

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

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MAR 22 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL SCOTT SIMMONS,

APPELLANT

APPELLATE CASE NO 2016-001975

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #1 (DVD OF REPORT); STATE'S EXHIBIT #22 (DVD OF
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(HANDWRITTEN LIST)**

State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
 County Of Richland) 2014-GS-40-06677
 2016-GS-40-01720
 2016-GS-40-01721
 2016-GS-40-01722
 2016-GS-40-01723
 2016-GS-40-01724

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Michael Scott Simmons,)
)
 Defendant.)
)
)
)
)
)

September 6, 7, 8, 9, 2016
 Columbia, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge

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1 TUESDAY, SEPTEMBER 6, 2016

2 THE COURT: Mr. Flores.

3 MR. FLORES: Yes, Your Honor. We have a trial for you
4 today. It's *State of South Carolina vs. Michael Scott*
5 *Simmons*. It's is going to be indictments 2014-GS-40-06677
6 and 2016-GS-40-01720 through 01724. These indictments are
7 all charged sexual exploitation of minor in the second
8 degree.

9 We do have -- I've spoken with Mr. Bank, Ms. Zmroczek
10 -- a couple of amendments to the indictments as they were
11 indicted that we've agreed, and I have those in writing if
12 you want to put those on the indictments.

13 THE COURT: All right, I've been handed up six
14 indictments, and you're calling all of them for trial?

15 MR. FLORES: Yes, sir.

16 THE COURT: All right. What indictments are being
17 amended and agreed to?

18 MR. FLORES: First is indictment, the 2014 indictment.

19 THE COURT: 6677?

20 MR. FLORES: Yes, sir.

21 THE COURT: All right.

22 MR. FLORES: And in that indictment -- sorry, Your
23 Honor. Let me get my copy of it.

24 THE COURT: I have the original.

25 MR. FLORES: Yes, sir. We are adding language between

1 THE COURT: Yes, sir.

2 MR. BANK: --- the stipulated motions with the
3 attorney general's office. We were planning to move for
4 the state to turn over the jury panel's -- criminal records
5 of the jurors. They did on their own, so the issue's been
6 resolved, Your Honor.

7 The second thing we've agreed to is we were planning
8 on moving to exclude any reference to the defendant's
9 possession of adult pornography. Essentially, Your Honor,
10 in this case, in the search warrant involved in the case,
11 there was an enormous amount of -- or a large amount of
12 pornography found. The vast majority of it was adult
13 pornography. There was only a minimal amount of child
14 pornography or what the state at least claims to be child
15 photography. It appears that the state has agreed with our
16 position that we don't believe that any references to the
17 adult pornography is relevant.

18 Your Honor, the second motion I'd like to begin with
19 -- the first motion I would like to take up, Your Honor,
20 just because it makes the most sense to go first, is we're
21 making a facial constitutional challenge to the statute
22 that Mr. Simmons is charged with as being facially
23 overbroad in violation of the First Amendment. Your Honor,
24 I have briefed this issue and presented that to the
25 attorney general and to your law clerk this morning.

1 Essentially it's our position that this statute that he is
2 charged under, which is specifically -- I apologize, Your
3 Honor. I don't have...

4 THE COURT: 405, 16-15-405?

5 MR. BANK: Yes, sir. The language of 405 that's
6 referenced in the brief is very similar to the very
7 statute, the very federal statute that the Ash -- the
8 Supreme Court in *Ashcroft vs. Free Speech Coalition* in
9 2001, that the statutes are virtually indistinguishable.

10 The court in *Ashcroft* reviewed a child pornography
11 statute that was written by the feds. That statute makes
12 illegal essentially pornography that depicts or has a
13 depiction of a minor. What the court addressed there was
14 that using the word depict can include pornography or any
15 type of representation or picture or movie or drawing.
16 That could include something that is virtual, on one hand,
17 and by that I mean something that is computer-generated,
18 animation, something like that. But it can also include
19 situations where an adult may be depicted as a minor in a
20 pornographic film or, or artwork or whatever we want to
21 call it.

22 The court spent much of its time focusing on the
23 *Miller* decisions and the *Ferber* decisions. Essentially
24 what it pointed out that -- was that under *Miller* there's
25 obviously no First Amendment protection for obscenity

1 statutes, and that this federal statute they were dealing
2 with in *Ashcroft* didn't have any reference to obscenity.
3 Therefore, it was still subject to the same First Amendment
4 analysis. It also looked at *Ferber*, and what *Ferber* stood
5 for was that pornography that involves actual children,
6 those situations also have no First Amendment protection.
7 That would be if a -- an actual minor. A fifteen-year-old,
8 a sixteen-year-old, a seven-year-old, or whatever we want
9 to call it, if you have an actual child involved in the
10 pornography, that there's no First Amendment free-speech
11 protection behind that. And so the court really focuses
12 strongly on *Miller* and *Ferber* and takes the position that
13 the statute that it was dealing with in *Ashcroft* went
14 beyond that. And it went beyond that because it had
15 language that included a depiction of a minor. That
16 depiction of a minor was not characterized as potential
17 obscenity, and it was also characterized as actually having
18 to involve a minor.

19 The statute that we're dealing with in South Carolina,
20 rather than use the word depiction, used the word -- uses
21 the word representation. Specifically, the statute states,
22 and I put this in our brief, that under 16-15-405(a)(2),
23 which is the precise statute and subsection Mr. Simmons is
24 charged with, that it's illegal to distribute, transport,
25 exhibit, receive, sell, purchase, exchange, or solicit:

1 Material that contains a visual representation of a minor.

2 What our concern with that is, Your Honor, is that
3 that very well could include the exact thing that concerned
4 the court in *Ashcroft*. It can include a situation where an
5 eighteen-year-old, a nineteen-year-old, a twenty-year-old,
6 whatever it might be, is representing themselves as a
7 minor, pretending to be younger or looking younger.

8 Your Honor, to give you a little background, a very
9 brief amount of background, Mr. Simmons is charged with six
10 videos, basically having them available on this computer so
11 that another computer in Berkeley County could receive
12 those images. When a search warrant was actually done on
13 the house, those six videos weren't found in Mr. Simmons's
14 house on his computer, on his desktop, or anything like
15 that. He was still charged. We have viewed what the
16 Berkeley County police officer viewed, which is bits and
17 pieces of these six videos because they only downloaded a
18 small portion of them.

19 I, I don't know how to articulate this. I'll try my
20 best, but between myself, Ms. Zmroczek, one of our
21 investigators, some of these videos I couldn't tell you
22 whether it was a minor or not. I couldn't tell you whether
23 it was a fifteen-year-old or if it was a nineteen-year-old.
24 There was one video, Your Honor, that's 20 seconds long
25 that is literally a close up of a -- of the penetration of

1 a penis and a vagina. You can't see anybody's face, you
2 can't see certain body parts, and all the videos are
3 different, but that's just one example of videos where I
4 have no idea whether this is somebody that is fifteen or
5 sixteen and this is someone that's eighteen, nineteen, or
6 twenty. And all of the videos are kind of -- we all bear
7 in mind on that scale whether we know or don't know, but it
8 seems to me that the problem with the statute is that the
9 jury is going to be put in the position where they're going
10 to be told the statute and essentially be told, well, if I
11 think it looks like a minor or that this is a
12 representation of a minor even though it is, in fact, not a
13 minor, that they would still convict him.

14 The attorney general's office does not -- you know,
15 has not at least identified, or I don't believe they have
16 any knowledge of who the actual actors in these videos are.
17 This isn't somebody that they're accusing Michael of
18 knowing and making a video of. These are videos that are
19 passed from computer to computer all over the Internet. We
20 don't know the ages; we don't know the dates of birth. We
21 don't know any of this. Again, the concern that we have is
22 that the jury is going to be left with the plain reading of
23 the statute: as long as they believe the representation of
24 a minor, that counts. And I believe that, and our position
25 is that's the exact same language that the *Ashcroft* court

1 struck down. Rather than representation, striking down the
2 word depiction.

3 Your Honor, I don't know if you have concerns being it
4 being a facial challenge. You know, in the criminal
5 context it's not usual that we move to strike facially a
6 statute as unconstitutional; but the courts we've seen and,
7 and the law we've looked at, there's an explicit exception
8 for First Amendment challenges, and that's why we're here
9 making this motion today.

10 I have most of the cases -- if not all, I think --
11 most of the cases that were cited in the brief. I have
12 copies for anybody, including the court if you would like
13 any, and I'm happy to answer any questions.

14 THE COURT: I'd like them all.

15 MR. BANK: Yes, sir.

16 THE COURT: Thank you, Mr. Banks.

17 Mr. Flores.

18 MR. FLORES: Yes, Your Honor. May it please the
19 court? We're going to hand up a memorandum I prepared in
20 response to Mr. Bank's motion. It is a little -- it
21 actually covers a little bit more than what I thought he
22 initially told me was going to be a First Amendment
23 challenge. So, I briefed his -- both the overbreadth and
24 vagueness argument. If I may approach, Your Honor?

25 THE COURT: Yes, sir.

1 MR. FLORES: Thank you. Your Honor, to start with, I
2 think Mr. Bank does not do justice to the *Ashcroft* decision
3 and what the court was asked to address there. The federal
4 statute at issue specifically was the Child Pornography
5 Prevention Act of 1996 found at 18 USC Section 2251. The
6 way that statute read and the type of -- in -- the type of
7 material that was being sought to criminalize was any
8 material in which the sexually explicit images appeared to
9 depict minors, and these were produced without any real
10 children. So, that was the basis of the *Ashcroft* decision.

11 The statute specifically made criminal child
12 pornography which was produced with the actual harm of
13 actual minors and actual children, as well as
14 computer-based or computer-generated minors and adults who
15 posed as minors. It criminalized that type of activity
16 because these individuals in this category appeared to be
17 minors.

18 The court found that that was not appropriate because,
19 in the first place, no minor child was being assaulted.
20 The *Ferber* and its progeny focus on actual harm to actual
21 children being perpetrated both on the child and continuing
22 based upon the existence of this material.

23 Of importance particularly to our statute, 16-15-405,
24 I'll start first with the language. The statute reads
25 that:

1 The individual commits this offense of second
2 degree sexual exploitation knowing the character
3 or content of the material.

4 In both (a) and (b) or at both (1) and (2) does some
5 verb concerning:

6 Material that contains a visual representation of
7 a minor.

8 Specifically in our statute, a minor is defined. A
9 minor is defined in Section 16-15-375. A minor means,
10 quote: An individual who is less than eighteen years old.
11 What is starkly different between our statute and the
12 federal statute in question in *Ashcroft* is that our statute
13 makes it clear that minors are individuals who are less
14 than eighteen years of age.

15 Continuing on that, Your Honor, our statutes, our
16 sexual exploitation statutes found in 16-15-395, 405, and
17 410 all contain similar language as those found in North
18 Carolina. And the North Carolina statutes, I do cite you
19 those in my memo. Those are North Carolina statutes
20 14-190.16, 14-190.17, and 14-190.17(a), and they correspond
21 accordingly to our first degree, second degree, and
22 third-degree statutes.

23 A challenge was brought by an individual by the name
24 Howell in South Carolina after the *Ashcroft* decision
25 concerning this very argument. Our statutes prior to the

1 2014 amendment were identical in language as the statutes
2 in North Carolina. I'm going to hand up, if the court
3 pleases, a copy of *State of North Carolina vs. Howell*.

4 THE COURT: Yes, sir.

5 MR. FLORES: If I may approach, Your Honor?

6 THE COURT: Yes, sir.

7 (A PAUSE.)

8 MR. FLORES: I seem to have misplaced my copy of
9 *Howell*. However, the argument is also made that it is a
10 visual representation. That the individuals would not have
11 to be minors and would fall under the *Ashcroft*
12 unconstitutionality because it would invade the province of
13 free speech.

14 The *Howell* court goes on to explain, as I have just
15 explained, that, no. Minor is defined by statute first.
16 It's a real individual who must be under age eighteen.
17 That is defined by statute. Second, the visual
18 representation must still be of a minor. And so the
19 language in, in *Ashcroft* focused on the appearance of that
20 individual.

21 Beg the court's indulgence.

22 (A PAUSE.)

23 MR. FLORES: Mr. Bank does bring up the issue of
24 whether or not these individuals in the videos were
25 fifteen, nineteen, six, nine. Those are all credibility

1 issues which can, based on the evidence presented, the jury
2 can within their own province use their common sense and
3 judgment and experience to determine whether or not the
4 individuals depicted in these videos are indeed minors
5 below the age of eighteen.

6 As I understand that particular argument, our statute
7 has in it a permissible, permissible inference found
8 particularly at subsection (B), and it states, the statute
9 does state:

10 In a prosecution pursuant to this section, the
11 trier of fact may infer that a participant in
12 sexual activity or a state of sexually explicitly
13 nudity depicted in material as a minor through
14 its title, text, visual representations, or
15 otherwise is a minor.

16 This, as well as -- I do have a case concerning that.
17 I only have one copy of that particular case, Your Honor,
18 where a court has dealt with that issue. That was the
19 state of Tennessee dealt with, with that in, in a case
20 called *State vs. Pickett*. Citation for that case -- beg
21 the court's indulgence -- is 211 S.W. 3d 696. It's a 2007
22 case. If I might approach, Your Honor?

23 THE COURT: Yes, sir.

24 MR. FLORES: In which it dealt with the permissible
25 inference and whether or not the statute was overbroad

1 because it impermissibly shifted the burden to the
2 defendant. The *Pickett* court found that it did not, in
3 particular at page 7 of 3, because the permissive inference
4 as is permitted through *Estelle vs. McGuire*, a, a U.S.
5 Supreme Court case at 502 U.S. 62, allows permissive
6 inferences in criminal trials. In quoting the *Estelle*
7 court, the *Pickett* court states that in *Estelle*, the United
8 States Supreme Court held that, quote:

9 Permissive inference is not a violation of due
10 process because the state still has the burden of
11 persuading the jury that the suggested conclusion
12 should be inferred based on the predicate facts
13 proved.

14 In this case, this case -- and the *Pickett* case again
15 was specifically attacking Tennessee's child pornography
16 statutes based on overbreadth. Because the statute in
17 question in Tennessee, found at Tennessee Code Section
18 39-17-1003(b), it also contains the exact same language in
19 which a trier of fact may infer. And so the *Pickett* court
20 found that the statute in question in Tennessee was not
21 overbroad and not violative of due process based on burden
22 shifting to defendant. Your Honor, I think those are, are
23 all the arguments that Mr. Bank has presented to the court
24 concerning the constitutionality on overbreadth.

25 THE COURT: Thank you. Thank you, Mr. Flores.

1 (A PAUSE.)

2 THE COURT: Mr. Banks?

3 MR. BANK: Your Honor, and if I could approach? I've
4 got a couple of these cases to pull out.

5 THE COURT: Sure.

6 MR. BANK: Your Honor, to address just a couple of
7 points briefly. I understand that the South Carolina code
8 section has the definition for minor being under the age of
9 eighteen. Our dispute is not the word minor is in any way
10 vague. The word minor may include sixteen or seventeen or
11 eighteen or nineteen. That's not our issue. I believe the
12 federal statute and *Ashcroft* also defined what a minor was.
13 The issue is whether a depiction of a minor or a
14 representation of a minor is the problem. Do we actually
15 know whether the person is under eighteen or over eighteen?
16 Part of the problem that I think he actually brings up
17 by talking about the inference provision within the statute
18 is that the inference provision essentially encourages the
19 jury to be able to find the defendant guilty of conduct
20 that *Ashcroft* has said we cannot criminalize. What the,
21 the inference provision essentially says is you can make
22 inferences; you can make assumptions. You can look at
23 different things to come to your conclusion as to why it's
24 a minor regardless of whether it is or isn't. And it's
25 that very risk, that very problem that *Ashcroft* said we

1 cannot have.

2 You know, the -- I was really kind of shocked when I
3 ran into all these lines of cases. *Ashcroft* came out in
4 about 2001. It very clearly said. Look. We're not saying
5 that you can't, you can't legislate child pornography. We
6 understand that that is a problem. But you either need to,
7 one, include language that says it has to be an actual
8 child, which many states already had, or you need to add an
9 obscenity clause. If you add an obscenity clause, the
10 problem is, is, is solved.

11 It's been ten years since this case, over ten years.
12 I don't know how it hasn't been challenged, to be quite
13 honest with you. For now the last week or so I was sure we
14 must have been missing a case somewhere, but how South
15 Carolina didn't simply just go back and add an obscenity
16 clause is beyond me. They are obviously aware of this
17 obscenity clause; it's referenced in other places within
18 the statute. What they fail to go fix is the exact problem
19 *Ashcroft* said. Depiction of a minor is too vague, includes
20 too much legal activity, and is, is something that we
21 cannot criminalize. If we were to want to criminalize that
22 through some type of obscenity statute, then sure. We can
23 live with that. But that's not what we have in our
24 statute, Your Honor.

25 I haven't read the North Carolina case. I was trying

1 to read it as he was speaking, and I'm going briefly over
2 that the next chance I have to sit down. But, Your Honor,
3 I don't know the difference -- a difference between the
4 word depict or represent, represent. Representation of a
5 minor or depiction of a minor, either can include -- you
6 know, the example that I've given to, to people and that I
7 think is referenced in the brief -- I know it's referenced
8 in the brief because it's referenced in *Ashcroft* -- is that
9 potentially any play where we have an act of sexual
10 stimulation [sic] of groping or something like in a *Romeo*
11 *and Juliet* play by people that are in their twenties, that
12 could be illegal under our statute because it's a depiction
13 of a minor. *Romeo and Juliet* are thirteen years old. That
14 has been what their ages are in Shakespeare since it was
15 written.

16 The amount of subject matter that this statute covers
17 is enormous, it is enormous, and for that we, we just, we
18 see no difference between, again, our statute and the
19 statute that *Ashcroft* has already addressed. And I'm not
20 quite sure why our legislature or Court of Appeals hasn't
21 addressed it since that decision.

22 THE COURT: Thank you. Thank you very much.
23 Anything in response?

24 MR. FLORES: Just very briefly, Your Honor. To answer
25 Mr. Bank's question, I think no one has, has taken the

1 opportunity to challenge the statute. Very few cases end
2 up in at stage where an individual is willing to challenge
3 the constitutionality of the statute.

4 But again I would point to the problematic language in
5 *Ashcroft* was that the minor was -- that the depiction
6 showed what appears to be a minor. That in and of itself
7 opened up to the virtual, quote unquote, virtual child
8 pornography which isn't really child pornography because if
9 it were child pornography -- and the U.S. Supreme Court has
10 clearly said that child pornography is not protected
11 speech.

12 The federal statute as it reads today at 18 USC 2251
13 actually still uses the visual depiction verbiage. It
14 states in relevant part:

15 Any person who employs, uses, persuades, induces,
16 entices, coerces any minor to engage in, or who
17 has a minor assist any other person to engage in.

18 Down further:

19 Any sexually explicit conduct for the purpose of
20 producing any visual depiction of such conduct,
21 or for the purpose of transmitting a live visual
22 depiction of such conduct, shall be punished as
23 provided under Subsection (E).

24 Mr. Bank's argument regarding the actors in *Romeo and*
25 *Juliet*, well, those individuals are not under eighteen. As

1 he stated, those actors are portraying minors, but those
2 actors themselves, the individuals are over the age of
3 eighteen. So, they would not fall subject to our statute.

4 THE COURT: All right. Thank you. Thank you. Let me
5 look at -- I'll look at some of these cases this evening,
6 and I'll rule on them first thing in the morning, okay?

7 MR. FLORES: Yes, Your Honor.

8 THE COURT: Thank you. Thank you very much, Mr.
9 Banks, Mr. Flores.

10 All right, you have other motions, Mr. Banks?

11 MR. BANK: We do, Your Honor, and I believe I'll let
12 my co-counsel take over.

13 THE COURT: Ms. Zmroczek.

14 MS. ZMROCZEK: Thank you. Your Honor, I'm addressing
15 the one dealing with the search warrant and moving to
16 suppress the search warrant and any items found from that.
17 If I may hand up to the court so the court knows what we're
18 talking about, the search warrant?

19 THE COURT: All right.

20 MS. ZMROCZEK: Thank you, Your Honor. As Your Honor
21 is aware, search warrant -- South Carolina Code Annotated
22 17-13-140 provides outlines for the, the requirements of
23 the search warrants. And in *State vs. Coburg*, which is 368
24 S.C. 188 628 S.E. 2d 482, Court of Appeals 2006, it says
25 while 17-13-140 does not specifically require -- well,

1 that, that deals with, Your Honor, with the signature, and
2 then it also go on to deal with the timing of it. And
3 specifically what we're challenging, Your Honor, is the
4 timing of the search warrant.

5 And for kind of a background -- that's why I handed up
6 the search warrant -- you'll see that how this
7 investigation begins, Your Honor, is out of Berkeley
8 County. An agent with the ICAC, which is I-C-A-C, the
9 Internet Crimes Against Children Act, they have agents
10 throughout the state. Agent Murphy finds what he believes
11 to be shared files from a computer relating to an address
12 where Mr. Simmons is staying, and he finds those two,
13 basically two dates that he refers to in his affidavit are
14 November 12, 2013, and February 2, 2014. And then what
15 Agent Murphy does is contact Investigator Hudak, who was
16 with CPD, and that's spelled H-U-D-A-K. He was with CPD
17 and he was contacted. Hudak is contacted by Murphy on
18 2/21/14. And then if you look at the search warrant, so on
19 6/122014, Investigator Narewski with CPD, replying solely
20 on what you see attached in the, the packet that I handed
21 up in the affidavit in support of application for search
22 warrant, that affidavit is based completely on Investigator
23 Murphy's information. So, Investigator Narewski goes to
24 the magistrate on June 12th, and this warrant is executed
25 on June 13th.

1 Your Honor, the argument that we're making here is a
2 staleness argument, and, and I'll tell you exactly how it
3 affects this case. So, the six videos in which you just
4 heard Mr. Bank and Mr. Flores argue about, those six videos
5 are not found anywhere on the -- anything, anything
6 gathered in this search warrant. What is, what, what, what
7 is located on perhaps a hard drive or computer, Your Honor,
8 are maybe some, some depictions or videos or portion of
9 depictions, none of which are charged in the indictments
10 for which we're going to trial.

11 So -- and to go back to the law, Your Honor, we're
12 talking about -- obviously there's no state, like, mandate
13 it has to be done within so-and-so time. However, the case
14 law specifically addressed that:

15 Proof must be, must be of the fact -- proofs --
16 excuse me -- proof presented must be of facts
17 closely related to the time when the warrant is
18 issued to justify a finding of probable cause.

19 And in, and in *State vs. Winborne*, which is
20 W-I-N-B-O-R-N-E, 273 S.C. 62-254 S.E. 2d 297, 1979, and its
21 progeny, Your Honor, talk about the seventy-two hours. For
22 example, a search warrant affidavit had been deemed to be
23 -- to establish probable cause where drugs were seen on a
24 premises within seventy-two hours. And that's kind of been
25 the rule of thumb for search warrants in this case where

1 it's talking about the staleness of the information.

2 But what we have here, Your Honor, is Investigator
3 Murphy, for the very last time that he mentions in his
4 affidavit, the last time he ever sees something or, or has
5 some notification is February of 2 -- February 2, 2014.
6 And then he doesn't -- he waits nineteen days to contact
7 CPD and then CPD -- so, that's on 2/21/14 and for whatever
8 reason, CPD waits three months and two weeks to bother to
9 get a search warrant. And I believe, Your Honor, that,
10 that search warrant requirements were addressing exactly
11 this, this point. So, either this information has been
12 lost or destroyed or it's somewhere out in the Internet, we
13 don't know, but none of this information was found to, to
14 bring to court today on these warrants or indictments on
15 which he's charged. So, what we believe that the state
16 intends to do, Your Honor, is there are some, some other
17 items of, of -- that they would consider pornography or
18 child pornography that they, I believe, intend to
19 introduce.

20 We would move to quash the search of any and all of
21 those items and the mention of them in court for several
22 reasons. One, these are not charged. These are, these are
23 not the porn videos or pictures for which the indictments
24 are. Additionally, they fall well, well without -- with --
25 outside of, of any reasonable time limit for these search

1 warrants. For these reasons, Your Honor, we would move to
2 quash any search warrants and any images or information
3 gathered as a result of those.

4 THE COURT: Thank you, Ms. Zmroczek.

5 Mr. Flores.

6 MR. FLORES: Yes, Your Honor. If I might approach? I
7 also prepared a memorandum with some cases concerning
8 staleness in search warrants, particularly in child
9 pornography investigations. As we've already pointed out,
10 not many of these cases go up on appeal. However, our
11 federal partners in the Fourth Circuit have addressed a
12 number of these issues as far as staleness is concerned.

13 As Ms. Zmroczek stated, you know, the probable cause
14 standard as to -- is the standard for the search warrant:

15 In order to justify the issuance of a search
16 warrant, probable cause must be shown, but the
17 term probable cause does not import absolute
18 certainly. In determining whether there is
19 sufficient evidence to sustain a finding of
20 probable cause, each case stand on -- stands on
21 its own facts. The evidence need not be
22 sufficient to support a conviction or a verdict
23 of guilty or to establish guilt beyond a
24 reasonable doubt, nor need the proof be positive,
25 it being enough if it is such as to induce in the

1 mind of the issuing officer an honest belief that
2 the facts set forth exist, or as would lead a man
3 of prudence to believe that the offenses have
4 been committed.

5 That was from *State vs. Williams*, 262 S.C. 186. The
6 U.S. Supreme Court has also gone into the issuance -- the
7 issue of probable cause, specifically in the case of 1983,
8 *Illinois vs. Gates*, found in 462 U.S. 213 in which it
9 identified probable cause as a: Fair probability that
10 contraband and evidence of a crime will be found.

11 As Your Honor is aware, these, these crimes were
12 alleged to have occurred on November 22, 2013. In support
13 of the search warrant issue here in Richland County,
14 Detective Murphy's affidavit was, was part of that. He
15 laid out the information about his training, what he did in
16 this case, and when he finally received information from
17 Time-Warner Cable. If we were to take a strict look at
18 time, even a few months perhaps would be stale from what
19 Ms. Zmroczek states. Between November and February may
20 have been too much time.

21 However, in, in *United States vs. Johnson*, which I
22 handed to the court, that's at 865 Fed. Supp. 2d 702,
23 this was a case in which under similar facts, the
24 individual was charged with the receipt of child
25 pornography, which would be similar to our statute because

1 receipt is actually one of our burdens as well. And he
2 moved to suppress because the information was too stale.
3 In that case, the individual had been going to a website in
4 March of 2010, but the search warrant was not issued and
5 the residence was not searched until May of 2011.

6 In that case, the district court very clearly goes
7 through a, a, I would argue, very thorough analysis of what
8 staleness is and how it relates to cases, particularly
9 involving child pornography where an individual may --
10 might delete that information so that that might not be
11 found at some point down the road. In finding that the
12 search warrant was not stale in that case, it cited that
13 many, many courts have found that long lengths of time were
14 not stale for a multitude of reasons. One reason is that a
15 typical child pornographer is one that collects these types
16 of images: a person who has a library, who wants to hold on
17 to that information and be able to access it at any time.
18 And so no matter how much time goes on, that library will
19 exist because he has it. The other types of individuals
20 who view and download and use child pornography are people
21 who download it and then delete it. And the court
22 addresses, I believe -- yes, the court addresses what
23 forensic technology has been able to find on computers.

24 This information, because our computers are so big
25 these days, this information remains on the computer well

1 after the time a video or an image is deleted. And so
2 addressing staleness from the perspective of whether or not
3 a real probability that evidence of child pornography will
4 exist on a computer several months or even years into the
5 future is a real probability where these devices do not
6 overwrite areas of the computer that are marked for
7 deletion. And they exist for many, many months and even
8 years after the user has gone to those websites or viewed
9 those videos.

10 So, Your Honor, we would, we would say that -- again,
11 I've also provided *United States vs. Richardson*. I won't
12 go over that further, but it is there as well concerning
13 emails and, and the amount of time our Fourth Circuit Court
14 of Appeals has deemed to be appropriate in these types of
15 cases. But we would say under the circumstances of this
16 case, there was a real probability that, based on
17 information provided by Mr. -- by Detective Murphy and
18 sworn to by Investigator Narenski -- excuse me, Narewski,
19 that evidence would exist on devices at [REDACTED],
20 which was the location where Detective Murphy downloaded
21 the child pornography.

22 (A PAUSE.)

23 THE COURT: All right, Ms. Zmroczek.

24 MS. ZMROCZEK: Thank you. Briefly, Your Honor. Mr.
25 Flores makes some points that I think apply directly to

1 this case. In a typical case -- I think that what the
2 testimony will point out in this case is that this is not a
3 typical case. I think that what the evidence will show,
4 what the testimony will be is that for someone to have just
5 two dates of, of accessing what people consider to be child
6 porn is, is very atypical.

7 What, what's also concerning, Your Honor, is that he
8 said that I think from, you know, November to May or March
9 or whatever those dates were would have been stale, well,
10 that's exactly what we have here, Your Honor. We have the
11 last time any pornography is alleged to be accessed is
12 February 2nd of 2014, and then what they do, four months,
13 literally four months later to the day is when a search
14 warrant is issued. And, and I think what's extremely
15 important, Your Honor, in this case for, for, for the court
16 to understand is that, is that those images that Murphy saw
17 were never found on the devices that they took from Mr.
18 Simmons. The house was full of other devices, some of
19 which were searched, some of which just -- they didn't ask
20 the owners for a password. So, what's extremely concerning
21 in this case, Your Honor, is that those images that Murphy
22 saw when he was back in November of 2013 and February of
23 2014 most certainly could have been on a device or a
24 computer using that IP address.

25 Unfortunately for the, for the government, none of

1 those belonged to Mr. Simmons. So, what they're trying --
2 and, and it's important for the court to, to understand,
3 too, is that they're not -- those images that they found or
4 these alleged images, and I believe there are eight, eight,
5 eight alleged images that they found on, on one of the
6 devices that they associate with Mr. Simmons, Your Honor,
7 those are not being charged. So, they're simply wanting
8 to, I think, reference those as more of, of, you know, bad
9 character evidence or something like that. None of those
10 images are being -- are the, are the basis for these
11 indictments.

12 So, again, you know, that's why -- another reason that
13 we are strongly moving to suppress the search warrant. (A)
14 for its -- for the staleness and (B) because none of those
15 images even -- let's say that the court finds that four
16 months isn't, isn't stale. That -- those images are still
17 not the ones at issue here. So, so, suppressing those
18 images doesn't end the case at all, but what it does is it
19 ends just some bad character evidence I think the state's
20 trying to backdoor in through a bad search warrant, through
21 a late search warrant. And that's our concern, Your Honor,
22 is none of those eight images -- and that's what I wanted
23 to make sure we get across. None of those are the subject
24 of either any six of the indictments.

25 And, and I'm sure Mr. Flores will correct me if I'm

1 wrong, but the six indictments are not based on anything
2 that was found in the search warrant. So, so, I think
3 that's really another important point for the court to
4 consider is that what they're simply trying to use that
5 information for is to, is to display some sort of, I
6 assume, bad character evidence or, you know, or common -- I
7 don't, I don't know what they're trying to use that for
8 because they are certainly not the subject of any of these
9 indictments. Thank you.

10 THE COURT: Thank you, Ms. Zmroczek.

11 Mr. Flores.

12 MR. FLORES: Your Honor, if I might clarify the facts?
13 Ms. Zmroczek has misstated some of the information that was
14 found during the forensic examination.

15 After the search warrant was obtained by Investigator
16 Narewski, it was executed at [REDACTED], at which
17 time all of the electronic devices were seized from the,
18 from the residence.

19 It's my understanding that Investigator Jon VanHouten
20 with the United States Secret Service looked at all of the
21 devices that were seized from the house; these included
22 iPads or EPad-like materials, as well as laptops and
23 desktop computers. He only found reference to child
24 pornography on two devices: one was an external hard drive,
25 the other was a desktop computer.

1 Both of these items were seized from Mr. Simmons's
2 room and were identified as being Mr. Simmons's based on
3 the information retrieved in the forensic exam. For
4 example, at least one legal document was found on one of
5 the devices concerning a family court case that Mr. Simmons
6 was involved in. Several pictures of Mr. Simmons was found
7 on this external hard drive.

8 And so concerning specifically the indicted videos,
9 Ms. Zmroczek is right in that the videos were not located
10 on the computers. However, during the forensic
11 examination, as I've explained for the stale -- for our
12 staleness argument, the forensic searches into unallocated
13 space into places that have been marked for deletion that
14 have not been overwritten by new information, in this
15 space, the term that we've been, been having a little issue
16 with, R@yGold, the R@yGold, that was specifically searched
17 for by Jon VanHouten. Multiple references to R@yGold were
18 found on that computer belonging to Mr. Simmons, and at
19 least reference to one of the videos that has been indicted
20 was found on that video.

21 Now, the videos were not found on the computer, but
22 there is evidence that it was that -- we believe is that
23 computer, the only computer that had child pornography on
24 it, and was the computer used to disseminate and distribute
25 these six images.

1 One other -- and maybe I misunderstood Ms. Zmroczek's
2 argument is that she's also stating that these eight videos
3 that were found on the external hard drive for which Mr.
4 Simmons has not been indicted should not come in as bad
5 character evidence. I have prepared a memorandum
6 concerning these additional items, and I'll hand that up to
7 the court right now. Your Honor, if ---

8 MS. ZMROCZEK: And, and I believe this segues into a
9 different motion, Your Honor, and so -- and I'm not, I'm
10 not tasked with arguing that motion. That would be Ms.
11 Goode. So, I, I -- my focus was specifically on the
12 staleness of the search warrant and suppressing those
13 images. I think Ms. Goode can address what I think Mr.
14 Flores is about to go into. So, I just want the court to
15 know that those were two separate motions. So, that the
16 search warrant was separate from the bad character. I just
17 happened to mention that because that's where it was found
18 was based on the search warrant.

19 THE COURT: All right. Well, let's just stick with
20 the search warrant, Mr. Flores.

21 MR. FLORES: Those will be all for the staleness
22 argument, Your Honor, as far as the search warrant.

23 THE COURT: Let me make sure I'm tracking. You got an
24 officer who located items he believed to be child
25 pornography to a specific AP address. Ultimately in

1 November of '13, that information three months later --
2 let's see, November, December, January, February -- three,
3 four months later it's passed on by that officer, Detective
4 Murphy, to the Columbia police officer Narewski, and I
5 apologize if I mispronounce his name.

6 MR. FLORES: It was actually assigned to Investigator
7 Hudak.

8 THE COURT: Hudak?

9 MR. FLORES: Yeah. Hudak was the original
10 investigating officer. Narewski works -- they both are --
11 work ---

12 THE COURT: But he becomes the active ---

13 MR. FLORES: That's correct.

14 THE COURT: Narewski, and also attached to the search
15 warrant is the affidavit prepared by Detective Murphy,
16 correct?

17 MR. FLORES: Yes, sir. Correct, Your Honor.

18 THE COURT: All right. So, and that's some, let's
19 see, February, March, April, May, June, four months.

20 MR. FLORES: Correct, Your Honor.

21 THE COURT: They execute a search warrant. They find
22 two items in the defendant's room, two items, the external
23 hard drive and the desktop.

24 MR. FLORES: They actually found an additional laptop,
25 but that could not be examined because the hard drive was

1 destroyed, but there will be -- two relevant items were
2 found at that point.

3 THE COURT: Two in Mr. Simmons's -- the room
4 identified as Mr. Simmons's?

5 MR. FLORES: That's correct, Your Honor.

6 THE COURT: And then ultimately Detective -- or Agent
7 VanHouten does a forensic examination of all the items that
8 came from [REDACTED]?

9 MR. FLORES: Yes, Your Honor.

10 THE COURT: Is that correct?

11 MR. FLORES: That is correct.

12 THE COURT: And this is one thing I wasn't sure I was
13 tracking or not. The R-at-Gold appears on these other
14 communication devices, these other communication devices at
15 [REDACTED]?

16 MR. FLORES: It only appears on the one hard drive
17 taken from Mr. Simmons's room. There's no other reference
18 -- we call -- we say R@yGold. That's what we typically say
19 is the, is the phrase. No other devices were found to have
20 any evidence of child pornography or pornography.

21 THE COURT: None of the devices were what?

22 MR. FLORES: At the residence that Agent VanHouten
23 took and looked at and examined.

24 THE COURT: So, how does -- are there images that are
25 recovered on the return from the devices found in Mr.

1 Simmons's room?

2 MR. FLORES: Sorry. I misunderstood the court.

3 THE COURT: Are there images ---

4 MR. FLORES: There are eight ---

5 THE COURT: --- from the devices found in Mr.

6 Simmons's room?

7 MR. FLORES: There are. There are eight by --

8 eight videos that are found on an external hard drive that
9 are ---

10 THE COURT: From his room?

11 MR. FLORES: In his room, yes, Your Honor.

12 THE COURT: All right.

13 MR. FLORES: And that contain pictures of, of him on
14 it.

15 THE COURT: And you, you would either directly or
16 circumstantially present evidence to connect those devices
17 to Mr. Simmons?

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

19 THE COURT: All right. Then maybe I misunderstood. I
20 thought -- all right, and those images at that point, if I
21 deny the staleness argument, Ms., Ms. Zmroczek would punt
22 that argument to Ms. Goode. No disrespect in using the
23 term punt.

24 MR. FLORES: Yes.

25 THE COURT: We all understand it. Is that, is that

1 correct?

2 MS. ZMROCZEK: That is. Absolutely.

3 THE COURT: So, solely I'm looking at right now not
4 whether anything is relevant or not from the search
5 warrant. Obviously it is or y'all wouldn't be arguing over
6 it, but I'm not really looking at that. I'm looking solely
7 at that period of time from November of '13 til June of
8 '14?

9 MR. FLORES: Yes, Your Honor.

10 THE COURT: All right. I just wasn't tracking where
11 those images were coming from.

12 MR. FLORES: Sure. I think, I think we've -- that
13 there was definitely some overlap as to the arguments
14 between the two.

15 THE COURT: All right.

16 MS. ZMROCZEK: And, and that's correct, Your Honor.

17 THE COURT: All right. Anything further, Ms.
18 Zmroczek?

19 MS. ZMROCZEK: Not on that issue, Your Honor. I will,
20 as the court effectively puts it, punt to Ms. Goode for
21 the...

22 THE COURT: All right. Do you want to present any
23 evidence or testimony, Mr. Flores, as to the search
24 warrant?

25 MR. FLORES: Not at this time, Your Honor.

1 (A PAUSE.)

2 THE COURT: Do you think I can rule on the staleness
3 of the search warrant without evidence and testimony? I
4 mean, I can read, I can read *United States vs. Johnson* all
5 day long.

6 MR. FLORES: Your Honor, you have the search warrant
7 that Ms. Zmroczek handed up. I don't know what additional
8 information that we would rely on in this case. Your
9 Honor, we can present ---

10 THE COURT: I'm not asking you to or not to present.
11 I'm, I'm just, I'm just -- and I wasn't being short when I
12 said that. Please excuse me if you take it as that. I'm
13 just asking the question. Is this the record I have to
14 rule on?

15 MR. FLORES: Sure, Your Honor.

16 THE COURT: Both you and Ms. Zmroczek?

17 MS. ZMROCZEK: And, and, and, Your Honor, it's my
18 understanding that the, the, the information we presented,
19 which is why we presented it to, to the court, in the
20 search warrant is, is the definitive and information that
21 was presented to the magistrate. And that the dates and
22 times all referenced are absolutely -- I don't think that
23 there would be any testimony that would dispute the dates
24 or times or timeline, as it were, of the information.

25 THE COURT: I don't, I don't dispute this timeline. I

1 accept your timeline as it is on the warrant.

2 (A PAUSE.)

3 THE COURT: All right, if there's nothing further, I
4 think there's a difference between taking something under
5 advisement and thinking about it. Let me think about it.

6 MS. ZMROCZEK: And for clarity, Your Honor, may we
7 have that search warrant -- I have another copy. If we may
8 have it marked as Court's 2, if we could?

9 THE COURT: You may have the copy. I'm going to take
10 this one with me.

11 MS. ZMROCZEK: Certainly, and I will hand it up.

12 (COPY OF SEARCH WARRANT MARKED INTO EVIDENCE AS
13 COURT'S EXHIBIT NUMBER 2.)

14 THE COURT: Yes, ma'am, Ms. Goode.

15 MS. GOODE: Thank you, Your Honor. May it please the
16 court? We have -- are asking for -- we're requesting that
17 the state be prohibited from mentioning or eliciting any
18 testimony regarding the eight deleted videos that
19 Investigator VanHouten was able to find on the external
20 hard drive that I believe was found in the bedroom that Mr.
21 Simmons was residing in at the time.

22 As has been mentioned, he had not been charged with
23 those eight videos and, Your Honor, this, this is the type
24 of evidence that should be excluded. It's clearly
25 propensity evidence, and that's strictly prohibited by Rule

1 404(b). These videos don't prove anything. The state must
2 -- that's the question that has to be asked, what do these
3 videos prove. What -- how will these videos assist the
4 jury in determining whether Mr. Simmons disseminated child
5 pornography. They don't do anything for the jury. All
6 this ---

7 THE COURT: Thank you. I'm sorry. I didn't mean to
8 interrupt you. Yes, ma'am, go right ahead.

9 MS. GOODE: All this type of evidence is going to do
10 is to shift the jury's focus to these eight videos instead
11 of the six videos that were not found, and they're here to
12 base their verdict on what Mr. Simmons was indicted for,
13 which is six counts of second degree sexual exploitation of
14 a minor.

15 I've, I've read very briefly -- because we just, we
16 just got it here -- Mr. Flores's motion or his memorandum
17 here. He's, he's arguing *res gestae* and if not *res gestae*,
18 then that he should be allowed to get into this, this --
19 these videos under absence of mistake or accident, an
20 exception to 404(b), and common scheme or plan. Your
21 Honor, there is a plethora of case law, and to get through
22 all of the different case law regarding 404(b) and the
23 exceptions is -- it could take the rest of my life
24 probably. The ---

25 THE COURT: Or at least the rest of mine.

1 MS. GOODE: It's a lot of case law. I'll start with
2 *res gestae*, Your Honor, and that doctrine says that:

3 Evidence of prior bad acts may be admissible
4 where such evidence constitutes an integral part
5 of the crime with which the defendant is charged,
6 or is needed to aid the factfinder in
7 understanding the context in which the crime
8 occurred.

9 I can see nothing of just having possession of child
10 pornography, may be child pornography, how that is going to
11 -- how that's an integral part of sharing six different
12 videos and how that's going to aid the jury in
13 understanding disseminating child photography, what --
14 which is what he's charged with. They're two separate
15 crimes. Possession and a deleted folder on an, on an extra
16 hard drive would be sexual exploitation of a minor in the
17 third degree. He's indicted for six other videos that were
18 never found. Second degree. Maybe those were actually
19 able to be downloaded by a second party on another
20 computer.

21 I don't, I don't believe that this -- that these
22 videos should be allowed to be introduced under the *res*
23 *gestae* doctrine. It's -- these videos were -- from what we
24 can tell and from VanHouten, Investigator VanHouten's
25 report, these were some time either in April or May of

1 2013. The downloaded videos from Berkeley County don't
2 come until November of 2013. So, they're not so linked
3 together on point and time or anything about the
4 circumstances surrounding the download of the videos to
5 where these are an integral part of the crime of
6 disseminating child pornography. So, I would, I would say
7 that *res gestae* is, is not going to fit.

8 He then goes on to argue that he should be able to,
9 if, if not part of the *res gestae*, then it should be
10 admissible under 404(b) as evidence of other bad acts.
11 Essentially propensity evidence: that these would
12 demonstrate absence of mistake or accident. I'm not sure
13 if anticipating a defense of just, oops, he happened to
14 download child porn and it got deleted. It just -- by
15 happenstance. I'm not sure what that is. But the case law
16 indicates for absence of mistake or accident -- let's see,
17 in *State vs. Key*, that's a 1981 case, there was evidence
18 that ---

19 THE COURT: Say that again.

20 MS. GOODE: I'm sorry, *State vs. Key*. Key, K-E-Y.
21 Oh, the cite, I'm sorry. It's 284 S.E. 2d 781. That's
22 1981. And the evidence that -- the holding was that the
23 evidence that the defendant had previously threatened the
24 victim with a gun was admissible during a murder trial to
25 show absence of mistake or accident where he claimed that

1 the gun just went off. So, in this case if there was a
2 claim of inadvertent downloading of child pornography, then
3 I could see where maybe eight deleted videos ---

4 THE COURT: It maybe becomes admissible.

5 MS. GOODE: Maybe, but I would, I would argue that
6 that's nothing that the evidence in the case would suggest,
7 would suggest that anyway, Your Honor.

8 And then a common scheme or plan, that's a very --
9 basically there are two forms of common scheme or plan.
10 One, that the person charged with a crime commits one crime
11 to aid in the furtherance of another. Say that someone
12 steals a car and want to go and rob somebody, or they steal
13 a car and go break into someone's house. The -- kind of
14 with *res gestae*. It's the -- it tells the whole story.
15 And then if there are -- if someone has committed crimes in
16 the past similar, similar to the crime they are charged
17 with, you know, they go in and rob a bank wearing a pink
18 bandanna and a blonde wig and they say the same thing every
19 time, you know, that, that is a common scheme and that is
20 so distinct that it produces a, a signature that could be
21 used to prove identity.

22 Your Honor, again the two crimes are not -- the only
23 thing that's similar about them is the nature of the
24 images, that they are alleged to be child pornography, but
25 possession and disseminating are two different crimes. Mr.

1 Flores argues that because they are electronic files that
2 depict minors engaging in sexual activity, that they are
3 similar in nature, that that's a common scheme or plan.

4 The Supreme Court -- our courts have, have been
5 varied. Again, that's an issue that gets brought up a lot,
6 common scheme or plan. There is tons of case law on it.
7 It requires a close degree of similarity or connection
8 between the prior bad act, between the uncharged conduct
9 and the crime for which the defendant is on trial. It has
10 to be more than just a general connection, and the general
11 connection here being alleged child pornography. Again,
12 the time -- the crimes themselves are two distinct crimes,
13 and I don't believe that that falls underneath either one
14 of those exceptions to 404(b).

15 Further, Your Honor, I don't believe that the state --
16 that if there's no clear and convincing evidence, which is
17 required, if the defendant, if Mr. Simmons has not been
18 convicted of the act, there has to be clear and convincing
19 evidence that he, in fact, committed the act. And the only
20 thing we have here is an external hard drive taken from his
21 room in a house shared with several other people that had
22 deleted files on it.

23 Clear and convincing evidence is the degree of proof
24 which will produce in the mind of the trier of fact, jury,
25 a firm belief as to the allegations sought to be

1 established. So, it's more than just a preponderance but
2 less than what's required beyond a reasonable doubt. So,
3 there has to be clear and convincing evidence that he
4 committed -- that he was the one in possession or had
5 knowledge that those files were on there, and there's no,
6 there's no clear and convincing evidence that he is guilty
7 of that act.

8 And again it's just, I believe, the state's way of
9 backdooring a conviction into the six that are indicted by
10 saying, look, we have these files here to show you. Yeah,
11 we didn't find these six, but we found these eight. That
12 is highly prejudicial to Mr. Simmons and not probative or
13 -- let me rephrase that. The prejudicial effect that it
14 would have on Mr. Simmons and his right to a fair trial
15 would be -- would substantially outweigh the probative
16 value to the state in this case. And we would ask that
17 Your Honor exclude any reference to that, have the state
18 exclude any reference to that in testimony or through their
19 openings or closings, and that none of that information be
20 presented to the jury.

21 THE COURT: Thank you. Thank you very much.

22 MS. ZMROCZEK: And, Your Honor, I know that it's Mr.
23 Flores's turn, but she just reminded me of something I
24 wanted to add on our staleness issue.

25 THE COURT: What, ma'am?

1 MS. ZMROCZEK: That I wanted to add to the staleness
2 issue. What she told you was that those eight videos,
3 those eight images that were found as a result of the
4 search warrant, those were dated in March 2013, Your Honor.
5 So, so, those images were predating any investigation by
6 Investigator Murphy and Hudak, too. So, I just wanted to,
7 to make sure that the court was aware of that because there
8 are so many dates that, that fly around. So, if -- that
9 goes back to the staleness issue, but, but, but, but the --
10 but it all kind of falls under one heading. But certainly,
11 Your Honor, the fact that -- the only thing found at the
12 basis of this search warrant, which we argue is stale, was
13 -- were images that were predating any investigation as
14 well. So, if that, if that makes it a little more clear,
15 thank you, and now I'll shut up.

16 THE COURT: Make sure I'm tracking again, Mr. Flores,
17 Ms., Ms. Zmroczek. Eight images that were found on devices
18 in Mr. Simmons's room.

19 MR. FLORES: Yes, sir.

20 MS. ZMROCZEK: Correct.

21 THE COURT: Are not images that are subject to the
22 indictments?

23 MS. ZMROCZEK: Correct.

24 MR. FLORES: That is correct, Your Honor.

25 THE COURT: That is correct? So -- well, tell me,

1 tell me, tell me then, Mr. Flores, putting aside the
2 staleness argument, tell me the state's position as far as
3 the admissibility of those items.

4 MR. FLORES: Your Honor, if I might approach with one
5 other memo? There is one other argument out there that I
6 think needs to at least be presented in totality with this
7 one, and it's on Mr. Bank's list concerning whether or not
8 the state should be allowed to use Internet search terms or
9 download histories.

10 This case is not dissimilar to certain cases we see.
11 As I was explaining for the court before, we see a lot of
12 child pornographers who have lots of images, and then we
13 have individuals who will download on a number of occasions
14 and then delete the material. In this case, the forensic
15 material ---

16 THE COURT: The material never deletes, does it, until
17 it's written over?

18 MR. FLORES: Until it's written over, right. It's
19 still -- you can still find it unless it's been written
20 over. The second one bite, the second one bite on, on a,
21 on a file has been overwritten -- could be one pixel --
22 then the evidence of that video is gone forever if it's
23 been overwritten.

24 So in certain cases, and in this case we would argue
25 the circumstances require that we present the totality of

1 what evidence is there, what information was gained from
2 the forensic examination. So, Agent VanHouten looked for
3 the videos.

4 THE COURT: The ones that are subject ---

5 MR. FLORES: Subject to indictment.

6 THE COURT: Subject to Investigator Murphy's
7 investigation?

8 MR. FLORES: That's correct. He looked for the
9 videos. Were not there. He looked for the term R@yGold
10 because that was in the title of those videos. Found
11 presence of that on the computer.

12 THE COURT: That term?

13 MR. FLORES: That term, and, and that term is
14 associated with at least the title of one of those videos.
15 R@yGold99.mpg was actually found on that computer. Now ---

16 THE COURT: Also in that computer is found the eight
17 non-indicted?

18 MR. FLORES: They are found on as a separate external
19 hard drive.

20 THE COURT: All right.

21 MR. FLORES: All right. So on this computer, in
22 addition to -- because the -- because as Ms. Goode ---

23 It's Goode?

24 MS. GOODE: Goode.

25 MR. FLORES: Ms. Goode had stated ---

1 THE COURT: I apologize.

2 MR. FLORES: --- there were multiple people living in
3 the home. So, there's a question as to accessibility of
4 this computer. Were these videos being intentionally
5 sought out? We would argue that the search terms that were
6 searched for using the forensic software are relevant
7 because whoever was using that computer was looking for
8 this material specifically; they were soliciting child
9 pornography.

10 Further, it's the state's case -- the state will
11 present the other individuals who were living at the home.
12 It's the, the Doiron family. I've got ---

13 THE COURT: They will deny it.

14 MR. FLORES: I'm sorry?

15 THE COURT: They will deny this.

16 MR. FLORES: They will deny it. They will testify
17 that, indeed, Mr., Mr. Simmons lived in that room. It was
18 his room. They weren't -- they do not go in that room
19 without his permission. If they went in there, he was
20 present with them. So, it will be their testimony that
21 Wendy, Ron, Kyle, the three of-age individuals -- they also
22 had minor children, I believe, seven years and younger --
23 those three individuals did not go into that room to use
24 the computer that was indeed password-protected. And that
25 password, as Mr. Simmons gave to -- gave a statement to

1 Investigator Narewski was needed in order to access that
2 computer. So, the external hard drive becomes relevant
3 because it was, again, located in that room. Was one of
4 only two devices inside the entire household that contained
5 images of child pornography. Were similar in nature to the
6 files that were in downloaded by Detective Murphy. And so
7 it's the totality of these, of these instances added up
8 that give the circumstances of this case that make the
9 presentation clearer. And that -- and that's where we are
10 as far as *res gestae*.

11 And as far as, you know, common scheme, the state ---
12 THE COURT: If you read, I mean, if you read -- Ms.
13 Goode says if you read those *res gestae* cases and even -- I
14 don't know. I think *res gestae* was actually a dissenting
15 opinion in *State vs.*, I think, *Smith*. The judge next door
16 wrote that opinion, and I predicted her dissenting opinion
17 would be the law in five years, and it was under *U.S. vs.*
18 *Masters*. But cases like *Adams*, he -- *Adams*, it was cocaine
19 and armed robbery, *Adams*, and the cocaine came into it
20 because that was the purpose of why he was committing the
21 armed robbery. I mean, there's cases that stretch it out
22 between the -- perhaps between planning the crime. You
23 look at *Beck*. We're going to go rob'escorts. Four months
24 prior to when he robbed, killed an escort. That kind of
25 gets into that. Also a little bit into common plan and

1 scheme but gets a little bit away from that temporal aspect
2 of it. Anyway, I interrupted you, Mr. Flores.

3 MR. FLORES: Sure, Your Honor.

4 THE COURT: But tell me your position as far as *res*
5 *gestae*, the full presentation of the case.

6 MR. FLORES: Sure, Your Honor. I mean, we would
7 stand, we would stand on what we've, we've already
8 presented in our memorandum.

9 It's just, you know, these cases involving technology,
10 when you can't get to a computer in a quick time frame,
11 oftentimes, whether it be an Internet service provider
12 who's slow getting things processed, it's possible that
13 this evidence would disappear, and we are left with
14 whatever is left on a computer to build a picture as to
15 how, how it's being used, who was using it, and, and, and
16 for what purposes.

17 THE COURT: What is, what is the testimony the state's
18 going to present as far as the six indicted ones?

19 MR. FLORES: Yes, Your Honor. Detective Murphy will
20 testify that he was conducting a pro-active investigation
21 on a Bit Torrent network, that it identified an IP address,
22 and on that date and time there are log files which we'll
23 represent show that at that particular IP address six files
24 were transferred to him, and they were transferred from a
25 computer at that IP address. Once he received those files,

1 he played those files. Found that they did indeed contain
2 minors engaging in sexual activity.

3 THE COURT: So, those files exist?

4 MR. FLORES: They did. On November 22nd, we would
5 argue that they existed on the computer in Mr. Simmons's
6 room at [REDACTED].

7 THE COURT: And there's no way, there's no way the
8 detective could have preserved it?

9 MR. FLORES: He preserved what he received. You can
10 only get -- based upon Internet connectivity, how long it
11 takes to download a file -- because these are single-source
12 downloads, file downloads take longer. So, if you and I
13 were using a filesharing network, typically we could get
14 files from everyone in this room. It would take a matter
15 of minutes. But because the investigator used software
16 which targets one particular IP address because they want
17 to be sure they're getting this illegal material from one
18 particular place, it takes longer. And so he downloaded it
19 over a period of time. He inspected what he received from
20 that location.

21 THE COURT: And it appeared to be child pornography.

22 MR. FLORES: It appeared to be child pornography.

23 THE COURT: And it still exists?

24 MR. FLORES: That particular -- those -- yes, those
25 files which he downloaded, yes.

1 THE COURT: All right. All right.

2 MR. FLORES: They don't -- we, we would say -- the
3 forensic report would say they don't exist on this device
4 anymore, but there's evidence that they did at the time.
5 There's evidence that they ---

6 THE COURT: Not -- they can connect ---

7 MR. FLORES: --- at the time.

8 THE COURT: --- back to that device.

9 MR. FLORES: That's correct.

10 THE COURT: And then, and then -- well, what -- I
11 mean, that's, that's a crime in and of itself if -- I mean,
12 I'm making the assumption.

13 MR. FLORES: Right.

14 THE COURT: You know, you connect those dots from the
15 investigator to the forensics to the defendant, correct, to
16 the IP address that's associated with the defendant.

17 MR. FLORES: Associated with location, and we have --
18 and then the state has the burden of showing, well, who was
19 it at this place that had these -- that, that ---

20 THE COURT: You want, you want to use eight
21 pre-existing, pre-existing images from -- I forget the
22 date, May or whatever, prior to the November when Officer
23 Murphy, detective, investigator located it. Is that, is
24 that correct?

25 MR. FLORES: We would, we would argue -- we don't want

1 to necessarily show those images. But I think it's
2 relevant that they existed on devices associated with Mr.
3 Simmons and found in his room because the idea -- it's the
4 state's theory in this case that Mr. Simmons would
5 intentionally seek out and solicit this type of material.
6 The search terms from the computer show specifically
7 R@yGold. There's other items that were obtained, as well
8 as torrent files that were, were accessed through that
9 computer and that would be deleted at some point to avoid
10 detection. Our, our argument would be that it was to avoid
11 detection.

12 So, the presence of these additional eight on the
13 external hard drive support that it was kind of a deletion,
14 a, a download search for delete, and so that's what, what
15 we would argue.

16 THE COURT: Well, isn't that, isn't that inconsistent
17 with child pornographers hoarding?

18 MR. FLORES: Well, I guess ---

19 THE COURT: Hoarding their, their stash or -- I don't
20 even know what you call it.

21 MR. FLORES: That could be ---

22 THE COURT: Hoarding these items?

23 MR. FLORES: There, there are two -- you know, not
24 every child pornographer is the same. Not every individual
25 who steals is the same. We take them as they come, but

1 they do -- the vast majority of them, as, as our cases have
2 shown, do collect and collect large amounts, but there
3 are ---

4 THE COURT: They do what?

5 MR. FLORES: Collect large amounts in, in a stash.
6 This is not one of those cases. We do come across cases
7 where they do download for whatever reason. We have ideas
8 of why they have -- why they delete over time. Whether it
9 be to avoid detection, whether they feel embarrassed by the
10 conduct and they try and start their lives over, but there
11 are -- there do exist people who collect child pornography,
12 use it, and then delete it over, over a period of time.

13 THE COURT: But you're not, you're not going to offer
14 the images in. Just that they were located on the devices?

15 MR. FLORES: That's correct, Your Honor.

16 THE COURT: Anything further, Mr. Flores?

17 MR. FLORES: Not at this time, Your Honor.

18 THE COURT: Thank you.

19 Ms. Goode.

20 MS. GOODE: Yes. Just briefly, Your Honor. Those
21 eight deleted videos don't say anything about R@yGold or
22 they don't -- I don't even believe they have titles or
23 anything. They're, they're just eight videos that -- from
24 Mr. Flores's own words, sounds like he's trying to use it
25 for propensity evidence only, not to even prove identity

1 that it was, in fact, Mr. Simmons that was the one
2 downloading this stuff. It's just that he is the person
3 that does this and deletes this to avoid detection and does
4 this character evidence, and that's what 404 strictly
5 prohibits is character evidence. That's all that they're
6 trying to do with these eight videos.

7 THE COURT: Thank you, Ms. Goode.

8 (A PAUSE.)

9 MS. GOODE: One last thing, Your Honor.

10 THE COURT: Yes, ma'am.

11 MS. GOODE: One last thing. The only person that
12 indicates that those eight files that were deleted that
13 were found are ---

14 THE COURT: The eight files that were deleted that
15 were found?

16 MS. GOODE: That were found by Investigator VanHouten
17 of the Secret Service.

18 THE COURT: That, that confused me. I thought there
19 were eight files that were actually found.

20 MS. GOODE: They were.

21 THE COURT: Eight files were actually found?

22 MR. FLORES: Yes, Your Honor. The way that ---

23 THE COURT: Six that were indicted for were not found
24 on the computer?

25 MR. FLORES: Right. The eight videos that we're

1 referencing on the external hard drive, there is a folder
2 called recycle bin, and it's in that folder the eight
3 videos exist. They do exist.

4 THE COURT: All right.

5 MR. FLORES: In a folder.

6 THE COURT: So, I, I didn't understand the term.
7 Eight, eight videos that were not found. I wasn't
8 tracking.

9 MS. GOODE: Deleted that were found. I guess I used
10 ---

11 THE COURT: All right.

12 MS. GOODE: They were found, but they were found in a
13 deleted folder.

14 THE COURT: But they were found.

15 MS. GOODE: They were removed.

16 MR. FLORES: They were found.

17 MS. GOODE: Yes.

18 MR. FLORES: They were marked ---

19 THE COURT: I don't care where they were found.

20 MR. FLORES: They were marked ---

21 THE COURT: They were found on that computer.

22 MS. GOODE: There we go. That, that makes it easier.

23 THE COURT: All right.

24 MS. GOODE: And we, we don't have any titles
25 representing what they are. The only person that gives any

1 sort of indication that they might be child porn is
2 Investigator VanHouten. Nobody else looks at these and
3 sees them and determines -- Detective Murphy hasn't,
4 Investigator Hudak, nobody else involved. Just
5 Investigator VanHouten is the only one.

6 THE COURT: Have y'all looked at it? Y'all had it in
7 discovery.

8 MR. BANK: Your, Your Honor, I, I viewed the, the
9 eight files. I reviewed it with one of my investigators.
10 Myself and Ms. Zmroczek reviewed what was the remaining of
11 the six videos, and I've reviewed that, but I saw the eight
12 videos. The way Investigator VanHouten explained -- pretty
13 open with me; met with me a couple of times -- is that he
14 found a lot of adult porn, legal porn on the external hard
15 drive. And within that adult porn, he picked out eight
16 videos that he thought were child pornography by what they
17 looked like. I asked, you know, if you had any -- did he
18 have any training in determining what was child pornography
19 or not. Obviously we could have him here to testify, but
20 he explained to me that he hadn't had any training. He
21 explained to me that at least one of the eight videos he
22 didn't really know whether it was child porn. He put it in
23 just in case. One of the videos, the person has a bag over
24 their head. I said, well, how do we know that's child
25 pornography, and he said, well, they're obviously trying to

1 hide her face for some reason.

2 And that's when we started thinking, well, geez, what
3 if this is a nineteen-year-old that's pretending to look
4 like a sixteen-year-old. I mean, I've seen the, the six
5 indicted videos, what the Berkeley officer was able to
6 preserve when he started downloading it. He only
7 downloaded a portion of the six videos; he still has those
8 preserved. I have viewed those as well. I have viewed the
9 eight videos that they did not charge him with. Those are
10 much longer and more in a -- in a, a -- what we'll call a
11 stash of adult pornography. There were some -- there are a
12 couple in the eight deleted that look like younger children
13 but, Your Honor, just to kind of give you an anecdote, when
14 we left watching the six indicted videos, which are as
15 short as 20 seconds long, on the ones that you could see a
16 face, the person in the video that I have marked down as I
17 thought looked the youngest my co-counsel had marked down
18 as the one she thought looked the oldest.

19 You know, I, I don't know whether this is child porn
20 or not. It's problematic for the jury. I don't want to
21 rehash the constitutional argument that it's problematic
22 that the jury just gets to guess. But then as to the way
23 that the solicitor's office -- or, excuse me, the attorney
24 general's office speaks about just saying, well, we'll just
25 tell the jury that there were eight videos, separate child

1 pornography without showing them, then the problem becomes,
2 well, then we're just telling the jury that they're ---

3 THE COURT: Well, you can show them to them.

4 MR. BANK: Right. Well ---

5 THE COURT: And say it's clearly adult porn.

6 MR. BANK: Well, but that's why again, Your Honor,
7 we're moving to exclude not only having them view the
8 videos. We're excluding any reference to them. We, we
9 understand that at the end of the day, we may have to, to
10 argue about the six videos and whether they're child porn
11 or not, but simply putting in eight videos that have no
12 relation to R@yGold, that have varying times in terms of
13 when they were downloaded or not downloaded, it, it becomes
14 problematic. But just really to give you background on
15 what those videos contain, that was my personal view of, of
16 the videos.

17 (A PAUSE.)

18 THE COURT: Anything further, Ms. Goode, Mr. Flores?

19 MS. GOODE: No, Your Honor.

20 MR. FLORES: No, Your Honor.

21 THE COURT: And, and that would be how you intended to
22 present the evidence, through testimony of the officer?

23 MR. FLORES: Sorry, Your Honor?

24 THE COURT: On the eight items, if you were not going
25 to present the items themselves, you would intend to

1 present -- not, not that I question the officer. Not that
2 I question -- questioning, but it would be an officer's
3 opinion as to whether it was or was not child pornography,
4 or whether it was not, was or was not a depiction of sexual
5 activity of a minor?

6 MR. FLORES: I guess as it stands now, if we don't
7 present the videos, it would be the testimony of the
8 opinion of the officer.

