Lewis.

23 THE WITNESS: Thank you, ma'am.

24 MS. DAVIS: Thank you, Your Honor. May it
25 please the Court?

CROSS-EXAMINATION

BY MS. DAVIS:

Q When Ms. Jeffords came in to talk with you or meet with you at headquarters, that was March 4th of 2010?

A I believe so, yes, ma'am. I don't have the report right in front of me.

Q If I handed that up to you, would that refresh your memory perhaps?

A Yes, ma'am. (Reviewing.)

Yes, ma'am. It's March 4th.

Q And the incident date listed on there was February 20th of 2010?

A Yes, ma'am.

Q And that's information you would have gotten from Ms. Jeffords, correct?

A Yes, ma'am.

Q Uh, at that time, you had her then write out a statement you said?

A Yes, ma'am.

Q And that's in her own handwriting, correct?

A Yes, ma'am.

Q So she sat down and you essentially told her to write down everything that she could remember?

A Yes, ma'am.

1 **Q** She did that for about -- it's four or five
2 pages long?

3 **A** That sounds right, yes, ma'am.

4 **Q** And when she told you about the incident, she
5 also told you that it was a desktop computer, that the
6 computer was usually left on, correct?

7 **A** That's --

8 **MS. ALL:** Objection, Your Honor. Hearsay.

9 **THE COURT:** Response?

10 **MS. DAVIS:** Your Honor, the witness has
11 already testified to this.

12 **MS. ALL:** I can withdraw it.

13 **THE COURT:** All right.

14 **BY MS. DAVIS:**

15 **Q** In terms of the information you learned from
16 Ms. Jeffords, that's the extent of your involvement in
17 this case?

18 **A** Yes, ma'am.

19 **Q** And after that, you did not investigate beyond
20 that?

21 **A** No, ma'am.

22 **Q** So you didn't interview any other witnesses?

23 **A** No, ma'am.

24 **Q** You also -- you personally have no idea how
25 those images got to the computer she's referring to?

1 **A** No, ma'am.

2 **MS. DAVIS:** Nothing further, Your Honor.

3 **MS. ALL:** Nothing further, Your Honor.

4 **THE COURT:** All right. Thank you, sir. You
5 may step down.

6 **MS. ALL:** Can this witness be excused?

7 **THE COURT:** Yes.

8 **MS. BODMAN:** The state would call -- excuse
9 me -- Lieutenant Hinson.

10 **BRYANT HINSON**

11 having first being duly sworn, testifies as follows:

12 **THE CLERK:** Please have a seat.

13 **DIRECT EXAMINATION**

14 **BY MS. BODMAN:**

15 **Q** If you could, introduce yourself to the jury.

16 **A** I'm Lieutenant Bryant William Hinson Junior of
17 the Forest Acres Police Department.

18 **Q** Okay. And what are your duties and
19 responsibilities as a lieutenant?

20 **A** I'm in charge of the Investigations Division.
21 I pull the reports that the Uniform Division does every
22 day. I assign them to different investigators. Some of
23 them, I take myself. Then, I oversee those
24 investigations.

25 **Q** How long have you been with the Forest Acres

1 Police Department?

2 A Just over 23 years.

3 Q Can you tell the jury a little bit about your
4 background, I guess, where you are from, where you went
5 to school and your training.

6 A Uh, I'm pretty much from the Columbia area. I
7 been in law enforcement now roughly 23 years. I grew up
8 here in Columbia. Went to Kennon High School. I have
9 been originally with Forest Acres. I went to City of
10 Columbia as well as back to Forest Acres. I've had
11 numerous training throughout the years going through
12 South Carolina Criminal Justice Academy as well as other
13 classes that I been sent to over the years.

14 Q How would you describe your jurisdiction Forest
15 Acres in terms of a small jurisdiction?

16 A It's a very small jurisdiction if you're going
17 to compare it to the city of Columbia or Richland county.
18 It's like between three and four miles, square miles..

19 Q And in your career of, I guess, 30 years, I
20 imagine that computer crimes, uh, I guess didn't always
21 exist, correct?

22 A That's correct.

23 Q Okay. And just in more recent years, we're
24 seeing, I guess, more of that, correct?

25 A That's correct.

1 Q How did you become involved in this case
2 involving Alan Smith?

3 A Officer Lewis had done a report the day before.
4 The next day, I came in again and I pulled the reports as
5 I always do, viewed them and assigned the case. That
6 case, I assigned to myself.

7 Q What did you do at that point?

8 A Based on this, even though I been in law
9 enforcement for many years, this is not a type of case
10 that we tend to get often. In fact, this was the first
11 case that I have dealt with specifically with computer,
12 uh, pornography. Based on that, I felt that I needed to
13 speak to some people who knew much more about it than I
14 did.

15 I contacted SLED because they have a division
16 which handles that. I wound up speaking with Agent Cave
17 who is an expert in that field. I got guidance from him
18 based off of the statement which had been obtained of
19 Officer Lewis. I read that. I felt that it was probable
20 cause for a search warrant for the residence.

21 I obtained that search warrant. Met with Judge
22 Kirby Shealy who agreed. Based off the statement in the
23 incident report, I obtained the search warrant for that
24 residence.

25 Q So the report and the statement that was

1 gotten, uh, the report that was made and the statement
2 that was gotten from Ms. Jeffords was on March the 4th,
3 correct?

4 A That's correct.

5 Q And you said that you got that search warrant
6 the next day?

7 A That's correct.

8 Q Do you remember approximately when it was that
9 you went over to the defendant's home, if it was --

10 A It was maybe around lunch time.

11 Q So that morning, you were already --

12 A I was getting it in the morning. We went over
13 there maybe around lunch time.

14 Q Uh, and what home did you go to? What
15 location?

16 A To Biltmore Apartments. I believe it was 608E.
17 They have two buildings which they call the east building
18 and the west building. It was 608E.

19 Q Okay. And where is that located?

20 A It's on Beltline Boulevard. It's actually on
21 the corner of Falcon Drive and Beltline Boulevard.

22 Q And is that in Forest Acres?

23 A Yes, it is.

24 Q And is that located in Richland county?

25 A Yes, it is.

1 Q And so who all do you recall going with you to
2 the defendant's home?

3 A Investigator Morrison who works with Forest
4 Acres Police Department, Agent Bart Cave was another
5 agent from SLED and myself. I do not recall if there was
6 a uniform officer with us or not.

7 Q Okay. And so what happens upon arriving at the
8 defendant's home?

9 A Knocked on the door. The defendant answered
10 the door. I explained to him why we were there. We went
11 into the apartment. The search warrant was served,
12 meaning it was read to him. So that he knew exactly why
13 we were there and what we were searching for and looking
14 for.

15 After that, uh, he was basically maintained in
16 the living room area. I know at some point, we went into
17 the kitchen area. But Agent Cave went into the bedroom
18 area because that's where the computers were and shortly
19 after being in there, contacted. Said he had found some
20 -- something on the computer. I went into the bedroom
21 and viewed the pictures. Some pictures at that point
22 and, of course, came back out of the bedroom.

23 Q How big is the defendant's home?

24 A It's very small. You come in. If I remember
25 correctly, it was the kitchen right to the right. Then

1 you walked into the small living room. If you had gone
2 to the left, immediately to the right there would have
3 been the bedroom and kind of straight ahead or slightly
4 off to that is one bathroom.

5 Q So one bedroom, one bath?

6 A Correct.

7 Q The living room and the kitchen, are they kind
8 of an open area or --

9 A There's a wall there that separates.

10 Q Okay. Uh, and so what happened next then?

11 A After the search was concluded, which I would
12 estimate maybe 45 minutes that we were there, I asked Mr.
13 Smith if he would come back to the Forest Acres Police
14 Department with me. I advised him that he was not under
15 arrest at that point. He agreed to come back to the
16 Forest Acres Police Department. I actually drove him in
17 my car back to the Forest Acres Police Department.

18 Q Did you talk to him there at the apartment?

19 A Uh, briefly.

20 Q Okay. And tell us about that. Did you read
21 him his rights? What was said?

22 A I did. If I remember correctly, it was in the
23 kitchen area. It was after the images were found.
24 Basically, he indicated that he had seen -- uh, that he
25 did look up pornography and that he had seen child

1 pornography but it was something that had just kind of
2 come up, popped up. It wasn't anything that he had ever
3 saved to his computer.

4 Q Okay. I want to back up. You had read him his
5 rights?

6 A Yes.

7 Q What do we mean by saying that we've read
8 somebody their rights?

9 A Basically advising them that they have the
10 right to remain silent and anything they say can and will
11 be used against them in a court of law. If they can not
12 afford a lawyer, one will be appointed to them without
13 any cost. If they wish to give a statement, they could
14 stop at any time until they've talked to a lawyer.

15 Q Did you do that off the top of your head?

16 A I did not. I did that off of a card that I
17 have.

18 Q Okay. Do you have the card with you?

19 A I do.

20 Q Okay. Okay. Uh, and so you read that verbatim
21 off of the card?

22 A I did.

23 Q Okay. Aside from the ones that you did off the
24 top of your head, review that. Were there any other
25 rights that you read to him there at his home?

1 **A** Knowing and understanding your rights as they
2 have been explained to you, are you willing to answer
3 questions now without a lawyer present.

4 **Q** Did he give you an indication?

5 **A** Yes.

6 **Q** Okay. And what was that indication?

7 **A** He basically indicated that he knew his rights
8 and, of course, answered that one question at that time.

9 **Q** Okay. And what he had said was, again, what
10 was his statement about the pornography?

11 **A** Something to the effect that he did look at
12 pornography on his computer. However, he did not look up
13 child pornography but they would come up periodically and
14 he never saved any of that.

15 **Q** Did you make a report in connection to your
16 investigation?

17 **A** I did. It was investigative notes.

18 **Q** I'm going to show you what's marked as State's
19 Exhibit 3 and see if you recognize that.

20 **A** That would be investigative notes that I would
21 have done on the 5th.

22 **Q** And I'm going to direct your attention to the
23 statement that you documented that the suspect told you.

24 **A** Suspect admitted to --

25 **MR. COLLINS:** Objection, Your Honor.

1 **MS. BODMAN:** The defendant's statement is not
2 hearsay.

3 **THE COURT:** Objection overruled.

4 **MS. BODMAN:** Okay. Suspect --

5 **MR. COLLINS:** Your Honor, if we could clarify
6 what document he's actually looking at.

7 **MS. BODMAN:** He said -- it was State's
8 Exhibit number 3 that was his investigative notes
9 that he made in connection to this.

10 **MR. COLLINS:** Again, Your Honor, that's not
11 the defendant's statement.

12 **BY MS. BODMAN:**

13 **Q** Did you document the defendant's statement in
14 that investigative note?

15 **A** I documented what was said to me.

16 **Q** Okay. What did he say to you?

17 **A** The suspect admitted to downloading porn and
18 seeing some child porn but never saving it.

19 **Q** While at the defendant's home, did you have any
20 contact with the actual computers, the evidence that was
21 seized?

22 **A** I did not.

23 **Q** Okay. Uh, so at this point then, you said you
24 ask him if he would come down to the police station?

25 **A** That's correct.

1 Q Uh, and did he agree to do that?

2 A He did.

3 Q Do you recall -- did you give him a ride? Did
4 he drive his own car?

5 A I gave him a ride.

6 Q Okay. So you get down to the Forest Acres
7 Police Department and what happens there?

8 A Once we were at the Forest Acres Police
9 Department, myself and a second SLED agent spoke to him.
10 I advised him of his rights again, this time with a
11 written form. I read that to him. He signed it freely
12 and voluntarily. Then, I took a written statement from
13 him. During that time, Agent Cave and Investigator
14 Morrison were handling the evidence which we had taken
15 two computers from his residence as well as a modem.
16 They were handling the evidence procedures. Myself and
17 the other agent was speaking to him at my desk.

18 Q And so you sat down at your desk. Let me take
19 it step-by-step what happens now when you sit down on
20 your desk.

21 A I obtained an Advice of Rights form, filled it
22 out, went over it. Each right, there is a small area to
23 the left that he initials indicating that he understands
24 those rights. Then also at the bottom is the waiver of
25 rights basically indicating that he's been read his

1 rights, he understands his rights and he's willing to
2 give a statement or answer questions at this time, does
3 not want a lawyer present. Also, he has the right to
4 stop. No pressure or coercion of any kind has been used
5 against him. He acknowledged that and signed that.

6 After that, we began asking him questions and
7 coming up with questions that I would type into the
8 computer --

9 Q Okay. I'm going to stop you there. I'm going
10 to show you what is marked as State's Exhibit number 1
11 and ask you if you recognize that.

12 A Yes. That is the Advice of Rights form.

13 Q Okay. The one that you used with the
14 defendant?

15 A That's correct.

16 MS. BODMAN: Offer into evidence State's
17 Exhibit number 1.

18 MR. COLLINS: No objection.

19 THE COURT: Admitted without objection.

20 (WHEREUPON, State's Exhibit 1 is admitted into the
21 record.)

22 (WHEREUPON, State's Exhibit 37 is marked for
23 identification purposes.)

24 BY MS. BODMAN:

25 Q Lieutenant Hinson, I'm just going to show you

1 what's been marked as State's Exhibit 37 for
2 identification. Is that an exact copy of the Advice of
3 Rights form?

4 A Yes.

5 Q Of State's Exhibit number 1?

6 A Yes.

7 Q Okay. So walk us through essentially the top
8 part of the Advice of Rights form. Who filled that out?

9 A I did.

10 Q Okay. And then, uh, the rights themselves, how
11 did you specific go through those?

12 A What I do with those -- and this is stemming
13 from a case I've dealt with from the past. At one time,
14 I used to allow the defendant to read his rights and then
15 let him sign it. I later found out that the defendant I
16 spoke to at that time could not read and it was thrown
17 out. Therefore, now, I always read the rights to him or
18 her. Again, on the side, they would initial indicating
19 that they understood those rights.

20 Q Okay. And so you read each of these individual
21 rights, correct?

22 A Right.

23 Q Okay. And then did the defendant initial those
24 in your presence?

25 A He did.

1 Q Okay. And that's an indication, the initial's
2 an indication that they read the right, correct?

3 A And they understand.

4 Q And they understand.

5 A Yes.

6 Q The bottom portion though, the waiver of
7 rights, explain that then.

8 A That's just indicating that he understands his
9 rights and nobody's forced him to sign that. No pressure
10 or coercion of any kind used against him. And he knows
11 that he has the right to stop answering at any time.

12 Q And did he sign that waiver of rights?

13 A Yes, he did.

14 Q And that is an indication that they want to
15 speak to you.

16 A That he is willing to speak to us, yes.

17 Q Okay. And so then what happened at this point?

18 A Based off that, we began asking him questions
19 pertaining to, of course, the search warrant and what was
20 found on the computer. At that point, we did not know to
21 what extent what was on the computer or wasn't on the
22 computer. We did ask him multiple questions, which was
23 written. As you can tell, I don't have the best
24 handwriting. Therefore, I use the computer. I type out
25 the questions. I allow him to answer those questions

1 which I type out as well.

2 When it's all said and done, I will print it
3 out and allow him to look it over to ensure that those
4 answers are correct. I always tell them that if it is
5 not correct, while I still have it up, we will make any
6 changes that need to be. Then, once they agree that
7 those answers are correct and what they had told me, then
8 I would ask them to sign that statement.

9 Q So with the defendant, did you have any type of
10 conversation about the case before you started typing
11 questions and answers or did you just go directly to
12 start asking questions and answers?

13 A We were asking questions back and forth. As to
14 what exactly the questions were, I couldn't tell you. We
15 would come up with questions to ask and based off the
16 answers, we would come up with the questions that we
17 would ask and put on the paper.

18 Q What, if anything, do you remember telling him
19 about the nature of what you were talking about or what
20 you all had found at the apartment?

21 A Naturally, I recall telling him that basically
22 it was child pornography images on his computer and that
23 from what I was being told that it wasn't just something
24 that just came up with a popup. It was stored there.
25 Now, I am not -- I am far from a computer expert so I

1 could not explain that if I had to. However, I explained
2 to him that clearly they were on his computer. Someone
3 had to put them on that computer. That's why we were
4 there and wanted to find out if, in fact, he had done
5 that or not.

6 Q And did that conversation occur prior to them
7 doing the questions and answers that were documented on
8 the statement?

9 A It was actually during all this.

10 Q I'm going to show you State's Exhibit number 2
11 and ask if you recognize that.

12 A Yes, that's the written statement that was
13 taken.

14 Q From?

15 A From the Forest Acres Police Department on the
16 5th.

17 Q Okay. What individual?

18 A From Mr. Smith.

19 Q Okay. And do you see Mr. Smith in the
20 courtroom today, the person that you got the statement
21 from and you gave the rights to?

22 A I do.

23 Q Okay. And where is he sitting?

24 A He's sitting at this table. He has on a yellow
25 looking shirt with, it looks like, a brownish or burgundy

1 tie.

2 **MS. BODMAN:** May the record reflect the
3 witness has identified the defendant. The state
4 offers into evidence exhibit number 2.

5 **MR. COLLINS:** No objection.

6 **THE COURT:** Admitted without evidence.

7 **(WHEREUPON, State's Exhibit 2 is admitted into the**
8 **record.)**

9 **(WHEREUPON, State's Exhibit 38 is marked for**
10 **identification purposes.)**

11 **BY MS. BODMAN:**

12 **Q** State's Exhibit number 38. Is that essentially
13 a blown up copy of State's Exhibit number 2?

14 **A** Yes, it is.

15 **Q** Okay. And so, uh, walk us through then the
16 questions and the answers that you asked Mr. Smith.

17 **A** The first question was do you live at 2000
18 Beltline Boulevard 608E.

19 **Q** And the answer?

20 **A** He indicated yes.

21 **Q** Okay. Do you live there by yourself? He
22 indicated yes. Do you download porn on your computer?
23 He indicated yes. Have you ever downloaded porn of girls
24 who appear to be under the age of 14? He indicated no.
25 Do you know how the movies and young nude girl pictures,

1 uh, were saved to your computer? He stated no. How old
2 is your computer? He indicated about five months old.
3 Are there any porn pictures on your other computer? He
4 stated yes. Any of young girls? No. How long do you --
5 how long did you have your other computer? Since 2004.
6 Have you ever seen any porn on your computer which were
7 of children naked under the age of 14? Yes. How did you
8 get to these sites? Through ShowNoMercy.com and other
9 sites. Has anyone ever spent hours on your computer?
10 Yes, Casey.

11 Q Okay. Stop there. Did he, at any point,
12 mention a Josh Pickles?

13 A No, he did not.

14 Q Did he at any point mention his brother?

15 A No, he did not.

16 Q Did he at any point mention any other person
17 other than Casey?

18 A No, he did not.

19 Q Okay. Next question.

20 A When you are not at work, are you usually at
21 home? For the most part. Have you ever seen anyone else
22 download porn on your computer? No.

23 Q And did the defendant sign this statement?

24 A Yes, he did.

25 Q Okay. Did you give him an opportunity to make

1 any changes, additions, deletions, add any other
2 information that he wanted to?

3 A I did.

4 Q Okay. And then what happened, I guess after
5 you got the statement?

6 A I gave him a ride back to his residence.

7 Q Why did you not arrest him at that point since,
8 uh, child pornography was seen at his home earlier that
9 day?

10 A Because again, I'm far from an expert when it
11 comes to computers. That's why I brought in Agent Bart
12 Cave from SLED who is an expert in that. Based off of
13 the images I saw, there could very well be images and
14 nothing else. I have no idea. Therefore, I wanted Agent
15 Cave to go through the computer, do a forensic interview
16 of the computer and come up with whatever is there. And
17 then based off his expertise, he could tell me whether it
18 was something that could have accidentally gotten on the
19 computer or whether it was something he felt that was
20 intentionally put there. Based off of what he would tell
21 me, I, at that point, could put everything together and
22 determine if there was enough there to bring charges.

23 Q And do you recall then when it was that you did
24 seek and obtain warrants on the defendant?

25 A I would have it in my notes, but I don't recall

1 the dates.

2 (WHEREUPON, State's Exhibits 39 and 40 are marked
3 for identification purposes.)

4 BY MS. BODMAN:

5 Q Did you get an analysis back from the State Law
6 Enforcement Division did?

7 A At some point, I did, yes.

8 Q Okay. Uh, did you get the warrants after that
9 analysis was done?

10 A Yes.

11 Q So then when was it that you obtained the
12 warrants?

13 A On August the 2nd, 2010 is when they were
14 signed.

15 Q Answer any questions Mr. Collins has.

16 CROSS-EXAMINATION

17 BY MR. COLLINS:

18 Q Uh, Investigator, you just testified that you
19 didn't do the warrant because you didn't know if the
20 files could have gotten there by accident because there's
21 pop ups and stuff. You wanted to make sure somebody else
22 could look at it with experience, right?

23 A That's correct.

24 Q Didn't you just testify that you told Alan
25 Smith when you were taking his statement that you knew

1 there was stuff on there that couldn't have come up
2 through a pop up. You just testified to that.

3 **A** I was told that, but I did not have something
4 in writing from SLED such as an analysis. I was not
5 going to go off of that. I would want an analysis
6 specifically indicating that.

7 **Q** You told Alan that you knew so?

8 **A** I believe I did say that.

9 **Q** Now, this was your first computer crimes case?

10 **A** First child pornography.

11 **Q** First child pornography case. Now, in any
12 case, your job as the investigator is to seek out facts
13 and seek out evidence, correct?

14 **A** That would be correct.

15 **Q** And when you do that, you're taking notes?

16 **A** At some point, yes, you do take notes.

17 **Q** Some times it takes close to three years before
18 you end up in a criminal trial, correct?

19 **A** Clearly.

20 **Q** And that would help with your memory to
21 remember details about what you observed?

22 **A** That's correct.

23 **Q** And you took those notes and you made reports?

24 **A** That's correct.

25 **Q** And that's standard operating procedure to make

1 investigative reports?

2 A Correct.

3 Q In this case, you wrote a report, right?

4 A I did investigative notes. I didn't actually
5 do the report.

6 Q And your notes consist of maybe five sentences?

7 A A couple of different ones, yes.

8 Q Not even enough to make up a report, correct?

9 A I wouldn't say that.

10 Q All right. Now, you're building a case, a
11 computer case, you said this your first child porn. How
12 many computer crime cases have you done?

13 A Over the years, I probably done 15 or so of
14 just that involved computers.

15 Q That involved computers, but specifically the
16 child porn. Did you do anything? Did you set up any
17 kind of sting operation to see if the defendant actually
18 would send an email with child porn in it?

19 A No, I did not.

20 Q Did you have anybody monitoring the internet
21 service to see who was actually on the computer when the
22 images were downloaded?

23 A No, I did not.

24 Q Did you check his cell phone to see if he sent
25 any of these images to the computer?

1 A No, sir.

2 Q Did you find any flash drives with child porn
3 on it that belonged to Mr. Smith?

4 A No, sir.

5 Q Did you look for any?

6 A We were searching the residence. If they would
7 have been found, that would have been seized as well.

8 Q And none were found?

9 A No.

10 Q Now, when you got there with the search
11 warrant, you said it was about lunch time, right?

12 A Approximately.

13 Q All right. And he opened the door?

14 A Correct.

15 Q And he gave consent to come in his apartment?

16 A Yes, he did.

17 Q He gave consent to look at his computer?

18 A Yes, he did.

19 Q He didn't ask where was your warrant, you can't
20 come in without a warrant, did he?

21 A We had the warrant to serve it on him so he
22 knew there was a warrant.

23 Q He was cooperative?

24 A That's correct.

25 Q You started talking to him immediately, right?

1 A We spoke about all kind of things. Where he
2 worked and various things.

3 Q Especially when he told you that yeah, I've got
4 porn on my computer, I've seen some pop ups for some
5 child porn.

6 A Correct.

7 Q And when you specifically asked him are you
8 aware of child porn on your computer, his answer was no?

9 A That's correct.

10 Q How did this get on your computer? He didn't
11 know.

12 A That's correct.

13 Q That's when he said when you talked to him at
14 the apartment and that's what he put in his statement,
15 right?

16 A That's correct.

17 Q Now, that statement, that's -- this isn't a
18 representation of your entire conversation with him, is
19 it?

20 A No, it is not.

21 Q You had two officers from SLED, computer crimes
22 task force, correct, that were with you the day the
23 search warrant was done?

24 A I know Agent Cave is from computer crimes. The
25 other agent, I'm not sure if he was assigned to that or

1 if he was a different division of SLED.

2 Q As you testified, you had a computer expert
3 with you?

4 A That's correct.

5 Q All right. Nobody had a recording device?

6 A No.

7 Q So there's no recording of any of your
8 conversation with Mr. Smith that day?

9 A I don't record any of my interviews.

10 Q All right. And that's not because you don't
11 have the capability, is it?

12 A . It's our practice. We don't record any
13 interviews.

14 Q So all we have to go by is these 15 or so
15 questions and one or two word answers, correct?

16 A That's correct.

17 Q You didn't take any notes from this, no
18 handwritten notes.

19 A That's correct.

20 Q Cause you would have kept those, right?

21 A That would be correct.

22 Q We don't have any handwritten notes.

23 A The only notes would have been from the
24 investigative notes from what he had indicated when he
25 was at the apartment.

1 Q All right. Now, when he talked about the
2 website he went to, Show No Mercy, which contained those
3 -- is contained in the written statement --

4 A Yes.

5 Q He was talking about that was the site he was
6 at where the child porn pop ups came up, correct?

7 A Correct.

8 Q Show No Mercy is not a child porn site, is it?

9 A I'd never been to it.

10 Q You didn't investigate that?

11 A I left that for Agent Cave.

12 Q All right. Now, you interviewed some other
13 people after the search warrant was served and after you
14 talked with Alan, right?

15 A Took statements, yes.

16 Q From those statements, you learned that his
17 computer was normally left on, correct?

18 A It could have been left on.

19 Q Somebody told you it was normally left on,
20 right?

21 A Per the statements, yes.

22 Q Okay. Somebody told you there were no
23 passwords, was there?

24 A Correct.

25 Q You also learned from Alan Smith that his older

1 computer had a virus on it?

2 A That's correct.

3 Q That's why he got a new computer?

4 A Correct.

5 Q That he's had for what, five or six months?

6 A Correct.

7 Q And the new computer is the one that had no
8 password from your information that was provided to you?

9 A I believe so.

10 Q All right. Take it back to March 5th with the
11 search warrant. You said you got there about lunch time?

12 A Right.

13 Q Roughly because nobody documented exactly when
14 you guys went over there?

15 A Okay.

16 Q That's correct, right?

17 A That would be correct.

18 Q The only documentation you have is the return
19 property report from the search warrant, correct?

20 A And of course, the date and time of the
21 statements that were taken.

22 Q Okay. So the return report, could you explain
23 to the jury a little bit about what a return report is?

24 A Basically, when you do a search warrant, the
25 final page is somewhat blank with lines. You will list

1 everything that you take from that residence because of
2 that search warrant. Then you take that back to the
3 judge. The judge signs off on it. Then you give the
4 original to the Clerk of Court who would maintain the
5 original search warrant.

6 Q It's essentially a summary of what's taken from
7 the residence at the end of the search warrant.

8 A An inventory of what's taken, correct.

9 Q And that's taken as you leave?

10 A That's correct.

11 Q Typically, that report is signed off on as you
12 leave the residence?

13 A After, yes.

14 Q The time on that was -- do you know what time
15 it was on that?

16 A I did not do that. No, I don't.

17 Q Uh, 2:25 p.m. Does that sound familiar with
18 the property report you signed?

19 A I don't know. I didn't do the return.
20 Investigator Morrison did.

21 Q And you said you were at the house for about 45
22 minutes?

23 A Roughly.

24 Q So a rough estimate would be 45 minutes before
25 that return sheet is signed. That would be a good guess

1 on how long you were there?

2 **A** I don't know exactly when it was returned.

3 **Q** Whatever time that is, you'd been at the
4 apartment for about 45 minutes. That be a very fair
5 statement?

6 **A** It could be.

7 **Q** Could be? Uh, now, you got the statement from
8 Alan and you took him back home, correct?

9 **A** Correct.

10 **Q** No arrest. The computer, two computer towers
11 were taken from the apartment.

12 **A** That's correct.

13 **Q** And a cable modem?

14 **A** Correct.

15 **Q** Nobody knows where the cable modem is any more,
16 right?

17 **A** That's correct.

18 **Q** It disappeared?

19 **A** I know it was taken. It was given to Agent
20 Bart Cave who then when he was completed with it,
21 contacted me. I came to see him. He turned it over to
22 me. I turned it over to the evidence clerk which I have
23 paperwork indicating. Then after that, no, I can not say
24 what happened.

25 **Q** Somehow it just ran away. Uh, so you have the

1 search warrant, you have the statement March 5th, 2010.

2 The computers go to SLED, right?

3 A Correct.

4 Q He does his analysis?

5 A Correct.

6 Q He sends a report?

7 A He sent a report and some videos.

8 Q And the report ws on May 21st, 2010, right?

9 A I don't know the exact date of that.

10 Q You sent your report May 21st, 2010. The
11 arrest warrant wasn't signed until August 2nd, 2010,
12 right?

13 A That's correct.

14 Q And you testified before that -- you waited to
15 do the search warrant because you didn't want to jump to
16 any conclusions, right?

17 A I waited for the arrest warrant, not the search
18 warrant.

19 Q I'm sorry. You waited for the arrest warrant
20 because you didn't want to jump to any conclusions?

21 A That's correct.

22 Q You wanted to completely or do a very thorough
23 investigation because this is a serious matter, correct?

24 A I wanted an expert to tell me what he felt, uh,
25 if the case warranted arrest warrants before I did that

1 since I had no expertise in that.

2 Q All right. But you have expertise in
3 investigating, right?

4 A Yes, I do.

5 Q Five months from the time you got the statement
6 and served the search warrant, there was no arrest
7 warrant, right?

8 A That's correct.

9 Q And this is a time where you're going to make
10 sure you're not going to jump to any conclusions, right?

11 A That's correct.

12 Q In that five-month period, did you test any DNA
13 swabs from the cigarette butts found right beside the
14 computer?

15 A All that would do was show somebody was in his
16 apartment.

17 Q All right. So those were tested?

18 A We knew people had been in his apartment.

19 Q Those weren't tested?

20 A No, they were not.

21 Q No interviews of his brother who often stayed
22 in his apartment?

23 A Did not have that information.

24 Q No interviews with any of Alan's family?

25 A No.

1 Q No interviews with his sister, Jeannette?

2 A Typically, with this type of investigation, it
3 wouldn't be something you're going to go around and tell
4 somebody about.

5 Q Well, typically, this was your first
6 investigation of this crime, right?

7 A Of this particular type of crime. But I've
8 investigated murders and burglaries and every other type
9 of crime. And just from my experience, this wouldn't be
10 something you would go around telling people.

11 Q You have no other experience with child
12 pornography?

13 A That would be true.

14 Q So you didn't interview his sister?

15 A That's correct.

16 Q You didn't interview his niece, Jordan?

17 A Correct.

18 Q Didn't interview his brother Jason?

19 A Correct.

20 Q Didn't interview his brother Justin?

21 A Correct.

22 Q Didn't interview Monica Walling's boyfriend?

23 A Wasn't aware of a boyfriend until today.

24 Q Didn't interview Josh Pickles?

25 A Did not.

1 Q Didn't interview anybody other than the three
2 ladies that we heard from today?

3 A Yeah. He never indicated anyone else had been
4 on his computer other than Casey.

5 Q All right. Did you interview Casey?

6 A Yes, I had spoken to her. I didn't take the
7 statement that day.

8 Q When did you speak with Casey?

9 A I don't recall the date.

10 Q You have any notation in any of your reports
11 that you personally spoke with Casey Jeffords?

12 A I do not.

13 **MS. BODMAN:** Your Honor, excuse me. They are
14 overlapping.

15 **BY MR. COLLINS:**

16 Q Do you have any notation in any of your reports
17 that you personally spoke with Casey Jeffords?

18 A I do not.

19 Q Okay. You are telling this court today that
20 you did speak with her at some point?

21 A I remember that -- I do believe that I did
22 speak with her, yes.

23 Q You remember anything that you talked about?

24 A Other than just going over the statement.

25 Q All right. You have no information about Jason

1 Smith's living arrangements in 2004 and 2005?

2 A I do not.

3 Q You did get information that the older computer
4 was purchased in 2004, correct?

5 A I did.

6 Q Did you interview Alan's -- did you interview
7 anybody in Alan's family to see where he lived from 2004
8 to 2009?

9 A I did not.

10 Q Did you ask him where he lived from 2004 to
11 2009?

12 A I did not.

13 Q Did you ask him where the computer was from
14 2004 to 2009?

15 A I did not.

16 Q So you have no information about who had access
17 to that computer from 2004 to 2009?

18 A Other than him indicating that Casey was the
19 only one that used his computers, no.

20 Q You have no information about Jason Smith's
21 drug use?

22 A I do not.

23 Q You have no information about Jason Smith's
24 history with pornography?

25 A I do not.

1 Q His history with child pornography?

2 MS. BODMAN: Objection, Your Honor. This is
3 not -- it's completely irrelevant.

4 THE COURT: Will counsel approach?

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

7 THE COURT: Objection overruled.

8 BY MR. COLLINS:

9 Q Through your talks with Alan Smith, you learned
10 that he worked at Applebee's as a manager?

11 A Correct.

12 Q Never went and got his schedule from Applebee's
13 to see when he was working?

14 A I did not.

15 Q You understand that computer people can pull up
16 the dates and times of when files were accessed, correct?

17 A I am aware of that.

18 Q You never got his schedule to see when he was
19 working?

20 A No, I did not.

21 MR. COLLINS: No further questions.

22 REDIRECT EXAMINATION

23 BY MS. BODMAN:

24 Q Where in the defendant's statement or when in
25 your conversation with him did he mention that he had a

1 sister by the name of Jeannette?

2 A He didn't.

3 Q Okay. Where in his statement or when in your
4 conversation with him did he mention that he had a niece?

5 A He did not.

6 Q Where in his statement and when in your
7 conversation with him did he say that he had a brother by
8 the name of Jason Smith?

9 A He did not.

10 Q Where in this statement or when in your
11 conversation did he say that he had a brother by the name
12 of Jason Smith that had some type of porn issue?

13 A He never did.

14 Q And so when in his statement or when in your
15 conversation with him did he mention the name of Josh
16 Pickles?

17 A He never did.

18 Q When is it that you first heard the name,
19 Jeannette, that he had a sister Jeannette and a niece and
20 a brother by the name of Jason Smith and some friend by
21 the name of Josh Pickles?

22 A Today.

23 MS. BODMAN: No further questions.

24 **RECROSS EXAMINATION**

25 **BY MR. COLLINS:**

1 Q You don't normally base your entire
2 investigation on the information you get from an accused
3 defendant, do you?

4 A No.

5 Q That's because -- could you repeat that answer?

6 A No, I do not.

7 Q That's because you testified he had the right
8 to remain silent?

9 A That's correct.

10 Q And you told him he had the right to remain
11 silent?

12 A I did.

13 Q All right. Your job as an investigator is just
14 that, an investigator, correct?

15 A Correct.

16 Q From March 5th, 2010 to August 2nd, 2010, you
17 didn't interview anybody, did you?

18 A I did not.

19 Q All right. You didn't do any further
20 investigation at the apartment?

21 A That's correct.

22 Q Everything else was done by SLED, correct?

23 A That's correct.

24 **MR. COLLINS:** Thank you.

25 **THE COURT:** You may step down.

1 Ladies and Gentlemen, we're going to break for
2 lunch now. We're going to break for lunch until
3 1:45. 1:45. You can coordinate with the bailiffs
4 as to when you can come and when you can go.
5 They'll discuss that with you. You are not allowed
6 to wander around the courtroom door or wander around
7 the courthouse. We'll see you back at 1:45. Please
8 do not discuss the case.

9 (WHEREUPON, the jury exits at approximately
10 12:33 p.m.)

11 **THE COURT:** Is there anything before we
12 break?

13 **MS. BODMAN:** Not from the state.

14 **THE COURT:** As far as scheduling is
15 concerned, when do you think the state will be
16 through presenting its case?

17 **MS. BODMAN:** We will definitely be done this
18 afternoon. We have a brief witness. Then we'll be
19 putting our expert on. I know that will be a little
20 timely and meticulous. Around an hour on the
21 forensic expert.

22 **THE COURT:** You think you'll be through in
23 your case about 4 o'clock, by 4 o'clock?

24 **MS. BODMAN:** I think so, yes.

25 **THE COURT:** All right. When will the defense

1 be ready?

2 **MR. COLLINS:** Your Honor, we've instructed
3 all our witnesses to be here tomorrow morning. We
4 were opening to give our opening statements to start
5 our case in the morning so that we can start our
6 case and do it all in one day.

7 **THE COURT:** All right. We'll be back at
8 1:45.

9 (WHEREUPON, a lunch recess is taken.)

10 **THE COURT:** Ready for the jury?

11 **MS. BODMAN:** Yes, Your Honor.

12 **THE COURT:** Bring them on..

13 (WHEREUPON, the jury enters at approximately
14 1:56 p.m.)

15 **THE BAILIFF:** The jury is present, Your
16 Honor.

17 **THE COURT:** All right. Continue with the
18 state's case. Your next witness.

19 **MR. POTTS:** The state calls Investigator
20 Morrison.

21 **CHARLES MORRISON**
22 having first being duly sworn, testifies as follows:

23 **THE CLERK:** Thank you. Have a seat please.
24 State your name for the record.

25 **THE WITNESS:** Charles Morrison.

DIRECT EXAMINATION**BY MR. POTTS:**

Q Investigator Morrison, where are you currently employed?

A The City of Forest Acres Police Department.

Q What do you do there?

A I'm assigned to the investigative division.

Q What does that mean?

A Uh, I'm an investigator. Uniform patrol takes reports of criminal incidents. Those reports get signed and forwarded to me by my boss, Lieutenant Hinson.

Q How long have you worked there?

A Uh, I was hired with the city in 1988. I've been working there ever since. 15 -- 15 years. About.

Q Now, how did you become involved in this case?

A Uh, kind of limited, sir. I was again -- I was on the investigations. Lieutenant Hinson was the lead investigator in this case. I assisted him with the executing of the search warrant.

Q When you say you assisted him in the execution of the search warrant, what was your role?

A I actually went to the apartment with, uh, Lieutenant Hinson and Mr. Cave with SLED and executed it. I read the search warrant to the defendant, collected items from the home, computers, a modem. They were taken

1 back to Forest Acres. I completed a chain of custody
2 form and turned --

3 Q Hold on.

4 A Yes, sir.

5 Q Now, did you search the house yourself?

6 A No, sir. I primarily stayed in the living room
7 with the defendant during the execution of the search
8 warrant.

9 Q What did you do there?

10 A Primarily just spoke with the defendant.
11 Trying to just keep him calm. Talked to him a little bit
12 so the other investigators could look for the computers.
13 He and I just primarily spoke. Small talk.

14 Q Did you talk about the case at all?

15 A No, sir. Primarily fast food. I used to work
16 in a restaurant business a long time ago. Just asked him
17 -- talked to him about business, Applebee's and that kind
18 of thing. He asked a few questions. I really didn't
19 give him any answers. Some of the questions, I just
20 didn't have an answer for.

21 Q Cause you were there just to help with the
22 search warrant?

23 A Yes, sir. That's correct.

24 Q There's no real easy way to do this.

25 A Yes, sir.

1 **(WHEREUPON, State's Exhibits 41 and 42 are marked**
2 for identification purposes.)

3 **BY MR. POTTS:**

4 **Q** In front of you, I have what's marked as
5 State's Exhibit number 41 and 42 for ID.

6 **A** Yes, sir.

7 **Q** Do you recognize those?

8 **A** Uh, yes, sir. Those are the two computers
9 that, uh, was collected from the defendant's home.

10 **Q** Those are the computers you took possession of
11 out of the defendant's home?

12 **A** Yes, sir. Those are.

13 **Q** Okay. Did you match those serial numbers for
14 me today to make sure they are still the same computers?

15 **A** Yes, sir. I did.

16 **Q** What did you do with those computers?

17 **A** Those computers were collected from the home.
18 They were transported from the home the day of the search
19 warrant. We took them back to Forest Acres Police
20 Department. A chain of custody was completed by me. The
21 computers were turned over the same day to Agent Bart
22 Cave with SLED for further forensic, uh, examination.

23 **Q** So once you took the computers out the home,
24 you turned them over to Bart Cave at Forest Acres,
25 correct?

1 **A** Yes, sir. That's correct.