9 THE COURT: Can you do that? Isn't that a decision
10 for the jury?

11 MR. FLORES: I would argue ---

12 THE COURT: It's a jury issue as to whether it is or
13 is not ---

14 MR. FLORES: We'd have to present those videos.

15 THE COURT: --- child pornography because that, isn't
16 that the ultimate issue for the trier of fact?

17 MR. FLORES: I think the rules provide that.

18 THE COURT: Let's look at 701.

19 MR. FLORES: Yeah.

20 THE COURT: And I'm, I'm comparing it to a case called
21 *Alice Postel Wilkins*, a battered wife homicide out of
22 Charleston where an expert could not give an opinion:

23 If a witness has not testified as an expert, the
24 witness's testimony in the form of opinions or
25 inferences is limited to those opinions or

1 inferences which are rationally based on the
2 perception the witness.

3 MR. FLORES: Yeah.

4 THE COURT: Or helpful to a clear understanding of the
5 witness's testimony; or the determination of the
6 fact in issue; and do not require special
7 knowledge, skill, experience, or training.

8 Just like Mr. Banks says, everybody has a different
9 opinion of age, height, weight. I, I don't know. I just
10 don't -- I'm trying to process it.

11 MR. FLORES: And we all bring our common sense,
12 particularly our factfinders, to determining those types of
13 issues.

14 (A PAUSE.)

15 THE COURT: Mr. Attorney General, I don't think the
16 eight videos are -- I think it's more prejudicial than
17 probative. I think it may assist in proving that the
18 defendant is a child pornographer, but I think it's more
19 prejudicial than probative as far as the elements of what
20 you have to prove in the six indictments in the, in the
21 plaintiff's -- in the state's case in chief. So, it is
22 excluded.

23 Does that make the staleness argument moot, or I do
24 not have to address it right now?

25 MS. ZMROCZEK: I ---

1 THE COURT: I'm not going to address it right now
2 anyway, but ---

3 MS. ZMROCZEK: Right, and, and I, I'll do some
4 research to see if just -- if it makes moot -- it may make
5 it moot, Your Honor, but let me -- I just need to -- if I
6 may, I'll email your clerk tonight, too, with, with the AG
7 just to ---

8 THE COURT: All right.

9 (COUNSELORS CONFER.)

10 THE COURT: All right, Mr. Flores -- don't, don't
11 email me. Not because I wouldn't look at it but because I
12 don't have Internet.

13 MS. ZMROCZEK: Certainly.

14 THE COURT: Mr. Flores, anything further?

15 MR. FLORES: I've got nothing, Your Honor. I gave you
16 all I got today.

17 THE COURT: Don't say it like that, Mr. Flores,
18 please.

19 All right, any other motions?

20 MR. BANK: Your Honor, one, one final one and I think
21 this will -- it may answer the question of whether it's
22 moot or not.

23 This is letter 2(D) That's the final motion. It's a
24 very similar argument as we just made regarding the eight
25 videos. To, to break down again, we have six indicted

1 videos. We have the eight unindicted videos. The third
2 thing that was found were search histories for child
3 pornography on the actual computer.

4 If I can, these dates may help you, Your Honor. The
5 -- there's -- appears to be some form of active child
6 pornography searching on four isolated date ranges on this
7 desktop. The first date is March 7th of 2013. The second
8 date is a range of May 21, 2013, to May 24th of 2013. The
9 third range is 11/11 of 2013 to 11/28 of 2013. And the
10 fourth and final is February 19th of 2014 through February
11 23rd of 2014.

12 As you'll make note, only one of those date ranges,
13 the November date ranges, are in line with the date that
14 this is alleged to have occurred, the November 2013 date.
15 An indictment date of the 22nd fall within that date range.

16 Your Honor, within those four isolated periods are the
17 only times that they saw active pornography searches for
18 terms that are commonly associated with child pornography.
19 So, some terms -- one specific term that is associated with
20 child pornography and that was searched is R@yGold, this
21 term we keep hearing a lot about.

22 Just for your knowledge, one of my investigators
23 explained it to me. Apparently Raymond Gold was a person
24 years ago that was very well regarded in the child
25 pornography community.

1 THE COURT: That's something I never wanted to know.

2 MR. BANK: But there were other commonly or at least
3 what the attorney general's office has presented as
4 commonly-searched child pornography terms. One of those is
5 an acronym, PTHC. That's preteen hardcore. One -- another
6 common term, for example, is Lolita, L-O-L-I-T-A, I
7 believe. One of -- a third off the top of my head is, is
8 Pedo, P-E-D-O, which I can assume has some type association
9 with pedophile.

10 Your Honor, out of all the searches -- well, there's a
11 few issues with the searches. One, I've spoken with, again
12 like I said, Mr. VanHouten. We're a little unclear and
13 unsure of the times that are given when these searches
14 occurred were actually accurate. That may be an issue for
15 the factfinder, but it became to be an issue for us in
16 terms of trying to present an alibi defense.

17 We have Mr. Simmons's work records; we have his credit
18 card records. We have a period when he was out of town on
19 vacation, but we've been unable to, with any certainty,
20 place him out of the house when these search terms are
21 happening because the search term times that are associated
22 with them are in and of themselves unreliable. The -- out
23 of all the search terms, the only time R@yGold is ever
24 searched, according to Mr. VanHouten's report, is during
25 that November period. That November period is also the

1 only period that is in close time and proximity with when
2 the indictment is.

3 So, what we would ask the court to consider doing
4 under essentially the same arguments as the deleted videos,
5 videos is we'd ask for the court to prohibit the state from
6 making any reference to any search terms in the other
7 periods or that are not R@yGold. I'll concede that if they
8 want to factually put up something that indicates there was
9 a R@yGold search in November on, on the desktop, I, I
10 concede and understand that. But searches that have
11 nothing to do with R@yGold and that happened in periods
12 that have nothing to do with the time period he's indicted
13 for, we ask to -- basically to prohibit that reference
14 because it's, again, an implication of bad character in
15 much the same ways that the, that the eight deleted images
16 are. And I think those were also found when the computers
17 were evaluated under the search warrant so that there would
18 still be a staleness issue there.

19 MS. ZMROCZEK: So, I just want to make sure that his
20 concession was in lieu of the staleness argument.

21 THE COURT: I'm sorry?

22 MS. ZMROCZEK: I just wanted to make sure that as he's
23 making concessions up here, that's only if Your Honor
24 decides the search warrant's not stale.

25 THE COURT: Mr. Flores.

1 MR. FLORES: Yes, Your Honor. The forensic report
2 does reference multiple times in which there was searches
3 for child pornography. R@yGold was one of the search terms
4 that was parsed, as Mr. Banks stated. PTHC, Lolita.

5 The other thing that is relevant is that the -- there
6 is a history of torrent files.

7 THE COURT: What?

8 MR. FLORES: Torrent files, t-o-r-r-e-n-t, and torrent
9 files are essentially how Bit Torrent works. They're
10 instructions as to how these types of files can be
11 transferred to a computer, and those are also -- were
12 recovered from, from Detective -- from Agent VanHouten.

13 We believe that in its entirety, you know, these,
14 these other searches are relevant because they, they show
15 that there was a knowledge of child pornography being
16 downloaded historically. The fact that it's been deleted,
17 we have to -- well, you know, the state would like to show,
18 you know, that there was other activity and that this was
19 -- the deletions were common. So, it's a continuing scheme
20 and pattern to show that the child pornography was not
21 placed on the computer by accident. It was downloaded on
22 certain times, and a history of this torrent usage over a
23 period of time, and as a result of -- that is why the
24 R@yGold videos were never found because it's a continuing
25 pattern of deleting files that had once been downloaded

1 onto computer. Well, I -- the state has to -- believes
2 that it has to rebut the argument that these -- why these
3 videos just don't exist anymore, so must never have existed
4 and, and we feel we have to rebut that.

5 THE COURT: You have, you have different dates and
6 different times for, I think, different time frames of four
7 different ones, one of which includes the date in the
8 indictment?

9 MR. FLORES: I believe so, Your Honor.

10 THE COURT: So, that ends up being -- the, the item
11 itself, the -- his computer, whatever, external hard drive.
12 I don't know what it is. He, he possesses the child
13 pornography on his computer?

14 MR. FLORES: We, we would argue he did at various
15 times. He, he's clearly solicited the material by using
16 those specific terms. There is no other reason for a
17 person to use PTHC or R@yGold but, but to, we would argue,
18 download this child pornography on those, those -- during
19 those time periods that he possessed it.

20 THE COURT: All right. Thank you.

21 Mr. Banks.

22 MR. BANK: Your Honor, I'd just kind of like to point
23 out also. We don't know what came of these actual search
24 terms and when they came, right? So, we know that there
25 was some type of Google search or Yahoo search. It's four

1 terms at times that may or may not be these times, four
2 terms ---

3 THE COURT: That, that goes to the weight, not the
4 admissibility.

5 MR. BANK: I understand, Your Honor.

6 THE COURT: Yes, sir.

7 MR. BANK: But again we -- by simply putting in that
8 people were searching for items that have nothing to do
9 with the actual videos that he's indicted for that don't
10 have to do with R@yGold, that we don't even know what came
11 from the searches because we don't have any files
12 associated with the searches, we believe is, is speculative
13 and prejudicial. And, and again they get another, another
14 opportunity for them to put in bad-character evidence.

15 THE COURT: I would deny that motion.

16 MR. BANK: Thank you, Your Honor.

17 THE COURT: And I would still rule on the staleness,
18 of course. Any other motions?

19 MR. FLORES: None from the state, Your Honor.

20 THE COURT: Any other motion from the defense, Mr.
21 Banks?

22 MR. BANK: None from the defense. I would ask if we
23 could make the original motion to rule on the
24 constitutionality, if we could make that a court exhibit,
25 Your Honor.

1 THE COURT: I don't have any objection.

2 Mr. Flores?

3 MR. FLORES: No objection.

4 MR. BANK: Thank you, sir.

5 THE COURT: Thank you. 9:30 in the morning?

6 MR. FLORES: Yes, sir.

7 THE COURT: All right. Thank you. Thank you very
8 much.

9 (MOTION BY DEFENSE MARKED INTO EVIDENCE AS COURT'S
10 EXHIBIT NUMBER 3.)

11 (WHEREUPON, THE CASE IS AT EASE.)

12 WEDNESDAY, SEPTEMBER 7, 2016

13 (COURT RESUMES AT 9:42 A.M.)

14 (PHOTOGRAPHS MARKED INDIVIDUALLY AS DEFENDANT'S
15 EXHIBITS 1 THROUGH 24 FOR IDENTIFICATION.)

16 THE COURT: As to the motion concerning the
17 constitutionality of the statute and a close reading the
18 *Ashcroft vs. Free Speech Coalition* 535 U.S. 234, and *North*
19 *Carolina vs. Howell*, 169 N.C. appeal 58, I will deny the
20 motion to declare the constitutionality -- to declare the
21 statute unconstitutional. I believe our statute tracks
22 very closely, precisely with the North Carolina statute,
23 and it is not the type of class that is created that
24 *Ashcroft* addressed.

25 As to the issue of staleness, citing *United States vs.*

1 *Johnson*, 865 F. supp. 2d 702:

2 On the issue of staleness, the court's
3 fundamental inquiry is whether the alleged facts
4 are so dated that at the time of the search, it
5 is doubtful that evidence of criminal activity
6 can still be found at the premises.

7 *United States vs. McCall*, 704 F. 2d 1131, and *United*
8 *States vs. Lamb* F. supp. 441, 459:

9 Although it is clear that time is a crucial
10 element of the probable cause, there is no fixed
11 rule as to admissible time lapse. In other
12 words, the vitality of probable cause cannot be
13 quantified by simply counting the number of the
14 days between the occurrence of the facts supplied
15 and the issuance of the affidavit. Moreover, the
16 mere lapse of substantial amount of time is not
17 controlling in a question of staleness.

18 *Citing U.S. vs. Lacey*, 119 F. 3rd 742:

19 Instead, a court must evaluate the individual
20 circumstances of each case. In addition to the
21 age of the information, the court must also
22 consider the nature of the alleged activity, the
23 nature of the evidence seized, and tendency that
24 the property evidence will be retained, and the
25 existence of a long-standing, ongoing pattern of

1 criminal activity. Further, the distinctive
2 nature of child pornography cases with regard to
3 child pornography, the consensus among courts,
4 including the Fourth Circuit, is that information
5 supporting probable cause is less likely to
6 become stale even when there exists substantial
7 delays between the receipt of the child
8 pornography and the issuance of a search warrant.
9 This consensus is based on the fact that
10 collectors and traders of child pornography share
11 common characteristics that separate said crimes
12 from other criminal acts. In child pornography
13 cases, courts often reject staleness challenges
14 based on widespread expert opinion that
15 collectors of child pornography store and retain
16 their collections for extended periods of time.
17 Although courts have held that law enforcement
18 lacked probable cause for search of defendants'
19 residences for child pornography, however it is
20 noteworthy that courts in these scant cases found
21 an affidavit deficient based on reasons other
22 than staleness.

23 Here the defense argues that the warrant is invalid
24 only because too much time has lapsed. Based on those
25 factors and the totality of the circumstances, I will deny

1 the motion as to the staleness issue. My ruling, the
2 statute is constitutional. The warrant is valid; there's
3 sufficient probable cause. Staleness is not an issue, and
4 my *Lyle* ruling as far as the searches, the four searches
5 for keywords that are characteristically searched by those
6 who may be engaged in child pornography is admissible. And
7 I reaffirm my ruling that the eight videotapes that were
8 located during the course of the search warrant are not
9 admissible because there is no clear and convincing
10 evidence as to, as to those.

11 All right, anything further from the state before we
12 bring in our jury, Mr. Flores?

13 MR. FLORES: No, Your Honor.

14 THE COURT: From the defense, Ms. Zmroczek?

15 MS. ZMROCZEK: No, Your Honor. Mr. Flores and I had
16 discussed trying to premark some evidence so as to not --
17 in the, in the effort of judicial economy, and so there was
18 a CD that he had, some logs and the, and the actual videos
19 that I think he intends to put in probably through his
20 first witness.

21 MR. FLORES: Yes.

22 MS. ZMROCZEK: And so instead of sending the jury out,
23 I thought maybe we can address that. The other issue is he
24 has his, his -- the investigator's narrative report on
25 there as well, and I believe he's furnished a separate copy

1 that, you know, if they try to move in his report, that at
2 that point we'll have the matter of law.

3 THE COURT: All right.

4 MS. ZMROCZEK: But we have no objection to the other
5 things.

6 THE COURT: All right. Thank you. Thank you very
7 much.

8 Mr. Bailiff.

9 (THE JURY ENTERS AT 9:56 A.M.)

10 THE COURT: Madame Clerk, would you please swear our
11 jury?

12 CLERK OF COURT: Yes, Your Honor.

13 (WHEREUPON, THE JURY IS SWORN.)

14 THE COURT: Mr. Foreman, ladies and gentlemen of the
15 jury, good morning.

16 JURY: (*en masse*) Good morning.

17 THE COURT: I apologize for the delay. I assure you
18 it's not the fault of the parties that we're not on time.
19 They were early working very diligently to proceed with the
20 trial of this case.

21 Ladies and gentlemen, the case we're about to try is
22 the case of *The State vs. Michael Scott Simmons*, the
23 defendant. What I will now say is intended to serve as an
24 introduction to the trial of this case. These remarks are
25 not an instruction on the law of the case. I will instruct

1 you on the law applicable to this case during and at the
2 end of trial before you retire to consider your verdicts.
3 This is merely an explanation of the procedure that we will
4 follow in the trial of this case so that you may better
5 understand what may be happening.

6 The defendant is charged by indictments filed with
7 this court with the crime of sexual exploitation of a minor
8 second degree, six counts, the elements of which will be
9 explained to you later. As I have stated before during
10 jury qualifications, the indictments are simply the formal
11 charging documents by which the case is brought before the
12 court, and they are not in any sense evidence of any of the
13 allegations they contain.

14 The defendant has pled not guilty to these
15 indictments. The state, the party to my front right
16 closest to you, therefore has the burden of proving each of
17 the elements of the indictment beyond a reasonable doubt.
18 And it will be your duty, ladies and gentlemen, to decide
19 whether or not the state has met that burden.

20 Your purpose as jurors is to find and determine the
21 facts. You are the sole judge of the facts in this case.
22 If at any time I make any comment regarding the facts, you
23 must disregard it. You are to determine the facts from the
24 testimony you hear from the witness stand and the other
25 evidence introduced in court. It is up to you to determine

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

6 On the other hand and with equal emphasis, the same
7 law that makes you the judge of the facts makes me the
8 judge on the law. The law given by the court is the only
9 law you may consider; you must accept it and follow it even
10 though you may disagree with it. I cannot tell you what
11 the facts are, and you cannot disagree with me about what
12 the law is or what the law should be.

13 Your job is to take the law as I give it to you and
14 apply it to the facts as you find them from the testimony
15 of the witnesses and any other evidence that is introduced.
16 After doing that, you will render your verdicts, true and
17 just verdicts under the solemn oath that you have just
18 taken as jurors.

19 Until I advise you to begin your deliberations, you
20 must not discuss this case with anyone. That includes your
21 fellow jurors, friends, family members, or anyone else.
22 After the case is submitted to you, you must discuss it
23 only in the jury room with your fellow jurors.

24 The attorneys and parties in this case are advised
25 that they are not to talk to you at all should they see you

1 Mr. Flores, you may address the jury.

2 MR. FLORES: Thank you, Your Honor. May it please the
3 court?

4 THE COURT: Yes.

5 MR. FLORES: Mr. Bank, Ms. Zmroczek, Ms. Goode, Mr.
6 Simmons. Good morning, members of the jury.

7 JURY: (*en masse*) Good morning.

8 MR. FLORES: As I introduced myself yesterday, my name
9 is Lloyd Flores. With me this week is Mr. Dan Gourley. We
10 are responsible for prosecuting in this state the Internet
11 Crimes Against Children Task Force run through the Office
12 of the Attorney General. First off, I'd like to thank you
13 for being here to answer these questions that we will
14 present to you.

15 This case is about children, children who have had
16 horrible moments in their life recorded and then placed on
17 the Internet for anyone who can view them. This case is
18 not about the people who actually abused those children,
19 but this is about a person, a man who has solicited,
20 received, and shared those files with others on the
21 Internet.

22 The testimony you will hear this week concerns Michael
23 Simmons. The investigation started November of 2013,
24 November 22nd when Detective Lieutenant Murphy with the
25 Berkeley County Sheriff's Office was conducting a proactive

1 investigation into the distribution of child pornography on
2 the Internet through filesharing. When he went online, he
3 found a computer sharing child pornography at a specific IP
4 address. On that date he received six files. After
5 receiving those six files, he reviewed those files. When
6 he finished reviewing those files, he then found out where
7 that IP address was assigned. Where does it exist in the
8 real world?

9 When we access the Internet, we each have a unique IP
10 address, each device -- computer, a cell phone, a tablet --
11 to a location in real space. Now, Detective Lieutenant
12 Murphy has done a lot of these investigations, but his
13 jurisdiction is Berkeley County. So, when he sent off that
14 information, he said Internet service provider, please tell
15 me where that is. Where is that IP address assigned? He
16 found out that it was located here, Columbia, South
17 Carolina. Specifically an address you've already heard:

18 [REDACTED].

19 Now, Detective Lieutenant Murphy only has limited
20 jurisdiction. He can't come up here. So, he contacted the
21 City of Columbia, specifically Investigator Hudak who is
22 seated at counsel table. City of Columbia is part of the
23 Internet Crimes Against Children Task Force, and Detective
24 Murphy sent his investigation to him. Said I downloaded
25 these six videos from this address, which is within your

1 jurisdiction.

2 Upon reviewing that information, in June 2014 a search
3 warrant was executed at that address. [REDACTED] is
4 the home of Ronnie and Wendy Doiron. They live there with
5 their family: Kyle, two smaller children. Also living at
6 that residence at that time was Michael Simmons.

7 What the City of Columbia did next was to take all of
8 the computer equipment, all of the devices because an IP
9 address can be accessed by computers, by cell phones, by
10 tablets. Detective Murphy got those files from something
11 in that house, either a computer, tablet, or a phone, and
12 so that all those devices were gathered up and sent over
13 for forensic processing at the United States Secret
14 Service.

15 Agent Jon VanHouten conducted a forensic examination.
16 Of all of the equipment seized from the home at 128 Whixley
17 Lane, Agent VanHouten only found material depicting sexual
18 -- the sexual assault of children and the history of
19 searches for the material in one room of that house. Those
20 devices were taken from a room that Michael Simmons lived
21 in in a home that was opened up to him by the Doirons.

22 Now, the testimony Agent VanHouten will provide to you
23 with tell you that the videos that Detective Murphy
24 downloaded were not recovered from that computer. However,
25 computers hold lots of information. When I got my first

1 computer, I was excited to have 2 gigabytes of memory. You
2 can get 2 terabytes of memory now. There is so much space
3 to store so many things, and information on a computer can
4 be kept for a long, long time.

5 So, using his forensic -- excuse me -- forensic
6 software, he looked into that space, into that memory, and
7 he pulled out what information he could. And what the
8 evidence will show is that those videos were on that
9 computer that was in that room where Mr. Simmons lived.

10 To develop this case, you will hear the testimony of
11 Detective Murphy; Investigator Hudak who's now with the
12 South -- State Law Enforcement Division; Investigator
13 Stephan Narewski, who's with the City of Columbia; Agent
14 April Merrill, who's at SLED now and who was previously at
15 the City of Columbia. Ronnie, Wendy, Kyle Doiron will be
16 here to testify for you concerning their computer usage in
17 their home, and you will hear the testimony of Agent Jon
18 VanHouten as to what he did in this case.

19 The state bears the burden to prove to you that beyond
20 a reasonable doubt it was Michael Simmons who distributed
21 those videos from that home on November 22nd of 2013. We
22 are confident that after you listen to all the evidence
23 from those witnesses, you will believe beyond a reasonable
24 doubt that Michael Simmons did indeed distribute those
25 videos of child pornography. Thank you.

1 THE COURT: Thank you, Mr. Flores.

2 Ms. Zmroczek.

3 MS. ZMROCZEK: Thank you, Your Honor. May it please
4 the court?

5 THE COURT: Yes, ma'am.

6 MS. ZMROCZEK: Good morning.

7 JURY: (*en masse*) Good morning.

8 MS. ZMROCZEK: So often as I've done this year and in
9 the years of my career, I greet a jury and I know that
10 you're sitting there and thinking about what -- trying to
11 put myself in your shoes. What are you thinking about?

12 First yesterday we asked you a bunch of personal
13 questions, and then do you remember we dragged you up here
14 and made you stand in front of us? We're all looking at
15 you. We're all judging you. We're all determining will
16 they be fair? Are they going to follow the law? Are they
17 going to listen to what we have to say? And then you sit
18 here and the only thing that you get to say for the next
19 couple of days to myself, to, to my friends at the AG's
20 office, and to the judge is good morning. So, once again
21 my manners say good morning.

22 I hope that you bear with us just a few days. I don't
23 imagine this will be a very long trial. What we do, we
24 lawyers, we judges, we live within the walls of this
25 courtroom. We forget sometimes that you get to judge the

1 facts, but in order to do that, you have to listen to us go
2 on and on, and sometimes you'll want to say we got it, Ms.
3 Zmroczek. We understand your point. Please, Mr. Bank,
4 stop asking that question; we understand what you're trying
5 to say. So, so, bear with us while we, while we get these
6 facts out to you because they are important, very
7 important. This case is, is about the State of South
8 Carolina versus ---

9 Michael, stand up.

10 You'll get to hear from Michael, but as he sits here
11 today, as he sits here today, the judge told you that he is
12 presumed innocent. You'll get to hear more about Michael
13 from Michael. Served in the military five years. Served
14 in military police. Served overseas. Was honorably
15 discharged. Fought for the very freedoms that he's now in
16 here having to assert.

17 Mr. Flores told you that he and Mr. Gourley and, and
18 the state -- represent the state. Ladies and gentlemen,
19 I'll tell you just, just as much, myself, Mr. Bank, and Ms.
20 Goode, we represent the Constitution and today we have the
21 pleasure of representing Mr. Simmons.

22 I want to talk to you about a few fears that I have,
23 just to let you know what they are. The first is child
24 porn, the hysteria and the fear and awe and disgust that
25 comes over everybody, myself included, when you hear the

1 words child porn. And I fear that when the state shows you
2 these videos that were downloaded or partial videos that
3 were downloaded from an IP address, that those emotions and
4 that fear and that disgust is going to take over. But just
5 as Judge McMahon will tell you that we can't -- cannot make
6 decisions on emotion, but we're also human. So, I hope
7 that you can put those fears aside.

8 My other fear comes from the technology because I have
9 an iPhone and I have a DVR and I have a laptop, and I
10 probably am using 20 percent of them efficiently. I don't
11 -- when this kind of stuff comes in cases, and I've had to
12 learn a lot. They always say I'm not a doctor but I play
13 one on TV. The nature of being a criminal defense attorney
14 is you have to get a little bit of knowledge about a whole
15 of stuff, which makes us very dangerous. So, we have
16 experts, and we'll be bringing in experts, one expert in
17 particular to talk to you about digital forensics because I
18 tell you. When I start with what -- even -- and I would
19 tell him to his face. When he starts talking about it, my
20 eyes glaze over because it's hashtag and values and
21 searches and, and it's very complicated, but you all were
22 selected. There was a reason that we asked about where --
23 your, your job and, and kind of your life experiences
24 because you bring those with you. You get to rely on your
25 common sense, and you get to rely on the testimony and the

1 experts.

2 On thing that is interesting that Mr. Flores said to
3 you this morning, and I wrote it down because it was the
4 first time I've heard it. He said that the six videos that
5 Lieutenant Murphy from Berkeley County found, he said that
6 the evidence will show that those videos were on that
7 computer. Ladies and gentlemen, I want you to hold the
8 state to that because I can tell you that there's not one
9 witness, not one expert, not one person who's going to be
10 able to come up here and sit in this witness stand and put
11 their hand on the Bible and raise their hand, and they're
12 not going to be on say, yeah, those videos were on that
13 computer. And that's, that's a big problem. So, that is
14 one of the reasons that we're here today.

15 He talked to you about IP addresses. He talked about
16 we all have a unique IP address, and I think he went back
17 and said every area has an IP address. So, for example, my
18 laptop or my cell phone and my -- anything I've had, all of
19 those things would be using the IP address from, from the
20 location where I am. And interestingly enough, he also
21 told you that all items, all devices were collected from
22 the home of the -- and I believe he said Doirons. I, I've
23 called them Doirons. I'm sure we'll get clarification as
24 to others, but the persons who lived in that house, the
25 state's going to tell you they looked at all the items.

1 You'll see what the proof will show is they didn't, and
2 that's concerning. There's no password protected. There's
3 no Internet chats. There's nothing, nothing to connect
4 Michael Simmons to these six videos, nothing that can reach
5 beyond a reasonable doubt. Nothing, nothing that can put
6 him in front of a computer disseminating porn.

7 Part of our job is to tell you what the evidence is
8 going to show in our opening statement. We've talked a
9 little bit about that and, and Mr. Flores listed out all
10 the witnesses. And like I said, we'll have Mr. Simmons and
11 at least a digital forensics expert, but I want to give you
12 three words to keep in mind as you sit and listen to the
13 evidence throughout this trial. The first one very simply
14 is evidence, the second one is exclusion, and the third one
15 is error.

16 I'm going to repeat that for you again because I want
17 you to remember this: evidence, exclusion, and error. And
18 as the trial progresses and we ask some tough questions of
19 the investigators, and they give you their interpretations
20 or their beliefs or what they think, I want you to keep
21 those three words in mind -- evidence, exclusion, and error
22 -- because, ladies and gentlemen, at the end of the trial
23 we, as a defense team, are firmly convinced that you will
24 be able to be proud, proud to give your verdict of not
25 guilty on these charges for Michael Simmons.

K. MURPHY - DIRECT EXAMINATION BY MR. FLORES

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1 THE COURT: Thank you, Ms. Zmroczek.

2 Mr. Flores, you may call your first witness.

3 MR. FLORES: Yes, sir. May it please the court?

4 State would call Detective Lieutenant Kevin Murphy.

5 THE COURT: All right, Lieutenant, if you would come
6 around and be sworn, please.

7 KEVIN H. MURPHY, BEING DULY SWORN,
8 TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Please have a seat. State your full
10 name for the record.

11 WITNESS: Kevin Hugh Murphy.

12 DIRECT EXAMINATION BY MR. FLORES:

13 Q. Good morning, Detective Murphy.

14 A. Good morning.

15 Q. Detective Murphy, could you tell the jury where you
16 are currently employed?

17 A. I'm employed with the Berkeley County Sheriff's Office
18 in Berkeley County, South Carolina.

19 Q. And what's your position there?

20 A. I'm a detective lieutenant.

21 Q. And as a detective lieutenant, what is your job? What
22 are your job duties?

23 A. I do Internet Crimes Against Children. I'm the
24 task-force member for the agency. I also do cellular phone
25 forensics and some limited computer forensics.

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1 Q. And how long have you been investigating cases for the
2 Internet Crimes Against Children Task Force?

3 A. I think about six years, five or six years.

4 Q. And what kinds of cases do you investigate for the
5 task force?

6 A. We have reactive and proactive cases. Proactive cases
7 would be something, I'm, I'm looking out for people who are
8 offending, and reactive cases would be like referrals where
9 other agencies send me something that they found for me to
10 investigate.

11 Q. Could you describe for the jury your general
12 law-enforcement training and background?

13 A. I've been in law enforcement in South Carolina since
14 2003, and I've received numerous hours of training in law
15 enforcement during the period that I've been in law
16 enforcement. Prior to that I was a special agent with
17 Coast Guard Investigative Service when I was in the
18 military. I'm retired military, twenty-six years in the
19 United States Coast Guard. And specifically with the
20 Internet Crimes Against Children Task Force, I have over
21 400 hours of specific training in that area.

22 Q. In those 400 hours of specific training, did you
23 receive any specialized training concerning investigations
24 of distribution of child pornography?

25 A. Yes.

1 Q. Detective Murphy, how many investigations for the task
2 force would you say you've been involved with concerning
3 child pornography?

4 A. Just, just cases that, that I've initiated?
5 Approximately 150 that I've initiated and several others
6 that were referred to me from other agencies of the state.

7 Q. Detective Murphy, are you familiar with filesharing
8 networks?

9 A. Yes.

10 Q. Have you received training concerning filesharing
11 networks?

12 A. I've received training in three or four filesharing
13 networks.

14 Q. All right. Stating generally, could you describe for
15 the jury what a filesharing network is?

16 MS. ZMROCZEK: Your Honor, may we approach?

17 THE COURT: No, ma'am.

18 MS. ZMROCZEK: Okay. Your Honor, he's giving ---

19 THE COURT: You have an objection?

20 MS. ZMROCZEK: --- expert testimony.

21 THE COURT: Just cite, just cite the rule. Cite
22 whatever rule you're objecting under.

23 MS. ZMROCZEK: 701, Your Honor.

24 THE COURT: Overruled. Thank you.

25 You may continue now, Mr. Flores.

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1 BY MR. FLORES:

2 A. There, there -- filesharing networks have been in, in,
3 in existence for several years now. I can't personally
4 think of any legitimate use for them, but primarily if you,
5 if you download software that's free from the Internet and
6 if you install it on your computer, then it joins you to
7 this kind of network inside of the Internet with other
8 people that have this software installed on their computer.
9 And it allows you to download files from these people and
10 to upload -- for them, I'm sorry, for them to upload files
11 from you. And to do that, you can, you can search usually
12 by a topic or a keyword such as if you were looking for the
13 Beatles's *Sergeant Pepper's Lonely Hearts Club Band*, you
14 could type in, you know, *Sergeant Pepper's Lonely Hearts*
15 *Club Band*, the Beatles, or whatever. And then you ask, ask
16 it to search and it goes out to all of the computers that
17 -- on, on the Internet that have this software installed on
18 their computer. And basically they talk and say, you know,
19 do you have what I'm looking for? It says yes and then it
20 allows you to download it from these different people or,
21 or for them to download it from you.

22 Part of the, the whole scheme of the thing is most
23 filesharing networks require that you are sharing, actively
24 sharing files in order to be on the network. The more file
25 -- in several of them, the more files you share, the more

1 bandwidth that you're afforded. That is that the larger
2 the capability you have of uploading and downloading files
3 using the, the filesharing network. It -- like I said, I,
4 I can't give any real legitimate -- I don't think anybody
5 would be interested in my family pictures, but they use it
6 for bootleg music, bootleg movies, bootleg software and
7 unfortunately pornography and child pornography.

8 Q. Detective Murphy, would Napster have been considered a
9 filesharing network?

10 A. The granddaddy, yes, sir.

11 Q. So, today's filesharing networks all stem from that
12 type of technology?

13 A. It, it, it does. The thing with Napster that brought
14 it down was Napster essentially kept their, their servers
15 where, where all these connections were made, and when the
16 recording industry realized that they were facilitating
17 copyright infringements, they -- that's when you saw the
18 trouble with Napster. The newer ones don't have a central
19 point. When I install it on my computer, it knows to go
20 out and get all the locations of all the computers that are
21 on the network from another computer that's installed on
22 the network. So, there's no central location like there
23 was with that Napster.

24 Q. Detective Murphy, have you received training in how to
25 conduct a proactive online investigation involving these

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1 types of filesharing networks?

2 A. Yes, sir.

3 Q. Could you describe for the jury how you conduct your
4 proactive investigations with -- into these filesharing
5 networks?

6 A. I have a computer setup in my office. I have several
7 computers, but each one has a specific type of filesharing
8 network. I run this, this modified version of the same one
9 you can download off the Internet, and it doesn't require
10 that I sit there or anything. It just, it just -- in fact,
11 it's running right now as I'm speaking to you. And it's
12 programmed to look for keywords or hash values which are
13 basically -- a hash value is if you take a computer file,
14 run a, run a certain algorithm against it, it'll come up
15 with a hash value, and that's kind of a unique identifier
16 for that file. So, you can search using keywords such as
17 Sergeant Pepper's Lonely Hearts Club Band or, Lonely
18 Heart's Club Band or something, or if you knew what the
19 hash value was, you could search for the hash value.

20 And the only difference with the software that I run
21 is, number one, I, I don't share any files. My system kind
22 of tricks the network into thinking I am sharing files
23 because obviously I'm not going to share child pornography.

24 Second thing that's different about the software that
25 I get that would be different if you went home and

1 downloaded one of the filesharing programs is that my
2 program does not -- regular sharing, filesharing programs
3 at home can -- if, if each one of you have a file on, on
4 your computer and my computer was looking for it, it could
5 theoretically share a little bit from each one of you so
6 that I could download it quickly. My, my computer will not
7 do that. When it finds a, a, a suspect file based on a
8 hash value or a keyword, it, it will lock onto one computer
9 and will not download from multiple sources, only from the
10 one computer where it found it.

11 Q. You talked about hash values. We'll focus on that for
12 a moment. So, the hash value for a file is obtained
13 through running some kind of algorithm?

14 A. Correct.

15 Q. Is -- you said that if each of these members of the
16 jury had had a song from *Sergeant Pepper's Lonely Hearts*
17 *Club Band* and you could get a piece of that from each of
18 them, would the hash values for their files on their own
19 computers match on each of those computers for that file?

20 A. If, if you have the exact file that I'm looking for,
21 it doesn't make a difference what you call it because the
22 outside portion of it -- like let's say if you've taken
23 digital photos or something, you want to rename a photo
24 from the generic name that your camera gives it to family
25 reunion 2016, the hash value of that, of that file will not

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1 change based on whatever the outside name that you give it.

2 So, you could, you could -- each one of you could have

3 renamed it something different, and as long as that hash

4 value is what I'm working for, it -- the computer knows

5 that that's what I want and will it locate it, download it.

6 Q. So, for example, if you're looking for a Beatles song

7 and somebody renames the file U2?

8 A. Makes no differences as long as the hash value is the

9 same.

10 Q. The software that you use, Detective Murphy, why would

11 you rely on hash values to search for files of child

12 pornography?

13 A. People quite frequently rename them or try to hide

14 them by other names, or they rename them something just to

15 rename them to something they want that, that, that they

16 can identify with. So, that's the reason that, that the

17 system uses hash values is because it's, it's easier for it

18 to find that file regardless if somebody took one letter

19 out of it or put it in caps or changed it, changed the name

20 of it somewhat and, and download, download, you know, find

21 the file. Then, then file it at multiple sources and

22 download it.

23 Q. Detective Murphy, you said that your software is

24 designed to look out and look for these hash values. Is

25 there a place where all these hash value are stored so that

1 the software knows what it's looking for?

2 A. Yes. There, there, there's a central repository where
3 -- well, my software looks not only for hash values but it,
4 it searches for keywords. That's a very big, big part of
5 it. But, yes, we -- there is a central repository of files
6 that have been known -- excuse me -- then, then -- and
7 reviewed by somebody confirmed to be child pornography.
8 Those hash values are stored to a, a -- the software in
9 looking for particular files, that and the keyword
10 searches.

11 Q. And those hash value are always going to be the same
12 for those same files?

13 A. If, if you took *Encyclopedia Britannica* and were able
14 to make it into a giant PDF file, which will be pretty
15 huge, and then you hashed out the value of that, of that
16 file, you'd, you'd come out with a certain thing. If you
17 went back in and deleted the last period in the last
18 sentence and rehashed it, you'd come out with a different
19 hash value. So, any, any changes made to the file itself
20 would yield a different, a different hash value.

21 Of recent, there have been university studies and
22 groups that have actually managed to duplicate hash values,
23 but the level of, the level of expertise and knowledge that
24 you would have to have to be able to consummate something
25 like that, I can't even, I can't even fathom doing it. I

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1 mean, it's way beyond the scope of, of, of anyone.

2 Theoretically it's possible. I guess they've done it, but
3 in, in reality it's like you'd be better off buying a
4 lottery ticket from every state, winning every lottery.

5 Q. So considering your software, you say it's running
6 right now down in Berkeley County currently?

7 A. Uh-huh.

8 Q. How does it function?

9 A. It functions in much the same regard as the, the
10 version that you would download. There's, there's two that
11 I can think of. One of them is Bit Torrent and there's
12 different -- different people have produced different
13 versions of it. There's another one, another network
14 called -- filesharing network called Aries and these -- if
15 you go and do a search online, you can find where you can
16 download these, these, these files for free and then you
17 install them, you know, just like you would any other
18 software. You run it. It would come up with the user
19 license frame that warned you about all the particulars
20 about it and explain some, some general stuff about the
21 software. You were asking me about -- I'm sorry?

22 Q. How your software is running right now.

23 A. It, it, it basically -- once, once you, once you start
24 it up, it doesn't require that you be there. I mean, if I
25 wanted to find a file or several files -- you can do

1 several searches at one time --- I would, I would type, type
2 in what I'm looking for, and it would just chug along
3 looking for it.

4 Now, I don't type in what I'm looking for. That's
5 programmed in, into the software. So, it's, it's programmed
6 to look for search terms consistent with child pornography
7 and the hash values consistent with child pornography.
8 Doesn't require that I input that.

9 Q. Once the software has identified a file being shared,
10 what happens next?

11 A. It attempts to make contact with the computer that's
12 sharing the file and to download the file.

13 Q. Once that download has been successful, do you look at
14 those files?

15 A. Yes.

16 Q. So before you do anything else, you look at the
17 individual files that have been downloaded?

18 A. I do.

19 Q. Have you ever had the instance where you downloaded
20 something and it wasn't what you, you thought it would be
21 based on search terms?

22 A. Yes. Several times.

23 Q. Do you proceed forward with those cases?

24 A. No.

25 Q. Now, you stated that you don't have to be physically

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1 at your computer to be sharing or downloading material to
2 someone who has the free software from the Internet. Do
3 they have to be physically at their computer to be doing
4 the sharing?

5 A. No.

6 Q. Do they have to be at your -- at their computer when
7 you are downloading the files?

8 A. No.

9 Q. And so after you've download the files, you viewed the
10 files and verified the contents, what do you do next to
11 identify where those files came from?

12 A. Well, first, first again I, I review the files to, to
13 see if they violate laws, laws of the State of South
14 Carolina, and then I obtained the IP address from, from the
15 software. An IP address is basically a unique string of
16 digits that's assigned to every computer on the Internet --
17 excuse me -- kind of like a phone number. There can't be
18 any more than one of those addresses with the -- that same
19 unique number on the Internet at any one time. It causes
20 all kind of problems like -- it'd be, like, if, if, if you
21 all had the same phone number and I wanted to call one of
22 you and I pick up the phone, it would be a mess. Everybody
23 would be able to pick up the phone. So, that's a unique
24 identifier that's assigned by your Internet service
25 provider, people who provide you with Internet service.

1 So, I take that number and I initiate action to have
2 process served on, on the Internet service provider to find
3 out which account had that number assigned to them during
4 the period in which the files were downloaded, that I
5 downloaded the files from.

6 Q. So, you asked for the specific date and time ---

7 A. Yes.

8 Q. --- you made your download from the Internet service
9 provider?

10 A. Right.

11 Q. Now, you stated that the IP address is like a phone
12 number. What about a location that has multiple devices
13 like a home that might have a computer and maybe some cell
14 phones. Do they each have their own unique IP address?

15 A. Under normal conditions that -- there's only one,
16 what's called an outside IP address, and that is one
17 provided -- excuse me. That's that number that I would see
18 that's provided by the, the Internet service provider. You
19 would -- if you have a router at home or something that --
20 the outside of that router is the one that connects with
21 the Internet and lets you talk with the rest of the world.

22 On the inside, they what's have a local IP address, a
23 scheme, certain number bands that are reserved and can only
24 be used in conjunction with internal networks such as a
25 business or your home or someplace like that. It will not

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1 work on the outside. So, the number that I get is the one
2 assigned to the outside your, your ISP, your Internet
3 service provider provides you to connect with the Internet.
4 I don't see the ones on the inside.

5 Q. So, you cannot tell whether it's a computer or a cell
6 phone or a tablet that's being used to disseminate the
7 material?

8 A. No.

9 Q. You just know it's that location?

10 A. No.

11 Q. You just know it's that location?

12 A. Just know that that's, that's where it originated,
13 correct.

14 Q. Detective, did you conduct a proactive investigation
15 into the sexual exploitation of minors on November 22,
16 2013?

17 A. Yes.

18 Q. Do you recall what IP address your investigation
19 concerned?

20 A. I'd have to look through my report.

21 COURT REPORTER: Repeat that, please.

22 A. I'd have to refer to my report to actually see that.

23 Q. Please.

24 (A PAUSE.)

25 A. It's 66.57.172.240.

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1 Q. And in conducting this investigation, you went through
2 the process that you just described for the jury?

3 A. Correct. I provided that information to the -- back
4 to the ICAC task force, and they obtained legal process to
5 serve the Internet service provider that that number comes
6 back to. That's the first thing I do is to check who was
7 assigned that block of numbers.

8 MR. FLORES: Your Honor, if I might approach for a
9 moment?

10 THE COURT: Yes, sir.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 THE COURT: Ladies and gentlemen of the jury, they
13 need a few minutes to set up some technology. So, I'm
14 going to give them a few minutes to do that, about ten
15 minutes. Let's take about a ten-minute recess. Do not
16 discuss the case during recess. Thank you very much. You
17 may now go with your bailiffs.

18 (THE JURY EXITS AT 10:50 A.M.)

19 THE COURT: All right, Lieutenant, you may step down
20 during this brief recess and refresh yourself. You may not
21 discuss your testimony with anyone. Thank you. Thank you
22 very much.

23 We'll take about ten minutes.

24 MR. FLORES: Thank you, Judge.

25 (OFF THE RECORD.)

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1 (DVD OF REPORT MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
2 IDENTIFICATION.)

3 (ADVICE OF RIGHTS FORM MARKED AS STATE'S EXHIBIT
4 NUMBER 2 FOR IDENTIFICATION.)

5 (STATEMENT MARKED AS STATE'S EXHIBIT NUMBER 3 FOR
6 IDENTIFICATION.)

7 (SEARCH WARRANT RETURN MARKED AS STATE'S EXHIBIT
8 NUMBER 4 FOR IDENTIFICATION.)

9 (PHOTOGRAPHS INDIVIDUALLY MARKED AS STATE'S EXHIBITS 5
10 THROUGH 15 FOR IDENTIFICATION.)

11 THE COURT: You can bring them.

12 MR. BANK: Your Honor, I think we have a matter to
13 take up.

14 THE COURT: All right, hold the jury, Mr. Bailiff,
15 please.

16 THE COURT: Yes, sir.

17 MR. BANK: It's just been brought to my attention. We
18 asked for the attorney general to bring with them the four
19 target items that were in Michael's room: the desktop, the
20 laptop, the iPhone, and the hard drive. It's been brought
21 to my attention that CPD apparently lost these items.
22 Don't know where the items are.

23 We were going to take up any chain issues as they kind
24 of arose. I, I don't know that this necessarily is going
25 to affect the chain in terms of up to when VanHouten got

1 it, but we wanted to bring it to the court's attention,
2 particularly the laptop.

3 We asked that they brought the laptop because it's our
4 understanding that the laptop was damaged, that there's a
5 break in the screen, and we had intended to introduce the
6 laptop in evidence, potentially with Michael as our
7 witness, to show why it -- why the laptop was damaged.
8 We're not going to be able to do that now. I don't know
9 that it's something that we necessarily need you to rule on
10 at this moment, but it was something I wanted to bring to
11 your attention.

12 THE COURT: All right. If I don't need to?

13 MR. BANK: I believe so, Your Honor.

14 THE COURT: Well, if you need to, need me to address
15 it, I will, Mr. Attorney General.

16 MR. FLORES: Not at this point in time, Your Honor. I
17 think we're -- they tell me these, these devices are lost.
18 They made an evidence-room move earlier this spring, and
19 they're diligently taking a look around to see if they
20 can't find where they misplaced them.

21 THE COURT: Well, read *State vs. Cheeseboro* where they
22 melted the murder weapon. That might give you some
23 guidance if it gets to that point. I should say reread
24 *State vs. Cheeseboro*. I'm sure you're both...

25 MR. FLORES: Yes, Your Honor. We are, we are ready

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1 with this witness.

2 THE COURT: You ready? You ready, Mr. Banks?

3 MR. BANK: Yes, sir. Wait a minute.

4 MR. FLORES: Just one ---

5 THE COURT: When I do that, that's like putting the
6 bloodhounds to the trail. They're going to get the jury.
7 You ready?

8 MS. ZMROCZEK: We're ready, Your Honor. We -- I, I
9 thought he was going to introduce the videos. Apparently
10 he wants to introduce his report at this time. So,
11 obviously we're going to have an issue.

12 THE COURT: All right. Well, let me hear that then.
13 What, what you are introducing ---

14 (THE JURY ENTERS AT 11:11 A.M.)

15 MR. FLORES: Your Honor.

16 MS. ZMROCZEK: The jury.

17 MR. FLORES: The jury's just stepped in.

18 THE COURT: All right. Step up here, please.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 THE COURT: Mr. Foreman, ladies and gentlemen of the
21 jury, please step to your jury room. Do not discuss the
22 case.

23 (THE JURY EXITS AT 11:12 A.M.)

24 THE COURT: All right, Ms. Zmroczek.

25 MS. ZMROCZEK: Thank you, Your Honor, and I apologize

1 for bringing the jury -- having the jury brought in prior
2 to this, but it's my understanding that as he was standing,
3 as Mr. Flores was standing at the computer, he said this is
4 where he intends introduce the written report as well as
5 the videos.

6 Your Honor, my concerns again with this report and
7 this line of testimony falls under 701. What the report
8 says is that he identifies the, the adolescents in the
9 video as preadolescent females six to eight years of age.
10 Your Honor, that -- I just don't see where he is qualified
11 to make that determination. He's not an expert. He's not
12 a doctor. He's -- these are -- identifying children by
13 ages from, from a lay witness as to what he sees on a
14 20-second video, Your Honor, we believe is, is completely
15 outside of, of any testimony for a lay witness.

16 This clearly, I think, falls, you know, within the
17 scientific expert and any -- all the rules under 701, *State*
18 *vs. Jones* -- and I understand that Your Honor allowed
19 through his training or whatever lay witness's testimony
20 regarding hashtag values and torrents and things like that.
21 I still think that that requires something more than the
22 average person to be able to understand, which is why I was
23 arguing that he needed to be qualified as some sort of
24 expert to make those statements. However, I understand
25 Your Honor overruled that. But at this point, Your Honor,

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1 and if it would help the court to see what I'm talking
2 about, I can hand up the three-page report if that will
3 assist the court in making its determination.

4 THE COURT: As far as my overruling previously under
5 701, 701 regards lay-witness testimony opinion, and he was
6 not giving opinions. He was talking about the conduct of
7 his investigation. He does not to be -- does not have to
8 be qualified in that regard, and so I reaffirm that ruling.

9 Now as for as the report, I'll be happy to look at it
10 if you have a copy. What is it, State's Number what for
11 identification?

12 MR. FLORES: Your Honor, this would be State's Number
13 1 we have on electronic form because the report is --
14 encompasses also the videos and data logs. But this is the
15 written portion that would be found on State's Exhibit 1.

16 THE COURT: All right, the grid portion?

17 MR. FLORES: Written portion.

18 THE COURT: Written portion, and what, what parts
19 specifically are you objecting to?

20 MS. ZMROCZEK: Specifically, specifically, Your Honor,
21 on page 2 where he is beginning to describe the videos.

22 THE COURT: Page 2, paragraph?

23 MS. ZMROCZEK: Hold on, Your Honor. Page, beginning
24 at page 2, paragraph 4.

25 THE COURT: All right.

1 (A PAUSE.)

2 THE COURT: All right. Any, any others?

3 MS. ZMROCZEK: Yes, Your Honor. Then he goes on to
4 paragraph 5, paragraph 6, paragraph 7, paragraph 8,
5 paragraph 9. Paragraph 8 and 9, Your Honor, are on the
6 second -- or on the third page.

7 THE COURT: All right. Anything further, Ms.
8 Zmroczek?

9 MS. ZMROCZEK: I'm sorry. I couldn't hear you.

10 THE COURT: Anything further? I'm sorry.

11 MS. ZMROCZEK: No. No, Your Honor.

12 THE COURT: All right, Mr. Flores.

13 MR. FLORES: Yes, Your Honor. As, as Detective Murphy
14 has already testified, he's conducted over 150 of these
15 types of investigations and is well familiar with this type
16 of material. He has testify that he does view personally
17 each of these videos before moving forward. I believe his
18 testimony will be -- we are going to elicit testimony that
19 he does view and write these descriptions at the time he
20 conducts these investigations. And so based on that
21 experience and the information, we believe it's, it's
22 proper.

23 THE COURT: So, so, your objection, Ms. Zmroczek, is
24 not under bolstering. It's under 701?

25 MS. ZMROCZEK: Correct, Your Honor. We believe

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1 characterizing and being able to determine the age or age
2 range of these persons in this video is certainly outside
3 of any lay testimony. He's giving his opinion as to what
4 their ages are. And if you see, Your Honor, he says
5 somewhere -- a female that's nine to eleven or a female ten
6 to twelve. So, he's giving age ranges and that's his
7 opinion, Your Honor.

8 And I understand that he views videos all the time,
9 but, but what they're asking him to do is provide, you
10 know, an opinion to subject matter which is the ultimate
11 issue here is, is this child porn. I don't know what
12 expertise he has to be able to say, oh, that's just, you
13 know, a small, you know, small person. I, I, I don't know
14 if he's going to be able to identify the Tanner stages. I
15 don't know what he relies on to make the, the age-range
16 guesses is, is, is all I understand, Your Honor. So, what
17 his opinion, what his opinion testimony is, Your Honor, is
18 he's deciding for the jury what these age ranges are in
19 these -- in this report.

20 THE COURT: Mr. Flores.

21 MR. FLORES: Your Honor, based upon everything that
22 Detective Murphy does in these cases, these are his
23 observations as to the age based on his experience. I
24 cannot remember if Detective Murphy has his own daughters,
25 but he has daughters and grandchildren. You know, I think

1 he's, he's well-equipped to at least make those
2 observations as he sees them.

3 THE COURT: It would appear to me that it would not
4 require an expert to view a photograph to give his or her
5 opinion of the age. If it did, then every victim of an
6 armed robbery would have to be qualified as an expert to
7 give a description that they always give the police of
8 whatever description that it may be of the gender, perhaps
9 a particular race or ethnic group, age, height, weight. We
10 all, we all give those opinions.

11 There are also some cases under a reading, close
12 reading of 701, says:

13 If the witness is not testifying as an expert,
14 the witness's testimony in the form of opinions
15 or inferences is limited to those opinions or
16 inferences which are rationally based on the
17 perception of the witness.

18 He's perceiving it through a video and, of course,
19 that goes, that would go its weight or its admissibility.

20 (B): Or helpful to a clear understanding of the
21 witness's testimony or the determination of a
22 fact at issue.

23 And (C): Do not require special knowledge, skill,
24 experience, or training.

25 I think just life in general gives each of us opinions

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1 as to a person's age. Or perhaps it can be based on
2 whatever factors that individual person uses to make those
3 decisions. So, based on that I would overrule the
4 objection, understanding that it is identification
5 testimony, identification only by placing an individual in
6 a particular age group, not identifying a specific person
7 in that regard. So, I would overrule it on the 701 basis.

8 Anything else, Ms. Zmroczek?

9 MS. ZMROCZEK: No, Your Honor.

10 THE COURT: All right. Thank you. Thank you very
11 much.

12 Let's try the third time, Mr. Bailiff.

13 (THE JURY ENTERS AT 11:23 A.M.)

14 THE COURT: I apologize for that judicial shuffle, so
15 to speak, ladies and gentlemen. That had nothing to do
16 with the parties but was one matter I needed to take up
17 briefly outside of your presence and had not done so.

18 All right, we continue the trial of the case by
19 continuing presentation of direct examination of the
20 lieutenant, Lieutenant Murphy, by Mr. Flores.

21 Mr. Flores, you may ask your next question.

22 MR. FLORES: Thank you, Your Honor. May it please the
23 court?

24 THE COURT: Yes, sir.

25 BY MR. FLORES:

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1 Q. Detective Murphy, we are focusing more specifically on
2 your investigation of November 22, 2013. I'm going to show
3 you what's been premarked as State's Exhibit 1.

4 MR. FLORES: May I approach, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. FLORES:

7 Q. Please examine this disk. Do you recognize that disk?

8 A. Yes.

9 Q. Yes, and what does that disk contain?

10 A. It's a copy of the disk that I, I created as evidence
11 that -- to the bit torrent. It's a copy of the disk that I
12 created originally as evidence for this bit-torrent case.

13 Q. And what is included on this disk?

14 A. Contains the original files that I downloaded. It
15 contains a report that was generated by the program. It
16 contains descriptions of the files that I viewed. It also
17 contains some logs that logs when the files were
18 downloaded, where the connections were made.

19 Q. Now, you just stated that there were descriptions of
20 videos. Did you personally view all the videos in this
21 case?

22 A. Yes.

23 Q. And did you write those descriptions at the time you
24 viewed those videos?

25 A. Yes. I write them at -- I, I write them as I'm

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1 viewing the videos.

2 Q. Okay. So, does this disk contain an accurate
3 representation of the information generated in your
4 investigation on November 22, 2013?

5 A. Yes.

6 MR. FLORES: Your Honor, the state would like to offer
7 State's Exhibit 1 into evidence and publish it for the jury
8 at this time.

9 THE COURT: All right, Ms. Zmroczek?

10 MS. ZMROCZEK: Subject to my previous objection, Your
11 Honor.

12 THE COURT: I'm sorry?

13 MS. ZMROCZEK: Subject to my previous objection, Your
14 Honor.

15 THE COURT: All right. Thank you. Thank you very
16 much. State's 1 is in evidence subject to previous
17 objection.

18 (DVD MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
19 1.)

20 BY MR. FLORES:

21 Q. I understand this is a little blurry, Detective
22 Murphy, but this folder, is this the folder that contains
23 all of your information?

24 A. Yes.

25 Q. Detective Murphy, I'm going to go into the folder

1 marked logs. The first file there is identified as a
2 torrent file. Could you tell the jury what a torrent file
3 is or a torrent?

4 A. When you see a bit torrent filesharing program, when
5 you, you select the files that you're going to upload to --
6 that you're going to make available, you're going to make
7 available to this system and -- excuse me -- using the
8 software and it creates this, this file called, called a, a
9 torrent file. It's assigned that, that random hash value
10 at the top that you see. It extends beyond what you can
11 see there. I, I can't really see it. It's my glasses, but
12 I can see enough to tell you that.

13 If you open that up with, with the program, you would
14 find that it would be like sort of a road map of what's in
15 the, what's in the, the torrent, what's -- the files that
16 are available for upload, and they can also -- you can
17 upload an entire file structure. You, you, you can upload
18 a folder with files in it or a folder with other folders
19 with files in it, not just one single file. I've seen them
20 with literally thousands of, of individual files inside.

21 It's the road map on how -- that tells the software where
22 the -- what those files are and where you can find them.

23 Q. So, this is the torrent file that you were dealing
24 with in this case?

25 A. Yes.

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1 Q. Open up this file called Details.txt. Detective
2 Murphy, what is this details file?

3 A. This is created by the, the program that I use, and it
4 logs all the events that occur -- excuse me. Tells -- it
5 gives you a host of information: the connections, the
6 torrent that it's looking for, the time of the original --
7 time and date of the original connections. It then gives
8 you all the files that the torrent contains. And when you
9 upload a file, they're broken into what's called pieces.
10 It doesn't, it doesn't upload one, one big chunk. It, it
11 breaks it into smaller pieces that are easier to download.
12 So, this will identify that, for instance, a file has --
13 I'm having a hard time seeing it.

14 The first there, it says file zero. You'll see what
15 it says. It says -- it gives you the total size of the, of
16 the file bytes, and then it says it spans pieces 02 -- I
17 want to say that says 150, if anybody -- 150. That means
18 it's 150 pieces in that -- that file was broken up into 150
19 pieces. And you, you don't necessarily need all 150 of
20 them to view the file, but you won't get the entire file.

21 So, if it was, let's say it was a video, you might get
22 a video that -- where small parts of it aren't, aren't
23 there. And, and -- so every time it makes a connection and
24 logs on to the client on the other end that I'm downloading
25 from, it logs all that information and tells you what

1 pieces that it downloads, that they were written to my
2 computer. And it goes on doing this until it completes
3 the, the entire torrent or it quits.

4 Q. Okay. So, this is the entire log of the process you
5 have told the jury of how your computer downloads material?

6 A. Yes.

7 Q. All right. So, if we're looking here at the top, very
8 top, it says: Torrent info hash?

9 A. Yes.

10 Q. What is that?

11 A. That's, that's the, the torrent file that, that the
12 computer was looking to download.

13 Q. And that would be the specific hash that your software
14 was looking for?

15 A. Correct.

16 Q. All right, and how many files does that torrent hash
17 make up?

18 A. Six.

19 Q. Okay.

20 A. Starting with zero as a number.

21 Q. And so this first portion, file 0 through file 5, is
22 six files?

23 A. Correct. Zero is, is counted as a number.

24 Q. And if they were all available, you would get 611
25 pieces according to that, the last line, right? Right

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1 here?

2 A. That's, I think that's pertaining to file 5.

3 Q. All right. So, what's going on right in this area
4 here?

5 A. I'm, I'm, I'm having a hard time trying to focus in
6 on ---

7 MR. FLORES: Your Honor, if Detective Murphy might
8 step around?

9 THE COURT: Yes, sir, you may step down. Just please
10 keep your voice up when you're away from the microphone.
11 You may step down, and remember to try to project your
12 voice back to the jury and the court reporter. That's a
13 microphone right there. Don't have him talking with his
14 back towards the jury either.

15 (A PAUSE.)

16 BY MR. FLORES:

17 A. Okay, the question. So, it identifies the torrent
18 file at the top. Tells you it consists of six files,
19 describes those files, how many pieces there are.

20 Everybody hear me all right? Ma'am?

21 Then, then it tells you it's attempting to connect the
22 client. The client would be the other computer that said
23 that it had it. Then it tells you it's connected, and it
24 attempts to negotiate sort of like a handshake so the two
25 computers can connect.

1 In the, in the next few lines of this are the
2 connection between the two computers, and then -- and I
3 used the term handshake. There is that, that line right
4 there where it says: Completed handshake with client. The
5 PRID was sent to the client, and then it tells the client
6 that -- what, what file it's looking for, and the client
7 tells them, confirms that it has those files, that, that
8 torrent file. And then it goes through the process of
9 attempting to connect and download each of those six files
10 that are contained in the torrent. And then it just logs
11 in as it makes the attempt, as it downloads pieces. We
12 skip down. You can see where it says: Piece 144 has been
13 completely received and written into file 1. And then just
14 continuing this process until it's collected all of these
15 pieces.

16 Q. Detective Murphy, I want to move up a couple spaces to
17 this line right here that starts: Client acknowledges.

18 A. Correct.

19 Q. What does this mean right here?

20 A. That's where it's asked the computer -- my computer's
21 asked that computer do you have these, these pieces to this
22 file, and it comes back, acknowledges that it has 108 of
23 612 pieces and then -- on, on the one particular file and
24 then commences to tell you which pieces of that file it
25 has. And it's, again it's, it's telling me there piece 0,

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1 piece 31, 32, 39, and 41, et cetera, et cetera.

2 Q. So, the client at 66.57.172.240 has 108 of the 612
3 pieces according to that. Is that right?

4 A. That's correct.

5 Q. So, I've scrolled down. What is this? The continued
6 process of your computer downloading these files?

7 A. Correct. Every time, every time it finishes with a
8 download you'll see, see a -- there's a cluster right about
9 there that says: Piece 312 has been completely received and
10 written to file 2. And then you'll see it says: Keep alive
11 message. And that's basically saying want more from you.
12 Stay, stay connected to me. I want more from you, and it
13 says -- then it acknowledges that it received the keep
14 alive message, which is please stay online with me. And at
15 that point, for some reason there was too many keep alive
16 messages, so it terminated the connection, and then again
17 it completed that particular session and tells you four
18 pieces were downloaded and written, and then it commences
19 to, to attempt to make the client connection again and go
20 through that process. So -- until, until it collects the
21 entire bit torrent or all the available pieces that it has.

22 Q. And that's only from this one IP address, right?

23 A. That's correct. That's one, one single IP address
24 indicated at the top of the report.

25 Q. Going to scroll down. Excuse me. Going to scroll

1 down to the very end of this log. Starting right there
2 where that -- right underneath there where the cursor is.
3 Let's go with that line right there. What is that telling
4 you?

5 A. Says it received all of the pieces. 108 of 108 pieces
6 of that particular file were possessed by the client and
7 were downloaded to and written to my disk. And then 108 of
8 612 pieces defined by the torrent were download and written
9 to the disk, and then it actually enumerates the actual
10 pieces. And then once it's done that, it validates those
11 pieces to make sure that they're authentic. That's where
12 you see it says: Starting validation of written pieces.
13 And then it goes and compares the hash value that we talked
14 about earlier there to make sure that that file was
15 genuine. It's, it's the one that was intended to be
16 download. So, it goes back and valid -- it's called
17 validation. Validates that all those pieces are genuine.

18 Q. And that's what this, these last lines state right
19 here?

20 A. Yeah. The last lines state that, that I received file
21 0, 1, 2, 3, 4, and 5. That they were incomplete in
22 compared to what -- remember I told you that, that it's
23 broken down in pieces. If, if my, my computer contacts
24 your computer and your computer only has 100 of 108 pieces,
25 it still shares all of those 108 pieces. Like I said, you

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1 may not get the entire file. So in the case of a video,
2 you may be missing a few minutes of it or it might skip in
3 the middle or something like that, but basically that
4 computer has given my computer all of that it has of that,
5 of that particular file.

6 Q. And this is all information that is generated by the
7 software that you're running on your computer?

8 A. Correct.

9 Q. And this gives you the absolute process by which it
10 obtains those files from the clients on the other computer?

11 A. From initial contact to the end. You see it says that
12 download has concluded.

13 Q. So, at this point you've received six files, portions
14 of six files that were on the other computer?

15 A. Correct.

16 Q. I'm going to scroll back up to the top of this, of
17 this log file. I want, I want you to focus here at this
18 particular line which has a version written out in the end.
19 What is this, what this is telling the jury? This is
20 version...

21 A. I believe that's probably the, the version of the
22 software that they're running, the filesharing software,
23 the particular version of it.

24 Q. Okay, so it tells you that's ---

25 A. I can't really -- I, I, I can't make -- that's either

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1 U, U or T or VT. I can't, I cannot really see it, but
2 that's the version of the software, the, the client
3 software running on the other computer.

4 Q. Detective Murphy, if you would just return to your
5 seat, please?

6 MR. FLORES: Beg the court's indulgence.

7 (A PAUSE.)

8 BY MR. FLORES:

9 Q. Detective Murphy, I'm back in the main folder of the
10 report. The first folder is called download. What is
11 contained in that folder?

12 A. Those should be, those should be the files that I
13 downloaded.

14 Q. I don't know if you can see this very well, but you
15 know what that says right there?

16 A. I can't, I can't, I can't read it.

17 Q. If you would come around?

18 MR. FLORES: Your Honor, if I might have the witness
19 come around?

20 THE COURT: Yes, sir.

21 MR. FLORES: Thank you.

22 BY MR. FLORES:

23 A. It looks like R@yGold.

24 Q. Here. Why don't you read it right here? Can you read
25 it off the screen?

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1 A. Yeah, it's -- it, it, it's supposed to be R@yGold and
2 they use the ampersand in lieu of an A, R@yGold.

3 Q. So, would you spell that out?

4 A. Well, it's, it's R with an ampersand, I believe is
5 what they call it, y-g-o-l-d or r-a-y-g-o-l-d.

6 Q. All right. Are you familiar with that term?

7 A. Mr. Ray Gold -- go back.

8 Q. Yes, please.

9 (A PAUSE.)

10 A. I believe Mr. Ray Gold ran a, for lack of a better
11 term, a commercial child pornography ring where he was
12 producing, producing videos unlike something where somebody
13 would -- was taking advantage of a child, filming it. He
14 had actually had, you know, title screens and names and all
15 that stuff in a series, and so it's a, it's a known series
16 of child pornography.

17 Q. And you've learned this based on your training and
18 experience?

19 A. Yes.

20 Q. In your child pornography investigations, have you
21 come across this term?

22 A. Many times. It's a common search term.

23 Q. At this time I'm going to open a folder and in this
24 folder, what is contained in this folder?

25 A. Should be the files, possibly other folders. Files.

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1 Now, that, that, that was the -- that folder was, was
2 downloaded in that format. I did not create that.
3 Anything inside that first folder that you opened that said
4 download was this file structure of what I downloaded. So,
5 that, that folder with these files in it was what I
6 downloaded.

7 Q. I hesitate to have you come down again, but would you
8 come down one more time?

9 In looking on this screen, could you tell -- could you
10 read out the titles of each of the videos?

11 A. Yeah. Let me...

12 (A PAUSE.)

13 A. All of them began with that R@yGold with ampersand,
14 ampersand symbol instead of an A. First one is R@yGold
15 99.mpg. Second one is R@yGold underscore, and I'll, I'll
16 spell it out l-g-a-s-s-m-a-n-i-a 2.mpg. The third one is
17 that R@yGold underscore all together MexicanGirl1.mpg. The
18 fourth one is R@yGold underscore all together
19 MexicanGirl2.mpg. The next one is R@yGold underscore
20 s-u-c-k-t-i-m-e 1.mpg, and the last one is R@yGold
21 underscore TheFamily1.mpg.

22 MR. FLORES: Your Honor, at this time we're going to
23 play these videos for the jury.

24 THE COURT: All right. You may publish.

25 MR. FLORES: Thank you, Your Honor.

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1 BY MR. FLORES:

2 Q. Before we show the jury this video, Detective Murphy,
3 could you describe this title screen?

4 A. That's, that's the screen I was referring to the --
5 when I said commercial child pornography as opposed to
6 someone who's filming the victim. These were made,
7 purposefully made to be distributed, and that, that is
8 typical of the Ray Gold series. It's a -- if you have the
9 entire collection of what this consisted of, it would be
10 39.5 megabytes consisting of seven files originally. They
11 were, they were, I believe they were video originally. I
12 know they were the video originally.

13 Q. Video as in VCR tape?

14 A. VCR tape, correct.

15 (WHEREUPON, STATE'S EXHIBIT 1 IS PLAYED FOR THE JURY.
16 THERE IS NO AUDIO.)

17 Q. Detective Murphy, which video is this one?

18 A. That would be the one that labeled MexicanGirl ---

19 THE COURT: Speak up a little bit for me, please.

20 A. Yes. That, that would be the one that was labeled
21 MexicanGirl1.

22 (PLAY RESUMES.)

23 Q. Entitled MexicanGirl2.

24 (PLAY RESUMES.)

25 Q. This video is entitled SuckTime1.

1 (PLAY RESUMES.)

2 Q. Last one is entitled TheFamily1.

3 (PLAY RESUMES.)

4 MR. FLORES: Beg the court's indulgence.

5 THE COURT: Yes, sir.

6 (A PAUSE.)

7 BY MR. FLORES:

8 Q. Detective Murphy, we're back in the main folder which
9 contains your written report to this. I'm going to select
10 this file entitled Index.htm. What is the jury seeing
11 here?

12 A. That's the report generated by the, the software that
13 I use, the only input being those descriptions that I, that
14 I, I typed in there when I, when I viewed them. That's all
15 done through the software and automatically incorporates
16 those descriptions into this report and compiles the
17 report.

18 Q. So, you're describing, you're -- excuse me. So, when
19 you say you're talking about descriptions, they would be
20 this information found here following the title of the
21 name?

22 A. Yes.

23 Q. Of the video?

24 A. Yes.

25 MR. FLORES: Your Honor, I would ask that Detective

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1 Murphy publish those descriptions based on the videos that
2 he's viewed.

3 THE COURT: All right, you may publish, subject to
4 previous objection.

5 BY MR. FLORES:

6 Q. Please read the title and then the description.

7 A. For, for each of them?

8 Q. Yes.

9 A. Is it all right if I use the copy that I have here? I
10 can't read it -- I can't read that.

11 Q. May I have that for a moment?

12 A. Yes. }

13 (COUNSELORS CONFER.)

14 BY MR. FLORES:

15 A. The first one is the R@yGold_SuckTime1.mpg. My
16 description says:

17 Completed the video length is 4 minutes and 10
18 seconds. A partial but functioning video opens
19 with the title frame R@yGold_SuckTime1, 21.9 MB,
20 two files, and a digital image of a preadolescent
21 female which I estimated to be between ten and
22 twelve years of age performing oral sex on an
23 erect adult male penis. The video depicts the
24 same preadolescent female in -- as in the digital
25 image described above line in between the legs of

1 an adult male, who is lying down face up and
2 performing oral sex on the adult male, and I
3 personally reviewed that file.

4 The next one is the R@yGold 99.mpg. Excuse me:

5 Completed video length is 1 minute, 40 seconds.
6 Partial but functioning video depicts an erect
7 adult male penis being inserted into the vagina
8 of a preadolescent female, which I estimated to
9 be six to eight years of age. I personally
10 reviewed that file.

11 The next one is the R@yGold_LGASSMANIA2.mpg:

12 Completed video length is 7, 7 minutes, 32
13 seconds. Partial but functioning video opens
14 with the title frame R@yGold_LGASSMANIA2, 39.5
15 megabytes, MB, seven files, and a digital image
16 of a preadolescent female which I estimated to be
17 between ten and eleven years of age lying down
18 naked with her legs in the air exposing her
19 genitals, anus.

20 I put the. Should be there.

21 Is a foreign object protruding from her anus.
22 The video depicts the same preadolescent female
23 described above bent over exposing her genitals
24 and anus. She is spreading her vagina open and
25 rubbing herself. Scene changes with another

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1 person.

2 No.

3 Scene changes and another person is digitally
4 penetrating the child's anus while she remains in
5 the same position. Scene changes and the child
6 is digitally penetrating her own anus while
7 masturbating. Scene changes and the child is now
8 lying on her back ---

9 COURT REPORTER: Slow down, please.

10 WITNESS: I'm sorry.

11 Scene changes and the child is now lying in her
12 back with her legs in the air spread open and
13 exposing her genitals and anus. She inserts the
14 foreign object, which was in the digital image on
15 the title frame, into her anus while she
16 masturbates. I personally reviewed the file.

17 The next one is the R@yGold_Family1.mpg:

18 Completed video length is 7 minutes. Partial but
19 functioning video opens with the title frame
20 R@yGold_TheFamily. 36.7 MB, two files.

21 And a, and I, I -- d-i-t-a-l:

22 Digital image of the preadolescent -- of a, of a
23 preadolescent female which I estimated to be
24 between ten and twelve years of age performing
25 oral sex on an adult male. Video depicts an

1 adult, an adult female and the preadolescent
2 female described. An adult male is lying beneath
3 a blanket on a bed. The adult female covers the
4 adult male -- uncovers the adult male, beings to
5 perform oral sex on him in front of the child as
6 if she were instructing her. The child then
7 performs oral sex on the adult male, who is naked
8 and exposed from the waist down. The adult
9 female and the child alternatively -- alternately
10 perform oral sex on the adult male. The adult
11 female undresses and sits astride the adult male
12 and engages in sexual intercourse with him while
13 the child assists her in inserting the male's
14 penis into her vagina. The child is now naked
15 from the waist down. The child then sit astride
16 the adult male and attempts to engage in sexual
17 intercourse with him. I personally reviewed that
18 file.

19 The R@yGold_MexicanGirl11.mpg:

20 Completed video length is 5 minutes, 48 seconds.
21 Partial but functioning video opens with the
22 title frame R@yGold, R@yGold_MexicanGirl11, 30.5
23 MB, two files, and a digital image of a
24 preadolescent female I estimate to be between
25 eight and ten years of age performing oral sex on

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1 an adult male. The video consists of several
2 scenes depicting an adult male attempting to
3 insert his penis into the anus of, of the
4 preadolescent female described in the digital
5 image above. Digitally penetrated the child's
6 anus with the child lying face down on top of the
7 adult male while he violently rubs his erect
8 penis between the child's legs, on her anus, and
9 on her genitals, and the child performs oral sex
10 on the adult male. I personally reviewed the
11 file..

12 And Mexican -- R@yGold_MexicanGirl2.mpg:

13 The completed video length is 5 minutes, 27
14 seconds. Partial but functioning video opens
15 with the title frame R@yGold_MexicanGirl2, 32.4
16 MB, two files, and a digital image of a
17 preadolescent -- I'm sorry, and a digital image
18 of a preadolescent female estimated to be between
19 nine and eleven years of age lying face down with
20 an adult male inserting his erect penis into the
21 child's anus. Video depicts the preadolescent
22 female described in the digital image above lying
23 down naked from the waist down wearing only a
24 white striped top. A naked adult male is leaning
25 over her, and she is masturbating the adult male.

1 Scene changes and the child is lying face down
2 while the adult male is rubbing his erect penis
3 on her anus between her buttocks. The adult male
4 then attempts to insert his erect penis into the
5 child's anus but continues to rub his penis on
6 the child's anus. The child gets up, and there
7 is a close up of her anus and genitals and it
8 appears as though the adult male ejaculated
9 between her legs. I personally reviewed that
10 file.

11 Q. After you've reviewed these files, what's the next
12 thing you do in your investigation, Detective Murphy?

13 A. I ascertained where they came from by requesting that
14 legal process be served on the Internet. Well, the first
15 thing I do is I take the IP address and run it through the
16 American Registry of Internet Numbers, which is an online
17 service, and tells me who that IP address was assigned to
18 with regard to ISP. In other words, if you have
19 Time-Warner, Comcast -- trying to think of some of the
20 other ones they have, but y'all know what I'm talking
21 about. An ISP would be like Time-Warner, Comcast.

22 So, I run that number through the American Registry of
23 Internet Numbers. It's going to come back and tell me that
24 in this instance it belongs -- it was assigned to
25 Time-Warner Roadrunner Cable. I then request that service,

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1 service -- process be served on Time-Warner through the
2 attorney general's office to find out what Time-Warner
3 account was assigned that particular IP address during the
4 time frame which the files were down -- uploaded by me.
5 Downloaded by me, I'm sorry.

6 Q. Just to clarify, ISP stands for?

7 A. Internet service provider.

8 Q. When you requested information from Time-Warner, did
9 they comply with the legal compliance?

10 A. They did.

11 Q. And where did they say that the IP address was
12 assigned at the time?

13 A. I'm going to have to ask. May I refer to my report?

14 Q. Yes, you may.

15 A. The subscriber information determined by Time-Warner
16 indicated it was in the name of Wendy Doiron, D-o-i-r-o-n,
17 and that the subscriber address and service address was 128
18 Whixley Lane, Columbia, SC 29223.

19 Q. Was this address located within your legal
20 jurisdiction?

21 A. No, it's not within my jurisdiction.

22 Q. Once you found out that it was not within your
23 jurisdiction, what did you do next in the file?

24 A. I ascertained whose jurisdiction it does fall in and
25 whether or not that, that law-enforcement agency is a

1 member of the South Carolina Internet Crimes Against
2 Children Task Force. If they are, then the case is
3 referred to them. In this case, it was the Columbia Police
4 Department.

5 Q. And who did you speak with at the Columbia Police
6 Department concerning your investigation?

7 A. Investigator Hudak.

8 Q. Investigator who?

9 A. Hudak.

10 Q. The disk that's been identified as State's Exhibit 1,
11 is that the information that you sent to Investigator
12 Hudak?

13 A. I sent Investigator Hudak that disk in its entirety,
14 an affidavit of, of my investigation, my experiences, and a
15 copy of my report, my, my actual police report.

16 Q. The information contained from the files you
17 downloaded, did you send that in encrypted format?

18 A. Yes. It -- you must send it encrypted. You cannot
19 send child pornography through the U.S. mail. By
20 encrypting it, it changes it into a useless file until it
21 -- unless you have the correct...

22 Q. And you instructed Investigator Hudak how to decrypt
23 that?

24 A. Yes. We transmit the, the pass code by other means.

25 MR. FLORES: Beg the court's indulgence?

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1 THE COURT: Yes, sir.

2 (A PAUSE.)

3 BY MR. FLORES:

4 Q. Detective Murphy, after you referred the case to
5 Investigator Hudak, did you have any further involvement
6 with the investigation?

7 A. Not at that point, no. Not after that point.

8 MR. FLORES: Please answer any questions the defense
9 may have for you.

10 THE COURT: Thank you, Mr. Flores.

11 Yes, ma'am?

12 MS. ZMROCZEK: May it please the court?

13 THE COURT: Yes, ma'am, Ms. Zmroczek.

14 CROSS-EXAMINATION BY MS. ZMROCZEK:

15 Q. Good morning, Investigator Murphy.

16 A. Good morning.

17 Q. Would you tell the jury how old I am?

18 A. Fifty-nine.

19 Q. How old I am?

20 A. Say probably late thirties, early forties.

21 Q. I'm sorry?

22 A. I'd say you're in your late thirties, early forties
23 maybe. I don't guess women's ages.

24 Q. Just, just, just guessing? Kind of like you were
25 guessing on the ages of these -- I'm, I'm forty-five,

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1 actually -- guessing on the ages of these ---

2 THE COURT: That's, that's not a question.

3 Q. --- victims as well.

4 THE COURT: That's not a question, Ms. Zmroczek.

5 MS. ZMROCZEK: Okay.

6 BY MS. ZMROCZEK:

7 A. You are adolescent. I can tell you that.

8 Q. I'm sorry?

9 A. You're, you're, you're -- you've reached adolescence.

10 Q. Okay.

11 A. Sexual maturity.

12 Q. How much training -- let me go back to ask you this.

13 Have you provided us with a CV, a curriculum vitae?

14 A. A what?

15 Q. A resume, a curriculum vitae?

16 A. Have I provided who?

17 Q. Have you, have you provided one to AG's office at our
18 request?

19 A. No.

20 Q. Okay.

21 A. Not, not that I recall.

22 COURT REPORTER: Speak up, please.

23 A. Not that I recall.

24 Q. Let's start with background questions, if you don't
25 mind. You said you were in the military for how long?

K. MURPHY - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. For twenty-six years.

2 Q. What's your level of education?

3 A. I have some college courses. I've taken a CLEP
4 battery, which I guess is equivalent to college. I've
5 taken courses that are worth college credits.

6 Q. I'm sorry?

7 A. I have some college.

8 Q. Okay, and where were those courses taken?

9 A. One of them is Sonoma University. One of them was in
10 Rhode Island, and then I've taken courses in the military
11 that have college credit value. Also in, in law -- in law
12 enforcement, yeah, college credit.

13 Q. And you began in law enforcement, in law enforcement
14 when?

15 A. 2000 -- actually, like, the last couple days of 2002,
16 but 2003.

17 Q. 2003. So, at the time of this investigation, you had
18 been in for ten years?

19 A. Approximately.

20 Q. Right, and how much training had you received at that
21 point in, in -- specifically in Internet crimes against
22 children cases?

23 A. At that -- I, I change every time I get trans -- you
24 know, I get, every time I get, every time I get a new --
25 take out, you know, new, new training I change it. So,

1 between 350 and 400 hours.

2 Q. How many of those have you gotten in the last -- since
3 February of 2014?

4 A. I, I honestly don't know. I don't know how much I've
5 got -- received since then. I, I've been to other digital,
6 you know, technical training since that point not
7 specifically related to ICAC.

8 Q. So, you would agree with me that in your affidavit
9 that you had stated to the magistrate -- or to the court at
10 the time that you had received approximately 274 and a half
11 hours of training, right?

12 A. If, if that's what was -- that's why I was telling
13 you. Every time I go I, I change that number because
14 obviously it's not accurate anymore. So, whatever is in
15 the, the affidavit is, is -- the number would be accurate,
16 yes.

17 Q. And according to that affidavit, the last time that
18 you attended any training was 2012, right?

19 A. Now, that I, I don't -- that part I don't update all
20 -- I just put -- that, that's some of the more intensive
21 training that I've had, and that's all I list. I usually
22 don't train that -- don't change that unless I go to
23 something that's fairly intensive.

24 Q. How many, how many times have you testified in court?

25 A. I, I don't know. A lot. I don't know.

K. MURPHY - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Q. How many times have you been qualified as an expert?

2 A. I've never qualified as an expert, to my knowledge.

3 Q. The computer program, as I understand it, it's the
4 computer that actually is the one that does all the work.

5 Is that ---

6 A. Yes, ma'am.

7 Q. --- fair to say?

8 A. Yes, ma'am.

9 Q. Okay. So, who generates that computer program?

10 A. It's provided by the ICAC task force. We have, like,
11 a -- excuse me -- website and, and individuals who work
12 closely with the National Center for Missing and Exploited
13 Children, including professors from -- I don't know if it's
14 Amherst University. I know a university in Massachusetts
15 but I can't remember which one. They assist in writing
16 the, the programs. They're, they're not -- they don't --
17 they actually modify the existing programs to -- as I said
18 earlier, so that ---

19 Q. And the, and the ---

20 A. --- we -- I'm sorry. Go ahead. Go ahead.

21 Q. Oh, and I was going to say and then you do what with
22 it?

23 A. And then we, we have -- before we can use the program,
24 we have to go to, to training to, you, to learn, learn how
25 to use the program and demonstrate our knowledge. And then

1 we get what's called a license, a license number and that,
2 that -- you get one license number. But the license
3 number, every time you are qualified to use a different
4 program, will, will unlock that program. Otherwise, you
5 can't use -- I can't use a program that I haven't been
6 trained on, in other words. So, the program is downloaded
7 and it's routinely updated by these individuals. We
8 download them and install them on, on our PCs and, and run
9 them.

10 Q. And that's your work PC, right?

11 A. No.

12 Q. It's your personal PC?

13 A. No. It's a work -- well, when you say your work PC,
14 I've got eight or nine computers in my office. My -- when
15 you say my work PC; see, I'm thinking the one that I
16 connect to the Berkeley County Sheriff's Office and do my
17 work on. I have an undercover network, and that's where
18 those computers are assigned. They're, they're all
19 government computers.

20 Q. Okay. In a proactive investigation, that's one that's
21 designed to identify offenders, right?

22 A. Yes.

23 Q. To investigate offenders?

24 A. Yes.

25 Q. And to prosecute offenders?

K. MURPHY - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. Yes.

2 Q. They may or may not be involved in a specific target,
3 right?

4 A. I, I don't follow your question.

5 Q. You just kind of are fishing at this point with, with
6 the proactive investigation, right?

7 A. No, I wouldn't, I wouldn't call it exactly fishing.
8 Well, maybe high-tech fishing. I mean, it's not just going
9 out and casting a line. Like I said, there -- all, all the
10 computers throughout the country that are running this
11 software -- and there's also an abbreviated version of the
12 software which does nothing more than go find the files and
13 report back. They don't -- it doesn't download anything.
14 So, all of these, these, these computers that are running
15 this ICAC software, that Internet Crimes Against Children
16 software report their findings back to a central, a central
17 database so that we're basically looking for IP addresses
18 of people that have already been identified as having child
19 pornography available for download, either by hash value of
20 files that they are making available or by keywords that
21 they're making available such as PTHC would be a keyword.
22 That stands for -- in, in -- if you were into child
23 pornography, that would mean preteen hardcore.

24 So, so, my computer would be looking for the hash
25 values and, and keyword searches. And it would be

1 specifically trying to identify people who have -- who
2 other computers have, have been connected to them and
3 allowed -- this software, if, if -- depending on how the
4 person sets it up, this software call allow you -- you can
5 actually allow people to do what's called browse. In other
6 words, let's say you were looking for, as I stated earlier,
7 *Sergeant Pepper's Lonely Hearts Club Band*, that particular
8 song. It is a song I just know. Okay, so.

9 Q. It's also an album.

10 A. So, let's say you connect it up with a computer that,
11 that had that particular file. If, if it was -- if that
12 person had left default to browse, I might be able to go in
13 and look and say oh, he's got all the Beatles. So, I'm,
14 I'm going to request all my Beatles songs, you know, from,
15 from, from this particular computer. So, the computers on,
16 on this, on, on -- using this software will, if they're
17 allowed to browse, will capture and see that, that this
18 individual computer is making these things available. So,
19 that's, that's how our software looks for it. It's not
20 really -- that's why I say it's not -- I'm not just, you
21 know, randomly...

22 Q. So your software, if I understand you correctly, your
23 software doesn't say, hey, do you have any porn to, to
24 anybody out there. It just says, hey, can I look around
25 and see what's in your computer?

K. MURPHY - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. No. It, it, it requests, it requests a file based on
2 a keyword or a hash value.

3 Q. Okay, and so the videos that we saw -- you, in your
4 report you said, for example, the first one you described
5 was R@yGold_SuckTime1, you said completed video length of 4
6 minutes and 10 seconds. That's not what you downloaded,
7 right?

8 A. Probably not, no, not unless I got the complete video.

9 Q. Correct, but that's not -- you showed us a -- you
10 showed the jury exactly what you downloaded ---

11 A. Correct.

12 Q. --- right?

13 A. Correct.

14 Q. And that was nowhere near 4 minutes and 10 seconds.

15 A. Correct.

16 Q. Okay, and so that would be true for R@yGold 99. It
17 says 1 minutes, 40 seconds. You didn't download that
18 completely, did you?

19 A. No.

20 Q. R@yGold_LGASSMANIA2, that was 7 minutes and 32
21 seconds. You didn't download that one completely, right?

22 A. Correct.

23 Q. R@yGold_TheFamily1, that was again 7 minutes. Didn't
24 load that one down?

25 A. Correct.

1 Q. MexicanGirl, 5.48, says you didn't have that complete
2 video, right?

3 A. Right.

4 Q. And MexicanGirl2 5.27, didn't have that complete
5 video?

6 A. Correct, and that's why it's worded partially but
7 functioning.

8 Q. Okay, and those, through those partial sometimes
9 20-second captures that, that you -- were downloaded from
10 your computer, right?

11 A. Well, they're not captures.

12 Q. Do you ---

13 A. They're, they're, they're files.

14 Q. They're files, the files that were captured.

15 A. Yes.

16 Q. 20 seconds or so, you were able to identify the age of
17 these girls?

18 A. I was able to estimate the age of the girls.

19 Q. And what was their race? Was it different for each
20 one?

21 A. I, I, I don't know. I didn't, I didn't put the race
22 down. I usually don't. I usually don't put, put the race
23 down, just the...

24 Q. You would agree with me that different races have
25 different appearances?

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1 A. To some extent.

2 Q. Okay. You would agree with me that in your extensive
3 Internet porn search that a lot of times people like to
4 fantasize about things that we don't consider normal?

5 A. Yes.

6 Q. You would agree with me that sometimes you can dress
7 people up to look younger?

8 A. To very limited extent.

9 Q. I'm sorry?

10 A. To a very limited extent, I would agree with that.

11 Q. You would agree that there's a whole genre of, of
12 that, people dressing up to look younger, right?

13 A. I wouldn't say six years old or nine years old or
14 eleven but, you know, yeah. I would, I would say that
15 there is, there -- yeah, I know what you're talking about.
16 So, yes, I would agree.

17 Q. And you would agree that's a, that's a -- an area?

18 A. Yes.

19 Q. Okay. Sometimes there are grown men that put on
20 diapers, right?

21 A. I guess.

22 Q. You've see that in your extensive research?

23 A. I haven't personally seen that, but I've heard of it.

24 Q. Okay. Okay. The task force gives you policies and
25 guidelines to follow, correct?

1 A. Correct. Correct.

2 Q. Okay. You want to make sure that, that there's not a
3 lot of time that passes from when information is gathered
4 to when it's given to the correct agency, right?

5 A. Correct.

6 Q. Sometimes this information, as you described, can be
7 found on iPads, right?

8 A. It could be found on an iPad.

9 Q. iPhones?

10 A. Possibly.

11 Q. Any, any, any phone ---

12 A. Any digital media device.

13 Q. Any digital media phone. Desktops?

14 A. Yes.

15 Q. It can be moved to those little scan drivers?

16 A. It could.

17 Q. And if that scan driver happened to be in that
18 computer, it would still show up on that IP address, right?

19 A. Okay, my software does not search your whole computer.
20 It's going to search what you've authorized it. It's, it's
21 -- in fact, I don't even want to use the term search. It's
22 not going to search anything. My computer is going to find
23 whatever you've allowed it to find. So, in other words, by
24 default most of the -- most, most of the programs create a
25 folder, like, with areas -- for instance, it's called My

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1 Shared Files or, or something to, to that effect, My Shared
2 Files. It's placed on the desktop by default, and this is
3 where your folder -- when you download, when you download
4 files, they go into that folder and they're shared out of
5 that folder. So, you can, if you know what you're doing,
6 go in and change that, or you can add other locations that
7 you want to share.

8 But, no, I don't -- if somebody plugged a thumb drive
9 in, I would not necessarily have access unless, number one,
10 they have specifically shared that thumb drive. And,
11 number two, that thumb drive was plugged in and functioning
12 when I made contact with them. So, that's of -- that's my
13 answer.

14 Q. And the people who download these files, they have
15 knowledge of how to download let's say, for example, music,
16 right? There are places that you can go to download music?

17 A. I'm, I'm not sure I...

18 Q. If I'm going on the Internet to search for music,
19 let's say, I can find a torrent that does that, right?

20 A. Yes.

21 Q. I can find a torrent that has child porn?

22 A. Yes.

23 Q. I can find a torrent that has stationery?

24 A. That has what?

25 Q. Stationary. They make torrents for any different --

1 anything, right?

2 A. You can, you, you can upload any kind of file. To my
3 knowledge, you can upload any kind of file on a torrent,
4 correct.

5 Q. Okay, and when you first received information
6 regarding this IP address, it came back to ISP. That's
7 Internet service provider, right, city, and tell the jury
8 what city that was.

9 A. No. It came back to Time-Warner Cable Roadrunner.

10 Q. And what city was that?

11 A. Okay, when, when they returned process and, and, and
12 gave me the subscriber information regarding the account
13 that that particular IP address during that particular time
14 came back to, it came back to an address in Columbia.

15 Q. Okay. Let me, let me, let me ask the question again.
16 Looking at the first page of your report ---

17 THE COURT: He, he gave you the answer, what city was
18 that.

19 MS. ZMROCZEK: Okay.

20 THE COURT: The answer was Columbia, correct?

21 MS. ZMROCZEK: I'll refresh his recollection, Your
22 Honor.

23 MR. FLORES: If, if, Your Honor, if she's referring to
24 a document, she can tell Detective Murphy what document
25 she's referring to and show it to him?

1 THE COURT: All right.

2 BY MS. ZMROCZEK:

3 Q. I show you the report you provided us. Does that
4 refresh your recollection?

5 A. Are you referring to Herndon?

6 Q. I am.

7 A. Herndon is where Time-Warner Cable is located.

8 Q. Okay. So, on the first page of your report, what is
9 the ISP city listed?

10 A. Okay, you, you've printed it -- let me explain so I
11 don't -- we don't get frustrated. You printed it a
12 different way. It looks like you printed it frame by
13 frame. My report is, is printed all together, so it
14 doesn't look like your report. So, if, if you want to
15 bring it to me and ask me specifically -- otherwise, I'm
16 going to have to try to compare sections within my report.

17 Q. When you requested the ISP city and the ISP address,
18 what city did it come back to?

19 A. Okay, again Time-Warner Cable Internet is located in
20 Herndon, Virginia.

21 Q. Herndon, Virginia.

22 A. Right. Not, not, not the subscriber information, but
23 that's the I -- that's the headquarters of the ISP, who
24 also retails in South Carolina.

25 Q. Right.

1 THE COURT: Mr. Foreman, ladies and gentlemen, step
2 out, please. Do not discuss the case during this brief
3 recess.

4 (THE JURY EXITS AT 12:28 P.M.)

5 THE COURT: May I see that document that you --
6 whatever document you have shown the officer, Ms. Zmroczek?

7 (A PAUSE.)

8 THE COURT: And your question was what city did the IP
9 address, ISP address come back to?

10 MS. ZMROCZEK: Yes, sir.

11 THE COURT: And this document also said --- you may
12 step back -- Time-Warner Cable Internet, LLC.

13 MS. ZMROCZEK: Yes, sir.

14 THE COURT: Are you familiar with Rule 403?

15 MS. ZMROCZEK: Yes, sir.

16 THE COURT: Rule 403 says although relevant, which
17 this may be, evidence may be excluded if its probative
18 value is misleading to the jury. I will not have an
19 officer of the court mislead this jury, Ms. Zmroczek.

20 MS. ZMROCZEK: Your Honor, I don't consider it
21 misleading. It's actually already ---

22 THE COURT: I do. I don't care what you consider it.
23 I'm the one ruling on it. If you're trying to tell this
24 jury that there was a computer in Herndon, Virginia, that's
25 misleading the jury. I will not do have a fraud

K. MURPHY - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 perpetrated on this jury by you or any other officer of
2 this court that stands in front of me. You understand, Ms.
3 Zmroczek?

4 MS. ZMROCZEK: Absolutely, Your Honor.

5 THE COURT: Thank you. You may take this back.
6 Bring us our jury, please.

7 (THE JURY ENTERS AT 12:35 P.M.)

8 THE COURT: Thank you very much, ladies and gentlemen
9 of the jury panel.

10 Ms. Zmroczek, you may ask your next question.

11 MS. ZMROCZEK: Thank you.

12 BY MS. ZMROCZEK:

13 Q. And it's Lieutenant, right?

14 A. Yes, ma'am.

15 Q. Lieutenant Murphy, I had Mr. Flores pull up
16 Defendant's -- or, excuse me, State's Exhibit 1, and can
17 you see that from there?

18 A. I, I can see it enough.

19 Q. Okay. So, so, to maybe clarify my question, the I,
20 the IP address came back to an Internet service provider,
21 ISP?

22 A. Correct.

23 Q. And that was in -- that was Time-Warner Cable?

24 A. Headquartered.

25 Q. Headquartered in Herndon, Virginia, right?

1 A. Yes, ma'am.

2 Q. And then you contacted them to say who does this IP
3 address belong to?

4 A. No. I, I asked them which Time-Warner Roadrunner
5 account was assigned that particular IP address during the
6 period in question.

7 Q. And that's when you got to the address in Columbia?

8 A. Yes, ma'am.

9 Q. Okay. That's all I was asking.

10 A. Yes, ma'am.

11 Q. All right. So, from that -- when did you request that
12 of Time-Warner Cable?

13 A. In February 2014.

14 Q. And you had located this video in November of 2013?

15 A. Correct.

16 Q. Or these six portions of videos?

17 A. Correct.

18 Q. And what was the reason for the delay?

19 A. Quite frankly I, I, I, I, I don't know. It could have
20 been anything. We was -- we, we had a, a big -- we
21 recently changed sheriffs and there was a lot of commotion
22 going on. There was a lot of stuff going on. I've
23 switched offices twice since then. You know, it could have
24 been related to that. I'm not really sure.

25 Q. So, in February of 2014, you contacted Time-Warner

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1 Cable and found out that it was the Columbia address, and
2 then that's when you realized you needed to contact
3 somebody in Columbia?

4 A. Right. Again, again, I, I, I checked to see which
5 jurisdiction it falls under. Then I checked to see if
6 jurisdiction is, is it -- is it one of the member agencies
7 of the Internet, South Carolina Internet Crimes Against
8 Children Task Force. Excuse me. If it is, then at that
9 time the files will directly -- the procedures have
10 changed, but at that time I would, I would make contact
11 with that agency. I would tell them what I have, and they
12 would have to actually say yes. We'll, we'll, we'll adopt
13 the case. We'll take the case. Once that's done, I, I
14 send them the case in its entirety that I have, and, and
15 that's it.

16 Q. And was there a different policy if they weren't part
17 of the Internet Crimes Against Children Task Force?

18 A. Yes. They, they -- the task force itself -- the
19 attorney general's office has investigators, and we also
20 use the State Law Enforcement Division. So ---

21 Q. So ---

22 A. So, if they're, if they're not -- if, if they're in --
23 really it would have to be a county because if the county's
24 in, then obviously the county can investigate anything.
25 So, if the county was not in, then it would go to them for

1 assignment to either SLED or to an investigator at, at the
2 task force.

3 Q. Okay, and so the location from -- tell the jury which
4 device this information was received from.

5 A. I didn't -- I don't follow what you're saying.

6 Q. Tell the jury which device these six videos that we
7 saw were received from.

8 A. Where I uploaded them from?

9 Q. Where -- no.

10 A. Downloaded them from?

11 Q. Yes.

12 A. I, I don't know what device. That has -- that's,
13 that's part of the investigation when you actually go into
14 the server with a search warrant on the, on the location.

15 Q. Okay, and then tell the jury the screen name
16 associated with these files.

17 A. The what?

18 Q. A screen name, an identifier of the person who had
19 these files.

20 A. It, it, it just indicates the IP address.

21 Q. I'm sorry?

22 A. It just indicates the IP address. It doesn't indicate
23 a, a screen name.

24 Q. Can you tell these jurors who trans -- who uploaded
25 these videos?

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1 A. No. No.

2 MS. ZMROCZEK: Beg the court's indulgence.

3 THE COURT: Yes, ma'am.

4 (A PAUSE.)

5 MS. ZMROCZEK: No further questions.

6 THE COURT: Redirect, Mr. Flores?

7 MR. FLORES: Yes. Very briefly, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION BY MR. FLORES:

10 Q. Detective Murphy, you testified in surveying the files
11 that you received that they were partial files, correct?

12 A. Correct.

13 Q. If you were, if you were using the commercially
14 available software, would you be able to get the entire
15 files?

16 A. I -- for all intents and purposes, I'm using the exact
17 same thing. Anybody can get what I got.

18 Q. But could you get the remainder of the files that you
19 did not?

20 A. If, if, if the file -- if the computer where I got
21 them from had them. That may have been all they had, and
22 if you look at the report -- we discussed that earlier --
23 it tells you how many pieces it is and then see what the
24 computer says. I've got 105 of 155 of those pieces. So,
25 it actually tells you. The computer says I only got a

1 partial file. I got 105, but you can have them.

2 Q. Could you get the other 50 from somebody else?

3 A. Yes. You could -- yes. You could get the -- if
4 somebody had the complete torrent, you could get them.

5 Q. So, your software can't allow you to do that?

6 A. No. My, my, my software downloads from one IP address
7 at a time. If you buy the, the -- or not buy but if you
8 download the commercially available one, it will try to
9 find every single source it can that has the file I'm
10 looking for and download at the same time bits and pieces
11 so that it, it speeds up the download time because, like I
12 said, they use it for, like -- when you're using software,
13 it can be very large files. This way everybody might have
14 little, little chunks of it, and I can download all at
15 once. Mine will not allow me to do that. Mine, mine will
16 go to one source and remain with that source from beginning
17 to end.

18 Q. Concerning the time it took to get the subscriber
19 information, is this something you can just call
20 Time-Warner about and say hey, can you give me the
21 information right now?

22 A. No. I wish it was. They must be served with legal
23 process in order to, to give you the information. Even,
24 even basic subscriber information.

25 Q. So, is a three-month delay in obtaining subscriber

K. MURPHY - REDIRECT EXAMINATION / RECROSS-EXAMINATION 206

1 information, is that common?

2 A. In, in this particular case it, it wasn't a
3 three-month delay. Actually, they provided it rather
4 quickly. In February, I believe the process was served in
5 February and, and, and it was received within a short
6 period of time.

7 Q. Do you deal with certain Internet service providers
8 that take considerably longer than a couple of weeks?

9 A. Some of them can take longer than others, yes.

10 MR. FLORES: Your Honor, that's all the questions we
11 have.

12 THE COURT: Recross, Ms. Zmroczek?

13 MS. ZMROCZEK: Briefly.

14 RECROSS-EXAMINATION BY MS. ZMROCZEK:

15 Q. He asked you, Mr. Flores asked you about taking long.
16 Once you contacted Time-Warner Cable, they responded within
17 a, a very short period of time, correct?

18 A. Yes.

19 Q. And they provided you the information that you needed?

20 A. Yes.

21 Q. And the ISP address -- excuse me, the IP address, that
22 was just for the house. So, any device in that house?

23 A. That's correct.

24 Q. Or anybody connected to that IP address outside of
25 that house?

1 A. That's correct.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: Thank you. Thank you very much,
4 Lieutenant Murphy. You may step down.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: All right, Mr. Foreman, ladies and
7 gentlemen of the jury, perhaps now would be a good time to
8 take our luncheon recess. I remind you during this recess,
9 you may not discuss this case with others, including your
10 fellow jurors, lunch mates, family, friends, or anyone
11 else. You may not read, watch, or listen to any news
12 reports about the case, should there be any.

13 You may certainly use your computer, cell phone, or
14 any other electronic device with communication capabilities
15 during your luncheon recess, but you may not use them to
16 obtain or disclose information which is prohibited.
17 Information which is prohibited includes but it is not
18 limited to the following: information about a party, a
19 witness, an attorney, or a court officer; news accounts
20 about the case, present or past should there have been any;
21 information collected through juror research on any topics
22 raised or testimony offered by any witness; and information
23 collected through juror research on any other topic that a
24 juror might think would be helpful in deciding the case.
25 In other words, do not do any independent investigation or

B. HUDAK - DIRECT EXAMINATION BY MR. FLORES

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1 BRIAN K. HUDAK, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please have a seat. State your full
4 name for the record.

5 WITNESS: It's Brian K. Hudak.

6 DIRECT EXAMINATION BY MR. FLORES:

7 Q. Good afternoon, Special Agent Hudak. Would you please
8 tell the jury how you are currently employed?

9 A. I'm employed by the South Carolina Law Enforcement
10 Division.

11 Q. What is your job title there?

12 A. I'm a special agent with Computer Crimes.

13 Q. And what are your duties as a special agent assigned
14 to the Computer Crimes Division?

15 A. I'm part of the Crimes Against Children Task Force, so
16 I investigate cases such as this one. I also do forensics,
17 computers and cell phones, as well as any other sort of
18 assistance with anything computer related that other agents
19 need.

20 Q. Prior to your employment with the State Law
21 Enforcement Division, where were you employed?

22 A. By the Columbia Police Department.

23 Q. How long were you with the Columbia Police Department?

24 A. Was there about eight and a half years.

25 Q. In February of 2014, were you employed with that

1 police department?

2 A. Yes, I was.

3 Q. And what was your job title and your duties ---

4 A. I was in ---

5 Q. --- while you were there?

6 A. Sorry. I was an investigator with the Special Victims
7 Unit. I investigated a variety of cases, from criminal
8 sexual conduct, missing persons, anything involved with
9 juveniles, subject or victim. Just a variety of cases. I
10 was a member of the Internet Crimes Against Children Task
11 Force as well.

12 Q. Concerning your work on the Internet Crimes Against
13 Children Task Force, have you received any specialized
14 training for that unit?

15 A. I have.

16 Q. And what type of training have you received?

17 A. Mostly received about -- in the area filesharing,
18 program that's about filesharing.

19 Q. Have you ever conducted investigations into the
20 distribution of child pornography?

21 A. Yes, I have.

22 Q. And have you received referrals concerning the
23 distribution of child pornography?

24 A. Yes, I have.

25 Q. Special Agent Hudak, Lieutenant Murphy has testified

B. HUDAK - DIRECT EXAMINATION BY MR. FLORES

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1 concerning his investigation of the case involving IP
2 address 66.57.172.240. Did you become involved with that
3 investigation?

4 A. Yes, I did.

5 Q. And how did you become involved in that investigation?

6 A. Investigator Murphy contacted me and stated that he
7 had been investigating that IP address, reference to the
8 distribution of child pornography, and he -- once he got
9 the address of that -- belonged to that IP address at the
10 time, he found out it was within the City of Columbia's
11 jurisdiction and contacted me since I was a member of the
12 task force in the agency that would handle it.

13 Q. Did you receive any information from Detective Murphy?

14 A. Yes. He sent me a disk with his report and
15 information on it.

16 Q. Did you view that disk?

17 A. Yes, I did.

18 Q. Did you review the videos on that disk?

19 A. Yes, I did.

20 Q. According to the information you received from
21 Detective Murphy, where was the location that that IP
22 address was assigned in November of 2013?

23 A. [REDACTED], Columbia, South Carolina.

24 Q. Is that here in Richland County?

25 A. Yes, it is.

1 Q. Did anyone else at the Columbia Police Department work
2 with you on this case?

3 A. Yes, Investigators Narewski and Merrill.

4 Q. When did you receive this case information?

5 A. I believe I received it either late February or early
6 March of 2014.

7 Q. Do you recall when a search was executed at 128
8 Whixley Lane?

9 A. I believe it was June 2014. It was a couple of months
10 after I received the information.

11 Q. Were you involved in the search of [REDACTED]?

12 A. No, I wasn't.

13 Q. Why was there a time gap between the time you received
14 the information from Detective Murphy and the time the
15 search warrant was executed?

16 A. Just due to a high case load. I had other cases that
17 I was working that were coming in and that were deemed
18 higher priority. Again, like I stated, I investigated
19 sexual assault, missing persons, you know, vulnerable
20 adults, stuff like that and unfortunately just had to work
21 those other cases before I could get to this one.

22 Q. Did you set the priority on investigating this case?

23 A. Between me and my supervisor, yes, but it was mostly
24 me.

25 Q. It was mostly who?

B. HUDAK - DIRECT EXAMINATION BY MR. FLORES

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1 A. Me.

2 Q. Concerning the computer equipment in this case, did
3 you ever use any of the computer equipment that was seized?

4 A. No.

5 Q. Did you ever analyze any of the equipment?

6 A. No.

7 Q. Do you know who did analyze the equipment?

8 A. Investigator Jon VanHouten with the Columbia Police
9 Department.

10 MR. FLORES: Beg the court's indulgence.

11 THE COURT: Yes, sir.

12 MR. FLORES: Investigator Hudak, please answer any
13 questions the defense may have for you.

14 THE COURT: Thank you, Mr. Flores.

15 Ms. Goode?

16 MS. GOODE: We have no questions, Your Honor.

17 THE COURT: Thank you. Thank you very much.

18 Thank you, Agent Hudak. You may step down.

19 WITNESS: Thank you.

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: All right, Mr. Flores, you may call your
22 next witness.

23 MR. FLORES: Yes, Your Honor. The state would call
24 Investigator Stephan Narewski, Narewski of the City of
25 Columbia Police Department.

1 THE COURT: All right, if you'd come around and be
2 sworn, please.

3 STEPHAN T. NAREWSKI, BEING DULY
4 SWORN, TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: Please have a seat. State your full
6 name for the record.

7 WITNESS: I'm Stephan Thomas Narewski.

8 DIRECT EXAMINATION BY MR. FLORES:

9 Q. I am so sorry I've been butchering your name, sir.
10 Could you please state for the jury where you are currently
11 employed?

12 A. I work for the City of Columbia in its investigative
13 division. Right now we are doing the regional teams. I
14 work for the metro section, which is downtown here.

15 Q. What kind of cases are you assigned to investigate as
16 part of the metro division?

17 A. Now it includes murder, attempted murder, kidnapping,
18 robbery, burglary, auto breaking, grand larceny of a
19 vehicle, sexual assaults, children cases, be they victim or
20 suspect, vulnerable adults. Basically anything you can
21 think of.

22 Q. Prior to your organization being divided into regions,
23 were you assigned to a unit?

24 A. Yes.

25 Q. And what unit was that?

S. NAREWSKI - DIRECT EXAMINATION BY MR. FLORES

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1 A. I was assigned to the Special Victims Unit from fall
2 of 2006 til January of 2016, about ten years. Well, about
3 nine and a half.

4 Q. All right. What kind of cases did you investigate as
5 part of the Special Victims Unit?

6 A. Our focus in that would be domestic violence, sexual
7 assaults, child as victim or suspect, missing persons,
8 stalking, harassment, vulnerable adults, and being anything
9 nobody else wanted to touch.

10 Q. Could you please tell the jury your general background
11 in law enforcement, how long you've been a law enforcement
12 officer?

13 A. I was an automotive maintenance technician in the Army
14 for twenty-three years. When I retired, I joined the City
15 of Columbia Police. I patrolled the north end of the city,
16 Eau Claire and north. I made investigator right at six
17 years of service. I did property and burglary for about
18 four months. Then I moved into the Special Victims Unit
19 and stayed there until earlier this year.

20 Q. Are you familiar with the South Carolina Internet
21 Crimes Against Children Task Force?

22 A. Quite familiar.

23 Q. How are your familiar with this task force?

24 A. Several years, gah, '8, 2008, 2009 was my first
25 introduction to Internet Crimes Against Children. I ended

1 up arresting that man for trying to entice a
2 fourteen-year-old boy into certain things. That was my
3 first introduction. Then in June of '10, I needed data
4 retrieval from cell phones where the guy took video of his
5 sexual interactions with a six-year-old girl out of
6 Newberry. That was my reintroduction. I had had ---

7 MS. GOODE: Objection, Your Honor.

8 A. So, then after ---

9 THE COURT: I'm sorry. Wait just a minute. Let me
10 rule.

11 What's your basis for your objection?

12 MS. GOODE: Relevance.

13 THE COURT: All right. Overruled.

14 BY MR. FLORES:

15 A. Then after that the city, based on some input from me,
16 decided to affiliate with the Internet Crimes Against
17 Children Task Force, and I was the named person for, for
18 several years.

19 Q. Investigator, how did you become associated with the
20 investigation into this case?

21 A. In this case, Investigator Hudak, Investigator Bailey,
22 and myself shared the same room at the front end of the
23 building down at 2132 Devine Street. So, when Mr. Hudak
24 and Bailey and I -- we'd also involve ourselves in ICAC
25 conferences and all the other stuff. When he was given the

S. NAREWSKI - DIRECT EXAMINATION BY MR. FLORES

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1 case by Investigator Murphy, I was familiar with it and
2 then when -- he was on night shift the week that we were
3 going to do the search warrant service, and our supervisor
4 made the decision that the day shift crew would go serve
5 the search warrant because he would still have to stay up
6 late at night answering the phone and working cases through
7 the night.

8 Q. So, you end up serving the search warrant that he
9 might have, might have done?

10 A. He would have done it if he was day shift.

11 Q. Were you responsible for obtaining that search
12 warrant?

13 A. He did most of the preparation work for it. I believe
14 that I reviewed it. I signed it because I was the senior
15 investigator in the section. I signed it. I took it and
16 got it approved by the ministerial reporter at the
17 courthouse, and then we went and served it.

18 Q. And your training in Internet crimes involves cases
19 such as this, which involved distributional of child
20 pornography?

21 A. Yes.

22 Q. What were you looking to seize in the search from that
23 location at [REDACTED]?

24 A. We use a typical phraseology in the search warrants
25 for those particular items, and it's basically computers,

1 cell phones, laptops, iPads, anything capable of storing
2 digital files to include CDs, DVDs, thumb drives. They
3 could even include Playstations.

4 Q. And were you present at [REDACTED] when the
5 search was executed?

6 A. Yes, I was.

7 Q. And what was your role during the execution of that
8 search warrant?

9 A. My role, I spent most of the time watching over the
10 family that resided there.

11 Q. Do you know who they were?

12 A. The Doirons. He's a retired Army guy, so we had a
13 little conversation about that. His wife. I do know they
14 had a child I think was wearing either a Superman or
15 Spiderman PJs. I believe he has autism.

16 Q. So, you weren't actually involved in going in and
17 taking computer equipment at that ---

18 A. I was in the house and then on the front porch, but I
19 didn't go search from room to room for computer gear, no.

20 Q. Concerning the computer items that were taken, did you
21 analyze any of that equipment?

22 A. No, sir.

23 Q. When it was taken from [REDACTED], where was
24 that equipment taken to?

25 A. It would have -- it was taken to the Columbia Police

S. NAREWSKI - DIRECT EXAMINATION BY MR. FLORES

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1 Department at Lincoln and Washington. That was -- at that
2 point in time, that was where evidence was stored, and it
3 was placed in there by the people that transported it
4 there.

5 Q. Now, based on your discussions with the Doirons, what
6 was your understanding about the residence? Whose
7 residence was it?

8 A. It was their residence, and he was a guest in their
9 house that had been staying there for some time.

10 Q. Who is he?

11 A. Mr. Simmons.

12 Q. Following the execution of the search warrant, did you
13 have the occasion to interview Mr. Simmons?

14 A. Yes, I did.

15 Q. And when and where did you interview Mr. Simmons?

16 A. I'd left my contact information at the house. I got a
17 phone call. We met Mr. Simmons at a fast food place
18 somewhere on the east side of the city. Investigator
19 Merrill and myself set down with him; we interviewed him
20 and had him do a short written statement.

21 MR. FLORES: Your Honor, if I might approach the
22 witness?

23 THE COURT: Yes, sir.

24 BY MR. FLORES:

25 Q. Investigator Narewski, I'm handing you what's been --

1 I'm sorry. One moment. Sorry.

2 (A PAUSE.)

3 Q. Investigator, I'm handing you what's been marked
4 State's Exhibit 2 for identification. Would you please
5 review that document?

6 (A PAUSE.)

7 Q. Are you familiar with this document?

8 A. Yes, sir.

9 Q. Is this document -- did you use this document during
10 your interview with Mr. Simmons?

11 A. Yes, sir.

12 Q. And how do you know it's that document?

13 A. I see my signature and I see my payroll number. So, I
14 know that I did this one because I'm the one that does that
15 specific technique. I also have his name in my handwriting
16 at the top, his date of birth, and then his DL number,
17 which I wrote there. That's my handwriting. Then place
18 that the interview was conducted, I put 446 Spears Creek
19 Church Road, and I show the date as June 13, 2014, at about
20 12:04 in the afternoon.

21 MR. FLORES: Your Honor, we would ask that State's 2
22 be admitted into evidence and published for the jury.

23 MS. GOODE: No objection.

24 THE COURT: State's 2 is in evidence without
25 objection.

S. NAREWSKI - DIRECT EXAMINATION BY MR. FLORES

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1 MR. FLORES: Thank you, Your Honor.

2 (ADVICE OF RIGHTS FORM MARKED INTO EVIDENCE AS STATE'S
3 EXHIBIT NUMBER 2.)

4 BY MR. FLORES:

5 Q. Investigator Narewski, would you go through this form,
6 explain to the jury what this form is?

7 A. It's the, it's the Advice of Rights, and there's no --
8 the city did not prepare it the way I would like, so I
9 write the person I'm talking to's information up here.
10 Then I put where we were, and then there's a signature by
11 the officer, a witness, and the time that we ended the
12 reading of this page, and then the person we're talking to
13 signs here acknowledging their rights. I also add little
14 marks at the end of each line so that the person I'm
15 talking to, I tell them initial everywhere I made a mark to
16 acknowledge they understand that. You want me to read the
17 form, sir?

18 Q. Please.

19 A. Before we ask any questions, you must understand
20 your rights.

21 And then he initialed indicating at the end that he
22 did understand.

23 You have the right to remain silent. Anything
24 you say can be used against you in court. You
25 have the right to talk to a lawyer for advice

1 before you answer any questions and have them
2 with you during questioning. If you cannot
3 afford an lawyer, one will be appointed for you
4 before any questioning, if you wish. If you
5 decide to answer questions now without a lawyer
6 present, you will still have the right to stop
7 answering at any time. You will also have the
8 right to stop answering at any time until you
9 talk to a lawyer.

10 And then at the next paragraph is a waiver of rights,
11 and I put a box around it and tell them initial out there
12 if they understand, and I read it to them:

13 I have read the statement of my rights. I
14 understand what my rights are. I am willing to
15 make a statement and answer questions. I do not
16 want a lawyer at this time. I understand and
17 know what I am doing. No promises or threats
18 have been made to me, and no pressure or coercion
19 of any kind has been used against me.

20 And at that point, I offer it to them for the initials
21 and the signature.

22 Q. When you are going through this form with them, and
23 specifically in this case did you threaten or coerce Mr.
24 Simmons into giving a statement and signing the form?

25 A. No, sir.

S. NAREWSKI - DIRECT EXAMINATION BY MR. FLORES

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1 Q. Did he ever respond that he wanted a lawyer and invoke
2 his right to silence?

3 A. No, sir.

4 Q. And did you give him -- did you promise him anything
5 or offer him anything?

6 A. No, sir.

7 Q. And he did indeed appear to understand the form?

8 A. Yes, sir.

9 Q. Was this conversation, this interview, was this
10 recorded at all?

11 A. I did not have my recorder with me. I don't believe
12 Investigator Merrill had hers either, so I don't think so
13 because I got the phone call -- normally my recorder stays
14 at the office charging all the time. So, I didn't have it
15 with me that day.

16 Q. Did Mr. Simmons provide a statement to you at that
17 time?

18 A. I believe he provided a short written statement, yes.

19 MR. FLORES: Your Honor, may I approach, approach the
20 witness?

21 THE COURT: Yes, sir.

22 MR. FLORES: Thank you.

23 BY MR. FLORES:

24 Q. Investigator, I'm handing you what's been marked
25 State's Exhibit 3. Would you please identify -- would you

1 please read over this?

2 A. Yes.

3 Q. Inspect that document. Are you familiar with that
4 document?

5 A. Yes.

6 Q. How are you familiar with that document?

7 A. This was done in conjunction shortly thereafter from
8 the rights advisement.

9 Q. Is this the written statement that Mr. Simmons gave
10 you based on the questioning of him?

11 A. Based on our conversation with him, yes.

12 Q. Has anything been altered in this statement?

13 A. I don't see any alterations.

14 MR. FLORES: Your Honor, we would ask that State's
15 Exhibit 3 be admitted into evidence and published for the
16 jury.

17 THE COURT: Ms. Goode?

18 MS. GOODE: No objection, Your Honor.

19 THE COURT: State's 3 is in evidence without
20 objection.

21 (STATEMENT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 3.)

23 BY MR. FLORES:

24 Q. Investigator Narewski, if you would read through that
25 document and explain for the court, for the jury ---

S. NAREWSKI - DIRECT EXAMINATION BY MR. FLORES

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1 A. Okay.

2 Q. --- what information it ---

3 A. This is a CPD standard statement form. The top has
4 the information on the person giving the statement. There
5 is a place for them to write out what they want to tell us.
6 Down here is where I personally notarized it that day after
7 I asked him if he swore/affirmed this statement was the
8 truth as he knew it, and then he signs it here indicating
9 that he's given the statement and that he acknowledges he's
10 received a copy.

11 And then on the top in my handwriting is the day's
12 date. It says 12:10, which -- this ended at 12:06, and
13 then it gives the address [REDACTED] Church Road,
14 which was consistent with that address there. And then it
15 says he, Michael Simmons, his birth date, his address and
16 phone number -- or his address. He did not include phone
17 number, and it says it's to me, Investigator Narewski,
18 who's identified himself as CPD, and then Mr. Simmons's
19 statement reads:

20 I was called this morning by Investigator
21 Narewski, who asked me to come down to the East
22 Region to answer some questions about child
23 pornography that was downloaded at this address.
24 I answered all of his questions, and he advised
25 me of my rights, and stated that I have not

1 downloaded any illegal videos, but I do have a
2 bit torrent that I use to download music and
3 Blu-ray movies. I do not believe that anyone
4 else has the password to my computer.

5 Q. Were there any additional statements that were made by
6 Mr. Simmons?

7 A. Not that I'm aware of, and on reflection, I think 446
8 Spears Creek Church Road might be the East Region since
9 it's stated in here, come down East Region. It may not be
10 a fast food restaurant; it may actually be the East Region
11 police station that we have out there. This has been a few
12 years.

13 Q. Following this interview with Mr. Simmons, did you
14 have any further involvement with this case?

15 A. If anything, would have been peripheral. Nothing in
16 it. Just, you know, hearing about it.

17 Q. You conducted no examinations on devices, CDs?

18 A. That's correct. I -- none of the equipment.

19 MR. FLORES: Beg the court's indulgence.

20 THE COURT: Yes, sir.

21 MR. FLORES: Your Honor, that's all the questions we
22 have for Investigator Narewski.

23 THE COURT: Thank you, Mr. Flores.

24 Ms. Goode.

25 MS. GOODE: Thank you, Your Honor. May it please the

S. NAREWSKI - CROSS-EXAMINATION BY MS. GOODE

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1 court?

2 CROSS-EXAMINATION BY MS. GOODE:

3 Q. Is it Sergeant Narewski now?

4 A. Oh, no. I refused that.

5 Q. Really? I thought it was ---

6 A. Investigator. No.

7 Q. Investigator. You don't want anything to do with
8 that. Got it. Okay, so just briefly your job basically in
9 this particular case, you were assisting?

10 A. Yes.

11 Q. Investigator Hudak was the ---

12 A. He was the lead.

13 Q. --- the lead?

14 A. Yes.

15 Q. And your involvement really was the day of -- I
16 believe it was June 13th of 2014, the day of the search
17 warrant?

18 A. The day of the search warrant, yes.

19 Q. And that day you get to the house. It's about 10:20
20 in the morning, the time?

21 A. Whatever time the search warrant says on it.

22 Q. Do you have a copy of your notes that you prepared?

23 A. I do not have any notes.

24 Q. It was morning. It was still early, and the people
25 that were at the house was the Doiron family, Doiron

1 family. Ron, who you said you got into a conversation
2 because he's ---

3 A. He's retired army.

4 Q. Right, and his wife, Wendy, and their son Kyle and
5 then two younger children. Is that correct?

6 A. I, I don't remember the total number of children.
7 I just remember the one in the, I don't remember if it
8 was ---

9 Q. I think it was Captain America.

10 A. --- Superman or Captain American.

11 Q. Captain America.

12 A. It was something.

13 Q. I think it was Captain America, but Michael was not
14 there, right?

15 A. He was not present.

16 Q. And actually he reached out to you after you guys had
17 left?

18 A. Yes.

19 Q. To meet up with you and, and that was just later in
20 the morning, is that right, the same day?

21 A. Well, that would have been right at 12 noon.

22 Q. Okay. So, a few hours later, a couple hours later you
23 meet with him. He comes in voluntarily, right?

24 A. Yes.

25 Q. And you said the interview with Michael wasn't

S. NAREWSKI - CROSS-EXAMINATION BY MS. GOODE

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1 recorded. Is that because of the recorder being at a
2 different police station?

3 A. Yes. Our office at that point in time was 2132 Devine
4 Street, which is Harden and Devine, and we were at, what,
5 Exit 82 off of 20.

6 Q. Are there -- and that was a police station?

7 A. Yes.

8 Q. In East Region?

9 A. But no investigators work out of there.

10 Q. No investigators, okay, and how long would you say
11 that you guys sat and talked?

12 A. I don't remember. I know it was long enough for him
13 to tell us what he wanted to tell us, then for him to write
14 it.

15 Q. And you mentioned that you took the search warrant and
16 were able to get a signature from a judge, right?

17 A. That's correct.

18 Q. And ---

19 A. Well, ministerial recorder.

20 Q. Yes, ministerial recorder, and you -- the language in
21 the search warrant is typical phraseology. I think that
22 was your ---

23 A. Yes.

24 Q. --- phraseology used on direct. Looking for anything
25 -- any items that can store data or anything like that,

1 right? You're looking specifically for computers, right?

2 Is that it?

3 A. Yes, ma'am.

4 Q. Yes? Either PCs or laptops?

5 A. Yes, ma'am.

6 Q. Okay. That can include iPads?

7 A. Yes, ma'am.

8 Q. Right? That could include any sort of disk, right?

9 A. It can, yes, ma'am.

10 Q. The USB things, you know, that can stick into the ---

11 A. Thumb drive.

12 Q. Thumb drive. That's a better word, and any tablets,
13 anything like that, anything that stores data?

14 A. Digital files.

15 Q. Digital files. That would be a better word. So,
16 that's what you're looking for specifically in this case?

17 A. Yes, ma'am.

18 Q. And that's, that's what you put in your search
19 warrant?

20 A. Yes, ma'am.

21 Q. That's specifically what you want, anything that
22 stores data digitally, right?

23 A. Yes, ma'am.

24 Q. And you, you said you stayed outside on the porch
25 mostly during the execution of the search?

S. NAREWSKI - CROSS-EXAMINATION BY MS. GOODE

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1 A. Yes, ma'am.

2 Q. So, you weren't inside the house making decisions on
3 what gets collected ---

4 A. No, ma'am.

5 Q. --- in what room?

6 A. My sergeant was present and Investigator Merrill would
7 have been present.

8 Q. Okay.

9 A. And our crime scene person was present and
10 Investigator Merrill was present.

11 Q. And do you remember what day of the week this would
12 have been?

13 A. I do not.

14 Q. If I told you it was a Friday, does that sound right?

15 A. I'd have to check the calendar.

16 COURT REPORTER: Keep your voice up, please.

17 A. I'd have to check a calendar.

18 MS. GOODE: Beg the court's indulgence?

19 THE COURT: Yes, ma'am.

20 (A PAUSE.)

21 BY MS. GOODE:

22 Q. And you are also given some passwords from the other
23 members of the household, household, right? Do you
24 remember?

25 A. I don't know that I was. I think some passwords were

1 given.

2 Q. Okay.

3 A. But I, I don't know if I was given them.

4 MS. GOODE: Thank you. I have no further questions.

5 THE COURT: All right, redirect, Mr. Flores?

6 MR. FLORES: We have no further questions for this
7 witness, Your Honor.

8 THE COURT: Thank you. Thank you very much, Officer.
9 You may step down.

10 WITNESS: Thank you, Your Honor.

11 (THE WITNESS EXITS THE STAND.)

12 THE COURT: All right, you may call your next witness.

13 MR. FLORES: Your Honor, the state would call Special
14 Agent April Merrill, State Law Enforcement Division.

15 THE COURT: All right. Please come around and be
16 sworn for us, please.

17 APRIL MERRILL, BEING DULY SWORN,
18 TESTIFIES AS FOLLOWS:

19 CLERK OF COURT: Please have a seat. State your full
20 name for the record.

21 WITNESS: April Merrill.

22 DIRECT EXAMINATION BY MR. FLORES:

23 Q. Good afternoon, Special Agent Merrill.

24 A. Hello.

25 Q. Would you please tell the jury where you're currently

A. MERRILL - DIRECT EXAMINATION BY MR. FLORES

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1 employed?

2 A. At the State Law Enforcement Division.

3 Q. And what is your job title there?

4 A. I am special agent with the Child Fatality Unit.

5 Q. And what are your responsibilities as a member of that
6 unit?

7 A. I'm one of ten agents that look into child deaths
8 throughout the State of South Carolina.

9 Q. Prior to employment with the State Law Enforcement
10 Division, where were you employed?

11 A. Columbia Police Department.

12 Q. How long were you at that agency?

13 A. From August of 2003 until February of 2015.

14 Q. Could you tell the jury what you -- what your
15 responsibilities were as a member of the City of Columbia
16 Police Department?

17 A. In 2009, I was promoted to investigator with the
18 Criminal Investigations Unit, and I was a member of the
19 Special Victims Unit.

20 Q. And what types of cases did you investigate as a
21 member of the Special Victims Unit?

22 A. Missing persons, anything to do with children, sex
23 crimes, indecent exposure, voyeurism cases, vulnerable
24 adult, domestic violence.

25 Q. Investigator Merrill, how did you become involved in

1 this investigation?

2 A. I was working the day of the search warrant; I was
3 asked to help out.

4 Q. You were asked to assist?

5 A. Yes, sir.

6 Q. And in assisting on the execution of the search
7 warrant in this case, how were you assisting?

8 A. I responded to the house in the northeast at Whixley
9 Lane. I'm not sure exactly the address, and I believe I
10 was the scribe on the search warrant, which means I wrote
11 down what was taken.

12 Q. All right, and as a, as a scribe for that search
13 warrant, would you be present when those items were seized?

14 A. I was in the house. I assisted in some of the rooms.
15 I'm not sure I went in all of them, but I recorded the
16 items, as I believe it was Crime Scene that collected the
17 items. As they made a list, I was writing down on the
18 search warrant what items were taken.