2 **Q** Uh, so did you talk to the defendant at Forest
3 Acres Police Department?

4 **A** I did not. Lieutenant Hinson was the lead
5 investigator. He was doing, uh, most of the interview
6 with the defendant. I was not involved in that, uh,
7 interview. I was in the same room but I was doing chain
8 of custody and whatnot.

9 **Q** But your major involvement was in handling
10 computers?

11 **A** Yes, sir. That's correct.

12 **Q** Did you have any other involvement in this case
13 after this?

14 **A** No, sir. I did not.

15 **Q** Did you -- are you sure nothing ever --

16 **A** Well, I did the search warrant. I think it was
17 the next business day, I believe, because it was late in
18 the week. The very next business week, I did the return
19 for the search warrant in front of the judge.

20 **Q** All right. Let me show you what's been marked
21 as State's Exhibit number 40 and 39.

22 **A** Yes, sir.

23 **Q** Let you take a look at that.

24 **A** Oh, yes.

25 **Q** Does that refresh your recollection at all?

1 **A** Yes, sir. Yes, sir. I recall this. These
2 were the search warrants that were drafted.

3 **Q** Are they search warrants?

4 **A** Oh, I'm sorry. Arrest warrants.

5 **Q** Don't tell me what they are. Do you have any
6 other involvement in this case after this?

7 **A** Yes, sir. I actually served these warrants.

8 **Q** When you say served them, what does that mean?

9 **A** I met with the defendant. He had turned
10 himself in so I could serve these warrants on him and
11 just log him at the county jail to await a bond hearing.

12 **Q** He turned himself in?

13 **A** Yes, sir. He did.

14 **Q** Did y'all have any -- talk any about the case
15 at that time?

16 **A** No, sir. From what I recall, I remember
17 reading these warrants to him. That was about it.

18 **MR. POTTS:** Beg the Court's indulgence one
19 second. (Pause.)

20 Thank you. No further questions.

21 **MS. DAVIS:** Thank you, Your Honor. May it
22 please the Court.

23 **CROSS-EXAMINATION**

24 **BY MS. DAVIS:**

25 **Q** Officer Morrison, you stated that you helped

1 Investigator Hinson serve a search warrant?

2 A Yes.

3 Q That was on March 5th, 2010?

4 A Yes, ma'am. That's probably correct. I'm not
5 sure of the exact date off the top of my head.

6 Q Do you have a copy of the search warrant in
7 front of you?

8 A Not the search warrant, no, ma'am.

9 Q Would that help refresh your memory ---

10 A Sure.

11 Q --- on the ---

12 A Sure.

13 Q --- date and time?

14 A Sure. Thank you, ma'am. (Reviewing.)

15 Yes, ma'am. It is March 5th.

16 Q And that's the search warrant that y'all served
17 that day, correct?

18 A Yes, ma'am.

19 Q You also the one that filled out the return?

20 A Yes, ma'am. I did that.

21 Q And the time on that is at 1:15 p.m.?

22 A Yes, ma'am.

23 Q So that would have been at the end of the time
24 after you collected the two computers and the modem?

25 A Yes, ma'am. That's correct.

1 Q And then after you signed that return, then you
2 take that -- collect evidence and take it back, correct?

3 A Yes, ma'am.

4 Q When you took it -- the items back, those are
5 all stored together, correct, the two computers and the
6 modem?

7 A Yes, ma'am.

8 Q Uh, the modem at this point, we have no idea
9 where it's at any longer?

10 A Yes, ma'am. That's what I've been told.

11 Q So we have two computers here today and that's
12 it?

13 A Yes, ma'am.

14 Q Now, you said that when you were at the
15 apartment, you primarily stayed in the living room?

16 A Yes, ma'am.

17 Q And just had some small talk with Alan?

18 A Yes, ma'am. That's correct.

19 Q In your opinion, he was cooperative that day,
20 correct?

21 A He was.

22 Q He answered the door?

23 A Yes, ma'am.

24 Q He let y'all in?

25 A Yes, ma'am.

1 Q Did you hear him when he consented to let y'all
2 search the computer?

3 A Yes, ma'am. It was kind of soft. I was still
4 in the hallway when he was talking with Lieutenant
5 Hinson.

6 Q And then after that, did you ride down with
7 Investigator Hinson and Alan in the squad car or did you
8 have a separate car?

9 A No, ma'am. All three of us were in the same
10 car right along with the computers.

11 Q So obviously, you know that he was willing to
12 come down to headquarters and talk to y'all?

13 A Yes, ma'am.

14 Q And you were in the room when they questioned
15 him as well?

16 A Yes, ma'am.

17 Q But you didn't ask him any questions?

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

19 Q But you were there during that whole time?

20 A That's correct.

21 Q And he was forthcoming with questions?

22 A Yes.

23 Q Or with the answers?

24 A Yes.

25 Q And he admitted or told Investigator Hinson and

1 the rest of y'all that he did not download in any child
2 pornography?

3 A Uh, I believe that was his statement. I didn't
4 hear all of it. I heard some. Was not really listening.
5 But I do remember questions to that effect.

6 Q And after -- how long were y'all at his
7 apartment?

8 A I'd say 45, 50 minutes.

9 Q So just under an hour?

10 A Yes, ma'am. That's correct.

11 Q Uh, and I'm sorry. Can I get that search
12 warrant back?

13 A Sure.

14 Q I'd have you look at this last page here.

15 A Yes, ma'am.

16 Q Is that the return that you filled out?

17 A Yes, ma'am. It is.

18 Q And is that your signature on that?

19 A My signature is.

20 MS. DAVIS: Your Honor, we move at this time
21 to move the return of the search warrant into
22 evidence.

23 MR. POTTS: Your Honor, I don't think it's
24 admissible. It's a hearsay document, Your Honor.

25 THE COURT: Let me see the document.

1 (Pause.)

2 I overrule the objection.

3 MS. DAVIS: Thank you, Your Honor.

4 (WHEREUPON, Defendant's Exhibit 1 is marked for
5 identification and admitted into the record.)

6 BY MS. DAVIS:

7 Q That was essentially -- that's the extent of
8 your involvement other than you were arrested or served
9 Alan with the warrants?

10 A That's correct.

11 Q At that point, he cooperated and turned himself
12 in as well?

13 A Yes, ma'am.

14 Q Again, that would have been about five months
15 after y'all had actually searched his house?

16 A I believe so.

17 Q So did you call him? Or how did you get in
18 touch with him?

19 A I believe Lieutenant Hinson had, uh, possibly
20 lined that up. Lieutenant Hinson directed me to be down
21 at the jail to be able to serve the paperwork.

22 Q So he met you down at the detention center to
23 be served?

24 A Yes, ma'am. That's correct.

25 Q Nothing further.

1 **THE COURT:** Redirect?

2 **MR. POTTS:** No further questions, Your Honor.

3 **THE COURT:** You may step down, sir.

4 **MS. ALL:** The state calls Agent Bart Cave.

5 **BART CAVE**

6 having first being duly sworn, testifies as follows:

7 **THE CLERK:** Thank you. Have a seat on the
8 witness stand please. State your name for the
9 record.

10 **THE WITNESS:** Bartley Cave.

11 **MS. ALL:** Agent Cave, we've all been eagerly
12 anticipating your testimony. Now, the State's not
13 ready with all my props. I'm sorry. (Pause.)

14 **THE COURT:** Ladies and Gentlemen of the jury,
15 uh, Ms. Cunnin, I'm going to appoint you to serve as
16 the foreperson of the jury. Ms. Cunnin?

17 **THE JUROR:** Me?

18 **THE COURT:** Yes.

19 **THE JUROR:** Okay.

20 **THE COURT:** You're Ms. Cunnin?

21 **THE JUROR:** Yes.

22 **THE COURT:** All right. You. I'm going to
23 appoint you to serve as the foreperson of the jury,
24 the forelady of the jury. As the forelady, it would
25 be your responsibility to serve as the spokesperson

Remarks

1 for the jury, to preside over the jury deliberations
2 and to complete the verdict form representing the
3 verdict of the jury. If you would, change seats
4 with the lady right next to you. That's the
5 foreperson's seat. We'll have you to to the jury
6 room for just a few minutes. Please do not discuss
7 the case.

8 (WHEREUPON, the jury exits at approximately
9 2:11 p.m.)

10 THE COURT: Ms. All?

11 MS. ALL: Yes, Your Honor. I'm sorry. One
12 moment.

13 THE COURT: You are about to display exhibits
14 to the jury?

15 MS. ALL: I am, Your Honor.

16 THE COURT: You have copies for the court?

17 MS. ALL: I'm sorry, Your Honor?

18 THE COURT: You have copies for the court?

19 MS. ALL: Uh, yes, Your Honor.

20 MS. BODMAN: I think we gave them to you this
21 morning with the cops.

22 MS. ALL: Do you need the slide show or --

23 THE COURT: Whatever you are showing to the
24 jury.

25 MS. ALL: Okay. We just have a list of

1 exhibits.

2 MS. BODMAN: We handed you that this morning.

3 MS. ALL: It's my understanding we handed up
4 the screen shots for the presentation when Mr. Cave
5 explained the process. Were you looking for the
6 copies of the child pornography?

7 THE COURT: Whatever you are showing the
8 jury.

9 MS. ALL: Yes, Your Honor. We'll show the
10 jury the -- those images.

11 MR. COLLINS: Your Honor, the defense does
12 have a couple of things with what they intend to
13 show the jury as far as being admissible or not.

14 THE COURT: I can't rule on anything without
15 seeing.

16 MR. COLLINS: I understand. All I ask is --
17 I believe they gave Your Honor a copy yesterday.

18 MS. ALL: What is about to be shown to the
19 jury, we've given the court copies of those
20 exhibits. The only other thing that can be shown is
21 the actual pornography, which are in the file
22 folders and on the disk that defense has looked at.
23 That's what -- the extent of what's being shown to
24 the jury.

25 MR. COLLINS: My concern with the slides that

Remarks

1 they have presented, there are a couple of files
2 that have video files that are unindicted video
3 files. There's another slide that has over 20 video
4 files on the screen. I'm not sure of exactly what
5 they are going to be explaining, but they are not
6 indicted files. I'm objecting to their
7 admissibility.

8 **MS. ALL:** Your Honor, the images, we're
9 trying to explain how the file structures break down
10 so Agent Cave describe what he does. This is all
11 the selection to be made from all different parts of
12 the hard drive. There's not really one place where
13 we can even show. We're just want to give the jury
14 a visual representation. Defense counsel's also had
15 access to the hard drive.

16 **THE COURT:** I have to hear the testimony and
17 I have to see the evidence in order to rule on any
18 objection.

19 **MS. ALL:** And I believe -- I just want to
20 confirm Your Honor has copies of this slide show.

21 **THE COURT:** I have copies of what you handed
22 to me.

23 **MS. ALL:** That's the slide show. Other than
24 that, it's just the copies of the materials.

25 **MR. COLLINS:** I just ask that the slides not

1 be displayed to the jury until after you've had a
2 chance to rule on the objection. I can go ahead and
3 take the two slides out.

4 **THE COURT:** Go ahead.

5 **MR. COLLINS:** If it's the same order, the
6 last slide describing the 21 videos. Some of them
7 are indicted videos. Others are not. There's only
8 20 videos indicted. Obviously, at least one is not.
9 I believe it's just -- at this point, it would be
10 the last page.

11 **MS. ALL:** Your Honor, Agent Cave prepared
12 this with the state. I'll be happy to kind of run
13 you through the slides one by one real quick.

14 **THE COURT:** You want me to prescreen?

15 **MS. ALL:** The concern seems to be content of
16 what we discussed. The concern needs to be that the
17 images themselves contain files that are not in
18 evidence. He used the software to access the
19 defendant's computer so that we could show the jury
20 an example of how a file path structure works. So
21 since we did 30 different pieces of data and they
22 were all over the hard drive so there wasn't one
23 place where we could get them. I don't believe --
24 it's just for demonstrative. It is the computer
25 that he was using.

1 **MR. COLLINS:** I think they can demonstrate
2 file structures and files and not 13-year-old
3 preteen underage teen sex, daughter gets allowance
4 from daddy, PTHC fun and 12-year-old hooker, sexy
5 doll. It goes on from there, Your Honor. It has a
6 highly prejudicial nature associated with his
7 computer that are unindicted. There had been no
8 connection to the indicted videos. They're just
9 seeking, as she says, the file content, there are
10 plenty of files on the computer to do that with. In
11 fact, they reference that on the previous page of
12 their slides. Normal files that normal people have
13 go into other pornography on the computer.

14 **THE COURT:** I have to hear the testimony.
15 The arguments are not persuading me. We're going to
16 bring the jury in. You object.

17 **MS. ALL:** Okay.

18 **THE COURT:** Bring the jury in. I can't rule
19 on anything that I can not see.

20 **(WHEREUPON, the jury enters at approximately**
21 2:19 p.m.)

22 **THE BAILIFF:** Jury is present, Your Honor.

23 **THE COURT:** You may proceed.

24 **MS. ALL:** Thank you, Your Honor.

25 **BART CAVE**

1 having previously been sworn, testifies as follows:

2 **DIRECT EXAMINATION**

3 **BY MS. ALL:**

4 **Q** Agent Cave, would you please introduce yourself
5 to the jury.

6 **A** My name is Agent Bart Cave. I work with the
7 South Carolina Law Enforcement Division in the Computer
8 Crimes Center.

9 **Q** And how long have you been employed by the
10 South Carolina Law Enforcement Division or SLED?

11 **A** Since December of '05.

12 **Q** What is your current position there right now?

13 **A** I'm a Criminalist II in the South Carolina Law
14 Enforcement Division Crime Center.

15 **Q** Were you a Criminalist II, uh, during the
16 execution of this examination?

17 **A** I was not.

18 **Q** Okay. What are your duties as a Criminalist
19 II?

20 **A** I'm the evidence custodian for the department
21 and network administrator for our department. I'm the
22 imaging technician for the majority of the cases. I do
23 computer forensics and cell phone forensics.

24 **Q** Okay. I feel like I just watched a Best Buy
25 commercial or something. Can you just explain what those

1 things mean, what you actually do?

2 **A** Uh, as an evidence custodian, whenever local
3 agencies, state or federal bring in evidence to our
4 department so we can assist -- SLED is an assisting
5 agency for local law enforcement -- I'll intake the
6 evidence and take it into custody and, uh, log it into
7 our evidence room. Then our captain will assign the
8 cases to an agent. Once it gets assigned to an agent and
9 they are ready to work the case, they will send me an
10 email and say, hey, can you get this case ready.

11 Then I'll go back, pull it out the evidence,
12 image it properly so it's a bit-by-bit image of the copy
13 so they can work it. The image is then stored on the
14 server so they can access it from their computer so they
15 can start working the case. If the case is assigned to
16 me, then it will go into my folder structure. I have a
17 computer that I go to and I will work the case.

18 If it's a cell phone forensics, it's pretty
19 much the same matter except cell phone forensics is a
20 little different than computer forensics. We have a
21 different setup for how we process cell phones.

22 As a network administrator, due to the nature
23 of the stuff that we deal with on a regular basis, we
24 can't be part of the regular SLED network. We have a
25 totally separate network. It's completely separate from

1 the SLED network that never touches the internet to
2 prevent from, uh, files getting corrupted or somebody
3 hacking in or making changes to the system. And it's
4 completely separate from the SLED network.

5 Q So you do -- we just heard from Investigator
6 Hinson. Do you do those kind of duties, regular
7 investigative duties with witnesses or anything like
8 that?

9 A No, ma'am.

10 Q Okay. Do you have -- what's your background
11 with computer science?

12 A Uh, I worked for computer sales and service for
13 five years as a computer technician where I traveled the
14 road and did service work for banks, lawyers, state
15 agencies preparing computers, PCs, servers and printers
16 for about five years. After that, I came to work at SLED
17 in '05. I started off as an IT, uh, desktop support
18 person and information resource consultant. Did that for
19 about a year and a half. They had a position available
20 in computer crimes where somebody was leaving out. They
21 needed somebody with a hardware background for removing
22 hard drives and knowing the inner workings of computers.
23 I got transferred over to computer crimes. I been there
24 for about eight years.

25 Q What kind of education have you had on computer

1 forensics? What kind of training and classes did they
2 send you to?

3 **A** I been to EnCase, uh, Computer Forensics I, II
4 and advanced. I been to FTK, which is another computer
5 forensics program that we used. I been to National White
6 Collar Crime Centers. Uh, BDRA training which is the
7 Basic Data Recovery. I been to their intermediate data
8 recovery. I been to NW3C's cell phone basic analysis. I
9 been to the, uh, to Hoover, Alabama through Secret
10 Service to do mobile data recovery forensics. I've done,
11 uh, different classes with securing evidence, how to do
12 investigations through different classes, through
13 webinars, through access data, FTK and NW3C which is the
14 National White Collar Crimes.

15 **Q** How many computer crimes investigations have
16 you participated in?

17 **A** I would say approximately 200.

18 **Q** Have you testified in state court before?

19 **A** Yes, ma'am.

20 **Q** Have you testified regarding computer crimes?

21 **A** Yes, ma'am.

22 **Q** Have you been certified as an expert in the
23 court of law before?

24 **A** Yes, ma'am.

25 **MS. ALL:** Your Honor, at this time, we move

1 that Agent Bart Cave be entered a computer forensics
2 expert.

3 **MR. COLLINS:** If I could ask a question?

4 **THE COURT:** Yes, sir.

5 **BY MR. COLLINS:**

6 **Q** Just one question. Of all those training
7 seminars that you did, how many hours of training did you
8 have approximately?

9 **A** Uh, I'm going to say over 250 hours.

10 **Q** Over 250 hours?

11 **A** Yes, sir.

12 **MR. COLLINS:** No more questions. No
13 objection.

14 **THE COURT:** Ladies and Gentlemen, this
15 witness is an expert witness in the field of
16 computer forensics. An expert witness, unlike lay
17 witnesses, can offer opinions in the areas of their
18 expertise. You are to evaluate an expert the same
19 as you are to evaluate any other witness. You may
20 proceed.

21 **BY MS. ALL:**

22 **Q** What kind of -- where do you work?

23 **A** Our department covers the whole state of South
24 Carolina.

25 **Q** Okay. So you could be in any county and on any

1 level?

2 **A** Yes, ma'am.

3 **Q** Okay. How did you come to be involved in the
4 investigation of Alan Smith?

5 **A** We received an assistance call from the Forest
6 Acres Police Department. It was assigned to me and Agent
7 Kevin Hampton.

8 **Q** And why would you -- why would Forest Acres
9 have made the assistance call?

10 **A** Cause they were not up to speed on the computer
11 forensics aspect of dealing with a computer case.

12 **Q** Do some agencies have their own expert within
13 the agency?

14 **A** They do.

15 **Q** Do most of the agencies go to SLED for
16 assistance?

17 **A** A good portion of them do.

18 **Q** About how many of the computer crimes cases --
19 maybe if you could just explain what kind of crimes are
20 usually implicated when you say computer crimes, what
21 that means?

22 **A** Uh, it's really a wide range of crimes.
23 Depending on what area it's in, we do murders, suicides,
24 robberies, financial transaction fraud. We do identity
25 theft, attempted murder, threats, you know, through the

1 internet, threats against judges.

2 Q What kind of evidence would you be looking for
3 in those types of crimes?

4 A Depending on what the main charge was, if it
5 was a threat against, uh, someone or a threat on
6 somebody's life, then we'd go in. Say if it was via
7 Facebook, then we do a search warrant for Facebook and
8 ask for records of the date and time for when that
9 happened so we can get back and get the information on
10 there.

11 If it was somebody who had been sending
12 threatening emails and the email they received showed --
13 pointed back to an IP address, we can do a search warrant
14 back to the provider to show who that IP belonged to at
15 that date and time. We could go to that person's home
16 and attempt to seize that computer to find those records.

17 Q Okay. Can you describe to the jury a little
18 bit the nexus between child pornography and computer
19 crimes and your involvement in both of those fields?

20 A Uh, most of the time, when people are dealing
21 with child porn, they are taking and downloading that via
22 the internet and they are getting it from a website or a
23 third party download location. When they go and they
24 download that, it's going to be going through an IP
25 address. When they go out and they search for that, most

1 of the time, that's not stored in a normal place. Most
2 of the time they are doing it, you know, kind of to hide
3 it or put it in another location where somebody else,
4 another family member is not going to easily run across
5 it by going through My Documents or a common area.

6 Q Now, you use the term download. The statute
7 requires possession. Can you describe exactly what
8 download means?

9 A Normally, when you go out to a site and they
10 have video files and you click on them, some sites have
11 what they call a temporary download. Other sites, if you
12 are using an application to download, it will store them
13 in a certain location for a folder to set up on your
14 computer. If that's set up on your computer, it's a
15 permanent where it goes to a location.

16 Q So say we have Netflix and we want to watch a
17 movie on Netflix, am I saying that to my computer?

18 A No, ma'am. That's a temporary download.

19 Q Say it's Youtube and I want to watch something
20 on Youtube, am I saving that to my computer?

21 A That's a temporary download also.

22 Q Okay. Well, say I'm on Girls Gone Wild and I
23 want to watch some girls going wild on a video, is that
24 going to be downloaded on my computer?

25 A That could also be -- you also have the option

1 on all of those sites where instead of just viewing it,
2 you can also download it and save it to review later.

3 Q When does that option come up?

4 A There's normally an additional step you have to
5 go through to do that.

6 Q When you elect to download it at that option,
7 what happens?

8 A It will pull up a thing and ask you where you
9 want to save it at.

10 Q So is it possible to download it without being
11 aware that you are downloading it if you just want to
12 watch it?

13 A It's possible. But most of the time, it pulls
14 up another dialog box to say save as or play.

15 Q Right. When it asks you where you want to save
16 it, does it also ask you how you want to save it?

17 A Most of the time, it just asks for a location.
18 Once it downloads, then you'd have the option to rename
19 it if that's what you wanted to do.

20 Q If it doesn't ask you for the name you want to
21 give it, what name does it get assigned?

22 A The name that it came from the website.

23 Q Okay. So you talked about how Forest Acres
24 contacted you to assist in its investigation. We
25 understand from Investigator Hinson that a search warrant

1 was obtained and that you were present when that search
2 warrant was executed?

3 A Yes, ma'am.

4 Q What did you do when you got inside?

5 A We came in once they read the search warrant.
6 Our goal was to locate where the, you know, the computers
7 were. We were told there was a computer in the bedroom.
8 We went there and looked. We found one computer on the
9 floor. As we did a further extensive search, we found
10 there was another computer in the corner that was hidden
11 up under a bunch of other items. Once we cleared that
12 away, we found that there was a second computer also in
13 there. That's where we found the two computers at. They
14 were both in the bedroom.

15 Q Were you the only member of law enforcement
16 from SLED?

17 A No, ma'am.

18 Q Who else was with you?

19 A Agent Kevin Hampton.

20 Q Did Agent Hampton take any part in the computer
21 exam or in the questioning of the defendant?

22 A He assisted me in the exam and the location and
23 taking the pictures of the scene.

24 Q Okay. I'm going to show you State's Exhibit
25 34. Do you recognize --

1 **MR. COLLINS:** Your Honor, these pictures have
2 not been admitted into evidence, I don't believe.

3 **MS. ALL:** Have these not been entered into
4 evidence? Okay.

5 **BY MS. ALL:**

6 **Q** Agent Cave, do you recognize these photographs?

7 **A** Yes, ma'am. I do.

8 **Q** Are they a fair and accurate representation of
9 the scene as you saw it on the day?

10 **A** Yes, ma'am.

11 **Q** Did they depict the scene at the time you
12 executed the search warrant?

13 **A** Yes, ma'am.

14 **MS. ALL:** Your Honor, at this time, we move
15 State's Exhibit number 34 into evidence.

16 **MR. COLLINS:** Several of the pictures have no
17 relevance in this case, Your Honor.

18 **THE COURT:** Admitted over objection.

19 **MS. ALL:** Thank you, Your Honor.

20 **(WHEREUPON, State's Exhibit 34 is admitted into the**
21 **record.)**

22 **MR. COLLINS:** May I put on the record which
23 pictures we object to?

24 **THE COURT:** If you'd like to.

25 **MR. COLLINS:** The bottom two pictures and the

1 top two pictures have no relevance.

2 THE COURT: You may proceed.

3 MS. ALL: Thank you, Your Honor.

4 BY MS. ALL:

5 Q Agent Cave, can you describe what's in these
6 photographs?

7 A The top left pictures is where we had taken the
8 picture across the bed to where the, the computer was up
9 in a corner hidden. The top right picture is just a more
10 up close picture of the stuff that was over the top of it
11 where you couldn't really see the computer.

12 Q Okay. It was hidden behind this teddy bear?

13 A Right. All that stuff that was piled up right
14 there.

15 Q Okay.

16 A On the second on the left from the top, you can
17 tell where we cleared some stuff away. You see where the
18 computer was up under all that stuff.

19 Q Okay.

20 A There's some other boxes and stuff on top of
21 it. As you can see on the second right picture, that's
22 where we cleared the stuff away. You can see a computer
23 tower sitting up next to the wall, kind of back in the
24 corner.

25 Q And is this the second computer?

1 A Yeah. Actually, that's the first computer.

2 That's Item 1.

3 Q Okay.

4 A And then the one below it where you see the
5 doorknob at the front of the picture and you see behind
6 it, that's the box that was sitting on top of the
7 computer. Then on the right, that's just where it was
8 sitting once we cleared everything away from it.

9 Q And then these bottom two?

10 A That's the stuff that was on top of it where we
11 cleared out the way. That's where it was hidden from
12 plain sight.

13 Q Okay.. And where was the second computer, Item
14 2 located?

15 A It was located on the floor when you walked
16 into the bedroom and passed the bed. It was sitting on
17 the floor with an ashtray next to it.

18 Q Would that be this one?

19 A Yes, ma'am. That's correct.

20 Q So Item 2 was the computer that he was using at
21 the time of the execution of the search warrant?

22 A Correct.

23 Q And what did you do once y'all had gone into
24 the apartment and you seized the computers?

25 A We then, at that time, talked to Lieutenant

1 Hinson and proceeded to conduct a preview on scene.

2 Q What is a preview on scene?

3 A That's where we take the computer and do some
4 of what we do back at the office where we remove the hard
5 drive. We can look at it forensically with a RAT
6 blocker. That way, it doesn't change any dates, times or
7 information on the drive.

8 Q Okay.

9 A It allows us to do an onsite preview. That
10 way, if there's an allegation of improper material on
11 there, if we do the preview and nothing's found, at that
12 time, there's not a reason to go forward. On this
13 computer, when we did it, we were able to find something
14 very quickly. Once I showed that to Lieutenant Hinson,
15 then we moved forward.

16 Q Why would you remove the hard drive?

17 A Because if we to take it and use his own set up
18 to boot the computer up like you normally would at your
19 home, as soon as you boot it up, it would change access
20 dates and times to the files.

21 Q Has anything in the hard drive changed since
22 the time you seized the computer?

23 A No, ma'am.

24 Q So it's exactly the same as it was the last
25 time the defendant touched it?

1 A Yes, ma'am.

2 Q You said you hooked it up to EnCase software.
3 Can you describe for us what EnCase software is please?

4 A Yes. That's a forensic software that allows
5 you to go in and see where -- if you normally use your
6 regular computer, all you can see is what's called the
7 allocated space where you can go in and see My Documents,
8 you know, My Computer, your basic files. EnCase lets you
9 go in and see where if you go in the deleted files or
10 deleted folders or if you were to take and delete files,
11 it goes into a space called unallocated space, which is
12 unable to be seen by, you know, a normal computer. The
13 software lets you go in and see the unallocated files
14 that may have been deleted. Also you can see if that's
15 the information that was reported to, uh, -- illegal
16 stuff on the computer.

17 Q When you say that software, you are inserting
18 that software into the suspect's computer or what do you
19 have with you to view what's on the suspect's computer?

20 A We have a laptop that has the software
21 preloaded on there.

22 Q Okay. The whole separate computer?

23 A Yes, ma'am.

24 Q Okay.

25 A Then we have a RAT block device that where you

1 plug the suspect's hard drive into a cable and once you
2 plug that in, there's a cable that goes to the computer.
3 That RAT block device prevents any changes being made to
4 the drive and will let you read the drive.

5 Q So when you say you seized the computer, you're
6 not picking up the computer monitor and then picking up
7 the tower and --

8 A No, just the -- what you see right here on this
9 table, we just took the tower itself. Once you take the
10 side cover off the tower, we removed the hard drive
11 itself, which is only three and a half by five hard
12 drive. It's got an adapter -- it's got a connection on
13 there. Our RAT blocker has a connection made to fit into
14 either an IDE or SATA hard drive. We are able to plug
15 that up to conduct a preview.

16 Q And IDE or SATA hard drive?

17 A That's just the connection type. IDE is the
18 old way they used to do it with a big ribbon cable and
19 SATA is the newer model that's smaller and faster.

20 Q Okay. So when you conducted this preview, what
21 did you see?

22 A We found that there was multiple files on there
23 showing, uh, children engaged in sexual acts.

24 Q How many did you find?

25 MR. COLLINS: Objection, Your Honor.

1 **THE COURT:** Overruled.

2 **THE WITNESS:** Uh, anywhere from 15 to 30
3 within a minute of just scrolling through the
4 gallery view of the program.

5 **BY MS. ALL:**

6 **Q** You say the gallery view. When you plug it
7 into the RAT blocker and you open the EnCase software,
8 what comes up in that gallery view? How do you determine
9 what comes up first?

10 **A** What we do is once we plug it up to EnCase, we
11 go in and have to assign it -- we assign it a number and
12 say, hey, we're doing a preview and I put my name to it.
13 Within EnCase, there's kind of like your folder structure
14 like Windows Explorer. There's a place where you can
15 mark it and it highlights all the drives. There's a tab
16 up top where you can hit gallery view. When we hit
17 gallery view, everything that's highlighted, it shows us
18 every image on that hard drive. All we have to do was
19 take and click on one of the images to highlight it.

20 Then, we could either scroll or drag and move
21 the cursor down. It would just go through all the images
22 on the computer. As we doing that, a couple of times, we
23 scrolled it and it went up five or six rows of files.
24 That's when there were files prevalent there that met the
25 statute for being child porn.

1 Q How long did you spend total doing that preview
2 before you felt comfortable seizing it?

3 A Within a few minutes.

4 Q How long did it take for you to find the child
5 porn?

6 A Uh, less than a minute.

7 Q Okay. After you conducted the preview, what
8 happened?

9 A That's when we contacted Lieutenant Hinson in
10 the next room and asked him to step in there so we could
11 show him what we had found and told him that we had found
12 enough for us to, you know, go further where a full
13 investigation was needed on the computer to do a full
14 analysis. Once he saw what we had on the screen, he
15 agreed. At that time, we then put the hard drive back in
16 the computer the way it was found, put the cover back on
17 the side. At that time, we got everything ready to be
18 transferred to Forest Acres Police Department so they
19 could transfer it over to a chain of custody to us.

20 Q Before we talk about that full analysis, --

21 (WHEREUPON, State's Exhibits 43 and 44 are marked
22 for identification purposes)

23 **BY MS. ALL:**

24 Q State's 43 and 44 for ID. I'm going to show
25 you what's been marked State's 43 and 44 for

1 identification purposes. These are your forensic imaging
2 worksheets. Could you describe what those are for the
3 jury?

4 A Yes, ma'am. These are the forms we fill out
5 when we go to do a bit-by-bit image of a hard drive. We
6 take them -- before we start the image of the hard drive,
7 we take and we pull the hard drive out of the computer.
8 We verify date and time on the computer. Then we notate
9 the make, model and serial number of the computer, the
10 drive. The keys we use to access the bios to verify date
11 and time and the file location that we were going to
12 transfer the files to to have an exam done on them.

13 Q And did you document the serial number of the
14 two towers that were seized from the defendant's
15 apartment?

16 A Yes, ma'am.

17 Q And from where did you receive those towers for
18 testing purposes?

19 A From Forest Acres Police Department.

20 Q Okay. Let me show you what's been premarked
21 Exhibit 35 -- 43 -- 45.

22 (WHEREUPON, State's Exhibit 45 is marked for
23 identification purposes.)

24 BY MS. ALL:

25 Q 45 for ID. This is the chain of custody form

1 for those two towers. Do you recognize your signature?

2 A Yes, ma'am.

3 Q Does that document show that you received from
4 Forest Acres Police Department and the proper chain of
5 custody?

6 A Yes, ma'am.

7 Q Do you recognize these items that have been
8 premarked State's Exhibit 41 and 42?

9 A Yes, ma'am.

10 Q Can you validate by comparing the serial
11 numbers that they are, in fact, the same towers that you
12 seized from the defendant's apartment?

13 A Yes, ma'am. (Reviewing.)

14 Yes, ma'am. They are the same.

15 Q Are they the same computers that you examined
16 back at SLED headquarters?

17 A Yes, they are. They were examined at the SLED
18 annex at the Computer Crimes Center.

19 Q Okay. If you'll reference those exhibits with
20 your computer forensic imaging worksheet, they are
21 labeled items 1 and items 2. Just to be clear, can you
22 be clear about how you labeled them and what each one is?

23 A Yes, ma'am. Item 1 is the Compaq Presario
24 SR1123WM. Item 2 is a Compaq Presario CQ5205Y.

25 Q Which one is older?

1 **A** Item 1.

2 **Q** Is that the one the defendant stopped using?

3 **A** Yes, ma'am. That's the one that was in the
4 corner.

5 **Q** Okay. Were there any read errors with Item 1?

6 **A** Yes, ma'am. There were 1221 read errors when
7 we did the bit-by-bit image.

8 **Q** Can you describe what a read error is please?

9 **A** When the software is looking at it and it's
10 trying to do a bit-by-bit copy to prepare for us to do a
11 copy, if it runs across a sector that's unreadable, it
12 marks it and it keeps going. On that, whenever we did
13 the imaging of that computer, it had 1221 read errors on
14 a 80 gig hard drive.

15 **Q** Is it normal for there to be read errors on
16 certain hard drives?

17 **A** It happens whether they are new or old because
18 it's manmade technology. Hard drives fail, just like
19 everybody knows, every couple of years. It's common for
20 us to get drives in that have read errors. We have some
21 that have one or two and we have some that are in the
22 thousands.

23 **Q** What is the standard procedure? How do you
24 handle it whenever you get a read error?

25 **A** We still make sure that at the end of the

1 imaging process that we get a verification match for the
2 hard drive saying that it is a, you know, bit-by-bit
3 image. Once it says that, we notate that there is, you
4 know, read errors. At times, like in this case, they ask
5 how much of that affects the readability of the drive.
6 We can do -- there's a calculation we can do that let's
7 us know how much of the drive is actually unreadable.

8 Q How much of the drive is actually unreadable in
9 this case?

10 A In this case, it's less than one percent.

11 MR. COLLINS: Objection, Your Honor. Matter
12 of law.

13 THE COURT: Ladies and Gentlemen, let me have
14 you step into the jury room for a few minutes
15 please.

16 (WHEREUPON, the jury exits at approximately
17 2:44 p.m.)

18 THE COURT: Yes, sir.

19 MR. COLLINS: Your Honor, I apologize. We
20 provided to the court this morning some of this
21 information. I may have been a little premature.
22 But I was also anticipating they were going to try
23 to introduce the computers. I don't have a problem
24 as long as they establish chain however as long as
25 it's agreed that the computers won't be operable

1 back in the jury room. As far as the cases of the
2 computers, the physical equipment, I'm fine as long
3 as it's understood that those would not be accessed
4 by the jury.

5 MS. ALL: We don't intend to offer the hard
6 -- the towers into evidence as long as they concede
7 it is the same ones.

8 THE COURT: What's the matter of law that you
9 had me send the jury out?

10 MR. COLLINS: The matter of law, Your Honor,
11 I was mistaken that they were discussing the new
12 calculations that were done that are contained in
13 this report that we received this morning. I
14 haven't had the opportunity to go all the way
15 through. Co-counsel has gone through it and
16 informed me as the jury was exiting that there is
17 one page addressing the calculation that was done.
18 But that was my -- I was a little premature on the
19 objection.

20 THE COURT: All right. We'll take about two
21 minutes, then we will proceed.

22 MR. COLLINS: Thank you, Your Honor. I
23 apologize.

24 THE COURT: That's alright.

25 (WHEREUPON, a short recess is taken.)

1 **MR. COLLINS:** Your Honor, for the record, the
2 defense will be requesting between a 10 and 15-
3 minute recess in between the direct testimony for
4 cross-examination so that I can confer with our
5 retained expert on this case.

6 **THE COURT:** Okay. Bring the jury please.

7 **(WHEREUPON,** the jury enters at approximately
8 2:54 p.m.)

9 **THE BAILIFF:** Jury is all present, Your
10 Honor.

11 **THE COURT:** You may proceed.

12 **BY MS. ALL:**

13 **Q** Agent Cave, you were saying about read errors
14 in this particular case. Why did you conclude that the
15 read errors did not present a problem to your forensic
16 analysis? Excuse me.

17 **A** In the past when we've run across this, there's
18 a calculation that you do to figure out how much of the
19 drive was actually unreadable compared to what is
20 readable. Once we did the calculation, it was less than
21 one percent of the drive. I guess a good analogy for
22 that is if you had a 100-page book and it had 100 lines
23 on each page, you would be missing one line off of one
24 page.

25 **Q** Okay. Once you pull out the imaging forensic

1 worksheets, what's the next step in your job?

2 **A** Once it completes imaging, we verify that it
3 has -- the hashes match and that it is an exact copy. If
4 it's not an exact copy, then we reimage. On this one, it
5 was an exact copy on both drives. So then the image is
6 stored on our server. At that time, it goes into the cue
7 for the investigator to go and, uh, review the case and
8 to start working it by the intake sheet for the scope of
9 the search and what you're looking for.

10 **Q** And what is the hash?

11 **A** The hash is a mathematic algorithm that takes
12 and computes the information on the drive. It gives you
13 a very long number that it says, okay, this is what the
14 drive is. It does the same thing on the copy. That way,
15 when both of those match identically, then you have a
16 bit-by-bit copy of the image. That way, we can use the
17 copy to do our exam on and not work off of the original
18 image and take the chance of damaging a file or
19 something, you know, to get corrupted.

20 **Q** Okay. So you said that it's an algorithm, the
21 hash is an algorithm. So what would need to change on
22 the hard drive for the hash to change?

23 **A** If you, if you did something as simple as
24 adding one space to one document, it would completely
25 change the algorithm.

1 **Q** So is the hash -- how do you validate that
2 these are exactly the same when you go to compare them
3 each separate time?

4 **A** Uh, EnCase has a verification process.
5 Whenever it gets done, that's what it does in the report.
6 It showed us that it had an exact match. That lets us
7 know that we have a good copy to work off of and that we
8 can move forward.

9 **Q** I'd like for you to explain to the jury
10 generally the processes of you examining a hard drive. I
11 believe that we have a slide show prepared for you if
12 you'd like to flip through it as you go to give us a
13 visual example.

14 **A** That's fine.

15 **MS. ALL:** Your Honor, permission for the
16 witness to step down.

17 **THE COURT:** Yes.

18 **BY MS. ALL:**

19 **Q** Okay. Agent Cave, how did you get to this
20 point in the process?

21 **A** This is actually a screen shot from my forensic
22 computer, uh, on my desk. And what it is is on the Z
23 drive. If you'll notice right here where it says K1EMZ1,
24 that's actually where my files are stored at. This is
25 our case number that we assigned to the case whenever it

1 comes into our department. Over here on the right side
2 where it says Item 1 and Item 2, that's where we
3 forensically imaged, uh, the two separate computers and
4 it put the files out there that were taken inside of
5 there. I think it's the next slide. That shows you how
6 many E01 files it creates. Each one of these files are
7 about a two gigabyte file. That's what, uh, stores the
8 information.

9 Q So go back to slide 1. What did you click?
10 This is on your computer at SLED, right?

11 A Yes, ma'am.

12 Q Were you on Alan Smith's computer at all?

13 A No, ma'am.

14 Q Okay.

15 A This is a copy of a drive on the network.

16 Q Okay.

17 A His original hard drive is back in his computer
18 and is stored back in our evidence room. So no changes
19 were made to the original drive. It pretty much looks
20 like what you see right there, but it sits on the shelf
21 in our evidence room until we're done with doing an
22 analysis. That's when we turn it back over.

23 Q So what did you click here to get to slide 2?

24 A What we do here is where it says Item 1, Compaq
25 tower, we just double click here. That opens it up and

1 it shows here's all the E01 files.

2 Q And that's the same Item 1 we're dealing with
3 here, the old tower?

4 A Right. That's the 80 gig hard drive.

5 Q And what is an E08 file?

6 A An E01 file is the EnCase evidence file.
7 That's where you take it and you add it to the EnCase
8 program, it takes it and it pulls the rest of the files
9 in there and it shows you the file structure of that hard
10 drive. That's where I would go in and do an exam and
11 find out what's there in it's, in the logical space, in
12 the unallocated space. You know, what's deleted and what
13 hadn't been deleted. It also gives us the dates and
14 times for the files and where they are located at.

15 Q What do all of these icons here represent, the
16 whole line of them?

17 A That was when we image it, it images in two
18 gigabytes. That way, when we image it, it breaks up the
19 files into two gigabyte sections. On this 80 gig hard
20 drive, it took 42 two gigabyte files to equal up to all
21 the information on that hard drive.

22 Q Okay. What do you do next once you get this
23 screen?

24 A Once we get this screen, all we have to do is
25 on the very last file where it says EnCase evidence file,

1 it's the EO1, that's the file you click that activates it
2 to go into EnCase to pull the rest of the files in so
3 then you can start working the case.

4 Q Why do you click that one? What happens if you
5 click one of these?

6 A Nothing will happen. The files that lets it
7 know to go to EnCase and start working is that file,
8 that's why -- it's hard to say on the screen shot, but
9 right here, it's like there's a little hard drive picture
10 where all the rest of them are just, like, you know,
11 basic icons. That's just the main file that EnCase has
12 it set up for. It starts with the EO1 file and then
13 pulls in the EO2, 3, 4, 5, 6 until you get all the files
14 in there. If at any time it goes to pull it, it doesn't
15 pull all the files, it says this is not a complete file,
16 you know, file. You're missing files and then we have to
17 go figure out why it's not seeing everything.

18 Q Okay. So when you click here to get to the
19 next page --

20 A You do the EO1. When you click on the EO1
21 file, that's when it pulls up EnCase. This is the first
22 screen you see on EnCase when you pull it up. It's
23 asking, okay, what you doing. This is one I typed in the
24 case number that we assigned to it and Item 1 and I put
25 my name. That's when it starts EnCase so we can pull

1 those files in and start working on them.

2 Q Where does that case number come from?

3 A We create that when it comes in whenever --
4 Forest Acres transferred the computers to me, then I
5 transferred to the computer crime center at the annex, we
6 have our own evidence system. When we log it into the
7 system, it automatically generates a case number. That
8 was our next available case number on that day and at
9 that time.

10 Q What happens to this number that you type up?
11 Where does it -- does it get translated into the evidence
12 itself?

13 A Right. That's the first -- that's the first
14 part of the file. Whenever it goes to save it to the
15 server, that's what it does. It saves it by case number.
16 And then it goes to -- once it gets there, then it goes
17 into another file location.

18 Q Okay.

19 A So once we get that entered, every time we
20 image a hard drive, we always assign a password. That
21 way, if somebody does bring in to SLED and they do get a
22 hold of our files and they get it and they go, we stole a
23 computer and we're going to access EnCase, they now have
24 to have the password for that case to see that
25 information. Without that, those files are useless.

1 Then once we put it into EnCase -- this is what
2 EnCase looks like. It's a -- it has a very similar look
3 to Windows Explorer. It pulls in the files over here on
4 this left side. This is where it shows up. It shows
5 that this the Western Digital hard drive and it's got the
6 serial number for the hard drive and the model number.
7 That's where it pulls in and we can view the case.

8 If we go over here, this is where it lets us
9 see the file structure of that drive. This drive has two
10 partitions on it. It has a C partition and a D
11 partition. On this particular machine, the C partition
12 is the recovery partition. If you ever have a problem
13 with your computer and you call HP or Dell and they say,
14 hey, restart it and go to the recovery partition and they
15 can reinstall your drive, that's where this file is
16 located at. D is where the operating system is located
17 at that is where we can go in and do an analysis of that.

18 This is what it looks like when we hit the plus
19 sign. It show us all the files that are located under C.
20 Here is where we can go in and do the exam and we can
21 search and look for the different files within those
22 drives.

23 Q So if I feel like I deleted a file, I dragged
24 my file to the recycle bin, what does that mean for your
25 examination?

1 **A** For my examination, then it would be -- if it
2 was deleted and it went to the recycle bin, where we
3 could go to the recycle folder and find that, then we
4 could find that file.

5 **Q** What if I emptied the recycle bin?

6 **A** Then it would go into unallocated space which
7 this program also lets us go in and view.

8 **Q** So deleted just means marked as deleted?

9 **A** Correct.

10 **Q** What if I Nintendo game controller pad edited
11 it?

12 **A** If you right clicked on a file and before you
13 hit Delete, hold down Shift ---

14 **Q** Right.

15 **A** --- you would do a permanent delete, but it
16 still goes to unallocated. That file can still be
17 recovered. Once the files go into unallocated, they sit
18 there until they are overwritten.

19 **Q** So even if somebody tries to delete
20 incriminating evidence on a computer, you can still
21 recover that?

22 **A** As long as it has not been overwritten.

23 **Q** Okay.

24 **A** The next screen shot here is the D drive. This
25 is just the D drive. This is normally where your

1 operating system files are. This is where your program
2 files are. This is where, uh, you load your drivers.
3 This is where you actually work from. You go to your
4 computer. You hit Start, All Programs, Word, Excel and
5 do different things to your computer.

6 **COURT REPORTER:** Excuse me, Your Honor. I need
7 them both to keep their voices up please.

8 **THE COURT:** Okay. Please keep your voices
9 up.

10 **THE WITNESS:** Okay. In here, if you were,
11 this is where your files are located at. If you
12 click Start, All Programs, and go to find Word,
13 Excel, Powerpoint, those programs, this is where you
14 would take and it would activate those programs
15 from.

16 On the next slide here, this is showing where
17 you can go in for file structure, this is where the
18 user data was stored at. Inside here is your My
19 Documents folder. Inside here, you have different
20 files inside of your My Documents folder. That's
21 where different items are stored at. When we take
22 and clicked on one of those, it shows here that
23 different files are located in here.

24 Then here, we can tell that these are Word
25 documents here. These are picture files here.

1 These are picture files here. It lets us go in and
2 tell those. We highlighted this specific file here.
3 This was a document that, uh, Mr. Smith had altered
4 that we found on the computer.

5 **BY MS. ALL:**

6 **Q** Can you explain in this screen what file path
7 is and then explaining file path in terms of this
8 structure because we're about to start talking about file
9 paths and what that means per data file.

10 **A** Okay. On this particular one here is when we
11 went down and there was a folder called User Data. In a
12 User Data file, there are multiple other files. As it
13 went down, as you see, there's a ton of folders here. As
14 we came on down here, there's a My Documents folder right
15 here. There's a My Documents folder. We come on down.
16 There's a different file structure where it's located at.
17 I need to back away. It gets a little bit better.

18 **Q** So can you tell just from looking at this what
19 the file path for his resume would be?

20 **A** Yes.

21 **Q** What would it be?

22 **A** Actually it's -- with EnCase, it actually tells
23 you what the file path said at the very bottom. If you
24 look at the bottom of the screen down here, that's where
25 it tells you it is D, User Data, My Documents --

1 Q Okay.

2 A Then it's resume.wps.doc.

3 Q Okay.

4 A And that's the actual file, resume.wps.doc.

5 Q So it's literally a path?

6 A Correct.

7 Q Okay. Go ahead.

8 MR. COLLINS: Objection, Your Honor. We're
9 coming up to the last slide that we discussed
10 outside the presence of the jury.

11 THE COURT: All right. Ladies and Gentlemen,
12 if you would, go to the jury room for a moment.
13 Please do not discuss the case.

14 (WHEREUPON, the jury exits at approximately
15 3:08 p.m.)

16 THE COURT: Yes, sir.

17 MR. COLLINS: Your Honor, on the last slide,
18 there are 21 files listed coming from a certain
19 folder. Not all of those files were included in the
20 indictments. The titles of these are obviously
21 pornography. Without confirming exactly what these
22 are and how they tie into this case, they are
23 probative of anything at this point and they are
24 highly prejudicial towards Mr. Smith giving that
25 they've contributed this computer to Alan Smith as

1 being his. We have these files that have nothing to
2 do with the case. They can easily demonstrate how
3 EnCase is used, how to access files within the
4 computer without using this set of files which is an
5 obvious attempt to attack his character and show all
6 the stuff that's on his computer that's not
7 indicted.

8 There are some of these videos that are
9 included in the indictments. If they limited it to
10 that, I wouldn't have an objection. But to add any
11 extra ones for no purpose other than to show more
12 bad files, I don't see how it's probative in this
13 case.

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

15 **MS. ALL:** Your Honor, the file path that
16 we've got up here shows the context of where we
17 located the illicit material. We've shown now how
18 you would find -- how you would browse within it.
19 Now, we're showing, in fact, an exact location of
20 where many of the images that we indicted were
21 located. We have images with file names such as
22 Three-year girl tied and butt fucked; nine-year-old
23 Jenny sucks off daddy's dog, look at her little
24 pussy; horny toads best cp. I doubt that these
25 additional images are going to be any prejudice to

1 the jury especially when we've been allowed to
2 reference their presence.

3 THE COURT: What's the purpose of showing the
4 additional ones?

5 MS. ALL: This is, in fact, a specific
6 location where we found several of the ones that we
7 indicted. So it gives context of the location.
8 This is a physical representation of the file paths.
9 We have this on the front of the files. This is
10 physically showing how it's structured within his
11 computer and within each file he saved it in so that
12 they have context for what these long lines of
13 computer lingo actually means.

14 THE COURT: Well, I guess you are answering
15 in reference to what you have in your hand?

16 MS. ALL: Yes, Your Honor. I was just
17 holding these because --

18 THE COURT: His objection is not based on
19 what you have in your hand, I don't believe.

20 MS. ALL: Right. I was just holding these to
21 read out the titles.

22 THE COURT: Okay.

23 MS. ALL: But some of the ones that we
24 indicted are contained within this file folder.

25 THE COURT: And the focus of seeking to

1 introduce the additional ones is what?

2 **MS. ALL:** To give them context of where it's
3 located. You can barely even read it, but this is,
4 in fact, the screen shot of where Agent Cave
5 discovered some of this material. So it is a
6 representation of --

7 **THE COURT:** How is it probative of guilt
8 versus -- how is it more probative than prejudicial?

9 **MS. ALL:** It's meant to be probative for
10 demonstrative purposes. We don't even mean it to be
11 probative for guilt in terms of the language that's
12 there. We need to be probative for guilt so the
13 jury understands why the forensics aren't that,
14 scientific forensics to go toward the evidence as
15 opposed to just somebody saying here is some
16 computer evidence and you have to believe me because
17 this is where I found it. It actually shows them
18 how Agent Cave finds it and all the different file
19 paths he had to save it under. We don't mean the
20 file labels to be prejudicial. They are no more
21 prejudicial than the 30 that we've entered into
22 evidence already. In fact, some of the ones that
23 we'll have in evidence are named here. They are
24 also almost impossible to read.

25 **THE COURT:** So the additional ones that he's

1 objecting to, you just said that you're not offering
2 them -- that you are offering them for demonstrative
3 purposes, not for the probative value?

4 **MS. ALL:** Right. I don't even think they --
5 I mean, it's very blurry. I don't know if you can
6 read it. We just wanted them to be able to see how
7 you find it within. This is one of the files on the
8 defendant's computers. We were trying to choose a
9 location that was reflective of some of the ones
10 that we indicted. This is where he saved a lot of
11 his explicit videos.

12 **THE COURT:** All right.

13 **MR. COLLINS:** Your Honor, if they are not --
14 admitting they are not offering for probative value,
15 I don't see how it gets past 403. The jury can
16 obviously read the slides. That's what it's there
17 for. They are referencing words and titles.

18 **MS. ALL:** Your Honor, we stand on our
19 argument. I mean, I understand Mr. Collins'
20 argument. We're just using it to demonstrate how
21 Agent Cave does his job so that the jury can see how
22 it happened. These are the files that saved in the
23 defendant's computers. There weren't any files full
24 of pictures of --

25 **THE COURT:** You need to show how many

1 unindicted files? How many unindicted images?

2 **MS. ALL:** There are no images. There's just
3 file names. I would say there's probably 30? 21.
4 And I don't know how many of them are indicted. I
5 can't read them.

6 **THE COURT:** You need to show them to show how
7 he does his job?

8 **MS. ALL:** Yes, Your Honor. It's to help
9 explain how Agent Cave found the material that he
10 was specifically seeking in this examination.

11 **THE COURT:** All of what you are referring to
12 is contained in these pages that you have right
13 here?

14 **MS. ALL:** Yes, Your Honor. It's the last
15 page.

16 (WHEREUPON, there is a pause.)

17 **THE COURT:** Are these tagged based on the
18 date and time? Any special reference?

19 **MS. ALL:** They are tagged based on the -- the
20 exhibits are tagged based on their location within
21 the computer, within the hard drive. That's how
22 they are distinguished is by their file path. This
23 is a picture of the file path.

24 **THE COURT:** There's an argument that these
25 are -- the way these are embedded in there, it shows

1 some consistency in the manner in which they are
2 saved?

3 **MS. ALL:** Yes, Your Honor. That's correct.
4 We have validated the exhibits against what Agent
5 Cave found by these file paths. This is how -- this
6 is what you name it by is the file path. That's how
7 it's noted. So by showing the jury how we get to
8 the file path, we show the jury what the file path
9 means and why that distinguishes it. If it's saved
10 in a different file, it's almost exactly the same
11 except one word might be different. If it's a
12 duplicate that he downloaded later, one letter might
13 be different or there might be two of the same ones
14 and one be deleted and one not. But one's going to
15 have Recycle Bin at the beginning of the file path.
16 The other one is going to have D drive at the
17 beginning of the file path. And we do, in fact,
18 have one that has two different locations, the same
19 video in two different locations. The more they
20 understand the file path, the more they'll
21 understand the process.

22 **THE COURT:** I overrule the objection. I think
23 that the explanation is -- advanced by the state is
24 essential for the jury's understanding of the
25 state's case. I find it sufficiently more probative

1 than prejudicial.

2 **MS. ALL:** Thank you, Your Honor.

3 **THE COURT:** Does anyone need a break before
4 we press on? (No response.)

5 All right. Bring the jury back.

6 (WHEREUPON, the jury enters at approximately
7 3:19 p.m.)

8 **THE COURT:** All right.

9 **THE BAILIFF:** Jury's all present, Your
10 Honor.

11 **THE COURT:** Objection is overruled. You may
12 proceed.

13 **MS. ALL:** Thank you, Your Honor.

14 **BY MS. ALL:**

15 **Q** Agent Cave, as you were saying about the file
16 paths for this particular document, I believe the next
17 page is a better example. When you conducted your exam
18 of this computer or when you do any kind of forensic
19 exam, are you looking for something in particular? And
20 if so, how do you narrow it down to those items that you
21 are seeking?

22 **A** There's, uh, conditions that we could run. If
23 you look up here in the bottom right-hand corner, there's
24 a Conditions button right here that we can use for
25 EnCase.

1 **THE COURT:** Can you make out what he's
2 saying?

3 **COURT REPORTER:** I'm having difficulty.

4 **THE WITNESS:** Okay. On EnCase, on the
5 bottom right-hand corner, there is an EnScripts and
6 also a Conditions that we can run. We can select
7 certain file types. If we want to look for Word
8 Documents, that's one that's actually in here. We
9 do MS Word document and actually find all of the
10 Word documents. And it puts those at the top of the
11 file path. This is where all of the Word documents
12 are located at.

13 If somebody said they got a threatening letter
14 that was sent and it was -- the attachment was DOC,
15 D-O-C, we know that's a Word document and that's
16 what we need to search for.

17 **BY MS. ALL:**

18 **Q** In this case, what were you looking for and
19 what conditions did you put in place?

20 **A** We were looking for, uh, child porn images and
21 child porn movies. We did a condition for all image
22 files and we also did a condition for movies. On this
23 next slide, when we did the condition for movies, this is
24 one of the file paths we found. This is actually on Item
25 2 under the D drive. It was under the public user

1 account. Then it went under pictures and then it went
2 under sample pictures. And then, there was videos. When
3 we, uh, up under videos, there was 21 files up under
4 videos. Of course, they are hard to read here, but it's
5 of very explicit nature with the file names that are
6 listed there. Once we double-clicked on one of those
7 videos to see if the content was similar to what the name
8 was saying that it was, that it was titled, then it was.
9 That's when we would take it and bookmark it to use as
10 part of, you know, our case to say that this was an
11 illegal to possess or to own or have possession of this
12 type of file.

13 Q Were personal files belonging to the defendant
14 other than child porn also located on the hard drive? If
15 so, where were they located with respect to the child
16 pornography?

17 A There were some personal photos of, uh, I think
18 there were some we found that were at a party that showed
19 the defendant and some young ladies --

20 MR. COLLINS: Objection, Your Honor.

21 THE COURT: Please explain your objection.

22 MR. COLLINS: Relevancy, 403.

23 MS. ALL: We'll be fine to limit the response
24 to just personal photos and their locations, Your
25 Honor, if that is sufficient.

1 **THE COURT:** Restate the question. I couldn't
2 understand what he was saying.

3 **MS. ALL:** I asked Agent Cave were there
4 personal files other than child pornography
5 belonging to the defendant on the computer. And if
6 so, where were they located with respect to the
7 child pornography.

8 **THE COURT:** The objection is overruled.

9 **THE COURT:** Okay. Your objection is
10 overruled.

11 **THE WITNESS:** Uh, there was similar folder
12 structure within folders that were embedded down,
13 there were folders that had also personal pictures
14 in there along with, we found child porn pictures
15 and child porn videos.

16 **BY MS. ALL:**

17 **Q** Was everything mixed in?

18 **A** A good bit.

19 **Q** Was there anything that appeared inconsistent
20 or out of place like any kind of crazy software or --

21 **A** I didn't notice any software, per say. But I
22 did notice that there were some folders added that aren't
23 normal folders within the file structure. That's where a
24 lot of the items were found.

25 **Q** A lot of what items?

1 **A** Child porn images and videos..

2 **Q** When you say folders that weren't contained in
3 the normal file structure, what does that mean?

4 **A** That means they were added.

5 **Q** By?

6 **A** The user.

7 **Q** So it would not be something that came with the
8 factory templet?

9 **A** Correct.

10 **Q** Okay. Uh, can you give the jury an idea of the
11 commonality of child pornography images and videos on
12 Item 1 and Item 2 while you were doing your examination?

13 **A** They were throughout the whole computer. There
14 were multiple different file locations, multiple, some
15 folders had much more files in them then others. Some of
16 them were just mainly pictures. Others were just
17 strictly videos. Some of them were a combination of
18 pictures and videos in the same folder.

19 **Q** Was that on items 1 and Item 2?

20 **A** Yes.

21 **Q** How much memory was on each hard drive?

22 **A** Actually, there's no memory on a hard drive.
23 But the storage size of Item 1 was an 80 gig. I don't
24 remember on Item 2. I could look at the sheet and tell
25 you. I can't remember right off.

1 Q So when you said that you found thousands and a
2 lot of child porn images and videos, about what
3 percentage of the total material was it? About what
4 percentage of --

5 A On the first hard drive, it was close to about
6 80 percent on the drive.

7 Q 80 percent of the hard drive was child
8 pornography?

9 A Yes.

10 Q Was child pornography?

11 A I'm going to say it was pornography and then 60
12 percent of that --

13 MR. COLLINS: Objection, Your Honor.

14 Standing objection to any pornography not listed in
15 the indictments.

16 THE COURT: Your ruling as to this particular
17 objection is overruled.

18 BY MS. ALL:

19 Q At that point, did you come across personal
20 porns?

21 MR. COLLINS: Objection, Your Honor.

22 MS. ALL: It was referenced in earlier
23 testimony, Your Honor.

24 THE COURT: Objection overruled.

25 BY MS. ALL:

1 **Q** Did you come across personal porn, say,
2 pictures that the defendant took himself?

3 **MR. COLLINS:** Objection again, Your Honor.

4 **THE COURT:** You may answer the question, sir.

5 **THE WITNESS:** I didn't see any personal
6 pornographic pictures that he would have taken
7 himself. Most of those were vacation, party
8 pictures. That kind of stuff. It was taken with a
9 digital camera.

10 **BY MS. ALL:**

11 **Q** Okay. Did you find any?

12 **A** The pictures we found were taken of, like, in a
13 party or personal pictures.

14 **MR. COLLINS:** Objection, Your Honor. This is
15 not relevant to this case.

16 **THE COURT:** Objection is overruled.

17 **THE WITNESS:** It had a date in the bottom
18 right hand corner of the picture.

19 **BY MS. ALL:**

20 **Q** Okay. Did you find any pictures of adult
21 pornography?

22 **A** Yes.

23 **MR. COLLINS:** Objection, Your Honor.

24 **THE COURT:** Objection overruled.

25 **BY MS. ALL:**

1 Q And about what percentage, if you could give us
2 an idea of how much adult porn there was in perspective
3 to the amount of child pornography?

4 A 10 to 15 percent compared to the rest that was
5 child pornography.

6 Q Okay. So like 85 percent of the whole porn
7 library was child porn?

8 A Correct.

9 Q Okay. Can you tell from your examination what
10 information can you get about each file? We got to this
11 point and say you find a file of interest, what
12 information can you glean?

13 A Over here on the right side is where it lets us
14 know the last time the file was accessed. If we were
15 would be able to scroll over, which we can't on the
16 screen shot, it also has a created date, a modified date.
17 It has a file right here. If it's deleted, it will put a
18 dot in there saying that the files are deleted. All
19 these files are not deleted. They are actually in
20 logical space where you could actually go to that file
21 location and pull that file up.

22 Q When you say if it's deleted, what does that
23 mean?

24 A That means -- if there's a dot next to it, that
25 means it had been deleted either by -- sent to the

1 recycle bin or either through somebody doing right click
2 and delete, holding shift and doing a permanent delete or
3 there was some kind of issue and the system would have,
4 uh, tried to consolidate files or delete files to make
5 room for something else.

6 Q How does that affect your ability to recover
7 that item?

8 A With EnCase, we can recover them.--

9 THE COURT: You are blocking the view of the
10 Court Reporter and the witness. She's trying to
11 hear the witness.

12 MS. ALL: Sorry, Your Honor.

13 THE WITNESS: With the EnCase and programs
14 we use, they allow us to go in and get the deleted
15 files regardless to whether they are in allocated or
16 unallocated space. The only problem with
17 unallocated space, if we're pulling files from
18 there, is they can be overwritten. Also, if they
19 were overwritten, we can lose date and times from
20 those files.

21 BY MS. ALL:

22 Q Were any of the files in question under an
23 indictment overwritten in this case?

24 A No, ma'am.

25 Q If there was a dot that had been deleted but

1 not a delete date, what does that mean?

2 **A** That it was permanently deleted and not sent to
3 the recycle bin.

4 **Q** And would you still be able to access it?

5 **A** Yes.

6 **Q** If there was a date that it had been deleted
7 but no dot that it had been marked as deleted, what does
8 that mean?

9 **A** That means it was just right click, delete and
10 it went to the recycle bin.

11 **Q** Does any of that, since, you know, one bit of
12 information and not the other indicate any corruption
13 within the file log?

14 **A** No, normally whenever it was -- if the file is
15 corrupted, when you go to open it up or to view it, then
16 it will either give you an error message or if it's a
17 picture, half the picture would be missing, pixilated or
18 an overwrite could have started and not completed.

19 **Q** So what does last access mean?

20 **A** That's the last time someone accessed that
21 file.

22 **Q** What does accessed mean?

23 **A** That means the last time they clicked on a file
24 or even put their mouse and hovered over the folder where
25 it was located at and it gave information, it would

1 change that.

2 Q Okay. What about last entry modified?

3 A That would be the last time a change was made
4 to the file. If it was a Word document and you pulled it
5 up and it was a recipe and you decided to add something
6 else on there to it, then it would modify that entry.

7 Q What if you moved it, what if you changed the
8 location?

9 A Right. If you moved it from My Documents -- My
10 Documents to My Favorites, then it would change the
11 location.

12 Q And what does file created mean?

13 A That's the date someone added that file to that
14 computer.

15 Q So does every file that you find on this
16 computer, is every file going to have a last modified
17 date?

18 A No.

19 Q Is every file going to have a last access date?

20 A It could. It could be the same as the created
21 date.

22 Q Is every file going to have a file created
23 date?

24 A Yes.

25 Q Okay. With all that information that you can

1 get from these files, can you tell from your exam who was
2 on the computer at the time the particular file was
3 created?

4 **A** On one computer, the account did not have a
5 password on it. It could have been one of the
6 administrator accounts and they could have put the files
7 in any location. Without logging in each time, there's
8 no way to know who was using the computer.

9 **Q** Even if there were a password associated with
10 an account, would you be able to tell with an absolute
11 certainty who was on the computer when the incriminating
12 evidence was downloaded?

13 **A** No, not unless you are there in person.

14 **Q** So you can't tell because you weren't there in
15 person?

16 **A** Correct.

17 **Q** In your experience, do people tend to download
18 child porn in person, in public places in front of other
19 people?

20 **A** Not normally.

21 **Q** What information can you get from the exam
22 regarding these changes? Can you get this information?
23 Where does it come from, these times and dates? Like,
24 what generates the times and dates?

25 **A** The clock on the computer.

1 Q Can you talk to us about the clock on the
2 computer?

3 A Whenever you log into your computer, the bios
4 has a clock. The clock on there, whenever you go in it,
5 whether you open up Word, Excel, anything to do with
6 save, it uses the computer's internal clock to say, okay,
7 it's, uh, May 5th, 2010 at 3:45 p.m. That's what time it
8 associates to. That's where -- it uses that time. Every
9 time you shut the computer off, it has a battery that
10 keeps the battery -- keeps the clock at the current time
11 so when you boot it back up, it still has the current
12 time on it.

13 Q And what determines the time zone that's used
14 to set that information?

15 A Whenever they set the computer, depending on
16 where it was made at -- uh, Compaq is normally set on
17 Pacific time. But when you get it, that's one of the
18 questions it asks you. If you get a new computer, you
19 know, what time zone do you live in. You could adjust
20 that to Pacific, Eastern, whatever. Some people change
21 it. Some people don't. It's up to your discretion on
22 what you want the time to be.

23 Q Okay. In this particular case, when you
24 accessed these hard drives, was it different than the
25 time on your clock?

1 **A** Yes, ma'am.

2 **Q** And how was it different?

3 **A** Item 1, the clock was five hours off. On Item
4 2, the clock was one hour off.

5 **Q** Okay. So how did you handle that?

6 **A** We just notated on our imaging worksheet. On
7 Item 2, it was pretty basic. By the time we imaged them,
8 it was daylight savings time. So that counted for the
9 hour of the time being off. On the first computer, with
10 it being over five hours off, it could possibly be
11 explained that it was Pacific time and Daylight Savings
12 Time made it an extra hour off. But there's no telling
13 why the time, or he was following, you know, some other
14 time to make it that time off.

15 **Q** With the exception of those hours within five
16 hours of midnight, are the calendar dates correct?

17 **A** From the time on the computer, that's correct.

18 **Q** Okay. We were talking about -- if you want to
19 have a seat real quick. We were talking about, uh, --
20 how reliable is the information you were able to get
21 about each of these files?

22 **A** Very reliable.

23 **Q** Would you consider it science?

24 **A** Yes, ma'am.

25 **Q** Forensics?

1 A Yes, ma'am.

2 Q But you can't tell who was downloading the
3 material?

4 A No, ma'am.

5 Q In your expert opinion, how certain are you
6 that the defendant was aware that he was possessing child
7 pornography on his computer?

8 A Very aware.

9 Q What leads you to that conclusion?

10 A The amount of material that was on the computer
11 and the amount of different file locations it was in.

12 Q And what was the earliest date associated with
13 the file -- first of all, can you see the file properties
14 and file created for every single bit of child porn in
15 this computer if you don't highlight it?

16 A Yes.

17 Q Regarding the ones that you looked at and that
18 you recall, what was the earliest date associated with
19 Item 1 for child pornography?

20 A I believe we found a date that was back in '05.

21 Q Okay. 2005. And then when was Item 2 set up?
22 Were you able to access that information?

23 A It looks like it was some time in 08.

24 Q Okay. So regarding your opinion that the
25 defendant was aware that he possessed the material --

1 **MR. COLLINS:** Your Honor?

2 **THE COURT:** State your objection.

3 **MR. COLLINS:** Calls for speculation.

4 **THE COURT:** I heard her say three words. I
5 didn't hear the question.

6 **MR. COLLINS:** You were asking him to consider
7 the accumulation of all the particulars that are in
8 evidence as an expert in computer forensics
9 regarding the defendant's culpability and his
10 awareness of the existence of this material on the
11 hard drive.

12 **THE COURT:** Basis of the objection?

13 **MR. COLLINS:** Calls for speculation.

14 **THE COURT:** Objection sustained.

15 **BY MS. ALL:**

16 **Q** Agent Cave, the earliest date on Item 1
17 associated with child porn that you looked at out of all
18 of the images that were on there in 2005, what was the
19 latest date estimate associated with child pornography
20 material on Item 2?

21 **A** If you could hand me the sheet where we did the
22 files, that way, I can give a more precise date.

23 **Q** Refresh your recollection with your examination
24 report. Is that your file over there?

25 **A** Yes, sir.

1 Q Refresh your recollection.

2 A (Reviewing.)

3 Q Agent Cave, did you have the opportunity to
4 access the user accounts on this computer?

5 A Yes, ma'am.

6 Q Were you able to see what the last time
7 defendant accessed Item 2 was?

8 A Yes, ma'am.

9 MR. COLLINS: Objection. Calls for
10 speculation.

11 MS. ALL: I be glad to refresh your
12 recollection relative to the information.

13 MR. COLLINS: He can testify about the
14 computer being accessed, but he can't testify as to
15 who accessed it.

16 MS. ALL: Your Honor, I'd like for him to be
17 able to testify period..

18 MR. COLLINS: Your Honor, the objection was,
19 she asked when the last time was the defendant
20 accessed the computer. My objection is that calls
21 for speculation. That's not something he has any
22 expertise in.

23 THE COURT: The objection is overruled.

24 BY MS. ALL:

25 Q Agent Cave, did you research the registry --

1 **THE COURT:** Just a moment. I've overruled
2 the objection to the previous question that you
3 asked. You may answer the question that was asked.

4 **THE WITNESS:** Uh, there is a report that I
5 provided. If you could provide me with that report,
6 I can look on there and tell you the last access
7 date. But I don't remember the exact date that it
8 is.

9 **BY MS. ALL:**

10 **Q** I'll refresh your recollection with the
11 registry information. (Pause.)

12 **THE COURT:** Ladies and Gentlemen, let's stand
13 for a moment.

14 (WHEREUPON, a short recess is taken.)

15 **THE COURT:** All right. You may ask the
16 question.

17 **MR. COLLINS:** Your Honor, I'm just going
18 through what she's getting ready to give up to the
19 witness. They are handwritten notes.

20 **BY MS. ALL:**

21 **Q** Agent Cave, I'll refresh your recollection with
22 your registry report. Are you able to gleam from that
23 information the last time the computer Item 2 was
24 accessed?

25 **A** (Reviewing.) That would be March 5th, 2010 at

1 3:51 and 12 seconds UTC.

2 Q And what is UTC?

3 A That's a time zone that's, uh, over around
4 Finland or Europe. When we did a time conversion to it
5 to establish that actually made it March 4th, 2010 at 22
6 hours 51 seconds and 12 seconds.

7 Q Okay. So that would be some time between 10
8 and 11 p.m.?

9 A Correct.

10 Q Of March 4th?

11 A March 4th, correct.

12 Q And when was the search warrant executed? Do
13 you recall?

14 A March 5th.

15 Q In the morning?

16 A Around lunch time.

17 Q Around lunch time. Okay. I'm going to hand
18 you your initial exam report for Item 2. One of the two
19 reports you generated regarding this item. If you could,
20 read us the dates from March 5th, 2010 that are on the
21 first page there. Explain to the jury what that means.

22 A There was, uh, a file named 8055 with the
23 number one in parenthesis JPEG at 12:52 -- 44 p.m. It
24 was -- that was a temporary internet file that was
25 accessed on that date.

1 **Q** Were those items child pornography?

2 **MR. COLLINS:** Objection, Your Honor.

3 **THE COURT:** Objection is overruled.

4 **THE WITNESS:** From the file name, if it was
5 a -- in my report, I would assume that it is. But
6 without actually seeing the picture, I can't be for
7 certain.

8 **BY MS. ALL:**

9 **Q** Didn't you generate that report?

10 **A** I did.

11 **Q** Would you have put stuff on it that wasn't
12 child pornography?

13 **A** No, ma'am.

14 **Q** Okay. So is it safe to say that the defendant
15 was downloading child pornography the morning the search
16 warrant was executed?

17 **A** It would actually be the day before, but yes.

18 **Q** Okay. I'm going to hand you what's been
19 premarked State's Exhibits 4 through 12 and 35. We're
20 going to get to the specific media that was indicted.
21 I'm handing you 10 photos with case files on them and
22 labeled on the case files is the file path and the case
23 name. Do you recognize these images?

24 **A** Yes, ma'am.

25 **Q** Are they the same images for the file path

1 that's on the front of the file?

2 A Yes, ma'am.

3 Q Have you validated those images?

4 A Yes, ma'am.

5 Q Are they exact same images as the ones that are
6 in each of the first 10 indictments?

7 A Yes, ma'am.

8 MS. ALL: Your Honor, at this time, the State
9 moves photographs Exhibits 4 through 12 and 35 into
10 evidence.

11 MR. COLLINS: What says the defense?

12 MR. COLLINS: No objection, Your Honor.

13 THE COURT: They are admitted without
14 objection.

15 (WHEREUPON, State's Exhibits 4 through 12 and 35 are
16 admitted into the record.)

17 BY MS. ALL:

18 Q Agent Cave, as delicately as possible, can you
19 please explain the details associated with State's
20 Exhibit 4 and the description of the picture within? Do
21 you need your report to refresh your recollection?

22 A No, ma'am. I can go by the file path.

23 Q You think you have it up here?

24 A Yeah.

25 Q Here?

1 **A** Yeah.

2 **Q** They are not numbered the same way. This would
3 be number 1 on the State's exhibit list.

4 **THE COURT:** Is all this a part of the same
5 questioning?

6 **MS. ALL:** Yes, Your Honor. It was more of a
7 train of thought. These are marked State's Exhibit
8 4.

9 **THE COURT:** I'm just asking. If you are
10 asking a question, I'm waiting for the answer. You
11 are doing more talking. I'm just asking whether
12 this is part of the same question.

13 **MS. ALL:** I'm actually going to reverse the
14 dialog part to the beginning if I can have a take
15 two at that.

16 **THE COURT:** Okay.

17 **BY MS. ALL:**

18 **Q** Okay. On State's exhibit list, this is number
19 one on the exhibit list that you generated?

20 **A** Yes, ma'am.

21 **Q** That report is marked State's Exhibit 4 for
22 court purposes.

23 **A** Yes, ma'am.

24 **Q** By referencing your report, can you go through
25 the details of that file including the file name? As in

1 when it was created, whether it was a movie or picture.

2 **A** This is a picture that was located in the D
3 drive on Item 1 that was found in the Program Files file
4 folder. Within the Program Files file folder, there was
5 a folder called Limewire. In the Limewire folder, there
6 was a file named 3-year sex made him come to
7 pedio/pediphilia kids child porn..jpeg. It was created
8 on January 12th, 2008 at 10:41 a.m. It was last accessed
9 on April 3rd, 2009 at 11:11 a.m. It's the image that I
10 marked that day.

11 **MS. ALL:** Okay. Your Honor, permission to
12 publish it to jury as we discuss each file?

13 **THE COURT:** You may do so.

14 **BY MS. ALL:**

15 **Q** When was this entry last modified?

16 **A** 3/23/2008 at 7:14 p.m.

17 **Q** Those three separate dates, what does that
18 indicate about the activity on the file?

19 **A** That it was accessed on three different
20 occasions.

21 **Q** You do the same thing with State's Exhibit 5.
22 It should be number 2 on the exhibit list.

23 **A** That's not correct.

24 **Q** Could you find the matching file path so that
25 you could give us the information, creating -- creation

1 date and access date?

2 **A** Yes, ma'am.

3 **Q** Agent Cave, we'll skip to State's Exhibit 6.

4 This is number 10 on SLED's exhibit list.

5 **A** Okay.

6 **Q** If you could describe the file path and where
7 it was located within the computer as well as the
8 details, I'll publish it to the jury.

9 **A** This is located in Item 1. It was located in a
10 folder on the D drive called user data. Inside that
11 folder, there was a folder called My Documents. Inside
12 that folder, there was a folder called My Stuff. The
13 file name was

14 Mafiasex.ru_children_kids_hard003childporn_collection_7_s
15 uck_2_illegal_preteen_underage_Lolita_kitty_child_insects
16 _XXX_porno_gay_fuck_young_naked_nude_little_girl.jpeg.

17 **Q** And all of those underscores, where is the file
18 name located within the file path?

19 **A** That's the very last part of the file name.
20 Starting with the mafia sex and ending with girl.jpeg.
21 It's quite long.

22 **Q** Okay. Can you give the jury the details as far
23 as file created, accessed?

24 **A** That file was created on January 12th, 2008 at
25 2:40 p.m. It was last accessed at 6/13/2009 at 10:51

1 a.m. Entry modified was on 10/24/09 at 6:47 a.m. and the
2 file was deleted.

3 Q Is there a delete date?

4 A There is not.

5 Q What does that indicate?

6 A That it was permanently deleted.

7 Q Okay. I'm handing you what's been marked
8 State's Exhibit 5. It's also SLED's Exhibit 5.

9 A This item was located on Item 1 on the D drive
10 under a folder called User Data. Within the User Data
11 folder, there was a desktop folder. Within there, there
12 was a folder with an asterisk. Within that folder, there
13 was a folder called All Store Meeting Spring 08. Inside
14 that folder, there was a folder called My Stuff. Inside
15 that folder, there was a file name of LSM-PTHC-LSP-UFT-
16 41.jpeg.

17 Q Okay. And what is the file created, accessed
18 and modified date?

19 A June 19th, 2008 at 9:54 a.m. It was last
20 accessed on February 28th, 2009 at 7:20 a.m. The entry
21 was modified on October 24th, 2009 at 6:45 a.m. It was
22 deleted but there's no file date.

23 Q Okay. I noted on this one, you named in the
24 file path All Store Meeting Spring 08. Was this file in
25 the desktop?

1 **A** The folder before that was on the desktop,
2 which was the asterisk.

3 **Q** What does LSM stand for?

4 **A** I'm not sure about all the exact acronyms.

5 **Q** When you say acronyms, acronyms for what?

6 **A** That's a shortened abbreviation for a longer
7 name. The one next to it, the PTHC stand for preteen
8 hard core.

9 **Q** Okay.

10 **A** Normally, in these file names, they abbreviate
11 them because it would be much longer if they spelled
12 everything out. That's -- whenever people go to search
13 for this type of material, that's the key initials they
14 type into the search bar or if they are on a site that
15 has this stuff, they type that it in so it looks for
16 specific files for what they are looking for.

17 **Q** Why don't they type in preteen hardcore?

18 **A** It would be a whole lot more letters to type
19 in. Also, if, I guess a shorter thing to type in and
20 that's what the sites are -- the file names are based off
21 of.

22 **Q** Okay. And in your experience as a computer
23 forensics expert, are these the abbreviations that people
24 use when they are specifically seeking child pornography?

25 **A** Yes, ma'am.

1 Q Are these terms used to seek in addition to to
2 delineate file paths?

3 A Yes.

4 Q So this preteen hardcore image was saved under
5 a desktop file apostrophe and then within it All Store
6 Meeting Spring 08?

7 A That was another folder underneath the --

8 Q Right. I'll hand you what's been premarked.
9 state's -- what's been entered as State's Exhibit 7. If
10 you could, just read the file name of that one. It's
11 SLED's Exhibit 8. Just the file name.

12 A Yep. The file name is QQAAZZ space PTHC space
13 pedo space 3-year-old space girl space tied space and
14 space butt-fucked space two.jpeg.

15 Q And what is this in fact a picture of?

16 A Uh, a young girl, uh, that's, uh, has her hands
17 duck taped behind her back and somebody having, uh, anal
18 sex with her.