19 MR. FLORES: If I may approach the witness, Your
20 Honor?

21 THE COURT: Yes, sir.

22 BY MR. FLORES:

23 Q. Special Agent, I'm going to hand you what's been
24 marked State's Exhibit 4 for identification purposes.
25 Would you please inspect this document?

A. MERRILL - DIRECT EXAMINATION BY MR. FLORES

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1 (A PAUSE.)

2 A. Yes, sir.

3 Q. Are you familiar with this document?

4 A. This is a document with my handwriting on it and my
5 signature.

6 Q. Okay, and have there been any additions or deletions
7 to this document?

8 A. No, sir. There does not appear to be any additions or
9 deletions.

10 MR. FLORES: Your Honor, we would ask that State's 4
11 be admitted into evidence and published for the jury.

12 THE COURT: May I see it, please? Has defense seen
13 it?

14 MR. FLORES: Yes, sir.

15 THE COURT: I may I see it, please?

16 (A PAUSE.)

17 THE COURT: No objections?

18 MS. GOODE: No objections, Your Honor.

19 THE COURT: State's 4 is in evidence without
20 objection.

21 (SEARCH WARRANT RETURN MARKED INTO EVIDENCE AS STATE'S
22 EXHIBIT NUMBER 4.)

23 BY MR. FLORES:

24 Q. Special Agent Merrill, could you please describe what
25 this document is for the jury?

1 A. This is called Search Warrant Return, and what this
2 does is it documents the day that we went to the location
3 and executed the search warrant. It documents June 13,
4 2014, at 10:20, and then it says that we left a copy of the
5 return of the search warrant with Ron Doiron, which I
6 believe is the homeowner, and then it has a list of -- and
7 it looks like I did this by room of what was taken in the
8 search warrant, and there's a lot of things on there.

9 And then at the bottom it lists people who were
10 present for the search warrant. Includes Sergeant Thomas,
11 ID tech Tommy Moore, Investigator Sumpter, and then myself,
12 and then I've signed it down here, and this is the
13 signature of our ministerial recorder.

14 Q. Would you hand me that document? So, Special Agent
15 Merrill, this is a list of all the items that were seized
16 by City of Columbia Police Department when they executed
17 the search warrant?

18 A. Yes, sir.

19 Q. And according to this return, what types of items were
20 taken?

21 A. There's a thumb drive, a Dongle, a US -- I'm assuming
22 we got that off of the device. I'm not sure. I don't know
23 a lot about electronic devices. Flash drive, another flash
24 drive, Mini Pass -- Passport hard drive. There's a PC, an
25 iPad Mini, a laptop, an iPhone with the model number,

A. MERRILL - DIRECT EXAMINATION BY MR. FLORES

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1 another Passport, another laptop. A lot of electronic
2 digital storage devices.

3 Q. Okay. So, so you were receiving thumb drives,
4 computers, iPads, iPhones, many types of electronics
5 that ---

6 A. Anything that could hold some type of storage for
7 digital media.

8 Q. And in order to identify the items, you wrote down
9 serial numbers?

10 A. Yes, sir.

11 Q. Did you personally see those serial numbers of these
12 devices?

13 A. I believe they were read out to me by a -- some of the
14 other members within our unit that was there.

15 Q. Okay. So, when ---

16 A. So ---

17 Q. --- when they were looking at the device ---

18 A. They'd read it out loud.

19 Q. Read it out and ---

20 A. And I, and I --

21 Q. --- you would copy it?

22 A. And I would say this is what I have and they would be
23 able to confirm that for me.

24 Q. Okay, and you would check back ---

25 A. Yes.

A. MERRILL - DIRECT EXAMINATION BY MR. FLORES

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1 Q. --- with them, and these were -- there were no other
2 items that were seized or no other items that were found at
3 the time?

4 A. I believe there was a child's tablet or something that
5 belonged -- that the parents identified as the autistic
6 child's tablet that we would -- we determined not to take
7 that.

8 Q. Okay, but outside of that particular tablet?

9 A. Uh-huh, and I believe we didn't even leave the family
10 a phone to use. I think they had to go get a temporary
11 phone to use because we took everything that we could find
12 in the house.

13 Q. Special Agent Merrill, were any photographs taken at
14 the residence while the search warrant was executed?

15 A. I don't remember. I believe there were. Usually
16 that's standard practice for us. That would have been
17 something a Crime Scene tech what would done, and that
18 would have been Ms. Moore.

19 Q. That's standard protocol ---

20 A. For ---

21 Q. --- for City of Columbia?

22 A. Yes, sir.

23 Q. I know you said you're not very proficient with
24 electronics, but did you analyze anything in this case?

25 A. No, sir.

A. MERRILL - DIRECT EXAMINATION BY MR. FLORES

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1 Q. And what was done with the seized computer equipment?

2 A. I assume it was taken to our property room. I didn't
3 have any -- I didn't touch any of that stuff after it was
4 taken, so I...

5 Q. Following the execution of that search warrant, did
6 you then later have the occasion to interview Mr. Simmons?

7 A. Yes, sir.

8 Q. And did you do that with Investigator Narewski?

9 A. Investigator Narewski knew more about this incident.
10 So, I was present while he -- I believe he talked to him
11 more. I was more of a witness. I didn't have a lot of
12 details about this case.

13 Q. Okay. So, you didn't ask him any questions?

14 A. I don't remember asking him any questions at all.

15 Q. Did you observe Investigator Narewski when he went
16 through the Advice of Rights forms?

17 A. I did.

18 Q. Did Mr. Simmons have any problem understanding those?

19 A. He didn't seem to have any problems at all.

20 Q. Did Mr. Simmons have an opportunity to review his
21 statement after he had written it?

22 A. Yes, sir.

23 Q. And you had signed that document as well as a witness?

24 A. I usually do, so I'm assuming that I, I -- I haven't
25 seen that document. I don't know.

A. MERRILL - DIRECT EXAMINATION BY MR. FLORES

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1 Q. I'm going to hand you what's been admitted into
2 evidence as State's 2 and 3.

3 A. On the Advice of Rights, my signature is on the second
4 witness spot with my payroll number.

5 Q. Just make sure, did you coerce Mr. Simmons at all or
6 offer him anything to get him to ---

7 A. Maybe a bottle of water.

8 Q. Bottle of water?

9 A. Maybe, but that's standard when we interview people
10 that we offer -- since we're in East Region, I don't know.
11 They usually, generally ---

12 Q. You didn't require him -- you give statements, give
13 you that bottle?

14 A. No.

15 Q. Okay.

16 MR. FLORES: Beg the court's indulgence.

17 THE COURT: Yes, sir.

18 (A PAUSE.)

19 MR. FLORES: Your Honor, that's all we have for
20 Special Agent Merrill.

21 THE COURT: Thank you.

22 Ms. Goode.

23 MS. GOODE: Thank you, Your Honor. May it please the
24 court?

25 CROSS-EXAMINATION BY MS. GOODE:

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 Q. Good afternoon.

2 A. Hello.

3 Q. How are you?

4 A. Good. How are you?

5 Q. Okay. So, your involvement in this case, pretty much
6 limited to that June 13th date?

7 A. Right, date of the warrant.

8 Q. Right, and that date you go to the house?

9 A. Uh-huh.

10 Q. You're there with other investigators?

11 A. Right.

12 Q. And Crime Scene, the Crime Scene techs?

13 A. Right.

14 Q. And they're there to take pictures?

15 A. Take pictures and help collect the list of stuff that
16 was taken.

17 Q. And your job during this, it's decided during that
18 time that you would take ---

19 A. Right.

20 Q. --- down notes, and this is what you did here on the
21 return?

22 A. Yes. That's my handwritten.

23 Q. And you were able to break it down by what items were
24 collected from what room in the house?

25 A. Right.

1 Q. So, you guys went through not just the living room or
2 the bedrooms but throughout the entire house?

3 A. Right.

4 Q. And I believe looking here at the return on some of
5 the items collected, there are serial numbers that were
6 written down. Is that correct?

7 A. Yes.

8 Q. And you said those were read off to you from somebody
9 else that may have found the item; and as you're writing it
10 down, then you're writing down the serial number ---

11 A. Right.

12 Q. --- they're reading out?

13 A. Yes, ma'am.

14 Q. Some of the items don't have serial numbers next to
15 them. Why is that?

16 A. Some of them may have been because we couldn't find
17 them, and maybe they -- I believe sometimes we -- like in
18 parentheses I have a color beside it or some type of
19 description. It depends on if we could locate it.

20 Q. Like some of the USB drives ---

21 A. Right.

22 Q. --- might not have a serial number?

23 A. Right.

24 Q. So, you give it a description?

25 A. Uh-huh.

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 Q. But in this case, there were two -- there were several
2 laptops taken?

3 A. Uh-huh.

4 Q. A PC?

5 A. Right.

6 Q. IPHones?

7 A. Uh-huh.

8 Q. And those would have serial numbers on them?

9 A. I think the phones are a little bit difficult to get
10 their serial numbers.

11 Q. Okay, and the iPads would possibly have serial
12 numbers?

13 A. Right.

14 Q. And you testified on direct that you guys are looking
15 for anything that can hold digital files and storage ---

16 A. Right.

17 Q. --- files and that, that's what is on this list, too?

18 A. Right.

19 Q. And you said that that was everything in the house?

20 A. I believe there was a child's tablet that I believe
21 was left in the home.

22 Q. Do you know where that was in the home?

23 A. In the -- I didn't locate the tablet. I was told it
24 was in the living room, and I believe the family may have
25 shown whoever the investigator was that made that decision

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 -- I believe it was our sergeant made that decision to
2 leave that tablet.

3 Q. Okay. So, it was never taken into evidence?

4 A. Not to my knowledge.

5 Q. Wasn't processed at all?

6 A. Uh-huh.

7 MS. GOODE: Beg the court's indulgence.

8 (A PAUSE.)

9 BY MS. GOODE:

10 Q. Now as far as collecting anything else, nobody's
11 collecting fingerprints?

12 A. No.

13 Q. They're not collecting swabs of DNA, anything like
14 that?

15 A. I don't remember any swabs being taken or fingerprints
16 being taken at the scene.

17 Q. Just the electronic devices and just pictures are
18 being collected, right?

19 A. Right.

20 MS. GOODE: Beg the court's indulgence.

21 THE COURT: Yes, ma'am.

22 (A PAUSE.)

23 BY MS. GOODE:

24 Q. And you, you're present going throughout the entire
25 house?

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 A. Yes, I am.

2 Q. You go through each room?

3 A. Yes, ma'am.

4 Q. Because you're the one that has to write down
5 everything that's found?

6 A. Yes, ma'am.

7 Q. In each of the rooms, and as they're being collected,
8 you're taking down notes of where the item was located?

9 A. Yes, ma'am.

10 Q. Specifically the ---

11 A. The bedrooms.

12 Q. --- master bedroom or son's bedroom?

13 A. Right.

14 Q. Michael's bedroom?

15 A. Uh-huh.

16 Q. And then downstairs, more general ---

17 A. It was kind of an open-concept house. It was
18 downstairs.

19 MS. GOODE: Your Honor, may I approach the witness?

20 THE COURT: Yes, ma'am.

21 (A PAUSE.)

22 BY MS. GOODE:

23 Q. Okay, I apologize for that. I want to show you what's
24 been marked as Defense Exhibit 16, 12, and 9 tell me what
25 you recognize there.

1 (A PAUSE.)

2 Q. Do you recognize those items or recognize -- can you
3 tell me what's in the, in the photos? I'm sorry.

4 A. In this photo, which is ---

5 THE COURT: Is it in evidence?

6 MR. GOURLEY: Not yet.

7 MR. FLORES: We have no objection to it coming into
8 evidence, Your Honor.

9 MS. GOODE: I apologize, Your Honor.

10 THE COURT: You can't be publishing things in evidence
11 -- what, what is it? 9, 12, and ---

12 MS. GOODE: 9 ---

13 THE COURT: --- 16?

14 MS. GOODE: Yes, Your Honor.

15 THE COURT: Which one are you referring to, please?

16 WITNESS: 16.

17 THE COURT: State's 9, 12, and 16 in evidence without
18 objection. You may continue.

19 MS. GOODE: Defense, defense exhibit.

20 MR. FLORES: It's defense exhibit, Your Honor.

21 THE COURT: I thought I said that. Defense Exhibits
22 9, 12, and 16 are in evidence without objection. Thank
23 you.

24 MS. GOODE: Thank you.

25 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 DEFENDANT'S EXHIBITS 9, 12, 16.)

2 BY MS. GOODE:

3 A. In Defense Exhibit 16, that's actually me in the
4 picture. This looks like a laptop bag and a -- some type
5 of laptop with a mouse.

6 Q. Are you able to tell from the picture what kind of
7 laptop that is?

8 A. No, ma'am.

9 Q. Do you remember where that laptop was found?

10 A. No. I see the bedspread, but I'm not sure which room
11 that was in.

12 Q. Would you have pulled that out from underneath the
13 bed?

14 A. I believe it was pulled out of the laptop bag.

15 Q. Okay.

16 A. But that's me guessing at this point. I don't recall.

17 Q. Let's see.

18 (PHOTOGRAPHS INDIVIDUALLY MARKED AS DEFENDANT'S
19 EXHIBITS 25, 26 FOR IDENTIFICATION.)

20 MS. GOODE: May I approach the witness, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. GOODE:

23 Q. I'm handing you what's been marked as Defendant's
24 Exhibits 25 and 26. Are these pictures of what you
25 observed that day that you were at [REDACTED]?

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 A. Yes.

2 MS. GOODE: At this time, Your Honor, we offer Defense
3 Exhibit 25 and 26 in evidence.

4 MR. FLORES: No objection, Your Honor.

5 THE COURT: Defendant's 25 and 26 in evidence.

6 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS
7 DEFENDANT'S EXHIBITS 25, 26.)

8 BY MS. GOODE:

9 Q. 26, is that -- can you look at that? Is that that
10 same laptop that was in the other picture we were talking
11 about?

12 A. It looks like it could be. I know there was a few
13 laptops taken, but it looks -- I, I see a -- what I believe
14 is a laptop bag. So, I believe it is.

15 Q. Okay, and that is underneath a bed?

16 A. It looks to be a bed, yes.

17 Q. And you're not able to tell from the one picture what
18 kind of brand laptop that is?

19 A. No.

20 Q. There weren't close-up pictures taken of, of the item?

21 A. You'd have to show me the close-up pictures.

22 Q. Okay. Defense Exhibit 26, would you mind taking a
23 look at that -- 25, sorry. I'll get my numbers straight.
24 25, do you recognize that?

25 A. Yes.

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 Q. And what is, what is that picture?

2 A. It's a desk and there's a -- I believe this is the
3 all-in-one. Looks like it's an ASUS and then a printer
4 down here.

5 Q. And where is that computer located?

6 A. It's, it's a workstation or a desk, but I think this
7 was in the master bedroom.

8 Q. The master bedroom, and looks like in the master
9 bedroom, if we're looking at the return just up here.

10 A. Uh-huh. It is -- there's something that says ASUS PC
11 all-in-one.

12 Q. Right. This Lab -- Logitech adapter with ASUS PC
13 all-in-one, would that have meant the entire thing was
14 collected and taken, or just the Logitech adapter?

15 A. This, this was one of those computers that was the --
16 it was the screen but was also a computer. So, we didn't
17 have, like, a separate CP tower.

18 Q. Okay.

19 A. And that ---

20 Q. So, the computer is in the screen?

21 A. Right.

22 Q. Okay.

23 A. And so that's why I put all-in-one.

24 Q. Okay, and what's a Logitech adapter?

25 A. I believe that was the charging cable.

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 Q. Okay, and that had a serial number, that computer?

2 A. It says model with power cord, and then the model
3 number. So, I don't know. That was the only number we
4 could find on it.

5 Q. And master, if we're looking at the master bedroom
6 again, there's -- I don't see where there's a laptop that
7 was taken from the master bedroom. Is that right?

8 A. No, I don't see one, not for the master.

9 MS. GOODE: Beg the court's indulgence.

10 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 27
11 FOR IDENTIFICATION.)

12 MS. GOODE: May I approach the witness, Your Honor?
13 May I approach the witness?

14 THE COURT: Yes, ma'am.

15 MS. GOODE: Thank you.

16 BY MS. GOODE:

17 Q. I'm going to hand you what's been marked as Defense's
18 Exhibit 27. Do you recognize what's in that photo?

19 A. This appears to be the -- I believe it's the master
20 bedroom. Has a bed and looks like two sinks in the
21 background.

22 Q. Is it a true and accurate depiction of what you saw on
23 June 13th?

24 A. Yes.

25 Q. When you were executing the search warrant?

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 MS. GOODE: Your Honor, at this time we would offer
2 Defense Exhibit 27 into evidence.

3 MR. FLORES: No objection, Your Honor.

4 THE COURT: Defense 27 is evidence without objection.

5 MS. GOODE: Thank you, Your Honor.

6 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
7 EXHIBIT NUMBER 27.)

8 BY MS. GOODE:

9 Q. That picture, 27, do you recognize that bedspread?

10 A. Yes.

11 Q. And that bedspread is in the picture with the laptop?

12 A. Yes.

13 Q. With the laptop?

14 A. Yes.

15 Q. Underneath it and that ---

16 A. Well, the laptop was outside from bed.

17 Q. Okay. So, you had to pull it out from the bed?

18 A. I don't remember.

19 Q. Okay.

20 A. I don't remember doing that.

21 Q. There's a laptop.

22 A. Uh-huh.

23 Q. In that bedroom because we have it with the bedspread,
24 right?

25 A. The picture, yeah, the picture with the ---

1 Q. Right.

2 A. --- laptop on the floor.

3 Q. Right. Next to a bed, beside that?

4 A. Right.

5 Q. But we don't have in that bedroom, the master bedroom,
6 that a laptop was taken?

7 A. Right.

8 Q. By CPD?

9 A. Right, and I don't know if it was one of the others.

10 Q. And there were several other items not taken, and I
11 want to take you back to some of those pictures that we --
12 and if I could just look at them.

13 (A PAUSE.)

14 Q. If I can direct your attention to what -- Defense
15 Exhibit 9. Please look at that picture.

16 A. Uh-huh.

17 Q. What is in that picture?

18 A. Books, a water bottle, an iPhone. I'm not sure what's
19 down in this corner on top of the book.

20 Q. And is that a desk?

21 A. I don't...

22 Q. Some sort of shelf maybe?

23 A. Some kind of shelf.

24 Q. Okay, and that's in one of the bedrooms in the house?

25 A. I don't recall. It's been a few years.

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 Q. Right. It looks like we have an iPhone taken from a
2 couple of places in that house, right?

3 A. Uh-huh.

4 Q. I believe from Mr. Simmons's bedroom. Is that right?
5 Looks like just the one iPhone was ---

6 A. Yeah.

7 Q. --- was taken, but that -- but no other iPhones were
8 taken?

9 A. I'm not seeing the iPhone on the list.

10 Q. Okay, and if you could look at Defense Exhibit's 12
11 and tell the jury what's in that picture?

12 A. It looks like a storage tray with -- I guess these are
13 thumb drives.

14 Q. And several of those thumb drives are collected?

15 A. Yes.

16 Q. Right, and those are, those are written down. I
17 believe that's the master bedroom?

18 A. I don't recall.

19 Q. That desk area where the computer was?

20 A. It's possible.

21 Q. And if, if you can -- if I can direct your attention
22 to this item here?

23 A. Uh-huh.

24 Q. Can you see that?

25 A. It, it looks like some kind of maybe an SD card ---

1 THE COURT: Speak up for me, please.

2 A. It looks like possibly some kind of SD card, but I
3 can't tell because it's turned over.

4 Q. Okay. Would you have collected something like an SD
5 card in a case like this?

6 A. Usually.

7 Q. Do you see where SD card ---

8 A. No.

9 Q. --- was collected?

10 A. No, but I don't know if this is a -- I believe we
11 found some micro SD adapters, and I don't know if that's
12 what this picture ---

13 Q. Okay.

14 A. --- is.

15 Q. Okay, but it appears to be some sort of storage
16 device?

17 A. Right.

18 Q. Okay. Thank you. So, it seems that not everything
19 was taken.

20 A. I, I recorded what was taken. I can't speak as to
21 what wasn't taken. Like I said, there was a few other
22 investigators in the house, and I didn't make those calls,
23 so.

24 Q. Who does make the call on what gets collected?

25 A. Our sergeant was there, so he probably would have made

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 that decision.

2 Q. Who makes the decision on what pictures get taken?

3 A. Usually Crime Scene will come in and they -- they're

4 Crime Scene, so they kind of know what pictures to take.

5 If there's any specific pictures they want taken, any of --

6 anyone at the house, we can ask them to take certain

7 pictures.

8 Q. And if you're in a room and you find a storage device,

9 something that you think might be important.

10 A. Right.

11 Q. Do you ask your sergeant if that's something that

12 needs to be taken into evidence, or is that a decision that

13 you make?

14 A. I didn't -- I don't -- it's been a few years. I don't

15 remember making any of those decisions. I know he was at

16 the house, and he was going back and forth through all the

17 rooms. So, I'm assuming any questions we had we would have

18 asked him.

19 Q. That would've been Sergeant Thomas?

20 A. Yes.

21 MS. GOODE: Beg the court's indulgence.

22 THE COURT: Yes, ma'am.

23 (A PAUSE.)

24 MS. GOODE: May I approach the witness, Your Honor?

25 THE COURT: Yes, ma'am.

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 BY MS. GOODE:

2 Q. Okay, I'm just going to go ahead and get the rest of
3 these pictures, and it's Defense Exhibit 1, 2, 3, 4, 5, 6,
4 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, and
5 24. Do you recognize those? Are those pictures an
6 accurate depiction of the house that day, the rooms that
7 you were in?

8 A. Yes.

9 MS. GOODE: At this time, Your Honor, we would offer
10 these defense exhibits into evidence.

11 THE COURT: All right, Mr. Flores?

12 MR. FLORES: No objection, Your Honor.

13 THE COURT: All right, those as stated by Ms. Goode
14 are in evidence without objection ---

15 MS. GOODE: Thank you, Your Honor.

16 THE COURT: --- as defendant's exhibits.

17 MS. GOODE: Thank you, Your Honor.

18 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS
19 DEFENDANT'S EXHIBITS 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 13,
20 14, 15, 17, 18, 19, 20, 21, 22, 23, 24.)

21 BY MS. GOODE:

22 Q. And if you would just, so the jury can kind of
23 understand the set up of the house, the rooms, if you would
24 just kind of take us through, starting with Defense Exhibit
25 1?

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 A. This is downstairs. I believe this is from the
2 entrance of the house. You can see this is the living
3 room, and this little bit of corner is the dining area.

4 Q. And is this where the tablet I believe that you
5 referred to earlier that was -- that wasn't collected, is
6 that where that would have been, in that area?

7 A. I believe so.

8 Q. Okay, and go on to the next picture. Do you recognize
9 that? What, what's -- where is that?

10 A. When I look at 3, this look like it's on a table. So,
11 I believe that would be in the dining area.

12 Q. The dining area, and that's ---

13 A. Downstairs.

14 Q. What, is that a cell phone? Kind of dark.

15 A. It's kind of dark. I'm assuming it's a cell phone.
16 It's hard to tell.

17 Q. And what's in, in Defense Exhibit 3?

18 A. It's the table with the can, and it looks like it's
19 possibly a cell phone.

20 Q. And is that a computer where your thumb is?

21 A. I don't know.

22 Q. Maybe one of the laptops from downstairs?

23 A. Maybe.

24 Q. I believe there might be a better picture that shows
25 the -- maybe not. And, and this is downstairs in the

1 living room?

2 A. Right. I believe that's the -- one of the tablets
3 downstairs.

4 Q. And that was not collected?

5 A. I don't know how many tablets were downstairs, but my
6 understanding is there was one that was one of the
7 children's tablets that was uncollected.

8 Q. It appears downstairs there were no -- it looks like
9 maybe just some laptops were collected?

10 A. Right, and it talks about an ePad. So, I don't know
11 if that's the ePad or if that's a tablet.

12 Q. And two phones, it appears?

13 A. Uh-huh. Yes.

14 Q. And what, and what do we have next? That's the close
15 up of the tablets downstairs?

16 A. Yes.

17 Q. That wasn't collected?

18 A. Like I said, I don't know if that one was collected or
19 not.

20 Q. Okay. Is this in the master bedroom?

21 A. I believe it was. It looks like there is a -- I
22 believe that's some kind of sleeping machine. I believe
23 that was in the master bedroom.

24 Q. And what do you see on the night stand? I believe
25 that's a night stand.

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 A. There's some kind of case, a landline phone, and I
2 can't tell what, what else.

3 Q. Is that an iPad case?

4 A. I think it's the case. I don't know that there was
5 anything in there.

6 Q. Does it ---

7 A. It looked ---

8 Q. --- appear to be plugged in? Maybe charging?

9 A. I don't know if that's charging that or -- that's a
10 wire in the area. So, I don't know if that's ---

11 Q. And -- okay, and from the master bedroom there was an
12 iPad ---

13 A. Uh-huh.

14 Q. --- that was collected, an iPad Mini it looks like.

15 A. Uh-huh.

16 Q. Is that right?

17 A. Um, and I believe this is going to be the son's room.

18 Q. The older son?

19 A. I, I don't remember.

20 Q. Okay. All right, but this is one of the children's
21 rooms?

22 A. Right.

23 Q. Okay, and -- okay, go on to the next one, and this is
24 in the same room?

25 A. I don't recall if this is -- which room this is in.

1 Q. It's a bookshelf in a bedroom?

2 A. Yes.

3 Q. Okay, and then from that bedroom, it appears that a
4 couple of tablets were taken into evidence and some
5 USB-type thumb drive kind of things. Is that, is that what
6 that means there on the return? Like you, I'm not very
7 tech savvy.

8 A. For bedroom, yeah, this -- I don't know if this is the
9 son's bedroom, but it says Kyle, USB. I'm not sure what --
10 Kyros. I don't know what that is. I just wrote down what
11 was ---

12 Q. Okay.

13 A. I'm not sure exactly electronically what that means.

14 Q. What that is, okay. Was there anybody, I mean,
15 anybody at the scene that knows what these are, what, you
16 know ---

17 A. I'm, I'm sure ---

18 Q. --- what these items do?

19 A. I'm just -- I ---

20 Q. You were just doing what you were told?

21 A. Just wrote down what they told me so I've got it.

22 Q. Okay. You can just go on to the next picture.

23 A. This is some closet, and it looks like there's
24 something that says Toshiba right there.

25 Q. Okay, and does it look like a laptop?

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 A. I'm assuming that's a laptop.

2 Q. And that's Defense Exhibit 10. Is that a laptop you
3 collected, a Toshiba laptop?

4 A. I don't remember the names of the laptops.

5 Q. There were lots of electronic devices in this house?

6 A. Right.

7 Q. Maybe computer or two for each person almost?

8 A. I'd have -- I didn't count. I ---

9 Q. There were several.

10 A. There was lots of stuff.

11 Q. Okay. We'll just go on to the next picture. That's a
12 close up of -- that a close up, same laptop?

13 A. Yes.

14 Q. Okay, and this is -- what is this here?

15 A. Printer. I believe this is in the master bedroom.

16 You showed me a picture of a white storage thing. That's
17 a ---

18 Q. And ---

19 A. --- white tray.

20 Q. And, and in there were lots of storage devices?

21 A. Uh-huh.

22 Q. USBs, potentially an SD card that would maybe have
23 some digital files on it?

24 A. Maybe.

25 Q. Maybe, but we didn't have an SD card collected from

1 the master bedroom?

2 A. Don't know. There was a bunch of stuff collected.

3 There's a SanDisk flash drive. I don't know if that's a
4 thumb drive or if it was an SD.

5 Q. Okay. This, I believe this is the master bedroom?

6 A. I can't ---

7 Q. Maybe?

8 A. --- tell you where that is.

9 Q. A drawer full of cords and things. Is that right?

10 A. It's a bunch of wires ---

11 Q. Wires.

12 A. --- and I don't know if that's in a drawer or behind
13 something.

14 Q. Okay.

15 A. I can't identify this.

16 Q. And any of these other things, wireless adapter or any
17 of these other things here in the picture, do you, do you
18 recognize that or know what those are? Are those potential
19 storage devices?

20 A. To me, it looks like a bunch of connectors.

21 Q. Just cords?

22 A. Like power sources.

23 Q. Okay, and where your thumb is, what do you, what do
24 you believe that to be? I think it's got wording on it.

25 A. It says wireless note something -- network card, but I

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 don't know. I guess I don't know a whole lot about ---

2 Q. Okay.

3 A. --- what that is.

4 Q. Okay. The next picture.

5 A. I believe this is a close up with the thing turned
6 over in the master bedroom.

7 Q. We're back in the master bedroom?

8 A. Uh-huh.

9 Q. And that would be on the night stand?

10 A. Close to the sleep machine.

11 Q. Close to the sleep machine, and that is potentially
12 the iPad Mini that you collected?

13 A. Correct.

14 Q. Okay. What, what is was that?

15 A. A cell phone.

16 Q. A cell phone. Does it have any -- can you tell me
17 what kind of cell phone it is?

18 A. Says Verizon, and I don't know what the -- what down
19 here says. That looks like it's a flip phone.

20 Q. Is that -- do you know where that was located in the
21 house?

22 A. I don't recognize from the picture ---

23 Q. Okay.

24 A. --- where that was.

25 Q. There were a couple of Verizon cell phones collected

1 from downstairs, right?

2 A. Yes.

3 Q. But none from either of the bedrooms?

4 A. I don't believe so.

5 Q. Mostly just computers and tablets from the bathrooms?

6 A. A lot of storage devices.

7 Q. Okay. Okay. This looks like another maybe a cell
8 phone?

9 A. Yes.

10 Q. In one of the bedrooms?

11 A. Again, I can't tell with this being close up where
12 this photograph was taken from.

13 Q. And again it looks like the cell phones that were
14 taken were from downstairs?

15 A. It looks like me ---

16 Q. According to the return?

17 A. Right. It looks like they are.

18 Q. And then one phone from Mr. Simmons's room, an iPhone?

19 A. Yes. There's an iPhone there.

20 Q. And that could be that iPhone there?

21 A. I don't -- I can't tell this is an iPhone.

22 Q. Because we don't have any markers or anything that
23 the, the crime scene person would have put next to each
24 item kind of indicating ---

25 A. No, not with these pictures. I don't see any.

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 Q. Okay. That would have been helpful probably.

2 MR. FLORES: Objection, Your Honor.

3 THE COURT: Overruled.

4 BY MS. GOODE:

5 Q. We'll go on to the next one, and what is, what is
6 this? You recognize that bedroom?

7 A. It's a room. There's a drawer and I -- not from the
8 stuff around it. I'm not sure which room.

9 Q. Does that look like the son's bedroom?

10 A. I have no, no idea.

11 Q. And that -- is that a tablet? That appears to be a
12 tablet?

13 A. I'm not sure if that's a tablet or not, but ---

14 Q. And there were a couple tablets taken from, from that
15 room according to the return, right? The Kyros, is that
16 your understanding of what that might be?

17 A. I don't have a clue of what Kyros is.

18 Q. Okay. It's got a power cord. It sounds like
19 something that ---

20 A. May be on the return.

21 Q. Okay.

22 A. That's a closet.

23 Q. That looks like whoever's in that picture is pointing
24 to something. Is that somebody kind of directing somebody
25 to take a picture a little closer maybe?

- 1 A. Yes, but I don't know what.
- 2 Q. Okay.
- 3 A. Don't see anything in there.
- 4 Q. All right. Maybe the next picture. That looks like
- 5 inside of that book bag.
- 6 A. There's something in there. I don't -- I'm not sure
- 7 what that is.
- 8 Q. Is that an SB -- or a USB drive or thumb drive
- 9 potentially?
- 10 A. Could potentially.
- 11 Q. There's a, according to the return, it looks like from
- 12 the older son's room, a black and white Data Traveler.
- 13 That might be black and white USB?
- 14 A. Not sure.
- 15 Q. Okay. All right.
- 16 A. Not sure.
- 17 Q. Go on to the next picture, and this looks like a
- 18 drawer?
- 19 A. Yes.
- 20 Q. In a desk, and what do you see in that, in that
- 21 drawer?
- 22 A. Thumb drive.
- 23 Q. And what does that thumb drive say on the outside?
- 24 A. National Guard Warrant Officer.
- 25 Q. National Guard Warrant Officer?

A. MERRILL - CROSS-EXAMINATION BY MS. GOODE

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1 A. Uh-huh.

2 Q. And that was taken, it looks like, from the older son,
3 Kyle's room. USB drive brown Nash Nat Guard it looks like?

4 A. Yes.

5 Q. Okay. What do we have here?

6 A. Cell phone looks like next to some type of kid's table
7 placemat.

8 Q. Like a placemat table on the dining room downstairs?

9 A. I think I would have to see it.

10 Q. And again, does it look like the cell phones that were
11 taken? There were two taken from downstairs, right?

12 A. Yes.

13 Q. And that's -- do, do we know what bedroom this is?

14 A. It looks like the bedspread isn't the same as in this
15 room. I believe that ---

16 Q. Okay. So, that would be the son's?

17 A. It's the son's room.

18 Q. And that appears to be a tablet on the floor?

19 A. Yes.

20 Q. And it's plugged in?

21 A. Yes.

22 Q. Charging and it looks like a tablet. If we are going
23 with a Kyros, that was plugged in. So, there's two tablets
24 taken from his room?

25 A. Okay.

1 Q. Is that right?

2 A. If that's what the Kyros ---

3 Q. According to the return?

4 A. Yes.

5 Q. And I believe that's all the pictures. Now all the
6 bedrooms, they're upstairs? Is that the set up of the
7 house?

8 A. Yes.

9 Q. And is it four bedrooms?

10 A. The master bedroom, the son's room, Mr. Simmons, the
11 room he was staying in. I believe there was another -- a
12 room that -- I don't know how many kids were staying there,
13 but I believe there were younger kids in that room.

14 Q. So, all four bedrooms would be upstairs?

15 A. Yes.

16 Q. And then downstairs was the living room, the dining
17 room, and the kitchen. Is that your understanding?

18 A. Yes, and I believe there was a bathroom or a laundry
19 room downstairs in the garage.

20 Q. And it's a two-story house?

21 A. Yes.

22 Q. Okay, and a garage?

23 A. Yes.

24 Q. You guys did go in the garage, too?

25 A. Yes.

A. MERRILL - REDIRECT EXAMINATION BY MR. FLORES

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1 MS. GOODE: Beg the court's indulgence.

2 (A PAUSE.)

3 MS. GOODE: No further questions.

4 THE COURT: Redirect, Mr. Flores?

5 MR. FLORES: Briefly, Your Honor.

6 REDIRECT EXAMINATION BY MR. FLORES:

7 Q. Special Agent Merrill, you were the scribe for this
8 search warrant?

9 A. Yes.

10 Q. And to the best of your knowledge, the devices that
11 were presented in the defense photos, those were seized?

12 A. To the best of my knowledge.

13 Q. And they were taken to CPD evidence?

14 A. That was routine.

15 Q. And to the best of your knowledge, the only item left
16 behind was a child's tablet?

17 A. Right. Yes.

18 MR. FLORES: That's it, Your Honor.

19 THE COURT: Recross, Ms. Goode?

20 MS. GOODE: No, Your Honor. Thank you.

21 THE COURT: Thank you. Thank you very much.

22 Perhaps now would be a good time to take our afternoon
23 recess, ladies and gentlemen. We'll take about fifteen
24 minutes. Please do not discuss the case during this brief
25 recess. You may go with your bailiff.

1 (THE JURY EXITS AT 3:19 P.M.)

2 THE COURT: All right, you may step down, Officer.
3 Court will be in recess fifteen minutes.

4 (THE WITNESS EXITS THE STAND.)

5 (OFF THE RECORD.)

6 (PHOTOGRAPHS INDIVIDUALLY MARKED AS DEFENDANT'S
7 EXHIBITS 28, 29, 30, 31, 32, 33, 34, 35 FOR
8 IDENTIFICATION.)

9 THE COURT: All right, anything before we bring in the
10 jury from the state?

11 MR. FLORES: Nothing from the state, Your Honor.

12 THE COURT: Defense?

13 MR. BANK: Nothing from the defense.

14 THE COURT: We're going to, I'm probably going to quit
15 around 4:30.

16 (THE JURY ENTERS AT 3:36 P.M.)

17 THE COURT: Our jury is back in place. Mr. Flores,
18 you may call your next witness.

19 MR. FLORES: Thank you, Your Honor. State would call
20 Ron Doiron.

21 THE COURT: All right, come around and be sworn for
22 us, please.

23 RON DOIRON, BEING DULY SWORN,
24 TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Please have a seat. State your full

R. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 name for the record.

2 WITNESS: My name is Ron Doiron.

3 DIRECT EXAMINATION BY MR. FLORES:

4 Q. Good afternoon. Good afternoon, Mr. Doiron.

5 A. Good afternoon.

6 Q. Pronounce that name one more time for us.

7 A. Doiron.

8 Q. Doiron. I've been trying to get it right all week,
9 and we apologize for having not done so at this point.

10 Mr. Doiron, where are you currently employed?

11 A. I work as a contractor for the South Carolina National
12 Guard.

13 Q. And as a contractor for the National Guard, what do
14 you do?

15 A. I'm a health and wellness coach. I run the program
16 for the state.

17 Q. And prior to your employment as a -- with the National
18 Guard, were you in the military?

19 A. Yes, I was. Twenty-six years.

20 Q. Tell the jury what you -- what your responsibilities
21 were as a member of the military.

22 A. I served as enlisted in -- I served in different
23 supervisory positions. I retired in 2010, twenty-six
24 years. Yay.

25 Q. And we thank you for your service. Mr. Doiron, where

1 do you currently live?

2 A. At [REDACTED].

3 Q. And that's here in Columbia?

4 A. Yes, sir.

5 Q. And how long have you lived at that residence?

6 A. Oh my gosh. Ten years. Moved in 2007.

7 Q. In 2007?

8 A. Yes, sir.

9 Q. Going on ten years, and who currently lives with you
10 at that residence?

11 A. My wife, Wendy; my son Ronnie, who's ten; and my
12 daughter, Bailey, who's six.

13 Q. Mr. Doiron, do you know Michael Scott Simmons?

14 A. Yes, I do, sir.

15 Q. And how do you know Mr. Simmons?

16 A. We used to be neighbors on Whixley Lane. He used to
17 live across the street from us, and again we were -- became
18 neighborhood friends and our friendship evolved from there.

19 Q. Did Mr. Simmons move in with you and your family at
20 some point?

21 A. On two different, two different occasions.

22 Q. All right, and the first occasion was what year best,
23 best of your knowledge?

24 A. I was still in the military, so it have to have been,
25 like, 2010 maybe.

R. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 Q. And most recently?

2 A. In April of 2013.

3 Q. At the time that Mr. Simmons moved into your home, who
4 else was living at your home at Whixley Lane on -- in, in
5 April 2013?

6 A. The time again it was me; my wife; my eldest son,
7 Kyle; my younger son, Ronnie; and Bailey.

8 Q. Mr. Doiron, were you present in June of 2014 when
9 agents of the police department here in the City of
10 Columbia came to your home?

11 A. Yes, I was.

12 MR. FLORES: Your Honor, if I might approach the
13 witness?

14 THE COURT: Yes, sir.

15 BY MR. FLORES:

16 Q. Mr. Doiron, I'm handing you what's been marked State's
17 Exhibit 5 for identification purposes. Would you take a
18 look at that picture, please? Are you familiar with the,
19 the -- what's being depicted in that picture?

20 A. Yes, I am.

21 MR. FLORES: Your Honor, we would ask that State's
22 Exhibit 5 be admitted into evidence.

23 MR. BANK: No objection.

24 MR. FLORES: And published for the jury.

25 THE COURT: State's 5 is in without objection.

1 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 5.)

3 BY MR. FLORES:

4 Q. Mr. Doiron, hold up that picture for the jury to see,
5 and could you describe what is being depicted here in that
6 picture?

7 A. After the police entered into our home, they basically
8 pulled my -- myself, Wendy, and the two kids outside the
9 house. In fact Kyle, I don't remember if Kyle was at work
10 or if he was with us.

11 Q. Take a look at the picture.

12 A. Never mind. He was with us. All right. We're all,
13 all -- all of us are outside. They pulled us all to the
14 porch, to the porch while they started the search for -- in
15 our house for all the stuff they were looking for.

16 Q. And what, what was the stuff that they were looking
17 for in your home specifically?

18 A. They told us any type of media device that could store
19 files basically, I think, was the general shotgun blast
20 they gave us.

21 Q. Okay, and did you assist them in finding any device
22 that was in your home?

23 A. When they were done, they asked us to come through and
24 to, to -- I guess almost like an inventory of what was
25 taken from the house and where they got it from, and of

R. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 course anything else. They kind of -- they had us explain,
2 I guess, the, like, iPad, my wife's phone, and the -- that
3 one computer.

4 Q. Well, let's talk about those things specifically.

5 Based upon your recollection, where there any devices they
6 did not take?

7 A. Just those three items.

8 Q. Okay. Could you list those items out?

9 A. Okay. One was an iPad. My son's, my youngest son's
10 autistic and had basically his games and things to keep him
11 occupied, his learning things to help him with his
12 condition. My wife's cell phone because we had no other
13 phone. We don't have a landline, and I think one of the
14 officers went through both of the items, and the third one
15 was -- again, I don't get rid of anything. I had a IBM,
16 was a T-30 or something like that, like a 1990s type
17 computer. They didn't -- they said it's not -- it couldn't
18 even store what they were looking for, so.

19 Q. Okay.

20 MR. FLORES: Your Honor, if I might approach the
21 witness?

22 THE COURT: Yes, sir.

23 BY MR. FLORES:

24 Q. Going to hand you two exhibits. One is marked
25 Defendant's, Defendant's Exhibit 26 and the other item is

1 Defendant's Exhibit 16. If you could review those, look at
2 those pictures?

3 (A PAUSE.)

4 A. Yes. That's ---

5 Q. Is that the items, the IBM you were describing?

6 A. Yes.

7 Q. And agents did not take those?

8 A. They did not take them, no.

9 Q. But everything else in your house that could store
10 electronic digital media was taken?

11 A. Yes, sir.

12 Q. And you assisted law enforcement in doing so?

13 A. Yes, sir. When they were doing the inventory, and I
14 guess that last sweep, I presume.

15 Q. You didn't attempt to hide anything from them?

16 A. No, sir. They wouldn't even let me save my game.

17 Q. Ron, how would you characterize your ability to use a
18 computer?

19 A. I am adept at Office and basically basic research
20 browsing. I was a college student at the time when they
21 did the, the raid. I was a full-time college student, so I
22 did my research on my classes and stuff like that and basic
23 Office skills.

24 Q. Are you familiar with filesharing?

25 A. I am not, sir.

R. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 Q. So, you don't have any filesharing type activity on
2 any of your computers?

3 A. Actually, they laughed at me when I mentioned that.
4 Napster is the closest thing I know that may be considered
5 that kind of thing, but that I don't -- have no need for
6 that kind of stuff.

7 Q. When Mr. Simmons came to live with you in April of
8 2013, did he bring any computer devices into your home?

9 A. I knew he brought his tower.

10 Q. Tower?

11 A. The -- well, the tower computer.

12 Q. Okay.

13 A. Or tabletop.

14 MR. FLORES: Your Honor, if I might approach the
15 witness?

16 THE COURT: Yes, sir.

17 MR. FLORES: Thank you, sir.

18 BY MR. FLORES:

19 Q. Mr. Doiron, I'm going to be handing you three pictures
20 that have been marked State's Exhibit 13, 14, and 15 for
21 identification. If you would just go ahead and review
22 these?

23 (A PAUSE.)

24 Q. Are you familiar with the room that's depicted in
25 those three pictures?

R. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 A. Yes, sir.

2 Q. And?

3 A. It's our guestroom.

4 Q. Your guestroom?

5 A. Yes, sir.

6 Q. Okay, and who was residing in that guestroom?

7 A. Michael, Michael Simmons.

8 Q. And which ---

9 MR. FLORES: Your Honor, we would ask that State's
10 Exhibits 13, 14, and 15 be admitted into evidence and
11 published for the jury.

12 MS. GOODE: No objection.

13 THE COURT: State's 13, 14, 15 are in evidence without
14 objection.

15 MR. FLORES: Thank you, Your Honor.

16 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
17 STATE'S EXHIBITS 13, 14, 15.)

18 BY MR. FLORES:

19 Q. Ron, if you would go ahead and hold up State's Exhibit
20 13, and that's the bedroom that, that Mr. Simmons lived in
21 when he was residing in your home?

22 A. Yes, sir.

23 Q. Would you hold up number 14, and what does that depict
24 for the jury?

25 A. The vanity on which Michael placed his computer and

R. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 stuff on while he was living there.

2 Q. Okay, and the next picture, please, and in that
3 picture, can you locate where Michael's computer was?

4 A. It's over here on the floor next to the vanity.

5 Q. Is there a sticker or something on top of it?

6 A. I wouldn't know. I, I didn't really go into his room.

7 Q. So, did you ever use that computer?

8 A. No, sir.

9 Q. And you said you never went into his room. Why was
10 that?

11 A. Well, you got to respect privacy, and it was his room,
12 and we didn't go in. I don't even remember going in there
13 when he lived there, you know.

14 Q. Mr. Doiron, you and I have discussed this case, and I
15 have to ask you certain questions, and I'm at that point
16 now. Specifically concerning material that depicts minors
17 engaged in sexual activity, have you ever used any computer
18 device to search out that material?

19 A. No, sir.

20 Q. Have you ever seen this type of material?

21 A. No, sir.

22 Q. Have you ever used any computer devices in your home
23 for that kind of material?

24 A. No, sir.

25 MR. FLORES: Beg the court's indulgence.

1 THE COURT: Yes, sir.

2 (A PAUSE.)

3 BY MR. FLORES:

4 Q. Couple of follow-up questions, sir. The -- you are
5 capable of getting Internet access at your home?

6 A. Yes, sir.

7 Q. Is that correct? The -- is that a wireless
8 connection?

9 A. Yes, sir.

10 Q. Does your network have to have a password required?

11 A. Yes, sir.

12 Q. So, it's not an unsecure network?

13 A. That is correct.

14 Q. Okay, and lastly, again in State's Exhibit 15, the
15 computer that was in that room where Michael Simmons lived,
16 that was whose computer?

17 A. That was Michael's.

18 MR. FLORES: Beg the court's indulgence one more time,
19 please.

20 THE COURT: Yes, sir..

21 (A PAUSE.)

22 BY MR. FLORES:

23 Q. Concerning the IBM computer found under your bed, when
24 was the last time that you can estimate you actually used
25 that device?

R. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 A. I think I tried to update it quite a few years ago.
2 Internet Explorer won't even connect to it anymore. I
3 mean, it's -- I think it's Windows 98 maybe. So, I
4 couldn't even, I guess, connect to the wireless anymore.

5 Q. Just clarify one further point. You said that you had
6 a secure wireless network at your home?

7 A. Yes, sir.

8 Q. Did you have a secure wireless network at your home in
9 November 2013?

10 A. Yes, sir.

11 MR. FLORES: I believe that's all the questions we had
12 for Mr. Doiron.

13 THE COURT: Thank you, Mr. Flores.

14 Ms. Goode.

15 MS. GOODE: We don't have any questions, Your Honor.

16 THE COURT: Thank you. Thank you very much for
17 coming, Mr. Doiron. You may step down.

18 You may call your next witness.

19 (THE WITNESS EXITS THE STAND.)

20 MR. FLORES: Yes, Your Honor. The state would call
21 Kyle Doiron.

22 THE COURT: All right, if you'd come around and be
23 sworn for us, please.

24 KYLE DOIRON, BEING DULY SWORN,

25 TESTIFIES AS FOLLOWS:

K. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 CLERK OF COURT: Please have a seat. State your full
2 name for the record.

3 DIRECT EXAMINATION BY MR. FLORES:

4 Q. Please state your name for the record.

5 A. Kyle Doiron.

6 Q. And make sure you speak up loud so the court reporter
7 can hear you.

8 A. Yes, sir.

9 Q. Mr. Doiron, how old are you right now?

10 A. I'm nineteen years old.

11 Q. How are you currently employed?

12 A. I'm employed with the South Carolina Department of
13 Corrections.

14 Q. And what do you do at the Department of Corrections?

15 A. I'm a correctional officer.

16 Q. How long have you been employed there?

17 A. In December it will be a year.

18 Q. And what are your duties as a correctional officer?

19 A. To ensure that the inmates do not kill themselves,
20 each other, or escape, and just to keep everything
21 organized.

22 Q. You like working at the Department of Corrections?

23 A. It's, it's different. I've seen and done things I
24 never thought I'd ever have to do it, but it's enjoyable
25 for the most part.

K. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 Q. You take pride in your work there?

2 A. Yes, sir, I do.

3 Q. Mr. Doiron, where do you currently live?

4 A. [REDACTED].

5 Q. In November of 2013, where were you living?

6 A. [REDACTED].

7 Q. And was at that home with your ---

8 A. Yes, sir, with my father.

9 Q. Do you know Michael Scott Simmons?

10 A. Yes, sir.

11 Q. And how do you know Mr. Simmons?

12 A. He was a neighbor and my family ended up inviting him
13 and his family over and gradually knew him as friends.

14 Q. Now, I've got State's Exhibit Number 4, which is a
15 return of the search warrant listing a number of devices
16 seized from your family's residence in June of 2014. Do
17 you see where it's listed your bedroom?

18 A. Yes, sir.

19 Q. Could you tell us what a Coby Kyros is?

20 A. It was a type of tablet, I believe. My mom had two of
21 them, two. One of them had a cracked screen, and I was
22 going to try to attempt to take the screen from the
23 non-broken one, put it on the broken one, but I don't know
24 how to do that. I ended up breaking the other one, too,
25 so.

1 Q. Broke many a CD player myself.

2 A. I'm not very tech savvy.

3 Q. Did you own a computer?

4 A. I did not.

5 Q. Did not? Those are the only digital -- those are the
6 only two pads that you had access to?

7 A. Yes, sir.

8 Q. I believe they also took a USB drive from your
9 bedroom, National Guard?

10 A. Yes, sir.

11 Q. What was contained on that USB drive?

12 A. I do not remember. I think it was one I just found at
13 one point in time walking home from school and decided to
14 keep. I think it was broken, too.

15 Q. Kyle, if you needed to use a computer at your home,
16 would you be able to do so?

17 A. Yes, sir.

18 Q. And which types of -- which computers would you use?
19 Which would you ask to use?

20 A. At that time?

21 Q. Yes, sir.

22 A. I would have asked to use my parents' if it was
23 something I needed for school for anything.

24 Q. Kyle, did you ever have occasion to use Mr. Simmons's
25 computer?

K. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 A. Yes, sir.

2 Q. When did you use -- which computer would that be?

3 A. It was his desktop computer.

4 MR. FLORES: If I might approach the witness, Your
5 Honor?

6 THE COURT: Yes, sir.

7 BY MR. FLORES:

8 Q. Kyle, I'm handing you what's been admitted into
9 evidence as State's Exhibit 15. Is the computer depicted
10 in that picture, is that Michael's computer?

11 A. Yes, sir.

12 Q. And you said that you used that on at least one
13 occasion?

14 A. Yes, sir.

15 Q. Did you use it by yourself?

16 A. No, sir.

17 Q. Was anyone else present when you were using that
18 computer?

19 A. Yes, sir. Michael was present.

20 Q. And at no other time did you use that computer?

21 A. No, sir.

22 Q. Do you recall what you were doing on that computer at
23 that time?

24 A. It was, like, a game that he was playing. Asked me if
25 I wanted to try it out, and I said yes. So, I played for a

1 little while.

2 MR. FLORES: Your Honor, if I might approach the
3 witness again?

4 THE COURT: Yes, sir.

5 MR. FLORES: Thank you.

6 BY MR. FLORES:

7 Q. Kyle, I'm going to hand you what's been marked as
8 State's Exhibit 12 for identification. Would you take a
9 look at that picture?

10 A. Yes, sir.

11 Q. Are you familiar with that picture?

12 A. Yes, sir.

13 Q. What's depicted in that room?

14 A. It's my bedroom I was residing in in my father's
15 house.

16 MR. FLORES: Your Honor, we would ask that State's
17 Exhibit 12 be admitted into evidence and published for the
18 jury.

19 MR. BANK: Without objection.

20 THE COURT: State's 12 is in evidence without
21 objection.

22 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
23 NUMBER 12.)

24 BY MR. FLORES:

25 Q. Kyle, would you go ahead and show the jury this

K. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 picture?

2 A. (WITNESS COMPLIES)

3 Q. Kyle, how would you characterize your ability to use a
4 computer?

5 A. Very less than the average person my age. I, I
6 crashed my computer trying to install anti-virus software
7 on it.

8 Q. What kind of cellular phone do you have?

9 A. I have a iPhone 6+.

10 Q. You okay working with that?

11 A. I have to ask my girlfriend for help a lot of the
12 time.

13 Q. Kyle, are you familiar with filessharing?

14 A. Yes.

15 Q. Do you know what filessharing is?

16 A. It's, from what I know, it's, it's a website where
17 people add files for other people to download in other
18 places over the world, I guess.

19 Q. Do you engage in any filessharing activity?

20 A. No, sir.

21 Q. Do you send out music and photos to anyone or make it
22 available for download from your phone?

23 A. No, sir.

24 Q. Now, Mr. Doiron, I have to ask you some very pointed
25 questions. Mr. Doiron, specifically concerning material

1 that depicts minors engaging in sexual activity, have you
2 ever used a computer or a cellular phone or a tablet to
3 access such material?

4 A. No, sir.

5 Q. Have you ever seen that type of material?

6 A. No, sir.

7 Q. Have you ever sought it out?

8 A. No, sir.

9 Q. At the time you -- of this case, you were in high
10 school. Is that right?

11 A. Yes, sir.

12 Q. Did you ever receive anything from your classmates
13 that might could be considered material of individuals
14 engaging in sexual activity?

15 A. No, sir.

16 Q. Have you ever sent out pictures of yourself?

17 A. No, sir.

18 MR. FLORES: Beg the court's indulgence.

19 THE COURT: Yes, sir.

20 (A PAUSE.)

21 MR. FLORES: Your Honor, that's all the questions we
22 have.

23 THE COURT: Thank you.

24 Mr. Banks.

25 MR. BANK: Thank you. May it please the court?

K. DOIRON - CROSS-EXAMINATION BY MR. BANK

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1 CROSS-EXAMINATION BY MR. BANK:

2 Q. Mr. Doiron, you go by Kyle or Mr. Doiron?

3 A. I go by Kyle. That's fine, thank you.

4 Q. Kyle. Now, Kyle, there were several electronics
5 throughout the house that you lived at that you had access
6 to?

7 A. Yes, sir.

8 Q. That includes iPhones, right?

9 A. Not at that time.

10 Q. You didn't have any access to any iPhones at that
11 time?

12 A. No, sir. It wasn't a iPhone. It was a simple
13 touchscreen phone.

14 Q. Did you have access to anybody else's iPhone?

15 A. No, sir.

16 Q. You have access to tablets?

17 A. Yes, sir.

18 Q. Laptops?

19 A. Yes, sir.

20 Q. As we heard you say a little earlier, Michael's
21 desktop computer?

22 A. Only a couple, couple of occasions when he was there
23 those times.

24 Q. I thought you say earlier it was one time. Was it a
25 couple of occasions or one time?

1 A. A couple occasions that I could use it. He was there.
2 Most of the time when he was using it, I sitting there
3 talking with him.

4 Q. Okay. So, there's more than one time that you had
5 access and used his computer?

6 A. Not that I used it, no, sir.

7 Q. Just that you were present?

8 A. Yes, sir.

9 Q. Were you ever allowed to stay at the house alone?

10 A. Yes, sir.

11 Q. You were old enough at that point. Were there
12 occasions that you would stay in the house alone?

13 A. Yes, sir.

14 Q. Now, I want to clarify a couple of things regarding
15 your knowledge of computers. You said that you were
16 familiar with filessharing?

17 A. Yes, sir.

18 Q. And you were familiar with the term torrent?

19 A. Yes, sir.

20 Q. And you're familiar with the idea that torrent
21 involves filessharing illegal movies?

22 A. Yes, sir.

23 Q. And those movies can be legal or illegal. Is that
24 right?

25 A. Yes, sir.

K. DOIRON - CROSS-EXAMINATION BY MR. BANK

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1 Q. And they can include pornography or non-pornography?

2 A. Yes, sir.

3 Q. And that pornography can either be legal or illegal
4 itself, right?

5 A. Yes, sir.

6 Q. Now regarding your ability, are you -- have you ever
7 had the occasion to request illegal movies before yourself?

8 A. Yes, sir.

9 Q. Okay. Now, when you were asked earlier on direct, you
10 said that you didn't know how to do any of that. Is that
11 right?

12 A. Yes, sir.

13 Q. So, what you said on direct wasn't correct, is it?

14 A. The way I understood the question was if I knew how to
15 do it personally, as in get on the computer and operate it
16 to do it.

17 Q. Well, have you ever done it?

18 A. No, sir.

19 Q. You've never requested illegal movies while using a
20 computer before?

21 A. I never requested from anybody. I thought you meant
22 requesting from, like, in person.

23 Q. No. I mean you personally using the computer.

24 A. No, sir.

25 Q. If I showed you a report regarding an instance where

1 you requested illegal movies, would that possibly refresh
2 your recollection?

3 A. Yes, sir.

4 MR. BANK: Your Honor, may I approach the witness?

5 THE COURT: Yes, sir.

6 BY MR. BANK:

7 Q. Now, just keep this to yourself, okay?

8 A. Yes, sir.

9 Q. Do you recognize that report, Kyle?

10 A. Yes, sir.

11 Q. Does that refresh your recollection on your history of
12 ever trying to download illegal movies?

13 A. Yes, sir. I never requested them. I was -- it was
14 given to me on a flash drive, and at the time I had put it
15 on my computer for school, and someone else requested it
16 from me. So, I shared it using the school's sharing
17 program and then deleted the file because I didn't, I
18 didn't want it anymore.

19 Q. Okay.

20 A. And the reason it got to this level was that multiple
21 people tried to share it, and it all led back to that point
22 in time I did.

23 Q. So, you have some familiarity with transferring files.
24 Is that correct?

25 A. Yes, sir.

K. DOIRON - CROSS-EXAMINATION BY MR. BANK

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1 Q. And you have some familiarity with deleting files?

2 A. Yes, sir.

3 Q. I take it that's all knowledge that you have, not
4 something that you ask your girlfriend for?

5 A. Yes, sir.

6 Q. Now, I want to speak to you a little bit about what
7 your family makeup is, okay?

8 A. Okay.

9 Q. Now your father, your biological father just
10 testified. Is that right?

11 A. Yes, sir.

12 Q. His wife who is living at the home at the time, her
13 name is Wendy. Is that right?

14 A. Yes, sir.

15 Q. And that's not your biological mother, right?

16 A. No, sir.

17 Q. Who -- what's the name of your biological mother?

18 A. Laura.

19 Q. Laura, and she lives right here in Columbia, right?

20 A. Yes, sir.

21 Q. Now, at this time did you spend most of your time at
22 Dad's house or Mom's house?

23 A. My dad's. I lived with my dad.

24 Q. Fair to say that the restrictions were a little
25 tighter at your dad's house than your mom's house?

1 A. Yes, sir.

2 Q. Is that one of the reasons that you don't live at your
3 dad's house anymore?

4 A. No, sir.

5 Q. Now, the prosecutor said he wanted to ask you kind of
6 some awkward questions. All right, I'm not going to ask at
7 this time, but I do want to ask you if you've ever -- and
8 this includes legally or legal types, okay? Have you ever
9 downloaded pornography at the home on Whixley on any
10 device?

11 A. No, sir. I never downloaded any.

12 Q. You've never downloaded any pornography?

13 A. No, sir.

14 Q. Okay. Now, sir, you work at SCDC now?

15 A. Yes, sir.

16 Q. And you just started there about a year ago, you said?

17 A. Yes, sir.

18 Q. Now, is it fair to say that if you were to acknowledge
19 here or be arrested for any type of child pornography, you
20 wouldn't be working in SCDC anymore?

21 A. Yes, sir.

22 MR. BANK: Beg the court's indulgence?

23 THE COURT: Yes, sir.

24 (A PAUSE.)

25 MR. BANK: Your Honor, if I can have one exhibit

K. DOIRON - REDIRECT EXAMINATION BY MR. FLORES

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1 marked?

2 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 36
3 FOR IDENTIFICATION.)

4 MR. BANK: Your Honor, may I approach the witness?

5 THE COURT: Yes, sir.

6 BY MR. BANK:

7 Q. I'm handing you this picture, and I know it's
8 difficult to see, but do you recognize some of the items in
9 that picture?

10 A. Yes, sir. I believe, I think I do.

11 Q. Are those items -- do those items look like your
12 items?

13 A. Yes, sir.

14 Q. Okay.

15 MR. BANK: Your Honor, we'd move to introduce Defense
16 Exhibit 36 into evidence.

17 MR. FLORES: No objection, Your Honor.

18 BY MR. BANK:

19 Q. And that's ---

20 THE COURT: Defense.

21 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
22 EXHIBIT NUMBER 36.)

23 Q. And that looks to be like an Apple product?

24 A. That is a case for an old iPod Nano.

25 Q. And Nano is something that -- another instance of

1 something that can store digital device -- or digital --
2 files, whatnot?

3 A. Yes, sir.

4 MR. BANK: Your Honor, that's all the questions that
5 we have.

6 / THE COURT: Redirect, Mr. Flores?

7 MR. FLORES: Very briefly, Your Honor.

8 REDIRECT EXAMINATION BY MR. FLORES:

9 Q. Kyle, I'm going to ask you, This write-up at school.

10 A. Yes, sir.

11 Q. How did you receive that movie?

12 A. It was given to me in a thumb drive. I can't remember
13 who gave it to me.

14 Q. Was it another student?

15 A. Yes, sir.

16 Q. It was given to you on a thumb drive?

17 A. Yes, sir.

18 Q. What did you do with that thumb drive?

19 A. I gave it back.

20 Q. What did you do with the movie on it?

21 A. I had it downloaded on my computer.

22 Q. And that computer was at?

23 A. It was a school computer.

24 Q. A school computer.

25 A. It was the take-home Chromebook.

K. DOIRON - REDIRECT EXAMINATION BY MR. FLORES

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1 Q. Did you have any filesharing software on that?

2 A. Just the Googleshare.

3 Q. And that's provided by the school?

4 A. Yes, sir.

5 Q. Access allowed by the school?

6 A. Yes, sir.

7 Q. Kyle, did you ever use Mr. Simmons's computer by
8 yourself?

9 A. No, sir.

10 Q. I believe your testimony was you've never looked at
11 pornography or searched for it on a computer or a device.
12 Is that correct?

13 A. Not child pornography, sir. I'll admit that.

14 Q. All right, let's talk about that. Have you looked for
15 regular pornography?

16 A. Yes, sir, I have.

17 Q. Have you ever looked for anything involving a minor?

18 A. No, sir.

19 Q. And when you were looking for regular pornography, did
20 you ever do it on Michael's computer?

21 A. No, sir.

22 MR. FLORES: Your Honor, that's all the questions we'd
23 have.

24 THE COURT: Recross, Mr. Banks?

25 MR. BANK: Thank you, Your Honor. Just briefly.

1 RECROSS-EXAMINATION BY MR. BANK: _____

2 Q. Now, Kyle, you remember when I asked you whether you
3 looked up any illegal or legal pornography on the device
4 just a couple of minutes ago? You remember me asking that
5 question?

6 A. Yes, sir.

7 Q. And do you remember your answer to me being no, I have
8 not done that?

9 A. Yes. I believe, I believe you asked me if it was on
10 his device.

11 Q. Okay. Well, let's, let's try again, okay?

12 A. Yes, sir.

13 Q. Have you ever used a device to look up legal or
14 illegal pornography before?

15 A. Yes, sir.

16 Q. And so you have had access to devices where you can
17 look up these types of videos. Is that right?

18 A. Yes, sir.

19 Q. This school computer, you can take the school computer
20 home. Is that right?

21 A. Yes, sir.

22 MR. BANK: That's all the questions I have.

23 THE COURT: Thank you. Thank you very much. You may
24 step down. All right, you may step down.

25 (THE WITNESS EXITS THE STAND.)

W. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 THE COURT: You may call your next witness.

2 MR. FLORES: Thank you, Your Honor. The state would
3 call Wendy Doiron.

4 WENDY DOIRON, BEING DULY SWORN,
5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please have a seat. State your full
7 name for the record.

8 WITNESS: Wendy Doiron.

9 DIRECT EXAMINATION BY MR. FLORES:

10 Q. Good afternoon, Ms. Doiron.

11 A. Good afternoon.

12 Q. Ms. Doiron, are you currently employed?

13 A. No. I'm a stay-at-home mom.

14 Q. Stay-at-home mom, and what are your duties as a
15 stay-at-home mom?

16 A. Well, I'm also a special needs stay-at-home mom, so my
17 duties are extensive. Taking care of Ronnie, my
18 nine-year-old who has autism, requires working with his
19 teacher, IP meetings, coordinating therapies, doing all his
20 paperwork, and then I have the other kids' stuff, which is
21 cooking, cleaning, taking care of them, bus routes, things
22 like that.