19 Q Does she appear to truly be a toddler?

20 A Yes, she's very young.

21 Q And can you do the file accessed created and
22 modified dates?

23 A File created was August 11th, 2009 at 11:28
24 a.m. Last accessed was October 21st, 2009 at 4:32 p.m.
25 The entry modified was October 24th, 2009 at 6:46 a.m.

1 The file is deleted but there is no file date.

2 Q Okay. I'm going to hand you State's Exhibit 8.
3 This is SLED's Exhibit 7. If you could do the -- just
4 your file property details that you gleamed from your
5 exam and which tower this is off of.

6 A What number you say that was on the State's
7 Exhibit?

8 Q 7.

9 A Uh, this came from Item 1. It was located in
10 the D drive within the User Data folder within the My
11 Documents folder, within the Limewire folder, within the
12 Saved folder labeled Hornytoads best CP PTN LSM PTHC with
13 the number 137 in parenthesis .jpeg.

14 Q Okay.

15 A It was created on July 17th, 2009 at 7:42 a.m.
16 It was last accessed on 10:21:09 at 4:10 p.m. The entry
17 modified was October 24th, 2009 at 6:46 a.m. The file is
18 deleted, but there's no file deleted date.

19 Q Okay. You said the word Limewire when you were
20 -- you said Limewire when you were discussing the file
21 path. Would you explain to the jury what Limewire is?

22 A Uh, Limewire is a program that you can put on a
23 computer for going out and downloading different types of
24 media. You can go out there and do a search for certain
25 types of files, whether you want movies, songs, pictures.

1 Once it finds it -- it's a share site, where that way,
2 multiple people can share stuff. Once you take and you
3 click on an item that you want, the program defaultly has
4 a file structure where it sets up a folder on your hard
5 drive where it stores the images that you click on.

6 Q Is this a program used to access child
7 pornography?

8 A Yes.

9 Q Okay. I'm going to hand you State's exhibit 9.
10 This is SLED's Exhibit 6. If you could, do the created,
11 accessed and modified dates for that one as well.

12 A This is Item 1, drive D. It's the drive D
13 partition. User Data folder, My Documents folder,
14 Limewire folder, Saved folder, uh, the file name is Horny
15 Toad's best CP PTN LSM PTHC 201 in parenthesis, 1 in
16 parenthesis .jpeg. The file was created on July 16th,
17 2009 at 8:21 a.m. The last access was October 21st '09
18 at 4:10 p.m. The entry modified was October 24th '09 at
19 6:46 a.m. The file is deleted but there is no file
20 deleted date.

21 Q Okay. State's Exhibit 10 is SLED Exhibit 4.
22 Could you please do just the file name on this one as
23 well as those file properties and describe the photo
24 please.

25 A The file name is PTHC_PTSC 9-year-old Jenny

1 sucking daddy's dog naked look at her little pussy .jpeg.
2 This is located in the D partition, User Data folder,
3 desktop folder, apostrophe folder, All Store Meeting
4 Spring 08 folder, My Stuff folder, uh, PTHC-PTSC 9-year-
5 old Jenny sucking daddy's dog naked look at her little
6 pussy jpeg. It pretty much shows a little girl crouched
7 down. Looks like she's up under a dog with the dog's
8 penis in her mouth. You want the created dates and all
9 that on that also?

10 Q Yes, please.

11 A The file created date is May 21st, 2008 at 1:02
12 p.m. The last access date was February 22nd, 2009 at
13 12:38 p.m. The entry modified date was October 24th,
14 2009 at 6:45 a.m. The file was marked as deleted.
15 There's no file deleted date.

16 Q Okay. I'm going to hand you State's Exhibit
17 12. This is SLED's Exhibit 2, I believe. If you don't
18 mind corroborating the file paths. If you could just
19 give us the file property specifics on that one.

20 A That one is the D drive user data folder,
21 desktop folder, asterisks folder, All Store Meeting
22 Spring 08 folder, My Stuff folder. File name is Mafia
23 sex RU children kids hard 2 PTHC ultra hard pedo child
24 porn pedophilia .jpeg. The file was created on April
25 16th, 2008 at 7:21 p.m. The last access date was

1 February 28th, 2009 at 7:20. The modified date was
2 October 24th, 2009 at 6:45 a.m. The file is deleted, but
3 there is no file deleted date.

4 Q Okay. I'll give you State's Exhibit 11. This
5 is SLED Exhibit 3. Can you just do the file created last
6 accessed and entry modified dates please?

7 A The file was created on 5/21/08. The last
8 access was 2/27/09. The entry modified date was
9 10/24/09. The file is deleted, but there's no file
10 deleted date.

11 Q Last one for the photos. This is State's
12 Exhibit 35, SLED Exhibit 9. If you could, just do the
13 file created, accessed and modified please.

14 A The file was created January 12th, 2008 at 6:00
15 p.m. The last access was June 13th, 2009 at 10:51 a.m.
16 The entry modified was October 24th, 2009 at 6:47 a.m.
17 The file is deleted, but there's no file deleted date.

18 Q Okay. Now, we'll start on the videos. If you
19 don't mind stepping down to the computer with Your
20 Honor's permission.

21 THE COURT: Yes.

22 BY MS. ALL:

23 Q Okay. Agent Cave, if you could just review
24 these two, uh, first sex act, State's Exhibit 13.
25 (Pause.)

1 Have you had a chance to review all of these
2 DVDs?

3 A Yes.

4 Q Have you seen them before?

5 A Yes, ma'am.

6 Q Are they the same DVDs that are in your exam
7 report?

8 A Yes, ma'am.

9 Q Are they the same DVDs that have been indicted?

10 A Yes, ma'am.

11 Q You've observed all 20 of them?

12 A Yes, ma'am.

13 Q Are the file names and the file paths the same
14 as what's in the indictment?

15 A Yes, ma'am.

16 Q Okay. Handing you State's Exhibit 13.

17 A Yes, ma'am.

18 MS. ALL: Your Honor, at this time, the state
19 offers exhibits 13 through 32 into evidence.

20 MR. COLLINS: No objection.

21 THE COURT: They're admitted.

22 (WHEREUPON, State's Exhibits 13 through 32 are
23 admitted into the record.)

24 MS. ALL: Your Honor, beg the Court's
25 indulgence. (Pause.)

1 **BY MS. ALL:**

2 **Q** I'm going to hand you State's Exhibit 19. This
3 is your exhibit number 15. If you could, give us the
4 file created, accessed and modified dates.

5 **A** January 20th, 2008. at 4 p.m.. Last access was
6 1/25/2008 at 7:31 p.m. Entry modified was March 23rd,
7 2008 at 7:36 p.m. The file is deleted. It was deleted
8 on 1/25/08 at 7:31. It starts out just like a regular
9 video of a child in the yard or whatever. I'm going to
10 skip through it just to kind of get through other parts
11 of it. This is one that started out like that. All of a
12 sudden, it jumps into --

13 **COURT REPORTER:** Excuse me, Your Honor. I
14 need the witness to keep his voice up please.

15 **THE WITNESS:** Uh, we have a video that
16 starts out just like a regular, like a kid playing
17 outside. We'll skip through the video to see if
18 that's all the video is. As this one, it started out
19 as just a little girl playing outside. All of a
20 sudden, it jumps to her, you know, being, uh, naked
21 and having sex with somebody.

22 **BY MS. ALL:**

23 **Q** I'm going to give you State's Exhibit 14. This
24 is SLED's Exhibit 29. If you could, give the file
25 property details on that one that you gleamed from your

1 computer forensics examination.

2 A Okay.

3 Q Which of the towers was this file located on?

4 A This is located on Item 2.

5 Q So the new one he was using?

6 A Yes, ma'am.

7 Q Okay. What are the file property details?

8 A The file was created January 17th, 2010 at
9 10:03 a.m. Last accessed on January 17th, 2010 at 10:03
10 a.m. Entry modified was February 25th, 2010 at 9:09 a.m.

11 Q Is it deleted?

12 A No, ma'am.

13 Q So he was still able to access this material?

14 A Yes, ma'am.

15 Q Agent Cave, your recollection, is that man
16 hooded through the entire video?

17 A Yes, ma'am. He is.

18 Q Agent Cave, do each of these contain a visual
19 representation of a minor engaged in sexual activity?

20 A Yes, ma'am.

21 Q Please have a seat on the witness stand.

22 A (Witness complies.)

23 Q Agent Cave, will you please go through the file
24 properties, the dates and times for each of the 20 videos
25 that you found on items 1 and 2 found in the defendant's

1 apartment?

2 **A** On Item 11, the file was created on January
3 3rd, 2010 at 7:28 p.m. The last access was January 3rd,
4 2010 at 7:28 p.m. Entry modified was January 3rd, 2010 at
5 7:59 p.m. uh, the file was deleted and has a file deleted
6 date of January 10th, 2010 at 7:59. Item 12, the file
7 created date was November 3rd, 2009 at 12:12 p.m. The
8 last access date was 11/3/2009 as 12:12 p.m. Modified on
9 February 25th, 2010 at 9:09 a.m. The file was not
10 deleted and does not have a file deleted date.

11 **Q** Agent Cave, would you please reference the
12 indictment numbers associated with each one?

13 **A** I can not.

14 **MR. COLLINS:** Your Honor, he's reading from a
15 six-page report. The defense doesn't have any
16 objection to that six-page report being admitted
17 into evidence.

18 **MS. ALL:** Your Honor, our concern was the
19 ability of the jury to read it since it is in
20 technological format. We wanted him to be able to
21 read the information out loud and for it to come in
22 as testimony.

23 **THE COURT:** It's in what?

24 **MS. ALL:** It's in, uh, like techno speak. It
25 can be difficult to read. I'll be glad to enter it

1 into evidence but unfortunately, the numbers don't
2 correlate with the exhibit numbers. They can match
3 the file paths.

4 **THE COURT:** The defense has offered to have
5 it admitted. Do you offer it into evidence?

6 **MS. ALL:** He's offered to have the
7 examination report that Agent Cave generated each of
8 the details correlating to the exhibits into
9 evidence.

10 **THE COURT:** Is that what you're offering into
11 evidence?

12 **MR. COLLINS:** The six-page report, yes, Your
13 Honor.

14 **THE COURT:** The six-page report.
15 It's your witness. Do you want it into evidence?

16 **MS. ALL:** Yes, Your Honor. It might save
17 some time.

18 **THE COURT:** It needs to be marked. It's
19 admitted without objection. State's exhibit number?

20 **COURT REPORTER:** 46.

21 **THE COURT:** 46.

22 (WHEREUPON, State's Exhibit 46 is marked for
23 identification and admitted into the record.)

24 **BY MS. ALL:**

25 Q Agent Cave, is this the exam report with the

1 information that you've generate per each of those
2 exhibits?

3 **A** Yes, ma'am.

4 **Q** Can you give us a general idea? Can you go
5 over those remaining 20? I understand Mr. Collins'
6 objection of going through every single one of those
7 dates, but can you give us an idea of the varying dates
8 and the varying file paths and the different locations
9 that each of those 20 videos contain?

10 **A** Yes, ma'am. They are from '08 to '09 to 2010
11 in various months and days. They go from User Data to
12 the, uh, storage in the My Documents folder.

13 **Q** Are they all on the C drive?

14 **A** No, ma'am. They are located on the D drive.

15 **Q** Are they all on the D drive?

16 **A** Uh, they are.

17 **Q** Are all the photographs in the D drive?

18 **A** Yes.

19 **Q** Are they all under different file names?

20 **A** Yes, ma'am.

21 **Q** Do they all have different file paths?

22 **A** Yes.

23 **Q** Are they all embedded in the same second to
24 last file or are they all in different variations?

25 **A** Different variations.

1 Q Are any of them in temporary file folders?

2 A No, ma'am.

3 Q Are any of them pop ups?

4 A No.

5 Q Was the defendant able to access them whenever
6 he wanted?

7 A Yes.

8 Q Were they permanently saved in his computer?

9 A Yes..

10 Q In your opinion, were they intentionally
11 downloaded?

12 A Yes.

13 **MS. ALL:** Beg the Court's indulgence.

14 (Pause.)

15 **BY MS. ALL:**

16 Q I bring your attention again to the registry
17 document that we refreshed your memory on. Can you use
18 that document to tell when the defendant started using
19 Item 2?

20 A It doesn't have a start date. It just has the
21 last access date and last log in date.

22 Q Does it have a date where he signed up with the
23 user account?

24 A Uh, 2009.

25 Q What's the date?

1 **A** The date is 7/14/2009.

2 **Q** Okay. Can anyone undelete a file?

3 **A** Yes.

4 **Q** Are these the only 30 files of this kind of
5 material that you found in these hard drives?

6 **A** No, ma'am.

7 **Q** Agent Cave, we discussed earlier that the times
8 can change according to the time zone you set your
9 computer on. The times that you just testified to that
10 you got these file properties and you conducted your
11 forensic report, had you already adjusted those times
12 according to the error in the clock on the computer?

13 **A** No, ma'am.

14 **Q** And so what does that mean?

15 **A** The time that the clock was set to is the same
16 time that it went by.

17 **Q** Okay. So the times on your forensic exam
18 report reflect what time?

19 **A** The time the computer was set to.

20 **Q** Which was?

21 **A** An hour off on Item 1 and an hour off on Item
22 2.

23 **Q** Okay. Thank you, Agent Cave. Answer any
24 questions for defense counsel.

25 **A** Yes, ma'am.

1 **THE COURT:** Ladies and Gentlemen, let's take
2 a break now. Please go to the jury room. Please do
3 not discuss the case.

4 **(WHEREUPON, the jury exits at approximately**
5 4:18 p.m.)

6 **THE COURT:** We'll take a 15-minute break.
7 **(WHEREUPON, a short recess is taken.)**

8 **MR. COLLINS:** Your Honor, if I may take this
9 down.

10 **THE COURT:** All right. Bring the jury in.
11 **(WHEREUPON, the jury enters at approximately**
12 4:37 p.m.)

13 **THE BAILIFF:** Jury is present, Your Honor.

14 **THE COURT:** All right. Cross-examination.

15 **MR. COLLINS:** Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MR. COLLINS:**

18 **Q** Agent Cave?

19 **A** Yes, sir.

20 **Q** How are you doing today?

21 **A** Good. How are you?

22 **Q** I'm doing pretty good. I just want to start
23 briefly with the timing issue on the different computers.

24 **A** Yes, sir.

25 **Q** You determined the difference in time by

1 looking at the screen shot from the computer?

2 A No, sir.

3 Q How did you determine the time period?

4 A Whenever we, uh, seize a computer, the first
5 thing we do is we remove the drive so that whenever we,
6 uh, boot the computer to access the bios for the system
7 time, it doesn't make any changes to the drive. On all
8 Windows based computers, they have a bios which stores
9 the system time.

10 What we do is we use function keys, which is
11 normally F1, F2, F10, delete. That lets you go into the
12 bios. That shows you what the system time is on the
13 motherboard. That's how we verify what the date and time
14 is for a computer. We verify that by an atomic clock
15 that we have in our lab.

16 Q Okay. So that was based on the day you guys
17 seized the computer?

18 A That was not -- that was the time and date that
19 we did -- that we imaged the computer, not the day we
20 seized it.

21 Q When you imaged it?

22 A Yes, sir.

23 Q When did you turn that imaging report over to
24 the Solicitor's office?

25 A Whenever we, uh, -- I think the initial report

1 was not in there. Then, when they requested it, we then
2 provided it to them.

3 Q So it was given to them several years later?

4 A Yes.

5 Q And without that report, one would not know the
6 difference in times, correct?

7 A Correct.

8 Q Uh, now, you specifically referenced -- was it
9 Item 1 or Item 2 that was up and running?

10 A Item 2.

11 Q Item 2. That was the computer that was up and
12 running at the time of the search warrant?

13 A It was off actually when we got there.

14 Q Okay. That was the computer in use?

15 A Correct.

16 Q And you testified that we saw that there were
17 several accessed files from the internet, correct?

18 A Yes.

19 Q From March 5th?

20 A Yes, sir.

21 Q With the times of 12:52 on the report that you
22 provided everybody, correct? 12:52 p.m.?

23 A I believe that's correct. I can verify that.

24 Q Okay. I believe it's on the first page of the
25 items that you list.

1 **A** (Reviewing.)

2 **Q** Do you have your Item 2 list with you up there?

3 **A** This is actually Item 1 and 2. Excuse me.

4 **Q** Third and fourth entries are the numbers you
5 provided.

6 **A** (Reviewing.)

7 **Q** If I showed you the first page of the Item 2
8 list that you provided to the defense, would that refresh
9 your memory?

10 **A** Yes, because I don't have those up here.
11 Sorry.

12 **MR. COLLINS:** If I can have this marked as a
13 defense exhibit for ID purposes.

14 **(WHEREUPON, Defendant's Exhibit 2 is marked for**
15 **identification purposes.)**

16 **BY MR. COLLINS:**

17 **Q** Do you recognize that front sheet?

18 **A** Yes, sir.

19 **Q** All right. And it says the files were accessed
20 and created on March 5th, 12:52 p.m.?

21 **A** Yes, sir.

22 **Q** That's on computer 2, Item 2, right?

23 **A** Yes, sir.

24 **Q** That's the computer that's an hour slow, right?

25 **A** Yes, sir.

1 Q So if the computer printed out 12:52, it was
2 actually 1:52 p.m., correct?

3 A Correct.

4 Q The computer was logged into evidence from the
5 search warrant at 1:15 p.m. that day, correct?

6 A Correct.

7 Q Okay. Now, you testified a lot about your
8 training and your experience in computers. You've done
9 many different courses, correct?

10 A Yes, sir.

11 Q You've been trained on how to forensically
12 evaluate these computers?

13 A Yes, sir.

14 Q Access files that normal everyday people aren't
15 going to know how to access.

16 A Correct.

17 Q Produced numerous reports that are a little
18 complicated?

19 A Yes.

20 Q All right. And EnCase is a software you have
21 that aids you really to get to the bottom of these
22 computers?

23 A Yes, sir.

24 Q It helps you analyze forensically everything
25 that's on that hard drive?

1 A Yes, sir.

2 Q The EnCase software was not on either one of
3 these hard drives, was it?

4 A No, sir. Not that I can tell.

5 Q You are not aware of any special training that
6 Alan Smith has had?

7 A I'm not aware of any training that he has.

8 Q And you testified you had over 250 hours of
9 training?

10 A Yes, sir.

11 Q You probably spent close to over a thousand
12 hours working on cases like this?

13 A Yes, sir.

14 Q Uh, now, when you created the first report for
15 this case, you completed your evaluation May 17th, 2010?

16 A Yes, sir.

17 Q And you wrote a report dated May 21st, 2010,
18 right?

19 A Yes, sir.

20 Q You gave the computers back to Lieutenant
21 Hinson on May 17th, didn't you?

22 A Yes, sir.

23 Q He signed off for it and you signed off for it,
24 right?

25 A Uh-huh.

1 Q Did you tell him anything about your evaluation
2 that you'd already completed?

3 A I just told him that we had some images and
4 files. Actually, I had contacted him whenever we found
5 some and they referred me to the Solicitor's office. We
6 notified them and was in the process of getting the
7 report created.

8 Q And so then you gave the report, sent the
9 report to Forest Acres P.D., right?

10 A I provided them a disk.

11 Q And that would have been May 21st, 2010?

12 A No, it would have been after that. We have to
13 return the evidence. Part of our report is having the
14 return chain in the report.

15 Q And that return chain included them both?

16 A Correct.

17 Q Do you have any idea when you sent the report?

18 A It was after that. I don't know the exact
19 date.

20 Q Y'all don't keep track of that?

21 A I had to get it approved by my captain to be
22 closed. Once he approved it to be closed, that's when I
23 created the disk for them. I believe they came by and
24 picked it up after that some time.

25 Q There's no documentation about when that

1 happened?

2 A Uh, not when they get the report.

3 Q Uh, now, you talked a little bit about
4 Limewire. That's a shareware-type program, right?

5 A Correct.

6 Q You search for different types of pictures or
7 videos, right?

8 A Yes, sir.

9 Q They have a search engine within Limewire.

10 A Uh-huh.

11 Q And you start a download. A lot of times you
12 don't have successful downloads with shareware, correct?

13 A Correct.

14 Q It's a lot of people on there with a lot of
15 files going back and forth. Yes or no?

16 A Yes.

17 Q And when somebody starts a download and the
18 programs over, sometimes the program can be closed before
19 that download is completed, right?

20 A Yes, sir.

21 Q That could create a partial file?

22 A I believe with Limewire, it's called
23 incomplete.

24 Q Incomplete. And then when Limewire is
25 reopened, that download will immediately start again,

1 correct?

2 A On that, I'm not exactly sure on the incomplete
3 status. We've had some issues in the past where,
4 especially like if you lose an internet connection or
5 something, it would stop the file, but that would be
6 indicative of the settings that someone had in Limewire.

7 Q All right. So it's possible?

8 A Everything is possible.

9 Q Through shareware, that's where a lot of virus
10 come from?

11 A A lot of the shareware or file sharing apps,
12 that's where a lot of stuff comes in.

13 Q Research, close to 30 percent of all viruses
14 start with shareware, right?

15 A (Nods head.)

16 Q Is that a yes?

17 A Yes, sir.

18 Q And you said that sometimes there's thousands
19 of misreads when you do your analysis of computers,
20 right?

21 A Say that one more time.

22 Q Was it misreads?

23 A Read errors.

24 Q Read errors. You said hundreds, sometimes
25 thousands?

1 A Correct.

2 Q And on computer 1, it was thousands or over a
3 thousand?

4 A Yes, sir.

5 Q A small part of the computer. I believe you
6 referenced one line of a 100-page book. But it depends
7 on which line you talk about that's corrupted, right?

8 A Correct.

9 Q If you get one line that's important, that can
10 crash the whole computer, right?

11 A Correct.

12 Q And a lot of read errors is consistent with
13 potential for a virus or that there's possibly a virus on
14 that computer at a certain point in time, correct?

15 A That there's problems with the drive, correct.

16 Q All right. Uh, now, you worked on a lot of
17 different cases involving computer crimes. You testified
18 you done a number of ones with child pornography before,
19 right?

20 A Yes, sir.

21 Q All right. This is your first time you've ever
22 testified in the Fifth Circuit, correct?

23 A For Richland county, that's correct.

24 Q All right. There are different methods that
25 can be used when investigating child porn or

1 disseminating child porn, right?

2 **A** Correct.

3 **Q** You could set up sting operations?

4 **A** Correct.

5 **Q** You could set up fake email accounts to get
6 somebody to send an email with child porn, right?

7 **A** Correct.

8 **Q** You could even monitor IP addresses, internet
9 connections?

10 **A** Correct.

11 **Q** That way, you can pinpoint exactly who's doing
12 the downloading and disseminating?

13 **A** Correct.

14 **Q** None of that was done in this case?

15 **A** Correct.

16 **Q** In your analysis of these computers, you saw
17 there were certain flash drives connected to the computer
18 at different times, right?

19 **A** Not part of my search.

20 **Q** You didn't look to see if people plugged in
21 flash drives to remove or add information?

22 **A** At the time of the search, the scope was for
23 looking for stored pictures and movies on the device.

24 **Q** All right. But if somebody plugged in a flash
25 drive, that would be a modification, correct?

1 A Correct.

2 Q And if there were a lot of files modified the
3 same date and same time, that would be consistent with
4 somebody pulling files off on a flash drive?

5 A Correct.

6 Q In your search warrant of Alan Smith's house,
7 did you find one single flash drive?

8 A No, sir.

9 Q And they were looking for stuff like that,
10 right?

11 A Yes, sir.

12 Q None was found?

13 A Correct.

14 Q You guys didn't call ahead and tell them that
15 you were coming, did you?

16 A I was unaware of that.

17 Q That would kind of go against the search
18 warrant, wouldn't it?

19 A Yes, sir.

20 Q Did anybody give you a cell phone to examine?

21 A No, sir.

22 Q You had the capability to examine the cell
23 phone, right?

24 A Yes, sir.

25 Q Especially one that has internet capability?

1 A Yes, sir.

2 Q You would look to see if there was child porn
3 sent or possessed?

4 A Correct.

5 Q If it was on somebody's phone, that would be
6 pretty good evidence that they knew about it, right?

7 A Yes, sir.

8 Q Through your analysis, there's no camera or
9 anything that you can look the video of who actually was
10 downloading the material, is there?

11 A No, sir.

12 Q All you can read is file access, file created
13 or file deleted?

14 A Correct.

15 Q It doesn't have Alan Smith did this on this
16 date?

17 A Correct.

18 Q Now, I want to direct you to one of the slides.
19 You helped prepare these slides for court, the ones that
20 were on the big screen up here?

21 A Correct.

22 Q Uh, I want to direct you to the second to last
23 slide. I'm not very good with their computers. If I
24 could have this marked for Defense Exhibit for ID
25 purposes on.

1 **(WHEREUPON, Defendant's Exhibit 3 is marked for**
2 **identification purposes.)**

3 **BY MR. COLLINS:**

4 **Q** Do you recognize that slide?

5 **A** Yes, sir.

6 **Q** I believe you were explaining to the jury that
7 this was coming from different folders and this was
8 actually Alan Smith's resume at that point, right, that
9 you highlighted?

10 **A** That's what it's labeled as.

11 **Q** All right. And down in the lower screen is the
12 top half of that document, right?

13 **A** Yes, sir.

14 **Q** It has Alan Smith's name?

15 **A** Yes, sir.

16 **Q** Can you read off the title of the document one
17 line below the resume?

18 **A** JAS.doc.

19 **Q** JAS.doc?

20 **A** Yes, sir.

21 **Q** Did you review that document?

22 **A** No, sir. I was not searching for Word
23 documents.

24 **Q** You would agree that those are the first
25 three letters of the name Jason?

1 A Yes, they could be.

2 Q When was that file created?

3 A October 27th, 2004.

4 Q October 27th, 2004. When was it last accessed?

5 A June 13th, 2009.

6 Q June 13th, 2009. No more questions.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MS. ALL:

10 Q Agent Cave, Mr. Collins was asking you about
11 your report on Item 2, the first one that was generated,
12 do you still have a copy up there with you?

13 A Yes, ma'am.

14 Q Okay. He asked about the third, fourth, fifth
15 entries, the files that were created on March 5th at
16 12:59 and compared those to the search warrant execution
17 times, is that correct?

18 A Yes, ma'am.

19 Q And found a discrepancy, is that also correct?

20 A Yes, ma'am.

21 Q Didn't you testify that daylight savings
22 occurred in the time that lapsed in between?

23 A Yes, ma'am.

24 Q So isn't it true that, in fact, these times --

25 MR. COLLINS: Objection, leading.

1 **THE COURT:** Don't lead the witness.

2 **MS. ALL:** Thank you, Your Honor.

3 **BY MS. ALL:**

4 **Q** Agent Cave, what occurred on March 14th, 2010?

5 Let me ask that another way, did Daylight Savings occur
6 in between the lapse between the execution of the exam
7 report and when this information was conducted?

8 **A** Yes, sir.

9 **Q** Would that have adjusted the time to reflect
10 properly at this report?

11 **A** It very well could.

12 **Q** When were these files created?

13 **A** March 5th, 2010 at 12:52, 12:59 and 12:40.

14 **Q** Okay. And at that time, how much time was off?

15 **A** One hour.

16 **Q** What happened to Daylight Savings time?

17 **A** We add an hour.

18 **Q** So what would happen?

19 **A** That would put it within the time of the search
20 warrant.

21 **Q** What time was the search warrant was executed?

22 **A** Uh, I believe that they stated that we did the
23 return or the return was done about 1:15 or so.

24 **Q** So it is accurate with the adjustment for
25 Daylight Savings Time. Is that before the execution of

1 the search warrant?

2 A Yes, ma'am.

3 Q Who decides how the investigation is handled,
4 whether there is a sting operation or you monitor the IP
5 address?

6 A It comes from the originating agency. If they
7 need assistance, they would come to us for assistance.
8 Then it would be up to our captain or our major to
9 determine whether that would be a case that we would go
10 under an operation for to try to monitor to see if there
11 was other activity going on.

12 Q What was your instructions in this case?

13 A To assist them with conducting a search warrant
14 of a house that possibly had child porn images stored on
15 computers.

16 Q Giving that Forest Acres consulted you for
17 assistance, you obviously reviewed the information prior
18 to the execution of the search warrant and your search,
19 did you have information that there was child porn on a
20 cell phone?

21 A No, ma'am. Not at that time.

22 Q You testified that moving a lot of files is
23 consistent with use of a flash drive, what else could
24 move a lot of files indicate?

25 A Deleting them or trying to clean up an area to

1 move them where there are not accessible space.

2 Q For camouflaging child porn?

3 A Yes, sir.

4 Q Thank you, Agent Cave.

5 MR. COLLINS: A couple of questions.

6 RECROSS EXAMINATION

7 BY MR. COLLINS:

8 Q Do you know if this computer automatically
9 adjusted for Daylight Savings Time?

10 A No, sir. I do not.

11 Q You don't know if it did or didn't?

12 A No, sir.

13 Q Uh, you've adjusted some of your reports for
14 Daylight Savings Time, haven't you?

15 A No, sir.

16 Q So the report that you gave the Solicitor's
17 office containing the 16 images didn't have adjusted for
18 Daylight Savings Time at the top of them?

19 A Uh, yes, it does have it on there. I did not
20 recognize that.

21 Q You don't know whether the computer adjusted
22 for it or not?

23 A No, that would be a setting.

24 Q Even if it didn't, we're talking 12:45 to 12:50
25 p.m. or 1:45 or 1:50 p.m., right?

1 **A** Correct.

2 **Q** I believe we've heard other officers testify
3 that you guys were there for about 45 minutes on the
4 search warrant, right?

5 **A** Correct.

6 **Q** A search warrant that was signed on taking the
7 computers out of the residence at 1:15?

8 **A** Correct.

9 **THE COURT:** You may step down, sir.

10 **THE WITNESS:** Thank you.

11 **THE COURT:** Next witness for the state.

12 **MS. BODMAN:** Your Honor, at this time, the
13 State rests its case.

14 **THE COURT:** All right. Ladies and Gentlemen,
15 the State has presented its case. It's a good time
16 for us to stop for the day. It's five o'clock.
17 Let's start back at 9:30 tomorrow morning. Please
18 do not discuss the case with anyone or allow anyone
19 to discuss it with you. See you tomorrow morning at
20 9:30.

21 **(WHEREUPON, the jury exits at approximately**
22 **4:59 p.m.)**

23 **THE COURT:** Any matters of law at this time?

24 **MR. COLLINS:** Your Honor, the defense would
25 renew all of our previous objections and motions.

1 We also move for directed verdict at this time,
2 specifically in regards to the files that were
3 introduced under the indictments that have been
4 deleted. We had the expert testify that it would be
5 very hard to retrieve without expert knowledge.
6 They've not provided any testimony that Mr. Smith
7 had any expert computer knowledge. I don't believe
8 it rises to the level of possession if there's
9 something on the computer according to the
10 indictment that he possessed this material on March
11 5th, 2010. If it was in deleted status, he's unable
12 to access it and he has no dominion and control over
13 that file if he can't access the file without
14 software expertise that he doesn't possess. So in
15 regards to each one of the indictments where the
16 files were deleted, I believe that's -- beg the
17 Court's indulgence very briefly. (Pause.)

18 That would be indictment number 2013-GS-40-
19 04178. That would be indictment number 2013-GS-40-
20 04186, indictment 2013-GS-40-04187, 2013-GS-40-
21 04188, 2013-GS-40-04189, 2013-GS-40-04190, 2013-GS-
22 40-04191, 4192, 4193, 4201, 4196, 4197, 4198, 4199.
23 That concludes all the files that were indicted that
24 had been deleted on the computer when they were
25 retrieved March 5th. So specifically, on those

1 indictments, I don't believe they have provided any
2 evidence or testimony that even in the light most
3 favorable to the state that a jury could come back
4 with a guilty verdict on possession of those files
5 on March 5th, 2010.

6 In regards to the other files, we heard a lot
7 of evidence about nature and what's on these videos
8 and what's on these pictures, but we haven't heard
9 any testimony other than the computer was found in
10 Alan Smith's apartment as to him being the one that
11 downloaded and accessed and modified these files. I
12 don't believe they could put up enough testimony and
13 evidence that he had the knowledge that these files
14 were there. Even in the state's opening argument,
15 they admitted right off the bat that these were
16 hidden, these were obscured and this was a deep dark
17 secret within the computer. Just because you own
18 the computer doesn't mean that you have knowledge of
19 everything that's on the computer. So on those
20 basis, I would move for directed verdict on all
21 counts.

22 Uh, we would renew our previous objections
23 specifically the ones in regard to the introduction
24 of the thousands of images of porn to the testimony
25 about pictures of Alan Smith partying with friends.

Motions

1 I believe those went to his character and were much
2 more prejudicial than they were probative. They
3 didn't elaborate. I think that could be taken in a
4 lot of different context. I didn't want to clarify.
5 There were pictures that were provided to us that I
6 thought they were getting into. They didn't go that
7 far.

8 **THE COURT:** I didn't see whatever pictures
9 you might be talking about. Are they like nude or
10 some kind of sexually suggestive positions or they
11 just out having a drink and getting coffee or
12 dancing? What was going on that would make you
13 think it was so bad?

14 **MR. COLLINS:** Your Honor, the only objection
15 I had for that one was the testimony that he was
16 partying with friends. I didn't feel that it had
17 any probative knowledge even if the prejudicial
18 value wasn't as high as some of the other stuff
19 that's been introduced.

20 **THE COURT:** So it's low on the totem pole,
21 what you're complaining about or what you are
22 arguing?

23 **MR. COLLINS:** That's one of the objections
24 that I'd like to renew.

25 **THE COURT:** All right.

1 **MR. COLLINS:** Specifically to the one slide
2 that was shown to the jury for over five minutes
3 that had the 21 listed video files that were plainly
4 visible to the jury. You could read it. You could
5 read the titles. There was no probative value to
6 that. They were highly prejudicial.

7 **THE COURT:** All right. Response.

8 **MS. BODMAN:** Your Honor, first, with regard
9 to, uh, evidence that it was the defendant that
10 possessed them, I believe, in the light most
11 favorable to the state, we have shown that this was
12 his apartment, he was the only person that lived
13 permanently in the apartment. No one else saw
14 anyone else. The other witnesses never saw anybody
15 else access this computer. One of them tried to and
16 he said no, sorry, you can't, there's a virus.
17 Casey was the only one that used it one time.
18 That's when she came upon this material.

19 So at the minimum, circumstantially in the
20 light most favorable to the state, the jury can
21 return a verdict that he is, in fact, the one that
22 possessed it. It was his computer. In his own
23 statement, he said, yeah, these are my computers and
24 Casey is the only one that's ever, uh, spent
25 extensive time on my computer. So even in his own

1 testimony that was put in by way of the statement.

2 Uh, with regard to the files that were deleted,
3 Agent Bart Cave testified that deleted does not mean
4 deleted. They can still be easily accessed by
5 anyone. So he is still in possession of those --
6 that material on that day when the computer was
7 retrieved. The dates on many of them of the
8 creation date and the last access date were
9 testified to. They were put on his computer, placed
10 on his computer, spent time there and were in
11 another place marked as deleted but really had not
12 been completely deleted because Agent Cave was able
13 to access them.

14 The dates that weren't specifically testified
15 to, the rest of the access dates and created dates
16 are on the document, but the defense asked that we
17 go ahead or had no objection to Bart Cave's report
18 coming in. Bottom line is the agent said, the
19 expert said deleted does not mean deleted. That is
20 still sitting there on his computer accessible by
21 anyone.

22 Finally, with regard to any reference or the
23 references to thousands of other images, first of
24 all, it was in the context of, uh, the search in the
25 case. When they first opened the computer, they do

1 see, uh, child pornography. Multiple images of it.
2 That's what they proceed on in taking this evidence
3 into custody and then going and taking, doing any
4 analysis of it, it goes to the lack of accident,
5 lack of mistake, the amount of images themselves
6 just go to show that these were not accidentally
7 placed in some type of temporary folder that he did
8 not know of or that they were placed -- there's
9 been, uh, reference in cross-examination to other
10 people had, may have had some type of access to this
11 computer. They are putting it on there and he
12 doesn't know. So it also went to knowledge that he
13 knows this material is on his computer and the sheer
14 amount of it, uh, supported the element of
15 knowledge.

16 The titles referenced the titles that were on
17 the demonstrative slides that we've shown to the
18 jury. That also goes to prove knowledge that the
19 statute itself says that the titles of the images
20 can be used by the trier of fact to infer that they
21 are minors in these images. There are similar types
22 of titles that are in all of the items that were
23 admitted into evidence.

24 Finally, the reference to photos of him at a
25 party with friends, that is literally how innocent

1 that question was. We had provided the photos that
2 Ms. All was referring to prior to trial. We gave
3 those to Mr. Collins. There is no nudity. There
4 was nothing at all of bad character in the reference
5 to that. It is that photos of him at a party,
6 personal photos of him at a party are in the same
7 location as this child pornography. It also
8 circumstantially goes to possession and knowledge of
9 the material that they are there with these personal
10 photos of him at a party with friends. Thank you,
11 Your Honor.

12 **THE COURT:** Uh, there was overwhelming direct
13 and circumstantial evidence, if believed by the
14 jury, that would lead to a conviction of the
15 defendant for actually and/or constructively
16 possessing these materials in violation of the law.
17 I respectfully deny your motion. All right. What's
18 next?

19 **MS. BODMAN:** Do you wish to admonish or give
20 the defendant his rights regarding testifying today
21 or wait until the morning?

22 **THE COURT:** All right. We can do that now if
23 you'd like, Mr. Collins. We'll swear him.

24 **(WHEREUPON, the defendant is first duly sworn.)**

25 **THE COURT:** Mr. Smith, we have now reached

1 the stage of the trial where you have the right to
2 present your defense. I'm going to explain to you
3 certain of your rights. If you do not understand
4 anything that I say to you, let me know. I'll be
5 happy to explain it in more detail. You understand?

6 **MR. SMITH:** Yes, Your Honor.

7 **THE COURT:** We've now reached a stage of the
8 trial where you have a right to present your defense
9 and you have the right to claim the protections
10 afforded you by the Fifth Amendment of the
11 Constitution of the United States. The Fifth
12 Amendment states, in part, that no person shall be
13 compelled in any criminal case to be a witness
14 against himself. This means that you can not be
15 required to testify in this case.

16 However, you do have the right to testify on
17 your own behalf if you would like to, but no one can
18 make you testify. This right is a personal right.
19 No one can waive this right except you. Now, if you
20 decide to testify, you will be subject to the same
21 rules that govern other witnesses. You may be
22 examined and cross-examined on any relevant issue in
23 this case.

24 In addition, if you have any convictions
25 involving dishonesty or false statements or

Court Remarks to Defendant

1 conviction for crimes punishable by imprisonment for
2 more than one year and I determine that the
3 probative value of admitting this evidence outweighs
4 its prejudicial effect to you, the Solicitor then
5 will be able to introduce your record to attack your
6 credibility. If you decide to testify, this
7 decision must be a freely, voluntarily and
8 intellectually made decision by you with knowledge
9 of the protections given to you by the Fourth --
10 Fifth Amendment and the consequences of your
11 decision to testify.

12 If you decide not to testify, I will instruct
13 the jurors that they can not give the fact that you
14 did not testify any consideration whatsoever and
15 that there is to be absolutely no prejudice to you
16 because you did not testify. It is left entirely up
17 to you whether or not you testify. You may talk
18 with your lawyers, Mr. Collins and Ms. Davis, your
19 family and friends or anyone else that you would
20 like to talk to, but the final decision will be left
21 entirely up to you. Do you understand what I've
22 explained to you?

23 **MR. SMITH:** Yes, Your Honor.

24 **THE COURT:** Do you have any questions about
25 what I've explained to you?

1 **MR. SMITH:** No, Your Honor.

2 **THE COURT:** Have you discussed with your

3 lawyers whether or not you should testify?

4 **MR. SMITH:** Yes, Your Honor.

5 **THE COURT:** Do you wish to talk with them

6 some more on this issue?

7 **MR. SMITH:** Yes, Your Honor.

8 **THE COURT:** All right. Very well. Thank you

9 very much. Any other matters that would prevent us

10 from proceeding with the defense in the morning?

11 **MR. COLLINS:** No, Your Honor.

12 **THE COURT:** All right. We'll reconvene at

13 9:30.

14 (WHEREUPON, the Court recesses at approximately

15 5:17 p.m.)

16

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 24th day of July, 2013 at approximately 9:46 a.m.)

THE COURT: All right. We ready for the jury?

MS. BODMAN: Your Honor, if I could hand up the State's requested charge. We gave a copy to the defendant.