23 Q. So, it's really a full-time job.

24 A. It is.

25 Q. Where do you currently live?

1 A. [REDACTED].

2 Q. And how long have you lived there?

3 A. Since November 2007.

4 Q. Ms. Doiron, do you know Michael Simmons?

5 A. Yes, I do.

6 Q. And how do you know Michael Simmons?

7 A. He was our neighbor; he lived across the street, and
8 then just over time became a family friend.

9 Q. And did he have the occasion to move in with you and
10 your family?

11 A. Yes, he did.

12 Q. And on the most recent occasion, when was that?

13 A. Late April 2013.

14 Q. In November 2013, was Mr. Simmons living at your home?

15 A. Yes, he was.

16 Q. Ms. Doiron, do you, do you recall who you had Internet
17 service with, most specifically in 2013?

18 A. Time-Warner Cable.

19 Q. Do you still continue to have that service with
20 Time-Warner?

21 A. No. We switched to U-verse.

22 Q. Was there ever any time when you were having Internet
23 connectivity issues in your home?

24 A. Yeah. We had a problem with it being real slow, kind
25 of not connecting when we would watch things like Netflix

W. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 or something like that. It would just buffer and buffer
2 and buffer, and sometimes it'd just completely time out to
3 where we couldn't watch anything.

4 Q. Did you ever discover why your Internet was so slow?

5 A. We weren't sure. We kept going back to Time-Warner
6 because we had supposedly the fastest that they had to
7 offer in our area. And they, you know, told us to get an
8 extender to push out more of a signal, and so we did that,
9 but it still continued to do that.

10 Later we found -- you know, they told us we may have
11 too many devices on our system because we did have several
12 iPads and desktops and laptops and things like that. So,
13 we started trying to take things offline when we weren't
14 using them, and that always didn't help. So, we never
15 really narrowed it down to one thing. Just, that's another
16 reason why we changed to U-verse.

17 Q. So, you're saying you and your family owned a number
18 of computers and ---

19 A. Yes.

20 Q. --- devices. Is that right?

21 A. Yes.

22 Q. And up on the screen here is State's Exhibit 4, which
23 has a list of, of items taken from your home in June of
24 2014. What devices were left at your home?

25 A. An iPad, my cell phone, and the IBM laptop, old IBM

1 laptop.

2 Q. Did you assist officers in finding and make sure they
3 had, they had every electronic device in your home?

4 A. I didn't personally. Ron did that.

5 Q. But you didn't hide any device?

6 A. No.

7 Q. When Mr. Simmons came over to live in your home
8 November of 2013, was your network already installed, your
9 wireless network?

10 A. Yes.

11 Q. And who did that?

12 A. Time-Warner.

13 Q. Time-Warner Cable. They assist you in setting up the
14 router?

15 A. Yes.. Well, they assisted Ron.

16 Q. Okay. Now, this case is a lot about filesharing and
17 computers. How would you characterize your ability to use
18 computers?

19 A. Pretty good. I'm a certified administrative software
20 specialist. So, I know Office programs, and for a while in
21 a couple of my jobs I had to do a lot of troubleshooting to
22 figure out how to get my salesmen's laptops working. So, I
23 know a bit. Probably a little bit more than my husband and
24 my stepson now.

25 Q. So, you're familiar with filesharing?

W. DOIRON - DIRECT EXAMINATION BY MR. FLORES

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1 A. I am.

2 Q. Do you engage in any filesharing activity?

3 A. No.

4 Q. And all these devices that you had access to, did you
5 ever use them for filesharing?

6 A. No.

7 MR. FLORES: Beg the court's indulgence.

8 THE COURT: Yes, sir.

9 (A PAUSE.)

10 BY MR. FLORES:

11 Q. Ms. Doiron, did you ever have the occasion to use Mr.
12 Simmons's computer?

13 A. No.

14 Q. And where was his computer located?

15 A. It was in his room.

16 Q. Did you ever go there when Mr. Simmons was not around?

17 A. No.

18 Q. Why would you do that?

19 A. That's his room; that's his privacy, his place. We
20 didn't even -- we did not invade his privacy.

21 Q. So, if anyone were ever in his room, it is because
22 they were invited?

23 A. Correct.

24 Q. Ms. Doiron, I also have to ask you some very serious
25 questions, specifically concerning materials that depict

1 minors engaging in sexual activity. ~~--Do you ever use your~~
2 computers to seek out that material?

3 A. No.

4 Q. Have you ever seen that type of material?

5 A. No.

6 Q. And you never used filesharing software to look for
7 that material?

8 A. No.

9 MR. FLORES: Beg the court's indulgence.

10 THE COURT: Yes, sir.

11 (A PAUSE.)

12 BY MR. FLORES:

13 Q. I've got one follow-up question for you. When you got
14 newer devices like new iPads and new tablets or computers,
15 who would set up those devices to use the wireless network
16 in the house?

17 A. Whoever was using them at the time. If I was -- if it
18 was something for my kids, I would set them up. If it was
19 Ron, he would set up. It just depended on who was using
20 the device.

21 MR. FLORES: Your Honor, that's all the questions we
22 have of Ms. Doiron.

23 THE COURT: Ms. Zmroczek.

24 MS. ZMROCZEK: Thank you. May it please the court?

25 CROSS-EXAMINATION BY MS. ZMROCZEK:

W. DOIRON - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Q. Good afternoon, Ms. Doiron.

2 A. Hello.

3 Q. I want to talk to you a little bit about Michael..

4 You're friends with Michael, right?

5 A. We have been, yes.

6 Q. In fact, you considered him your oldest son. You even
7 told him that, right?

8 A. Yeah.

9 Q. Continued to invite him over for Thanksgiving dinner
10 after he was arrested?

11 A. Yes.

12 Q. Continued to, to talk to him about your family issues?

13 A. Yeah.

14 Q. Shared personal things with him?

15 A. Yeah.

16 Q. You had told him you didn't believe he did this,
17 right?

18 THE COURT: No, ma'am. No, ma'am. That's, that's not
19 an appropriate question. That's a question for the jury.
20 It doesn't matter whether she believed he did or he didn't.
21 That is a question of fact for the jury.

22 Strike that from the record, jury. You are to
23 completely disregard that question.

24 You may ask your next question. You may ask your next
25 question.

1 MS. ZMROCZEK: Thank you.

2 BY MS. ZMROCZEK:

3 Q. I want to ask you about these issues that you said you
4 had with Time-Warner, Time-Warner being slow.

5 A. Yes.

6 Q. Were those issues when he -- he, Michael -- was
7 staying with y'all or, or not staying with y'all?

8 A. When he was staying with us.

9 Q. And how many times do you think you called
10 Time-Warner?

11 A. Several times.

12 Q. And they told you that you had too many devices going
13 on eventually? Eventually they figured out that was the
14 problem?

15 A. That's what they said, yeah.

16 Q. That's what they said?

17 A. Yeah.

18 Q. Basically they just weren't providing good service?

19 A. Correct.

20 Q. Okay. Did you have any other issues with services
21 like DVRs? Any problems with those?

22 A. No.

23 Q. Did you know about Kyle's issue with the movies and
24 school?

25 A. I knew that he had gotten, I guess, in trouble at

W. DOIRON - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 school for having what he told us at the time was
2 inappropriate materials. When I asked him later about
3 that, he said just stuff that they weren't supposed to
4 have. And I figured it was something that he shared with
5 friends and they caught him because it was on the school
6 network, and they took care of it. So ---

7 Q. And that was ---

8 A. --- it was dropped.

9 Q. I'm sorry.

10 A. It's okay.

11 Q. That was in December of 2013?

12 A. I don't remember when it was.

13 Q. Okay. Did you know that he downloaded or watched
14 porn?

15 A. No.

16 Q. He, Kyle. He hid that from you?

17 A. Yeah.

18 Q. Okay.

19 A. Yeah.

20 Q. Who was in charge his -- his, Kyle's -- disciplining?

21 A. It was normally a group effort between me and my
22 husband and when things got tough, his mom would get
23 involved, too.

24 Q. Safe to say that he had some issues?

25 A. Yeah.

1 Q. And that was frustrating?

2 A. Yeah.

3 Q. The computer in Michael's room was right close to the
4 door. Is that correct?

5 A. If I remember correctly, it was on the other side of
6 the table that sat next to the door.

7 MS. ZMROCZEK: Beg the court's indulgence.

8 BY MS. ZMROCZEK:

9 Q. The door wasn't locked. He didn't have a key to his
10 own room, right?

11 A. No. He didn't have keyed locks.

12 Q. Okay, no keyed locks, and you -- Kyle was allowed to
13 stay home without anybody around at times?

14 A. Yeah. He was seventeen, eighteen years old, however
15 old he was. Sixteen, seventeen, something like that.

16 Q. So, there were times during the day when you weren't
17 home?

18 A. If I had something to do with my other children or
19 something to do with my husband, probably. Yeah.

20 Q. He would be there by himself?

21 A. Either there by himself or with one or two of the
22 children if he was helping me watch them.

23 Q. So, he would watch the children as well?

24 A. Yes.

25 Q. And sometimes you went on vacation for the weekends,

W. DOIRON - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 right?

2 A. Yes.

3 Q. And he -- and you would leave Kyle to watch the house?

4 A. We also have a friend who would come because for an
5 extended period like that, I would not leave Kyle in charge
6 of a nine-year-old autistic child, or younger at the time,
7 and a baby.

8 Q. You said you were pretty good with the use of
9 computers, right?

10 A. Pretty decent.

11 Q. The computer that y'all had in the master bedroom -- I
12 believe this is State's Exhibit 10. Is that, is that, is
13 that the computer ---

14 A. Yes.

15 Q. --- in there, and was that functional?

16 A. Yes.

17 Q. Okay, and all of that worked off of the same IP
18 address, right?

19 A. Yes.

20 MS. ZMROCZEK: Beg the court's indulgence.

21 THE COURT: Redirect, Mr. Flores?

22 MS. ZMROCZEK: Wait. I beg the court's indulgence.

23 THE COURT: Yes, ma'am. Go right ahead.

24 (A PAUSE.)

25 BY MS. ZMROCZEK:

1 Q. I just wanted to -- I know I asked you earlier if you
2 recalled this date of this school incident with Kyle.

3 Would it refresh your recollection to see the report?

4 A. Did I sign the report because I probably didn't even
5 see it, to be honest with you.

6 Q. Okay.

7 MS. ZMROCZEK: Thank you. No further questions.

8 THE COURT: Redirect, Mr. Flores?

9 MR. FLORES: No redirect, Your Honor.

10 THE COURT: Thank you.

11 Thank you very much, ma'am. You may step down.

12 WITNESS: Thank you.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: All right, Mr. Foreman and ladies and
15 gentlemen of the jury, perhaps now would be a good time to
16 take our evening recess.

17 I'll remind you during this recess you may not discuss
18 this case with others, including your -- anyone, including
19 your fellow jurors, family, friends, or anyone. You may
20 not read, watch, or listen to any news accounts about the
21 case, should there be any.

22 Of course you may use your computer, cellular phone,
23 or any other electronic device. However, you may not use
24 it to obtain or disclose information which is prohibited.
25 Information which is prohibited includes but is not limited

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1 the parties your complete and undivided attention as you
2 have done throughout the trial of this case.

3 Mr. Flores, you may call your next witness.

4 MR. FLORES: Thank you, Your Honor. State would call
5 Jon VanHouten.

6 THE COURT: All right, if you'll come around and be
7 sworn for us, please.

8 JON VanHouten, BEING DULY SWORN,
9 TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Please have a seat. State your full
11 name for the record.

12 WITNESS: Jon VanHouten.

13 DIRECT EXAMINATION BY MR. FLORES:

14 Q. Mr. VanHouten, what is your current job title?

15 A. I am a computer forensic examiner.

16 Q. And where are you employed?

17 A. I am employed by the Columbia Police Department.

18 Q. And where are your offices located?

19 A. Since 2010, I've been assigned full time to the
20 computer forensics lab at the U.S. Secret Service.

21 Q. Would you tell the jury your general law-enforcement
22 background?

23 A. Yeah. Seventeen years employed with the Columbia
24 Police Department. For the past six years, I've been
25 assigned as a computer forensic examiner with the U.S.

1 Secret Service. I work solely out of their lab. My office
2 is at the Columbia field office, and I've received several
3 training certificates through the National Computer
4 Forensic Institute, Federal Law Enforcement Training
5 Center, National White-Collar Crime Center, Mississippi
6 State University Computer Forensic Center, and several
7 others.

8 Q. So, for a computer forensic examiner, what are your
9 job duties?

10 A. To forensically recover evidence relating to any crime
11 or illegal activity under my guidelines as criminal -- we
12 only handle criminal, not civil -- in anything that stores
13 digital media, whether it be computer, whether it be
14 computer, cell phones, hard drives, thumb drives, anything
15 that stores digital media.

16 Q. And in your position conducting forensic examinations,
17 you said that you analyze computers, thumb drives. Do you
18 also do tablets?

19 A. Yes. Yes. Again, anything that stores digital media:
20 tablets, cameras, GPSs.

21 Q. Could you briefly explain to the jury what a forensic
22 examination would entail?

23 A. Basically a forensic examination, we do acquire the
24 evidence, whether it be a computer or a thumb drive or a
25 phone. We, we take the evidence. The standard procedure

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1 would be to examine it without altering the data, and
2 generally what we would do is we'd hook up to what's called
3 a write block or a forensic -- a write block or a tableau.
4 What that does is it allows me to look at the data, and I
5 can preview the data without altering any of the data on
6 the hard drive or, or the device itself. The -- it also
7 will allow me to get an exact bit by bit copy of the hard
8 drive or the device, exact match of what's on that original
9 device without changing or altering it. It's called a
10 forensic image, and that's what we use; that's what we work
11 off of. Once we obtain a forensic image of the original
12 evidence, we no longer mess with the original evidence. We
13 work solely off that forensic image.

14 Q. So, you never turn on the device to manipulate the
15 data before you get the image?

16 A. It, it depends on the, the type. It depends on if the
17 system is encrypted. It depends. There's a lot of
18 variables in there, but the majority of the time, I would
19 say 95 to 97 percent of the time we are -- we don't have to
20 turn the device on, or I take that back. We don't have to
21 turn the device on with the hard drive in there.

22 Q. Is there a reason why you would turn on the hard --
23 turn the computer on, and what would you turn on?

24 A. Yes. As I said, we would take the hard drive out. I
25 would make my forensic image. I can start the computer up,

1 the, the actual target machine. I can start that computer
2 up because I want to go into the BIOS system, which is the
3 basic input/output settings in the computer. When you boot
4 your computer up, it runs through a series of checks and
5 it, it allows me to go in and verify certain things and
6 make sure that the day and time on the computer is
7 accurate, correct with what the current date and time is.

8 You have to take into effect certain situations. If
9 the computer came from a different time zone, of course
10 it's going to be off a couple of hours, Daylight Savings
11 times, things of that nature. So, that's why I would boot
12 the computer, to check the BIOS, but when I do, the
13 evidence hard drive is not in the system. So, it's not
14 touching the evidence hard drive.

15 Q. About how many forensic examinations have you
16 conducted in your career?

17 A. Maybe 600. That's -- we're required to keep a, a
18 running log. The average is about 120 to 140 a year for
19 me.

20 Q. Is that devices?

21 A. That's devices. That could be, that could be a phone.
22 That could be a computer. That could be a thumb drive.
23 Any, any particular device that I would do an examination
24 on is counted.

25 Q. Investigator, once you image the hard drive, you

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1 acquire the image, what do you do next in your process?

2 A. What I would do is I would take that -- once I acquire
3 the image, if I conduct a forensic preview and I don't see
4 anything of relative evidence on there, I will set it to
5 the side. If I do see something that is of relative
6 evidence, I will go ahead and do a full process examination
7 using several different types of software.

8 Q. In this case, we're dealing with images of sexually --
9 sexual exploitation of minors. What would be the type of
10 relevant evidence that you're looking for on devices before
11 you conduct a full examination?

12 A. Things in general such as pornography, pornography
13 depicting of children, Internet searches, pictures, photos,
14 videos, you know, anything relevant to the -- that would be
15 to the case.

16 Q. So, you would look for that type of -- those types of
17 materials prior to conducting a full examination?

18 A. Right. I would go -- generally I would do a preview,
19 a forensic preview. Again, I'm not altering the data.
20 Photos, for instance, are what we classify as low-hanging
21 fruit. Even though you delete a photo or video, the file
22 is not gone. All you're -- all you've done is change the
23 first few characters of the hexadecimal, which is, you
24 know, basically computer language. The rest of the file is
25 there; it's just the first couple of characters have

1 changed. So, when the computer searches for it, it says,
2 oh, it's -- this is marked for deletion. We don't need to
3 worry about this, and that's why you don't see it.

4 I can go in and I can recover that file, and I can
5 even look at the file as long as it has not been
6 overwritten through a period of time. I can still recover
7 it and view that, look at it.

8 Q. And do you use forensic software to do such?

9 A. Yes.

10 Q. Once you've determined that a computer has evidence,
11 how does your full examination proceed?

12 A. I would -- generally my first rule or first tool that
13 I will go to is software called Forensic Toolkit. It's
14 manufactured by Access Data, and it's, it's what I would
15 generally use to do the full examination. And Access Data
16 -- FTK would, would take that imagine, that forensic image
17 that I've taken, and it would go through it bit by bit by
18 bit by bit until it finds -- so it parses, we call it
19 parsing, or carves out all the documents, all the photos,
20 all the Internet history, all the pictures, and everything
21 that had been deleted, and also backup systems such as
22 system -- or shadow copies or system volume information.
23 Things that you would not see, it's, it's what's called in
24 a physical, unallocated section of the hard drive.

25 Q. So, once you have conducted that part of your

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1 examination with that imager, do you go further in the
2 cases? Do you look for anything else?

3 A. Right.

4 Q. Excuse me.

5 A. I would use -- the, the forensic software would allow
6 me to view in a more detailed aspect of what's on the
7 drive. It would give me deleted information. It would
8 give me dates and times, user information or user profile
9 registry information. You know, what type of operating
10 system it's running, is there a password required, you
11 know, all, all kinds of things that -- it's a very detailed
12 report or a very detailed examination of the computer. And
13 after I would search through that, I would generate a
14 bookmark or make notes of relevant items that I think are
15 important, and I would generate my report based on what I
16 found or what I bookmarked.

17 Q. Are you familiar with the program Internet Evidence
18 Finder?

19 A. Yes. That's one of the tools that I use.

20 Q. Would you describe what, what that, that tool does?

21 A. Yes. Internet Evidence Finder is a, a software
22 developed by a company called Magnetic Forensics. When
23 they first started, all they did was look for Internet
24 history, Internet data; that was their primary function.
25 Of course it's expanded a lot since then, but it's very

1 good at what it does. It's very good at parsing out in
2 the, the scripts that are used to parse out the data.
3 It's, it's a very good tool to use if that's what you want
4 to focus on is the Internet history such as Firefox,
5 Chrome, Safari, any type of web browser, especially if you
6 use the incognito browsers. If you want to, if you want to
7 turn off your search histories, it can still go in and find
8 remnants of search histories that you try to search in
9 what's called incognito profile.

10 Q. And all of these softwares that you're describing,
11 they don't place any information on the computer or on the
12 image?

13 A. No. When we take -- when I take a forensic image,
14 it's placed into a secure container called an E01 file. If
15 you try to view that on a computer system without forensic
16 software, your computer, whether it be a Lennox system or a
17 Mac system or a Windows system, it would not be able to see
18 it.

19 It's a secure container because it gives it a hash. A
20 hash is a fingerprint for a file. It gives it a beginning
21 and an ending. The beginning hash -- once, once the
22 computer makes the forensic -- or once my software makes
23 the forensic image, it will start with the beginning hash
24 and it will -- the ending hash, and if they match up, then
25 that's a secure container. It doesn't alter any data.

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1 Q. And these programs, the process you, you go through,
2 is this typically what forensic examiners do when they're
3 processing evidence in cases such as this?

4 A. Using the forensic tools?

5 Q. Yes.

6 A. Yes. That is correct.

7 Q. Now, Mr. VanHouten, I want to go ahead and move to
8 this specific case.

9 A. Okay.

10 Q. Were you asked by Investigator Hudak to analyze
11 equipment in this case?

12 A. Yes.

13 (A PAUSE.)

14 Q. Investigator VanHouten, I've placed on the overhead
15 projector State's Exhibit 4, which is the search warrant
16 return for the search warrant executed at 128 Whixley
17 Drive. These were all the devices seized from ---

18 MR. BANK: Leading, Your Honor.

19 THE COURT: Rephrase your question, Mr. Flores.

20 MR. FLORES: Sure. Yes. Thank you, Your Honor.

21 BY MR. FLORES:

22 Q. This is State's Exhibit 4, the return from 128 Whixley
23 Lane.

24 A. Okay.

25 Q. Is this the list of items that you examined for this

1 case?

2 A. It appears, it appears so.

3 MR. FLORES: Beg the court's indulgence.

4 A. Yes.

5 (A PAUSE.)

6 Q. Now, when you conducted your examination, did you
7 analyze all of the computers that were listed here?

8 A. As far as the actual computer systems, I did a
9 forensic preview. The -- when the, when the, the items
10 were brought or when I -- when the investigator told me
11 what he was looking for, he specifically pointed out this
12 is one -- or the first -- this particular item is something
13 we need to focus on. I would go ahead and do a complete
14 forensic image on that because the case agent would know
15 the best about the case itself. The rest of the stuff, the
16 rest of the laptops or computers that were involved, I did
17 -- I conducted a forensic preview.

18 Q. And the thumb drives that are listed here.

19 A. Yes.

20 Q. Did you conduct examinations concerning those thumb
21 drives?

22 A. Forensic previews.

23 Q. Previews?

24 A. Yes.

25 Q. And the tablets that are listed?

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1 A. I believe the tablets were either too old or password
2 protected. The only thing, if I recall, was the Apple
3 iPhone that I was able to get a full, full image of.

4 Q. Now, when you say that you previewed those items, is
5 that the process by -- which you described before?

6 A. Yes. I can either obtain a forensic image of that
7 device and as I, as I do, I can conduct a preview, or I can
8 hook the device up to, again, to a write blocker which does
9 not alter the data, and I can preview that way, and it
10 still does not alter the data.

11 Q. And you conducted previews on all the computers. Did
12 you end up examining any particular computer?

13 A. Yes. As far as a full forensic ima -- or full
14 forensic examination of the computer, I examined a -- an HP
15 laptop. I'm sorry, HP desktop.

16 Q. And is that HP Pavilion desktop on this return?

17 A. Yes.

18 Q. And where is that?

19 A. HP Pavilion, line 8.

20 Q. Line 8?

21 A. Yes.

22 Q. Would it be right here?

23 A. Yes.

24 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 16 FOR
25 IDENTIFICATION.)

1 MR. FLORES: Your Honor, may I approach the witness?

2 THE COURT: Yes, sir.

3 MR. FLORES: Thank you.

4 BY MR. FLORES:

5 Q. I'm going to hand you a photograph that's been
6 identified as State's Exhibit 16. Are you familiar with
7 this photograph?

8 A. Yes, I took this photograph.

9 Q. You took this photograph. Did you take this
10 photograph prior to examining the equipment?

11 A. Yes.

12 Q. And what is ---

13 MR. FLORES: Your Honor, we would ask that State's
14 Exhibit 16 be admitted into evidence and published for the
15 jury.

16 MR. BANK: Without objection.

17 THE COURT: State's 16 is in evidence without
18 objection.

19 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 16.)

21 BY MR. FLORES:

22 Q. Would you, Mr. VanHouten, would you show the jury what
23 State's Exhibit 16 is?

24 A. It's an HP Pavilion desktop computer.

25 MR. FLORES: And if I might approach the witness

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1 again, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. FLORES:

4 Q. I'm handing you State's Exhibit 15. Can you identify
5 that picture where that computer is located?

6 A. It appears to be located in a bedroom.

7 Q. Could you show the jury and point it out for them?

8 A. (WITNESS COMPLIES.)

9 Q. Thank you. Concerning your forensic examination of
10 this device, did you locate any videos or pictures
11 depicting minors engaging in sexual activity on this
12 device?

13 A. No videos or pictures of minors in sexual activity on
14 this device.

15 Q. Yet you continued to do a full forensic examination on
16 this device?

17 A. Yes.

18 Q. And why did you do that?

19 A. This was one of the devices that the submitting agent
20 or investigator said was pertinent to his case.

21 Q. After you found no videos on this device, what did you
22 do next?

23 A. I conducted a search of the Internet history for the
24 device and any deleted information relating to any child
25 porn, child pornography, or depicting of children, and also

1 the hash and file name provided by the submitting agent, a
2 particular file name and particular hash value submitted by
3 Agent Hudak.

4 Q. So, you took the computer and with all that
5 information used your software to find if there were any
6 references?

7 A. Yes.

8 Q. In using the hash values for the videos, did you find
9 evidence of the hash values?

10 A. The submitted hash that was given to me, I did not
11 find that particular hash.

12 (SEARCH RESULTS FOR INTERNET MARKED AS STATE'S EXHIBIT
13 NUMBER 17 FOR IDENTIFICATION.)

14 Q. Mr. VanHouten, I'm going to hand you what's been
15 marked as State's Exhibit 17 for identification. Can you
16 review that information?

17 A. Yes. This is the search history result recovered from
18 the desktop, Internet search history result.

19 Q. And was this part of your investigation?

20 A. Yes.

21 MR. FLORES: Your Honor, we would ask that State's
22 Exhibit 17 be admitted into evidence and published for the
23 jury.

24 MR. BANK: Subject to prior objections, Your Honor.

25 THE COURT: May I see it, please?

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1 MR. FLORES: Yes, sir.

2 (A PAUSE.)

3 THE COURT: Step up here for a minute, please.

4 (OFF-THE-RECORD BENCH CONFERENCE.)

5 THE COURT: All right, State's 17 is in evidence
6 subject to the defense's prior objection.

7 MR. FLORES: Thank you, Your Honor.

8 (SEARCH RESULTS FOR INTERNET MARKED INTO EVIDENCE AS
9 STATE'S EXHIBIT NUMBER 17.)

10 BY MR. FLORES:

11 Q. Now, the videos that you were seeking to find on the
12 desktop, did they have a common word?

13 A. Yes.

14 Q. Title?

15 A. And it's -- this goes back to the hash.

16 Q. Okay.

17 A. Along with the hash, and again a hash is a fingerprint
18 for the file. The hash was submitted with a -- or attached
19 with a file name R@yGold. I believe it was R@yGold99. I
20 did not find the hash associated that was given to me
21 associated with that file name, but I did find R@yGold
22 during the Internet search history.

23 Q. May I have that document, please? So, just looking
24 generally at this forum first, this is for any searches of
25 R@ygold. Is this in the Internet history or any place on

1 the computer?

2 A. This was located in the system volume information.

3 Q. Okay.

4 A. Of this -- of the computer.

5 Q. And what is system volume information?

6 A. A system volume information is what a -- it's like a
7 backup file system that Microsoft uses. All your, all your
8 computers use it, anybody using Windows 7 and above. If
9 you get a virus or if something happens to your computer,
10 you can do what's called a system restore and go back to a
11 previous time on your computer; it's a safety feature built
12 in by Microsoft.

13 So, what this does is it, it automatically keeps a
14 backup of your system files, Internet history, file
15 folders, things of the nature. So, if you do have to do a
16 system restore, it will go back to a previous time and it
17 will be like nothing, nothing happened or nothing changed.
18 So, this is a -- an internal backup system for Microsoft
19 Windows.

20 Q. So, one of the files that you were asked to look for
21 was R@yGold99.

22 A. Yes.

23 Q. Correct?

24 A. Yeah.

25 Q. Focus right here, this last full set of information

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1 on, on their searches. As a result, did you actually find
2 reference to the video file?

3 A. Yes.

4 Q. And, and that's here, and is this the location where
5 it would have been on the computer?

6 A. Yes.

7 Q. Okay. So, Mike is...

8 A. Would have been, it would have been a user profile.
9 It may not be a user with rights to the computer, but it
10 would have been a user profile.

11 Q. Okay. Downloads, R@yGold. Is this -- what is, what
12 is this here?

13 A. That's just ---

14 Q. This gap?

15 A. --- the title of the filename.

16 Q. Title of -- is this a filename or a folder?

17 A. It could be the folder.

18 Q. Okay.

19 A. It's be in a downloads folder.

20 Q. Okay.

21 A. But it would be -- it could -- it, it would be the
22 title of the filename, not the folder. It's in the
23 downloads folder, but it would be either -- in this case an
24 IMPEG, which is a video file.

25 Q. And that would be this last part right here. Is that

1 right?

2 A. Yes.

3 Q. And that was found on the desktop computer?

4 A. Yes.

5 Q. And just another -- turn to page 2 of that document,
6 and there is another reference to R@yGold99?

7 A. Yes.

8 Q. Again, where is this located?

9 A. It would be in the downloads folder under user Mike.

10 Q. And that's in the system volume information?

11 A. Yes.

12 Q. Again backup?

13 A. Yes.

14 Q. So, it existed on that desktop computer at some point
15 in the past?

16 A. That is correct.

17 Q. But it didn't exist when you examined it?

18 A. The actual file itself, no.

19 Q. Okay. Investigator VanHouten, have you received
20 training in the forensic examinations, finding child
21 pornography on computers?

22 A. It's part of the basic training in computer forensics.

23 Q. Are you familiar with any terms that are common in the
24 search of for -- search out for child pornography on
25 devices?

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1 A. Yes. There's many terms to search for.

2 Q. Are you familiar with the term PTHC?

3 A. Yes.

4 Q. What does that stand for?

5 A. It's the acronym for Preteen Hardcore.

6 Q. To your knowledge, is there any other acronym or any
7 other meaning for that phrase?

8 A. Any other meaning for that?

9 Q. For that acronym?

10 A. None that I know of.

11 (SEARCH RESULTS FOR INTERNET MARKED AS STATE'S EXHIBIT,
12 NUMBER 18 FOR IDENTIFICATION.)

13 Q. Investigator VanHouten, I am handing you what's been
14 identified State's Exhibit Number 18. Would you take a
15 look at this document?

16 A. Yes.

17 Q. As a result of your examination, did you generate this
18 document?

19 A. I did.

20 Q. And what is this document?

21 A. I conducted an index search for the term PTHC. Again,
22 it's a common form for child pornography. I conducted the,
23 the search hit for the index, and it came back with
24 positive hits.

25 MR. FLORES: Your Honor, we would ask that State's

1 Exhibit 18 be admitted into evidence and published for the
2 jury.

3 MR. BANK: Subject to prior defense objections.

4 THE COURT: State's 18 is in evidence subject to
5 previous objections.

6 (SEARCH RESULTS FOR INTERNET MARKED INTO EVIDENCE AS
7 STATE'S EXHIBIT NUMBER 18.)

8 BY MR. FLORES:

9 Q. Investigator VanHouten, if I may? I want to focus
10 here on this first line here. What is all this information
11 prior to getting into this?

12 A. Well, the PT -- PTHC in the parenthesis is the search
13 term that I entered to search for.

14 Q. Okay.

15 A. And the rest is the path or location where that term
16 was -- where a positive hit had occurred, any reference
17 material associated with that index search.

18 Q. Okay. So, similar to searching Google for, say,
19 sports, the word sports?

20 A. Uh-huh.

21 Q. You used PTHC to search the computer for that term?

22 A. Yes. Using the forensic software, it's almost like a
23 Google search.

24 Q. Okay. It says that it's here. It says unallocated
25 space?

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1 A. Yes.

2 Q. Could you tell the jury what unallocated space is?

3 A. Unallocated space is the part of the system that you
4 cannot see. When you look at your computer and your phone,
5 the photos that you see, the documents that you see, that's
6 called logical information, logical file system.

7 Unallocated space is the part of the hard drive or the
8 system that has been marked for deletion or is ready to be
9 called what's written over. The computer -- the user has
10 determined that it's no longer warranted or a, a -- some
11 type of cleaner software will be run to, to move that file
12 system or that folder or that artifact into what's called
13 unallocated space. And all it is is just space that's
14 ready to be written over.

15 Q. So, in order for a file or for you to find PTHC and
16 unallocated space, would it have to have been on the
17 computer in the past?

18 A. It would have to been viewed, yes. One issue with
19 unallocated space, when, when it's sitting in unallocated
20 for a period of time, a lot of the attached information
21 such as where the file came from, if it was assigned to a
22 particular folder, that has been stripped out.

23 (SEARCH RESULTS FOR INTERNET MARKED AS STATE'S EXHIBIT
24 NUMBER 19 FOR IDENTIFICATION.)

25 Q. Investigator VanHouten, I'm going to hand you what's

1 been identified as State's Exhibit 19 for identification.

2 Would you please inspect that document?

3 A. Yes.

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. And did you generate that document as part of your
7 investigation?

8 A. I did.

9 MR. FLORES: Your Honor, we would ask that State's
10 Exhibit 19 be entered into evidence and published for the
11 jury.

12 MR. BANK: Subject to prior objections.

13 THE COURT: State's 19 is in evidence subject to
14 previous objections.

15 (SEARCH RESULTS FOR INTERNET MARKED INTO EVIDENCE AS
16 STATE'S EXHIBIT NUMBER 19.)

17 BY MR. FLORES:

18 Q. Investigator VanHouten, what is State's Exhibit 19?

19 A. It's an index search term for the term Lolita.

20 Q. And what is the search term Lolita?

21 A. Lolita is also a common form for child pornography.

22 It's also a movie, but it's one commonly used to search for
23 child pornography.

24 Q. If I can take that document? Thank you.

25 So, in conducting your search for Lolita, you had four

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1 instances that were found. Where were they located on the
2 computer?

3 A. They were located on the desktop under the user
4 profile M.

5 Q. User profile M?

6 A. Yes.

7 Q. So, this -- what is this additional information:
8 AppData, roaming, Microsoft? What, what is that
9 information?

10 A. That's the registry information of the computer.

11 Q. So, this was not in deleted space?

12 A. No.

13 Q. And date recent, what does that mean?

14 A. That's just a subfolder generated by Microsoft.

15 Q. So, Microsoft will put files or, or information into a
16 recent folder if it has been recently accessed or obtained?

17 A. Yes, depending on the, the file system and depending
18 on the folder itself, whether it's Internet history,
19 whether it's, you know, an external drive hooked into the
20 device. It's just a subfolder generated by Microsoft.

21 (SEARCH RESULTS FOR INTERNET MARKED AS STATE'S EXHIBIT
22 NUMBER 20 FOR IDENTIFICATION.)

23 Q. Investigator VanHouten, I'm handing you State's
24 Exhibit 20 for identification purposes. Would you take a
25 look at that document, please?

1 A. Yes.

2 Q. Did you generate this document as part of your
3 investigation?

4 A. I did.

5 MR. FLORES: Your Honor, we would ask that State's
6 Exhibit 20 be admitted into evidence and published to the
7 jury.

8 MR. BANK: Subject to prior objection.

9 THE COURT: State's 20 is in evidence subject to
10 previous objection.

11 (SEARCH RESULTS FOR INTERNET MARKED INTO EVIDENCE AS
12 STATE'S EXHIBIT NUMBER 20.)

13 BY MR. FLORES:

14 Q. Investigator VanHouten, could you tell the jury what
15 you did to generate this particular document?

16 A. This was a search for various downloads that had
17 occurred on the computer system, on the desktop. Some of
18 them are just unknown filenames. They, they have
19 particular numbers and letters associated with a file.
20 Most of them appear to be videos. I cannot tell you what
21 the particular -- those that are not identified as a
22 particular filename, I can't tell you what they were. But
23 the ones that were still identified, I could tell you.

24 Q. All right. If you would hand me that exhibit, please.

25 MR. FLORES: If I might approach?

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1 Q. Could you point to the jury what we are seeing here?

2 A. Yes. Under the -- again, these are downloads in the
3 download folder under the user M on the desktop. It
4 depicts certain downloads, some movies, some filenames.
5 Most of them appear to be videos with the FLB extension or
6 MOB extension or ABI extension. Some are not identified or
7 some -- those -- some are identified with just random
8 letters and numbers. They're not associated. I can't pull
9 these up. I could, I could not tell you what was in those
10 particular filenames that, that show just letters and
11 numbers.

12 Q. Going to flip over to the second page here, and as
13 part of this document, you have certain areas highlighted?

14 A. Right.

15 Q. Would you explain the reasons why you would highlight
16 these?

17 A. These are the ones that I feel that were relevant to
18 child photography.

19 Q. And where, where were these, these particular -- let's
20 look at this first one. Where was it found?

21 A. Under the downloads folder under user M.

22 Q. So, you conducted all these searches on the computer.
23 I want to bring you back to something you were discussing
24 before about CMOS.

25 A. Yes.

1 Q. What is CMOS?

2 A. CMOS is the battery system. When you look -- if you
3 look at a, a motherboard or the -- where the CPU and memory
4 and all that goes on a computer system, and it's a little
5 silver bag. It looks like an oversized watch battery, and
6 it's called a CMOS system. That's what keeps the, the date
7 and time on your computer correct when you turn your system
8 off.

9 Q. And if that battery or if that system malfunctions,
10 what does that do to the dates or the times that you
11 retrieve in your examination?

12 A. You would not get an accurate date or time.

13 Q. Even though a date or time might be listed?

14 A. Even though, even though the date or time may not be
15 listed, once a CMOS failure occurs and it's not changed
16 out, I've seen, I've seen it resort back to the last date
17 that the computer was turned on, and I've also seen it
18 resort back to the last date that the software was
19 installed in the computer. So, it's, it's very difficult
20 to pinpoint a particular date and time after a CMOS
21 failure.

22 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 21 FOR
23 IDENTIFICATION.)

24 Q. I want to hand you what is marked as State's Exhibit
25 21 for identification purposes. Are you familiar with this

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1 photograph?

2 A. Yes.

3 Q. Did you take this photograph?

4 A. Yes.

5 MR. FLORES: Your Honor, we would ask that State's
6 Exhibit 21 be admitted into evidence and published for the
7 jury.

8 MR. BANK: Subject to prior objection.

9 THE COURT: State's 21 is in evidence subject to
10 previous objection.

11 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 21.)

13 MR. FLORES: If I may?

14 BY MR. FLORES:

15 Q. Do you recall the date that you conducted your
16 forensic examination on, on these devices, on this device
17 specifically, this desktop computer?

18 A. Yes. One moment.

19 (A PAUSE.)

20 A. I took the initial image on June 18, 2014.

21 Q. And at that time, did you boot up the CMOS? Did you
22 go through that process of ---

23 A. The BIOS.

24 Q. --- booting up the BIOS?

25 A. I booted up the BIOS, and that, that is a picture of

1 the BIOS system. That's where I recovered my date-and
2 times from.

3 Q. So, when you booted up this computer on the 18th, the
4 BIOS, when you booted up the BIOS on the 18th, what time
5 did it indicate was on the computer?

6 A. The computer time was 1526.

7 Q. What date?

8 A. June 13, 2014.

9 Q. So, as a result of this, was there a CMOS issue as to
10 time and date?

11 A. In my experience, it's a, it's a CMOS failure. The,
12 the difference between the date that last registered or was
13 in the BIOS system of the computer and what the actual
14 current date and time was off five days, six hours, and
15 fifteen minutes.

16 Q. So, as to dates and times that may, may have been
17 obtained in this case, there is no accuracy or there may be
18 little accuracy to those dates and times?

19 A. With this type of discrepancy in the BIOS system, I
20 cannot have -- you -- I cannot say for certain exact dates
21 and times of the -- or the file folders and systems that I
22 recovered.

23 Q. Is there anything you could do to test or check to
24 whether or not the CMOS issue was a problem with the dates
25 and times that you did obtain?

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1 A. Yes. The general rule is to start the computer up,
2 log into the Internet or connect to an Internet source, and
3 wait for the computer system or Microsoft to reach out and
4 touch the time server for that particular area. It could
5 take anywhere from twenty, thirty minutes, even longer.
6 But once you turn the computer on to connect to the
7 Internet, you're going to alter the data.

8 Q. Okay. So, you did not do that in this case?

9 A. I did not.

10 Q. Why didn't you do that?

11 A. Because it would alter the original evidence.

12 Q. But I want to ask. Even though this has a -- you --
13 you've identified this as a CMOS problem. Does that affect
14 the presence of any of the information that you found, such
15 as ---

16 A. Yeah.

17 Q. --- the search terms?

18 A. It would not affect the search terms, no. It would
19 affect the date and time that the searches or file folders
20 or, or whatnot -- it would affect the time, but it would
21 not change or alter the data that -- that particular data
22 was found.

23 Q. So, in looking at, at State's Exhibit 17, the fact
24 that CMOS is -- the CMOS has a failure problem would not
25 affect the fact that you found this particular search

1 string on State's Exhibit 17?

2 A. That is correct.

3 Q. You just couldn't tell perhaps the time and date that
4 was there?

5 A. With that type of CMOS failure, I cannot articulately
6 prove the correct date and time.

7 (DVD OF IEF REPORT MARKED AS STATE'S EXHIBIT NUMBER 22
8 FOR IDENTIFICATION.)

9 Q. Investigator VanHouten, I'm going to hand you this
10 disk. What does this disk contain?

11 A. It appears to be an IEF report, an Internet Evidence
12 Finder report.

13 Q. And you generated an IEF report in this case?

14 A. I did generate an IEF report in this case.

15 Q. And is it specifically for this desktop?

16 A. Yes.

17 MR. FLORES: Your Honor, we would ask that State's
18 Exhibit 22 be admitted into evidence and published for the
19 jury.

20 MR. BANK: Subject to prior objection.

21 THE COURT: State's 22 is in evidence subject to
22 previous objection.

23 (DVD OF IEF REPORT MARKED INTO EVIDENCE AS STATE'S
24 EXHIBIT NUMBER 22.)

25 (A PAUSE.)

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1 BY MR. FLORES:

2 Q. Investigator VanHouten, I have loaded this disk onto
3 this computer, and this is the folder. Is this where your
4 Internet evidence report is located?

5 A. It should, should reside.

6 Q. All right. It says: Desktop IEF Artifacts.

7 A. Yes.

8 Q. And is this the file that we need to open here, the
9 Index HTML?

10 A. Yes.

11 Q. Okay. Would you tell us what we are looking at here?

12 A. This is basically just the case info. It shows what
13 evidence I loaded or hard drive or image file I loaded up
14 to, to process an IEF.

15 Q. Okay, and so that information would be found here
16 under evidence number right here?

17 A. Yes.

18 Q. All right, and this is -- we are dealing with the HP
19 desktop?

20 A. That is correct.

21 Q. All right. What is on the left-hand side? What is
22 that menu?

23 A. Those are hyperlinks. Those are references to
24 whatever searches I did and recovered and bookmarked.

25 Q. Okay, and so the, the first set of refined results is

1 parsed search queries, and then rebuilt web pages, torrent
2 URLs?

3 A. Yes.

4 Q. What are parsed search queries?

5 A. Search terms that I may have looked for. You would
6 have to actually open up the, the hyperlink to determine
7 what exactly search terms I searched for. Rebuilt web
8 pages are web pages that there is enough partial
9 information that if you were to click on the link, it
10 should take you to the correct web page, the actual page
11 that a user might have gone to. And a torrent URLs, the --
12 that is the torrent sites used to exchange usually
13 peer-to-peer information and files. Filesharing software
14 pretty much.

15 Q. Okay, and then underneath peer-to-peer, torrent
16 fragments?

17 A. Yes, and they're -- the torrent file fragments are
18 fragments of the torrent sites. It may not be complete,
19 but there is some remnants of a particular site or torrent
20 used to download a particular file.

21 Q. And the last set, web related?

22 A. Just web history, search history. Generally either
23 Firefox or Microsoft Internet Explorer, Safari, or Opera,
24 whatever was primarily used at the time.

25 Q. So these subcategories, if something on the computer

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1 -- say a web page -- still exists, would, would your IEF
2 software pick that up?

3 A. Yes. If it was still intact and had not been deleted,
4 it would still -- it would pick it up, and it would
5 actually provide you with the entire length to where you
6 could actually use that link to go outside to another
7 computer to -- that's hooked to the Internet and view the
8 exact web page.

9 Q. Concerning this investigation, were you tasked with
10 finding any evidence of torrents?

11 A. Yes. The information I was originally provided, the
12 hash and the actual file name of the R@yGold99, I believe
13 it was, it was my understanding that that -- that
14 information came from a torrent, a peer-to-peer sharing
15 site.

16 Q. All right, Investigator VanHouten, I'm going to select
17 torrent URLs from this menu here on the side, move it so we
18 can see what the entire screen shows us. Would you tell
19 the jury how this is broken down and what they are seeing?

20 A. These are torrent sites that were used to access
21 peer-to-peer filesharing networks. There are many, many
22 different torrent sites. Each user from one end -- it's
23 sharing a file from one end to the other. They don't have
24 to be on the same torrent network; they can be on different
25 torrent networks and still share the same file. Basically

1 a torrent is just a portal to access the files they want to
2 either share or download.

3 Q. Okay, and so on here, how is this broken down?

4 A. Torrent crazy -- I'm having a hard time reading.

5 MR. FLORES: Your Honor, if I could ask the witness to
6 step around so he can see a little better?

7 THE COURT: Yes, sir. Just keep your voice up when
8 you're away from the microphone.

9 MR. FLORES: Sorry I can't make it any better, Your
10 Honor.

11 BY MR. FLORES:

12 A. Yes. Where it says: Torrent Crazy CD. There are
13 several others. That's the name of the, the torrent site,
14 and then the URL is the actual address, the web address to
15 log in to that particular torrent site.

16 Q. And, and we spoke just briefly earlier about this date
17 and time information here on the -- you see it here on the
18 right edge?

19 A. Yes.

20 Q. Right here?

21 A. Yes.

22 Q. Now, it gives a date and time, say, for number 60. It
23 says 11/22/2013 4:46:16. Now, you've testified there was a
24 CMOS problem. Is that data -- you cannot say that that is
25 accurate?

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1 A. Yes. I cannot say that that date and time on this
2 report is accurate.

3 Q. But the fact that the website or the torrent site
4 exists does state that it was visited?

5 A. That is correct.

6 Q. At some time on the desktop computer?

7 A. That is correct.

8 Q. If you would return to your seat for me, please.

9 Investigator VanHouten, I hate to belabor the point,
10 but the CMOS issue, is that something that you created or
11 just as a result of the battery failing, that's just what
12 happened?

13 A. It's, it's nothing that I've done. In my experience,
14 when you have a date and time that are off by that much,
15 unless the computer is in a different time zone and hasn't
16 been turned over on in several years, this generally
17 accounts to a battery or CMOS failure.

18 Q. All right, I've backed out to the main page. I'm
19 going to enter the parsed search queries.

20 MR. FLORES: Your Honor, if I might ask Mr. VanHouten
21 to come forward again?

22 THE COURT: Yes, sir. You may step down.

23 BY MR. FLORES:

24 Q. The second column states: Search term. What does that
25 mean?

1 A. That is the search term that ~~I put in~~ PTHC. That is
2 what was recovered.

3 Q. Okay. So, you put into the computer find PTHC and it
4 found PTHC forums. Is this a ---

5 A. Yes.

6 Q. Is this -- did you type in PTHC forums, or was that
7 something that a user ---

8 A. No.

9 Q. --- would type in?

10 A. PTH forums is what was on -- residing on the computer.
11 I did not create that.

12 Q. So, a parsed search query is something that the user,
13 a user of the computer would have to type in?

14 A. Yes.

15 Q. Now, on this you have a search -- a capability to
16 search your document here, and I typed in R@yGold.

17 A. Yes.

18 Q. What are we seeing here?

19 A. You're seeing the hit results for the term R@yGold.

20 Q. All right. So under 4755, the very first one, that
21 was the entered search term that was found on the computer?

22 A. Yes.

23 Q. And what is this URL here?

24 A. That is the UR -- that is the website that was used to
25 search for the term.

J. VANHOUTEN - DIRECT EXAMINATION BY MR. FLORES

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1 Q. So, in Google, a Google search was conducted for that
2 term?

3 A. Yes.

4 Q. So, I scrolled to the bottom and it says -- what does
5 this say as to the search term, the last one here?

6 A. R@yGold collection torrent -- I'm, I'm -- segment.

7 Q. If you want to look, if you want to look at the
8 screen, that might be better.

9 A. R@yGold collection torrent.

10 Q. Okay. Thank you, and so this is an entered search
11 term into the computer seeking this torrent. Are you
12 familiar with Medicrawler, this address?

13 A. I'm, I'm not.

14 Q. You're not, but it was being searched for that?

15 A. Well, it was -- the website -- went through that
16 website.

17 Q. Okay.

18 A. That search term went through that website.

19 Q. Can you read line 6447?

20 A. Why can't I find PTHC porn.

21 Q. And is that a search string that was entered into
22 Google?

23 A. Yes. That was a general Google search.

24 Q. Now, there's a date and time associated with that, and
25 I'll just scroll over to it. It says -- what does that

1 say? If you'll look at the screen?

2 A. May 22, 2013, at 1:18 a.m.

3 Q. Now, you've stated that time, time is inaccurate in
4 this?

5 A. Yeah. I cannot confirm.

6 Q. You cannot confirm that?

7 A. Right.

8 Q. But that search string does exist on this computer?

9 A. That is correct.

10 Q. So, someone using the computer typed in that string?

11 A. That is correct.

12 (A PAUSE.)

13 Q. I've scrolled back to the top of that parsed search
14 queries database or, or set. I'm going to scroll over to
15 the right, and I'm going to ask you to explain what the
16 source means. You see this here?

17 A. Yes.

18 Q. What does source mean?

19 A. That is the image that I loaded up.

20 Q. Okay.

21 A. Forensic image I loaded up of the HP desktop. That's
22 where all the search queries came from. It -- they came
23 from the forensic image of the HP desktop.

24 Q. All right. So, I can't reach up. I can reach a
25 little bit higher. So, this string right here, users.

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1 A. Yes.

2 Q. M, AppData, that's all from the computer?

3 A. That's all from the desktop.

4 Q. Okay, and it was found in a web cache. Do you know
5 what a web cache is?

6 A. That's the storage for Internet searches.

7 Q. All right. So, that was still existing on the
8 computer. It was not in unallocated space?

9 A. No.

10 Q. All right, I've loaded up the Firefox form history
11 from that menu. Under field name, what does, what does
12 this mean, field name over here on the second column?

13 A. Field name would be the partial information related to
14 whatever was searched for.

15 Q. Okay. So, this says: Search bar history.

16 A. Right.

17 Q. So, this is from the search bar ---

18 A. In, in ---

19 Q. --- in Firefox?

20 A. In Firefox, yes.

21 Q. And this value here?

22 A. Yes.

23 Q. What does that mean?

24 A. That was a positive hit when I typed in to search for
25 PTHC. That's the positive hit.

1 Q. So, in the search file history, it, it triggered a
2 positive hit to PTHC having been entered?

3 A. In that, yes.

4 Q. Okay, and I won't belabor the point. Dates and times,
5 we just cannot rely on to complete accuracy?

6 A. I cannot verify the date and times.

7 Q. Investigator VanHouten, I clicked on the internet
8 Explorer 1011 main history. Can you tell us what we're
9 looking at here?

10 A. That is a positive hit from the R@yGold search that I
11 did.

12 Q. Okay, and what did it find?

13 A. It found that a zip file was located under the C user:
14 Mike downloads.

15 Q. All right, and is that something the user would have
16 to download?

17 A. They would have to click on it. Whether the download
18 was completed or not, I couldn't tell you.

19 Q. But it was clicked on by the user ---

20 A. Yes.

21 Q. --- of the computer?

22 A. It was clicked; therefore, a subfolder under downloads
23 for that file was created.

24 Q. Are you familiar with Vicki? Do you know what that,
25 that name is?

J. VANHOUTEN - DIRECT EXAMINATION BY MR. FLORES

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1 A. I've seen some results of that particular name used in
2 other cases.

3 Q. If you would return to your seat, please. Thank you.

4 One last area I would like to talk to you about is
5 torrent file fragments. What are we seeing here?

6 A. That is remnants of a torrent. That's...

7 Q. So ---

8 A. Would have been deleted.

9 Q. Could have been deleted? This one down here is PTHC
10 in unallocated clusters?

11 A. Yes. That's deleted.

12 Q. It's deleted, but ---

13 A. It's unallocated space of the, the hard drive.

14 Q. But it existed on the hard drive at ---

15 A. At ---

16 Q. --- some point?

17 A. At one point in time.

18 Q. How about here in the shadow copy? Let's go to this
19 one.

20 A. Yes. It would -- it ---

21 Q. So, those are -- shadow copy are?

22 A. It's basically the same as a, a, a, a smaller backup
23 type system that Microsoft uses.

24 Q. In examining the other computers that were seized from
25 the home, you did not do an in-depth analysis like this?

1 A. No. I did a forensic preview, again looking for
2 low-hanging fruit, thing -- delete -- certain deleted items
3 that would, would be for me relevant to the case, and I
4 didn't see any. So, therefore, I didn't proceed with a
5 full examination.

6 Q. And what did you look for?

7 A. Basically photos, videos, deleted -- certain deleted
8 photos or videos, desktop cache, anything in the
9 subfolders, downloads, things of that nature.

10 Q. And you didn't find any evidence of that?

11 A. Relevant to this case? No.

12 Q. On any of the computers that were submitted to you?

13 A. No.

14 Q. Besides this one?

15 A. Right.

16 Q. And it's your testimony that you attempted to or did
17 conduct analysis on all of these items together?

18 A. The ones that I could, yes.

19 Q. Okay.

20 MR. FLORES: Beg the court's indulgence.

21 THE COURT: Yes, sir.

22 (A PAUSE.)

23 MR. FLORES: Your Honor, that's all the questions we
24 have for Investigator VanHouten.

25 THE COURT: Thank you. Thank you very much, Mr.

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1 Flores.

2 All right, Mr. Banks.

3 MR. BANK: Thank you, Your Honor. May it please the
4 court?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION BY MR. BANK:

7 Q. Investigator, how are you doing today?

8 A. I'm good.

9 Q. It's good to see you again. We've actually spoken
10 before, haven't we?

11 A. Yes.

12 Q. You were kind enough to meet with not only myself but
13 one of my investigators, Chris Watkins?.

14 A. Yes.

15 Q. I want to cover just a few things. Now, you went to
16 school and graduated with a degree in criminal justice?

17 A. I went. I did not obtain the degree.

18 Q. Okay.

19 A. I got hired first before I finished my degree.

20 Q. Sure. Well, you've been in law enforcement ever
21 since?

22 A. Yes.

23 Q. And that's for fifteen-plus years?

24 A. Seven -- seventeen years.

25 Q. Now, in your current role with the Secret Service or

1 CPD, you only do a handful of ~~child-porn-cases~~ a year?

2 A. Yes. The majority -- in our lab, Secret Service lab,
3 we generally maybe do two, maybe three a year.

4 Q. Okay.

5 A. At the most. Within South Carolina, most of it is
6 submitted to either FBI or the attorney general's office.

7 Q. Okay. So, what are some of the other type of areas
8 that you're involved with?

9 A. For any agency that requests assistance, it could be
10 anything: murder case, kidnapping, location, missing
11 person. Majority of it is fraud, fraud cases,
12 counterfeiting, things of that nature.

13 Q. And this is basically local agencies that don't have
14 kind of the computer equipment that you guys have to review
15 all these type of devices?

16 A. Correct.

17 Q. And your role with the Secret Service, there is no
18 association with ICAC? Is that the...

19 A. The South Carolina district, South Carolina field
20 office for the Secret Service is not in association with
21 ICAC.

22 Q. Okay. Now, when local agencies come to you, whether
23 it be for a murder case or a child porn case, they
24 essentially put in a request of what they want you to do.
25 Is that right?

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1 A. Correct.

2 Q. They provide whatever items they're going to provide
3 to you?

4 A. Yes.

5 Q. And at times they'll tell you if there are certain
6 items that they want to be focused on, and if there's just
7 other items that may be just looked at. Is that correct?

8 A. Right, depending on, again, the type of case.

9 Q. And in these situations, you're not involved in the
10 search warrant or the pre-investigation or anything like
11 that, right?

12 A. No. The information that I receive, I receive
13 directly from the submitting agent or officer.

14 Q. Now, I want to talk a little bit about the receipt of
15 these items.

16 A. Okay.

17 Q. Okay. Do you happen to have any of the -- the list of
18 non-focus items that you'd previously provided us?

19 A. I do not. They would be in the original evidence log.

20 Q. Okay.

21 A. Of the CPD evidence.

22 Q. Sure. I've got a copy of it. You think it might
23 assist you in helping us talk about ---

24 A. Yes.

25 Q. --- all these things? I'll get a copy for you.

1 (A PAUSE.)

2 MR. BANK: Your Honor, may I approach the witness?

3 THE COURT: Yes, sir.

4 BY MR. BANK:

5 Q. Are you familiar with that, Investigator VanHouten?

6 A. Yes. These are the notes I created of the items that
7 I received, 5 through 20 except 1 through 4.

8 Q. Okay. Now, the items -- let's back up. Essentially
9 you were given some items that were -- they told you to
10 focus on. Is that right?

11 A. That is correct.

12 Q. And those were the items that we saw on the search
13 warrant associated with Michael's room?

14 A. Yes.

15 Q. Focusing on the other items for just a moment, and
16 maybe it will be easier if we think about all the items
17 altogether. And I'm going to break it down rather than the
18 way it's listed there by type of item, okay, and what -- I
19 think I'm going to write something up there to help us in a
20 minute. But essentially you were given, provided one
21 desktop computer?

22 A. Yes.

23 Q. And you were provided four laptop computers?

24 A. One, two, three, four, yes.

25 Q. And you were provided two external hard drives?

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1 A. USB external hard drives, your -- difference than --
2 the thumb drives?

3 Q. Yes, sir, I'm, I'm ---

4 A. Okay, yeah, two external hard drives.

5 Q. Okay, and then moving on to the thumb drives, how
6 many? It's looks like about five of those?

7 A. Yes.

8 Q. And could you real briefly explain the difference, as
9 I think you just were about to, about the difference
10 between what I'm phrasing as an external hard drive and a
11 thumb drive?

12 A. Right. A thumb drive is the terminology used for an
13 external drive that's smaller than an external hard drive.
14 It doesn't hold as much information as an external hard
15 drive would. It's portable; it's lightweight. You can
16 carry it on a key ring.

17 Q. Okay, and then we see that there were three phones
18 that were given to you in total. Is that right?

19 A. Yes.

20 Q. And then moving to the tablets, there's three of
21 these?

22 A. Yes.

23 Q. And could you briefly just explain what a tablet is?

24 A. Tablet, the best explanation I can give you is what an
25 iPad is.

1 Q. Okay. Is it something that typically has access to
2 the Internet?

3 A. Yes. Most people use it to access the Internet.

4 Q. And they can store -- all these devices can store
5 digital files?

6 A. That's correct.

7 Q. And then I've got -- and I don't want to put words in
8 your mouth. I've got it characterized as miscellaneous
9 items. There's two other items. It looks like a Wi-Fi
10 adapter?

11 A. Yes.

12 Q. And then a second one which is a thumb drive receiver?

13 A. Yes.

14 Q. And that's different than a thumb drive?

15 A. That is correct.

16 Q. Could you explain what a -- what the thumb drive
17 receiver is?

18 A. For this instance, the thumb drive receiver, if you
19 wanted to attach a mouse to your laptop, you can receive a
20 signal via bluetooth.

21 Q. Okay, and there is no digital files -- those are the
22 only items that don't have the capability of storing
23 digital items, the Wi-Fi adapter and the thumb drive
24 receiver?

25 A. Generally no.

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1 Q. Okay. Now, what I want to do is basically make a
2 chart of the non-focus items using those terms.

3 MR. BANK: Your Honor, may I approach the witness with
4 the chart?

5 THE COURT: Yes, sir.

6 BY MR. BANK:

7 Q. All right, now, I'm left handed, so this might make it
8 difficult, but let's start with the miscellaneous items
9 I've just listed, and we'll write miscellaneous, okay? One
10 of those is the Wi-Fi adapter. Is that right?

11 A. Yes.

12 Q. And I believe that's item 15 on your list just so
13 we're keeping track.

14 A. Yes.

15 Q. And then under 2 is the mouse thumb drive?

16 A. Yes.

17 Q. Now, moving to the five thumb drives we talked about.

18 A. Okay.

19 Q. And again, thumb drives are something that can store
20 digital files?

21 A. Correct.

22 Q. We've got a -- what's listed as a white Kingston thumb
23 drive?

24 A. Correct.

25 Q. And then we have a Dane Electric?

1 A. That's just the name of the -- printed on the outside
2 of the thumb drive.

3 Q. Sure, and then we've got a ScanDisk?

4 A. Yes.

5 Q. And then a TwinMOS?

6 A. Yeah. That's whatever's printed on the...

7 Q. Okay.

8 A. Thumb drive.

9 Q. And the final one is one that's referenced as National
10 Guard?

11 A. Yes.

12 Q. All right. Then let's move to the two cell phones,
13 okay?

14 A. Okay.

15 Q. First one we have is a Motorola?

16 A. Yes.

17 Q. And the second one we have is listed as a Pantech?

18 A. Yes.

19 Q. And then we have the tablets, right?

20 A. Yes.

21 Q. And we have three of those listed?

22 A. Two, two Cobys.

23 Q. Were these a Mini iPad or iPad Mini?

24 A. Yeah. That's right.

25 Q. So, that would be 10, 11, and 12. We have a Coby, and

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1 I'll just write number one and Coby number two because
2 those are two separate items, right?

3 A. Yes.

4 Q. And then an iPad, and would I write iPad Mini?

5 A. It is an iPad Mini.

6 Q. All right, bear with me. I've only got two more
7 categories. Go to the external hard drive, and there's one
8 of those on this sheet?

9 A. Yes, sir.

10 Q. Of the non-focused items?

11 A. Non-focused, yes.

12 Q. So, that would be number 10, 11, 12, 13, and what is
13 the name of that? What's the title for it?

14 A. That would be a Western Digital.

15 Q. And then we have three laptops?

16 A. Yes.

17 Q. And that would be a ASUS netbook?

18 A. Yes.

19 Q. A ASUS laptop?

20 A. Yes.

21 Q. And finally what's listed as a Gateway laptop?

22 A. Correct.

23 Q. All right, and those were all of the items -- I'm
24 sorry. Those were all of the items that were given to you
25 that were in the non-focus category?

1 A. Correct.

2 Q. Now, if there were any other items in the household
3 besides these items and the focus items, those weren't
4 provided to you?

5 A. No.

6 Q. And you didn't make that decision of what they were
7 gathering or what they were not ---

8 A. No.

9 Q. --- gathering, and obviously if they're not given to
10 you, you can't examine them?

11 A. Correct.

12 Q. And specifically including those sixteen items and
13 four focus items, you were never provided a, a red-in-color
14 iPad. Is that right?

15 A. Red-in-color iPad? I don't, I don't believe so. I
16 don't think they make a, like a paint color, but I --
17 unless it's a case, you're talking exterior case on the
18 iPad.

19 Q. Sure. Well, let's, let's clarify maybe a little bit.
20 You didn't receive any other iPad beside -- tablet besides
21 the one that was listed there?

22 A. Not an iPad, no.

23 Q. And you didn't receive an ASUS all-in-one computer,
24 right?

25 A. Would that be an all-in-one touchscreen?

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1 Q. Yes, sir.

2 A. No, I did not.

3 Q. And you didn't provide -- you weren't provided an IBM
4 ThinkPad laptop?

5 A. No.

6 Q. And you weren't provided a white-in-color iPhone?

7 A. I can't remember the iPhone. I was provided with an
8 iPhone.

9 Q. Sure.

10 A. I can't remember if it was white.

11 Q. Was, was the -- let me -- I might be able to help you.
12 Was the only iPhone that you were given the -- one of the
13 focus items in Michael's room?

14 A. I, I don't know what room they came from, but there
15 was an iPhone in the first four ---

16 Q. Okay.

17 A. --- of the items, yes.

18 Q. So, the only iPhone you got was one of the focus
19 items?

20 A. Correct.

21 Q. So, let's move generally -- I know that you reviewed
22 some of this, but generally what you do with items you
23 receive, typically you're receiving items, in this case and
24 in any other case, from non-forensic experts. Is that
25 fair?

1 A. Yes.

2 Q. People that don't know how to do this type of work
3 that you do, right?

4 A. Correct.

5 Q. A lot of times it can be just general law enforcement
6 officers and agents?

7 A. Yes.

8 Q. And as we've already discussed, sometimes, as in this
9 case, you're told to focus on some items and, and not
10 others?

11 A. That is correct.

12 Q. And at this point, once you have all the items, you
13 start reviewing the items, right?

14 A. Right.

15 Q. And sometimes these reviews can be limited by an item
16 being damaged?

17 A. Right.

18 Q. And if something's damaged, you don't go back and try
19 to fix it?

20 A. No. If it's an internal issue, no.

21 Q. Okay, and talking again about something that might
22 limit this review, can passwords ever limit your ability to
23 review any -- some things?