THE COURT: All right.

MS. BODMAN: I do have a matter to address in regards to what appears to be a third party guilt defense. So far, we had a question thrown out to a witness of do you know Jason, I guess, which is the brother, to have a drug problem. I noticed that Jason is not on the witness list. Any type of questions in that manner are improper. Number one, it is 404(b), just bad character evidence. They are trying to show just because somebody has a drug problem that potentially they also had a child porn problem. Impeachment is only to a testifying witness and those have very specific rules in terms of convictions of crimes and under 607, 608, and 609, you can't just thrown out specific acts.

THE COURT: Is there any reason why none of

1 this was objected to yesterday?

2 **MS. BODMAN:** Uh, well, it was a single
3 question. Once it's out there to the jury, uh, you
4 know, there's not too much that I can do about the
5 question. What I'm trying to prevent is any
6 further --

7 **THE COURT:** That's the purpose of objection.
8 If somebody asks an improper question, the trial
9 process is you object. Then, it won't be out there
10 to the jury. It was talked about it all day
11 yesterday. Now you want to talk about it this
12 morning.

13 **MS. BODMAN:** Well, it wasn't talked about
14 all day yesterday. It was talked about to, uh, one
15 of the lay witnesses, do you know Jason to have a
16 drug problem. Then the questions to the law
17 enforcement officer were, you know, did you talk to
18 this person. You know, do you know him to have a
19 porn problem. That, to a law enforcement,
20 maybe/maybe not. But Jason is not on the witness
21 list. One of the purposes too of motions in limine
22 is to prevent, uh, improper questioning to come out
23 and taint the jury.

24 **THE COURT:** What do you want now?

25 **MS. BODMAN:** A motion in limine that no

1 further 404(b) or improper character evidence be
2 asked. If someone has personal knowledge as to
3 seeing this person on the computer, uh, you know,
4 hours, that sort of thing. But as to any drug
5 problem, uh, it should not be at all mentioned and
6 limined out.

7 **THE COURT:** All right.

8 **MS. DAVIS:** Your Honor, first of all, that
9 was my initial response that that was not objected
10 to yesterday. It's already been before the jury.
11 They've already heard the information. At no time
12 did they make any objections to it. In addition,
13 there was no testimony, uh, yesterday in the record
14 saying that because he had a drug problem or some
15 other pornography problem, in terms of our
16 witnesses that we put up today, I would just ask
17 that anything elicited be ruled as. Your Honor has
18 ruled earlier, that you have to hear the testimony
19 to see if it becomes or is admissible before you
20 can made a decision on if it's relevant to this
21 case.

22 **THE COURT:** I would deny the motion in
23 limine. I will rule based on the testimony and
24 objections. Bring the jury.

25 **(WHEREUPON,** the jury enters at approximately

1 9:51 a.m.)

2 **THE BAILIFF:** The jury is all present,
3 Judge, Your Honor.

4 **THE COURT:** Okay. Thank you. Good morning.
5 Madam Forelady, how is the jury doing?

6 **THE JUROR:** They are doing well this
7 morning.

8 **THE COURT:** Very good. Very good. Well,
9 we're on day number three of this matter. You've
10 heard the State's case. It's now the defense's
11 turn. You may proceed.

12 **MS. DAVIS:** Thank you, Your Honor. May it
13 please the Court..

14 **THE COURT:** Yes.

15 **MS. DAVIS:** You heard from the State in their
16 opening argument that Alan Smith was a man with
17 everything to hide, that he had a secret, a deep
18 dark secret that he kept hidden from everyone and
19 that he had a double life that he kept hidden from
20 everyone. This is a man that you will hear testify
21 today.

22 You will hear him say and confirm that his
23 computer had no password on it. His computer was
24 kept logged in most of the time and that he shared
25 his computer with many people. You will hear that

1 multiple people lived with him throughout the years.
2 He would let friends, coworkers, family stay with
3 him on regular occasions. As his computer was
4 logged in, he would not -- he could not always
5 monitor or know who had been on his computer. Are
6 these the actions of a man who knows that he has
7 child pornography on his computer? Does a man with
8 these images and these videos tell a coworker go
9 look at my computer, you can use it, you can use it
10 while I'm at work? Have at it. Are those the
11 actions of a man who knows that he has this material
12 on his computer?

13 We ask you to use logic, reason and common
14 sense in deciding this case. The State's theory is
15 of shock and awe that you will hear these titles and
16 you will hear about these images and you will make a
17 decision based on emotion. That's an easy thing to
18 do in this case. The images are horrible. The
19 videos are horrible. Do not let that make the
20 decision for you. Basing a decision on emotion has
21 no place in a court of law, has no place in making a
22 decision in the criminal justice system. What does
23 matter are facts and evidence.

24 You will hear not one single witness, not one
25 witness that ever saw Alan Smith download child

1 pornography, that ever saw Alan Smith watch child
2 pornography or ever heard him mention, confide in,
3 let that secret out that that was something he did.
4 And you will hear again, multiple people live with
5 him. Multiple people use his computer. No password.
6 Logged in almost all the time. Common sense. What
7 does that mean? If people are coming to your house,
8 they have access to your computer. Is that the
9 action of a man who knows he has this deep dark
10 secret?

11 The State also alleged or stated that these
12 computers were his treasures.. They implied that he
13 coveted them away and kept them secret, hidden
14 because of all this deep dark secret that was on
15 there, this child pornography. You will hear today
16 how one of those computers was not even in the
17 possession of Alan Smith. For years, he didn't even
18 have it. Does that make sense? Does it make sense
19 that someone would keep his treasure somewhere else
20 where other people can access it, where other people
21 use it? You will hear from his family about where
22 that computer was kept. You will hear from Alan
23 where that computer had been kept.

24 This decision has to be made on logic, reason
25 and common sense. Not based on emotion, not based

1 on that gut reaction, which I'm sure every one of
2 you had when you heard these titles, when you saw
3 these images. That is not what we are here to
4 decide today. No one in this courtroom is telling
5 you or asking you to decide that this was not child
6 pornography. And no one here is asking you to decide
7 how bad is child pornography. We can all agree on
8 that. It's universally condemned. It's illegal for
9 a reason. No one is asking you here to make a
10 decision that it is not.

11 What you are here to decide is whether Alan
12 Smith knew that material was on his computer. You
13 will not hear one piece of evidence to support that
14 that was true. Did he know it? Look at his actions.
15 Actions speak louder than words. Think about what
16 he did. Computer, no password. Kept logged in.
17 Other people can access it.

18 Think about when the police actually came to
19 his house. He will tell you and you've heard, he
20 opened the door. He let them in. They told him
21 what they were looking for and he consented. He
22 didn't have to, but he consented to let them search
23 his computers. And then after that, he still went
24 down to headquarters. He spoke with them. He
25 answered all of their questions. Are those the

1 actions of a man who was trying to hide something?
2 Are those the actions of a man who knew what was
3 going to be found on that computer?

4 Even still, five months later, when they decide
5 to serve arrest warrants, he goes down and meets
6 them at the jail. He turns himself in. Are those
7 the actions of a man who had this deep dark secret,
8 who consents to everything they ask, turns himself
9 in?

10 Please use common sense, reason and logic in
11 making this decision. Do not base it on emotion.
12 That's not what we're here to decide today. We are
13 not here to decide child pornography. We are here
14 to decide if the State answered the only question
15 that matters: Did Alan Smith know this was on his
16 computer? You will find that they have not answered
17 that question.

18 The table, this table here represents the
19 government. They have a lot of power. We know they
20 have used that power in the sense they went into his
21 apartment, they took his belongings, they charged
22 him. They have exercised their power. What they
23 also have is a host of resources at their fingertips
24 to supply you with evidence that you would need in
25 order to make this decision and in order to actually

1 convict someone. They have the ability to do that.

2 They have experts. They have investigators.

3 They have software. They have SLED. They can do

4 all of those things to give you what you would need

5 to make this decision. They chose not to use all

6 their resources. They chose to make an assumption

7 that this was a computer found in Alan's house, so

8 he must know about it. Assumptions have no place in

9 a criminal justice system as well. That is not what

10 we base decisions on when deciding someone's fate in

11 a criminal court.

12 Now, each one of you took an oath yesterday

13 morning. That oath was that you would deliver a

14 verdict, a true verdict based on the law and based

15 on the evidence, not based on emotion, not based on

16 judgement, but based on law and the evidence that

17 you are provided in this case. After hearing all of

18 the case and hearing from our witnesses today and

19 upholding the law in that regard, and to do so, that

20 means each one of you have to believe that Alan

21 Smith is innocent. That innocence remains with him

22 unless factual evidence is presented that is so

23 ironclad and utterly believable that it erases any

24 and all reasonable doubt from your mind from each

25 one of you. In a case where you will hear no

1 evidence that Alan Smith knew what was on that
2 computer, we ask you to uphold the law, base your
3 decision on the law and the evidence and find Alan
4 Smith not guilty.

5 **THE COURT:** First witness?

6 **MR. COLLINS:** Thank you, Your Honor. The
7 defense calls Justin Smith.

8 **JUSTIN SMITH**

9 having first being duly sworn, testifies as follows:

10 **THE CLERK:** Please have a seat. State your
11 full name for the record.

12 **DIRECT EXAMINATION**

13 **BY MR. COLLINS:**

14 **Q** Say your name for the record, Justin.

15 **A** Uh, my name is Justin Smith.

16 **Q** Make sure to speak up so the Court Reporter can
17 hear you.

18 **A** Okay.

19 **Q** Justin, how do you know Alan?

20 **A** Alan is my brother.

21 **Q** Are you his older brother, younger brother?

22 **A** I'm his youngest brother.

23 **Q** Youngest brother. How ---

24 **A** Yes.

25 **Q** --- old are you?

1 A Yes.

2 Q How old are you?

3 A 30.

4 Q 30? How far did you go in school, Justin?

5 A To the 12th grade.

6 Q All right. What do you do for a living?

7 A I service and install HVAC units.

8 Q Okay. Are you a little nervous here today?

9 A Yeah. Yeah. Totally.

10 Q Okay.

11 A I don't even want to be here.

12 Q All right. Uh, how many other brothers and

13 sisters do you have?

14 A I have three other brothers, one sister. One

15 of my brothers is deceased.

16 Q One of your brothers is named Jason?

17 A Yes, that's correct.

18 Q How old is Jason?

19 A I believe he's 36, 37. I'm not sure exactly.

20 Q Do you stay in a bunch of contact with your

21 family anymore?

22 A Uh, no.

23 Q I want to take you back, now, to about 2004.

24 Where were you living in 2004?

25 A Uh, still at home with my dad.

1 Q Who else was living there with you?

2 A Jason, Alan, of course, my brother's
3 girlfriend, Jason and then my niece and nephew.

4 Q All right. Was there a computer in that house?

5 A Yes.

6 Q Do you remember what type of computer?

7 A Uh, I know it was a desktop.

8 Q Okay. Did everybody in the house have access
9 to that computer?

10 A Yes.

11 Q All right. Now, did you ever see anybody on
12 that computer looking at child pornography?

13 A Yes.

14 Q Who did you see looking at --

15 A I seen Jason.

16 Q All right. Can you explain to the jury a
17 little bit about how you saw that.

18 A It was one day that I had walked into the room
19 and see him. He was looking at, it looked like some type
20 of Asian porn, child porn. Not to be vague. It looked
21 like some orgy or something, of course. I just walked
22 out the room after I seen it.

23 Q From your glance, could you tell it was child
24 pornography?

25 A I mean, it looked pretty close to me. I mean,

1 you know, the children in it looked young.

2 Q Bad enough for you to turn away?

3 A Yeah. Yeah. I mean, I definitely was appalled
4 at it.

5 Q Are you nervous of being here because you're
6 scared about what could happen to Jason now?

7 A Well, yeah. Yeah. Of course. I don't want to
8 be pitted against -- you know, one brother against
9 another.

10 Q Okay. Are you here just to tell the jury what
11 you saw?

12 A Yes. Yes.

13 Q How long had you lived at that house?

14 A Basically my whole life up until I was 20.
15 Then I moved out.

16 Q So about 2005?

17 A Yes. Or at the end of 2004.

18 Q Okay. Is that kind of when you lost touch with
19 some of your family?

20 A Yes, yes.

21 Q Now, with that computer at that house, did you
22 ever see Alan looking at child pornography?

23 A No.

24 Q Thank you for coming, Justin.

25 A Thank you.

1 Q Answer any questions they have. .

2 A Okay.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MS. ALL:

6 Q Hey, Mr. Smith.

7 A How you doing?

8 Q Uh, so it was only this single time back in
9 2004, ---

10 A Yes, ma'am.

11 Q --- right?

12 A That's correct.

13 Q Just the one time that you saw Jason?

14 A Yes.

15 Q Okay. And ever at -- did you ever go to the
16 Biltmore apartments on Beltline where Alex Smith lived?

17 A Yes.

18 Q Okay. So you never saw it happen over there?

19 A No.

20 Q Never saw Jason looking at porn on that one?

21 A No. Huh-uh. But I'd only went by there a
22 couple of times.

23 Q Okay. Did you ever go by there when your
24 brother got a second computer?

25 A Uh, no.

1 Q Okay.

2 A I don't remember what he had in there.

3 Q Okay. And you're not -- you're not even sure
4 if the same computers that are at issue in the courtroom
5 here today is the same computer that you saw back in 2004
6 at your dad's house?

7 A No, I can't be certain on that.

8 Q Okay. One second.

9 A That's fine.

10 Q No further questions. Thank you very much.

11 A Thank you.

12 MR. COLLINS: One more question.

13 REDIRECT EXAMINATION

14 BY MR. COLLINS:

15 Q How many computers were at your dad's house
16 when you were there?

17 A Uh, one.

18 Q Thank you.

19 THE COURT: You may step down, sir.

20 Yes, sir.

21 MR. COLLINS: The defense calls Kim Lomax.

22 KIMBERLY LOMAX

23 having first being duly sworn, testifies as follows:

24 THE CLERK: Please have a seat. State your
25 full name for the record.

1 **THE WITNESS:** My name is Kimberly K. Lomax.

2 **DIRECT EXAMINATION**

3 **BY MR. COLLINS:**

4 **Q** Good morning, Kim.

5 **A** Good morning.

6 **Q** Kimberly, I'm just going to get right to the
7 point. How do you know Alan Smith?

8 **A** Uh, I worked with him at Applebee's. I had met
9 him before. I worked as a server at Max on Main. He was
10 a frequent patron there. He recruited me to come work
11 for Applebee's.

12 **Q** What was your position at Applebee's?

13 **A** I started out as a server and a bartender and
14 quickly moved up to a key hourly manager. Shortly
15 thereafter, I became an associate manager.

16 **Q** About what time frame?

17 **A** I started there in June of 2009. By July of
18 2009, I had become a key hourly manager. And within six
19 months, I became an associate manager.

20 **Q** I'm going to back you up a little bit to
21 2006/2007. Did you get into a little bit of trouble?

22 **A** I did. I did. I pled guilty to making,
23 uttering and possessing a forged document in federal
24 court. I was sentenced, uh, to 24 months in a federal
25 prison camp.

1 Q Okay. What was that forged document?

2 A I worked for a masonry company. I had a
3 gambling problem at the time. I was basically embezzling
4 money from them. But it was a lesser charge that I pled
5 guilty to.

6 Q Okay. Now, I'm going to take you back to your
7 work at Applebee's with Alan.

8 A Okay.

9 Q How would you keep track of the schedules at
10 Applebee's?

11 A Well, they had this long spreadsheet when I
12 first started working there, when I became a key hourly
13 manager, it was really difficult to read. So I would
14 take a picture of the schedule on my phone. I also did
15 the front of the house server, hostess and Carside To Go
16 schedule. I used the same template, which was a much
17 simpler format and would just input the manager's
18 schedule in that template because it was much easier to
19 read.

20 A few months later, they switched to a
21 different operating system. So it was a lot easier to
22 read. And I had access from the internet from home at
23 that point. But for the first, probably five or six
24 months, it was on the long spreadsheet. So I would just
25 make a copy of it and put it on a different template so I

1 knew what hours I was working and which managers I would
2 be working with.

3 Q And did you store those records, those
4 schedules?

5 A I made copies and I put in a file along with
6 the server schedules just in case if I ever needed them.

7 Q And have you had that in your possession until
8 around the time of this trial?

9 A Yes, sir. I did. I had it in a filing cabinet
10 at my house.

11 Q Can you explain a little bit about the
12 ownership of the Applebee's corporation?

13 A Yes, sir. When I first started working there,
14 Apple Jay was the owner of the Applebee's that I was
15 working at. They had, I believe, 23 stores in the area
16 that they owned. And I believe it was in 2012, I believe
17 it was April of 2012, a different company, Apple Gold
18 took over the franchise ownership of that particular
19 location.

20 Q All right. And the old organization, did it
21 just close down?

22 A It did. The owner of that corporation, I
23 believe he had cancer. So he sold his franchise to Apple
24 Gold. So they are no longer in creation.

25 MR. COLLINS: Your Honor, if I may approach.

1 **(WHEREUPON, Defendant's Exhibit 4 is marked for**
2 **identification purposes.)**

3 **BY MR. COLLINS:**

4 **Q** All right. Let me show you what's marked as
5 defense exhibit. Do you recognize that document?

6 **A** Yes, sir. These are the template that I use to
7 input the schedules at home.

8 **Q** And what manager is on those schedules?

9 **A** Uh, it's Daniel, April, Alan and myself. And
10 then later on, there was another manager added. Charles
11 became our new kitchen manager.

12 **Q** And that Alan -- is that Alan Smith?

13 **A** That is correct. Yes, sir.

14 **Q** Uh, now, it's only for a certain number of
15 months. Can you explain why it's only for a certain
16 number of months?

17 **A** Yes, sir. When I first started, they were
18 using a different computer system. When they would print
19 the schedule, it was on a long spreadsheet. There were
20 different blocks. It was really hard and confusing to
21 just look at a glance when I was working and who I was
22 working with. So that's when I simplified it on my own
23 template. Then several months later, they switched to a
24 different program, which I had access from the internet
25 from my house so I could pull up the schedule from home

1 any time I needed to. So I didn't need to have the hard
2 copies.

3 Q Are those the actual files that you pulled?

4 A They are, yes, sir.

5 MR. COLLINS: At this time, Your Honor, the
6 defense would submit Defendant's Exhibit 4 into
7 evidence.

8 THE COURT: Any objection?

9 (WHEREUPON, there is a pause.)

10 MS. ALL: No objection.

11 THE COURT: Admitted without objection.

12 (WHEREUPON, Defendant's Exhibit 4 is admitted into
13 the record.)

14 BY MR. COLLINS:

15 Q Now, Kim, uh, have you been involved with the
16 defense in this case throughout the process?

17 A No, sir. It was actually a mutual friend of
18 mine that contacted me three or four weeks ago and said
19 that Alan was trying to get in touch with me. I have a
20 new cell phone number since I quit working with
21 Applebee's. She asked if it was okay if he contacted me
22 concerning getting copies of the schedule to see if I
23 still had any.

24 Q Did you have any idea of the dates and times
25 that any of these images or videos were downloaded or

1 accessed?

2 A Absolutely not. No, sir.

3 Q Beg the Court's indulgence. (Pause.)

4 Please answer any questions the prosecutors
5 ask.

6 A Yes, sir.

7 **CROSS-EXAMINATION**

8 **BY MS. ALL:**

9 Q Uh, so these records that you kept, they are
10 not business records of Applebee's, it's just how you
11 personally preferred to store the information?

12 A That is correct.

13 Q And keep organized for yourself?

14 A Yes, ma'am.

15 Q And these times don't actually reflect the time
16 that he actually would have shown up to work, correct?

17 A Uh, it showed the time that he actually showed
18 up, but it didn't have end times on it because even
19 though it may have said a certain time on the schedule,
20 it always varied as far as what time we actually got off
21 as managers.

22 Q Okay. I realize there are times on here.
23 Those are the times that he was scheduled to work,
24 correct?

25 A To arrive at work.

1 Q So it doesn't reflect if on a particular day,
2 uh, he had to stop at the gas station to fill up with gas
3 and he was running 10 minutes late?

4 A No, ma'am. That was just the schedule that was
5 made ahead of time. I had no reason to document anything
6 like that.

7 Q I'm just showing the purpose of these versus
8 actual records that Applebee's kept. Did he have to
9 clock in?

10 A No, ma'am. We did not. As managers, we did
11 not clock in. We just followed the schedule. We were
12 expected to be at work no later than 10 minutes before
13 our scheduled shift.

14 Q Was there any kind of, uh, sign in or sign out
15 procedures documenting the hours that you worked?

16 A No, ma'am. There was not.

17 Q So I guess you were treated, as instead of an
18 hourly employee, as salaried employee with trust to come
19 when you are supposed to and leave when you are supposed
20 to.

21 A That's correct, yes, ma'am.

22 Q Also these records don't reflect what time he
23 left after his shift was over, correct?

24 A Correct.

25 Q And that would vary sometimes, right, depending

1 on how crowded or how -- if business was slow, you could
2 leave a little early.

3 A Correct, yes, ma'am.

4 Q If it was a really packed day, a manager may
5 have to stay a little bit later.

6 A And that was generally the case, but yes,
7 ma'am, that is correct.

8 Q Okay. So these records, again, don't show what
9 time Alan Smith left work any particular day?

10 A No, ma'am. On the record schedule, they had to
11 schedule us between 45 and 50. All the associate
12 managers and general managers had to be scheduled between
13 45 and 50 hours. They had to let the schedule correlate
14 with those hours. Again, more times than not, it was a
15 lot more hours than just the 45 to 50 hours per week that
16 associate managers worked.

17 Q And these records cover 20 weeks, so
18 approximately five months?

19 A Yes, ma'am.

20 Q Okay. The first date is July 24th, 2009.

21 A That is when I first started then.

22 Q The last date is December 10th, 2009?

23 A That is correct, yes, ma'am.

24 Q Do you have a copy of those in front of you?

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

1 Q Specifically, could you look at July 27th?

2 A Yes, ma'am.

3 Q Uh, he was off that day?

4 A Yes, sir.

5 Q August 4th -- excuse me. August 1st, what time
6 was he scheduled?

7 A Uh, he came in at 4 p.m.

8 Q Okay. So any time we see a 4, that's going to
9 be p.m.?

10 A Correct. And that's always a closing shift.
11 Any time you come in at 4:00, you were there until close.

12 Q Okay. Again, I guess it varies but kind of
13 give us an idea.

14 A Back then, uh, let's see, I believe it was
15 Sunday nights we close at 11:00. Monday through
16 Thursday, we closed at midnight. And then Friday and
17 Saturday, we closed at 1 a.m. They have since extended
18 the hours. But I believe those were the closing hours
19 back in 2009.

20 Q Okay. But as a manager, you could potentially
21 leave early if it's not packed?

22 A If it was a midshift. If you were the closer,
23 you had to be there until everyone left. You had to do
24 the closing paperwork. So you were there 45 minutes to
25 an hour after everyone else left. So if it was 1 a.m.

1 that you closed, you get out of there 1:45 to two o'clock
2 in the morning.

3 Q Okay.

4 A Like the midshift of the opening shift, there
5 was a little -- there could be a little bit of variation
6 depending on the volume of business.

7 Q Okay. August the 8th, he worked at 4 p.m.?

8 A Correct, yes, ma'am.

9 Q August the 11th, that's at 10. Is that 10
10 a.m.?

11 A That is 10 a.m., yes, ma'am.

12 Q Okay. So any time we see a 10, that's going to
13 be an a.m.?

14 A Uh-huh.

15 Q August 12th is a 10 a.m.?

16 A Correct, yes, ma'am.

17 Q August 14th, he was on vacation, correct?

18 A Correct. Yes, ma'am.

19 Q Actually August 13th, he was on vacation?

20 A It was his day off, but yes, ma'am, we tried to
21 lump our days off with our vacation to kind of stretch
22 our vacation days.

23 Q And then August 15th and August 16th, one was a
24 vacation day and one he was off?

25 A Correct. Yes, ma'am.

1 Q August 25th, he was scheduled to work at 4
2 p.m.?
3 A Yes, ma'am. That's correct.
4 Q September 5th, he was scheduled to work at 4
5 p.m.?
6 A Yes, ma'am. That's correct.
7 Q September 7th, he was off?
8 A Correct, yes, ma'am.
9 Q September 15th, he worked at 4 p.m.?
10 A Yes, sir. Correct.
11 Q September 16th, 4 p.m.?
12 A Correct.
13 Q October 18th, he worked at 10 a.m.?
14 A Correct. Yes, ma'am.
15 Q August 21st at 4 p.m.?
16 A October 21st?
17 Q Yeah.
18 A Yes, ma'am. 4 p.m.
19 Q And October 24th?
20 A 4 p.m.
21 Q November 2nd, he was off?
22 A That is correct.
23 Q And November 3rd, 10 a.m.?
24 A Correct. Yes, ma'am.
25 Q Okay. And this also, uh, just as it doesn't

1 show what time he left -- actually what time he actually
2 showed up, it doesn't show what time he left at the end
3 of the day. It also doesn't reflect that there were any
4 days he may have called in sick?

5 A Correct.

6 Q Okay. Uh, now, he was kind of a, uh, maybe a
7 trouble shooter. Did he go to different stores and kind
8 of help out as the manager?

9 A Occasionally, he would do that. But he was
10 pretty much the cornerstone at the O'neil Court
11 Applebee's, which is where we both worked at.

12 Q Okay. And as a big corporation like
13 Applebee's, did you all some times have either -- how
14 many Applebee's are in Columbia?

15 A In Columbia? I want to say seven or eight.
16 There's quite a few in the Columbia area.

17 Q Okay. What about South Carolina?

18 A I believe it was -- I want to say 23 or 24
19 stores in South Carolina.

20 Q Okay. And then, does that the corporation or
21 did the corporation have you all broken down into regions
22 of the country?

23 A We did and that's where the different -- they
24 were franchised. That's where all the ones in South
25 Carolina fell under the Apple Jay franchise. They owned

1 all of those, Apple Gold, the company that took over that
2 maintained mostly in North Carolina. When they acquired
3 Apple Jay, they acquired all the stores in South Carolina
4 as well.

5 Q Okay.

6 A And I believe there may have been one or two
7 stores in Georgia.

8 Q And at times then, did the corporation have
9 meetings with multiple stores together where managers
10 from multiple stores would get together and meet about
11 certain procedures, changes in the menu, et cetera?

12 A Yes, ma'am. Uh, generally when they did that,
13 it was at the corporate office in Greenville, South
14 Carolina.

15 Q Okay. So sort of like an all store meeting?

16 A We did all store meetings in our store with the
17 area director coming in, sometimes the president coming
18 in. Associate managers would meet generally about once a
19 year at the Greenville office just to discuss, you know,
20 the state of the business and, you know, just pertinent
21 information that they needed to get out to all the
22 associates at one time.

23 Q Okay. Thank you very much.

24 THE COURT: Okay. Redirect.

25 REDIRECT EXAMINATION

1 BY MR. COLLINS:

2 Q I may have missed it. How many hours a week
3 did you normally work?

4 A How many were we scheduled for or how many did
5 we actually work?

6 Q How many did you actually work?

7 A At least 60 hours. Probably closer to 75, 80
8 hours. Myself personally, I was like any other associate
9 manager there. We all put in a good bit of time.

10 Q Thank you.

11 MR. COLLINS: Your Honor, if we could have a
12 short break.

13 THE COURT: You have any questions, more
14 questions for this witness?

15 MS. ALL: No, sir.

16 THE COURT: All right. Thank you. You may
17 step down.

18 THE WITNESS: Yes, sir.

19 THE COURT: Ladies and Gentlemen, we'll take
20 a short recess. Please go to the jury room. Do not
21 discuss this case.

22 (WHEREUPON, the jury exits at approximately
23 10:25 a.m.)

24 THE COURT: We'll take about five minutes.

25 (WHEREUPON, a short recess is taken.)

1 **THE COURT:** All right. If you'll bring the
2 jury.

3 **THE BAILIFF:** Yes, sir.

4 **(WHEREUPON, the jury enters at approximately**
5 **10:37 a.m.)**

6 **THE BAILIFF:** Jury all present, Your Honor.

7 **THE COURT:** All right. Next witness please.

8 **MS. DAVIS:** We next call Janette Smith.

9 **JEANETTE SMITH**

10 having first being duly sworn, testifies as follows:

11 **THE CLERK:** Please have a seat. State your
12 full name for the record.

13 **THE WITNESS:** My name is Susan Janette
14 Smith.

15 **BY MS. DAVIS:**

16 **Q** You go by Jeanette?

17 **A** I do.

18 **Q** And can you tell the jury how you know Alan?

19 **A** Alan is my brother.

20 **Q** And do you have other siblings as well?

21 **A** I do. I have four brothers. One is deceased.

22 **Q** And what are their names?

23 **A** Jason, Jessie, Justin and Alan. I also have a
24 half-brother, Danny, who lives in Michigan.

25 **Q** And I want to talk to you a little bit about

1 the living arrangement among some of your brothers, okay?

2 A Okay.

3 Q Uh, did your father have a house here in
4 Columbia?

5 A He did.

6 Q And where did he live?

7 A He lived on Commonwealth Boulevard in Columbia.

8 Q And is that off Leesburg Road?

9 A It is.

10 Q And can you tell me kind of the time frame of
11 who lived there with him?

12 A Well, my brother, Justin, as he said earlier,
13 lived there until he moved out when he was about 20.
14 Then, my brother Jason, his wife, their children, uh, my
15 brother Alan and multiple other people lived in the home
16 on different occasions, anyone who needed a place to
17 stay, a lot of times, my father took in people that I
18 can't even remember everyone that stayed there.

19 Q At some point, you said Alan did stay there?

20 A He did.

21 Q At some point, did he move out on his own?

22 A He did.

23 Q Uh, did he -- when he left, did he leave any of
24 this personal belongings or any of his items at the
25 house?

1 **A** He left a lot of his items at the house.

2 **Q** And was one of those things a computer?

3 **A** It was.

4 **Q** You remember that computer being in the house?

5 **A** I do.

6 **Q** Can you tell the jury what you remember about
7 it looking like or what kind of computer it was?

8 **A** It was a desktop computer. It was in my
9 brother, Jessie, the one that is deceased, it was in his
10 room. It was an older, you know, older type monitor. It
11 was in that room along with some of Alan's belongings. I
12 went in there often because it had been my brother,
13 Jessie's room, the one who is deceased. He had some
14 artwork that was in there. I was in the room a good bit
15 to kind of connect to my other brother who is deceased
16 and saw Alan's stuff in the room.

17 **Q** Okay. And one of those things was the
18 computer?

19 **A** Yes.

20 **Q** And can you tell the jury what that computer
21 looked like or what kind of computer that was?

22 **A** It was a Compaq computer, uh, older monitor.

23 **Q** You remember what color it was?

24 **A** Off-white and black was the computer itself.

25 **Q** The tower was black?

1 A Right.

2 Q Do you know -- once Alan moved out of that
3 house, the computer stayed there?

4 A It did.

5 Q And at that point, did other people access that
6 computer?

7 A They did.

8 Q Do you know who some of the people were that
9 would have been able to use that computer?

10 A Uh, Jason, Lucy, who is my sister-in-law, any
11 of the kids, my father-- well, my father rarely went in
12 there. He wouldn't go in there. But, uh, any multiple
13 people that stayed there. The computer was in the room
14 accessible to anyone.

15 Q So you witnessed that computer was up and
16 running at that time?

17 A Yes.

18 Q That was after Alan had moved out?

19 A Yes.

20 Q When he had moved there, were there other times
21 during that period where Alan would leave your father's
22 house and lived elsewhere?

23 A There were a couple of times when he left.

24 Q When he left, he would still keep that computer
25 there?

1 **A** Yes.

2 **Q** Uh, at some point, did Alan move into the
3 Biltmore Apartments that you remember?

4 **A** Yes.

5 **Q** Do you remember when that was?

6 **A** It was, uh, I believe late 2008. It was right
7 before my father passed away.

8 **Q** And at some point, do you remember that Jason
9 also lived at the Biltmore Apartments?

10 **A** I do.

11 **Q** Uh, can you tell me about Jason in general, in
12 terms of did he ever live with Alan?

13 **A** He lived with Alan on several occasions in his
14 apartment when he was evicted from one place or another.
15 He and his wife or children lived in Alan's apartment.

16 **Q** And do you know Alan, I'm sorry, do you know
17 Jason to have been evicted several times?

18 **A** Jason was evicted probably five to six times at
19 the very least.

20 **Q** And did he ever live with you?

21 **A** He did.

22 **Q** Was there ever a time where you had an issue,
23 or not you, but where you became aware that your daughter
24 had an issue with her computer?

25 **A** I did.

1 Q And do you remember what happened with her
2 computer?

3 A There was a virus on her computer. I'm sorry.
4 Just a virus on the computer.

5 Q You don't know anything -- any details of that?

6 A No.

7 Q And did that ever happen before Jason lived
8 with her?

9 A No.

10 Q Did that ever happen after?

11 A No.

12 **MS. DAVIS:** Beg the Court's indulgence.

13 (Pause.)

14 Nothing further, Your Honor.

15 **MS. ALL:** Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MS. ALL:**

18 Q Good morning, Ms. Smith.

19 A Good morning.

20 Q Do you know when the defendant moved out of
21 your father's house?

22 A Uh, I believe he moved out in the end of '08,
23 right before my father passed away, which was December of
24 '08, that one time that he moved out. He moved out more
25 than one time.

1 Q When did he move out so as to leave the
2 computer available for everybody else to use?

3 A The last time was '08. But he also, uh, was
4 married. And when he was married, he moved in with his
5 wife. And the computer was left there then also. And
6 prior to his wife, he would stay at a girlfriend's house
7 more than he ever stayed at home. I don't know that he
8 had technically moved in with a girlfriend, but he was
9 gone most of the time.

10 Q Where did the computer stay?

11 A In what became Alan's room, but had been my
12 brother Jessie's room.

13 Q Okay. And when did it get to your dad's house?
14 When did the computer arrive to your father's house?

15 A I'm not sure. It was there for a while.

16 Q Did the defendant purchase it and bring it to
17 your father's house?

18 A I'm assuming he did.

19 Q How many computers were in your father's house?

20 A One that I know of.

21 Q So you had one computer in your father's house
22 and you don't know where it came from?

23 A I know that it was Alan's computer.

24 Q Okay.

25 A And I would assume he purchased it.

1 Q Okay. I'm going to show you what's been marked.
2 State's Exhibit 42 and 41. You said the computer was
3 white, is that right?

4 A The monitor.

5 Q Do you remember what the desktop looked like?

6 A You mean the --

7 Q The tower. Do you remember what the tower
8 looked like?

9 A I just remember that -- I couldn't tell you if
10 either one of those was it.

11 Q You can't tell us if it was either one of these
12 monitors?

13 A I can't. I just know that it looked something
14 like that. I can't tell you for sure. I don't know.
15 They look similar to me.

16 Q So these two monitors looked the same?

17 A They looked similar. It's been quite a few
18 years. So I couldn't tell you.

19 Q They also look like the tower that was at your
20 dad's house?

21 A Yes.

22 Q You said that your brother Jason had been
23 evicted five to six times. Is that correct?

24 A I believe so. That's a rough estimate.

25 Q Were those actual legal proceedings?

1 **A** Yes.

2 **Q** Are you aware that there are no records of an
3 eviction?

4 **A** He might have had the eviction in his now
5 wife's name because they lived together and they have
6 children together. So a lot of times, things would be in
7 her name or his name. But he was living there. They
8 were legal evictions.

9 **Q** How long were the stints when he would live
10 with the defendant?

11 **A** You mean when he lived with them at the
12 Biltmore? Months, months, several times.

13 **Q** What was the longest time he stayed with the
14 defendant?

15 **A** I want to say about four to six months.

16 **Q** And when was that?

17 **A** I believe that was 2009 and maybe even 2010.
18 I'm not sure.

19 **Q** So late 2009 into 2010?

20 **A** I'm not sure when in 2009. He stayed with Alan
21 on more than one occasion. He stayed with Alan one time
22 when he left my house and moved in. Then he got his own
23 apartment and then he was evicted from that apartment.
24 Then he stayed with Alan again. I couldn't tell you the
25 exact dates because he stayed with Alan so many times

1 that I don't recall exactly what the dates were.

2 **MS. ALL:** Beg the Court's indulgence. No
3 further questions, Your Honor.

4 **MS. DAVIS:** Nothing further, Your Honor.

5 **THE COURT:** You may step down.

6 Next witness.

7 **MR. COLLINS:** The defense calls Alan Smith.

8 **ALAN SMITH**

9 having first being duly sworn, testifies as follows:

10 **THE CLERK:** Please have a seat and state your
11 full name for the record.

12 **THE WITNESS:** Alan Dale Smith.

13 **DIRECT EXAMINATION**

14 **BY MR. COLLINS:**

15 **Q** Alan, you a little nervous today?

16 **A** Uh, yes, sir.

17 **Q** This the first time you've ever had to testify
18 in a courtroom?

19 **A** Yes, sir.

20 **Q** What I want to ask you, first of all, let's
21 just start with you saw Justin in the courtroom today,
22 right?

23 **A** Yes, I did.

24 **Q** Before today, when was the last time you saw
25 Justin?

1 **A** It's been about four or five years.

2 **Q** Now, Alan, I just want to ask you a little bit
3 of background information. Where all did you grow up?
4 Well, I grew up as a military brat. I lived in Germany
5 during the 60s to the early 70s. Then we moved to
6 Colorado. Moved back from there and moved to South
7 Carolina. Moved to Frankfurt, Germany where I went to
8 Junior High and High. I came back to South Carolina. I
9 lived in Greer in my mother's house because I had been
10 away in Frankfurt for so long. My parents were in
11 different locations. Then I moved to Columbia, South
12 Carolina. Then from Columbia back to Greer. Then I
13 joined the military.

14 **Q** Okay. When did you join the military?

15 **A** '83.

16 **Q** How long were you in the military?

17 **A** Seven years.

18 **Q** What branch were you in?

19 **A** U.S. Army.

20 **Q** When you finished with your military service,
21 what did you do after that?

22 **A** I went back to Germany for a little while and
23 got into the military club system, restaurants by the NOC
24 club, officer's club. Back overseas, all ranks can go.
25 Mechanics and faculty have an officer's club, NOC club.

1 They just have community clubs. I worked over there. I
2 kind of got into the restaurant business, the food, food
3 and beverage industry.

4 Q Okay. I want to jump around a little bit. I'm
5 going to take you to the written statement you gave
6 Lieutenant Hinson. You heard some testimony about a site
7 you went to. Was it Show No Mercy?

8 A Show No Mercy.

9 Q Can you explain what that site is?

10 A It's a site that shows, like, war images,
11 images of current war, different things that are going on
12 with like IEDs, explosions, the results of it. It also
13 shows like car wrecks.

14 Q Why would you be looking at that site?

15 A Just general interest. I was with the second
16 cab and I -- you know, I still know people that are
17 there. I'm a member of the Second Cab Association. I
18 have an association with them.

19 Q Is that the site you were telling the
20 lieutenant about where you saw pop ups for child porn?

21 A Yes.

22 Q All right. Please describe exactly what you
23 saw on those sites and how you dealt with it.

24 A It was, like, -- I would look at the thing. It
25 would have these little applets that would pop up.

1 First, it would be like one. Then you click -- X off of
2 it, then all of a sudden, a bunch of them would just
3 start going across. The same thing. It was just like
4 overlapping each other like a deck of cards fanned out.

5 Q Is that the only time you saw child porn on
6 your computer?

7 A Yes.

8 Q Now, I want to take you -- let's go back to
9 what you're talking about, the military service and your
10 experience with restaurants. When you basically got out
11 of a service, where did you move back to?

12 A Uh, South Carolina.

13 Q All right. What did you do careerwise at that
14 point?

15 A Uh, I -- briefly, I was a manager for a
16 convenience store a few months. Then I got back into the
17 restaurant business and was a manager for the restaurant
18 business.

19 Q You have a college degree?

20 A Yes, I do.

21 Q All right. Did you ever get involved with a
22 chain restaurant?

23 A Yes.

24 Q And what was that?

25 A Uh, the first one, I believe, was Church's

1 chicken.

2 Q Did that lead you to another job?

3 A It did. A recruiter for Pilot gas stations.

4 Q Uh-huh.

5 A Pilot Travel Centers. They called me. Offered
6 more money. Well, offered actually to come in for an
7 interview to check them out and offer me more money to
8 get into the Wendy's concept. So I went for the money.

9 Q I'm going to stop you just for a second. Just
10 kind of give the jury the timeframe we are talking about.
11 What were you doing around 2004?

12 A 2004, uh, actually, I briefly was in a business
13 called Corky's Ribs and BBQ out of Memphis. I started
14 out as a manager. Eventually, as things were going
15 along, I became a co-investor in the company, in the
16 business. I was investing my own money. Come to find
17 out a few months later, the owner or one of the other
18 owners that was doing the book work had two sets of books
19 and embezzled a lot of money. We were forced to close.

20 Q Where were you looking at that time?

21 A Uh, my father and also with my girlfriend.

22 Q All right. Who else was living at your
23 father's house?

24 A Justin was there. Jason was there. Jason's
25 kids, the twins, they were there. Lucy was there.

1 Several other people here and there would come to stay
2 for a little while.

3 Q There's been a lot of talk about these
4 computers. Did you buy that computer in 2004?

5 A Yes, I did.

6 Q Is that the computer that they brought in the
7 courtroom?

8 A Yes. I believe it was. I wasn't able to see
9 it from over there.

10 Q Okay. Does it look similar to the --

11 A It does.

12 Q Did you leave that computer at your dad's
13 house?

14 A I did.

15 Q From 2004 to 2009, did you ever take it out of
16 your dad's house?

17 A No.

18 Q Did you restrict the use of that computer?

19 A No.

20 Q So anybody that was in that house would have
21 had access to that computer?

22 A That's correct.

23 Q Do you know specifically certain people that
24 did use your computer?

25 A Yes.

1 Q Who would that be?

2 A I know Jason used it. I know Justin used it.

3 Q Now, you kind of explained to the jury a little
4 bit. We've heard that you moved out a couple of times
5 from your dad's house with your girlfriend, got married.
6 Could you just kind of run through a time line of where
7 you were living and when you moved back.

8 A Start in '04 with Corky's. In the summer of
9 '04, right into the summer of '04, I moved out of my
10 father's house and moved to Harden Street with my
11 girlfriend. She later became my wife.

12 Q How long did you live at the Harden Street
13 address?

14 A Probably close to the beginning of the year,
15 during the holiday season.

16 Q Beginning of 2005?

17 A 2005, that's correct.

18 Q Okay. And then did you move back to your
19 father's house?

20 A I did.

21 Q How long did you stay at your father's house
22 before you moved out again?

23 A Uh, I don't even remember. I had another
24 girlfriend I would stay with.

25 Q Okay. Other than staying with your girlfriend,

1 did you move anywhere else before you moved to the
2 Biltmore?

3 **A** No.

4 **Q** All right. When did you move into the Biltmore
5 Apartments?

6 **A** At the end of 2008, right around the time my
7 father was dying.

8 **Q** Okay. Was it the end of 2008 or summertime?

9 **A** Well, my father went in the hospital in the
10 beginning of October. I know I had the apartment before
11 then. You know, not long before then. So maybe
12 September.

13 **Q** Now, when you moved into that apartment, did
14 you have internet access?

15 **A** No, I didn't.

16 **Q** Why not?

17 **A** I couldn't afford it. Was trying to buy
18 furniture. My father's house had furniture. I didn't
19 move with any of that because it was his.

20 **Q** All right. When you originally moved to the
21 Biltmore Apartments, did you take that old computer with
22 you?

23 **A** No, I did not.

24 **Q** Is that because you didn't have internet
25 access?

1 A That's correct.

2 Q Was it still hooped up at your father's ---

3 A Yes, it was.

4 Q --- place? And after your father died, who was
5 living at your father's house?

6 A Uh, Jason did, Lucy, his wife, the kids and
7 they had several other roommates that would come to try
8 to help them with the bills.

9 Q And was the computer still there?

10 A Yes, it was.

11 Q Now, eventually, you went and got that
12 computer, right?

13 A That's correct.

14 Q You remember exactly when that was?

15 A Not exactly. I know it was late 2009.

16 Q When you got that computer, what state was it
17 in?

18 A It was trashed. I mean, debris, all kinds of
19 stuff on it.

20 Q Trash on the outside. Was there trash on the
21 inside too?

22 A Yes.

23 Q Have a lot of viruses?

24 A It did.

25 Q Is that why you got a new computer?

1 **A** That is correct.

2 **Q** The new computer that you had at the Biltmore
3 Apartments, uh, -- did Jason eventually move into the
4 Biltmore Apartments too?

5 **A** He did.

6 **Q** Where was his apartment?

7 **A** On the first floor.

8 **Q** Where was your apartment?

9 **A** On the sixth floor.

10 **Q** Did he have a computer in that first floor
11 apartment?

12 **A** No, he did not.

13 **Q** Did he have a key to your apartment?

14 **A** Yes, he did.

15 **Q** So he had free access to your apartment
16 whenever he wanted to go?

17 **A** Yes.

18 **Q** Do you know when or if every single time he
19 went to your apartment?

20 **A** No, cause I gave him the key. My father was
21 laying in the hospital. We were right around the corner.
22 He had no place to go. I was like here is a key.

23 **Q** You heard testimony about Jason being evicted
24 from several different places.

25 **A** Yes.

1 Q And you took him in several different times?

2 A Yes, sir.

3 Q Why would you take Jason in?

4 A I felt like after my father passed that that
5 was my responsibility to protect and to take care of him.

6 Q Is that one of your little brothers?

7 A Yes, it is.

8 Q Are you the oldest?

9 A I am.

10 Q You are the oldest?

11 A Well, the oldest of the boys.

12 Q Of the boys?

13 A Yes.

14 Q Uh, bear with me. Now, at the time you moved
15 to the Biltmore, where were you working?

16 A I was working for Applebee's.

17 Q Was that a pretty good job?

18 A It was.

19 Q About how many hours a week were you working
20 there?

21 A Like Kim stated, about 70 hours a week, 60 to
22 70 hours a week.

23 Q Now, you worked at the Broad River or O'Neill,
24 Court?

25 A When I first moved there, I was at the

1 Orangeburg store.

2 Q About when?

3 A I took over in the summer of '08 at the
4 Orangeburg store. I worked there until January.

5 Q Okay. Now, when you were working at the
6 Orangeburg Applebee's, you were living at the Biltmore
7 Apartments?

8 A I was.

9 Q So you had a lot of commuting to do.

10 A I did.

11 Q All right. So if you had to be at work at,
12 say, four o'clock, what time would you have to leave your
13 apartment at the Biltmore?

14 A Generally about 2:30.

15 Q Did you always drive back to Columbia after
16 shift?

17 A No.

18 Q Where would you stay?

19 A With kitchen manager. His name is Brett --
20 Brent.

21 Q Okay. You would do that just because it's a
22 long drive?

23 A Yeah, it's a long commute. A lot of times, we
24 would be in there inventorying or it would be real busy.
25 I would have stayed late for whatever reason. He would

1 just say, you know, stay at my house.

2 Q All right. Now, you heard Kim Lomax come and
3 testify. Did you tell her anything or any dates about
4 this case?

5 A No, I didn't.

6 Q Did you simply just ask her for her schedule?

7 A I did.

8 Q And how did you know she'd have a schedule?

9 A Well, it was just a luck thing. I know that
10 she had handled all the scheduling. And Kim, I know, is
11 a real, I don't know, meticulous person about keeping
12 records and stuff like that.

13 Q Okay. And, uh, the company that owned
14 Applebee's when you worked there, are they in business
15 anymore?

16 A No, they are not.

17 Q Is there anybody to contact that would be in
18 charge of that business?

19 A No.

20 Q Did you try to contact them?

21 A Yes.

22 Q Did you tell the Forest Acres Police Officers
23 where you worked?

24 A Yes, I did.

25 Q Did they ever try to get your work records?

1 **A** No, not to my knowledge.

2 **Q** Uh, these computers, would you consider
3 yourself a computer expert?

4 **A** Not at all.

5 **Q** What's the main reason that you would use your
6 computers?

7 **A** Mostly just to listen to music or
8 correspondence.

9 **Q** Now, you just heard a little testimony about
10 all store meeting.

11 **A** Yes.

12 **Q** There's a folder on your computer named All
13 Store Meeting. Do you know how that got there?

14 **A** It was, uh, a download sent by the area
15 director. Any time they would send out information, any
16 manager that had a private or a personal email address,
17 it would go to the store plus their personal email
18 address. We were salaried. So we're expected to always
19 be working. The email was sent to me and it had an
20 attachment and said All Store Meeting. I just downloaded
21 it when I was looking at my mail.

22 **Q** Was that a file folder that you would go to
23 often?

24 **A** Never.

25 **Q** Were you aware that there was another folder

1 inside of that folder ---

2 A No, I wasn't.

3 Q --- entitled My Stuff?

4 A No, I wasn't.

5 Q Have you ever seen what was in that folder?

6 A No, I haven't.

7 Q I'm going to take you back to March 2010, okay?

8 March 5th, you got a knock on the door and a search
9 warrant. Do you remember that day?

10 A Yes, I do.

11 Q What was going through your head when the
12 Forest Acres Police Department came to your door?

13 A I was in shock. I mean, shaking. I just
14 couldn't believe that -- I thought they were making a
15 mistake that something was wrong.

16 Q Did you tell them it was fine to look at your
17 computer?

18 A Yes, I did.

19 Q Why did you tell them it was okay to look at
20 your computer?

21 A I didn't think anything was on it.

22 Q All right. Now, when the officer asked you if
23 anybody else had access to your computer, did you think
24 he was talking about just your new computer?

25 A Yes.

1 Q Why didn't you tell us about Jason?

2 A He's had so much trouble. I just wanted to
3 protect him.

4 Q Now that you know a little bit more, do you
5 know more now than you knew that day when they --

6 A Oh, yeah, of course.

7 Q Now, have you had time to think about it?

8 A Yes.

9 Q Now, have you had time to go back through your
10 time line of where everybody was living?

11 A Yes, I have.

12 Q If you had a chance to talk to Lieutenant
13 Hinson again, would you tell him something different?

14 A Yes.

15 Q Did he ever ask you about where the old
16 computer was for the past six years?

17 A No.

18 Q Did you have any reason to know that anything
19 bad was on that computer?

20 A No.

21 Q Now, when you went and talked to the Forest
22 Acres and gave that statement, they took you back home,
23 right?

24 A Yes, they did.

25 Q They didn't arrest you for several more months,

1 right?

2 **A** That's correct.

3 **Q** Why didn't you leave?

4 **A** I mean, I know that -- I figured that an
5 investigation, I figured they were going to investigate
6 and I would be vindicated. I had no fear. I didn't do
7 anything wrong.

8 **Q** Has anybody done any kind of an investigation
9 other than your defense team since March 5th, 2010?

10 **A** Not to my knowledge.

11 **MR. COLLINS:** Beg the Court's indulgence.

12 **BY MR. COLLINS:**

13 **Q** Alan, did you keep your computer -- your newer
14 computer at the Biltmore, did you keep it password
15 protected?

16 **A** No.

17 **Q** Did you normally leave it on and logged in?

18 **A** Yes.

19 **Q** Did you let other people use your computer if
20 they asked?

21 **A** Sure.

22 **Q** Now, you heard testimony from Monica Walling
23 that she asked to use your computer one time. Can you
24 explain why you told her no?

25 **A** It wasn't working. There was a virus on it.

1 Q Is that when you had the older computer?

2 A That was the old computer.

3 Q Was that just for a short amount of time?

4 A Yes, sir.

5 Q All right. Did you give people keys to your
6 apartment other than your brother?

7 A Yes.

8 Q Who all did you give keys to?

9 A Uh, Casey, she had a key. The other roommate
10 that we talked about, Josh, he had a key. I gave a
11 couple of more people keys.

12 Q This just a one-bedroom apartment, right?

13 A Yes.

14 Q Why would you let people stay with you? It was
15 probably a little cramped right?

16 A It was. But, you know, I've seen people in
17 trouble and in need. I felt like I needed to help them
18 out.

19 Q Alan, did you ever see any downloaded child
20 pornography on that computer?

21 A No, I did not.

22 Q Would you have told the police had you known
23 about them?

24 A Yes.

25 Q Please answer any questions the prosecution

1 has.

2 **CROSS EXAMINATION**

3 **BY MR. POTTS:**

4 Q Good morning, Mr. Smith.

5 A Morning.

6 Q So when you lived at the Biltmore, that was
7 your apartment, right?

8 A That's correct.

9 Q Your name was on the lease?

10 A Correct.

11 Q Uh, it was a one bedroom?

12 A Correct.

13 Q Right? Living room, kitchen and one bath.

14 A And a bedroom.

15 Q Huh? Sir?

16 A And a bedroom.

17 Q And a bedroom.

18 A That's correct.

19 Q So it's a one bedroom with a living room,
20 kitchen and a bath?

21 A Correct.

22 Q Right. There was desk in there?

23 A No.

24 Q In fact, your computer was on the floor.

25 A That's correct.

1 Q And the monitor next to the bed.

2 A Right.

3 Q Right. And your bedroom was where your
4 computers were, your PCs?

5 A Correct.

6 Q That's where your ashtray was?

7 A That's correct.

8 Q Are you still a smoker?

9 A Yes, I am.

10 Q You know, that's a -- you would sit there and
11 have your smoke?

12 A Yes.

13 Q Now, you said you used that computer for
14 correspondence and for music?

15 A Yes.

16 Q But you also used it for pornography?

17 A Occasionally.

18 Q That's what you told --

19 A On the internet, yes.

20 Q Yeah. You told the investigators you used it
21 for pornography.

22 A Right.

23 Q While you said a minute ago it was
24 correspondence and music, also pornography?

25 A Right.

1 Q Uh, now, do you watch movies on it?

2 A Uh, DVDS.

3 Q Any kind of movies?

4 A No.

5 Q Didn't watch any kind of movies? Did you use
6 it for pictures?

7 A Uh, I mean, personal photos?

8 Q Yeah.

9 A Yes.

10 Q So you did use it for pictures?

11 A Well, correspondence when they were sent to me.
12 I didn't even have a digital camera. Somebody would send
13 me pictures and that's where I downloaded them to. I
14 don't have a picture phone or any of that. People send
15 pictures.

16 Q Right. But you save pictures on your hard
17 drive or your computer, right?

18 A That's correct.

19 Q Right?

20 A Correct.

21 Q Sometimes, they are personal pictures.

22 A Right.

23 Q You have your resume on there?

24 A Yes.

25 Q All sorts of different Word documents you

1 created, right?

2 **A** Yes.

3 **Q** Uh, you had Limewire on there?

4 **A** Yes.

5 **Q** Is that where you got your music?

6 **A** Some of it, yes.

7 **Q** So you downloaded off Limewire and you'd play
8 it yourself or whatever. I mean, is that where you got
9 the wedding music for Casey?

10 **A** Limewire, yes.

11 **Q** You got Limewire? Okay. Do you know what it
12 is?

13 **A** I mean, I don't know all the technical jargon.
14 I know that you can type in a search looking for music
15 and it will come up and it will show like different
16 people that have it and upload it to your computer. You
17 can look by genre of music. You know, like if you're
18 looking for jazz, you can type in old school and a bunch
19 of old school stuff would come up.

20 **Q** Right.

21 **A** I --

22 **Q** You downloaded it off of someone else's
23 computer?

24 **A** Correct.

25 **Q** And it goes to your computer and you can send

1 stuff back and forth, however which way?

2 A Yes.

3 Q And it keeps a record of what gets downloaded.
4 and all that kind of stuff, right?

5 A I'm not that technical. I don't know about
6 records or anything like that.

7 Q But like you designate the folder you want to
8 download stuff in, right?

9 A No.

10 Q You don't, so the program does that
11 automatically?

12 A When you set it up, you know, it will set up
13 where it's going to go automatically. Then from then on
14 you don't designate --

15 Q It just goes there every single time?

16 A It just goes there.

17 Q So you set that up on both of yours?

18 A Yes, I did.

19 Q Right. So that's on both Item 1 and Item 2?

20 I'm calling them Item 1 and Item 2. I know to you, they
21 are the old computer and the new computer. Just bear
22 with me on that.

23 A Okay.

24 Q Okay. So Item 1 being the old one, right?

25 When I say that, just remember to yourself old computer.

1 New computer being Item 2. Did you go to Show No Mercy
2 on both computers?

3 A I believe so.

4 Q When is the last time you went to Show No
5 Mercy?

6 A I would look at it at varying times. See
7 something on the television about war correspondence or
8 feeling bad. I was interested in my brothers in arms.

9 Q Uh-huh.

10 A And I would go there and look up any
11 information about specifically the second armor of
12 calvary.

13 Q It's on ShowNoMercy.com?

14 A Yes.

15 Q Not .org, right?

16 A I just know Show No Mercy.

17 Q What if we told you it was .com?

18 A Okay.

19 Q Right. And when did you say the last time you
20 went there was?

21 A I couldn't tell you.

22 Q Was it six months ago, nine months ago, a year
23 ago?

24 A It's been, I mean, I stay away from those sites
25 now since this whole thing started. So I couldn't tell

1 you.

2 Q 2010?

3 A I couldn't tell you.

4 Q You remember when the pop ups started showing
5 Show No Mercy?

6 A Uh, the exact date?

7 Q I'm just wondering when.

8 A Occasionally when I would look at it, you know,
9 you click on one screen and it would take you like to
10 another screen. Say you clicked on war, then it would
11 take you to a page that was just specific to Afghanistan
12 or Iraq. And then around these ads or whatever they are,
13 they start coming up from the bottom and then popping up.
14 I mean, it didn't happen all the time, but I mean, it
15 would happen occasionally.

16 Q Right, but that site's been closed down since
17 2008, right? So anything you saw on that had to be prior
18 to 2008, right?

19 A It's been closed down since 2008?

20 Q Right.

21 A Which site?

22 Q ShowNoMercy.com, isn't that right?

23 A I don't know.

24 Q Okay.

25 A There are several other ones that are similar.

1 There's Show No Mercy, uh, there's one more that has
2 stuff that's specific to the war and combat.

3 Q The one we're talking about in your statement
4 was ShowNoMercy.com, right?

5 A That was one that I mentioned to the officers.

6 Q Okay. Now, you're good friends with Casey,
7 Michelle and Monica, right?

8 A Yes.

9 Q Or at least you were good friends, right?

10 A Yes.

11 Q Y'all hung out a lot?

12 A Yes, we did.

13 Q They used to come over to your house and listen
14 to music with you, right?

15 A Yes.

16 Q And what else did you guys do?

17 A Say it again?

18 Q What else did you guys do? Go to jazz some
19 times, right?

20 A Not necessarily jazz, blues, old school R&B.
21 Max on Main is open mic for musicians, singers, anything
22 like that. It's not particularly jazz.

23 Q All right.

24 A But we would go listen to blues across the
25 street at Max on Main.

1 Q So you know a good bit about music. I mean,
2 that's a fine distinction to draw between jazz and blues,
3 right?

4 A A fine?

5 Q Yeah. That's a good distinction.

6 A Oh, no. Anybody would know the difference
7 between jazz and blues. Blues is blues. I know a lot
8 about jazz, blues and old school R&B.

9 Q Because you're a big music fan.

10 A Say it again?

11 Q You are a big music fan, right?

12 A That's correct.

13 Q And that's why Casey went to you for the
14 wedding stuff, right? That's why Casey went to you for
15 the wedding marches.

16 A No, she went to me because I could burn her a
17 copy.

18 Q But you also downloaded it for her, right?

19 A Yes, I did.

20 Q And you know how to use it to find the music
21 she needed.

22 A I typed in wedding march.

23 Q Right. And she got a couple of different
24 versions.

25 A Right.

1 Q Did you listen to them? Did you listen to
2 them?

3 A Just the beginning of -- I'd listen to one and
4 it wasn't even the traditional, dum, dum, dum. It wasn't
5 that. So I went and tried to download another one so
6 that she would have, you know, several different choices.

7 Q But you know, they used to come over to your
8 house. In fact, you let Monica stay at your house from
9 September of, uh, 2009 to November of 2009.

10 A Yes, while she was convalescent.

11 Q Right. That's what a good friend does.

12 A Yes.

13 Q And you let her stay in the bedroom, right?

14 A Yes. Pretty much anybody who stayed there
15 stayed in the bedroom, in the bed. The way the apartment
16 was configured, it had one of those air conditioning
17 units like you find in hotels that was just in one room.
18 It was vents that went through the bedroom. It was
19 generally really hot. I always slept on the sofa.

20 Q So you always slept on the sofa whenever anyone
21 else was there?

22 A Not always, but pretty much most of the time I
23 slept on the sofa. That's why I never had any problem
24 with somebody coming over. I'd say, hey, listen, you're
25 more than welcome in my bedroom.

1 **Q** Okay. Now, Casey, Michelle and Monica, when
2 they found this, they were telling the truth.

3 **A** Say it again?

4 **Q** When Casey, Michelle and Monica found this --

5 **MR. COLLINS:** Objection, Your Honor. Pitting
6 witnesses.

7 **THE COURT:** Restate the question, sir.

8 **BY MR. POTTS:**

9 **Q** Okay. Casey, Michelle and Monica, they didn't
10 have any reason to make this up, did they?

11 **A** No.

12 **MR. COLLINS:** Objection, Your Honor. Same
13 reason.

14 **THE COURT:** Objection is sustained.

15 **BY MR. POTTS:**

16 **Q** Have you talked to them much since then?

17 **A** Not a lot. I mean, I have talked to them, but
18 not much.

19 **Q** You talked to Casey on Facebook, right?

20 **A** Yes.

21 **Q** And she said she wish it wasn't true and she
22 felt bad, right?

23 **A** Right.

24 **Q** Did you tell her about Jason at that time?

25 **A** No.

1 Q Did you tell her about Mr. Pickle?

2 A She knew Josh.

3 Q Did you tell her it wasn't you, it was Josh
4 Pickles?

5 A Say it again?

6 Q Did you tell her it wasn't you, it was Josh
7 Pickles?

8 A I don't recall. I mean, she knew Josh.

9 Q You didn't -- you didn't tell her it was Jason.
10 You didn't tell her anything?

11 A No, I was talking more about our relationship.

12 Q Right.

13 A We talked about us.

14 Q You talked about you guys and she talked about
15 how she misses you and how she wants the relationship
16 back?

17 A Correct.

18 Q And this is your good friend, right? You guys
19 are good friends?

20 A Yes, sir.

21 Q Now, you talked a little bit about, you know,
22 to Mr. Collins about Item 1, the old computer.

23 A Right.

24 Q Sorry. And you abandoned his house?

25 A Abandoned?

1 Q Abandoned it at your dad's house. You left it
2 there.

3 A Yeah, I mean, it wasn't abandoned. It was left
4 there. I mean, I kept a lot of my stuff there.

5 Q You keep lots of things there?

6 A Like clothes and I had an old sled from when I
7 was a kid. My father had a big house and I was living in
8 a small apartment.

9 Q So you are telling me it wasn't like you were
10 just leaving it there for someone else to you. You left
11 a lot of your stuff there, right?

12 A I had an old sled that was given to me as a
13 kid. My father had a big garage and was able to store
14 stuff like that in there.

15 Q You mentioned clothes though, right?

16 A Yes. I had my military uniform. That was my,
17 what a person would call their permanent home of record.

18 Q Uh-huh.

19 A Even when you are in the military, you have a
20 permanent home of records. You want a permanent mailing
21 address, one that is going to be established and always
22 be there especially when people are transient. My
23 father's house, a lot of people stored their stuff there.
24 But that was in the garage. I left it inside.

25 Q And you picked it up in late 2009. Does that

1 mean before Monica stayed with you or after?

2 **A** Before.

3 **Q** So your computer was there before Monica got
4 there, right?

5 **A** Yes.

6 **Q** So that would be, at the very latest, September
7 of 2009, right?

8 **A** Right.

9 **Q** And you used it, right?

10 **A** Briefly. Then it got the virus.

11 **Q** So you didn't have the virus when you first
12 started using it?

13 **A** I think it did. When I got it, it was all
14 kinds of problems. It was just real slow. I'd have to
15 work with it, turn it off and on, go into, uh, the thing
16 where you could pop it up and ask for help and look up
17 all kinds of stuff to restart it. Restart it. I tried
18 that. Then when you start it up, I seen that press F or
19 something other. I tried that. I tried everything to
20 get it to work.

21 **Q** Did you buy the anti-virus software?

22 **A** No.

23 **Q** Okay. So you just went out and -- do you
24 remember when you got the new computer?

25 **A** I believe it was the following month, October.

1 Q So you think you bought it some time in
2 October?

3 A Yes, sir.

4 Q Late in the month?

5 A I don't remember.

6 Q Okay. Beg the Court's indulgence for a second.

7 (Pause.)

8 Before that, you'd still use it occasionally?

9 A Say it again?

10 Q Before you brought it over to your house at the
11 Biltmore, your apartment at the Biltmore, you'd still use
12 it occasionally, Item 1?

13 A When I lived there. I didn't go to my father's
14 house to use it. The computer is not something that's
15 necessary in my line of work. It wasn't necessary for me
16 to have one at home.

17 Q So when they would email the all store meeting
18 stuff, you're not getting those?

19 A Say it again?

20 Q When they are emailing you the all store
21 meeting information, you're not getting those emails?

22 A That's right. They email it both to your
23 personal email address as well as to the store address.

24 Q But it's spring or late file, you definitely
25 got that?

1 **A** Yes.

2 **Q** Right. I mean, you got that one?

3 **A** Right.

4 **Q** Then you saved it on your hard drive?

5 **A** Yes.

6 **Q** Okay. But rather than try to clean off the
7 virus off of your old computer, what you did was you
8 decided you were just going to buy a new one?

9 **A** That's correct.

10 **Q** I want to show you what's been marked State's
11 Exhibit number 16.

12 **A** Okay.

13 **Q** Can you read that out for me please? What's
14 written on there?

15 **A** Say again?

16 **Q** Could you read out what's written on there for
17 me please.

18 **A** State versus Alan Dale Smith. Indictment
19 number 2013-GS-40-04185, 7010-0062, Item 2, Western
20 Digital, WD
21 2500AAJS65M0A0/D/User/Public/PictureSample/Video/(PTHC)9Y
22 0Beckystrippingandsucking{kiddypedaillegalunderagepreteen
23 }.mpg.

24 **Q** Now, what does that file name indicate to you
25 would be on that disk?

1 **A** Uh, I mean, it's obviously something Becky
2 stripping and sucking.

3 **Q** Okay. Now, the same thing.

4 **MR. COLLINS:** Your Honor, I have to object to
5 having the witness read these. I don't see the
6 relevance.

7 **MR. POTTS:** Okay. Your Honor, that's fine.
8 I'll do it a different way.

9 **BY MR. POTTS:**

10 **Q** BJA file seven-year-old goat chick gets fucked
11 in back seat and remains silent, pthc, one YO, two YO,
12 three YO, five YO.mpg. What would that file name
13 indicate to you would be on this? Do you want to look at
14 it and read it?

15 **A** I mean, it's obviously child pornography.

16 **Q** Okay.

17 **A** But as far as the exact content of what it is,
18 it's hard to tell with all the acronyms that you are
19 using.

20 **Q** Which ones do you have a problem with?

21 **A** This hussy fan r@ygoldpthc. I learned about
22 yesterday what that was. Of course, one-year-old, two-
23 year-old, three-year-old, four-year-old, five-year-old.

24 **Q** You got the year old part?

25 **A** Say again?

1 Q You understood the YO meant year old, right?

2 A Year old, yeah. They are actually -- the
3 number and letters are together. But this quat chick,
4 quat, quat chick. Obviously, chick is --

5 Q Chick is a girl.

6 A Yeah. I mean, yeah. But what quat, quat
7 means, I don't have a clue.

8 Q G-U-A-T.

9 A Yeah.

10 Q Okay.

11 A I mean, it is like a nationality or --

12 Q Could be. Could be Guatemalan.

13 A Is that what it is?

14 Q You tell me.

15 A I don't have a clue.. Okay.

16 Q Now, you gave a statement to law enforcement?

17 A Yes, I did.

18 Q You remember doing that?

19 A Yes, I do.

20 Q You recognize that?

21 **MR. POTTS:** I'm showing him State's 2, Your
22 Honor.

23 **BY MR. POTTS:**

24 Q You recognize that?

25 A Yes.

1 Q Now, what is that?

2 A It's the, uh, statement that I gave to the
3 police officer at Forest Acres.

4 Q I just want to draw your attention to a couple
5 of responses you gave. So second question. All right.
6 They asked you do you live there by yourself. How did
7 you answer?

8 A Yes.

9 Q Okay. They asked you how old the computer,
10 that is the fifth question, I believe.

11 A Fifth question. Fifth question?

12 Q I'm sorry. Sixth question.

13 A Yes.

14 Q You said about five months old, right?

15 A That's correct.

16 Q Which is about right. You said you got it at
17 the beginning of November and October. You said October
18 so about the end of October?

19 A Right. That would be about.

20 Q The next question, are there any porn pictures
21 on your other computer.

22 A Yes.

23 Q Yes. Are you aware of those?

24 A Yes.

25 Q And they ask you how long have you had or how

1 long have you had your other computer?

2 A 2004.

3 Q 2004. All right. And then two questions
4 later, has anyone ever spent hours on your computer.
5 Yes. Didn't mention your brother Jason, correct?

6 A Correct.

7 Q You didn't mention Josh, correct?

8 A Correct.

9 Q You didn't mention Monica?

10 A Correct.

11 Q Didn't mention Michelle?

12 A Correct.

13 Q You didn't mention any of the number of people
14 you talked about living with you that you said had access
15 to your computer?

16 A And also didn't mention my old computer. I was
17 thinking it was the current computer.

18 Q So the current computer was on the case?

19 A Say again.

20 Q For Item 2, it was on the case?

21 A That's what I have.

22 Q And when you are not at work -- you are not at
23 work, you are usually at home?

24 A Yes.

25 Q You ever seen anyone else download porn on your

1 computer?

2 **A** Where are you at?

3 **Q** That's the last question.

4 **A** No.

5 **Q** Okay. Court's indulgence just one second.

6 (Pause.)

7 Thank you, Mr. Smith.. I have no further
8 questions. You need a bathroom break?

9 **A** I do.

10 **Q** Before we take a break, you recently been
11 diagnosed with prediabetes?

12 **A** Yes, Friday.

13 **Q** That's why we have to take a number of breaks?

14 **A** Friday.

15 **MR. POTTS:** Objection, Your Honor. It's not
16 responsive to any question I had or --

17 **THE COURT:** We'll take a break at this time.
18 Please go to the jury room. Please do not discuss
19 the case.

20 **THE WITNESS:** I apologize to the court.

21 (WHEREUPON, the jury exits at approximately
22 11:33 a.m.)

23 **THE COURT:** We'll take about 10 minutes.

24 (WHEREUPON, a short recess is taken.)

25 **THE COURT:** All right. Bring the jury back.

1 **THE BAILIFF:** Yes, sir.

2 **(WHEREUPON,** the jury enters at approximately
3 11:50 a.m.)

4 **THE BAILIFF:** Jury panel is present, Your
5 Honor.

6 **THE COURT:** Redirect?

7 **MR. POTTS:** Thank you, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY MR. COLLINS:**

10 **Q** Alan, he was asking a little bit about your new
11 computer?

12 **A** Yes.

13 **Q** When you had your computer at the Biltmore, did
14 Jason have access to that computer?

15 **A** Yes, he did.

16 **Q** Was that because he had the key to your
17 apartment?

18 **A** Yes.

19 **Q** Did he have your permission to use your
20 computer?

21 **A** Yes, of course.

22 **Q** Did you know he was downloading child
23 pornography?

24 **A** No, I did not.

25 **Q** Is Jason a smoker?

1 **A** Yes.

2 **Q** Is Monica a smoker?

3 **A** Yes.

4 **Q** Is Casey a smoker?

5 **A** Yes.

6 **Q** Josh Pickles a smoker?

7 **A** Yes.

8 **Q** Now, Mr. Potts also asked you a little bit
9 about your written statement given to the Forest Acres
10 Police Department. Does that written statement contain
11 everything that you guys talked about that day?

12 **A** No, sir.

13 **Q** Does it have everything that they asked you?

14 **A** No, sir.

15 **Q** Does it have everything that you told them?

16 **A** No.

17 **Q** Those files that he was making you read, had
18 you ever seen those files before?

19 **A** No, I haven't.

20 **MR. COLLINS:** Thank you, Your Honor.

21 **THE COURT:** You may step down.

22 Next witness.

23 **MR. COLLINS:** At this time, the defense
24 rests, Your Honor.

25 **THE COURT:** All right. Ladies and Gentlemen,

1 that ends the defense's case.

2 Any reply by the state?

3 **MS. BODMAN:** No, sir, Your Honor.

4 **THE COURT:** Ladies and Gentlemen, you've
5 heard all the testimony in this case. I'm going to
6 have you go to the jury room while I speak with the
7 lawyers for a moment or two. I'll have you right
8 back. Please go to the jury room. Please do not
9 discuss the case.

10 **(WHEREUPON, the jury exits at approximately**
11 11:53 a.m.)

12 **MR. COLLINS:** Your Honor, the defense would
13 renew all our previous objections and motions for
14 directed verdict.

15 **THE COURT:** Okay. Motions denied.

16 The requests for charge, the state handed
17 something to me today. It says you, the jury, may
18 infer that sexual activity depicting a minor or its
19 title depicts representation or otherwise of a
20 minor. Rule 20 of the Rules of Criminal Procedure
21 says that all requests for legal instructions to the
22 jury shall be submitted at the close of the evidence
23 or at such earlier time as the trial just reasonably
24 elect. All request must include accurate citation
25 to authorities relied upon. Tell me about this one

1 that was handed to me by the State.

2 **MS. BODMAN:** Section 16-15-410 under the
3 actual statute of sexual exploitation of a minor in
4 the third degree, subsection D.

5 (WHEREUPON, there is a pause.)

6 **MR. COLLINS:** Your Honor, in searching for a
7 charge on this statute, we're really without
8 guidance. I don't have a problem with this specific
9 instruction.

10 **THE COURT:** This is the only one we're
11 talking about now, this particular request for
12 instructions. It's the only one the State gave me.

13 **MR. COLLINS:** I would object to this one
14 without another instruction to specify exactly what
15 -- without another jury charge referencing what this
16 one is talking about. I would object to this
17 specific charge. In regards to receiving this one,
18 I would ask the Court that the jury also be charged
19 that they must find that an actual minor was
20 depicted.

21 **MS. BODMAN:** I believe that our statute
22 specifically says he possesses material that
23 contains a visual representation of a minor. This
24 ties into our argument and addressing the Ashcroft
25 decision and compares it to the federal statute. We

1 do not have that other part of our statute that says
2 or appears to be. I don't think there needs to be
3 any other, uh, specifications that, in fact, does
4 have to be minor. Our statute says that, this is a
5 minor. The subsection D says you can infer it is a
6 minor. It says the words at the very end, is a
7 minor.

8 **THE COURT:** With regards to items in
9 evidence, it's leaving a close question.

10 **MS. BODMAN:** I do not believe that any of the
11 visual representations that we have presented show
12 anything that appears to be some type of a
13 simulation or --

14 **THE COURT:** The ages of the people depicted
15 in the, uh, --

16 **MS. BODMAN:** All clearly, clearly appear to
17 be under the age of 18. We, in fact, attempted to
18 depict -- the 30 that we chose attempted to pick the
19 ones that were the youngest.

20 **THE COURT:** Such as appear to be 5, 10, 15?

21 **MS. BODMAN:** 6, 5, a toddler. Clearly, a
22 distance away from 18.

23 **THE COURT:** So you don't have anyone who --
24 you have only pictures of people who are clearly
25 toddlers, 3, 4, 5, 6?

1 **MS. BODMAN:** I'd like for all the jury
2 charges to be just a clear statement of the law and
3 not any kind of adding words such as actually and
4 things that are not in the statute. I would just
5 like the charge to --

6 **THE COURT:** The question is why does it
7 really matter?

8 **MS. BODMAN:** We never know what the jury goes
9 back and says and someone gets hung up on a
10 particular word that they hear being read in the
11 charge.

12 **THE COURT:** All right. Regarding the
13 request, verbally suggest Mr. Collins, where is your
14 accurate citation? I'm not sure I know what you're
15 asking me to do. You said something and it didn't
16 register fully. Tell me again what it is and cite
17 the authority for it.

18 **MR. COLLINS:** Your Honor, the citing
19 authority for jury charges under the statute in the
20 state of South Carolina is impossible. There's not
21 a single case where there is -- a jury trial where a
22 charge is under this statute. I think we're in a
23 position to where we have to evaluate the statute
24 and interpret what it means. Your Honor found the
25 statute is constitutional. It's not over broad.

1 The reasoning for that is that they would have to
2 prove that an actual minor was used and depicted.
3 And we'd also have to define what a minor is for the
4 jury.

5 **THE COURT:** The statute defines what a minor
6 is.

7 **MR. COLLINS:** Yes, Your Honor. I think that
8 should be included with the instructions if we're
9 going to instruct them on what they can infer. We
10 can give them the definition of a minor as well.

11 **THE COURT:** I will give them the definition
12 of what a minor is per the statute. A minor means a
13 person that is less than 18 years old.

14 **MR. COLLINS:** Yes, Your Honor. And I agree
15 with Your Honor. I don't think that's a big issue
16 in the case about whether or not there's actually a
17 minor in the video.

18 **THE COURT:** All right. Well, that's that
19 particular one. Regarding the defense's request for
20 charge -- regarding the request for charge by the
21 defense, what says the state.

22 **MS. BODMAN:** The present, near or at the
23 scene of the crime, uh, in looking at -- and I
24 apologize that I do not have a copy of it. But
25 there is a case, State versus Lee, 380 SE 2d 834,

1 it's a 1989 case, says that a mere presence charge
2 is not required when the state's evidence tends to
3 show that the defendant had actual possession and
4 control. And that particular case was, uh, drugs.
5 The defense is that he was framed. I believe that
6 our case does tend to show he had actual possession
7 and control of these computers.

8 **THE COURT:** All right. Mr. Collins?

9 **MR. COLLINS:** Your Honor, we've heard no
10 testimony about Mr. Smith's knowledge of what was on
11 the computer. What we've heard is repeated testimony
12 about him being the user and the fact that this
13 computer was at the scene of the crime.

14 **THE COURT:** As I see this charge, he's
15 charged with a possession charge. He's charged with
16 possessing material that contained visual
17 representations of a minor engaging in sexual
18 activity. So similar to a charge of possession of
19 drugs, cocaine, marijuana. The charge in this case
20 mirrors that type of possession charge which means
21 that possession can be actual or constructive.
22 Constructive possession means that the person has
23 dominion and control or the right to exercise
24 dominion and control either of the material or
25 property or the property in which the material was

1 found. Mere presence at the scene where the
2 material was found is not enough to include
3 possession. Actual knowledge of presence is strong
4 evidence of the defendant's attempt to control its
5 distribution and use.

6 The defendant's knowledge and possession may be
7 inferred when the material is found on the property
8 under the defendant's control. Wherever this
9 inference is simply an evidentiary fact, it's to be
10 taken into consideration by you alone with the other
11 evidence in this case and to be given the weight
12 that you decide it should have.

13 Intent may be shown by acts and conduct of the
14 defendant and other circumstances which the jury may
15 actually and reasonably infer the circumstances
16 surrounding alleged possession and manner of which
17 he allegedly possessed.

18 **MR. COLLINS:** I think we probably need to
19 instruct the jury on the definition of actual and
20 constructive possession as well.

21 **THE COURT:** Strike them? What you said?
22 Instruct the jury?

23 **MR. COLLINS:** Instruct the jury on the
24 definitions of constructive and actual possession.

25 **THE COURT:** That's what I just said.

1 **MR. COLLINS:** Your Honor, I don't have an
2 exact memory of everything that was just read on the
3 record. If I could maybe see or understand where
4 you are reading from. There was some language in
5 that that I would have an objection to.

6 **THE COURT:** What do you think about that,
7 Madam Solicitor, that this charge is basically a
8 possession charge, similar to a possession of drug
9 charge except for the definition of other things
10 which is the other definitions in the statute.

11 **MS. BODMAN:** Yeah. I agree with Your Honor.
12 I think without more of the Lee case that I cited as
13 my basis for objecting to it, I think that's
14 probably what Lee is saying. Mere presence is not
15 required when we're going to be talking to them
16 about the actual versus constructive possession.
17 We're going to be talking about exercising dominion
18 and control.

19 **THE COURT:** The mere fact that drugs would be
20 in a car when a person is driving in and of itself
21 does not prove, make a person guilty of possession.
22 Similarly, mere presence of this, the State has to
23 prove that he was not merely present but that he
24 possessed it. Actually or constructively based on
25 the direct circumstantial evidence. You have to

1 convince the jury that not only it existed but that
2 he knew it was there based on evidence presented.