24 A. Yes, especially on the Apple devices. If it is
25 locked, we have some difficulties getting in.

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1 Q. Okay.

2 A. Some androids we have difficulty, especially if it's
3 not a popular model. However, a lot of the popular models,
4 we are able to bypass passwords on.

5 Q. Okay, and if it was an item that you weren't able to
6 bypass the pass code on but that pass code was provided to
7 you, could you then ---

8 A. Absolutely.

9 Q. Now, besides some of those limitations, otherwise you
10 try to generally preview every item that you receive?

11 A. Yes.

12 Q. And in a preview, every document or file within it is
13 not actually reviewed by you?

14 A. No. That is correct.

15 Q. And in a preview, you wouldn't be looking at Internet
16 histories?

17 A. Well, no, unless -- I take that back. Unless there is
18 a -- if it would be stored on a desktop or in a favorites
19 folder.

20 Q. Sure.

21 A. If -- but the user would have to -- like if there's a
22 particular favored website, I can be able to be able to
23 view that if it's in the favorites folder.

24 Q. Right.

25 A. But no, not an in depth deleted or unallocated view of

1 it, no.

2 Q. Not ---

3 A. Not on a preview.,

4 Q. Not like the Internet previews that we were seeing
5 here ---

6 A. That is correct.

7 Q. And sticking with the previews, in previews you don't
8 look at programs or programmed data information. Is that
9 fair?

10 A. No, not unless there is encryption software on the
11 system.

12 Q. And so essentially what you're doing, I think you used
13 the word loading. You're manually clicking through kind of
14 typical places to look for ---

15 A. Common places, yes.

16 Q. But that is a manual -- you using a mouse to look
17 through different folders and that type of thing?

18 A. Right. I'm going through the, the root tree of the,
19 the file system once I did a preview.

20 Q. Right.

21 A. And it's just, you know, how you would see it if you
22 see -- you know, my document, I click on my documents type,
23 type deal.

24 Q. And if the process ends there, that's what we
25 characterize as not doing a full forensic examination?

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1 A. That is correct.

2 Q. And I believe on direct examination, you said there
3 were no full examinations done on these items, the
4 non-focus items?

5 A. No full examination. However, some images were
6 obtained.

7 Q. Okay. Now, sometimes if you do a preview and you
8 don't see anything, any low-hanging fruit, you said
9 something that -- along the lines of you might still go
10 further and do the full forensic exam if it's a focus item?

11 A. If it's, if it's a focus item, if, if I've been told
12 when the evidence is submitted to me, if I've been told
13 this is what we need to look at, then I will go ahead and
14 start a full focus examination on that.

15 Q. Okay. Now, when we're talking about the forensic
16 examination actually being completed, that usually involves
17 you taking an image of the computer?

18 A. Yes. That's part of the process.

19 Q. And that basically means you just, you copy it, copy,
20 you know, the -- well, could you explain what exactly an
21 image is?

22 A. Yeah. It's the forensic image. It's the exact copy
23 of whatever that device is, bit by bit copy.

24 Q. And one of the benefits of an image is that you can go
25 back and look at it later?

1 A. Absolutely.

2 Q. So, if a item were to be returned to its original
3 owner but you still had an image ---

4 A. Correct.

5 Q. --- you could, you could still view that image at a
6 later date?

7 A. Yes.

8 Q. Do you have any idea where any of these items ended
9 up?

10 A. It is, it is my understanding -- I know some of them
11 went back to, I guess, the owner because he had brought one
12 laptop back to me to get repaired. I'm not sure if the
13 rest of the items went back to him.

14 Q. Sure. Now, let's briefly move to the desktop that was
15 one of the focus items.

16 A. Okay.

17 Q. On this desktop, when you did your examination there
18 was no password required?

19 A. That is correct. There was no password required to
20 log in.

21 Q. Meaning that anybody that had physical access to the
22 computer would have been able to access it without having
23 some encryption?

24 A. Correct.

25 Q. And as we've stated a few times, there's an issue with

1 the CMOS. Is that correct?

2 A. Yes.

3 Q. Meaning that all the times that we see, we don't know
4 if they're accurate or not accurate?

5 A. Right. In this particular instance, I cannot
6 definitively say if something was accessed on a particular
7 date and time.

8 Q. And one thing that you're unable to tell us is, who
9 actually had access -- not access but who was actually
10 using the computer at the times we see activity, right?

11 A. That is correct. I cannot determine who, who was
12 using the computer what particular time.

13 Q. And to be clear, this desktop, the six files, the six
14 R@yGold files that Mr. Simmons is charged with and that
15 we've been talking about and that they were investigating,
16 those were not found, those videos were not found on that
17 desktop?

18 A. No. That is correct. No, no child pornography videos
19 were found anywhere on the desktop.

20 Q. Now, I want to finally briefly come back to what was
21 done on these items.

22 A. Okay.

23 Q. Now, as we stated with the miscellaneous items we have
24 there, there wouldn't be any relevant files that you would
25 think would be there on the Wi-Fi and the mouse thumb

1 drive?

2 A. No.

3 Q. Now on the five thumb drives, what I have listed as 3,
4 4, 5, 6, and 7, those are capable of containing movies,
5 music, any type of digital file?

6 A. Yes.

7 Q. Just with -- they just happen to have less space than
8 an extra hard drive might have?

9 A. Correct.

10 Q. Okay. Now on the cell phones, do you know whether
11 those two cell phones would have had access to Internet?

12 A. Yes. The -- both android. The Motorola and the
13 Pantech were both android phones. They would have access
14 to Internet service.

15 Q. And so there would have been some type of Internet
16 activity or history if anybody had been on the internet on
17 those cell phones?

18 A. Yes.

19 Q. Now, on the Coby one and the Coby two tablets, you
20 weren't able to access those. Is that right?

21 A. That's correct. These, these type of tablets are not
22 very popular, and they are extremely on the lower end of
23 tablets.

24 Q. Okay.

25 A. And they generally do not last very long, and there's

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1 a lot of issues with the off brands like that.

2 Q. And it looks like one -- am I correct in saying one
3 was damaged and one wouldn't power up?

4 A. Right. In order to do the android -- and, and these
5 Coby tablets are based on the android system. I would have
6 to navigate through the, the settings of the screen to set
7 what's called USB debugging in order for me to go into the
8 file system and pull it out. If I can't navigate through
9 the screen, unless it's a popular brand that I can bypass,
10 I have to navigate through the screen.

11 Q. Okay. Now on the iPad Mini, you weren't able to
12 access that because you didn't have a pass code?

13 A. Right. Apple is the most difficult to bypass.

14 Q. Moving to the external hard drive, what I have listed
15 as number 13, a full examination was not done?

16 A. No. These were all done with previews, the ones that
17 I could. I think there was one that I wasn't able to. The
18 Dane Electric was -- would not mount. It's not -- it was
19 an internal error somewhere on the drive itself.

20 Q. Okay, but on the external hard drive, you didn't
21 review every file and folder that was on that hard drive?

22 A. I viewed the, the logical stuff, the stuff that you
23 could see. I did a quick preview of what, what was on
24 there.

25 Q. Sure. So ---

1 A. But nothing, nothing relevant, -- I would say. No, no CP
2 reference or deleted folders -- or, I'm sorry, deleted
3 photos or type deal.

4 Q. Well, now, if it had been deemed by whatever law
5 enforcement agency to be one of the focus items, could you
6 have done more to review it?

7 A. Oh, absolutely.

8 Q. You would've been able to run a program that would
9 actually go through every single file?

10 A. Yes. It would carve it out, carve out the information
11 just like it did the desk -- the desktop.

12 Q. And that was not done on the external hard drive?

13 A. On that particular external hard drive, no.

14 Q. Now with the laptops that you were given here, 14
15 through 16.

16 A. Right.

17 Q. Full forensic exams weren't done on these?

18 A. No. Previews. Some were imaged and some were -- but
19 all were previewed.

20 Q. Okay. Were full Internet histories done on all these
21 laptops?

22 A. No.

23 Q. And again, not every file on all those laptops was
24 actually gone through or anything like that?

25 A. No.

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1 Q. And again, if these had been deemed focus items, your
2 practice would have done -- been to do the full exam?

3 A. Right. The submitting agent -- again because the case
4 agent is the lead agent, knows best on his or her case. If
5 they say I need to focus on this, then I would have focus
6 on this. But if it's a we found this, too, but we're not
7 sure, then I would do a preview.

8 MR. BANK: Beg the court's indulgence.

9 THE COURT: Yes, sir.

10 (A PAUSE.)

11 BY MR. BANK:

12 Q. Now, Investigator VanHouten, again, the six charged
13 videos and any child porn that was actually not found on
14 this desktop, actual ---

15 A. You're talking about the recovered videos or you're
16 talking about the videos...

17 Q. I'm talking about the, the, the six charged actual
18 child pornography on the desktop that was not found.

19 A. No. There was no videos of child pornography found on
20 the desktop.

21 Q. And you can't tell us obviously just by the
22 limitations, you can't tell us who did these search
23 histories, right?

24 A. No, absolutely not.

25 THE COURT: That's been asked and answered, Mr. Banks.

1 Move on.

2 MR. BANK: Thank you, Your Honor. I don't have any
3 other questions.

4 THE COURT: Redirect?

5 MR. FLORES: Your Honor, I have a matter to take up
6 with the court.

7 THE COURT: All right. Thank you.

8 Mr. Foreman, ladies and gentlemen of jury, I'll give
9 you about -- I'm going to say fifteen minutes. That's
10 judicial time, okay, but say fifteen minutes. Do not
11 discuss the case. Thank you. Thank you very much.

12 (THE JURY EXITS AT 11:23 A.M.)

13 THE COURT: All right, Mr. Flores.

14 MR. FLORES: Yes, Your Honor. We previously addressed
15 in -- prior to this trial starting the external hard drive
16 that Investigator VanHouten examined and did find child
17 pornography videos on. The line of questioning conducted
18 by defense has now placed these -- they've categorized as
19 focused items and non-focused items. By saying that, you
20 know, we -- what, what now is before the jury is that he
21 fully conducted an examination on these four items and
22 didn't on these other items, and he has not been able to
23 speak about those items on the external hard drive.

24 We believe that now that we are entering into that
25 territory where we must be able to provide a full and

1 complete picture of what was found on those items.

2 THE COURT: Specifically ---

3 MR. FLORES: Particularly the focused items and
4 particularly your rulings on those -- on the child
5 pornography videos that were there.

6 THE COURT: Tell me specifically which items are you
7 wanting to focus on, Mr. Flores.

8 MR. FLORES: Particularly it's a, it's a hard drive.
9 It's an external hard drive that's not listed on that chart
10 that was attached to the computer at the time of its
11 seizure, and, and it has been categorized by the defense as
12 one of the four focused items.

13 THE COURT: Thank you. Thank you.

14 Mr. Banks.

15 MR. BANK: Yes, sir. I'm going to be speaking about
16 the external hard drive that contained the images that you
17 had previously excluded pretrial.

18 Your Honor, I spoke to Mr. Flores yesterday about how
19 to address this external hard drive that was found in Mr.
20 Simmons's room in light of your ruling. I told Mr. Flores
21 I was happy to either ignore that the item exists, or state
22 that it exists and just not talk about what was found or
23 wasn't found on it.

24 He has put up -- he basically had two choices. One,
25 to put up the search warrant return. The external hard

1 drive is listed on the search warrant return. The jury can
2 see it; it's been up in front of them many times. He has
3 told me that he wanted to not ignore that it was there.
4 Just kind of let it be there and not talk about it. So,
5 that's what I've done.

6 The term focus items or target items has been used by
7 the investigator here, previous law enforcement who said,
8 you know, we told them to focus on the items in Michael's
9 room. I'm just using the language that they used, and we
10 wanted to focus on the items not found in Michael's room
11 since so much time had been spent on the items that were.

12 I made a point whenever we were talking about the
13 child pornography being on something or not on something,
14 to stick specifically to the desktop and not mention
15 anything about the external hard drive found in his room,
16 as I thought we had already agreed upon. So, I don't
17 believe we've opened the door to anything.

18 I've been very cautious and aware of the potential
19 risk in opening the door and have tried to go out of my way
20 to speak to Mr. Flores about this beforehand. It was his
21 indication we would not redact or pretend that an external
22 hard drive in Michael's room didn't exist. We would just
23 recognize that it existed and not talk about it, and I
24 believe that I've abided by that agreement.

25 MR. FLORES: What I will say is that we did agree as

1 to the presence of it. But what Mr. Bank has done
2 throughout the testimony of Jon VanHouten is say, well, he
3 fully examined all these items, and now he used -- there is
4 -- there are items that were imaged but not looked at, but
5 now he's not testified as to what else he had found. It's,
6 it's this lingering question that, well, he must not have
7 found anything on the other items. It's just this one, and
8 that's not what we agreed to.

9 The fully focused -- now he's saying, well, if you
10 fully focused, if he fully focused, he looked at every
11 single thing on those, on those hard drives, he looked at
12 it to try to find a determination of who owned the computer
13 and what else was found, that was, that was not part --
14 that potential portion was not part of our agreement, the
15 way it's been categorized as fully forensically analyzed.
16 That and the focus, that was not part of what we, we deemed
17 -- what we discussed in this matter.

18 MR. BANK: Your Honor.

19 THE COURT: Mr. Banks.

20 MR. BANK: On direct examination of Investigator
21 VanHouten, Mr. Flores asked you were given certain items
22 from Michael's room, and you talked about it on the search
23 warrant and said you did full examinations on that. They
24 said now all the other items, you didn't do full
25 examinations on. That was brought up on direct. It's on

1 the search warrant, the external hard-drive-that they're
2 putting -- that they put into evidence and that they're
3 previewing to the audience.

4 I, I would not have mentioned anything about the
5 external hard drive. I was happy to approach it any way
6 that they wanted to. They've taken the position -- if they
7 want to acknowledge that they exist, that all the items of
8 Michael's rooms were fully examined, all the rooms outside
9 it were not fully examined -- I believe I've, I've not
10 opened the door to anything, Your Honor.

11 THE COURT: Were all the items in Mr. Simmons's room
12 fully examined?

13 MR. FLORES: The ones that could be examined, Your
14 Honor. We would say there was a laptop computer that had
15 -- its hard drive had been destroyed. It's in pieces.
16 That could not be examined. I believe there was an iPhone
17 that was taken from the computer -- or from the room, and
18 that was examined as well, as well as the external hard
19 drive.

20 THE COURT: So, there was an iPad that was damaged
21 that could not be examined. The laptop was fully examined.
22 No, excuse me.

23 MR. FLORES: No, Your Honor.

24 THE COURT: The desktop was fully examined and the
25 external hard drive was fully examined?

1 MR. FLORES: That's correct, Your Honor, and the --
2 but to correct the court, Your Honor, it wasn't an iPad but
3 a laptop.

4 THE COURT: Laptop. I apologize.

5 MR. FLORES: Yes.

6 THE COURT: Thank you. I'll write that on my hand so
7 I can remember it, Mr. Flores.

8 All right, give me a few minutes. Let's take about a
9 fifteen-minute recess. I'm going to review my notes.
10 Thank you. Thank you very much.

11 Anything further before we take our recess, Mr. Banks?

12 MR. BANK: No, sir.

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

15 You may, sir, step down, refresh yourself. Do not
16 discuss your testimony.

17 WITNESS: That's correct, sir.

18 THE COURT: Thank you very much.

19 (OFF THE RECORD.)

20 THE COURT: All right, anything further from the
21 state, Mr. Flores?

22 MR. FLORES: Nothing. Just a ruling on the issue.

23 THE COURT: Right. I, I hadn't forgot that.

24 Anything additional from the defense, Mr. Banks?

25 MS. ZMROCZEK: No, sir.

1 (A PAUSE.)

2 THE COURT: Tell me, tell me specifically and briefly,
3 Mr. Flores, what you would propose to ask this witness in
4 redirect.

5 MR. FLORES: Yes, Your Honor. As a result of the way
6 we categorized the evidence and what we've presented so
7 far, we would ask Investigator VanHouten to produce the
8 results of the forensic examination of that external hard
9 drive and discuss specifically what he did for the other
10 devices in the room. There is a -- we would introduce a
11 copy of the full forensic report that he produced in this
12 case. We have not done that to this point based on your
13 prior rulings. We have submitted those into evidence as
14 documents and a -- and one other CD.

15 THE COURT: All right. Thank you. Thank you very
16 much. Based on, based on the question, I think the door
17 has been opened. I think it hamstrings the state not to be
18 allowed to get into the examination of the both desktop and
19 the external hard drive. If I understand factually, the
20 external hard drive was connected to that desktop? Is that
21 correct?

22 MR. FLORES: That's what it states in the return.

23 THE COURT: All right.

24 MR. FLORES: I believe and ---

25 MR. BANK: Your Honor, if I may be heard on that?

1 THE COURT: I, I asked you before I ruled if there was
2 anything else, Mr. Banks.

3 MR. BANK: Your Honor, I meant just specifically on
4 the understanding of whether the hard drive was connected
5 to the computer.

6 THE COURT: Well, was it or wasn't it? I, I, I ---

7 MR. BANK: I think ---

8 THE COURT: --- thought I heard that in the testimony.

9 MR. BANK: It, it states that in the search warrant.
10 However, the pictures do not show that there was actually
11 -- I would just -- there is a factual dispute to whether
12 ---

13 THE COURT: Well, be that as it may, given the fact
14 that the desktop and the external hard drive, may be a
15 factual dispute as to whether or not it was or was not
16 attached, it was -- they were both in the same room, I
17 assume, unless there's a factual dispute as to that that
18 somehow the court has not been made aware of, and it goes
19 to the full and complete picture of the forensic computer
20 examination performed by Officer VanHouten -- did I
21 pronounce that correct?

22 WITNESS: Yes, sir.

23 THE COURT: VanHouten on the items that were recovered
24 during the course of the search warrant. So, I'm going to
25 recall the jury, and you may proceed, Mr. Flores.

1 MR. FLORES: Thank you, Your Honor.

2 THE COURT: Thank you.

3 (THE JURY ENTERS AT 12:15 P.M.)

4 THE COURT: Thank you. Welcome back, ladies and
5 gentlemen. Again, I, I forewarned you about judicial time.
6 It's similar to island time but, of course, not the same
7 things are going on with judicial time and island time.
8 Thank you very much for your patience with the court. I
9 assure you it had nothing to do with the parties. They're
10 working very, very diligently to move the case along.
11 Please continue to give the parties your complete and
12 undivided attention as you have done throughout the trial
13 of this case.

14 Redirect, Mr. Flores?

15 MR. FLORES: Thank you, Your Honor. May it please the
16 court?

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION BY MR. FLORES:

19 Q. Investigator VanHouten, I'm going to place on the
20 overhead State's Exhibit 4, and that -- you testified to
21 concerning the items that were retrieved and you analyzed
22 in this case. Now in Mr. Bank's cross-examination, he
23 focused on these items that you did forensic previews for
24 or did some examination. Is that right?

25 A. Yes, sir.

J. VANHOUTEN - REDIRECT EXAMINATION BY MR. FLORES

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1 Q. Now, I asked you in direct whether or not you examined
2 all these devices that were on the return. Do you recall
3 that?

4 A. Yes, sir.

5 Q. Do you recall what you said?

6 A. Yes, sir. Either a full examination or forensic
7 preview.

8 Q. All right, and specifically we looked at the HP
9 Pavilion desktop, correct?

10 A. Yes, sir.

11 Q. Did you conduct an in depth, focused examination of
12 the Toshiba laptop, the iPhone, and the DW Passport that
13 was hooked to the computer seized?

14 A. The Toshiba laptop could not be imaged or viewed; it
15 was severe damage to that device. The iPhone, I did
16 retrieve a -- an image and I processed the iPhone, and the
17 external hard drive that was submitted, part one to the
18 first four pieces of the evidence I did conduct a full
19 examination on.

20 Q. All right. Now when you completed your examination,
21 did you prepare a report containing all of the items --
22 some of the items that are already in evidence?

23 A. Yes. I completed a summary report.

24 Q. Summary report, and what did that report include?

25 A. The first four items of the -- desktop, the Toshiba

1 laptop, and iPhone, and the external drive that I
2 categorized or I labeled as evidence 1.

3 Q. Okay. Did you, did you produce a CD of that report
4 and bring it to court today?

5 A. I did.

6 MR. FLORES: Your Honor, I would ask that Investigator
7 VanHouten be able to retrieve that CD.

8 THE COURT: Yes, sir.

9 MR. FLORES: Thank you.

10 (A PAUSE.)

11 (DVD OF REPORT MARKED AS STATE'S EXHIBIT NUMBER 23
12 FOR IDENTIFICATION.)

13 BY MR. FLORES:

14 Q. I'm handing you what's been marked as State's Exhibit
15 23 for identification. Can you identify what this is?

16 A. This is a Blu-ray disk, a -- of the full, unedited
17 version of my report. The first report that I submitted, I
18 blocked out certain things. This the full, edited version.

19 MR. FLORES: Your Honor, I would ask that Special
20 Agent -- or Investigator VanHouten be able to open the
21 evidence so we can access the disk.

22 THE COURT: All right.

23 MR. FLORES: And, Your Honor, we would move State's
24 Exhibit 23 be admitted into evidence.

25 MR. BANK: Over prior defense objections.

J. VANHOUTEN - REDIRECT EXAMINATION BY MR. FLORES

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1 THE COURT: All right, subject to previous objection,
2 State's 23 is in evidence.

3 (DVD OF REPORT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 23.)

5 MR. FLORES: Your Honor, we do need to have access to
6 a Blue-ray DVD for this particular device. I unfortunately
7 do not have one at this time, and we'll need some time to
8 -- we do have one available, and we'll need to set it up.
9 I apologize, Your Honor.

10 THE COURT: What, what kind of time are we talking
11 about, Mr. Flores? It's 12:25. I can do one of two
12 things, none of which is your or Mr. Banks's or anyone's
13 fault. I could send the jury on to lunch and have them
14 come back early.

15 MR. FLORES: Let me, let me consult with Mr. Gourley
16 real quick, Your Honor.

17 THE COURT: All right. Yes, sir.

18 (A PAUSE.)

19 MR. FLORES: Your Honor, it might be best to take our
20 lunch break at this time so we can obtain the proper
21 technology.

22 THE COURT: All right. We'll blame it on technology.

23 MR. FLORES: Proper technology.

24 THE COURT: Proper technology.

25 MR. FLORES: Yes, Your Honor.

1 THE COURT: All right, ladies and gentlemen, I, I do
2 apologize. Rather hold you captive any longer, I will --
3 we'll take an early lunch and recess.

4 Please remember do not discuss this case with anyone
5 during this, during this time. Do not read, watch, listen
6 to any news reports about the case. Do not do any
7 investigation independently or on the Internet. I've
8 discussed those items with you in the past. You can
9 probably repeat them back to me by now, but do not do any
10 investigation on the Internet. Remember to keep an open
11 mind. Do not begin your deliberations until you've heard
12 all the evidence, all the testimony, closing arguments by
13 the attorneys, and the instruction on the law by the court.

14 With that being said, let's say, let's say 1:30.
15 You'll be -- please be back promptly at 1330 hours. Thank
16 you. Thank you very much. Hope y'all have a pleasant
17 lunch.

18 (THE JURY EXITS AT 12:23 P.M.)

19 THE COURT: All right, anything for the state before
20 we take our recess, Mr. Flores?

21 MR. FLORES: Apologies for not having the technology
22 ready, Your Honor.

23 THE COURT: Defense, Mr. Banks?

24 MR. BANK: No, Your Honor. I would ask that we make
25 the demonstrative a court exhibit if possible for the

1 purposes of the opening-the-door ruling.

2 MR. FLORES: No objection to that, Your Honor.

3 THE COURT: Of course. So, you want it a court
4 exhibit?

5 MR. BANK: Yes, sir.

6 THE COURT: All right. Yes, sir, it may be marked.

7 MR. BANK: Thank you, sir.

8 THE COURT: Officer VanHouten, you may certainly step
9 down and refresh yourself during this recess. You may not
10 discuss your testimony with anyone. You are subject to the
11 redirect, of course, we've just started and
12 recross-examination, all right?

13 WITNESS: Yes, sir.

14 THE COURT: Thank you. Thank you very much.

15 And let's, let's get that document to our court
16 reporter now.

17 MR. FLORES: Yes, sir.

18 THE COURT: Thank you. Thank you very much.

19 MR. BANK: Thank you, Judge.

20 THE COURT: All right, court will be in recess until
21 1:30.

22 (HANDWRITTEN LIST MARKED INTO EVIDENCE AS COURT'S
23 EXHIBIT NUMBER 4.)

24 (OFF THE RECORD.)

25 THE COURT: Anything from the state before we bring in

1 our jury, Mr. Flores?

2 MR. FLORES: Your Honor, we are -- we should be ready
3 with technology in just one, just one moment, Your Honor.

4 THE COURT: All right. That's fine.

5 (OFF THE RECORD.)

6 MR. FLORES: Your Honor, there's one thing we wanted
7 to address prior to.

8 THE COURT: All right. Yes, sir.

9 MR. BANK: Your Honor, in the report that's just been
10 entered into evidence, there is a brief paragraph that
11 comments on there being adult pornography on the hard
12 drive. We had previously in pretrials put on the record
13 that we had agreed that there would not be any adult
14 pornography mentioned. However, I've spoken to Mr. Flores,
15 and if this is the extent of the evidence regarding adult
16 pornography that is going to come in, we're fine with that.

17 Our concerns with the adult pornography had to do with
18 other things, not this one paragraph. So, as long as this
19 is the extent of the adult pornography evidence that comes
20 in ---

21 THE COURT: May I see that?

22 MR. FLORES: And this is in the written report that is
23 found on this, this DVD. It's one sentence here, Your
24 Honor.

25 (A PAUSE.)

J. VANHOUTEN - REDIRECT EXAMINATION BY MR. FLORES

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1 THE COURT: All right. So, there's no objection to
2 that paragraph, Mr. Banks?

3 MR. BANK: There is no objection to that paragraph,
4 no, sir.

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

6 MR. FLORES: With that, Your Honor, we are ready to
7 proceed.

8 THE COURT: Okay.

9 (THE JURY ENTERS AT 1:41 P.M.)

10 THE COURT: Welcome back, ladies and gentlemen. Hope
11 y'all had a pleasant lunch. We'll continue with the trial
12 of the case by the redirect examination by Mr. Flores of
13 Officer VanHouten. Please give the parties your complete
14 and undivided attention.

15 Mr. Flores.

16 MR. FLORES: Thank you, Your Honor. May it please the
17 court?

18 BY MR. FLORES:

19 Q. Investigator VanHouten, before we took our lunch
20 break, we were discussing the -- specifically the four
21 items that were seized from what's been identified as
22 Michael's bedroom, and we had just admitted into evidence
23 your report. What items did those cover, does that report
24 cover?

25 A. The forensic report covers items recovered from an HP

1 tower desktop, an Apple iPhone, Western Digital external
2 hard drive. Out of the four, those are the only three that
3 could be -- that information could be recovered from.

4 Q. All right, and the fourth item was what?

5 A. It was, I believe, a Toshiba laptop which was damaged.

6 Q. And how was that damaged?

7 A. I don't, I don't know how it was damaged. It was
8 submitted already damaged.

9 Q. And I believe you testified about the iPhone, but
10 could you refresh our memories as to if anything was found
11 on the iPhone?

12 A. Yeah. I was able to process the, the iPhone, but
13 there was no relevant evidence recovered from that iPhone
14 regarding this case.

15 Q. Now, on direct testimony you testified concerning the
16 process by which you conduct your examinations. Could you
17 refresh our memory as to how you conduct an examination on
18 an external hard drive?

19 A. I would hook the external hard drive up to, again, a
20 write blocker which prevents any data being written back to
21 the external hard drive, and I would capture a forensic
22 image, a bit-by-bit image or a physical image of that
23 device.

24 Q. And from that image, you would conduct your
25 examination?

J. VANHOUTEN - REDIRECT EXAMINATION BY MR. FLORES

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1 A. Yes. I would either do a preview or I would do a full
2 forensic report or full forensic examination.

3 Q. And what software would you use?

4 A. I use many types of software for this. I primarily
5 used FTK.

6 Q. And did you use FTK on this specific hard drive?

7 A. I did.

8 Q. And what items were you looking for in this hard
9 drive?

10 A. Again any, any relevant items relating to child
11 pornography.

12 Q. Did you also seek out any information as to who the
13 owner of the hard drive might be?

14 A. Yes. I would -- I, I did try to do that. Every,
15 every type of data that's -- people use to store
16 information on an external hard drive is not always
17 possible to try to find out. It's not like looking at a
18 computer that -- pertinent information or registry
19 information is not always there.

20 Q. Concerning this hard drive, did you find any relevant,
21 relevant items to child pornography?

22 A. I did.

23 Q. Were they videos or were they pictures?

24 A. I found eight videos relating to what I believed was
25 child pornography.

1 MR. FLORES: Your Honor, if I have not already asked,
2 I would like to publish that report to the jury right now,
3 Exhibit 23.

4 THE COURT: All right. Mr. Banks?

5 MR. BANK: No objection, Your Honor.

6 THE COURT: So, you may publish.

7 BY MR. FLORES:

8 Q. Investigator VanHouten, would you explain to the jury
9 what we're viewing right now?

10 A. This is an FTK forensic summary report.

11 Q. All right. Is this the one you produced in this case?

12 A. Yes.

13 Q. Did this -- does this report contains some of the
14 documents that we discussed earlier concerning searches for
15 R@yGold or PTHC?

16 A. Yes.

17 Q. And they would be found on this left side of the, of
18 the report?

19 A. That is correct.

20 Q. All right. I want to focus right here, the focus of
21 your report on the Western Digital external hard drive.

22 A. Okay.

23 Q. Evidence photos, what is this?

24 A. That is just photos I took of the hard drive.

25 Q. And you took this photo prior to examining it?

J. VANHOUTEN - REDIRECT EXAMINATION BY MR. FLORES

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1 A. I did.

2 Q. Is this another photograph of the hard drive?

3 A. It is.

4 Q. And this is the serial number located on the hard
5 drive. Is that right?

6 A. Exterior -- external [sic] serial number for the, the
7 plastic cover for the hard drive.

8 Q. Okay. Would it have a different ---

9 A. The hard drive ---

10 Q. --- serial number?

11 A. --- itself would have a different serial number.

12 Q. Okay. This tab imaging information, what is this?

13 A. That's just the image file for the recovery of the
14 information off the hard drive.

15 Q. Let's take a look at that. So, this is the worksheet
16 about imaging?

17 A. Yeah.

18 Q. And what is this used for?

19 A. That's just used for verification.

20 Q. Verification?

21 A. Yeah, and it stores it as a container, in a one-format
22 container.

23 Q. Now, this, this next item you have listed here, what
24 is this?

25 A. That is again with the external hard drives trying to

1 determine ownership. Again, there's no registry, there's
2 no log-on information like a computer would. So, what I
3 would do is I would go in and I would try to find items
4 that are, that are relevant and may possibly show ownership
5 such as family photos, documents, tax returns, things of
6 that nature.

7 Q. Okay, and so you tagged some, some of that information
8 here?

9 A. Yes.

10 Q. This right here where I have the cursor?

11 A. Uh-huh.

12 Q. Move this over just a little bit so you can see it.
13 Could you explain what this information is to the jury?

14 A. That is the file path where that particular photo was
15 located at on the hard drive.

16 Q. All right, and it starts off on with recycle bin.

17 A. Yes.

18 Q. What does that mean?

19 A. That is the recycle bin for the hard drive. If you
20 view something on the hard drive and you go to delete it,
21 it doesn't delete it on your computer. It deletes it --
22 Windows sets up -- NTFS system will set up a recycle bin
23 folder on that hard drive.

24 Q. Okay. So, this file was found inside that recycle
25 bin?

J. VANHOUTEN - REDIRECT EXAMINATION BY MR. FLORES

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1 A. This file was found in the recycle bin on that on --
2 on, on the external hard drive.

3 Q. Okay.

4 A. In this case, this photo would have been on a computer
5 because there is a user ID, a UID number assigned, 1000.

6 Q. Is that this number right here, 1000?

7 A. Yes.

8 Q. Okay. So, this was originally found on a computer?

9 A. Yes, a computer.

10 Q. And it was placed on this external hard drive?

11 A. It was either viewed or deleted at one time on the
12 hard drive and deleted, or transferred from the computer to
13 the hard drive and then eventually deleted.

14 Q. Okay, and this is the photo?

15 A. Yes. Based on the video that was provided by the
16 South Carolina Department of Motor Vehicles, this is the
17 photo that I would -- that I viewed as the, the defendant.

18 Q. Okay.

19 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 24 FOR
20 IDENTIFICATION.)

21 MR. FLORES: May I approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. FLORES:

24 Q. I'm going to hand you what's been marked State's
25 Exhibit 24 for identification purposes. Are you familiar

1 with this picture?

2 A. Yes.

3 Q. Is this the same picture that would be available if I
4 clicked on the 1179.jpg?

5 A. Yes.

6 MR. FLORES: Your Honor, we would offer State's
7 Exhibit 24 into evidence at this time.

8 THE COURT: Mr. Banks?

9 MR. BANK: Without objection.

10 THE COURT: May I see it, please?

11 MR. FLORES: Yes, Your Honor.

12 (A PAUSE.)

13 THE COURT: All right, without objection, Mr. Banks?

14 MR. BANK: Yes, sir.

15 THE COURT: State's 24 is in evidence without
16 objection.

17 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 24.)

19 BY MR. FLORES:

20 Q. Investigator VanHouten, would you please explain to
21 the jury what the -- State's Exhibit 24 depicts?

22 A. It appears to be some type of bill from a company
23 called Certified Recovery Service, and it is addressed to
24 Michael S. Simmons and Melanie Simmons, [REDACTED],
25 Columbia, South Carolina, 29223.

J. VANHOUTEN - REDIRECT EXAMINATION BY MR. FLORES

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1 Q. And when is it dated?

2 A. August 1, 2013.

3 Q. Would you please publish that to the jury?

4 A. (WITNESS COMPLIES.)

5 Q. And that is the photo at 1179?

6 A. Yes.

7 Q. And that's found on the external hard drive?

8 A. That is correct.

9 Q. Now, Investigator VanHouten, the last bit, you've
10 already stated to the jury that there were eight videos
11 found in this -- on this external hard drive?

12 A. Yes. Yes, there was.

13 Q. Did you view those videos?

14 A. I did.

15 Q. And these would be found underneath the video of
16 interest tab on your report?

17 A. Yes.

18 Q. All right, Investigator VanHouten, again we're dealing
19 with a recycle bin. What does this mean?

20 A. This is the recycle bin. If you want to delete
21 something, the recycle bin is where you put your, your
22 trash or no longer needed material.

23 Q. This information has not been overwritten?

24 A. As, as it was recovered, no, it had not been
25 overwritten yet.

1 Q. And it's located on this hard drive?

2 A. Yes.

3 (A PAUSE.)

4 Q. Investigator VanHouten, you have personally viewed
5 these videos?

6 A. I have.

7 MR. FLORES: Your Honor, we are going to play the
8 first of these videos at this time.

9 THE COURT: All right. Yes, sir.

10 (WHEREUPON, PORTIONS OF STATE'S EXHIBIT NUMBER 23 ARE
11 PLAYED FOR THE JURY. THERE IS NO AUDIO.)

12 MR. FLORES: The second of these videos.

13 (PLAY RESUMES.)

14 MR. FLORES: The third of these videos.

15 (PLAY RESUMES.)

16 MR. FLORES: The fourth of videos.

17 (PLAY RESUMES.)

18 MR. FLORES: This is the fifth of the videos.

19 (PLAY RESUMES.)

20 MR. FLORES: This is the sixth of the videos.

21 (PLAY RESUMES.)

22 MR. FLORES: This is the seventh of the videos.

23 (PLAY RESUMES.)

24 MR. FLORES: This is the last of the videos.

25 (PLAY RESUMES.)

J. VANHOUTEN - DIRECT EXAMINATION / CROSS-EXAMINATION 405

1 MR. FLORES: Beg the court's indulgence.

2 THE COURT: Yes, sir.

3 (A PAUSE.)

4 BY MR. FLORES:

5 Q. Investigator VanHouten, the information, the videos,
6 and the pictures that we've just viewed, how would they get
7 to the external hard drive?

8 A. They would have to be transferred via a computer,
9 either a desktop or a laptop.

10 Q. They're not naturally found on that drive?

11 A. No.

12 MR. FLORES: Your Honor, that's all the questions we
13 have for Investigator VanHouten.

14 THE COURT: Thank you, Mr. Flores.

15 Mr. Banks.

16 MR. BANK: Thank you, Your Honor. May it please the
17 court?

18 THE COURT: Yes, sir.

19 RECROSS-EXAMINATION BY MR. BANK:

20 Q. Investigator VanHouten, are any of these videos we
21 just saw the ones that Mr. Simmons is charged with and that
22 you were tasked to find?

23 A. For clarification, I don't, I don't know which ones
24 he's charged with.

25 Q. Sure.

1 A. But the original file, the R@yGold and that hash, no,
2 I did not find that particular file.

3 Q. Okay. So, these are different than the R@yGold videos
4 we were talking about earlier?

5 A. Yes.

6 Q. Now in your report, there is a paragraph that mentions
7 that these videos were found among adult pornography?

8 A. Yes.

9 Q. So, is it fair to say that you reviewed the adult
10 pornography, and then you picked these out as what you
11 thought were child pornography?

12 A. I, I reviewed the, the child pornography -- I mean,
13 the adult pornography and the child productively. The
14 child pornography I was able to pick right out as soon as I
15 did that because I did a preview on this also. I was able
16 to look into the recycle bin and identify these. But, yes,
17 if -- I'm sorry, the question is did I review all of it as
18 far as all the ---

19 Q. I ---

20 A. --- adult porn and then the child porn and then just
21 identify these as what I feel is child porn?

22 Q. Yes, sir.

23 A. Yes, that is correct.

24 Q. So, these videos aren't in -- or previously identified
25 as child pornography in, like, the ICAC database we talked

1 about before?

2 A. No. I mean, they may be, but I did not -- I didn't
3 run it in what's called a NRSL hash against it because
4 based on my experience, I naturally assumed that these were
5 child porn.

6 Q. Now, some of these -- you have no idea who any of the
7 females in the videos are, right?

8 A. No, I did not.

9 Q. And in some cases, you don't even know what they look
10 like, depending on the video, right?

11 A. On these particular videos?

12 Q. Sure.

13 A. Yes. There's some in there that I think are -- got --
14 have a hood on or a blind or, or something.

15 Q. A hood on or a blindfold so you can't see what the
16 person looks like?

17 A. Either the, the person committing the act or the, the
18 child itself.

19 Q. Now, these videos were in deleted space?

20 A. Well, no. They had been deleted. They were still
21 under the recycle bin. They were found in a backup file
22 system for a, for a particular computer.

23 Q. Okay. Now in viewing these files, you're not a
24 pediatrician, right?

25 A. That is correct.

1 Q. And you've never taken any training in terms of
2 identifying different parts of, of humans in, in comparison
3 to their ages, right?

4 MR. FLORES: Objection, Your Honor, based upon
5 yesterday's discussion.

6 MR. BANK: I'm just asking if he had any training,
7 Your Honor.

8 THE COURT: He hadn't been offered as an expert. I, I
9 assume he's got a body like everybody else, so objection
10 sustained.

11 BY MR. BANK:

12 Q. Now, when you're viewing these videos and trying to
13 determine whether they are child pornography or not, do you
14 get a second opinion from anybody?

15 A. If there is question, if there is a particular
16 question on one, I will be honest. The -- a lot of the
17 Asian demographic appeared to be younger. I mean, they
18 have natural young-looking features. If I, if I do have a
19 question or if I'm not really sure, then I will get a
20 second opinion from another examiner.

21 Q. And is another examiner just somebody that happens to
22 be in the lab with you that day?

23 A. He is a forensic examiner in our lab.

24 Q. And you said specifically you have -- there's -- it's
25 problematic to determine whether Asian porn is -- or Asian

1 bodies are child porn or adult?

2 A. Well, you would look at certain features. The first
3 thing you would look at is, of course, skin tone, are there
4 any wrinkles, any tattoos or piercing that, you know, an
5 adult would have but appear to be a child. A lot of times
6 the teeth, if they appear to be, you know, you know, newly
7 -- new teeth have just come in or fairly juvenile. Certain
8 features around the room. There's a lot of things that I
9 try to look at to determine, if I'm not quite sure, that
10 I'll, that I'll look at to say, okay, this is what I
11 believe to be this particular piece of evidence.

12 Q. Sure. Now, specifically on the technological side of
13 this, you can't tell me all of the devices this hard drive
14 has ever been plugged into?

15 A. No. The only way to tell that would have the actual
16 computer that the -- each computer, whether it be a desktop
17 or laptop, that this hard drive had been plugged into,
18 that's the only way to tell every, every piece of evidence
19 that the hard drive's been plugged into.

20 Q. And that's because the computer would recognize and
21 take a record of that and the hard drive doesn't?

22 A. Right. A computer will take the serial number from
23 the hard drive, and it will store it in what's -- in a
24 registry file called the USB store so that the hard drive
25 -- if, if you were just to plug just a hard drive or a

1 thumb drive into a computer, behind-the-scenes action to
2 that computer is going to register that hard drive to that
3 serial number of that hard drive, and it's going to
4 identify that hard drive.

5 Q. So, this specific device we're talking about, the
6 external hard drive, could have been plugged into any
7 number of computers, including or excluding Michael's?

8 A. Right. Outside of the desktop computer, it can, it
9 can be plugged into any -- I, I don't know how many
10 computers it's been plugged into.

11 Q.. And those computers could include some of the
12 computers we were talking about earlier there were also
13 found in the house?

14 A. It's possible.

15 Q. There is a way to verify that, isn't there?

16 A. Yes.. You would have to go through the registry for
17 the USB store.

18 Q. And you didn't do that in this case with the
19 non-target items, the non ---

20 A. No, because the, the eight videos or the videos
21 recovered were specifically on the, the hard drive itself.

22 Q. Now this device, like any other device, can be
23 accessed by any number of people, right?

24 A. Yeah. There was no password or encryption enabled on
25 the, the hard drive.

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1 Q. And as to the -- any times associated with files found
2 on the external hard drive, are those times dictated by how
3 the computer had it saved at first?

4 A. That is correct.

5 Q. So, because we see a time on the external hard drive
6 file, we don't know if that time is accurate or not?

7 A. That is correct. Unless there was -- unless the
8 computer -- unless the hard drive was plugged into one
9 specific computer only, excuse me, then it's safe to say
10 you can match up the, the times. But in this particular
11 instance, I can't verify the time.

12 Q. And I certainly saw a, I believe, a photograph of this
13 external hard drive where we got to see the make, the
14 model, and the serial number?

15 A. Yes.

16 Q. All right, and this is a Western Digital?

17 A. Yes.

18 Q. We had another external hard drive that was not one of
19 the focus items.

20 A. Yes.

21 Q. Did we know the make, model, or serial number on that
22 one?

23 A. I have the, the picture. I don't have it with me, but
24 I did take a picture of that, that hard drive.

25 Q. You did take a picture of that hard drive? You don't

1 -- do you know what the capacity was on that hard drive?

2 A. I do not. Not right off hand I don't.

3 MR. BANK: Beg the court's indulgence.

4 THE COURT: Yes, sir.

5 (A PAUSE.)

6 MR.. BANK: No further questions, Your Honor.

7 THE COURT: Thank you. Thank you very much, Mr.

8 VanHouten. You may step down.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: All right, Mr. Flores, you may call your
11 next witness.

12 MR. FLORES: Your Honor, at this time the state would
13 rest its case.

14 THE COURT: Thank you. Thank you very much, Mr.
15 Flores.

16 Motions? Do you have motions, Mr. Banks?

17 MR. BANK: We do, Your Honor.

18 THE COURT: All right. Thank you.

19 Mr. Foreman, ladies and gentlemen of the jury, if
20 you'd please step to your jury room for a brief recess. Do
21 not discuss the case during this brief recess. Thank you
22 very much.

23 (THE JURY EXITS AT 2:11 P.M.)

24 THE COURT: All right, Mr. Banks.

25 MR. BANK: Thank you, Your Honor. First we would like

1 to renew all previous objections, both pretrial and made
2 throughout the course of testimony and in between
3 testimony. And second, we'd move for a directed verdict on
4 these charges for a number of reasons.

5 First of all, on a -- on the point of the statute
6 about whether this qualifies as child pornography, the six
7 charges -- the six videos that he's charges with, we've
8 seen the videos. At least one of them is a 20-second clip
9 of, of penis going into a vagina where you can see no other
10 parts. There are several videos where you just cannot see
11 anything. They're very brief; they are limited in their
12 access of what is viewable. I think that there is no way
13 for us to know whether these are minors. There is no way
14 for us to know whether they are under the age of eighteen.
15 We don't know who the, the females are. We don't know
16 their dates of birth. We don't know where they live. We
17 don't know anything. We just have videos were a person can
18 speculate and have to guess about whether they think it's a
19 person that's under the age of eighteen.

20 On a second matter, we also believe there's been no
21 direct evidence, not that it's necessary, but not
22 sufficient evidence to link Michael to actually sharing
23 these files on November 22nd of 2013. We've heard that
24 these files may or may not have existed on this computer.
25 That there may be association with this computer and the

1 external hard drive, but somebody, we don't know who,
2 searching for a child porn at some time. But the actual
3 videos he's charged with not only were not found on his
4 computer, but we don't have any evidence that he was the
5 person on November 22nd sharing these videos with the
6 computer in Berkeley.

7 So, on those two bases, on -- again to just summarize,
8 whether we can tell that they're child pornography, and the
9 second whether there's enough evidence to show that he was
10 the person sharing the videos, if they are indeed child
11 pornography, we move for a directed verdict.

12 THE COURT: Thank you, Mr. Banks.

13 Mr. Flores.

14 MR. FLORES: Yes, Your Honor. May it please the
15 court? When looking at a directed verdict motion, of
16 course the question is whether or not, in the light most
17 favorable to the nonmoving party, whether there is evidence
18 to support the charges and go forward with -- to send it to
19 the jury.

20 As to Mr. Bank's argument concerning whether or not
21 these are actual minors or whether or not this is actual
22 material depicting minors engaging in sexual activity,
23 there's been an abundance -- there's been abundant
24 testimony concerning Detective Murphy's viewing of these
25 films in which he, he estimates the age. Investigator

1 VanHouten has also identified the age in some films.

2 The, the titles may be -- the statute does provide the
3 titles may be used to infer that this content is sexual
4 activity. R@yGold has been identified as a term that's
5 particularly used in the field of child pornography, and so
6 these videos might be viewed as child pornography. And
7 lastly, the jury, and this is as to whether or not the
8 jury, in their common sense viewing these particular
9 videos, can judge for themselves based upon their own
10 experiences in life whether or not these individuals
11 depicted are minors.

12 As to Mr. Bank's second argument concerning the
13 sufficiency of the evidence, we believe that there is
14 evidence to circumstantially place this computer
15 particularly in Mr. Michael Simmons's bedroom. That he was
16 the main user of this computer, as it being in his room.
17 We've had testimony from all the Doirons, who have stated
18 that they have never used that computer for child
19 pornography or for those purposes. That the forensic
20 examination did link the videos to that computer. And so
21 we would say that in the light most favorable to the state,
22 that this creates a question for the jury as to whether or
23 not it was Michael or someone else who disseminated these
24 videos.

25 THE COURT: Thank you, Mr. Flores.

1 Anything in response, Mr. Banks?

2 MR. BANK: No, sir.

3 THE COURT: All right, as to the first point, renewing
4 all previous objections, I would renew all my pretrial
5 rulings and trial and evidentiary rulings and reaffirm
6 them.

7 As to the directed verdict motion, as is pointed out,
8 the court views the evidence most favorable -- in the light
9 most favorable to the nonmoving party, and if there is any
10 direct or circumstantial evidence. Citing from *State vs.*
11 *Bennett*, the lens through which a court considers
12 circumstantial evidence when ruling on a directed verdict
13 motion is distinct from the analysis performed by the jury.
14 Within the jury's inquiry, it is necessary that every
15 circumstance relied up by the state be proven beyond a
16 reasonable doubt and that all of the circumstances so
17 proven be consistent with each other and taken together
18 point conclusively to the guilt of the accused to the
19 exclusion of every other reasonable hypothesis.

20 However, when ruling on a directed verdict motion, the
21 trial court views the evidence in the light most favorable
22 to the state and must submit the case to the jury if there
23 is any substantial evidence which reasonably tends to prove
24 the guilt of the accused, or from which his guilt may be
25 fairly and logically deduced.

1 The court must concern itself solely with the
2 existence or nonexistence of evidence from which a jury
3 could reasonably infer guilt. This objective test is
4 founded upon reasonableness. Accordingly, in ruling on a
5 directed verdict motion where the state relies on
6 circumstantial evidence, the court must determine whether
7 the evidence presented is sufficient to allow a reasonable
8 jury to find the defendant guilty beyond a reasonable
9 doubt.

10 The state has submitted or called eight witnesses. As
11 to the first witness, Detective Murphy from Berkeley County
12 -- and his report is in evidence. It is replete, both his
13 testimony and his report, with his perception or
14 identification of the ages of the individuals in the
15 representations, and it appeared to be representations of
16 minors engaged in criminal activity.

17 He identified further the IP address and through
18 Time-Warner Cable identified that IP address as located at
19 [REDACTED], Columbia, South Carolina, IP address
20 66.57.172.240. At [REDACTED], therein resided Mr.
21 and Ms. Doiron, Kyle Doiron, and two younger children and
22 the defendant, Mr. Simmons. Testimony is that from those
23 parties -- at least Mr. and Ms. -- was that the room where
24 the external hard drive and the desktop was located, along
25 with an iPhone and a laptop, damaged laptop computer, was

1 in the room that Mr. Simmons occupied, was the resident of.
2 Further, that he was given his privacy in that room.

3 There's no moment in the -- to this court in the
4 determination of my ruling on this motion whether or not
5 others may have had access because the question is whether
6 or not there is sufficient evidence from which a jury may
7 reasonably and logically infer guilt beyond -- or find
8 guilt beyond a reasonable doubt.

9 Further, there is the statement given to Detective
10 Narewski and Detective Merrill wherein the defendant
11 himself unobjected to said no one else had access to his
12 computer. Thereafter, there is the denial by the Doirons,
13 d-o-i-r-o-n-s, family, and then the forensic examination
14 by, by Detective VanHouten. In that examination, although
15 you may not find the exact -- or the videos that Detective
16 Murphy viewed at the beginning of his investigation, you
17 find the various terms associated with individuals that may
18 be searching for child pornography, as has been throughout
19 the evidence. And then as to the external hard drive, you
20 find additional items of what appears to be, to this court,
21 child pornography. It's no moment to me whether a clip is
22 twenty seconds or two hours, or what have you. Child
23 pornography knows no time.

24 As far as the age, both Detective VanHouten, Detective
25 Murphy testified to the age or their -- the appearance of

1 the age, and that's a question of fact for the jury.

2 So, with that being said and the standard I must
3 apply, I would deny the motion for the directed verdict as
4 to all six indictments.

5 MR. BANK: Thank you, Judge.

6 THE COURT: Anything further, Mr. Banks?

7 MR. BANK: Not in terms of any more motions, no, Your
8 Honor.

9 THE COURT: All right. Do you want me to question Mr.
10 Simmons as to his right to testify or not to testify?

11 MR. BANK: Yes, sir.

12 THE COURT: All right. If you would have him come
13 around, please.

14 Madame Clerk, would you place Mr. Simmons under oath?

15 CLERK OF COURT: Yes, Your Honor.

16 MICHAEL S. SIMMONS, BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 THE COURT: You are Michael Scott Simmons?

19 DEFENDANT: Yes, sir.

20 THE COURT: Mr. Simmons, I need to go over some things
21 with you. I do this with everyone who is on trial, and I
22 need your responses to be under oath. That's why I had the
23 clerk administer the oath to you. Do you understand?

24 DEFENDANT: Yes, sir.

25 THE COURT: We have reached the stage of the trial

1 MR. BANK: Without objection. He's not under our
2 subpoena.

3 THE COURT: Yes, sir, he may be.

4 MR. FLORES: You are free to go.

5 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 38
6 FOR IDENTIFICATION.)

7 THE COURT: Anything before we bring in our jury from
8 the state, Mr. Flores?

9 MR. FLORES: There's nothing from the state at this
10 time, Your Honor.

11 THE COURT: Defense, Mr. Banks?

12 MR. BANK: No, sir.

13 (THE JURY ENTERS AT 2:41 P.M.)

14 THE COURT: Mr. Foreman, ladies and gentlemen of the
15 jury, you've heard the state has rested. You've heard all
16 the evidence and all the testimony you're going to hear
17 from the state in its case in chief.

18 The defense now has an opportunity to present
19 additional evidence or testimony if the defense chooses to
20 do so. As I told you at the beginning of the trial, a
21 criminal defendant in South Carolina is always presumed to
22 be innocent regardless of what the nature of the crime or
23 crimes may be. A criminal defendant has no burden of
24 proving himself or herself innocent; the burden is and
25 always remains on the state of South Carolina to prove

1 guilt beyond a reasonable doubt. With that being said,
2 we'll turn our attention to Mr. Banks.

3 Does the defendant intend to present any evidence,
4 additional evidence or testimony, Mr. Banks?

5 MR. BANK: We do, Your Honor.

6 THE COURT: All right. Would you call your first
7 witness, please?

8 MR. BANK: Yes, sir. If it pleases the court, may we
9 first publish the stipulation?

10 THE COURT: Yes, sir, you may.

11 A stipulation is an agreement between the parties,
12 ladies and gentlemen.

13 Yes, ma'am, Ms. Goode.

14 MS. GOODE: Both parties have stipulated that the
15 referenced report stating the requesting illegal movies
16 while using school-issued technology is dated as September
17 2, 2013.

18 THE COURT: And you may, you may mark that.

19 (STIPULATION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
20 NUMBER 5.)

21 THE COURT: All right, Mr. Banks, Ms. Zmroczek.

22 MS. ZMROCZEK: Thank you. Your Honor, at this time we
23 would call Christopher Watkins.

24 THE COURT: All right. If you'd come around and be
25 sworn, please.

1 CHRISTOPHER JAMES WATKINS, BEING
2 DULY SWORN, TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please have a seat. State your full
4 name for the record.

5 WITNESS: Christopher James Watkins.

6 VOIR DIRE EXAMINATION BY MS. ZMROCZEK:

7 Q. Mr. Watkins, what's your occupation?

8 A. I'm a private investigator and digital forensic
9 examiner.

10 Q. Please tell the jury where you're employed.

11 A. I, I'm employed with Watkins Digital Forensic
12 Investigations, which is my own company.

13 Q. Where were you previously?

14 A. Previously I, I began my career as a private
15 investigator in February 2010, and I worked for a firm here
16 in Columbia starting at that time, and I started my own
17 company this year in January.

18 Q. How long have you been working as a private
19 investigator, a licensed private investigator in digital
20 forensics?

21 A. A little over six years. Began February 2010.

22 Q. Tell the jury a little bit about your background and
23 training.

24 A. Okay. So, I attended Midlands Technical College with
25 the focus on information technology, IT, computer science.

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1 Beyond that, I've taken continued education courses
2 pertaining to information technology in the interest of
3 digital forensics, and, and I began professionally working
4 in digital forensics as an examiner in 2010 as well.

5 Q. And when did you become licensed as a private
6 investigator?

7 A. First licensed February 12, 2010.

8 Q. And what is digital forensics?

9 A. Digital forensics is the science of discovering,
10 authenticating, and analyzing information stored
11 electronically on devices such as cell phones, computers,
12 or anything that can store digital data.

13 Q. Have you previously been qualified as an expert in
14 digital forensics?

15 A. Yes. I've been qualified in United States federal
16 court, South Carolina circuit court, general sessions and
17 common pleas, and South Carolina family court.

18 Q. Are you available for consulting by parties other than
19 defense?

20 A. Yes. I have testified or been called as a witness for
21 the state in the past.

22 MS. ZMROCZEK: Your Honor, at this time we would move
23 in -- to enter Mr. Watkins as an expert in digital
24 forensics.

25 THE COURT: All right, any *voir dire*, Mr. Flores?

1 MR. FLORES: None, Your Honor. No objection.

2 THE COURT: All right. Thank you. Thank you very
3 much.

4 Mr. Foreman, ladies and gentlemen of the jury,
5 normally a person cannot give opinion testimony. Normally
6 when a person testifies, they must testify to either what
7 they saw, heard, or sensed by smell or something of that
8 nature. However, there is an exception when someone is
9 qualified because of education, experience, and training.
10 They are permitted to give their opinions in certain areas
11 if the court qualifies them that way.

12 This witness, Christopher Watkins, will be qualified
13 in the area of digital forensics to give opinion testimony
14 in that area. That does not mean that you must accept the
15 opinion, but it is evidence for you, the jury, to use in
16 any way you may deem appropriate and fit.

17 Thank you, Ms. Zmroczek. You may continue.

18 MS. ZMROCZEK: Thank you, Your Honor.

19 DIRECT EXAMINATION BY MS. ZMROCZEK:

20 Q. What was your role in this matter?

21 A. I was hired to assist in this case in an investigative
22 capacity. My role as an investigator is to evaluate the
23 evidence, find what, what has been tested, what evidence
24 has been tested, what's not been tested, and to determine
25 whether the proper procedures have been followed during the

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1 acquisition of that evidence.

2 THE COURT: Speak up just little bit for me, Mr.
3 Watkins.

4 WITNESS: Yes, sir.

5 THE COURT: Thank you.

6 BY MS. ZMROCZEK:

7 Q. Have you had the opportunity to review Investigator
8 VanHouten's reports?

9 A. Yes, I have.

10 Q. And listen to his testimony?

11 A. I have.

12 Q. Okay. What, if anything, did you find that interested
13 you or got your attention regarding Mr. -- regarding the
14 reports in this case, provided in this case?

15 A. Okay. I had the opportunity to review Mr. Van -- or
16 Investigator VanHouten's digital forensic report. One of
17 those was a Internet Evidence Finder report, which contains
18 Internet, Internet artifacts that was collected from the HP
19 computer, the desktop computer. In that report, we have
20 artifacts just pertaining to torrents and child photography
21 hits.

22 What we do not have in this report is a full, complete
23 Internet history, which would be beneficial to analyze the
24 full, complete history so that we can look for patterns of
25 usage to determine -- to help to try to determine who was

1 using the machine during the times that we, that we see in
2 access in the other artifacts. And things that, that an
3 examiner such as myself would look for is anything
4 pertaining to a user account, maybe a Facebook, social
5 media account, or email account that was accessed around
6 the same time that the hits related to the illegal content
7 was accessed. So, that, that we did not have access to in
8 this report.

9 Q. You say Facebook, emails, meaning -- so, if, if, if
10 you're downloading or you're looking or you're searching
11 for certain items, can you simultaneously be accessing
12 other areas in a computer that would help identify ---

13 A. Yes, and, and ---

14 Q. --- the user?

15 A. --- there's also program data that we don't have. We
16 don't have any reports that indicate that Investigator
17 VanHouten reviewed any program data or history or usage,
18 how many programs that were installed on the system, which
19 also could have been useful to determine who was accessing
20 the machine at the time.

21 As an examiner, we're trained to look for patterns,
22 usage patterns because typically a person is going to
23 adhere to a certain pattern. Maybe they're into sports or
24 they're into looking at a certain music video related to
25 their favorite band or something, something like that to

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1 help narrow down, you know, who's actually accessing,
2 accessing the machine.

3 Now, as it pertains to programs, we could see or we
4 could try to find anything to do with an instant messaging
5 software which could have logs that would indicate the
6 time. Now, I understand that Investigator VanHouten
7 testified that the computer time was off. It could not be
8 -- a lot of these artifacts cannot be verified. It's
9 reasonable to, to say that if we find evidence of some
10 Internet activity or program activity that's dated the same
11 date that we're seeing the other artifacts, we can
12 reasonably say that even though we can't verify that that
13 time is correct, we can still say that it's, it's
14 reasonable that it's still accessed around the same time
15 because otherwise it would not record the same date.

16 Q. Are there -- what other additional artifacts could be
17 analyzed to help determine a user or, or, or if somebody
18 had access to it?

19 A. Okay. Another thing that we would look at is a deeper
20 analysis of the registry. Find out whether there were any
21 other users that may have existed on the system that have
22 been deleted at some point. Verifying whether there were
23 any software, any programs that had third -- I'm sorry,
24 remote-access capabilities that would enable a user to
25 connect to the computer from an outside source, from

1 another computer that's either at the same location, in the
2 same residence, or away from that area. And if there were,
3 if there were a software like that installed, we would then
4 look for -- looking at the log files in the history to
5 determine not only the times of access but also whether
6 there were any other IP addresses reported, which some,
7 some software do report. Not all of them. Some do, and we
8 would then look at the IP address, and we could potentially
9 determine from where access is coming from to the machine.

10 Q. Is that similar to a, a VPN or some -- is that ---

11 A. A, a VPN would be another way. There, there, there
12 are VPN -- third-party VPN software or one may be already
13 installed in the system that could enable a person to
14 access the machine from an outside, outside machine.

15 Q. Were you able to -- or did you see any evidence of
16 research done about network connections or associated other
17 data?

18 A. No, that -- another thing missing from the report is
19 we don't have a deeper analysis of the registry. When I do
20 my examinations, I look for artifacts. You mentioned a
21 network. Every, every machine that connects to -- we're
22 talking about computers -- that connects to the Internet
23 has a network card or something that you would -- either
24 it's Wi-Fi or you're hooking up an ethernet cable to
25 connect to the Internet, and some devices can have more

1 than one. They can have either two ethernet ports or
2 cards, or they can have -- they can use the Wi-Fi adapters.

3 In the registry it's recorded, the last access times,
4 and they're -- you can potentially find in the case for
5 Wi-Fi other location -- other Wi-Fi broadcast locations
6 such as, you know, if the, if the machine was at a, at a
7 different location and it was connected to a different
8 Wi-Fi connection, or if maybe there's another Wi-Fi
9 connection broadcasting in the area that, that's been
10 connected to, we would find that. We would look for that
11 in the, in the registry.

12 Q. Is there a way to tell whether or not any external
13 devices such as hard -- or, excuse me -- yeah, external
14 hard drives or thumb drives or, or SIM cards, is there a
15 way to tell if they've been hooked up to a computer?

16 A. Yes. Now, Investigator VanHouten's report does
17 indicate that, that -- we know of at least one hard drive
18 was connected to the computer, but we don't have a full
19 list of all other possible hard drives. We do have other
20 thumb drive or other external connectable devices in
21 evidence, but there's no indication of whether any of those
22 were connected to the divorce or, or any others that just
23 -- that, that were not collected.

24 Q. I want to -- you talked about -- you said that there
25 was evidence of an external hard drive, and you said that

1 Investigator VanHouten indicated he found a user profile on
2 the external hard drive with the name Simmons. Do you
3 agree with this assistant -- assessment, excuse me, or his
4 review of that external hard drive?

5 A. When we reviewed VanHouten's testimony where they were
6 talking about his report pertaining to the hard drive, they
7 pulled up -- the, the first thing that we talked about were
8 the pictures that were found, and they were found in the
9 recycling bin. And they pointed out -- I believe Mr.
10 Flores pointed out the, the folder in the recycling bin
11 where this particular picture was found.

12 If, if, if we have -- I don't, I don't know if we
13 could pull it up now, but it was ending in the number 1000.
14 The artifacts pertaining to the child pornography, the
15 alleged child pornography, the videos, the videos that we
16 saw, those -- if you were looking at the report, they ended
17 in 1001.

18 Now, the very beginning of this folder in the
19 recycling bin begins with a very specific number that's
20 recognized by the Windows operating system, and that refers
21 to an account, and, and they mentioned that it refers to an
22 account. But there -- the difference between the 1000 and
23 the 1001 -- better refer to my notes here.

24 Okay, in another portion of Investigator VanHouten's
25 report, he indicates the users -- and I know we didn't -- I

1 don't believe we got to see that on the screen, but there
2 was an indication of the users on the desktop computer.
3 And that username, the username that was most commonly
4 accessed -- basically, like, if you were to create an
5 account, your account on your machine -- there was one
6 indicated as M, the letter M. And there was a reference,
7 there's a reference in that report, indicates a
8 profile-type ID, and it's indicated at 03P8, which is a
9 hexadecimal value, and if we convert that to decimal, the
10 number represents 1000. So, it would be reasonable to say
11 that any items deleted on that hard drive from that machine
12 would appear in the recycling bin folder that ends in 1000.

13 Now, of course I can't say that with a definite, but I
14 can say that because there is a folder there that we see
15 that's referenced 1000, and we have a user account that's
16 referenced 1000, we can reasonably deduce that those
17 particular files of Mr. Simmons could have been accessed
18 from the machine.

19 The videos that we, that we saw and talked about,
20 those appeared in the folder ending in 1001. In
21 Investigator VanHouten's report, there is not a user
22 account that, that indicates 1001, just the 1000. So, that
23 would indicate that this came from some other machine.
24 These videos would have been accessed by another machine
25 and deleted by another machine other than this machine.

1 Q. So -- and, and, and I want to be clear. Videos,
2 videos, videos, and those videos that you're talking about,
3 those were the ones that we saw today, right?

4 A. Correct.

5 Q. Now, the videos for which these indictments are, did
6 you find any information about any of that on hard drive,
7 computer drive, anything?

8 A. Not -- in respect to the actual content?

9 Q. Right.

10 A. No, and I believe Investigator VanHouten also
11 testified to that. The actual files were not present on
12 any of the devices.

13 Q. Lastly, we -- you mentioned and we've talked about
14 items that could have been and that weren't analyzed. Did
15 you prepare a, a summary chart of, of all the items?

16 A. I did.

17 Q. I'm going to show you what's been marked for State ID
18 -- or, excuse me, Defendant's ID as 37 and ask you if this
19 is your chart.

20 A. Yes.

21 Q. And would it assist you in your testimony today?

22 A. Yes.

23 MS. ZMROCZEK: Your Honor, at this point we would move
24 to move -- we would move item -- Defendant's 37 into
25 evidence.

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1 MR. FLORES: No objection, Your Honor.

2 THE COURT: Defendant's 37 is in evidence without
3 objection.

4 (SUMMARY MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
5 NUMBER 37.)

6 BY MS. ZMROCZEK:

7 Q. I'm going to hand this chart and ask you to publish it
8 to the jury and, and, and refer to it at the same time. Is
9 your chart color-coded?

10 A. It is.

11 Q. Okay. What -- and what do the colors show?

12 A. All right. Well, the first twenty items that are
13 colored in grey ---

14 MS. ZMROCZEK: And, Your Honor, it seems like maybe
15 some of jurors are having a hard time. May he step down?

16 THE COURT: Yes, sir, you may step down. Just keep
17 your voice up when you're away from the mic.

18 BY MS. ZMROCZEK:

19 Q. And make sure you speak very loudly.

20 A. Okay. All right. So, I prepared a chart of all the
21 evidence that -- all the evidence items, the electronic
22 items that were collected or not collected in the process.
23 The ones that you see here in grey, they are the ones that
24 were -- that, that we saw -- the search warrant where it's
25 being handwritten, that refers to the devices here. And

1 then the bottom six that I have, they were at the location
2 where the evidence was collected, and they are pictured in
3 some of the photos taken by CSI. These are items that were
4 not collected or processed. And the first of which was an
5 iPad, an Apple iPad which had a white case.

6 Q. And ---

7 A. There was a ---

8 Q. I'm going to show you what's been marked as Defense
9 Exhibit 4. Is that the iPad you're referring to?

10 A. Yes.

11 Q. So, this is the iPad that was -- that you referred to
12 in your first orange highlight that was not collected?

13 A. That's right. That's correct.

14 Q. Now, is that the same as this child's iPad?

15 A. There is a device here. That is not what I'm
16 referring to. The actual iPad is pictured here.

17 Q. Okay.

18 A. And that's a close up.

19 Q. And what about -- and I'm pointing to Defendant's 4,
20 this little child's iPad-looking thing on the table.

21 A. It's an electronic device, but it's not one that, that
22 is here for...

23 Q. That's not one that listed? Okay, and then the next
24 item was -- that you have listed that was not collected?

25 A. Was an ASUS all-in-one computer, which is what you

1 see...

2 Q. On Defendant's 25?

3 A. Yes. Now, this is a -- if you're not familiar with an
4 all-in-one computer, it's essentially a -- the computer
5 screen with components built in, the hard drive, the
6 motherboard, all fancy stuff. So, there's no tower
7 connected to it. It just looks like a monitor.

8 Q. So, all of that information I'm pointing on Defense 25
9 would be all of that -- searchable information would be
10 located here?

11 A. Correct. There would be a hard drive that stores
12 visual data inside this, this device here.

13 Q. What's the next item?

14 A. An IBM ThinkPad laptop.

15 Q. And I'm showing you what's Defendant's 16.

16 A. Yes, which is pictured here.

17 Q. And that was a, a laptop that was recovered in the
18 master bedroom under the bed?

19 A. It was found but not collected.

20 Q. I mean, sorry, found but not -- photographed and found
21 but not collected?

22 A. Correct.

23 Q. Okay, and the next item?

24 A. There was a -- I would say it's a possible USB storage
25 device. There's a device listed here.

1 Q. Wait, and this is Defense Exhibit 8?

2 A. Yes, which we see the item pictured here. It's black
3 with a green trim around it. That looks familiar to me as
4 a -- as an external hard drive. I'm not sure of the make
5 and model, but that was not collected.

6 Q. What's the next item?

7 A. There was a Apple iPhone that was white in color.

8 Q. Wait. Oh, wait. I'm showing you Defendant's 9.

9 A. Yes. You can see it here in the center of the photo.
10 Not collected.

11 Q. Okay, and what's the last one?

12 A. The last one was a Samsung phone. It's a basic phone,
13 not a smart phone. It's pictured.

14 Q. Defendant's 17?

15 A. In Defendant's 17.

16 MR. FLORES: Objection, Your Honor. I don't believe
17 Defendant's 17 is in evidence yet.

18 MS. ZMROCZEK: It -- it's in evidence.

19 MR. FLORES: Is it?

20 (COUNSELORS CONFER.)

21 MR. FLORES: I'm sorry.

22 THE COURT: All right. Thank you.

23 BY MS. ZMROCZEK:

24 Q. Thank you. You may have -- you may -- if you could
25 take a seat?

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1 So, these items that were photographed but not
2 collected, is it much -- what, what is the information
3 that, that could have been gathered from this?

4 MR. FLORES: Objection, Your Honor. Calls for
5 speculation.

6 THE COURT: Sustained.

7 BY MS. ZMROCZEK:

8 Q. In your field and training as an expert and, and going
9 through the other reports and seeing what was previewed,
10 are these items that could have been previewed, too?

11 A. The items were previewed, according to Investigator
12 VanHouten. Some items were not. He indicated that a few
13 of these were damaged and could not be reviewed. However,
14 he did indicate that some of them were reviewed using a
15 software called FTK Imager, which is not a forensic
16 analysis software. It's a forensic imaging software. The
17 difference is you can't do -- you can't use that software
18 and do a deep analysis.

19 When he says he is doing a preview, he is essentially
20 going through the files and folders like you would a
21 computer on your, your own computer and just looking around
22 to see if there's anything of value. In that respect, you
23 would not have the opportunity to look at all the program
24 files, program data, the Internet artifacts, and all the
25 deleted content. Yes, it is possible to review some

1 deleted content using the FTK Imager software, but it's
2 going to be very limited. It's not going to have the --
3 you're not going to have the opportunity to use that and
4 extract anything that's, that's residing in the deleted
5 space of that device.

6 Q. Now, the items that you have highlighted on your chart
7 and the pictures we just saw, now were those items
8 previewed?

9 A. I'm sorry. Could you say that one more ---

10 Q. The items you had highlighted in orange on your chart
11 that ---

12 A. Oh.

13 Q. --- weren't collected, now were they previewed?

14 A. No. Investigator VanHouten did not receive these
15 items.

16 Q. As an expert, as you're reviewing all this, what was
17 the point of, of, of going through and, and trying to find
18 out this information? What were you looking for?

19 A. The overall purpose is to determine whether the
20 evidence has been reviewed to be -- with the objective in
21 mind to determine who is the one accessing the machine.
22 Who is -- and it is possible whether other machines besides
23 the ones that we, we heard about have also been used in the
24 same respect. We don't know that.

25 Q. That -- it's -- so, much -- so, have you been able to

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1 determine with the evidence reviewed who used these
2 machines?

3 A. No, and I believe Investigator VanHouten testified the
4 same.

5 MS. ZMROCZEK: Beg the court's indulgence.

6 (A PAUSE.)

7 MS. ZMROCZEK: No further questions, Your Honor.

8 Please answer any questions that the government may
9 have.

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

11 Mr. Attorney General.

12 MR. FLORES: Thank you, Your Honor. May it please the
13 court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION BY MR. FLORES:

16 Q. Good afternoon, Mr. Watkins.

17 A. Good afternoon.

18 Q. You were hired by the defense to take a look at the
19 forensic examinations that had already occurred. Is that
20 correct?

21 A. Yes, sir. That's correct.

22 Q. Mr. Watkins, did you produce a report for the forensic
23 examination you conducted in this case?

24 A. I did not. I, I did not have the opportunity to
25 investigate or to review the actual seized evidence.

1 Q. Do you have the skill and experience to forensically
2 analyze machines?

3 A. Absolutely.

4 Q. Was there an opportunity for you to do so?

5 A. Prior to my involvement, it was brought to my
6 attention that there was an examiner involved, but due to
7 the, due to the budget involved with hiring him, the
8 expense to the state, that it would cost for him to
9 continue his analysis. To my understanding from what he
10 did was in the amount of around \$8000, and it would have
11 been an additional expense or a higher expense to continue
12 that, which I believe -- in my opinion, I thought that was
13 a little outrageous.

14 Q. That's -- that is a bit outrageous.

15 A. It, it certainly is.

16 Q. So, Mr. Watkins, someone else took a look at these
17 machines prior to you?

18 A. That's correct.

19 Q. So, between Investigator VanHouten and you -- but you
20 didn't look at the machines themselves?

21 A. Yes, and I, I can't testify as to the extent of what
22 that examiner did. I, I don't know whether he did anything
23 additional or anything that, that I've discussed.

24 Q. So, he didn't give you any notes about his
25 examination?

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1 A. He did not give me anything.

2 Q. Is his name Lars Daniel?

3 A. That is his name.

4 Q. But he didn't give you anything to review ---

5 A. There was ---

6 Q. --- about what he did?

7 A. He did not give me anything. I was provided an
8 assessment from, from the attorney that just kind of
9 generalized what, what he had looked at, and to my
10 knowledge he examined the, the desktop computer.

11 Q. Okay. So, he, he definitely examined the desktop
12 computer?

13 A. That's, that's, that's what, that's what I was led to
14 believe, yes, because there was an assessment provided.

15 Q. He didn't issue a report for \$8000?

16 A. That's, that's kind of what I said.

17 Q. Okay. All right. So, you came on the case after Mr.
18 Daniel, and you inspected Investigator VanHouten's report.
19 Is that correct?

20 A. Yes, that is correct.

21 Q. But you do have the skill and expertise to conduct
22 these forensic examinations ---

23 A. Certainly. Yes.

24 Q. But you didn't do that in this case?

25 A. No, because of the expense involved.

1 Q. So concerning the user account information, you could
2 have looked at that information if you had conducted an
3 analysis. Is ---

4 A. That's, that's ---

5 Q. --- that right?

6 A. --- what I would have done, yes. I would, I would
7 have looked for all the things that I've discussed. I
8 would have, I would have done those things.

9 Q. Concerning the things that were found on the computer,
10 would your analysis have found the search terms R@yGold and
11 Lolita and PTHC that we've seen?

12 A. Yes. I'm, I'm not disputing what's actually in any of
13 the reports.

14 Q. Okay. Oh. So, what was already found by Investigator
15 VanHouten you definitely would have found as well?

16 A. That's correct.

17 Q. All right.

18 A. I would have had -- I, I use the same software. So, I
19 would have had the same capability.

20 Q. So, you would have seen the, the, the search terms and
21 the items pulled out of unallocated space. Is that
22 correct?

23 A. Yes, but again I would have done a little bit deeper
24 analysis just to -- with a focus on who was actually using
25 the machine.

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1 Q. But you also didn't do an examination to find out that
2 information?

3 A. That's correct, but neither did Investigator
4 VanHouten, according to his report.

5 Q. Mr. Watkins, you're familiar with BitTorrent?

6 A. I am, yes.

7 Q. And is that a filesharing program?

8 A. It's a -- BitTorrent is the name of a filesharing
9 program, and it's also the name of the filesharing network.

10 Q. An individual running BitTorrent on a home computer,
11 would that take up a lot of bandwidth a -- on a home
12 network?

13 A. Potentially. It depends on what items are being
14 downloaded with software and the amount of use that -- that
15 is being used to do such.

16 Q. So, if a person was downloading movies and music and
17 another user were trying to watch Netflix, would that
18 potentially affect the Netflix connection?

19 A. It certainly could. Now, I, I am not aware of what
20 Internet speed package that they were using. So, I don't
21 know. I, I, I would say yes, but I, I would say it depends
22 on the volume of, of, of traffic in that -- using that
23 software.

24 Q. So, an individual who is downloading a lot of movies
25 and music, if they used up most of the Internet package

1 that a family had would cause the rest of the family to
2 experience Internet connectivity issues. Is that correct?

3 A. I would say that's a reasonable argument to make.

4 Q. Okay.

5 MR. FLORES: If I might approach the witness, Your
6 Honor?

7 THE COURT: Yes, sir.

8 BY MR. FLORES:

9 Q. I'm going to hand you Defendant's Exhibit 17. This
10 is a Samsung phone which has been identified as coming from
11 Mr. Simmons's room. Is that correct?

12 A. Yes, that's correct.

13 Q. Is it possible to run a files sharing software on that
14 phone?

15 A. It's not. I, I had it listed on my -- the list that I
16 showed y'all earlier because it's an electronic device and
17 it just met the standards for electronic items I collected.

18 Q. But you can't run BitTorrent on that ---

19 A. Not, not ---

20 Q. --- particular phone?

21 A. This would, this would be what we would call a basic
22 cell phone, not a smart phone. It's -- it would not be
23 capable of doing all that fancy Internet...

24 Q. Now, if I followed your testimony correctly, FTK can't
25 be used for a deep analysis but can be used for finding

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1 pictures or anything that's been deleted ---

2 A. There ---

3 Q. --- as such?

4 A. There is a difference between FTK and FTK Imager. FTK
5 stands for Forensic Toolkit. It is the software that we
6 would utilize to actually do our, our analysis or
7 examination. The FTK Imager, not to be confused with FTK,
8 is what you use prior to examining your evidence. FTK
9 Imager is what we would use to actually acquire our
10 forensic image bit by bit before processing it in FTK.

11 Q. And according to Mr. VanHouten's testimony, he used at
12 least some software to preview those other items. Isn't
13 that correct?

14 A. And that -- yes, sir, and that was the FTK Imager,
15 which he indicated he was basically looking at it, at the
16 actual file system like you would see on your computer
17 where you can go to your user profile and look at your
18 files. And that's what he indicated what -- is what he was
19 doing during his preview process.

20 Q. And it's true the only location that child pornography
21 was found was in the desktop and the external hard drive
22 found in Michael's room. Isn't that correct?

23 A. From Investigator VanHouten's testimony, that's the
24 only device that he examined extensively enough to find
25 that. So, yes, those are the only two items in that

1 evidence that we know has that content.

2 Q. And the Toshiba laptop that was located in Michael's
3 room, that was not examined. Is that right?

4 A. Correct. Yes.

5 Q. Do you have any notes as to why that was unable to be
6 examined?

7 A. I did speak with Investigator VanHouten a couple of
8 weeks ago. I believe it was the 29th of August, and we got
9 a chance to speak with him about his, his examination, and
10 he had mentioned this, this hard drive. It's also
11 mentioned in his report, and I believe the way it was
12 worded -- if you don't mind me looking in my notes?

13 Q. Please.

14 A. Okay. Okay, he had written in his report that the,
15 the Toshiba laptop was damaged. It had a damaged monitor
16 and the hard drive, the internal hard drive had been
17 damaged. And I had asked him, you know, was the -- was
18 there any indication that laptop had been opened, tampered
19 with. He said no. It did not appear. He told me that it
20 had not been opened, and the hard drive itself had the --
21 when you check a hard drive and you want to take it apart
22 when you want to open it, there's these little seals over
23 the screws that would have to be removed or punctured, and
24 he said that those were intact.

25 He took apart the hard drive himself and found that

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1 the platters were damaged. Now, that could be explained by
2 -- hard drive platters are fragile. If you drop a hard
3 drive hard enough, it's going to shatter. So, in that
4 regard you would not be able to do anything with the hard
5 drive because it's damaged beyond repair. There's no way
6 to retrieve that data.

7 However, what VanHouten could have done with this
8 laptop is he could have attempted to power it on and
9 examine the BIOS with the -- I'm sorry, the BIOS, which is
10 the system configuration settings which he mentioned he did
11 with the HP computer, and he could have at least, at the
12 very least, examined the time indicated on the laptop and
13 determine -- there is a system log and BIOS settings. And
14 you can review the last time it was powered on, the last
15 time that the battery was recording low state, the last
16 time the battery indicated full state and other, other
17 indicators with a timestamp. And with that information --
18 I know it's not much. That could have at least been
19 compared to other items in evidence to at least determine
20 whether or not it could be ruled out as having anything to
21 do with any of the other dates and times recorded in the
22 other evidence or other histories that were found.

23 Q. Did you check the BIOS?

24 A. I did not have a chance to do that, no.

25 MR. FLORES: Beg the court's indulgence.

1 THE COURT: Yes, sir.

2 (A PAUSE.)

3 BY MR. FLORES:

4 Q. Just a couple more questions. First, just going back
5 to the FTK Imager, had there been child photography on the
6 other devices non-deleted, Investigator VanHouten would
7 have seen that with the FTK Imager, wouldn't he have?

8 A. If the items he was previewing were undeleted and in a
9 file folder that he previewed during his preview, such as
10 the user file searcher, that is possible. However, if the
11 -- if there were any such files that had been accessed on
12 that machine and deleted, doing the FTK Imager preview
13 would not have been sufficient to determine that.

14 MR. FLORES: Beg the court's indulgence.

15 THE COURT: Yes, sir.

16 (A PAUSE.)

17 MR. FLORES: Your Honor, that's all the questions we
18 have for Mr. Watkins.

19 THE COURT: Thank you.

20 Any redirect?

21 MS. ZMROCZEK: No further questions.

22 THE COURT: Thank you very much, Mr. Watkins. You may
23 step down.

24 (THE WITNESS EXITS THE STAND.)

25 MS. ZMROCZEK: Your Honor, Mr. Watkins is under

1 subpoena. May he be excused?

2 MR. FLORES: We have no objection to him being
3 released, Your Honor.

4 THE COURT: How long is your next witness?

5 MR. BANK: Your Honor our next witness is the -- Mr.
6 Simmons.

7 THE COURT: Why don't we take about a ten-minute
8 recess.

9 MR. BANK: Yes, sir.

10 THE COURT: All right, Mr. Foreman, ladies and
11 gentlemen of the jury, please step to your jury room. Do
12 not discuss the case.

13 (THE JURY EXITS AT 3:24 P.M.)

14 THE COURT: Mr. Banks, Mr. Flores.

15 (OFF-THE-RECORD BENCH CONFERENCE.)

16 THE COURT: We'll be in recess for ten minutes.

17 (OFF THE RECORD.)

18 THE COURT: All right, anything from the defense, Mr.
19 Banks?

20 MR. BANK: No, sir.

21 THE COURT: The state?

22 MR. FLORES: No, sir, Your Honor.

23 (THE JURY ENTERS AT 3:43 P.M.)

24 THE COURT: Welcome back, ladies and gentlemen. We'll
25 continue with the trial of the case by the presentation of

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1 evidence and testimony by the defense. Please continue to
2 give the parties your complete and undivided attention as
3 you have done throughout the trial of the case.

4 Mr. Banks.

5 MR. BANK: Thank you, Your Honor. The defense calls
6 Mr. Simmons.

7 THE COURT: Mr. Simmons, if you'd come around and be
8 sworn for us, please.

9 MICHAEL SCOTT SIMMONS, BEING DULY
10 SWORN, TESTIFIES AS FOLLOWS:

11 CLERK OF COURT: Please have a seat. State your full
12 name for the record.

13 WITNESS: My name is Michael Scott Simmons.

14 DIRECT EXAMINATION BY MR. BANK:

15 Q. Michael, I know you just did, but would you introduce
16 yourself to the jury?

17 A. My name is Michael Scott Simmons.

18 Q. And speak up a little bit, okay?

19 A. Yes, sir.

20 Q. Are you a little nervous?

21 A. Very nervous.

22 Q. Michael, are you originally from South Carolina?

23 A. No, sir. I'm from Nashville, Tennessee.

24 Q. What was -- where did you go to high school?

25 A. I graduated high school in Alabama actually, a small

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1 school called Alma Bryant.

2 Q. Okay.

3 COURT REPORTER: Speak up, please.

4 A. I graduated high school in Alabama, a small school
5 called Alma Bryant High School.

6 Q. Okay. So, you moved from Tennessee to Alabama as a
7 child?

8 A. Yes, sir.

9 Q. Now, what was your first career after high school?

10 A. I joined the Army in 2006.

11 Q. And what was your job with the military?

12 A. I was a military police officer.

13 Q. And how long was your contract with the military?

14 A. It was a five-year contract, five years.

15 Q. Can you tell the jury some of the different places you
16 were stationed or any overseas duties that you had?

17 A. I was stationed in Fort Bragg, North Carolina. I was
18 stationed at Fort Jackson here in Columbia, which
19 ultimately landed me here, and I did one tour in Iraq for
20 fifteen months in 2007, 2008.

21 Q. Now, when and how were you discharged from the
22 military?

23 A. I was discharged in 2011; it was just an honorable
24 discharge after completion of my contract.

25 Q. You said that was honorable discharge?

1 A. Yes, sir, honorable.

2 Q. Now, what was your career after the military?

3 A. After I got out of the military, I initially, I went
4 to work for a contracting company that was in charge on
5 Fort Jackson for checking identification at the gates. If
6 you've ever been to Fort Jackson, they have the, the gate
7 guards and they check your identification. I went there
8 originally. Then I -- for about a year and a half, and
9 then I got hired at Time-Warner Cable.

10 Q. Okay. What was your job at Time-Warner Cable?

11 A. I was an installer, field, a field-tech installer.

12 Q. A field-tech installer?

13 A. Yes, sir.

14 Q. Does -- were you actually programming computers, or
15 were you, like, drilling holes in stuff?

16 A. I was, I was the cable guy. So, I would come to your
17 house, and I would run the cables on your house if need be,
18 or install the wall outlets if need be. Stuff of that
19 nature.

20 Q. Okay. Now, what happened with your job at Time-Warner
21 Cable?

22 A. As a result of the arrest that occurred in July 2014,
23 I was terminated.

24 Q. And are you speaking about the arrest for this case?

25 A. Yes, sir.

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1 Q. Now, let's stick with that a moment for a second.

2 After your arrest, were you allowed to stay at the Doirons
3 anymore?

4 A. No, sir. I moved out the day the search warrant was
5 executed.

6 Q. Did you broadcast your information about your arrest
7 publicly or anything like that?

8 A. No, sir.

9 Q. Anything else change after your arrest?

10 A. I gained a lot of weight. You know, got fat.

11 Q. Okay.

12 A. Stress.

13 Q. Was that a picture of you we saw earlier?

14 A. Yes.

15 Q. Now, what do you currently do?

16 A. I am currently unemployed. I utilize my G.I. Bill
17 benefits from the Army to go to school full-time. So, I
18 do that at Midlands Tech.

19 Q. And what do you study at Midlands Tech?

20 A. Associate of Arts degree.

21 Q. Associate of Arts degree?

22 A. Yes.

23 Q. You have any children, Mr. Simmons?

24 A. Yes, sir.

25 Q. How many?

1 A. I have two. I have an eight-year-old daughter and a
2 five-year-old son who turns six next month.

3 Q. Now, how did you know the Doirons, and I, I -- we've
4 all been mispronouncing it. How do you pronounce their
5 last name?

6 A. Doirons.

7 Q. Doirons?

8 A. Yes.

9 Q. How did you know the Doirons?

10 A. I moved next door to them after transferring from Fort
11 Bragg to Fort Jackson, and we were neighbors.

12 Q. Okay, and at some point, did you move in with them?

13 A. Yes, sir.

14 Q. Do you remember when that was?

15 A. 2013 in the spring.

16 Q. Spring of 2013. Do you remember the exact date?

17 A. No. No, I don't.

18 Q. Now, what were the living arrangements at the
19 household?

20 A. I lived upstairs in the room that's been displayed.
21 It was a -- just a -- just one room on a hallway with two
22 other rooms.

23 Q. Okay. Who, who all stayed in the house?

24 A. At that time Ron and Wendy and Kyle, and they had two
25 small children.

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1 Q. Okay. How many bedrooms were there total?

2 A. Four bedrooms.

3 Q. And they were all occupied?

4 A. Yes, sir. .

5 Q. Now, we've talked about a lot computers the last
6 couple of days, and you've been sitting in the courtroom
7 the whole time, right?

8 A. Uh-huh. Yes, sir. Yes, sir.

9 Q. Now, the items we've talked about in your room are --
10 have been noted as a desktop, an external hard drive,
11 iPhone, and a laptop. Is that right?

12 A. Yes. That's correct.

13 Q. Are all those items yours?

14 A. Yes.

15 Q. Okay. When did you purchase all those items?

16 A. The iPhone was probably the newest purchase at the
17 time. The laptop was purchased at Fort Bragg before I
18 moved here. I can't tell you when exactly, and the desktop
19 is the oldest of all the, the items. It's seven, six,
20 seven years old. I don't know when.

21 Q. And why did you, why did you purchase these items?

22 A. No, no particular reason. Just upgrades. Just new
23 devices.

24 Q. Now, what physical locations, to the best of your
25 recollection, what different physical locations have each

1 of these items been at? -----

2 A. Throughout the entire time?

3 Q. Since the time you owned them, yes, sir.

4 A. Multiple. I mean, I've had them for years, in excess
5 of multiple -- I've had the computer for six years or seven
6 years and the laptop for five plus. I've had the devices
7 for quite a while. So, they've been in -- I've had two
8 apartments, a house. They've been everywhere.

9 Q. Okay. Have they ever been in storage?

10 A. Yes, at one point in time.

11 Q. And can you tell the jury an exact number of how many
12 people had access to any of these devices over the years?

13 A. My family members, extended family, friends, multiple
14 people, anyone that's ever been visited our house. Well,
15 my computer, my laptop exactly but not my phone or anything
16 like that.

17 Q. Okay. Now, specifically let me start with the -- I
18 want to go through each of these items, okay?

19 A. Uh-huh.

20 Q. Let's start first -- well, I want to go through three
21 of these items anyway. Let's start first with the laptop.
22 Were you aware that there was any damage with that laptop?

23 A. Yes.

24 Q. Can you tell the jury a bit about what you know about
25 how and when it may have been damaged?

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1 A. The damage to the laptop was a cracked screen. It was
2 -- the, the LCD on the screen was cracked. It was cracked
3 as a result of moving from Fort Bragg to Fort Jackson
4 several years ago, and I just retained the laptop in hopes
5 of repairing it one day, taking it to, like, Phone Medic or
6 something, have them fix the screen because to the extent
7 of my knowledge at that time, that was the only damage that
8 -- was just the screen.

9 Q. Okay. Did you have any personal items on it?

10 A. Pictures of my family.

11 Q. Were you aware until we got Mr. -- Investigator
12 VanHouten's report that there was any damage to the actual
13 hard drive?

14 A. No. I thought it was just the screen.

15 Q. And where did you store the laptop?

16 A. It was in a storage closet. Well, when I moved,
17 storage closet outside my apartment complex for several
18 months.

19 Q. Well, let's -- where did you keep it when you were
20 staying at the Doirons?

21 A. The Doirons? It was not operable. So, it was
22 actually under my bed.

23 Q. Okay. Now, let's talk for a second about the external
24 hard drive. What types of things did you use the extra
25 hard drive for?

1 A. I originally got it just to store, you know, your
2 basic things like pictures. I had a bunch of military
3 documents on it, my D2 -- my DD214, stuff like that.

4 Q. Okay, and where did you keep that in, in the room that
5 we've been talking about?

6 A. In my closet usually. I had -- I hadn't used it in a
7 long time. It was in my closet.

8 Q. Was that something that was typically always hooked up
9 to the desktop or just hooked up whenever you needed it to
10 be?

11 A. Whenever it needed to be.

12 Q. Okay. Now, let's move finally on to the desktop.
13 Could you tell the jury a little bit about whether you
14 remember there ever being a password on the computer or
15 not?

16 A. Like I said, the desktop was very old. It had had
17 passwords on it before. When I was originally interviewed
18 by police officer Narewski, he had asked me if it was
19 password-protected, and at that time I didn't know if it
20 was or not. So, I was just trying to offer him assistance
21 by giving him my universal password at the time, which
22 actually unlocked many things other than just my computer.
23 So, I said I don't know, but if it does have a password,
24 this would be it, but...

25 Q. And is that what you meant by universal password?

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1 A. Yes. It was actually my password for everything.

2 Q. Well, what are some other examples that it ---

3 A. Facebook, email.

4 Q. Okay. Now in speaking with law enforcement, were you
5 attempting to be cooperative with law enforcement?

6 A. Yes.

7 Q. Did you require the presence of a lawyer while you
8 were there?

9 A. No.

10 Q. Did you require the, the need for a recording device?

11 A. No.

12 Q. You voluntarily went to go speak with them?

13 A. Yes.

14 Q. And to your knowledge, were you the only person ever
15 asked to provide a statement?

16 A. Yes.

17 Q. Now, do you remember on the desktop whether there were
18 ever any usernames?

19 A. Once again, the computer was really old. Like five,
20 six-plus years. Throughout the years, it had several names
21 but typically it was just Simmons.

22 Q. Okay. Now, around this time at the Whixley address,
23 do you remember anybody specifically ever having access to
24 this desktop?

25 A. My desktop was in my room, which case I allowed other

1 people to use it in the house, yes.

2 Q. Was there anybody that used it more than others?

3 A. Kyle did. .

4 Q. Okay. In what way that are you are aware of did he
5 use your computer?

6 A. Well, he would use it to view videos, YouTube, things
7 related to specifically paintball or Airsoft; he was really
8 into that kind of stuff. He would also use it to download
9 movies like we've talked about as far as Blu-rays such as
10 *The Avengers* or *Superman* or something like that.

11 Q. I don't mean to interrupt you, but when you say
12 download movies like that, are we speaking about torrents?

13 A. Yes.

14 Q. Okay. Any other things he used it for?

15 A. And the gaming. He played games on it.

16 Q. Okay. Was there any reason that he would have been
17 using your computer?

18 A. He didn't have a computer; he didn't have access to a
19 computer.

20 Q. Okay.

21 A. At, at, at their -- at that house.

22 Q. Were there any restrictions on his use by anybody in
23 the house, either you or parents?

24 A. Say that one more time. I'm sorry.

25 Q. Were there any restrictions on his use by -- of any

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1 computer device by either you or his parents?

2 A. I typically -- no, I, I didn't have any restrictions.
3 His parents did not want him to have, to have any
4 unauthorized access basically. He wasn't allowed to have a
5 TV in his room or a gaming system. So, if he wanted access
6 to a computer, he's have to go ask them and depending on
7 what it was, he'd have to get permission and that kind of
8 thing.

9 Q. Did he sometimes use the computer with you knowing but
10 his parents not knowing?

11 A. Yes.

12 Q. And were you always in the room with him while he was
13 using it?

14 A. No.

15 Q. Okay, then explain that to me.

16 A. There were times when he wanted just to look up stuff.
17 Like I said, YouTube videos. If I'm not interested, I
18 would just walk away. I would go downstairs and, you know,
19 eat dinner or whatever the case may be. I mean, I didn't
20 hover over his shoulder all the time.

21 Q. Okay, and was Kyle -- and we've already heard a little
22 bit about this -- was he ever allowed to stay at home alone
23 without either you or the parents there?

24 A. Yes.

25 Q. And would you have any idea if he used your computer

1 during any of those times when neither you or the parents
2 were there?

3 A. No. No, I would not.

4 Q. And why wouldn't you?

5 A. It's just something I didn't really look out. I don't
6 know how I would -- how would I find that out?

7 Q. Okay. Now, were there any locks or anything for your
8 doors?

9 A. No, sir.

10 Q. And is the Whixley address -- the Whixley address is
11 not the only household this computer has ever been in,
12 right?

13 A. That's correct.

14 Q. Are the people that live at the Whixley address the
15 only people that have ever had access to it?

16 A. No.

17 Q. Now, let me ask you this. We've heard a couple other
18 people be asked this question. Could you explain to the
19 jury what your general knowledge is in computers, your,
20 your kind of abilities or capabilities with computers?

21 A. I believe I'm pretty average for my, for my age. I'm
22 average for my age.

23 Q. Okay, and what do you, what you mean by that? How do
24 you -- what do you base that opinion on?

25 A. Well, I'm twenty-nine years old and, you know, I grew

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1 up on Facebook and, you know, Napster and that kind of
2 thing. So, browsing, you know. I'm in college, so I'm
3 also familiar with Microsoft Word, Microsoft Point.

4 Q. If you had a problem, for instance, with a computer,
5 some kind of virus or any kind of other problem, what would
6 you do?

7 A. I would -- you said a virus?

8 Q. Just any general problem, how would you approach a
9 problem on -- if you'd had a problem with your computer?

10 A. Probably just do, like, a Google search to try to
11 troubleshoot it myself.

12 Q. Okay.

13 A. If I was -- if I couldn't, you know, figure it out, I
14 would just take it to, like, a laptop repair place or
15 something.

16 Q. Okay. So, you're not somebody that can, you know, fix
17 every problem with a computer?

18 A. No.

19 Q. Now.

20 MR. BANK: Your Honor, may I approach the witness?

21 THE COURT: Yes, sir.

22 BY MR. BANK:

23 Q. Take a look at this picture.

24 A. Yes.

25 Q. You recognize whose room that is?

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1 A. Yes. This is my room.

2 Q. Okay.

3 MR. BANK: Your Honor, the defense would ask to admit
4 Defense Exhibit 38 into evidence.

5 MR. FLORES: Mr. Flores?

6 MR. FLORES: No objection, Your Honor.

7 THE COURT: Defense 38 is in evidence without
8 objection.

9 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
10 EXHIBIT NUMBER 38.)

11 BY MR. BANK:

12 Q. All right, Michael, we're almost done here, okay? I'm
13 going to wrap up with a few questions, okay, and I know
14 that you've been kind of talking to me, and this is kind of
15 awkward to talk across the room. I want you to look at the
16 jury and answer a few of these questions, okay?

17 A. Uh-huh.

18 Q. Have you ever seen the videos that have been played in
19 this courtroom on that screen?

20 A. I've never seen the videos that have played in this
21 court until they showed them yesterday or today, those
22 videos. The first time I've ever see those.

23 Q. Have you typed in any of the search terms that we've
24 heard about and seen on the screen over the last couple of
25 days?

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1 A. I have not. I have not typed in any of those search
2 terms.

3 Q. Have you ever intentionally tried to wipe your
4 computer or make it so that forensic analysis couldn't be
5 done on your computer?

6 A. No, I have not.

7 Q. Michael, do you have any interest in child
8 pornography?

9 A. Absolutely not.

10 Q. Did you have any knowledge of these videos being on
11 that desktop or hard drive?

12 A. No, sir.

13 Q. Did you have any knowledge of these videos being
14 searched for on your computer or hard drive?

15 A. No, sir.

16 Q. And did you have any knowledge of these videos being
17 shared on November 22nd of 2013?

18 A. No, sir.

19 MR. BANK: Thank you. That's all the questions I
20 have. Please answer any questions for Mr. Flores.

21 THE COURT: Thank you, Mr. Banks.

22 Mr. Flores.

23 MR. FLORES: Thank you, Your Honor.

24 MR. BANK: Your Honor, may I approach the witness with
25 some water?

1 THE COURT: Yes, sir.

2 MR. BANK: Thank you.

3 CROSS-EXAMINATION BY MR. FLORES:

4 Q. Good afternoon, Mr. Simmons. Don't have too many
5 questions for you. When you spoke with Investigator
6 Narewski and Investigator Merrill, did you tell them that
7 Kyle used your computer often?

8 A. I don't recall. I'd have to review the statement to
9 recollect.

10 MR. FLORES: If I might approach, Your Honor?

11 Q. I hand you what's marked Stat's Exhibit 3. If you
12 would review that.

13 (A PAUSE.)

14 A. All right, what was the question again, sir?

15 Q. Yes. I, I asked if -- when Investigator Narewski and
16 Investigator Merrill came to investigate you whether or not
17 you told them that Kyle had used your computer often.

18 A. No, I did not mention Kyle's name at all in the
19 statement.

20 Q. Not in your statement, and you did not in any other
21 questions that they asked you that day?

22 A. No, I did not.

23 Q. But you did tell them that you knew how to use
24 BitTorrent. Isn't that correct?

25 A. I told them I was familiar with BitTorrent, yes.

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1 Q. And that you used it not to download illegal videos
2 but to download music and Blu-ray movies. Is that correct?

3 A. Yes.

4 Q. Did you pay for those Blu-ray movies?

5 A. No. They were pirated.

6 MR. FLORES: Beg the court's indulgence.

7 THE COURT: Yes, sir.

8 (A PAUSE.)

9 BY MR. FLORES:

10 Q. When you were living at the home, you moved into
11 Whixley Lane in the spring of 2013. Isn't that right?

12 A. Yes, spring 2013.

13 Q. And the Doirons said it was late April 2013. Do you
14 recall if it was late April? Do you have a recollection?

15 A. No, I don't recall. I just know it was early 2013.

16 Q. And how old was Kyle at that time?

17 A. I believe he testified he was nineteen yesterday, so
18 I'm assuming he was seventeen.

19 Q. Okay, and when you were living at the home, he was
20 attending high school at that time?

21 A. Yes.

22 Q. Do you recall?

23 (A PAUSE.)

24 MR. FLORES: Your Honor, that's all the questions we
25 have for Mr. Simmons.

1 THE COURT: Redirect?

2 MR. BANK: One question, Your Honor.

3 REDIRECT EXAMINATION BY MR. BANK:

4 Q. When the police questioned you, did they ask you if
5 Kyle used the computer?

6 A. No, sir. They asked me really very -- the simple
7 questions you asked me earlier and also about the password
8 on the computer, which I told them that I don't know if
9 there is a password, but if there is, it would be this
10 password.

11 MR. BANK: Thank you.

12 That's all the questions, Your Honor.

13 THE COURT: Recross?

14 MR. FLORES: None, Your Honor.

15 THE COURT: Thank you. Thank you, Mr. Simmons. You
16 may step down.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: All right, Mr. Banks, you may call your
19 next witness.

20 MR. BANK: Your Honor, at this point the defense
21 rests.

22 THE COURT: Thank you.

23 Any evidence or testimony in reply from the state?

24 MR. FLORES: None, Your Honor.

25 THE COURT: Thank you. Thank you very much.

1 six counts and renew all my previous pretrial and trial and
2 evidentiary rulings.

3 Any requests to charge specifically, Mr. Banks?

4 MR. BANK: I believe so. I believe Ms. Zmroczek may
5 have been working on it actually.

6 THE COURT: All right. Yes, ma'am.

7 MS. ZMROCZEK: Your Honor, we have several requests.
8 They're in Word format. We were going to email them to
9 your clerk ---

10 THE COURT: All right.

11 MS. ZMROCZEK: --- in about five minutes.

12 THE COURT: All right.

13 MS. ZMROCZEK: I just wanted to meet with Ms. Goode.

14 The, the only one I think that's unusual which is not
15 part of your common charge would be a third-party guilt
16 charge, but I guess ---

17 THE COURT: I'm not familiar with a third-party guilt
18 charge on the cases I'm familiar with. Is there one?

19 MS. ZMROCZEK: We just had one charged last week by
20 Judge Hocker.

21 THE COURT: I'm not Judge Hocker.

22 MS. ZMROCZEK: I understand. So...

23 THE COURT: Yes, ma'am.

24 MS. ZMROCZEK: So -- but to answer your question is
25 there one, I would use the one that Judge Hocker provided

1 us. So, that's, that's where it comes from.

2 THE COURT: What case did it come from?

3 MS. ZMROCZEK: Your Honor, I believe his law clerk
4 cited -- I would -- if, if I may so that I'm not ---

5 THE COURT: Yes, ma'am.

6 MS. ZMROCZEK: --- misquoting him, if I can get that
7 to you? She's the one who found it and did that. So --
8 but I will include that with the email that I send.

9 THE COURT: I'm always taken that, that type of
10 evidence similar to testimony of flight: that it can be
11 argued but it's not subject to a charge. And, of course,
12 then again I'm more familiar with the cases, quite frankly,
13 where it's an issue of whether third-party guilt is
14 admissible or not as opposed to whether or not it's a, it's
15 a request to charge, but I'll, I'll look at that, and you,
16 you've simultaneously, I take it, emailed them to Mr.
17 Flores?

18 MS. ZMROCZEK: Absolutely.

19 THE COURT: All right. All right. Thank you. Thank
20 you very much.

21 MR. FLORES: Your Honor, we, we do have a proposed
22 jury charge on the second degree sexual exploitation that
23 just tracks that statute. I think it's from the bench
24 book. We would offer it.

25 THE COURT: All right. Thank you. Thank you very

1 much, and this is a specifically out of the statute?

2 MR. FLORES: Yes, sir.

3 THE COURT: All right.

4 MR. FLORES: I understand -- we had the trial last
5 week in which you crafted it to the circumstance of that
6 case, and I envision that, that you'll do the same in this
7 case.

8 THE COURT: I don't remember last week, Mr. Flores.

9 MR. FLORES: It's hard for me to remember, Judge.
10 It's been a long time.

11 THE COURT: All right, y'all, y'all can look at that.
12 Y'all have any objection, just let me know. I generally
13 just track the statute on ---

14 MS. ZMROCZEK: Thank you.

15 THE COURT: --- what is it, 16-15-404, what have you.

16 MR. FLORES: Yes, Your Honor.

17 MS. ZMROCZEK: 405, yes, sir.

18 THE COURT: All right. Thank you. Thank you.
19 Nothing, nothing further then?

20 MR. FLORES: Nothing from the state, Your Honor.

21 THE COURT: And nothing further from the defense?

22 MS. ZMROCZEK: Nothing further.

23 MR. BANK: No, sir.

24 THE COURT: All right. Thank you. Thank you very
25 much. 9:30.

1 (WHEREUPON, THE CASE IS AT EASE.)

2 FRIDAY, SEPTEMBER 9, 2016

3 (COURT RESUMES AT 9:43 A.M.)

4 THE COURT: All right, as to the charge on third-party
5 guilt, I decline to charge that. I think that is a charge
6 on the facts. I know of no South Carolina case that I'm
7 aware of that identifies third-party guilt as an
8 appropriate charge. So, I would decline to charge
9 third-party guilt. It certainly can be argued. I compare
10 that again, as I said yesterday, to evidence of flight
11 which can, of course, be argued, but it's not appropriate
12 when charging the jury.

13 Anything from the state before we bring in our jury,
14 Mr. Flores?

15 MR. FLORES: Your Honor, I've, I've had the
16 opportunity to review the defense's proposed jury
17 instructions, and having tried cases with you here last
18 week, I would defer to Your Honor on the jury charges for
19 this case.

20 If the -- if Your Honor is inclined to charge some of
21 the defendant's requested language, there is a paragraph
22 located on page 10 of their jury charges concerning police
23 officers. It's at the very bottom.

24 THE COURT: Perhaps -- on page 10?

25 MR. FLORES: Yeah, at the other very bottom, Your

1 MR. BANK: *Fixing a Hole*, that's track five of the
2 Beatles's *Lonely Hearts Club Band*, and the only thing I'm a
3 little disappointed about is Investigator Murphy isn't here
4 to hear that reference as much as he seemed to like that
5 album. But regardless of how much he enjoyed it, I think
6 it's a perfect example of exactly what's going on in this
7 case.

8 The attorney general, the last four days, has been
9 trying to fix the hole they dug themselves in. This
10 investigation started in Berkeley County with a computer
11 program that found partial files through ICAC, and they
12 weren't going to stop regardless of all the problems that
13 came along the way before they arrested somebody. Folks,
14 all these problems, don't let them try to dig themselves
15 out of that hole.

16 Now, Berkeley County is a great place to start because
17 that's where the case starts. We have Investigator Murphy,
18 who I just mentioned. He uses a program to try to find
19 torrents on the Internet. He finds a file with a hash
20 value, a number that's associated with child porn. Within
21 it, six partial videos. You heard him testify that there
22 was an association with R@yGold, right? That's the R and
23 then amp sign, the Y and Gold, and what we learned from
24 most of the law enforcement officers is that as soon as
25 they see R@yGold, they immediately think child porn because

1 that's the association.

2 Now, we heard Investigator Murphy say that the IP
3 address that he was getting the information from had -- I
4 believe it's 108 of 622 pieces, meaning that the IP address
5 that turned out to be in Columbia only had about 1/6 of all
6 the files to begin with, right? Now, Investigator Murphy
7 used these files and without being able to see the entire
8 files, without being able to tell us what race the people
9 are involved, without being a pediatrician, without having
10 any training in this, he tells us not only are these
11 minors, but that he can tell us the age.

12 Now, let's get something out of the way real quick,
13 all right, the elephant in the room. We've been talking
14 about pornography for four days, right? Much less child
15 pornography. Pornography is an uncomfortable thing to talk
16 about, to think about, to see in a public courtroom while
17 you're sitting with strangers in a situation that's already
18 uncomfortable in the first place since it's your first time
19 probably y'all being jurors. It's a hard thing to deal
20 with. It's an uncomfortable thing to talk about, but we
21 have to, and we have to because it's important to Michael.
22 It's important to this case. It's important to know where
23 we're going to end up. We have to be able to talk about
24 it. So, let's talk about it.

25 We have these six videos that Mr. Simmons is charged

1 with knowingly having and sharing, right, six videos. We
2 saw those two days ago very briefly on the screen, and then
3 we saw a different set of videos yesterday, right? We saw
4 eight videos that Mr. Simmons is not charged with, right?

5 Let me not mince words; let me be clear right now.
6 What you saw yesterday, those eight videos, that was child
7 porn, most of it if not all of it. It was disgusting; it
8 was disturbing. It was child porn. I'm not going to say
9 that that wasn't, but there's a couple of things about
10 that.

11 Number one, there's a reason he's not charged with
12 those eight videos, and I'll get to that when we talk a
13 little bit about Investigator VanHouten and Chris Watkins,
14 who you heard from. But the second thing about those eight
15 videos is that they played them quite intentionally for you
16 even though he's not charged with them, and why do you
17 think that was? It was to get a reaction, a very common
18 human reaction of oh my god, that's disgusting. Don't let
19 it be that easy, right?

20 Let's talk for a second about the six videos he is
21 charged with knowing and sharing on November 22nd. I'm no
22 expert. You've got to find some way to figure out beyond a
23 reasonable doubt whether the people on those videos were
24 under the age of eighteen. Whether they're sixteen,
25 eighteen, twenty, fifteen, I don't know. I do know that

1 they did seem more age appropriate for a teenager.

2 Now, Investigator Murphy said one thing at the end
3 that was very consistent again throughout the case, I think
4 very important to the case, and that was while he said I
5 can pinpoint an IP address, I can't tell you where videos
6 are, I can't tell you where they were originally
7 downloaded, and I can't tell you who downloaded them, and
8 what device they came from. We hear that time and time and
9 time again.

10 So, what's the next step in the process? Well, we
11 have the search warrant and the search warrant -- for the
12 life of me I haven't figured out -- is done seven months
13 later, right? Investigator Murphy kind of holds on to the
14 information for whatever reason for about three months.
15 Contacts Time-Warner Cable, who immediately responds and
16 tell him this is an IP address in Columbia, and then
17 there's another four-month gap until July until anybody
18 bothers to go do a search warrant. And the only excuses
19 that I heard were I don't know why it took so long, and I
20 believe that one of the law enforcement officers said it
21 wasn't a high priority.

22 We saw Special Agent Merrill on the stand, right? She
23 was in charge of writing down the evidence that was taken
24 in the search warrant. She's the only person that was on
25 the stand that was actually inside the home during the

1 search warrant, and all I heard from her was I don't
2 remember what was taken. It was two years ago; I'm really
3 not sure.

4 Folks, this is the person in charge of telling us what
5 is taken and what is not taken. How can we know what is
6 taken or not taken? I don't know. It was two years ago.
7 I wasn't in charge. Well, we know, we know several items
8 that weren't taken, and we've been discussing them all
9 week.

10 The first item that we know isn't taken is an iPad in
11 the living room, all right, and we heard something about a
12 child's iPad, right, that wasn't taken because it's used
13 for autism. That's that iPad way up top, the child's
14 device that looks like it's on the table. The iPad that
15 we've been talking about is that big one right in front of
16 it. Not taken. We have an IBM computer both here and then
17 taken out. We then have an ASUS all-in-one computer, a
18 touchscreen computer with a hard drive. None of them not,
19 not, not taken. We have in Kyle's room an iPhone which he
20 says he's never had -- I don't have an iPhone -- sitting in
21 his room. Not taken, and then we have another device. We
22 were never -- that green thing right up there at that other
23 table. Go back for a second. That green line there where
24 you see the playing cards on the middle table on the left
25 side, right in the middle, that green item there. We don't

1 know if it's an iPhone.— It looks like some type of
2 electronic device, according to Mr. Watkins. Not taken.

3 This is just a mention -- things that were in the
4 house that we weren't fortunate enough to have pictures of.
5 This doesn't include any school computers. It certainly
6 doesn't include any computers from Kyle's mom's house,
7 right? And, folks, that's not -- and I tried to make this
8 as clear as I could when I was speaking with Investigator
9 VanHouten -- that's not Investigator VanHouten's fault.
10 You heard him. He's there to receive the items; he can
11 only receive what's given to him. Just like it's not
12 Investigator VanHouten's fault, it's sure not Michael's
13 fault that that wasn't taken and reviewed. It's the fault
14 of the people that were there, the fault of the people that
15 were supposed to be in charge with the search warrant who
16 are now saying I don't know what was taken. It's been too
17 long, two years.

18 So, we had a couple people talk about computers, and
19 there's two people in the room we saw all week who know
20 what they're talking about, right? Investigator VanHouten
21 and then the witness, the expert that we put up, Mr.
22 Christopher Watkins. Now, the things that everybody, like
23 I said, seems to agree on is we don't know where these six
24 files are, we don't know anything about the accuracy of the
25 times of the computers we've been talking about, and we

1 don't know who had access to what computer. Everybody
2 agrees those questions have not been able to be answered by
3 anybody.

4 Let's start very directly. Let's talk about the items
5 in Michael's room, the items that he didn't say, well,
6 those aren't mine. He said those are mine. You heard him
7 on the stand. We have an iPhone, where Investigator
8 VanHouten said something along the lines of no relevant
9 evidence found on the iPhone. We have a laptop which is
10 broken. Doesn't appear to have any relevance in the case.
11 I imagine and would hope if it does that they would have
12 done the BIOS check that Mr. Watkins talked to us about.
13 And if you remember, guys, that's where even though there
14 might be a damaged hard drive in the laptop, you can,
15 without the hard drive in it, still look at the basic
16 information such as the last time it was turned on, that
17 type of thing, right? That wasn't done on the laptop.

18 Then we have the external hard drive that we heard
19 about yesterday. Those are the eight videos, right, the
20 eight videos that are bad. Well, I told you when I just
21 talked about those eight videos there's a reason he's not
22 charged with them. I guess I can't completely say that,
23 but I can say that I found it very telling in not only
24 Investigator VanHouten's report, which y'all will have, but
25 from Mr. Watkins's testimony that it doesn't appear from

1 the information we have that those eight files, those eight
2 videos on the hard drive came from the desktop. They came
3 from some other device, right? We also know that these are
4 deleted videos, so they were in some way hidden. We know
5 that because there weren't examinations done on the -- full
6 examinations done on the other -- all the devices of the
7 house that we don't know what other items that that
8 external hard drive has ever been plugged up to. We just
9 know that those videos from the evidence we have don't
10 appear to come from the desktop, and we didn't do checks on
11 everything else. So, who knows?

12 We also know something -- and something that's very
13 interesting here. I don't know how much it's been pointed
14 out. The search warrant that Investigator Merrill wrote
15 says in Michael's room, and take a look at it. It's in
16 evidence. It says the desktop in Michael's room is plugged
17 into an extra hard drive, right? Here's one picture of the
18 desktop, and there's nowhere in there where an external
19 hard drive is plugged into a computer, all right? There's
20 several other pictures in evidence -- that's why we kept
21 putting them in -- that show different angles of that, and
22 I want y'all to go back and look and see if you can find an
23 external hard drive plugged into that computer. So, we
24 have two competing stories. We have Investigator Merrill's
25 description of an external hard drive being plugged into a

1 desktop, and then we have the actual pictures taken, and
2 I'll let y'all judge which one might be more credible on
3 that.

4 Now, the final item in Michael's room is the desktop,
5 right, and the first question I asked Investigator
6 VanHouten, the very first question because there seemed to
7 be some issue about it was is there a password. Was there
8 a password to get on the desktop? No, no password needed,
9 and whose testimony does that corroborate? Michael's. So,
10 I don't know if I had a password or not. I gave the
11 password I use for everything. Investigator VanHouten
12 isn't lying about that. There's not a password; it didn't
13 take any encryption for him to get in.

14 We also know that there was a problem we heard a lot
15 about regarding the CMOS, right, and CMOS has apparently
16 everything to do with time. So, when we see on the desktop
17 deleted search histories for four Internet child
18 pornography terms, we don't dispute they're on the
19 computer. Mr. Watkins said I would have found the same
20 thing. We dispute how they got there, but what's important
21 for CMOS is that we don't know when they got there. We
22 don't know if it was this year, last year, last month.
23 There's no way to pinpoint when it happened, which means
24 there's no way to pinpoint who was there. Now, how do you
25 provide an alibi to Kyle or Michael or Joe Schmoe if you

1 don't know the times on anything?

2 We also know that the searches appear to be from
3 someone who don't really seem to know what they're doing --
4 excuse me, and the searches appear to be from someone who
5 don't know what they're doing. One of the search terms
6 that Mr. Flores pointed out yesterday: Why can't I find
7 PTHC porn, right? That clearly indicates somebody who
8 doesn't really know what they're doing. I mean, it's a
9 pretty blatant search term.

10 Another thing that we know about the desktop is that
11 the information that was found in terms of the searches is
12 accessed -- or would not have been able to be accessed just
13 on a typical search, so it's in hidden or deleted space,
14 right? So, if you were just using the computer, was not --
15 it wouldn't be an icon sitting there with child porn, okay?
16 Investigator VanHouten said he looked at the desktop. He
17 did his normal preview and didn't see anything, and he only
18 went further because that was one of the focus items.
19 Remember we talked about focus items and not all focus
20 items -- and that's also, of course, important of the other
21 items in the house.

22 And so let's talk about the other items, and I'll just
23 say the other items in the house, a.k.a. everything that's
24 not in Michael's room, right? That's whatever else is in
25 the house. Well, I want you to take a look at who was on

1 the porch the day of the search warrant when we decided
2 what was going to be the focus items and which was not
3 going to be focus items. You see Michael anywhere in
4 there? Just Doirons, right? No full exams were done, and
5 that's incredibly important. That means we don't know.
6 All the files on all these things weren't reviewed; all of
7 the search histories weren't reviewed. The history --
8 Internet search histories weren't reviewed, the hard drive
9 histories to see what hard drives were plugged into or not,
10 not reviewed on any of the other items.

11 We have a chart that's in evidence y'all will have
12 with y'all back there. It's not very easy to see now, so
13 just make sure to take a look at it, but essentially what
14 it shows is a list of items, 1 to 26, right? 1 through 4
15 you'll see noted on the right, Michael's bedroom, right,
16 the focus items, the items they did full exams on. And
17 then we have items 5 through 20, which is everything but
18 Michael's room, and then down at the bottom we have the
19 items that we already mentioned a little earlier, 21
20 through 26 which are the items that at least they take --
21 took pictures of that we know that they didn't take, right?
22 I don't think I've mentioned the Samsung phone that was in
23 Michael's bedroom just because both Mr. VanHouten and Mr.
24 Watkins seemed to say it didn't have Internet.

25 So, let's go through these items one by one, all

1 right? We have the ASUS MacBook, which I believe is the
2 one on the right. There's two laptops there. No full
3 history done, no search history, nothing. Just a preview.
4 Just manually going in to see if you see low-hanging fruit.
5 If you don't, we'll leave it alone. And then we have a
6 couple of phones, droid and then another droid, and these
7 are all in evidence, folks. So, y'all will be able to take
8 these with you. And then we have an iPad right there they
9 didn't look at because they didn't have a password, right?
10 Then we have a number of thumb drives all in this drawer
11 there and one more. Didn't go through and do full previews
12 to look at all the files.

13 And then we have an external hard drive next to the
14 ASUS all-in-one they didn't take. They didn't take the
15 ASUS all-in-one but they did take the hard drive that's
16 hooked up to it, an external hard drive which he himself,
17 Investigator VanHouten, says stores an enormous amount of
18 information, the same -- very similar to the external hard
19 drive found in Mr. Simmons's room. He just went through
20 and picked a couple of things to see if he saw anything,
21 any low-hanging fruit, and then moved on.

22 And then we have an ASUS laptop. That's the same
23 picture as before, but the ASUS laptop is the one on the
24 left. No full history done, no full exam. And then we
25 have a Gateway laptop right there on the left. Same thing,

1 no full history. Don't go through all the files, don't
2 look at the searches, don't look at what hard drives have
3 been hooked up to it. And then we have two of these
4 laptops, Coby laptops, this one, one more. Both in Kyle's
5 room. One is broken and I believe Investigator VanHouten
6 said the other wouldn't power up for some reason. So, no
7 history done.

8 Now, folks, one thing -- they didn't do histories on
9 them, but what did they do after? They just gave all this
10 stuff back to the family. Mr. Flores wants to ask Mr.
11 Watkins why didn't you go back and do a full exam on all
12 the items in his room. What about all these items? Where
13 did all these items go? No full exams. Give them back.

14 Now, you met the Doirons today -- or not today but
15 this week. The father, the wife, which is the stepmother,
16 and Kyle, and I know at times that it may seem like we've
17 been just trying to attack this family. I know at times
18 it's looked that way, and sometimes we just have to look
19 that way to get the information. That's not our intention.
20 The Doirons and Mr. Simmons were close friends. They took
21 Michael in, right? We heard that after the arrest that he
22 moved out, but that they remained in touch, that he would
23 come over. They had him over for Thanksgiving. This is
24 not meant to be an attack on the Doirons, but I will tell
25 you that it looks like it and appears pretty clearly that

1 there was a lot of things going on in that house that not
2 everybody knew about.

3 Kyle was on the stand. He wasn't on the stand for
4 very long, but he couldn't seem to give a straight answer,
5 and he couldn't seem to tell the truth, right? Y'all
6 remember me standing right here talking to him? He said
7 that I've got a little understanding of computers.
8 Admitted within a couple of minutes on the stand that was
9 actually a lie. I haven't looked at pornography, illegal
10 or legal. Admitted somehow with Mr. Flores on redirect I
11 actually have looked up pornography. I haven't ever looked
12 up pornography on any devices in the home. Oh, well,
13 that's a lie. I did look up pornography on devices at the
14 home. He said I never requested illegal movies. Lie. We
15 figured it out. He said, well, actually I did. Remember
16 that one was a little bit like yanking teeth. I sat up
17 here and asked him several times: you sure you never
18 requested illegal movies? Obviously holding a report. I
19 know he didn't know I had that in my hands. Literally had
20 to take it to him, where he finally said yeah, that did
21 happen. That did happen, and not only did that happen, by
22 the way, I know how to transfer files and I know how to
23 delete them. I know how to transfer, download illegal
24 movies, but I know how to delete them.

25 Now, it's really important. I don't know how much

1 y'all caught this. It was kind of awkwardly done a little
2 bit yesterday, but -- and not to -- by Ms. Goode's fault by
3 any means. I think stipulations just work that way, but
4 Ms. Goode came up yesterday and said -- and the judge said
5 there was a stipulation between the parties, and she read
6 something very directly to y'all, then sat down without
7 there being any questions about it. And what the
8 stipulation is is that report was dated December 2, 2013.
9 We've all agreed on that, December 2, 2013. How many days
10 that is from November 22, 2013, in Berkeley County? Ten,
11 ten days' difference.

12 Now, it took some more questioning with Kyle, but we
13 did find out some more things. We found out that he's
14 familiar with torrents, with illegally downloaded movies
15 and music, which all kind of people do. Michael admits he
16 does. I won't say about myself. According to Wendy, we
17 found out that apparently he's been hiding the pornography
18 from them, okay? And what is real important -- I don't
19 know that we ever got an answer to -- is that we know by
20 his own admission on the stand that he has accessed
21 pornography, whether adult or not, on a device in the home.
22 He says I've done that to me on recross: I looked at
23 pornography on a device. Yes, that's true. But everybody
24 you talk to -- the parents, Michael, Kyle himself -- all
25 say he doesn't have access to any devices. It's a

1 restrictive household, right? So, what does that leave for
2 him to look at this on? That leaves either the items that
3 weren't in Michael's room that they didn't do full
4 histories on, or it leaves the devices in Michael's room
5 which he had access to.

6 Now, it's my whole point up here, it's Ms. Zmroczek
7 and Ms. Goode's whole point this whole case to say, you
8 know, easy. Open shut. This was Kyle. Simple as that.
9 That's why, that's why Michael's not guilty. It's not that
10 simple. There's a lot of things that go into this, and
11 there's a lot of things and reasons to doubt. But
12 regarding Kyle, specifically Kyle, I do think he's as
13 likely as anybody else to have done it.

14 Now you heard, and maybe you were very eager to hear,
15 Michael testify. Actually the last witness. Sat right
16 here. You know, to this day, Michael's the only person
17 that's ever been asked to give a statement to law
18 enforcement, right? And Michael, according to state's own
19 witnesses, fully cooperated and answered every question
20 that they had for him. He voluntarily went to the police
21 station; he did so without a lawyer. I wasn't there. He
22 did so without having anybody record it, require a
23 recording device, and then law enforcement, given an
24 opportunity to ask him any question they want -- they have
25 him there without a lawyer -- they get him to write out a

1 paragraph of information. That's all the questions you
2 have for Michael? That's it?

3 So, then we come to trial, and Michael gets up on the
4 stand. Walks up there. He's under oath in front of all of
5 you. Now, on cross-examination I know I'm in the room but
6 I'm not there to help him anymore. I can't help him on
7 cross-examination. This is Mr. Flores's chance; this is
8 the attorney general's opportunity. You have Mr. Simmons,
9 the guy you have charged with six counts of sharing child
10 pornography. You have him on the stand under oath, and you
11 ask less than a minute's worth of questions. What, what
12 does he have to do? He's offered to answer any question
13 anybody has for him. Nobody wants to ask him any
14 questions.

15 You know, when I was thinking about that, it took me
16 back to what seems a long time ago in jury qualifications
17 Tuesday morning, right? Y'all remember that was not when
18 y'all were in this courtroom. It was when we were in the
19 big -- the other courtroom and it was full with all the
20 jurors that had come Tuesday morning. And typically in
21 jury qualifications in this county our great clerk of
22 court, Ms. Jeanette McBride, comes down before the judge
23 and introduces herself, thanks everybody for being here,
24 and she usually sets up along the lines -- and I was in
25 there last Tuesday -- of saying what y'all do is very

1 important. You help decide whether people are guilty or
2 not guilty. You help decide whether someone is at fault
3 for a car wreck or not at fault for a car wreck. And then
4 you might be on a case where you help decide whether an
5 employer owes, you know, his employee money. Then she
6 says, you know, you also have another important job, and
7 sometimes that's just showing up because sometimes that's
8 all a defendant needs to see is the jury because when they
9 see a jury, they don't want a trial anymore.

10 Well, Michael's still sitting here. He's still
11 sitting here exercising his right, his right that he -- and
12 a ton of witnesses that were here. All of the military
13 witnesses that were here fought. He's exercising his right
14 to a trial.

15 Now, there's two basic big questions for these six
16 indictments, for these six charges. One, is this child
17 porn? Do we know the ages or do we know the people
18 involved in the videos are under the age of eighteen? Do
19 we know that? And number two, if it is, do we know that
20 Mr. Simmons, Michael, knew about it and knew he was sharing
21 it on November 22, 2013?

22 You know, the Internet is evolving and law enforcement
23 and the courts and all of us are trying to keep up. But at
24 some point, we have to ask ourselves are we willing to find
25 somebody guilty in a situation where we have videos that

1 can't be located on a device that has no accurate time,
2 that have open access to other people in a household for
3 videos that we don't even know if they're child porn? Are
4 we ready to convict somebody of that in this day and age of
5 the Internet? Is that all it takes?

6 Ms. Zmroczek said in opening a few great things, but
7 one of the things she mentions was she wanted you to
8 remember three words: evidence, exclusion, and error. I
9 think that those were three good words, and I think they
10 apply very well with this case. What is the evidence?
11 Well, the evidence is everyone says it ain't me, right?
12 The exclusion is, well, we don't even know where the videos
13 are. And the error is we also don't know the times of
14 anything or who had access to what. Evidence, exclusion,
15 and error.