3 **MS. BODMAN:** Well, we definitely have a
4 knowledge element. He has to know the nature under
5 the statute itself. The sexual exploitation statute
6 says knowing the character or content of material.
7 There certainly would be a knowledge aspect to it.

8 **THE COURT:** Knowingly -- that he knowingly
9 possessed?

10 **MS. BODMAN:** Correct.

11 **THE COURT:** Based on what part of the
12 statute?

13 **MS. BODMAN:** If, knowing the character or
14 content of the material, he possessed the material
15 that contains a visual representation knowing the
16 character and content. If you don't know it's
17 there, you certainly don't know the character and
18 content of it.

19 **THE COURT:** Right.

20 **MS. BODMAN:** So just by virtue of the
21 statute, there is a knowing element.

22 **THE COURT:** All right.

23 **MR. COLLINS:** Your Honor, I'm finally up to
24 speed. I agree that this does fall under possession
25 the same as it does for contraband and drugs. State

1 v. Hudson, the language about regards proof of
2 possession either actual or constructive coupled
3 with knowledge of its presence is a two-prong test.
4 I think that -- that's in my second request in a
5 little bit different terms. But I think that the
6 two prongs need to be instructed to the jury. I
7 also stand by our request for the mere presence
8 charge.

9 **THE COURT:** Mere presence is included in the
10 knowing possession charge. It's part and parcel of
11 that charge.

12 **MR. COLLINS:** I respectfully disagree with
13 that, Your Honor.

14 **THE COURT:** You are entitled. (Pause.)
15 The existence of material in and of itself is
16 not, not a crime. The crime is possession of the
17 material. So to say he was -- it's not the same as
18 being merely present when someone is committing a
19 robbery, burglary, shooting or whatever. This is --
20 the presence and committing the offense is one in --
21 is integral, is really one in the same. The
22 existence of the illegal material, the illegal
23 material itself is not a crime. Possession of it is
24 a crime.

25 **MR. COLLINS:** I agree we're in a difficult

1 situation. My analogy would be that the mere
2 presence of being on the computer or using the
3 computer doesn't mean you are guilty of normally
4 possessing everything that's on the computer. It's
5 a different -- it's definitely far different from
6 just being present at the normal crime scene. This
7 is a different type of case.

8 **THE COURT:** Well, that's more like argument.
9 That's what you're going to tell the jury?

10 **MR. COLLINS:** No, that's my argument for the
11 -- to discuss the charge.

12 **THE COURT:** I think the charge -- everything
13 that I've heard on that issue regarding -- the jury
14 can weigh the credibility of witnesses and consider
15 the bias, prejudice, prior record of witnesses,
16 inferences, inferences from the fact that witnesses
17 are not called by the state, I'm not sure what
18 you're talking about there.

19 **MR. COLLINS:** Your Honor, we've learned of
20 new information subsequent to me turning this in as
21 far as evidence being lost. If I could take a
22 little time over lunch to find a site for the same
23 or similar jury charge where evidence is lost.

24 **THE COURT:** The testimony of the police
25 officer, the jury can weigh the prejudice of not

1 singling him out or praise or ill-repute. I have an
2 expert witness charge.

3 **MR. COLLINS:** The only reason I'm bringing up
4 the officer, Your Honor, is that every time the
5 officer is called to the stand, they are allowed to
6 go through all their prior experience and
7 investigation in law enforcement and that does set
8 them out from the other witnesses.

9 **THE COURT:** I'll give them a credibility
10 charge, but I'm not going to single them out. They
11 can believe them or not believe them because they
12 are police officers. You can argue that further.
13 Singling out witnesses is too close to commenting on
14 the evidence. All right. What else do you have,
15 Mr. Collins?

16 **MR. COLLINS:** The only thing that's not
17 included in what I submitted would be a charge on
18 the inference of modem that has disappeared. We
19 were unaware of that until the start of the trial.

20 **THE COURT:** What's important with the modem?

21 **MR. COLLINS:** Well...

22 **THE COURT:** What's important with the modem?

23 **MR. COLLINS:** That's part of the defense.
24 The state has never given access to it and it
25 disappeared.

1 **THE COURT:** What's contained on the modem?
2 I'm drawing a blank on what's the importance.

3 **MR. COLLINS:** There's a lot of things that
4 are recorded on the modem that could be relevant to
5 the case as far as whether an internet connection
6 was made or it was made through what website we
7 would have gone to. There's a reason why they took
8 it with the search warrant. But we don't have any
9 information from them. It's been lost.

10 **THE COURT:** Anything else then?

11 **MS. BODMAN:** Your Honor, the only response I
12 have with regard to the modem argument is that there
13 is no testimony in this trial that any information
14 had been gotten off of the modem. Nobody testified
15 to that.

16 **THE COURT:** How about that, Mr. Collins? You
17 are telling me now, but no one said anything about
18 it during the trial.

19 **MR. COLLINS:** Your Honor, as a defense
20 attorney, you never want to ask a question that
21 you're not sure what the answer is. The SLED agent
22 had access to the modem. I don't know what he did
23 with it. He made no reports with it. He said he
24 turned it back into Forest Acres P.D. and then it
25 disappeared. I don't think that the defense should

1 be bootstrapped into having to inquire what they
2 don't know the answer to in order to preserve an
3 issue about evidence that was lost as a result of
4 complete incompetence of Forest Acres.

5 **THE COURT:** You want to argue that we don't
6 know what's on that lost evidence because of lack of
7 evidence and your client should be found not guilty.
8 Not only that, you want the judge to instruct the
9 jury about the missing evidence. You don't need to
10 know the answer. You told me the answer about what
11 it is, some means of connecting to the internet and
12 storing information. You didn't get any of that
13 from any of the witnesses. That's what the state
14 argues.

15 **MR. COLLINS:** I'm not requesting a jury
16 charge telling them they must find him not guilty of
17 the modem. It's simply an inference.

18 **THE COURT:** You're requesting a spoliation of
19 evidence charge when evidence is lost or destroyed
20 by a party, you may infer that the evidence which
21 was lost or destroyed by that party would have been
22 adverse to that party.

23 **MR. COLLINS:** Yes, Your Honor.

24 **THE COURT:** The jury can infer. The
25 information on the modem would be attempting to

1 exonerate your client.

2 **MR. COLLINS:** Yes, Your Honor.

3 **THE COURT:** All right. How about that, Madam
4 Solicitor?

5 **MS. BODMAN:** I agree that he could stand up
6 in front of a jury and generically say, you know,
7 they didn't do anything to this modem and the modem
8 is now gone. However, I don't think -- because
9 there is no actual testimony in evidence that there
10 was, in fact, any information that they could have
11 gotten off of this modem, I think having a specific
12 instruction to it, uh, is not proper. He could say
13 generally we don't know what could have gotten off
14 of it. We could also stand up and argue if
15 something could have gotten off of that modem, you'd
16 be darn sure that Mr. Collins would have been asking
17 the defense expert about it. But to have a specific
18 charge that points out something that there's zero
19 testimony to, that there was, in fact --

20 **THE COURT:** Well, there is testimony that
21 there is evidence that was gathered that was lost or
22 destroyed by the state. There's evidence in the
23 record. A spoliation charge where there is such
24 evidence, the jury may infer that the evidence which
25 was lost or destroyed would have been adverse to

1. that party.

2. **MS. BODMAN:** Well, I guess that's what I'm --
3. I think I am focusing on the word "evidence". It is
4. potential evidence in their argument.

5. **THE COURT:** Well, it is evidence.

6. **MS. BODMAN:** Well, the evidence would be the
7. data, potential data on it. There's zero testimony
8. that there was any stored data on that item.

9. **THE COURT:** What do you have to say to that?

10. **MR. COLLINS:** The data that she speaks of was
11. what was destroyed and lost. That's the evidence.
12. They were responsible for the evidence. I can't
13. argue what's on there if I never had a chance to see
14. it.

15. **THE COURT:** I think the defense is entitled
16. to a spoliation charge.

17. **MR. COLLINS:** Would Your Honor like for me to
18. prepare that?

19. **THE COURT:** It's already been prepared.

20. **MR. COLLINS:** Thank you, Your Honor. An
21. additional issue that, uh, --

22. **THE COURT:** I think there has to be some
23. consequence where the state gathers evidence and the
24. evidence could be exonerating to the defendant. I
25. don't know. It could be, but the jury will never

1 know because the state got it and lost it. There
2 has to be -- that's the purpose of this particular
3 charge where there's missing evidence. It's missing
4 because the state lost it.

5 **MR. COLLINS:** Your Honor, another issue is
6 the state gets up first for closing arguments on the
7 law, the defense gets a closing argument then the
8 state gets the last closing argument. Under Supreme
9 Court of South Carolina, State versus Atterberry, it
10 goes into the reasoning why this is violation of due
11 process for the defendant. We would specifically
12 request that the state open fully on the law and the
13 facts so that the defense can respond to anything
14 from the state's theory. Then, in their last
15 closing argument, they are allowed to rebut any new
16 arguments that the defense makes, however, they
17 would be limited to that rebuttal in closing.

18 The common practice is that the solicitors are
19 allowed to close strictly on the law and then close
20 after the defense. My argument is that they
21 shouldn't be allowed to close on anything that's not
22 rebuttal after my closing.

23 **THE COURT:** The state can waive opening
24 unless the defense insist that they open. And the
25 state has the right to close. If they make an

1 improper argument, the parties have the right to
2 object. The common practice may be that no one ever
3 objects. That covers a pretty wide area of what
4 they can talk about. They can respond to any
5 inferences that can be drawn. So it's hard to nail
6 that down.

7 **MR. COLLINS:** I understand, Your Honor. I
8 just want to bring it to the Court's attention.

9 **THE COURT:** All right.

10 **MR. COLLINS:** Thank you, Your Honor.

11 **THE COURT:** All right. What else do you all
12 have? We're going to start closing argument at
13 1:15. Will you be ready to go at that time?

14 **MR. COLLINS:** Yes, Your Honor.

15 **THE COURT:** We'll be in recess until that
16 time.

17 (WHEREUPON, a short recess is taken.)

18 (WHEREUPON, the jury enters at approximately
19 1:32 p.m.)

20 **THE BAILIFF:** All the jury present, Judge
21 Your Honor.

22 **THE COURT:** Madam Forelady, Members of the
23 Jury, you have now heard all of the testimony. You
24 have now received all of the evidence. It's now
25 time for closing arguments. First from the state.

1 **MS. BODMAN:** Thank you, Your Honor.

2 Sexual crimes against children are by their
3 nature cloaked in secrecy. They do not offend
4 against children out in the open. Because our
5 society, frankly, looks upon crimes against children
6 as the absolute and utter worse. It is the very
7 crime that people don't want to admit to the most.

8 You could have some forward and say, yeah, I
9 killed that man. Yeah, it was a community safety
10 project, but I got rid of that guy or he was coming
11 after me or he was a jerk. But people don't admit
12 to crimes against children. They don't happen in
13 front of their mothers, their sisters, their nieces,
14 their nephews, their friends. Just the way that his
15 best, best friends reacted, the balancing that
16 friendship with the atrocities that they found on
17 his computer, it was the atrocity that outweighed
18 the friendship.

19 These children were violated over and over and
20 over again in his bedroom with that computer turned
21 away from the front door of his bedroom so that
22 nobody could see it. He sat on that pillow. He's
23 got headphones, multiple headphones, all of his
24 computer equipment, his ashtray, as he would hunker
25 down time after time after time after time in the

1 secrecy of his own bedroom. That is the nature of
2 sexual offenses against children.

3 I want to spend a few minutes with you talking
4 to you a little bit about the law in this case. The
5 judge is going to read to you what we call the
6 charge, the jury charge, which are the laws that are
7 applicable to the facts in the case. You will take
8 the facts and go back into the jury room. You're
9 going to apply the facts as you heard them in here,
10 determine what the facts to be and apply those to
11 the law that the judge gives you. Okay.

12 First of all, obviously enough, sexual
13 exploitation of a minor in the third degree.
14 Knowing the character or content of the material.
15 He possesses material that contains a visual
16 representation of a minor engaging in sexual
17 activity. You heard in Ms. Davis' opening
18 statement, she said we don't contest that these
19 contain a visual representation of a minor. That
20 this is child pornography. What they are contesting
21 is that he knew it was on his computers. Okay. So
22 the visual representation aspect, essentially, they
23 conceded in their opening statement. So knowing the
24 character or content of the material, he possesses
25 the material.

1 Essentially, the judge is also going to read
2 you the definitions of, uh, sexual activity that
3 under the laws of South Carolina, the children in
4 these, the minors in these images must be engaged in
5 one of these acts. As I said, I'm not going to go
6 through and read all of this to you. The judge will
7 read it to you. But Ms. Davis conceded in her
8 opening statement that it was, in fact, child
9 pornography. There are multiple -- as he reads it
10 to you, there are multiple different types of acts
11 that would constitute sexual activity and a
12 violation under our state laws. Okay.

13 The law also says that you, the jury, may infer
14 that a participate in sexual activity depicted as a
15 minor through its title -- is a minor through its
16 title, text, visual representation or otherwise is,
17 in fact, a minor. Not only -- that law says that
18 you an infer that the child depicted in the visual
19 representation is, in fact, a minor.

20 You can also take the title text to decide
21 whether or not he knew the character and content of
22 the material that he possessed. If he went on his
23 computer and there was a video marked My Fall
24 Asheville Vacation 2008, that's why you would infer
25 that that video, if you opened it up, is your fall

1 vacation to Asheville in that year. But if its
2 marked with best Vicky VJ, you know that it's
3 something else. If it's marked seven-year-old,
4 three-year-old girl pedo R, Sally cums, four-year-
5 old to eight-year-old pedo like a monkey. The
6 titles and the texts sitting there on his computer
7 row after row after row after row after row is the
8 knowledge that he knows exactly what is sitting
9 there on his computer. That alone. He wouldn't
10 even have to double click on it to open it up. It
11 is knowledge that he knows what is the character and
12 content of what is sitting there on his computer.

13 But we have more than that. We have actual
14 access dates. We have Agent Bart Cave actually
15 testify to times that these images were accessed,
16 modified, created, actual dates. So they are just
17 not sitting there on his computer. He is hunkered
18 down in the corner of his bedroom watching, day
19 after day. Every single one of these, all of these
20 we labeled with the texts, so the title of the image
21 and the file path so that you, yourself can look and
22 go, if I read that, would I have an idea of what was
23 sitting on my computer? Would I have knowledge of
24 what, in fact, that image is? You know exactly what
25 it is that he's looking at on his computer.

1 The yellow -- so that you could see, we marked
2 everything or packaged everything in yellow that was
3 in Item 1, computer 1. The older computer. The
4 items that were going forward went forward on this
5 case today for Item 2, the newer computer that was
6 set up are the items in green.

7 The credibility of the witnesses. You all are
8 the sole judge of the credibility or the
9 believability of each and every witness that took
10 the stand. You have the right to believe everything
11 that a particular witness said, to believe nothing
12 that a particular witness said or to take parts of
13 what a witness said and discard other parts as not
14 believable.

15 When you came in that door the beginning of the
16 week, you brought your common sense with you. When
17 you go out this door to go to the jury deliberation
18 room, you are going to take your common sense with
19 you. Okay. And you're going to ask just the same
20 things that you ask in everyday life about whether
21 somebody told you the truth, were they
22 straightforward or hesitant. And if they were
23 hesitant, did they have a reason?

24 And I would submit to you that Casey, Monica
25 and Michelle, they told you exactly what happened.

1 There was no, uh, motive behind what they talked
2 about. Really, if there was a hesitancy, they would
3 say, you know, I'm not sure. I can't say that.
4 They have every reason to come in here and try to
5 help him out. Every reason. They have every reason
6 to come in here and say, oh, yeah, that bad Jason,
7 he was there all the time, all the time in his room.
8 We didn't know what he was doing hunkered down on
9 that computer.

10 They, themselves said, you know, at least Casey
11 did in a Facebook message with the defendant is, you
12 know, I'm sorry if this isn't true. She's still
13 hanging on. She's still hanging on. It is a best
14 friend. It is a best friend, but she was here to
15 tell you the truth. We never saw anybody else using
16 that computer. I was in and out of that apartment
17 all the time. I never used that computer. This is
18 the only time I had used that computer.

19 Were they consistent or inconsistent? How did
20 they know the facts to what they are testifying to?
21 For example, Casey saw it herself. I have personal
22 knowledge. Now, Michelle obviously didn't go look
23 at the computer herself. Her friends came and told
24 her what they say, but she did tell you they were
25 hysterically crying. That's what she knows and saw.

1 They came in after seeing this stuff and they were
2 hysterically crying. They were very upset. This is
3 what they found out about their best friend was the
4 worse of the worse.

5 Was the testimony of the witness strengthened
6 or weakened by the other testimony or evidence?
7 That's exactly what Casey does. Casey is like, I
8 saw this, boy, I needed someone else to see it. I
9 do not know if I could believe my own eyes. This is
10 horrible. I wanted somebody else to come. So she
11 gets her friend. Come on over here and let me show
12 you what I saw.

13 Is there a reason a witness would want to give
14 testimony which would help or hurt one side or the
15 other? In other words, are they biased or
16 prejudice. As I already covered, his best friends,
17 you know, have every reason in the world to try to
18 help him out. Every reason in the world to try to
19 help him out. His brother and his sister, you've
20 got to factor in family relationships. Even the
21 limitation of what they testified to. His one
22 brother basically said I don't know anything that
23 was going on in his apartment. All I really know is
24 that at one time, I caught our other brother on a
25 computer with a single image.

1 It is very possible -- it is very possible that
2 both of them download and look at porn, that both of
3 them do that. So -- and he even said, I want you to
4 remember what he said. He goes, I feel bad about
5 pitting one brother against the other. I think
6 that's an interesting thing for y'all to think
7 about. Why would he say pitting instead of I am
8 here to tell the truth, I'm here to say what I know,
9 but it is this. I've got to, you know, sell out one
10 brother to help the other one that's in a jam. I'm
11 pitting them.

12 Direct and circumstantial evidence. Direct
13 evidence is the testimony of a person who asserts a
14 claim, to have knowledge of a fact such as an
15 eyewitness. It's a crime of secrecy. A crime of
16 secrecy. No one saw him on the computer watching
17 the porn. But circumstantial, chain of facts and
18 circumstances indicating the existence of a fact.
19 It is his house, his computer in his room with
20 thousands of images accessed at all times, day and
21 night, middle of the morning with names that just
22 yell out at you as Agent Cave pulled up with the
23 EnCase and just, boom, says within less than a
24 minute, less than a minute, boom, I've got it up.

25 The testimony of the defendant. He has a right

1 not to testify. He chose to testify. He is also
2 presumed to be innocent. It is a wonderful, uh,
3 aspect, concept of the United States is throughout
4 this trial, he's been presumed to be innocent. But
5 as the evidence is now with you, that presumption
6 comes down as the evidence builds and you find that
7 beyond a reasonable doubt, we have proven our case.

8 He is not presumed to tell the truth. He has
9 the right to testify, but that does not mean that
10 everything that came out of his mouth is the truth
11 and that you have to accept it as the truth. You
12 weigh his credibility just as you weigh anybody
13 else's. What does he have to gain or to lose by
14 testifying a certain way? What evidence did he
15 bring to corroborate his story? What consistencies
16 or inconsistencies does he have in his testimony?
17 You can disregard it all, take some or none or
18 believe all of it. But do not go back and say
19 because he testified, he is presumed to tell the
20 truth. That is not the case.

21 The law, actual and constructive, constructive
22 possession, uh, wraps in also to this knowledge as
23 we talked about of what is on his computer. There
24 clearly has been facts thrown out from the family
25 about the older computer being over at the dad's

1 house for some period of time. But what we do know
2 is as our indictment states is on March the 5th of
3 2010. That was the date we said he was in
4 possession of the material. March 5th, 2010, not
5 2009, not 2008, 7, 6, 5, 4. But on March 5th of
6 2010, he was in actual and constructive possession
7 of that. He had dominion and control over that
8 computer in his apartment in his bedroom.

9 So maybe other people were doing things on that
10 computer prior to, maybe the whole family also had
11 access to it, but on March 5th, 2010, thousands of
12 images were sitting there from the date that he
13 brought it back from his dad's house, set it up,
14 plugged it in, turned it on and sat in the corner.
15 However those images got there, they were there on
16 the date that that search warrant was executed and
17 that computer was taken.

18 Finally, the work schedule in tying in the
19 credibility of Ms. Lomax is those records, she
20 testified, were not actual business records. They
21 are records that she just kept on her own because
22 she liked the format better than they had at
23 Applebee's. They did not at all document what time
24 he actually showed up, if he showed up at all, how
25 long he stayed at work and whether or not he called

1 in sick, took a day off. They just can not be
2 relied upon as, you know, he was not at home that
3 day. They are not in any way, shape or form
4 verified.

5 But what we do know is that some of the dates I
6 asked her about, uh, he was on vacation. He was off
7 work. He could have switched shifts with somebody
8 on a particular date because he wanted to go do
9 something. So you just can not rely, uh, -- Ms.
10 Lomax was very nice to come in and to say what she
11 could with her limited records, but how can we at
12 all rely upon something that didn't document what
13 actually happened on those days at those actual
14 times?

15 I don't know if y'all ever saw, there was a
16 show called "The Practice". A law show, of course,
17 from around 1997 to 2004. A criminal defense firm.
18 Dillon McDermot was on it. He was the head of the
19 law firm. Well, they had this, I guess, defense
20 that when all else failed, when everything else was
21 going bad in the trial, they would pull out what
22 they'd call --

23 **MR. COLLINS:** Objection, Your Honor.

24 **THE COURT:** Objection is overruled.

25 **MS. BODMAN:** They would pull out what was

1 called Plan B. They'd look at each other and they'd
2 say we're going with Plan B. We're going to have to
3 Plan B and they would all have this big talk about
4 it. A husband would Plan B a wife. A wife would
5 Plan B a husband. And that's that you'd blame it on
6 somebody else. Blame it on somebody else. Poor
7 Jason got Plan B'd with zero evidence other than the
8 one brother saying one day back in who knows when, I
9 saw, one time, him there. You can not base a
10 decision based on Plan B Jason without any evidence.

11 I appreciate your time and attention. I
12 apologize for the distastefulness of the material
13 that we had to show you even in those short
14 segments. I ask that you go back and base your
15 decision on the law and the evidence that was
16 presented and find this defendant guilty. Thank
17 you.

18 **THE COURT:** Mr. Collins.

19 **MR. COLLINS:** Thank you, Your Honor.

20 I told you from the beginning they are going to
21 play with your emotions throughout the trial. I
22 don't know how many times they have to read these
23 file names or how many times they are going to tell
24 you to look at these pictures and say the word
25 atrocious. This is not the case. We waited to talk

1 to you until we got to present what the case is
2 really about.

3 Did he know that these files were on his
4 computer? They have given you nothing to show that
5 he knew those files were on his computer. Without
6 that, there is no case. They talk about deep, dark
7 hidden secrets. They got the secret part right.
8 What they got wrong was who was keeping a secret.

9 We told you in opening statement, do his
10 actions demonstrate somebody who's hiding and
11 hoarding thousands of images? They had their expert
12 up here trying to mislead you saying that 80 percent
13 of the hard drive were these images, 80 percent of
14 the images on the hard drive making up a lot less
15 than 80 percent of the hard drive. Scrutinize what
16 you heard.

17 Talking about Plan B. It's not Plan B. We're
18 trying to show you guys what they didn't bother to
19 go and investigate. You heard from these officers.
20 You want to talk about secrets? Where is the modem?
21 You heard the officers testify we don't know where
22 it went. We put it into evidence and it's gone.

23 You're going to hear the judge tell you that
24 because of that, you can infer it would have been
25 adverse to their case, which means would not have

1 helped them. Would have helped us. He's going to
2 tell you that. That's another secret that I'd like
3 to know the answer to that. What kind of things
4 could be on a modem? Think about that. You have
5 your common sense. You can bring your everyday
6 knowledge into this. What kind of specific dates
7 and times and evidence could be on modems as far as
8 internet providers, locations, where computers were
9 at specific times.

10 Alan's actions. He gave keys to his house to
11 numerous people. Let people live with him in times
12 of need. His best friends came over weekly. This
13 is all during the time he's working 60/70 hours a
14 week. There's no -- look at the picture. There's a
15 wind chime in his doorway to his bedroom. That's
16 not a room that locked off or kept under lock and
17 key. This is out in the open for all the people
18 that are living with him, staying with him.

19 He's got his brother he's been trying to
20 protect that keeps getting evicted who has a key to
21 his apartment who can come up there at any time. He
22 doesn't know when he's brother's there. He's
23 working 60 to 70 hours a week. Is that somebody
24 hiding something? Is that somebody who knows he has
25 thousands of child porn images on his computer and

1 giving out keys to his apartment saying, yeah, you
2 can use my computer? Go ahead. Does that sound
3 like a man with a deep dark secret or is that secret
4 being kept from him by his brother Jason? Which one
5 sounds more likely?

6 You heard testimony about the living
7 arrangements. It's not exact. This was a long time
8 ago. In 2005, 2006, nobody knew they'd be in here
9 in 2013 testifying. The witnesses we brought in
10 here were just trying to give you as much
11 information as they could give you. Nobody asked
12 them to give anything more than what they remember
13 or trying to let you guys know the whole picture.

14 That's why we brought them in here because of
15 the State's case. We knew it was going to be this
16 way. Bring in these pictures, bring in these videos
17 and say we found this in Alan Smith's apartment on
18 Alan Smith's computer. He had them. He's guilty.
19 Look how nasty and disgusting this is. And then
20 hope you check guilty.

21 You heard from Lieutenant Hinson. From March
22 5th, 2010 to August 2nd, 2010, he did absolutely
23 nothing. Nothing. They are trying to act like,
24 well, Mr. Smith didn't give them the information he
25 needed to do investigation. That's insulting. He's

1 an investigator 23 years with experience. If you
2 confiscate the two computers, you might want to
3 figure out where they were for the past six years.
4 Maybe ask a few questions.

5 Ms. Davis told you the State has a lot of
6 power. And it sure does. You go get a pack of
7 crackers on a break, they are getting a cut from
8 that. It's called taxes. All right. They have a
9 lot of resources. They've got SLED. They've got
10 computer forensics.

11 They called in SLED, but they didn't do a sting
12 operation on an email. They didn't put a device on
13 the router so they could monitor when the stuff was
14 downloaded and who downloaded it and proved that
15 somebody knew what they were doing when they were
16 doing it. None of that was done. That's all at
17 their fingertips. It wasn't done.

18 Now, you heard testimony about the living
19 arrangements, Alan living with his father, Jason
20 living with his father. There's that house. That's
21 where CPU1, they called it Item 1, the first
22 computer -- from 2004 to 2009, that computer was at
23 his father's house. From 2004 to 2009, Jason was at
24 that house with free access to that computer. Alan
25 was at that house some of the time too. He moved

1 out a couple of different times.

2 When Alan moved to the Biltmore Estates, that
3 computer was at his dad's house with Jason still
4 there. Alan told you I didn't have internet at the
5 Biltmore. All right. When he finally gets internet
6 and realizes that computer is pretty shocked, it's
7 been through a lot and you guys have heard about all
8 the things that was on that computer. All right.

9 So he gets a new computer. He doesn't know.
10 The secret is still being kept from him by Jason.
11 He doesn't know everything that was on the computer.
12 He didn't go looking through. He's not a forensic
13 expert with the EnCase software that can plug in,
14 pull a hard drive out of the tower, plug it into a
15 special device and then suddenly have a screen full
16 of images. They make a big deal out of immediately
17 we saw all these disgusting porn images because he's
18 an expert. They had the capability to come in and
19 show you screen shots that a normal computer, that
20 Alan would have looked at when he turned his own
21 computer on, then they could have shown you how hard
22 it would have been to get to these files.

23 These files within files within files. This
24 many images and videos can stay hidden and they did.
25 They didn't show you that because they didn't want

1 you to see that.

2 We also -- we found the schedule from
3 Applebee's. You heard the company's been out of
4 business. It's hard to get corporate records. We
5 tried. This table -- we're not the state. We don't
6 have the sheriff's department. We have limited
7 resources. We did the best we could.

8 Kim had no reason to come in here and make this
9 up. She kept records. You can choose to believe
10 her or not believe her. She kept records to the
11 best of her ability. They may not be exact to the
12 minute, but you know they worked a lot and you know
13 they worked long hours. We have that schedule now.
14 We brought the schedule in.

15 Lieutenant Hinson never bothered to call
16 Applebee's. You know how easy it would have been to
17 get the schedule from Applebee's back in 2010? The
18 burden is on them. But they didn't want to bring
19 that in. They already had their case. The computer
20 was in his apartment. We found bad stuff. Charged
21 the bad guy. But we have the schedule. I didn't go
22 through it in detail. You guys are smart. You're
23 going to be able to take this back there with you.
24 You're going to be able to take it back there.

25 This is another piece of evidence that we

1 offered and we had to suggest to them to introduce.
2 This is a list of every file that he is indicted for
3 with file created dates and times and access dates
4 and times. Now, there's a little confusion about
5 the accuracy of the times. We heard that one
6 computer was five hours fast and the other computer
7 was one hour slow. Didn't all make sense. But
8 generally, you can kind of get a general idea of the
9 times. I'm not telling you everything is exact.
10 Take these back there.

11 We get which computer it came off. Computer 1,
12 that's the old computer at the dad's house.
13 Computer 2 was the new computer that was at the
14 Biltmore. There are six indictments on Computer 2.
15 All right. Of those six, four fall within this time
16 frame. Guess who was at work all four times. The
17 other two from Computer 2 were in the middle of the
18 day, a likely time Alan would have been at work.
19 Pay close attention to those dates and think about
20 where the computers were and who was really looking
21 at this stuff.

22 The case is simple. They have to prove he knew
23 the files were there. Nobody's arguing that this is
24 not child porn. We've said it is disgusting. It's
25 appalling. Nobody wants to see this. Honestly, you

1 don't even have to look at back -- look at it back
2 there. Nobody's arguing it's not child porn.

3 All you have to decide is if Alan knew it was
4 on his computer. What do you have to make that
5 decision that they gave you? Well, it was thousands
6 of images. He had to have known. Well, nobody
7 would see somebody else downloading porn. Yeah,
8 yeah. They do. It happened. It happened on
9 Computer 1.

10 Somebody saw somebody else downloading porn.
11 That somebody else would have access to both of
12 these computers the whole time that he is indicted
13 for. That's powerful evidence. They can't just
14 wash that away. Thankfully, we found out some
15 information to come show you guys outside of bad,
16 bad child porn, we found a computer in his
17 apartment.

18 This is an advanced legal system.
19 Investigators are supposed to use the resources
20 given to them. Citizens deserve to be treated
21 fairly. Citizens deserve the power to be used
22 correctly. The power that you have to put an
23 innocent man on trial, you need to use your
24 resources and make sure you've got the right guy.

25 Now, it's in your hands. Alan's been waiting

1 on this for almost three years now to put this in
2 your hands. Fair and impartial people that didn't
3 assume, that can't assume that he was guilty just
4 because it was found in his apartment.

5 Now, you've heard the whole story. The whole
6 story they stuck their head in the sands by. The
7 whole story they didn't bother to go look for. They
8 did jump to conclusions. I found it very telling.
9 Lieutenant Hinson said I didn't want to sign a
10 warrant because I didn't want to jump to
11 conclusions. So you wait five months. You do
12 nothing. Then you jump to conclusions and sign a
13 warrant out on them. That's exactly what the state
14 did.

15 You saw the surprise when they heard some of
16 the testimony we brought in here. They weren't out
17 there looking for any evidence that he knew these
18 files were on the computer. They have the case.
19 They're going to read it to you every chance they
20 get to try to appall. An appalling atmosphere in
21 the courtroom so your emotions find the verdict.
22 But your emotions have no place.

23 It's also important to notice from the
24 testimony that Kim Lomax brought that schedule in.
25 She told you. I think you will see that as

1 believable. She had no idea about all of these
2 dates and times of accessing file created. Alan
3 told you he didn't know either. Then, he looked at
4 the schedule and how it matches up. It's
5 impressive. It's impressive for two people who had
6 no idea of these times and dates to come in with a
7 schedule that matches up pretty well. It's not
8 exact.

9 Alan wasn't home every single second. He was
10 not at work. He's a human being living his life.
11 He can't go back four, five, six years and tell you
12 where he was every second of every day.

13 Again, everybody knows this is child porn. I
14 know you guys probably didn't get the best luck in
15 getting picked for a jury on a case. These are
16 things you can't unsee. Everybody in this courtroom
17 with the exception of Alan Smith understand because
18 we've all had to look at it. I'm asking you or
19 begging you guys to put that aside. Take these
20 photos and take these disks and realize nobody is
21 arguing over any of this. The attorneys on both
22 sides all agree that it's disgusting child porn.

23 Let's look at what else we have. Pictures of
24 his room where numerous people stay. Some people
25 stayed for months in that bedroom. We have Alan's

1 statement which you can take back with you and read
2 his one or two-word answers. The only answers that
3 he typed. You heard there was a much bigger
4 conversation that they didn't record.

5 You heard from Alan's testimony about what
6 happened that day. You heard why he didn't drop the
7 dime on his brother. He didn't know everything that
8 they were going to find on those computers. He was
9 told some things, but we don't know exactly what he
10 was told. They didn't take notes and they didn't
11 record any of it. He was told some things about
12 stuff being on his computer. Your first instinct
13 isn't to point the finger at your family member and
14 try to send them to jail.

15 Alan was in shock. He was trying to figure out
16 what was going on. He realizes how serious of a
17 situation it is and how in depth these files were
18 and what computers they are on. We realize it's on
19 the old computer. He can put two and two together.
20 You start asking questions about other family
21 members who were living with Jason, who were staying
22 with Jason, had experience with Jason, then it
23 starts coming together.

24 You take it a step further which is what we did
25 this week. We'll take the schedule. We look at the

1 dates and times and we'll see it's more likely
2 Jason, not Alan. There are dates accessed and files
3 created on that list that are possible for him to
4 have done on his computer. You guys take it back
5 there and look. Then, we have this evidence report.
6 We introduce this to show that at one point, there
7 was a modem that either drew legs and walked away or
8 somebody could break into the Forest Acres evidence
9 department and just take something out. That's
10 disturbing. I already talked to you about that.

11 Ms. Bodman told you a story about a TV show.
12 She kind of stole my thunder a little bit, but I
13 don't normally watch CSI. But my fiancé forces me
14 now. Just the other week, I heard a story that kind
15 of hit home. Obviously, we were thinking about
16 cases and work as we're watching TV. CSI is not
17 that realistic, but the story is good. The officer
18 was talking about a traffic accident, really bad
19 accident with a horse trailer involved. There was a
20 wreck. The horse got severely injured. The officer
21 that, a number of officers responded to the scene.
22 As trained observers, they take notes. They are
23 processing the scene.

24 One of the officers is going to put the horse
25 out of its misery and goes to shoot the horse. The

1 bullet ricochets off the horse and kills the fellow
2 officer. Eight more officers show up to the scene.
3 Pictures are taken. More notes are taken.
4 Measurements are made of the accident.

5 The next day, all these officers, trained
6 observers show up to the big meeting room. The old
7 veteran detective comes in there. The first question
8 he asked is what color was the horse. Not a single
9 person in the room could answer that question.

10 The reason I tell you that is sometimes it's
11 the most obvious thing that people miss when you are
12 trained observers and trained investigators. That
13 obvious thing they missed in this case is who had
14 the computers and who was on them and who downloaded
15 these files. They didn't ask the obvious questions.
16 If they would have, they would have seen he didn't
17 download these files. He didn't know these files
18 were on his computer. He had a pretty good idea who
19 did.

20 **THE COURT:** Ladies and Gentlemen, I'm going
21 to send you to the jury room for two or three
22 minutes. Please do not discuss the case.

23 **(WHEREUPON, the jury exits at approximately**
24 2:16 p.m.)

25 **THE COURT:** Okay.

1 **(WHEREUPON, a short recess is taken.)**

2 **(WHEREUPON, the jury enters at approximately**
3 2:25 p.m.)

4 **THE BAILIFF:** Jury panel is present, Your
5 Honor.

6 **THE COURT:** Mr. Potts.

7 **MR. POTTS:** Thank you, Your Honor.

8 Ladies and Gentlemen, this case is about the
9 ugliest we don't want to face. That's true for many
10 of the witnesses in this case. Casey and Monica
11 when confronted with this, they didn't want to do
12 anything about it. It took them 10 days to go see
13 law enforcement. That time to gather the courage
14 and the strength to face the ugliest.

15 It's also about justice. When he thought his
16 saw his brother looking at what might be child
17 pornography, he couldn't face it. He left. This
18 case is ultimately about Alan Smith.

19 Ladies and Gentlemen, you know how this case
20 all began. It began when Casey went up to Alan
21 Smith's house to burn some CDs for her sister's
22 wedding.

23 When she got there, she tried to do it. He had
24 it all ready for her. It turned out that one of the
25 music files opened somewhere else. She found

1 minimized, hidden from view, some terrible pictures,
2 the ugliness and it started a slide show. That
3 slide show saw 15 or 20 more. Mixed in there, she
4 said, was his personal porn pics.

5 This was Alan Smith's slide show. It's not
6 James Smith's slide show. This was Alan's. And
7 when faced with that, Casey needed support. She
8 needed her friend. So she got Monica, brought her
9 back. Based on what they saw that day, they knew
10 that their relationship with Alan Smith was over.
11 Casey tried to reach out. She told him, if it
12 wasn't true, forgive her. Did he tell her it wasn't
13 true? No. He wanted to work on their relationship.

14 Now, Forest Acres, which is the proper
15 jurisdiction, they didn't know how to handle a case
16 like this. Sergeant Hinson never had one. So they
17 called in Bart Cave with SLED. They drew up a
18 search warrant and they went to search Alan Smith's
19 home. When they did, they got there at
20 approximately 1:15. How do we know that, Ladies and
21 Gentlemen? We know that by the return that's in
22 evidence signed by Investigator Morrison. I
23 received the search warrant and executed as follows:
24 On March 5th, at 1:15.

25 What did Bart Cave tell you happened at 12:52?

1 Bart Cave told you the child porn was accessed at
2 12:52 on March 5th, 23 minutes before Lieutenant
3 Hinson knocks on his door. So yes, when they came
4 and they read him that search warrant, he knew it
5 was up. Yes, come on in. His heart was probably
6 beating through his chest panicking. It took Bart
7 Cave 30 seconds. Hooked up to his laptop and, boom,
8 there it was. We have charged Alan Smith with 30 --

9 **MR. COLLINS:** Lodge an objection, matter of
10 law, at the appropriate time after the state
11 completes.

12 **THE COURT:** All right.

13 **MR. POTTS:** He was charged with 30 different
14 indictments. Those are not all he had. They are
15 representative of the thousand images and movies he
16 had on his computer. Those are not all it was. You
17 heard Bart Cave. 80 percent of the computer was
18 pornography. 85 percent of that was child
19 pornography. He told you some of them had been
20 marked deleted but it was still there. That's how a
21 computer works. Shift delete, you can put things in
22 the recycling bin. All it does is hide them. You
23 know it's still there.

24 So you heard about Bart's training and
25 everything he knew. You heard his testimony. You

1 know what he saw. The defense tells you this case
2 is about knowledge. He says it's not really about
3 this. It's about whether he knew about it. It's
4 about what he knew and when he knew it. They're
5 admitting essentially that he possessed the child
6 porn, he may not have known he possessed it.

7 **MR. COLLINS:** Object to misstatement of law,
8 Your Honor.

9 **THE COURT:** You may proceed.

10 **MR. POTTS:** When you heard Monica, Michelle
11 and Casey testify, they told you one person used
12 Alan Smith's computer. One person. Alan Smith.
13 You heard the defendant testify. Did he ever
14 actually tell you someone else -- he saw someone
15 else use his computer? Sure, it was free and open
16 to everybody. He left his door unlocked for crying
17 out loud.

18 He never said I saw my brother using my
19 computer. He never said I saw Jason come in and use
20 it. It would have been for him to use if he wanted.
21 But no one ever saw Josh Pickles. No one ever saw
22 Justin. No one ever saw Jason. The only person who
23 saw them was the defendant Alan Smith.

24 One of the reasons we keep reading out these
25 names and what these files are is because what they

1 are, it's apparent just through the names. If you
2 are going through a computer and you happen upon
3 these files, there's not going to be any doubt in
4 your mind what it is. You don't have to open it up
5 and see it. Maybe you want to confirm it, but you
6 know what it is.