16 You know, that Beatles song I mentioned on behalf of
17 Investigator Murphy, *Fixing a Hole*, looked it up and
18 apparently a lot of people have attributed a lot of
19 different meanings to it over the years. I guess like a
20 lot of other Beatles songs, but Paul McCartney was asked to
21 explain what it meant, and the quote, he said:

22 Well, you know, fixing² a hole referring to the
23 hole in your makeup which lets the rain in and
24 stops your mind from going where it will.

25 It's essentially refusing to see things the way that

1 they are.

2 Now, the government, Mr. Flores, is going to get up
3 after me and ask y'all to find Michael guilty beyond a
4 reasonable doubt. I want y'all to remember I don't get to
5 come back up and argue; I don't get to come back up and
6 combat what he has to say. So, I really need y'all to take
7 this with you to the jury room. I really need y'all to
8 take all these words with you and remember all this when
9 you go back.

10 But guilty beyond a reasonable doubt, what does that
11 mean? You know, I, I don't usually give a long speech on
12 what guilt beyond a reasonable doubt is. The judge is
13 going to give you that definition. Y'all are going to hear
14 it from the judge, but in a general sense it doesn't mean
15 that I think he's guilty or he could be guilty, probably
16 guilty, more likely than not guilty. It's none of those;
17 it can't be those. It's firmly convinced. You need to be
18 firmly convinced, folks. It's a high standard and it's
19 meant to be a high standard.

20 Well, what's the things that cause a reasonable doubt
21 in this case? Well, we've just been talking about all of
22 them, and you've been hearing about them for four days:
23 missing video, missing times, missing users, missing
24 evaluations on the computers, the full evaluations. We're
25 missing evaluations at all -- on some of the computers that

1 weren't even taken in, the content of the video, ten days
2 for Kyle with the illegal movies, and then among other
3 things but most specifically did Michael know that he had
4 these six and shared them on November 22, 2013.

5 When you deliberate, you're going to be told, and it's
6 going to be very true, that y'all have a duty to try to
7 work together to see if you can come to a consensus, right,
8 but I want to be clear. That duty does not require you to
9 forfeit, change, or give up your vote just because you feel
10 pressure from anybody else. This is your vote, each of
11 your votes. It's going to live with you tomorrow, next
12 week, next month. Vote not guilty and be proud to vote not
13 guilty. Thank you.

14 THE COURT: Thank you, Mr. Banks.

15 Mr. Flores.

16 MR. FLORES: Yes, Your Honor. May it please the ,
17 court?

18 THE COURT: Yes, sir.

19 MR. FLORES: Mr. Bank, Ms. Zmroczek, Ms. Goode, Mr.
20 Simmons.

21 Fixing the hole where the rain gets in stops the
22 mind from wandering.

23 That is my role. That is what the defense has told
24 you. I, too, am a Beatles fan. Not as good as Paul
25 McCartney obviously. That's why I'm a lawyer, but I'm here

1 today.

2 Now before I start my argument in length, two things,
3 disclaimers. If I say anything about the law that's
4 incorrect, the judge will correct that. I'm not a judge.
5 I'm an attorney general and sometimes we get the law wrong.
6 The second thing that I want to tell you -- and Mr. Bank
7 referred to this and engaged in this in a roundabout way --
8 is that, you know, we are here because we are honoring the
9 Constitution of the United States of America. We are here
10 to place this case before you and so in exercising your
11 civic duty, we thank you. I thank you personally. Defense
12 thanks you. My boss, Alan Wilson, thanks you. So, without
13 you here today, we could not answer any of these questions
14 because they deal with questions of fact. You've heard a
15 lot of testimony this week, and there are a lot of
16 questions, as Mr. Bank pointed out, but I want to focus you
17 on the evidence that does exist and why Mr. Simmons is
18 guilty beyond a reasonable doubt.

19 A noted journalist by the name of Barton Gilman, who
20 was the author of such topics -- such books and topics as
21 the September 11th attacks and more recently global
22 surveillance disclosure said of this about types of
23 technology, and his quote is about Cloud services and I
24 quote:

25 Cloud services cut both ways in terms of

1 security. You get off-site backup and disaster
2 recovery, but you entrust your secrets to
3 somebody else, somebody else's hands. Doing the
4 latter increases your exposure to government
5 surveillance and the potential for deliberate or
6 inadvertent breaches of your confidential files.

7 As I go through the evidence, remember that quote.
8 Backup of files, confidential or secret device becomes
9 relevant when you look at all the evidence, and what is all
10 the evidence? When I came before you on Tuesday --
11 Wednesday with our opening statements, I said there would
12 be a number of witnesses who would come before you, tell
13 you what they did and what they didn't do, and why there
14 was a crime committed in this case. I told you this case
15 was about children, about children who had horrible,
16 horrible moments recorded and saved and sent and requested
17 on the Internet, and you've seen those. You've seen those.

18 So, the first witness you had before you was Detective
19 Murphy. He's done a lot of these cases, he testified to
20 you. There's a lot of filesharing going on, and he said I
21 really don't think there's a legitimate reason for
22 filesharing, and we've heard it this week. At least two of
23 our witnesses testified that they have sought out movies,
24 pirated movies. Mr. Simmons says he grew up in the age of
25 Napster. He's come up with filesharing software. He knows

1 what he's doing. Kyle said he's looked at illegal movies.

2 But Detective Murphy testified -- and you saw the log
3 clearly created -- that his computer connected with another
4 computer and downloaded these six files. There's no doubt
5 about that. That happened. A crime was committed.

6 So, what did he do once he got those files? Well, he
7 got the IP address. He looked at the videos. You've seen
8 those videos, and he's seen a lot of these videos, and he
9 gave you his opinion as to age, but we all have experiences
10 in life. Your judgment, your experiences, what you know,
11 having been children at some point, now adults, you know
12 what a child looks like. So, regardless of what he says,
13 regardless of what VanHouten says, you can tell and you do
14 get to decide.

15 What's next? The IP address. Time-Warner Cable held
16 that IP address and he got the information. Where did it
17 lead back to? [REDACTED] here in Columbia, South
18 Carolina. No doubt about it. That is where this crime
19 occurred. The person who had that computer distributed
20 these files from that location, no doubt. So, what did he
21 do?

22 Now, you've heard about -- and, and Mr. Bank harped on
23 this point about time passing. Maybe these crimes aren't
24 as important, but you know in your everyday life we have
25 to-do lists. I have a long to-do list. Sometimes I don't

1 get to certain things I want to get to because other things
2 pop up, or there are other things that are more pressing.
3 But the fact of the matter is with computer and technology,
4 we can always go back and take a look later. These devices
5 are so massive these days, 2 terabytes of information, if
6 you erase something on a 2-terabyte hard drive, remnants of
7 it may still exist. What I'll get to in a moment is they
8 did in this case, and that's going to make a difference.

9 So, once he has identified [REDACTED] is here in
10 Columbia -- he's not from Columbia -- contacts Investigator
11 VanHouten. Sends up the files. Says here's a case in your
12 jurisdiction. Somebody at that address is distributing
13 child photography, and so they execute a search warrant.

14 Now, time has passed. We've heard a lot about
15 devices. I think there's disagreement as to what devices
16 were seized and weren't seized, but the ones that were
17 seized were looked at, either previewed or full
18 examination, and we would argue, as Investigator VanHouten
19 has stated, that a preview is what investigators in his
20 position do on devices. That's the first step. The first
21 step is is there anything here that makes me want to go
22 further or that I need to go further on, and so he did that
23 with all the devices that he received, no question about
24 it.

25 But let's step back a second. [REDACTED],

1 that's the home of Ron and Wendy Doiron. In 2013, son Kyle
2 was living there. They had two younger children. There's
3 no question the two younger children are not at issue in
4 this case, and then there was Michael Simmons. There are
5 four people living in that home. It's one of the four.
6 Can be only one of the four, and I'll tell you and I'll
7 tell you which one, too. I think you already know because
8 I told you before, but I'll tell you why.

9 There was no device in that house that actually had
10 the videos that Detective Murphy received on November 22nd.
11 That's just a fact. What would be great from the
12 government's perspective is that on November 22nd when this
13 crime was committed, that computer would freeze, just
14 freeze in time. We could immediately identify where that
15 was, who it was, what was done grabbing that computer, or
16 -- I'm a fan of *Star Trek*. It just turned fifty years old.
17 You could ask the computer: Computer, on November 22nd,
18 please play back the film of who was using that computer.
19 We're not there yet, and I don't think we really want to go
20 that far with personal invasion of privacy, but if we had
21 it, we could tell. We don't have that in this case, and
22 time passes. Even one day later time passes. We can't
23 stop somebody from using that computer. First, we don't
24 know it. And, second, they're going to do whatever they're
25 going to do on that computer, which was done in this case.

1 The videos were clearly deleted. How do we know that?
2 State's Exhibit 17. The defense will ask you to ignore
3 this particular exhibit because it has the exact folder and
4 title name of a video that was downloaded or distributed to
5 Detective Murphy. It's right here under Mike Downloads,
6 R@yGold, the folder, R@yGold99 of MPG. That's the
7 computer. That's the name of the file. That's the video
8 you saw on the computer.

9 Did they get the right computer? Yes. That is the
10 only computer it could have been, and we know it because
11 that's where the information tells us it was, all right,
12 but we still haven't answered that question of which of the
13 four it was. It was definitely that computer. It was
14 definitely this desktop computer in State's Exhibit 16.
15 That's the computer; that's the computer from Michael's
16 room. No other computer distributed that file or the other
17 files, for that matter, because it was a torrent, and as
18 Detective Murphy told you, that torrent file came together
19 all as one. So, evidence of one video on the computer is
20 evidence of all videos on the computer.

21 Now, this case could have ended. It could have been
22 an accident, right? Sometimes people who download lots of
23 video files and movies and music because of whatever
24 interest, they do things by accident. It happens. I think
25 the federal statute allows you to have three images of

1 child pornography by accident before you are charged. Was
2 it an accident in this case? No. There were plenty of
3 search terms found in that computer: PTHT forums, R@yGold,
4 Lolita, 2013 Vicki compilations, 7YO, search terms entered
5 on the computer by someone. So, we know someone did it.
6 This is no accident, so we can't chalk it up to that.

7 Not only were those terms found in the Internet
8 evidence-find program that pulls that information out from
9 the computer. It was found under recent applications,
10 backup files, system information volume, the file that your
11 computer will create for you either by request or
12 automatically to help you get that information back if it's
13 lost or a virus gets on your computer. So, these -- this
14 files -- these files, this information existed on this
15 computer. So, we know that someone used the computer to
16 solicit child pornography, to receive child pornography,
17 and to distribute child pornography, and so the question
18 becomes who did it? Got to keep coming back to that.

19 If we go back to Mr. Bank's argument, you have to go
20 through the child porn first. Was that real child
21 pornography? It's your decision, and so who did it? Who
22 had access? Everyone had access, right? There was a home.
23 There's no lock on the door for Michael. Anyone could do
24 it. Both Wendy and Ron testified they respected his
25 privacy. They're all military people, members of the

1 military. Families of the military. I grew up in a
2 military household. You know, you respect people's
3 privacy; you follow the rules. So, that leaves us Ron,
4 Wendy, Kyle, and Mike.

5 You might say, well, it's Mike's computer. It's in
6 his room. Has the username like Mike, username M. He uses
7 the username Simmons on everything. Isn't that enough?
8 Couldn't we just test the credibility of every witness and
9 say it must have been him based upon that? And we could.
10 We could ask you to do that. The judge will, will instruct
11 you that credibility is yours. You get to decide who was
12 believable, how much you believe from them. You can
13 believe everything; you can believe nothing. You can
14 believe some but not the other. So, you'll get to decide
15 that, and we could give that, this case, to you right now
16 on solely that. There's something else, something else to
17 think about, and that's why you will come back with a
18 guilty verdict.

19 Now, I do want to touch on Kyle's testimony. A
20 nervous child. He's grownup now, nineteen. Works at the
21 Department of Corrections. He testified he got written up
22 at school for an illegal video. He did, but I will argue
23 to you this: apples and oranges. Apples and oranges.

24 You heard his testimony. What happened? I received
25 the thumb drive from another student. I put that thumb

1 drive in my school-issued computer, put that file into
2 Google Drive, and then subsequently deleted it. All right,
3 is that files sharing in its broadest definition? Yes. He's
4 put a file into a Cloud-based device where many people
5 could potentially have access to it on the school network,
6 and that's how he got caught.

7 Is that BitTorrent sharing? No. There was a thumb
8 drive. It was a Google Chromebook that was testified to,
9 Google Chromebook. Now, Google doesn't use Windows. Not a
10 Windows-based system, not a Microsoft-based system. Why is
11 that important? Let's get to that.

12 Backups. Backups tell us all wonderful things. This
13 case comes down to a backup. External hard drives were
14 seized from this house, two: one from the Doirons, one from
15 Michael's bedroom. What is the purpose of a backup? As
16 Mr. VanHouten would tell us, you put that information there
17 to save it in case something happens. English teachers,
18 authors, people who deal with finances back up their
19 systems frequently because if you lose that information,
20 it's hard to get it back. I'm not an author, but if I were
21 to write a 200-page novel and save it on my computer and
22 then my computer gets destroyed, I just lost the Nobel
23 Prize in literature many years down.

24 Backups, and why are backups important in this case?
25 Now, Michael testified that he did have a device for

1 backups: an external hard drive he had in his room. He
2 saved pictures on it; he saved his DD214, his military
3 file, on it, very personal item. You saw that there was at
4 least some bills that were saved on it, pictures.

5 Now, what's important about this is that there was
6 testimony about those files being in the recycle bins in
7 the system information volume. A computer backed up those
8 files, a Windows-based computer. Let me make sure. Mr.
9 Watkins was very correct in that. A Windows-based computer
10 backed up those files to the computer and then to the
11 external hard drive. That's how they exist on that
12 external hard drive, system information volume.

13 Now, you can tell your computer -- I also have a
14 system information volume, and you've seen it because
15 sometimes you can back up to your computer and you can
16 still recover from the computer if the operating system is
17 -- still allows you to get in, but if you get the blue
18 screen of death, you're pretty much in trouble and you need
19 to go to an external source, an external hard drive, and
20 you back up things to an external hard. So, you can plug
21 it into your computer saying I want this backup file to go
22 there. Was it done in this case? Yes, at least on
23 multiple occasions, which brings us to 1000 and 1001.

24 Mr. Watkins seemed to think that was a really
25 important distinction, 1000 and 1001. One of the backup

1 files was at a 1000; one was at a 1001. In 1001, you had
2 the eight videos of child pornography that Mr. Bank has
3 conceded clearly are child pornography. In 1000 there were
4 pictures of Michael. This is a device he kept in his room.
5 He said I kept it in my closet. It's his, clearly his.
6 So, they're in the system. They're in the recycle bin.
7 System information volume as a backup.

8 So, who would back up the 1001 file to that external
9 hard drive? Who would do that? Who of the four people in
10 that house would back up the 1001 file? Ron and Wendy,
11 they had their own on external hard drive. It's on the
12 chart listed right here, number 13, hard drive. Why would
13 they need Michael's hard drive to do that? They had their
14 own, which leaves us Kyle and Mike, two people. Who would
15 back up?

16 We know Michael backs up on his computer because he
17 has pictures, okay? He has the bills. He has his
18 information, so we know he's done it. What about Kyle?
19 What about Kyle? I would say the reasonable answer, based
20 on the evidence, is no. This is why.

21 You heard it from Michael himself tell you that Mike
22 -- that Kyle had no computers, none at all. He had
23 tablets. He had two of them, not Windows-based devices.
24 That was testified to. They were, like, droids, not
25 Windows-based devices. Would not give you a 1001 file. He

1 has phones.

2 Now, the picture of iPhone from Kyle's room, I would
3 argue that that's a question. Was that an iPhone or was it
4 an iPod? iPods after a certain generation looked very much
5 like iPhones. My wife and I bought one for our daughter,
6 but it's not a phone. It's an iPod. So, was it really an
7 iPhone or an iPod? Really doesn't matter in this case.
8 Why? Does Apple use Windows? No. Apple and Microsoft are
9 two of the -- can they? Sure, but they're two of the most
10 diametrically opposed computer organizations. They don't
11 want you to use the other person's stuff, right? They
12 don't make it easy for you to use the other person's stuff.
13 So, he didn't do it from the iPod or the iPhone or whatever
14 that is. He had a Google Chromebook. Well, folks, Google
15 doesn't use Windows either, not the Chromebooks they use in
16 our school districts. Chrome OS, not a 1001 file.

17 So, I ask you. Who backed up those files? Who had
18 access to computer backup files, lots and lots of videos?
19 Somebody who downloaded lots and lots and pirated movies
20 and music, who grew up in the Napster generation. Backups,
21 ladies and gentlemen, that's what this case boils down.

22 You'll judge the credibility of all the witnesses who
23 came before you. Now, if you believe that Kyle or somebody
24 else in that house was the person who backed up that, not
25 guilty. But if the circumstances are the way that I have

1 explained them to you, he is guilty beyond a reasonable
2 doubt on all six charges. Thank you for your time.

3 THE COURT: Thank you. Thank you very much, Mr.
4 Flores.

5 Mr. Foreman, ladies and gentlemen of the jury, my
6 charge is rather lengthy. We'll take about a
7 fifteen-minute recess. Do not discuss the case during this
8 period. Thank you very much. You may go with the bailiff.

9 (THE JURY EXITS AT 10:51 A.M.)

10 THE COURT: Court will be in recess fifteen minutes.

11 (OFF THE RECORD. ATTORNEYS REVIEW EVIDENCE WITH THE
12 COURT REPORTER DURING THE BREAK.)

13 (THE JURY ENTERS AT 11:12 A.M.)

14 THE COURT: Mr. Foreman, ladies and gentlemen of the
15 jury, if you would please give me your complete and
16 undivided attention. I am going to charge or instruct you
17 on the law that applies to this case. The way I instruct a
18 jury is I charge general criminal law that applies to all
19 criminal cases in South Carolina. Generally when I change
20 from one topic to another, I will give you the caption of
21 the area I'm fixing to cover. After I charge the general
22 criminal law, I will charge you the law specific to the
23 indictments in this case. And finally I will charge you
24 the form of the verdict.

25 Charge, arrest, indictments: not evidence. The

1 indictments charge the defendant with sexual exploitation
2 of a minor second degree, six counts. I remind you that
3 the fact the defendant was arrested and charged and
4 indicted in this case is not evidence in this case and
5 cannot be considered by you as evidence of guilt in this
6 case. Nor does it create any presumption or inference of
7 guilt. Again, these documents are simply the formal,
8 written instruments which contain the charges made against
9 the defendant. It is the -- they are the formal documents
10 by which this case is brought before the court.

11 Multiple charges. The indictments in this case allege
12 different, different instances of an offense by the
13 defendant. As I've stated, six counts of sexual
14 exploitation of a minor second degree. Each indictment
15 charges a separate and distinct offense. You must decide
16 each indictment separately on the evidence and the law
17 applicable to it, uninfluenced by your decision as to any
18 other indictment. The defendant may be convicted or
19 acquitted on any or all of the indictments. You will be
20 asked to write a separate verdict of guilty or not guilty
21 as to each indictment.

22 Presumption of innocence. The defendant has pled not
23 guilty to these indictments, and that plea puts the burden
24 on the state to prove the defendant guilty. A person
25 charged with committing a criminal offense in South

1 Carolina is never required to prove himself or herself
2 innocent. I charge you that it is an important rule of the
3 law that the defendant in a criminal trial, no matter what
4 the seriousness of the charge may be, will always be
5 presumed to be innocent of the crimes with which the
6 indictment was issued unless guilt has been proven by
7 evidence satisfying you of that guilt beyond a reasonable
8 doubt. This presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the defendant
10 throughout the trial until you reach verdicts of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 Ladies and gentlemen, the presumption of innocence has
14 been said to be like a robe of righteousness placed about
15 the shoulders of the defendant which remains with the
16 defendant until it has been stripped from the defendant by
17 evidence satisfying you of the defendant's guilt beyond a
18 reasonable doubt. The presumption of innocence is not a
19 mere legal theory; it's not just a legal phrase. It is a
20 substantial right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence of
22 the defendant's guilt beyond a reasonable doubt.

23 What is a reasonable doubt in the law? A reasonable
24 doubt is the kind of doubt that would cause a reasonable
25 person to hesitate to act. The state has the burden of

1 proving the defendant guilty beyond a reasonable doubt.

2 Some of you may have served as jurors in the past in civil
3 cases where you were told that it is only necessary to
4 prove that a fact is more likely true than not true, such
5 as by the greater weight or the preponderance of the
6 evidence. In criminal cases, the state's proof must be
7 more powerful than that. It must be beyond a reasonable
8 doubt. Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the defendant's guilt.

10 There are very few things in this world that we know
11 with absolute certainty, and in criminal cases, the law
12 does not require proof that overcomes every possible doubt.
13 If based on your consideration of the evidence you are
14 firmly convinced that the defendant is guilty of the crimes
15 charged, you must find the defendant guilty. If, on the
16 other hand, you think there is a real possibility that the
17 defendant is not guilty, you must give the defendant the
18 benefit of the doubt and find him not guilty.

19 Duties of jury and trial judge. I remind you that
20 during this trial, you and I have certain distinct duties
21 to perform. As the trial judge, it is my responsibility to
22 preside over the trial of this case, and I also have the
23 duty to rule on the admissibility of the evidence offered
24 during the trial. You are to consider only the competent
25 evidence before you. If there was any testimony ordered

1 stricken from the record in this case during this trial,
2 you must disregard that testimony. You are to consider
3 only the testimony which has been presented from the
4 witness stand, any exhibits that have been made a part of
5 the record in this case, and any stipulations of counsel.

6 I have the additional duty to charge or instruct you
7 the law applicable to this case. As the presiding judge, I
8 am the sole judge of the law of this case, and it is your
9 duty to accept and apply the law as I now state it to you.
10 If you already have any idea as to what the law is or what
11 the law ought to be and it does not agree with what I now
12 tell you the law is, you must set aside, you must abandon
13 your idea because you are sworn to accept the law and apply
14 the law exactly as I state it to you.

15 In every case tried in this court before a jury, the
16 jury becomes the sole and the exclusive judge of the facts
17 in a case. A trial judge cannot intimate, state, comment
18 on, or make any statement to a trial jury about the facts
19 in a case. Since you, the jury, are the sole judge of the
20 facts in this case, you are not to infer from what I have
21 said during the progress of this trial in ruling upon the
22 admissibility of evidence or otherwise or anything I say
23 now during the course of this instruction to you that I
24 have any opinion about the facts in this case. The law
25 does not allow me to have an opinion about the facts in the

1 case. That is a matter solely for you, the jury, to
2 determine. As jurors, it is your duty to determine the
3 effect, the value, the weight, and the truth of the
4 evidence that has been presented during this trial.

5 Direct and circumstantial evidence. There are two
6 types of evidence which are generally presented during a
7 trial: direct evidence, circumstantial evidence. Direct
8 evidence directly proves the existence of a fact and does
9 not require deduction. Circumstantial evidence is proof of
10 a chain of facts and circumstances indicating the existence
11 of a fact.

12 Crimes may be proven by circumstantial evidence. The
13 law makes absolutely no distinction between the weight or
14 the value to be given to either direct or circumstantial
15 evidence. However, to the extent that the state relies on
16 circumstantial evidence, all the circumstances must be
17 consistent with each other and when taken together point
18 conclusively to the guilt of the accused beyond a
19 reasonable doubt. If these circumstances merely portray
20 the defendant's behavior as suspicious, the proof has
21 failed. The state has the burden of proving the defendant
22 guilty beyond a reasonable doubt. This burden rests with
23 the state regardless of whether the state relies on direct
24 evidence, circumstantial evidence, or a combination of
25 both.

1 Credibility of witnesses. Necessarily, ladies and
2 gentlemen, you must determine the credibility of the
3 witnesses who have testified in this case. Credibility, as
4 you all know, simply means believability. It becomes a
5 your duty as jurors to analyze and evaluate the evidence
6 and determine which evidence convinces you of its truth.
7 In determining the believability of witnesses who have
8 testified in this case, using the background of your
9 individual and collective good judgment and common sense,
10 you may believe one witness over several witnesses or
11 several witnesses over one. You may believe part of the
12 testimony of a witness and reject the remaining part of the
13 testimony of that same witness. You may believe the
14 testimony of a witness in its entirety or reject the
15 testimony of a witness in its entirety. You may consider
16 whether any witness has exhibited to you any interest,
17 bias, prejudice, or other motive in this case. You may
18 consider whether a witness's testimony has been
19 corroborated or made stronger by other testimony, or you
20 may consider whether a witness's testimony has not been
21 corroborated or has been weakened by other testimony. You
22 may consider anything in this record that will help you
23 evaluate the credibility and the believability of the
24 witnesses who have testified in this case. You may also
25 consider the appearance and the manner of the witness as

1 they appeared before you on this witness stand.

2 Expert witness. The rule of -- the rules of evidence
3 ordinarily do not permit witnesses to testify to opinions
4 or conclusions. An exception to this rule exists for
5 witnesses which we call expert witnesses. A witness who by
6 education and experience has an expert in some art,
7 science, profession, calling, or craft may state an opinion
8 as to relevant and material matter in which the witness
9 claims to be an expert and may also state the reasons for
10 holding such opinion or opinions. You should consider any
11 expert witness's opinions received in evidence in this
12 case, and like any other evidence give it the weight you
13 think it deserves. If you decide the opinion of an expert
14 witness is not based on sufficient education or experience
15 or training, or if you conclude that the reasons given in
16 support of the opinion are not sound, or that the opinion
17 is outweighed by other evidence, you may disregard the
18 opinion entirely. An expert witness's testimony is to be
19 given no greater weight than that of other witnesses simply
20 because the witness is an expert. Further, you are not
21 required to accept an expert's opinion even though it is
22 not or may not be contradicted.

23 Intent. In order to establish criminal liability,
24 criminal intent is required. For example, the, the mental,
25 the mental state required to be proven by the state for a

1 particular crime might be purpose, might be intent, might
2 be knowledge, might be recklessness, might be criminal
3 negligence as you go down that, that ladder. Criminal
4 intent must be proven by the state beyond a reasonable
5 doubt. Criminal intent is always a matter that must be
6 determined by the jury from the circumstances surrounding
7 the situation.

8 Ladies and gentlemen, there is no way to prove intent
9 to a mathematical certainty; there's no way medical science
10 can dissect a person's brain and determine what the person
11 had in mind. So, the law, our law says that criminal
12 intent may be inferred from the circumstances shown to have
13 existed.

14 This is how you make your determination of whether or
15 not an element requiring intent was present. It is not
16 necessary, necessary to establish intent by direct and
17 positive evidence, but intent may be established by
18 inference in the same way as other facts: by taking into
19 consideration the acts of the parties and all the facts and
20 circumstances of the case.

21 Criminal intent is a mental state, a conscious
22 wrongdoing. It is up to you, it is up to you, the jury, to
23 determine what the defendant intended to do based on the
24 circumstances shown to have existed. Criminal intent can
25 arise from action or a failure to act. It may arise from

1 negligence, recklessness, or indifference to duty or to
2 consequences that is considered by the law to be the
3 equivalent of criminal intent.

4 Excuse me, please.

5 Ladies and gentlemen, that is the general criminal law
6 as far as charge, arrest, indictment not evidence, multiple
7 charges, presumptions of innocence, reasonable doubt,
8 duties of jury and trial judge, direct and circumstantial
9 evidence, credibility of witnesses, expert witnesses, and
10 criminal intent. I will now charge you the specific
11 language as to sexual exploitation of a minor second
12 degree.

13 The defendant is charged with six counts of sexual
14 exploitation of a minor. There is a statute in South
15 Carolina, Section 16-15-405 of the South Carolina code.
16 The state must prove beyond a reasonable doubt that the
17 defendant, knowing the character or content of the material
18 he distributes, transports, exhibits, receives, sells,
19 purchases, exchanges, or solicits material that contain a
20 visual representation of a minor engaged in sexual
21 activity, or appeared in a state of sexually explicit
22 nudity when a reasonable person would infer the purpose is
23 sexual stimulation.

24 The trier of fact, the jury, may infer that a
25 participant in sexual activity depicted in material as a

1 minor through its title, text, visual presentations, or
2 otherwise is a minor. Mistake of age is not a defense to a
3 prosecution under this section.

4 Now, there are certain terms in the statute that I
5 have just read for you that are defined in a companion
6 statute under 16-15-375. I will define those terms in
7 their entirety as they appear in the South Carolina code.

8 Minor, the term minor is defined as an individual who
9 is less than eighteen years old. Material is defined as
10 pictures, drawings, video recordings, films, digital
11 electronic files, or other visual depictions or
12 representations but not materials consisting entirely of
13 the written word.

14 Sexual activity is defined as any of the following
15 acts or simulations thereof: masturbation, whether done
16 alone or with another human or an animal; vagina, anal, or
17 oral intercourse, whether done with another human or an
18 animal; touching in an act of apparent sexual stimulation
19 or sex; sex -- sexual abuse of the clothed or unclothed
20 genitals, public area, or buttocks of another person or the
21 clothed or unclothed breast of a human female; an act or
22 condition that depicts bestiality, sadomasochistic,
23 sadomasochistic abuse, meaning flagellation or torture by
24 or upon a person who is nude or clad in undergarments, or
25 in a costume which reveals the pubic hair, anus, vulva,

1 genitals, or female breasts, nipples; or the condition of
2 being fettered, bound, or otherwise physically restrained
3 on the part of the one so clothed.

4 Excretory functions: the insertion of any part of a
5 person's body other than the male sexual organ or of any
6 object into another person's anus or vagina except when
7 done as part of a recognized medical procedure. Sexually
8 explicit nudity is also defined in our code as the showing
9 OF the uncovered or less than opaquely-covered human
10 genitals, public area, or buttocks, or the nipple, or any
11 portion of the areola of the human female breast, or the
12 covered human, human male genitals in a discernibly turgid
13 state. That is the charge and the definitions as to sexual
14 exploitation of a minor second degree.

15 Ladies and gentlemen, your verdicts must be unanimous;
16 all twelve of you must agree. Your verdicts may not be
17 based on passion, prejudice, bias, or any other factor not
18 in evidence in this case.

19 Mr. Foreman, you will have with you in the jury room
20 form of the verdict. I think once you view it, you will
21 find it is very self-explanatory. It may be followed. And
22 what I have done, what is my normal practice in criminal
23 cases, I have the caption of the case and a listing of all
24 the indictment numbers charged. The form is entitled
25 Verdict Form, and then I have listed one through six

1 indictment numbers, and it's got the indictment number as
2 to sexual exploitation of a minor second degree: We, the
3 jury, unanimously find the defendant. And there are two
4 choices, guilty or not guilty. The order in which I have
5 listed those choices on the form, the order in which I have
6 stated to you those, those potential verdicts has no
7 significance whatsoever. It's only that one must be listed
8 first and the other second.

9 If after your determination of the facts, if you find
10 the state has met its burden of proving its case beyond a
11 reasonable doubt and that finding is unanimous, I would ask
12 you, Mr. Foreman, to please check to the left of the word
13 guilty. Place a checkmark and circle both that checkmark
14 and the word guilty. If after your determination of the
15 facts, applying those facts to the law as I have stated
16 them to you, you find that the state has not met its burden
17 of proving its case beyond a reasonable doubt, I would ask
18 you to check to the left of the words not guilty. Circle
19 both your checkmark the word -- words not guilty, and that
20 would just follow throughout the verdict form. Then there
21 is a place, Mr. Foreman, on the second page to sign as the
22 presiding juror and date it.

23 Again, ladies and gentlemen, your verdicts must be
24 unanimous; all twelve of you must agree. Once you have
25 reached those unanimous verdicts as to all six counts, if

1 you would please knock on the jury room door, advise the
2 bailiff that you have reached those unanimous verdicts, we
3 will then receive you back into the courtroom for the
4 announcement of those verdicts.

5 If during the course of your deliberations, Mr.
6 Foreman, you, any member of the jury have any questions
7 whatsoever, if you would please write out a note for me,
8 again knock on the jury room door, turn it over to the
9 bailiff. He will bring that to my attention, and I will
10 certainly comply with whatever request, whatever questions,
11 if I can, under my judicial constitution.

12 I'm going to ask you to please step to your jury room.
13 Do not begin your deliberations. The law requires I must
14 speak one time outside of your presence with the attorneys
15 in case I have to bring you out here for any further or
16 additional instructions. If I do not, the verdict form,
17 the items of evidence will be presented to you. Everybody
18 looks great today. Our alternate will then come out. You
19 would then be advised by the clerk to begin your
20 deliberations with your fellow jurors in your jury room.
21 So, again do not begin your deliberations until you are
22 instructed to do so.

23 Thank you very much for your attention and focus for
24 the court. You may now go with the bailiff.

25 (THE JURY EXITS AT 11:38 A.M.)

1 MR. FLORES: I'm fine with that, Your Honor.

2 THE COURT: And I always, I always have this question,
3 too, Mr. Banks. One of these days I'm going to research
4 it. Of course I am a big fan, of course, of *Jackson vs.*
5 *Denno* and have been to the sight in Brooklyn where that
6 actually occurred many years ago and -- well, many years
7 ago whenever -- both many -- when I was -- when it
8 happened, but I've always been curious. I did not see
9 y'all request this charge when the defendant gives a
10 statement but it is not a confession and there's no *Jackson*
11 *vs. Denno* that the state presented. You don't want such a
12 charge, do you?

13 MR. BANK: We're not requesting that charge, no, sir.

14 THE COURT: And I always, I always have that question.
15 I usually ask it in advance, and I didn't think you would,
16 but no telling what the appellate courts would do with that
17 issue if it ever came up in a case.

18 All right. All right, anything further?

19 MR. BANK: No, sir. We'll get the court exhibit
20 together for the charge.

21 THE COURT: All right. Well, let me -- I'll bring,
22 I'll bring the jury out and get, get that one definition.

23 (THE JURY ENTERS AT 11:45 A.M.)

24 THE COURT: Mr. Foreman, ladies and gentlemen of the
25 jury, as you may recall, after I charged the statute as far

1 as sexual exploitation of a minor second degree, I
2 thereafter defined basically four terms: minor, material,
3 sexual activity, and sexually explicit nudity. Sexually
4 explicit nudity does not apply to this case; it is not part
5 of the sexual exploitation of a minor second degree. Those
6 first three terms do apply. They're defined by statute.
7 The fourth term, sexually explicit nudity, is not a part of
8 this particular statute. I apologize to you for doing
9 that. Apologize to the parties also for doing that.

10 Additionally, not only am I going to send in the
11 verdict form, I'm also going to send in the indictments
12 because -- not for your consideration as evidence because
13 I've charged you the indictments are not evidence, but it,
14 it may assist you in determining -- well, it will assist
15 you in determining 2014-GS-40-06677 exactly what is being
16 alleged as to that particular indictment.

17 All right, so I'm going to ask you again to return to
18 your jury room. Do not begin your deliberations until you
19 are informed or directed to do so. It will still take a
20 few minutes for the parties to confirm that the items that
21 were introduced by both the defense and the state are, are
22 gathered properly, collected properly to be submitted to
23 you for use during your deliberations.

24 Thank you. Thank you very much, Mr. Foreman. Thank
25 you, ladies and gentlemen. You may return to your jury

1 room.

2 (THE JURY EXITS AT 11:48 A.M.)

3 THE COURT: Anything, Mr. Banks?

4 MR. BANK: No, sir. We just need to put on the record
5 about that third-party charge. We don't have a copy of it.

6 THE COURT: Certainly.

7 MR. FLORES: Nothing from the state, Your Honor.

8 THE COURT: And you, you may want, of course, Mr.
9 Flores, Mr. Banks, to have technology available should the
10 jury request it.

11 MR. FLORES: We'll make sure that we get that set up
12 and, and ready to go in case..

13 THE COURT: All right. Well, I, I've always allowed
14 the jury to, if they request it, to do it in their jury
15 room. With that being said, there has been a time or two
16 that the parties have agreed to allow my law clerk, for
17 example, to operate it, just operate it only. But anyway,
18 some, some, some neutral, some neutral party.

19 MR. FLORES: Yes, sir.

20 THE COURT: All right.

21 MR. BANK: We'll discuss it.

22 THE COURT: All right. Thank you. Thank you very
23 much.

24 Check the exhibits, please, and here's the verdict
25 forms and indictments.

1 MR. FLORES: We've already checked the exhibits.

2 THE COURT: All right. Well, that's a first for
3 anybody that's tried a case in front of me.

4 (OFF THE RECORD AS JURY DELIBERATIONS BEGIN AT 11:52
5 A.M.)

6 (DEFENDANT'S REQUEST TO CHARGE MARKED INTO EVIDENCE AS
7 COURT'S EXHIBIT NUMBER 6.)

8 (OFF THE RECORD.)

9 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
10 NUMBER 7.)

11 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
12 NUMBER 8.)

13 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
14 NUMBER 9.)

15 THE COURT: All right, everyone is back in place. Mr.
16 Simmons is present. I understand we have a jury verdict.

17 (THE JURY ENTERS AT 4:32 P.M.)

18 THE COURT: Madame Clerk.

19 CLERK OF COURT: Yes, Your Honor.

20 Mr. Foreman, have you reached a verdict?

21 FOREPERSON: Yes, we have.

22 CLERK OF COURT: Will you hand it to the bailiff?

23 (A PAUSE.)

24 THE COURT: All right, Madame Clerk, the verdict
25 appears to be in proper form. Will you please publish the

1 verdict, the verdict of the jury?

2 CLERK OF COURT: Indictment numbers 2014-GS-40-6677,
3 2016-GS-40-1720, 2016-GS-40-1721, 2016-GS-40-1722, 2016-GS-
4 40-1723, 2016-GS-40-1724, *The State of South Carolina vs.*
5 *Michael Scott Simmons*. Question number one, indictment
6 number 2014-GS-40-6677, as to sexual exploitation of a
7 minor second degree, we, the jury, unanimously find the
8 defendant guilty. Indictment number 2016-GS-40-1720, as to
9 sexual exportation of a minor second degree, we, the jury,
10 unanimously find the defendant guilty. Indictment number
11 2016-GS-40-1721, as to sexual exploitation of a minor
12 second degree, we, the jury, unanimously find the defendant
13 guilty. Indictment number 2016-GS-40-1722, as to sexual
14 exploitation of a minor second degree, we, the jury,
15 unanimously find the defendant guilty. Indictment number
16 2016-GS-40-1723, as to sexual exploitation of a minor
17 second degree, we, the jury, unanimously find the defendant
18 guilty. Indictment number 2016-GS-40-1724, as to sexual
19 exploitation of a minor second degree, we, the jury,
20 unanimously find the defendant guilty. This is signed
21 foreperson, juror number 161 September 9, 2016.

22 Mr. Foreman, are these your verdicts and the verdicts
23 of the entire jury?

24 FOREPERSON: Yes, they are.

25 THE COURT: Thank you, Madame Clerk.

State of South Carolina)	In the Court of General Sessions
)	Fifth Judicial Circuit
County Of Richland)	2014-GS-40-06677
	2016-GS-40-01720
	2016-GS-40-01721
	2016-GS-40-01722
	2016-GS-40-01723
	2016-GS-40-01724

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Michael Scott Simmons,)
)
 Defendant.)
)
)

September 16, 2016
Columbia, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge

A P P E A R A N C E S:

Lloyd V. Flores, Esquire, Assistant Attorney General
Daniel F. Gourley, II, Esquire, Assistant Attorney General
Attorneys for the State

Robert Louis Bank, Jr., Esquire
Aimee J. Zmroczek, Esquire
Attorneys for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

1 very high degree of respect and longterm, I would add,
2 professional relationship with Dr. McKee, and he has
3 testified in cases that I have presided over the years and
4 even prior thereto. He's testified in cases in which I was
5 -- had a small measure of contribution or lack thereof in
6 the presentation of the case.

7 He did extensive testing on Mr. Simmons, and his
8 bottom-line review is:

9 Based on thirty-five years of evaluation,
10 treating, and conducting peer-review published
11 research on sex offenders, it is my opinion that
12 Mr. Simmons does not meet the state's statutory
13 definition of an SVP.

14 That's sexually violent predator. Of course, as far
15 as the sex offender registry is concerned, I have no
16 discretion in that regard in this particular case.

17 Indictments 2014-GS-40-06677, 2016-GS-40-1721,
18 2016-GS-40-01722, 2016-GS-40-01723, 2016-GS-40-01724, the
19 defendant is committed to the state Department of
20 Corrections for the determinate term of ten years. Those
21 are concurrent, and he is subjected -- subject to the sex
22 offender registry. Thank you. Thank you very much.

23 Good luck to you, Mr. Simmons.

24 Thank you, Mr. Attorney General and Mr. Banks. Thank
25 you.

1 MR. BANK: Thank you, Your Honor.

2 MR. FLORES: Your Honor, did that also include
3 indictment 2016-GS-40-01720? I don't think I ---

4 THE COURT: 1720?

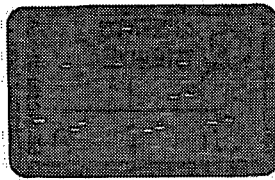
5 MR. FLORES: Yes, sir.

6 THE COURT: Yes, sir, it did. I apologize if I didn't
7 announce that. That's a ten-year sentence concurrent as to
8 all indictments.

9 MR. BANK: Thank you, Judge.

10 THE COURT: All right. Thank you. Thank you very
11 much.

12 --- END OF TRANSCRIPT OF RECORD ---



5/14-240

RETURN

I received the attached Search Warrant June 13 20 14 and have executed it as follows:
 On June 13 20 14 at 1020 o'clock M. I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Bon Daron
 Name of person searched or "at the place of search" with
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

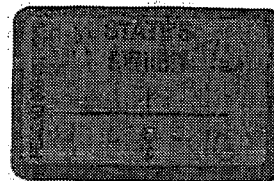
Master Bedroom: Tragus thumbdrive, ACER USB DONGLE, twin
 Mos. flashdrive (blue), SanDisk flashdrive 4GB, DANE ELEC
 (Black) flash drive, H2O MAN flash drive (Black), BLOW (Black) Passport
 External Harddrive, Logitech adapter w/ ASUS PC all in one
 model ET2321E w/ power cord, FPA0 Mini,
 Bedroom Michael Simmons: Toshiba Laptop model PSK 2LU, FPhone
 (Black + silver) model # A1387, W.D. Passport serial # WXL1A5138251
 Hooked to HP Pavilion (POWER serial # CN4750117) w/ Power Cord
 Bedroom Kyle Dorian: USB Drive (Brown) net card Coby KYROS
 serial # 044120021330, Data Transfer (Black + white) 5GB, Coby KYROS
 serial # 044120021347 w/ power cord
 Downstairs: Gateway laptop (SN 5F1601), Acer laptop w/ (Spartan Race sticker)
 ASUS E-PAD contains microspiral, Verizon Razer MAX, Verizon Pantech

This inventory was made in the presence of Sgt Thomas, ID Tech T. Moore, Ch. Sumpter
 AND Mr. A. Merrill

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 16th
 day of June 20 14
Rennell T. [Signature] (L. S.)
 Signature of Judge 6674

Mr. A. Merrill 15514
 (Signature of Officer Executing Warrant)



R@ygold SEARCH RESULTS

"TERM","FILENAME","FILEPATH","ITEM","HIT #","CONTEXT DATA"

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"r@ygold","{b9bb210e-ddcf-11e3-ac70-b222a1365ea3}{3808876b-c176-4e48-b7ae-04046e6cc752}","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[root]/System Volume Information/{b9bb210e-ddcf-11e3-ac70-b222a1365ea3}{3808876b-c176-4e48-b7ae-04046e6cc752}","813113082","rs Mike\Downloads\<<|R@yGold|>>\R@yGold 99.mpg "

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(pthc) (<<|r@ygold|>>) (babyshivid) 14y"

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(babyshivid) 14y"

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Files/Content.IE5/QJBN66OG/web.video.collection.torrent", "8910", "Hussyfan) (pthc) (<<|r@ygold|>>)
(babyshivid)-K- K"

"r@ygold", "web.video.collection.torrent", "CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME
[NTFS]/[root]/Users/M/AppData/Local/Microsoft/Windows/Temporary Internet
Files/Content.IE5/QJBN66OG/web.video.collection.torrent", "4345", "teen52:(Hussyfan)(<<|R@Ygold|>>)(
Pthc) Tvg 18B 9Yo"

SEARCH TERM HITS IN RED



PTHC SEARCH FOUND ON DESKTOP

"TERM","FILENAME","FILEPATH","ITEM","HIT #","CONTEXT DATA"

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"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","2","ta) 2003-01-28 (13Yo,Pthc).mpg(P ij(Japan Lolita) "

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"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","4",". (JAPAN~2.MPGOri (Pthc) 7yo 8yo asian girls .av"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","5"," asian girls .avi G(Pthc) Pedo Oriental Bonda e"

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"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","20","c pedo) GG.avi j(Pthc) - Little Lolita Build R"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","21","Russian Girls .mpg (Pthc) 2011 FamilyBed.avina H"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","22","1 FamilyBed.avina H(Pthc) Tamara (10Yo) & Lena (1"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","23","& Lena (14Yo).aviă (PTHC)~1 .AVI 13 (PTHC)~1 ."

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","24","(PTHC)~1 .AVI 13 (PTHC)~1 .MPG 13 (PTHC)~2 ."

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","25","(PTHC)~1 .MPG 13 (PTHC)~2 .AVI 13 (PTHC)~1.MP"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","26","ie her fertile pussy PTHC.mpg- 13YOG~1.MPGsi D"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","27","addy cum in pussy - (Pthc - 20.2.04 Pedoland).mpgp"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","28","(IValya Part 2).avi PTHC-C~1.MPG PTHC-V~1.MPG P"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","29","").avi PTHC-C~1.MPG PTHC-V~1.MPG PTHCIR~1.AVI I"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","30","1.AVI lzooskool-new-PTHC-TakingEmHome-(Really Goo"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","31","</d\\INDX(Ě! New I (Pthc) Tara 8Yr - Tara Gets Mo"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","32","kait 5yo - chunk2 FK pthc best.avi INEW~1.AVI-1M "

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","33"," Ĺ(Children-Lf-1Man)Pthc - Special Edition 1 - [0"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","34","ingpass) (Hussyfan) (pthc) (r@ygold) (babyshivid) "

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","35"," (P74D2~1.AVI13y ĥ(pthc pedo) 13yo mast vibe ado"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","36","vibe adorable.avi (pthc pedo) 10yo.mpgo i(Pt"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","37","edo) 10yo.mpgo i(Pthc) - avi 640x480 (Lovin"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","38","Loving,Lolita).avi (Pthc) 10yo Irisa - Anal .mpg "

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","39","isa - Anal .mpg m ĥ(Pthc) 2011 8yo girl with two "

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","40"," with two men.avi ĩ(Pthc) Hotlols Alesia 01-Omg!!"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","41","!!Omg!!Omg!!!.avi Ĥ(PTHC) JhO - Kelly&Amber&Comp"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","42","Amber&Company.mpg Ñ(Pthc) Jho - Laura 10Yo & 13Yo"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","43","ura part 1).mpgPa i(Pthc) Lily 10Yo Takes It Full"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","44","Fully - 8m39S.avi ġ(Pthc) ScarGirl - Compilation."

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","45","Compilation.avimp Ĥ(pthc) Tracy (8yo) Anal Dream"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","46"," Anal Dream's .mpg (PTHC)~1 .AVIġPa G9F13Y~1.MP"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","47","ĤG9s 11yo Mary Girl (Pthc 14m10s).mpgFat G9S11Y~1"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","48"," knew 2011(Hussyfan)(Pthc) 7yo girl Suck & Fuck We"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","49","201~1.MPG- L ĥPedo (Pthc) - Little 6yo and dad .m"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","50","o and dad .mpg pedo pthc.mpga PEDO(P~1.MPGta "

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","51","a PEDOPT~1.MPGta Pthc - Hc 12Y - Fat Girl.mpgg"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","52"," South America.aviă PTHC-H~1.MPG.hu ĥPthc-Russia"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","53","Valya Part 1).mpg). PTHC-R~1.MPG.hu Őpthc.raygol"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","54","girl an father.great(PTHC)(Laura Part 2).mpgă PTH"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","55","Lolita 13 yo- SaMix (PTHC)(R@y gold).mpg RUSSIA~1"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","56",".mpg RUSSIA~1.MPG (PTHC)~2 .AVIġPa (PTHC)~2 ."

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","57"," (PTHC)~2 .AVIġPa (PTHC)~2 .MPGġPa (PTHC)~3 ."

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","58"," (PTHC)~2 .MPGġPa (PTHC)~3 .AVIġPa (PTHC)~3 ."

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","59"," (PTHC)~3 .AVIlgPa (PTHC)~3 .MPGgP (PTHC)~4 "

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","60","(PTHC)~3 .MPGgP (PTHC)~4 .AVIlgPa (PTHC)~4 ."

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","61"," (PTHC)~4 .AVIlgPa (PTHC)~4 .MPGgPa (PTHC)~1.AV"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","62","12YOGI~1.MPGgPa 5 (PTHC).mpgPa 5(PTHC~1.MPG)Pa "

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","63"," 5 (PTHC).mpgPa 5(PTHC~1.MPG)Pa 19 yo Blonde I"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","64","m ing Incest(3m8s)pthc.avi.mp 9YOBLO~1.AVI Yo "

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","65","Yo lAndina3 Five-Yo Pthc,Pedo,Incest,Kiddy 7m35S."

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","66","Pedo New Serie 2011 (Pthc) Julia 8Yo Lisa 4Yo Mike"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","67","y G G9f 13yo laura (Pthc Pedo) .mpg G9F13Y~1.MPG"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","68","AG9s 11yo Mary Girl (Pthc 14m10s).mpgFat G9S11Y~1"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","69","genschappen. udent (Pthc).mpg (JAPAN~1.MPG16. P"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","70"," (PTHCH~1.MPGtle0)(pthc Hc_Littlesisley10yo girl"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","71","EE~1HQ preteen HQ (PTHC)~1 .MPGgPa lIrisa (Val"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","72","11Yo Totally Dadgirl Pthc-Kinderkutje.avi IRISA(~"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","73","11Yo Totally Dadgirl Pthc-Kinderkutje.avi Descrip"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","74","escription DESCR1 (PTHC)~1 .MPGtle0 j(Pthc) - "

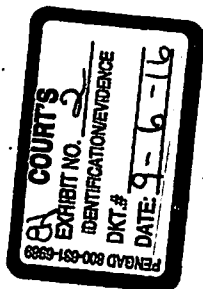
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"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","76","ssian Girls .mpg 5(PTHC~1.MPGg 5 (PTHC).mpg D"

"pthc","055832579","CPD 14-16214 HP DESKTOP.E01/Partition 2/NONAME [NTFS]/[unallocated space]/017186551/055832579","235912","77"," 5(PTHC~1.MPGg 5 (PTHC).mpg DESCR1~1ion0 Desc"

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STATE OF SOUTH CAROLINA

314-240

County of RICHLAND

ORIGINAL

CITY OF COLUMBIA

SEARCH WARRANT

OCCUPANTS AND STRUCTURE OF

COLUMBIA, SC 29223

Date 06-12-2014

Officer INV NAREWSKI

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

AFFIDAVIT

Personally appeared before me: one INV NAREWSKI
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County: On the person of any occupants and at this residence at [REDACTED] Columbia, SC 29223.

DESCRIPTION OF PROPERTY SOUGHT

Computer systems, including any electronic, magnetic, optical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as, hard disk, or CD Rom / DVD; communications facilities directly related to or in conjunction with such device; cellular wireless telephones, and such records or data produced in various forms, manuals documents or instructional material relating to such devices. As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to email, ledgers, lists, records, documents chat logs or photographs taken from, derived from or contained in the computer components and storage media described in the above listed systems or devices seized pertaining to this investigation: Sexual Exploitation of a Minor (16-15-410).

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

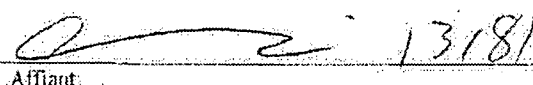
Any occupants at this dwelling and this residence, a single family dwelling, off white in color, two story dwelling with a black shingle roof with 128 displayed on a pillar at the front porch, located at [REDACTED] Columbia, SC 29223 (pictures enclosed). Those Computer systems, including any electronic, magnetic, optical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as, hard disk, or CD Rom / DVD; communications facilities directly related to or in conjunction with such device; cellular wireless telephones, and such records or data produced in various forms, manuals documents or instructional material relating to such devices. As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to email, ledgers, lists, records, documents chat logs or photographs taken from, derived from or contained in the computer components and storage media described in the above listed systems or devices seized pertaining to this investigation: Sexual Exploitation of a Minor (16-15-410).

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

The affiant has received information in the form of an affidavit and a data disk containing several files that depict children engaging in sexual acts including penetration. These files were obtained through law enforcement investigation activity by SGT K. Murphy of the Berkeley County Sheriff's Office. SGT Murphy was using software designed to obtain child pornography files from those persons trading them on the Internet using similar software. Based upon training and experience gained investigating Internet Crimes Against Children (ICAC) as a member of the South Carolina ICAC Task Force for more than four years, it is this investigator's belief that Computer records / file structures are present and available on the computer equipment located at this dwelling and they will support the evidentiary needs of this case based upon those records provided by the SGT Murphy.

Worn to and Subscribed before me
This 13 day of Dec, 2014


Signature of Judge

 13181

Affiant:
Columbia Police Department
1 Justice Sq. Columbia, SC 29201
(I.S.) 803-737-5886

COUNTY OF RICHLAND

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF COLUMBIA, SC.

It Appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

Any occupants at this dwelling and this residence, a single family dwelling, off white in color, two story dwelling with a black shingle roof with 128 displayed on a pillar at the front porch, located at [REDACTED], Columbia, SC 29223 (pictures enclosed). Those Computer systems, including any electronic, magnetic, optical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as, hard disk, or CD Rom / DVD; communications facilities directly related to or in conjunction with such device; cellular wireless telephones, and such records or data produced in various forms; manuals documents or instructional material relating to such devices. As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to email, ledgers, lists, records, documents chat logs or photographs taken from, derived from or contained in the computer components and storage media described in the above listed systems or devices seized pertaining to this investigation: Sexual Exploitation of a Minor (16-15-410).

Now, therefore, you are hereby authorized to search the subject premises described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

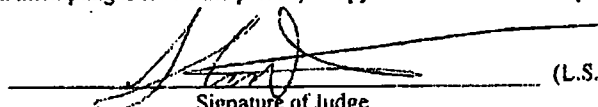
Computer systems, including any electronic, magnetic, optical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as, hard disk, or CD Rom / DVD; communications facilities directly related to or in conjunction with such device; cellular wireless telephones, and such records or data produced in various forms; manuals documents or instructional material relating to such devices.

As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to email, ledgers, lists, records, documents chat logs or photographs taken from, derived from or contained in the computer components and storage media described in the above listed systems or devices seized pertaining to this investigation: Sexual Exploitation of a Minor (16-15-410).

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to The City of Columbia Municipal Court within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.


Signature of Judge

(L.S.)

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

I, Detective Sergeant K. P. Murphy, being duly sworn do state the following:

1. Detective Sergeant K. P. Murphy, herein referred to as Detective Murphy, is employed by the Berkeley County Sheriff's Office (BCSO) as a criminal investigator and that one of Detective's Murphy's duties is as an investigator for the South Carolina Internet Crimes Against Children Task Force, herein referred to as the Task Force. Detective Murphy has worked in law enforcement for a total of 10 years. Prior to being employed by the BCSO, Detective Murphy served honorably with the United States Coast Guard and served as a Special Agent with the Coast Guard Investigative Service (formerly known as Coast Guard Intelligence). Detective Murphy has investigated internet-based crimes against children for approximately 5 years and is familiar with the manner in which these crimes are committed. Detective Murphy has received approximately 274.5 hours of training relating to the investigation of these types of crimes, including training pertaining to the behavior associated with offenders who commit crimes against children, which included the investigation of child sexual assault cases. Detective Murphy has received training in ICAC Investigative Techniques (01/10) and ICAC Undercover Chat Investigations (06/10), both of which deal with the investigation of the solicitation of minors. Detective Murphy has received training in ICAC Roundup BitTorrent, ICAC Roundup BitTorrent Investigations and ICAC Roundup eMule Investigations, which focuses on investigations involving the use of file-sharing programs and networks to download and disseminate child pornography in the form of digital files. Detective Murphy also has experience in investigating information received from the National Center for Missing and Exploited Children (NCMEC) via CyberTipline Reports. Detective Murphy has also received training in areas related to the investigation and prosecution of internet crimes against children such as Cyber Cop 101 – Basic Data Recovery and Acquisition, Confronting the Challenge of Sexual Exploitation and Cyber Cop 202 – Ilook Automated Forensic Application and has attended the 2010, 2011 and 2012 National Strategy Conference on Combating Child Exploitation.
2. Based on information within this affidavit, there is probable cause to believe evidence of a crime in violation of the South Carolina Code of Laws, Title 16, Chapter 15, Section 405, the offense of Sexual Exploitation of a Minor will be found through a search of computers and computer-related equipment and media owned by or used by the suspect.
3. On 22 November 2013, Detective Murphy was conducting investigations into the sharing of "child pornography" files on the BitTorrent Peer-to-Peer (P2P) file sharing network. At this time, he identified a computer with the IP address

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

66.57.172.240 as a potential download candidate (source) for files of investigative interest. Detective Murphy directed his investigation to this computer at IP address 66.57.172.240 as it had been recently detected associated with investigative files of interest by investigator(s) conducting keyword searches or hash value searches for files related to child abuse material including child pornography on the BitTorrent P2P network.

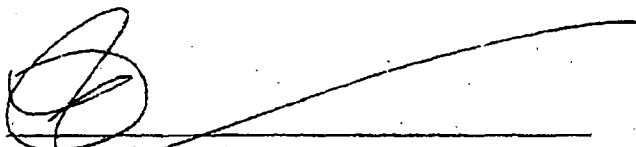
4. During the investigation the BitTorrent client P2P program on the computer with the IP address 66.57.172.240, reported its BitTorrent version as µTorrent 3.3.1. This client program also reported that it was associated with a torrent with the infohash: 25dfcd2cfe529b36500afee5307760c0ed1f9c26. This torrent file references 6 files, at least one of which was identified as being a file of investigative interest to child pornography investigations.
5. Between 1146 and 1232 hours (EST) on 22 November 2013, Detective Murphy successfully completed the download of the following 6 file(s) that the computer at IP address 66.57.172.240 was making available: R@ygold_sucktime1.mpg; R@ygold 99.mpg; R@ygold_lgassmania2.mpg; R@ygold_TheFamily1.mpg; R@ygold_mexicangirl1.mpg; and R@ygold_mexicangirl2.mpg. These/this file(s) were downloaded only from the computer at IP Address 66.57.172.240. Detective Murphy personally reviewed all 6 of these file(s) and determined that they contain "a visual representation of a minor engaging in sexual activity" as defined by §16-15-375, South Carolina Code of Laws 1976, as Amended.
6. Detective Murphy then determined that the IP Address 66.57.172.240 resolved back to Time Warner/Road Runner, 13820 Sunrise Valley Drive, Herndon, VA by querying the ARIN/WHOIS online database.
7. On 2 February 2014, Time Warner/Road Runner was served with process by the Office of the Attorney General for the State of South Carolina. On 10 February 2014, Time Warner/Road Runner returned process indicating that on the date and time the aforementioned files were downloaded, the IP Address 66.57.172.240 was assigned to a Time Warner/Road Runner account in the name of Wendy Doiron. The service address is indicated as [REDACTED], Columbia, SC 29223. The telephone number(s) associated with the account is (are) 803-865-5646. The type of service is High Speed Internet Service. The account was active as of the date process was returned. The email address(es) associated with the account is (are): doiron1@carolina.rr.com. Billing statements for this account are sent to the aforementioned address. The

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

account has been active since 9 November 2011.

8. A query of the online SC DMV database revealed that Wendy Doiron lists his home of record as [REDACTED], Columbia, SC 29223. His/her SC Driver's License number is [REDACTED] and his/her date of birth is [REDACTED]. There are three other individuals possibly associated with that address in the SC DMV database.
9. On 21 February 2014, Detective Murphy contacted Investigator B. Hudak with the South Carolina Internet Crimes Against Children Task Force, Columbia Police Department in Columbia, South Carolina and Investigator B. Hudak agreed to accept this referral for further investigation. This case will be referred to Investigator B. Hudak for further investigation.

The undersigned Detective Murphy, having been sworn, deposes and says that I am the writer of this affidavit and that the information contained is an accurate statement of the information observed or received by me.



K. P. Murphy
Detective Sergeant
SC Internet Crimes Against Children Task Force
Berkeley County Sheriff's Office

Sworn to and Subscribed to Before
me this 21st Day of February, 2014


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: February 5, 2024



RETURN

I received the attached Search Warrant June 13 20 14, and have executed it as follows:

On June 13 20 14 at 1020 o'clock M, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with Bon Dairon

Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Master Bedroom: Tragus thumbdrive, ACER USB DONGLE, twin
MOB flashdrive (blue), SanDisk flashdrive 4GB, DANE ELEK
(Black) flash drive, H2O MAN flash drive (Black), W.O (Black) Passport
External Harddrive, Logitech adapter w/ ASUS PC all in one
model ET2321E w/power cord, EPAD Mini,

Bedroom Michael Simmons: Toshiba Laptop model PSK2LU, PPhone
(Black + silver) model # A1387, W.O. Passport serial # WXL1A5138281
Hooked to HP Pavilion (POWER serial # CAH75011TL) w Power cord

Bedroom Kyle Dairon: USB Drive (Braun) unbranded Coby Kyros
Serial # 044120021330, Data Traveler (Black + white) 5GB, Coby Kyros
SN# 044120021347 w/power cord

Downstairs: Gateway laptop ^{15.5"} SN 5F1601, ASUS laptop w/ (Spartan Race sticker)
ASUS EPAD contains micro soc card, Verizon Razor MAX, Verizon Pantech

This inventory was made in the presence of Sgt Thomas, 10 Tech T. Moore, CE Supt
AND Det A. Merrill

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____
day of _____ 20 _____

(L.S.)
Signature of Judge

(Signature of Officer Executing Warrant)

Return

514-240

I received the attached Search Warrant June 15, 20 14, And have executed it as follows:
 On August 6, 20 14 at 10:00 o'clock 8 M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Ken DeLeon

Name of the person searched or "at the place of search" with. _____

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Due to the intense nature and exhaustive amount of information that may be stored in the device and the necessary amount of time required to complete the analysis of this information, an amended Return copy of the Search Warrant will be forwarded to the issuing judge as soon as possible with regard to the results of the analysis.

1x Blu Ray D-S-C containing 6.36gb of data

This inventory was made in the presence of James H. Haddock
 AND T. J. Haddock

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

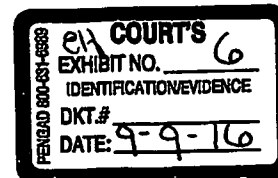
SWORN to before me this 6
 day of August, 2009

[Signature] (L.S.)

Signature of Judge

Ministerial Recorder

[Signature]
 (Signature of Officer Executing Warrant)



THE STATE OF SOUTH CAROLINA

In the Court of General Sessions

RICHLAND COUNTY

R. Knox McMahon, Circuit Court Judge

Indictments

2014-GS-40-6677

2014-GS-40-1720

2014-GS-40-1721

2014-GS-40-1722

2014-GS-40-1723

2014-GS-40-1724

The State of South Carolina

v.

Michael Scott Simmons

JURY INSTRUCTIONS

CHARGE

I NOW WILL CHARGE YOU ON THE LAW APPLICABLE TO THIS CASE. YOU MUST CONSIDER THE CHARGE AS A WHOLE AND NOT FOCUS ON SOME PORTIONS TO THE EXCLUSION OF OTHERS.

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE INDICTMENTS CHARGE THE DEFENDANT WITH SEXUAL EXPLOITATION OF A MINOR, SECOND DEGREE, SIX COUNTS. I REMIND YOU THAT THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THESE DOCUMENTS ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGE(S) MADE AGAINST THE DEFENDANT. THEY ARE THE FORMAL DOCUMENTS BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

MULTIPLE CHARGES

THE INDICTMENTS IN THIS CASE ALLEGE SEVERAL DIFFERENT OFFENSES AGAINST THE DEFENDANT. EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW

APPLICABLE TO IT UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH INDICTMENT.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO THESE INDICTMENTS, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS A VITAL IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, MUST ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNLESS YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT

GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNLESS IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THE STATE IS REQUIRED TO PROVE EVERY ELEMENT OF THE CHARGED OFFENSES BY EVIDENCE WHICH SATISFIES YOU THE JURY BEYOND A REASONABLE DOUBT. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE, THIS BURDEN ALWAYS REMAINS WITH THE STATE OF SOUTH CAROLINA TO PROVE GUILT BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE

TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

DUTIES OF JURY AND TRIAL JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY

RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A

CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

(Logan Charge)

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL—DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE DIRECTLY PROVES THE EXISTENCE OF A FACT AND DOES NOT REQUIRE DEDUCTION. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.