7 In that same vein, we didn't show you all 30
8 pieces of evidence but they are all in evidence. If
9 you, the jury, want to go back to the jury room and
10 you want to look at each one individually, that is
11 your right. That's your power. Okay. Y'all can
12 look at each and every one as many times as you
13 want. Just because we didn't show them to you
14 doesn't mean you can't do that. Bart Cave testified
15 to what the nature of what they were and file names.
16 If you want to go with that, you can too. But they
17 are there for you.

18 Let's talk a little bit about knowing. What's
19 one of the first things? We talked about Applebee's
20 and the all store meeting. Right? The defendant
21 admitted he saved files from all store meetings in
22 2008. That's the directory where some of these
23 child porn files were saved. They were saved on the
24 desktop in a small file. All Store Meetings.

25 Then there was a folder called My Stuff. This

1 is the folder. He admits he created this folder.
2 Did he create it on the desktop by itself? No. This
3 convoluted thing Mr. Collins was talking about, this
4 is what he created. So he did it by choice. So
5 when he had his work, pornography wasn't far behind.
6 When he was looking at his Applebee's documents,
7 there was a folder called My Stuff. If he didn't
8 create it, there's nothing more curious than that.
9 He did create it.

10 Rather than fix his old computer when he got
11 his new one, what he did, he unplugged it and put it
12 away in a corner. Y'all see the search warrant
13 folders. Item 1 wasn't just sent out there. There
14 was a printer on top of it, a cookware set, a teddy
15 bear next to it. Maybe a keyboard box. He didn't
16 give it back to his family. He kept it. He didn't
17 call on someone to fix it. Why didn't he call
18 someone to fix a good computer? He didn't want
19 someone going inside and seeing what they'd find.
20 Possessing it.

21 There were other file paths, of course, besides
22 just All Store Meeting. Another one I will draw
23 your attention to is Item 1,
24 D:/userdata.mydocuments.limewire.saved.qqazd and so
25 forth. What does that file path tell us? It's a

1 Limewire save. You heard me talk to him about
2 Limewire. It's a peer-to-peer connection. That's
3 where you download things.

4 He told you it had a default save spot.
5 Everything downloaded from Limewire would be saved
6 to one spot. He said when you first set it up,
7 that's where it's going to determine where to
8 download it to. He said that's what he's using for
9 his music. You download the music off of Limewire.
10 Every single piece of music he downloaded was stored
11 in that save folder right alongside all the child
12 porn. Every time ---

13 **MR. COLLINS:** Objection.

14 **MR. POTTS:** --- he went to that folder --

15 **MR. COLLINS:** Objection, Your Honor.

16 Speaking on stuff that's not in evidence.

17 **THE COURT:** The objection is overruled.

18 **MR. POTTS:** Every time he went to move music
19 out of that save folder, he came across what else
20 was saved there. He came across ugliness. He knew
21 it was there. That's what knowledge means.. That's
22 how we know he knew it was there. All Store
23 Meeting. It's in a saved Limewire. It's in a bunch
24 of different places all over the computers. The
25 computers he admitted he used. The computers he

1 kept at his house.

2 It is impossible to ignore. When you retire
3 back to the jury room and you review the evidence, I
4 know you're going to come to the same conclusion
5 that Bart and Casey did when they saw what he had.
6 He had to know it was there.

7 These times and his work schedule and all of
8 that, okay. This is forensic imaging worksheets
9 that Bart Cave did. There are two of them. One for
10 Item 1 and one for Item 2. Okay. You can see right
11 here it says this is for Item 2. Look at the top
12 corner. Current date, the item date, current time
13 and the item time. This is where we get the one
14 hour slow and five hours fast. All right. So on
15 Item 2, the clock is five hours fast. On Item 1,
16 the clock is --

17 **MR. COLLINS:** Objection, Your Honor. There
18 might be a matter of law here.

19 **THE COURT:** Objection is overruled.

20 **MR. COLLINS:** I don't believe this is in
21 evidence. It's marked for ID purposes only.

22 **MR. POTTS:** Bart told you about how Item 1
23 was five hours fast and Item 2 was one hour slow.
24 So when you go through the schedule, those times you
25 see on the exhibits. When you are comparing the

Jury Charge

1 times, just remember the clocks are off. For Item
2 1, the difference is five hours. Item two, the
3 difference is one hour.

4 In the defense's opening statement, they asked
5 you to use logic, reason and common sense. I too
6 ask you to use those same three tools. I ask you to
7 use your logic. I ask you to use your reason, to
8 determine if the defendant knew those items were
9 there. I want you to use your common sense. I want
10 you to prove your verdict and shine a light on the
11 evidence. I want you to return a verdict of guilty,
12 guilty on all 30 counts. Thank you very much.

13 **MR. COLLINS:** Your Honor, may we approach
14 briefly before the jury charge.

15 **THE COURT:** Yes, sir.

16 **(WHEREUPON, a bench conference is held off the**
17 **record.)**

18 **THE COURT:** Madam Forelady and Members of the
19 Jury, you have heard the testimony and the evidence
20 and the arguments of the state and the defendant. I
21 will now explain to you the law that applies to this
22 case. Under the Constitution and laws of South
23 Carolina, you are the finders of the facts in this
24 case. I do not have the right to pass upon the
25 facts or even to express any opinion that I might

1 have as to the evidence. This is a matter solely
2 for you the jury to determine. As jurors then, it
3 is your duty to determine the effect, the value, the
4 weight and the truth of the evidence presented
5 during this trial.

6 Now, as the trial judge, it is my
7 responsibility to preside over the trial of this
8 case and to rule upon the admissibility of the
9 evidence offered during the trial. You are to
10 consider only the testimony which has been presented
11 from this witness stand together with any exhibits
12 which have been made a part of the record.

13 I have the additional duty to charge you the
14 law applicable to this case. As the presiding
15 judge, I am the sole judge of the law in this case.
16 It is your duty as jurors to except as correct and
17 apply the law as I now state it to you and then
18 reach your verdict. Finally, I charge you in this
19 regard that you should not be concerned with what
20 you think the law ought to be, but rather, what I
21 charge you the law is.

22 Now, you are also the judges, the sole judges
23 of the credibility, that is, the believability of
24 the witnesses who have testified and of the evidence
25 which has been presented during this trial. In

1 passing upon credibility, you may take into
2 consideration many things such as the demeanor or
3 manner of testifying, whether the witness had reason
4 to be biased or prejudiced or whether a witness'
5 testimony was contradicted on the one hand or
6 supported and corroborated on the other hand. All
7 of these things you will consider bearing in mind
8 that you should give the defendant the benefit of
9 any reasonable doubt. It becomes your duty as
10 jurors to analyze and to evaluate the evidence and
11 determine that evidence which convinces you of its
12 truth.

13 Now, the rules of evidence ordinarily do not
14 detect -- ordinarily do not permit witnesses to
15 testify to opinions or conclusions. An exception to
16 this rule is for witnesses we call expert witnesses.
17 A witness who by education and experience has become
18 expert in some art, science, profession or calling
19 may state an opinion as to relevant and material
20 matter in which the witness claims to be an expert.
21 They may also state the reasons for the opinion.
22 You should consider any expert opinion received in
23 evidence in this case and, like any other evidence,
24 give it the weight that you think it deserves.

25 If you think that an opinion of an expert

1 witness is not based on sufficient evidence and
2 experience or if you conclude that the reasons given
3 in support of the opinion are not sound or that the
4 opinion is outweighed by other evidence, you may
5 disregard the opinion entirely. An expert witness
6 is to be given no greater weight than that of other
7 witnesses simply because the witness is an expert.
8 You are not required to accept an expert's opinion
9 even though it is not contradicted.

10 A person who has a past criminal record is
11 competent to testify in a trial. A past record does
12 not affect the ability of that witness to testify.
13 Past record may only be considered by you if at all
14 in determining a witness' credibility. Remember,
15 you are the sole judges of the facts in the case and
16 the believability of any and all of the witnesses.

17 There are two types of evidence which are
18 generally presented during a trial. Direct evidence
19 and circumstantial evidence. Direct evidence is the
20 testimony of a person who claims to have actual
21 knowledge of a fact, such as an eyewitness. It is
22 evidence which immediately establishes the main fact
23 to be proved.

24 Circumstantial evidence is proof of a chain of
25 facts and circumstances indicating the existence of

1 a fact. It is evidence which immediately
2 establishes collateral facts, which the main fact
3 may be inferred. Circumstantial evidence is based
4 on inference and not on personal knowledge and
5 observation.

6 The law makes absolutely no distinction between
7 the weight or value to be given to either direct or
8 circumstantial evidence. Nor is a greater degree of
9 certainty required of circumstantial evidence than
10 of direct evidence. You should weigh all the
11 evidence in this case. After weighing all of the
12 evidence, if you are not convinced of the guilt of
13 the defendant beyond a reasonable doubt, you must
14 find the defendant not guilty. Now, when evidence
15 is lost or destroyed by a party, you may infer that
16 the evidence which was lost or destroyed by that
17 party would have been adverse to that party.

18 The fact that the defendant was arrested,
19 charged and indicted is not evidence in this case
20 and can not be considered by you as evidence of
21 guilt in this case. Nor does it create any
22 presumption or inference of guilt. The indictments
23 are simply the formal written instruments which
24 contain the charges made against the defendant. An
25 indictment is a formal document by which a case is

1 brought into court.

2 The defendant has pled not guilty to the
3 charges in the indictments. That plea places the
4 burden on the State to prove the defendant guilty.
5 A person charged with committing a criminal offense
6 in South Carolina is never required to prove himself
7 innocent.

8 I charge you that it is an important rule of
9 law that a defendant in a criminal trial, no matter
10 what the seriousness of the charge may be, will
11 always be presumed to be not guilty of the crime for
12 which the indictment was issued unless guilt has
13 been proven by evidence satisfying you of that guilt
14 beyond a reasonable doubt.

15 The presumption of innocence does not end when
16 you begin your deliberations. It accompanies the
17 defendant throughout the trial until you reach a
18 verdict of guilt based on evidence satisfying you of
19 that guilt beyond a reasonable doubt. The
20 presumption of innocence is like a robe of
21 righteousness placed about the shoulders of the
22 defendant which remains with the defendant until it
23 has been stripped from the defendant by evidence
24 satisfying you of the defendant's guilt beyond a
25 reasonable doubt.

Jury Charge

1 Now, the presumption of innocence is not a mere
2 legal theory. It's not just a legal phrase. It is
3 a substantial right to which every defendant is
4 entitled unless you, the jury, are satisfied from
5 the evidence of the defendant's guilt beyond a
6 reasonable doubt. The state must prove the
7 defendant guilty beyond a reasonable doubt.

8 What is a reasonable doubt in the law? A
9 reasonable doubt is a doubt which makes an honest,
10 sincere, conscientious juror in search of the truth
11 to hesitate to act. Proof beyond a reasonable doubt
12 must therefore be proof of such a convincing
13 character that a reasonable person would not
14 hesitate to rely and act upon it in the most
15 important of her -- his or her own affairs. Proof
16 beyond a reasonable doubt can also be described as
17 proof that leaves you firmly convinced of the
18 defendant's guilt.

19 Now, there are very few things in this world
20 that we know with absolute certainty. In criminal
21 cases, the law does not require proof that overcomes
22 every possible doubt. If, based on your
23 consideration of the evidence, you are firmly
24 convinced that the defendant is guilty, then you
25 must find him guilty. On the other hand, you think

1 there is a real possibility that he is not guilty,
2 you must then give him the benefit of the doubt and
3 find him not guilty.

4 The defendant is charged with 30 counts of
5 Sexual Exploitation of a Minor third degree. As to
6 each count, the State must prove beyond a reasonable
7 doubt that the defendant possessed material that
8 contained a visual representation of a minor engaged
9 in sexual activity while knowing the character or
10 content of such material. To prove possession, the
11 State must prove beyond a reasonable doubt that the
12 defendant had both the power and the intent to
13 control the material, to control the material.

14 Possession may either be -- may be either
15 actual or constructive. Actual possession means the
16 material was in the actual, physical custody of the
17 defendant. Constructive possession means that the
18 defendant had dominion and control or the right to
19 exercise dominion or control over either the
20 material itself or the property in which the
21 material was found.

22 Mere presence at the scene where the materials
23 were found is not enough to prove possession.
24 Actual knowledge of the presence of a material is
25 strong evidence of the defendant's intent to control

Jury Charge

1 its use. The defendant's knowledge and possession
2 may be inferred when the material is found on the
3 property under the defendant's control. However,
4 this inference is simply an evidentiary fact to be
5 taken into consideration by you along with the other
6 evidence in the case and to be given the weight that
7 you decide it should have.

8 Intent may be shown by acts and conduct of the
9 defendant and other circumstances with which you may
10 naturally and reasonably infer intent. In
11 determining whether the defendant had the intent to
12 possess the material, you may consider the
13 circumstances surrounding the defendant's alleged
14 possession. You may consider the manner in which
15 they allegedly possessed, the place where it was
16 allegedly possessed and other factors which you may
17 consider to be important. You may infer that a
18 participant in sexual activity depicted as a minor
19 through its title, text, visual representation or
20 otherwise is a minor.

21 Material means -- material means pictures,
22 drawings, video recordings, films, digital
23 electronic files or other visual depictions or
24 representations but not the material consisting
25 entirely of written words.

1 Minor means an individual who is less than 18
2 years old.

3 Sexual activity includes any of the following
4 acts or simulations thereof: masturbation, whether
5 done alone or with another human or animal; vaginal,
6 anal or oral intercourse, whether done with another
7 human being or an animal; touching, in an act of
8 apparent sexual stimulation or sexual abuse, of the
9 clothed or unclothed genitals, public area or
10 buttocks of another person or the clothed or
11 unclothed breasts of a human female; an act or
12 condition that depicts bestiality, sado-masochistic
13 abuse, meaning flagellation or torture by or upon a
14 person who is nude or clad in undergarments or in a
15 costume which reveals the pubic hair, anus, vulva,
16 genitals, or female breast nipples, or the condition
17 of being fettered, bound or otherwise physically
18 restrained on the part of the one so clothed;
19 excretory function; the insulation on any part of a
20 person's body -- I'm sorry -- the insertion of any
21 part of a person's body other than the male sexual
22 organ, or any object into another person's anus or
23 vagina except when done as part of a recognized
24 medical procedure.

25 The indictments or the indictment in this case

1 alleged 30 counts of Sexual Exploitation of a Minor
2 third degree by the defendant. Each charge is a
3 separate and distinct offense. You must decide each
4 charge separately on the evidence and the law
5 applicable to it uninfluenced by your decision as to
6 any other charge or charges. The defendant may be
7 convicted or acquitted on any or all accounts. You
8 will be asked to write a separate verdict of guilty
9 or not guilty on each indictment.

10 Madam Forelady and members of the jury, I'm
11 required to charge you the law as I have done
12 through these instructions now being given to help
13 you or guide you a just and lawful verdict. Whether
14 some of these instructions will apply will depend
15 upon what you find to be the facts. The fact that I
16 have instructed you on the various subjects on this
17 case is not to be taken as indicating an opinion of
18 this Court as to what you should find to be the
19 facts or what your verdict should be.

20 In conclusion, you've been selected by both the
21 state and the defendant to be fair and impartial
22 jurors. It is your duty then in your joint
23 deliberation to determine the truth in this case
24 giving the defendant every reasonable doubt on each
25 and every charge and from the facts which you

1 determine to be true to take and apply the law which
2 I've just given you and thus arrive at a verdict
3 which speaks the truth. I've told you the standards
4 you have to apply in the charge of Sexual
5 Exploitation of a Minor in the third degree.

6 I will give you a copy of these instructions in
7 written form. During your deliberations, you may
8 refer to the instructions to guide you in your
9 decision making. You must consider the instructions
10 as a whole and not follow some and ignore others.
11 You've heard the evidence and now you've heard the
12 law.

13 Whatever your verdict as to each charge, Madam
14 Forelady, you will indicate it by writing the word
15 guilty or not guilty where it says verdict on each
16 indictment.

17 Remember that although the foreperson is the
18 only juror who writes the verdict, it is not hers
19 alone. The verdict has to be a unanimous verdict.

20 Madam Forelady, you are not authorized to write
21 the verdict until all the jury have agreed as to
22 what the verdict should be as to each count.

23 Ladies and Gentlemen, I'm going to send you to
24 your jury room, all of you except the two
25 alternates. Do not begin to discuss the case until

Jury Charge

1 you have received a copy of the jury charge, the
2 indictments and exhibits. Once you receive the jury
3 charge, indictments and the exhibits, that will be
4 your signal to begin your deliberations. Once you
5 begin your deliberations, you will deliberate until
6 you reach a verdict at which time you will knock on
7 the door, advise the bailiff and we will bring you
8 out to receive your verdict. Please go to the jury
9 room.

10 (WHEREUPON, the jury exits at approximately
11 3:05 p.m.)

12 **THE COURT:** Any additions or exceptions to
13 the charge by the state?

14 **MS. BODMAN:** No, Your Honor.

15 **THE COURT:** By the defense?

16 **MR. COLLINS:** Your Honor, the definition of
17 actual or constructive possession, I don't believe
18 included in your instruction was the added prong of
19 there must be knowledge from State v. Hudson, one of
20 our submitted charges, a conviction of possession
21 requires proof of possession, either actual or
22 constructive, coupled with knowledge of its
23 presence. I didn't hear the second part, coupled
24 with its knowledge, included in your charge. I
25 would have an exception to that particular.

1 **THE COURT:** All right. You want me to
2 recharge them on actual and constructive possession
3 or the entire charge?

4 **MR. COLLINS:** I'm fine with going just
5 directly to that one.

6 **THE COURT:** All right. What says the state?

7 **MS. BODMAN:** That's fine, I guess, if somehow
8 it's not put that you're reemphasizing something but
9 that you are adding some additional language or
10 something like that. Not that they're getting
11 something again because you are trying to emphasize
12 it, I guess.

13 **THE COURT:** Say that one more time.

14 **MS. BODMAN:** That just this one part we want
15 you to focus on.

16 **THE COURT:** Well, I said a visual
17 representation of a minor engaged in sexual activity
18 while knowing the character or contents of such
19 material. But with regard to the -- I told them
20 that, that the state must prove that beyond a
21 reasonable doubt, he possessed it while knowing the
22 character or content of such material.

23 **MR. COLLINS:** I understand, Your Honor. But
24 the instruction on possession is incorrect unless it
25 includes the second prong.

1 **THE COURT:** All right. Tell me what prong
2 you want me to tell them. I'll tell you what I
3 read. I said instruction -- constructive possession
4 means that a defendant had dominion and control or
5 the right to exercise dominion or control over
6 either of the material itself or the property in
7 which the material was found. Mere presence at the
8 scene where the materials were found is not enough
9 to prove possession. Actual knowledge of the
10 presence of the material is strong evidence of the
11 defendant's intent to control and defendant's
12 knowledge of possession is inferred. What do you
13 want me to do?

14 **MR. COLLINS:** Your Honor, under that
15 instruction, at least leave the --

16 **THE COURT:** Tell me what you want me to do.

17 **MR. COLLINS:** I would like the language
18 conviction of the possession requires proof of
19 possession either actual or constructive coupled
20 with the knowledge of its presence.

21 **THE COURT:** Say it one more time.

22 **MR. COLLINS:** Conviction of possession
23 requires proof of possession either actual or
24 constructive coupled with the knowledge if its
25 presence.

1 **THE COURT:** All right. Let me have that. Let
2 me see it. (Pause.)

3 All right. Bring the jury back in and I'll
4 give them that additional instruction.

5 **MR. COLLINS:** Your Honor, if I could put one
6 other thing on the record.

7 **THE COURT:** All right.

8 **MR. COLLINS:** In the Court's definition of
9 reasonable doubt, one of the references was, I
10 believe, honest, sincere juror in search of the
11 truth should have a -- should hesitate to act and
12 also in your final colloquy to the jury asking them
13 to seek the truth in their verdict. Uh, in State v.
14 Daniels in the Supreme Court of South Carolina, and
15 I've got a copy of it, there's a lot of discussion
16 about the language of to seek the truth or to seek
17 justice. The Supreme Court took the opportunity to
18 instruct the trial judges to not use that language
19 in the definition of reasonable doubt.

20 **THE COURT:** Tell me what part of that says --
21 the part about seeking justice.

22 **MR. COLLINS:** Seek the truth? Your Honor, if
23 you go to the -- Justice Toal's dissent in that
24 case.

25 **THE COURT:** Her dissent?

1 **MR. COLLINS:** Her dissent, Your Honor,
2 citing, uh, United States versus Gonzalez-Balderas
3 from the Fifth Circuit. It goes into a little bit
4 more of a detailed analysis about the dangers of
5 using terms of seek the truth or seek justice. The
6 issue of --

7 **THE COURT:** What page number on the case?

8 **MR. COLLINS:** Page 6 of 9. (Pause.)

9 It says the terminology of seeking the truth
10 when used in the definition of --

11 **THE COURT:** The top part? Okay. Ladies and
12 Gentlemen, throughout this entire process, you have
13 but one single objective, and that is to seek the
14 truth, uh, -- seek the truth regardless of from what
15 source that truth may be derived.

16 **MR. COLLINS:** Your Honor, further down the
17 page, as an abstract concept, seeking the truth
18 suggests determining whose version of events is more
19 likely true, the government's or the defendant's,
20 and thereby intimates a preponderance of evidence
21 standard. Such instruction would be error if used
22 in the explanation of the concept of proof beyond a
23 reasonable doubt. I think using that in the
24 definition of reasonable doubt is exactly what this
25 case is talking about.

1 **THE COURT:** It says the defendant in this
2 case argued that instructing the jury that its sole
3 interest is to seek the truth diluted the reasonable
4 doubt standard. The Fifth Circuit Court of Appeals
5 disagreed.

6 **MR. COLLINS:** The distinguishing factor that
7 this circuit applied is that seeking the truth in
8 the evidence was talking about the credibility. But
9 that language is used in the definition of the
10 burden of proof or beyond a reasonable doubt, that's
11 where there's a problem and that's where burden
12 shifting occurs.

13 **THE COURT:** All right.

14 **MS. BODMAN:** I was not provided a copy of the
15 case. I can't honestly respond. It's my
16 understanding that he's relaying her comments that
17 are in the dissent?

18 **THE COURT:** Various comments and various
19 references to the language from various cases. In
20 other words, he's seeking to craft a new jury
21 instruction that's contrary to that which is used
22 throughout the state. That's the way I see it.

23 In this case with Judge Russo, they jumped all
24 over him in much of what he told the jury. I'm most
25 familiar with his case. The very first sentence of

1 the case said he committed reversal error in
2 charging them that they were acting for the
3 community and their verdict will represent the truth
4 and justice for all the parties that are involved.

5 This plea of acting for the community and
6 verdict and truth and justice. The court was clear
7 that he went to far on his comments. But that
8 wasn't the -- what you are arguing to me is not the
9 holding in the case. It's just comments by Chief
10 Justice Toal in her dissent. Of course, she, in her
11 reference in the dissent, she indicates that she did
12 not think that at all affect the jury's verdict and
13 the overall definition of reasonable doubt did not
14 cause the jury to decide the case on an improper
15 basis.

16 **MR. COLLINS:** Your Honor, just for the
17 record, because if I don't put it on the record, it
18 won't be preserved. But I cited this case because
19 the Supreme Court specifically took the time to put
20 the warning about fair -- just and fair language
21 even though it wasn't preserved. My position is
22 that the terminology that was used in seeking the
23 truth and definition of reasonable doubt creates
24 burden shifting situation in this case.

25 And then repeating that language at the end of

1 the jury charge instructing the jury to seek the
2 truth, that alleviates the burden putting on the
3 state -- put on the state to prove beyond a
4 reasonable doubt. That's all my argument is on
5 those jury charges, Your Honor.

6 **MS. BODMAN:** If I could -- just reading this,
7 I don't see that that case stands for that
8 proposition. It stands for the additional language
9 of for all parties and for the community. You and I
10 are here for the community, that additional language
11 had nothing to do with any of the reasonable doubt
12 instruction.

13 **THE COURT:** As a matter of describing what
14 reasonable doubt is, a juror in search of the truth
15 would hesitate to act, it can also be described in
16 various forms or fashions. So if the definition of
17 reasonable doubt when approved by the court may no
18 longer prove that, South Carolina no longer approves
19 that definition of reasonable doubt. I'm sure that
20 we'll hear about it in many cases before this one
21 will reach that point. This definition is an
22 approved definition that's given by all the judges
23 in this state for the most part. What else do you
24 have over there?

25 **MR. COLLINS:** Would you like me to address

1 the closing argument issue?

2 **THE COURT:** Any and everything you want to
3 address.

4 **MR. COLLINS:** Under the closing argument
5 under State v. Atterberry, the state is required to
6 open on the law and the facts. Basically, giving
7 their theory of the case before the defense in
8 closing argument. They are then allowed to get up
9 in rebuttal to my closing argument adding
10 information to their closing arguments.

11 Mr. Potts' closing argument when I objected as
12 a matter of law, it's when he was referencing Bart
13 Cave's testimony about the timing of the search
14 warrant and the timing of specific computer files.
15 I've not mentioned the timing of the search warrant
16 or the timing of those computer files. What I would
17 like to put up in rebuttal is that what was said by
18 the Solicitor does not correspond with the testimony
19 of their witness. He misstated the evidence. I
20 would like to have an opportunity to explain to the
21 jury to listen to his testimony and do not take what
22 the Solicitor said because it was actually false.

23 **THE COURT:** So you want to create a further
24 new ground by allowing the defense a rebuttal where
25 the defense contends the state misstates or

1 mischaracterize evidence or where you want to note
2 an objection for the record rather than state an
3 objection, whatever the objection is at the time the
4 argument is being made, you want to note for the
5 record at the end of the argument in order to give
6 you a basis to make a rebuttal as you requested.

7 **MR. COLLINS:** I'm a little confused by that,
8 Your Honor.

9 **THE COURT:** You stood up during his argument
10 and said I want to note an objection to his
11 argument. Then you came to the bench after he
12 completed his argument and stated the basis for the
13 objection and requested to give a rebuttal.

14 **MR. COLLINS:** Yes, Your Honor.

15 **THE COURT:** So then you didn't seek to have
16 the court rule on any objection or anything that you
17 might have considered objectionable, you noted for
18 the record. Then you came and asked the Court to
19 give you a rebuttal based on improper argument.
20 That would be creating further new ground by
21 allowing the defendant to, rather than the state
22 having a final argument as the rules provide, to
23 give a final argument to the defense.

24 **MR. COLLINS:** Your Honor, I think that's the
25 only remedy to this situation when new information

1 is brought up in their second closing argument that
2 violates due process when you don't give the defense
3 an opportunity to address new information that was
4 outside the scope of --

5 **THE COURT:** The remedy is -- the remedy is to
6 object and have the court rule on the objection,
7 which you did not do. You noted -- said you wanted
8 to note an objection for the record, but you are now
9 stating on the record after closing arguments are
10 done.

11 **MR. COLLINS:** With deference to the Court, I
12 didn't want to have a speaking objection.

13 **THE COURT:** After the closing argument and
14 jury charge is over, you want me to now reopen the
15 -- call them back and let you have a final argument
16 after the Court's instruction as well?

17 **MR. COLLINS:** Your Honor, that's -- I
18 approached the bench and asked for an opportunity
19 while the jury was still in the courtroom.

20 **THE COURT:** After the closing arguments were
21 over, is that right?

22 **MR. COLLINS:** That was the only time that
23 would be available to do a rebuttal, I believe, Your
24 Honor.

25 **THE COURT:** All of that is noted for the

1 record.

2 **MR. COLLINS:** Thank you, Your Honor.

3 **THE COURT:** If you have something
4 objectionable, you have to state it throughout the
5 trial. You make an objection. That's the process.
6 If there's an objection, make the objection and have
7 the court rule on the objection. It's virtually
8 meaningless to say I want to note an objection that
9 I want to argue later on unless what you're arguing
10 for later on is a mistrial or something based on
11 abuse of process.

12 **MR. COLLINS:** That would be my motion at this
13 point then, Your Honor, is for a mistrial based on
14 improper closing argument of the Solicitor.

15 **THE COURT:** All right. I deny your motion.
16 I think it's invalid.

17 **MR. COLLINS:** Thank you, Your Honor.

18 **THE COURT:** All right. Let's see, I've got
19 to bring the jury back and tell them again -- give
20 them more instruction about the actual constructive
21 possession.

22 **THE BAILIFF:** Bring them in?

23 **THE COURT:** Yes.

24 **(WHEREUPON, the jury enters at approximately**
25 **3:24 p.m.)**

1 **THE BAILIFF:** Jury is all present, Judge.

2 **THE COURT:** All right. Ladies and Gentlemen,
3 as addition to the instruction that I gave you
4 regarding, uh, the charge of sexual exploitation of
5 a minor third degree. The state must prove that the
6 defendant possessed material that contained a visual
7 representation of a minor engaged in sexual activity
8 while knowing the character or content of such
9 material, uh, that the state must prove that --
10 proof of possession requires either actual or
11 constructive, uh, possession coupled with knowledge
12 of its presence. With that additional instruction,
13 I ask that you return to the jury room. Wait for
14 the -- wait for a copy of the charge, the
15 indictments and the exhibits to begin deliberating.
16 (WHEREUPON, the jury exits at approximately
17 3:26 p.m.)

18 **THE COURT:** Any objection to the additional
19 charge?

20 **MS. BODMAN:** No, sir.

21 **MR. COLLINS:** No, Your Honor.

22 **THE COURT:** All right. If y'all will take a
23 look at the exhibits.

24 **MR. COLLINS:** Did the alternates leave, Your
25 Honor?

1 **THE COURT:** I'll deal with the alternates.
2 You deal with exhibits.

3 **MR. COLLINS:** Sorry, Your Honor.

4 **THE COURT:** That's alright.

5 (WHEREUPON, there is a pause.)

6 **THE COURT:** Now, regarding the, uh, --
7 regarding the, uh, original indictments, you have
8 all of them there?

9 **MS. BODMAN:** I do.

10 **THE COURT:** All 30 indictments? I just
11 wanted to be sure.

12 (WHEREUPON, there is a pause.)

13 (WHEREUPON, the alternates are released.)

14 **THE COURT:** All the exhibits are in shape.
15 The jury can deliberate.

16 **MS. BODMAN:** We have a blank laptop. There's
17 no access to the internet. Can we send that back in
18 case they want to --

19 **THE COURT:** Y'all agree to that?

20 **MR. COLLINS:** I'll check.

21 **THE COURT:** All right.

22 (WHEREUPON, jury deliberation begins at
23 approximately 3:33 p.m.)

24 **THE COURT:** The jury's question says can we
25 have, one, a copy of Casey's original statement that

1 she filed and, two, a copy of Michelle's statement
2 and, three, the evidence showing the last file
3 access on the new computer right before Detective
4 Cave came to see the defendant, four, the transcript
5 of the evidence presented; five, (Inaudible.)

6 **MS. BODMAN:** I think pretty much what they
7 are asking for, Your Honor should just say you have
8 all the evidence before you to consider.

9 **THE COURT:** Mr. Collins?

10 **MR. COLLINS:** Your Honor, I agree with that.
11 I think maybe we can also give them the option to
12 rehear any testimony that you --

13 **THE COURT:** All right. Bring them in.

14 (WHEREUPON, the jury enters at approximately
15 3:20 p.m.)

16 **THE COURT:** Madam Forelady and members of the
17 jury, you said -- your note says may we have a copy
18 of Casey's original statement that she filed; two, a
19 copy of Michelle's statement; three, the evidence
20 showing the last file access of new computer right
21 before Agent Cave came to see the defendant; four,
22 the transcripts from the evidence presented; five,
23 (Inaudible.); six, the jury requests more snacks.
24 I've instructed the bailiffs to find you some more
25 snacks somewhere.

1 Regarding Ms. Thomas leaving at 6:15, if the
2 jury has not reached a verdict by 6:00 and you wish
3 to leave at 6:00 -- if you wish to leave at 6:00 and
4 return at 9:30 tomorrow morning, that's fine with
5 the Court and the parties.

6 Regarding the, uh, requesting additional
7 evidence as in copies of statements of Casey and
8 Michelle and evidence showing last final access on
9 the new computer before Agent Cave came to see the
10 defendant, the very first sentence of the jury
11 instruction says that you have heard the evidence
12 and testimony and arguments of the state and the
13 defendant. You have received all the evidence in
14 this case. The case has been given to you based on
15 evidence presented and through testimony and the
16 exhibits. The case can not be reopened and
17 additional evidence presented or additional evidence
18 provided.

19 With regard to your request for the transcript,
20 the Court Reporter is recording or taking down the
21 testimony but she doesn't have an instant machine to
22 pop out a transcript. That's something that
23 generally takes days, weeks or months. If you want
24 to listen to any particular testimony or any
25 particular testimony that you might want to hear

1 again, there are not transcripts of any testimony to
2 prove you.

3 With those responses to your questions, I ask
4 that you return to the jury room and resume
5 deliberating. When six o'clock rolls around and you
6 have not reached a verdict and you want to leave and
7 come back tomorrow and continue deliberating, you
8 may do so. Please return to your jury room.

9 **(WHEREUPON, the jury exits at approximately**
10 5:24 p.m.)

11 **THE COURT:** Any additions or exceptions to
12 the charge?

13 **MS. BODMAN:** No, sir.

14 **MR. COLLINS:** No, Your Honor. I don't -- I
15 would like to, uh, see a copy of the written
16 instructions that were given to the jury. I don't
17 believe we've seen them.

18 **THE COURT:** All right. The jury has the
19 written instructions. That's the only copy of the
20 written instructions.

21 **MR. COLLINS:** Is it part of the record or is
22 there any way that I can review it when they break
23 for the night?

24 **THE COURT:** You can if there are no
25 objections. I read the instructions verbatim. If

1 you heard the instructions, I read the instructions
2 and gave them a copy.

3 **MR. COLLINS:** My only concern would just be
4 the additional instruction. If that was included,
5 Your Honor, I don't have a --

6 **THE COURT:** The additional instructions were
7 also included. I had to modify the original
8 reprinted copy. I have no problem with you seeing
9 it. I don't have it.

10 **MR. COLLINS:** Thank you, Your Honor.

11 **THE COURT:** All right.

12 (WHEREUPON, a recess is taken.)

13 **THE COURT:** All right. They want to come
14 back tomorrow. We can bring them in. Whatever you
15 want to do. Are they ready to leave now? Does it
16 seem that way?

17 **THE BAILIFF:** They are still discussing.

18 **THE COURT:** We'll wait until six o'clock.

19 (WHEREUPON, there is a pause.)

20 **THE COURT:** The jury's note says regarding
21 replaying testimony, may we hear the testimony from
22 Agent Cave tomorrow. May we hear the testimony from
23 Casey tomorrow. We're going to bring them in and
24 let them go to be back at 9:30 tomorrow morning.
25 All right.

1 **(WHEREUPON,** the jury enters at approximately
2 6:05 p.m.)

3 **THE COURT:** All right. Ladies and Gentlemen,
4 as I said earlier, if you wanted to leave at 6:00,
5 you can leave if one of you had something to do or
6 someplace to be. We're going to break for the
7 evening.

8 Also, uh, your note -- most recent note says
9 regarding replaying testimony, may we hear the
10 testimony of Agent Cave and can we hear the
11 testimony of Casey tomorrow. We have those ready
12 for you to hear tomorrow or rehear tomorrow.

13 With regard to taking an overnight recess while
14 the jury is deliberating, it's very important that
15 you remember the admonition that I gave you during
16 the course of the trial, which is that you are not
17 to discuss the case at all with anyone or to allow
18 anyone to discuss it in your presence. This is
19 particularly important where the jury breaks while
20 deliberating because you now had been discussing the
21 case with each other.

22 When you break overnight, you must cease all
23 discussions of the case with everyone. You can not
24 continue discussing the case with any fellow juror.
25 You can not call one of your jurors or email one of

1 your fellow jurors tonight and say, well, how about
2 this point or how about that point. The jury can
3 only deliberate with all 12 jurors present and
4 participating.

5 It would be a violation of your oath as a juror
6 to engage in any form of side conversation with any
7 other juror and also would be a violation of your
8 oath as jurors to discuss the case with anyone not
9 on the jury. You are duty bound to deliberate with
10 the 12 jurors who heard the evidence and not with
11 people at your home or other places who have not
12 heard the evidence. So I want you all to abide by
13 those instructions.

14 It's also particularly important that you not
15 read, watch or listen to any news reports or any
16 other discussions that you otherwise hear about this
17 trial, that you cease all deliberations and the
18 deliberations will resume tomorrow morning at 9:30.
19 We'll see you all at that time.

20 **(WHEREUPON, the jury exits at approximately**
21 6:08 p.m.)

22 **THE COURT:** Any exceptions to the
23 instructions?

24 **MS. BODMAN:** No, sir.

25 **MR. COLLINS:** No, sir.

1 **THE COURT:** All right. Be back at 9:30
2 tomorrow morning.
3 **(WHEREUPON,** the Court recessed at approximately .)
4

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 25th day of July, 2013 at approximately 9:41 a.m.)

THE COURT: You can bring the jury in.
Good morning, everyone.

(WHEREUPON, the jury enters at approximately 9:42 a.m.)

THE COURT: Good morning. Welcome back, Ladies and Gentlemen. You stated you wanted to hear the testimony of Agent Cave and Casey. The Court Reporter will play back the testimony. Madam Forelady and members of the jury, obviously, you deliberate in the jury room and not in the courtroom. Uh, so you can not have any discussion about what you are hearing in the courtroom.

Madam Forelady, if any point in time you have heard enough of a particular testimony -- if at any particular time you've heard enough of any particular testimony and you want to stop at that particular testimony, let me know that you want to stop.

You may proceed.

(WHEREUPON, the testimony of Bart Cave and Frances Jeffords is replayed for the jury.)

THE COURT: All right. Very good. Ladies

Verdict

1 and Gentlemen, you may go back to the jury room and
2 resume your deliberations.

3 (WHEREUPON, the jury exits at approximately
4 11:08 a.m.)

5 THE COURT: Any matters?

6 MR. POTTS: None from the state, Your Honor.

7 MR. COLLINS: None from the defense.

8 THE COURT: All right. We'll be at ease
9 until we hear from the jury.

10 (WHEREUPON, a recess is taken.)

11 THE COURT: We understand that the jury has
12 a verdict. Bring them in.

13 (WHEREUPON, the jury enters at approximately

14 THE COURT: All right. Thank you. Madam
15 Forelady, if you would, stand for me. Have you
16 reached a verdict?

17 THE JUROR: Yes.

18 THE COURT: Is it unanimous?

19 THE JUROR: Yes.

20 THE COURT: All right. If you would, pass
21 it up. You may be seated. The defendant will
22 rise.

23 Madam Clerk, you may publish the verdict.

24 I caution against any outburst by anyone.

25 THE CLERK: Indictment number 2011-GS-40-

1 2789, the State of South Carolina versus Alan Dale
2 Smith. It's an indictment for sexual exploitation
3 of a minor third degree. We, the jury, find the
4 defendant guilty. This is signed foreperson, Juror
5 number 154.

6 2011-GS-40-2790, the State of South Carolina
7 versus Alan Dale Smith. It's an indictment for
8 sexual exploitation of a minor third degree. We,
9 the jury, find the defendant guilty. This is
10 signed foreperson, Juror number 154.

11 2013-GS-40-1401, the State versus Alan Dale
12 Smith. It's an indictment for sexual exploitation
13 of a minor third degree. We, the jury, find the
14 defendant guilty. This is signed foreperson, Juror
15 number 154.

16 2013-GS-40-4200, the State versus Alan Dale
17 Smith. It's an indictment for sexual exploitation
18 of a minor third degree. We, the jury, find the
19 defendant guilty. This is signed foreperson, Juror
20 number 154.

21 Indictment number 2013-GS-40-4199, the State
22 versus Alan Dale Smith. It's an indictment for
23 sexual exploitation of a minor third degree. We,
24 the jury, find the defendant guilty. This is
25 signed Juror number 154.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Clifton Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALAN DALE SMITH,

APPELLANT

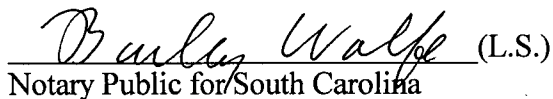
APPELLATE CASE NO. 2013-002524

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William M. Blich Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 1st day of July, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 1st day of July, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.