

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

 ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIE DON HORRY,

APPELLANT

Appellate Case No. 2010-163348

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2008-GS-10-1626

3 STATE OF SOUTH CAROLINA)
4 Plaintiff)

5 V.)

TRANSCRIPT OF RECORD

6 WILLIE DON HORRY,)

7 Defendant.)
8 -----)

9 MAY 12 - 14, 2010
10 CHARLESTON, SOUTH CAROLINA

11
12 B E F O R E:

13 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
14
15
16
17

18 A P P E A R A N C E S:

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Circuit Court Reporter
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1 THE COURT: Mr. Smiley, is that your client's
2 wife? She can come sit behind him right there.

3 MR. SMILEY: Thank you. Does the voir dire
4 have 13 questions? One was handwritten and 12
5 others?

6 THE COURT: Yes. I have 12 typed and one
7 handwritten.

8 MR. SMILEY: Thank you.

9 (Whereupon, the prospective jurors enters the
10 courtroom.)

11 THE COURT: Good morning, ladies and
12 gentlemen. Happy to see you all as well.

13 We are going to select a jury for the State of
14 South Carolina versus Willie Don Horry, indictment
15 2008-GS-10-1626. It is an indictment for sexual
16 exploitation of a [REDACTED] in the second degree.

17 And that indictment alleges as follows: In
18 Charleston County, South Carolina, on or between July
19 23rd, 2007 and July 26th, 2007, knowing the character
20 or content of the material, the defendant, Willie Don
21 Horry, did record, photograph, film, develop,
22 duplicate, produce, or create digital electronic file
23 material that contained a digital representation of a
24 [REDACTED] engaged in sexual activity; or did distribute,
25 transport, exhibit, receive, sell, purchase,

1 this case.

2 Your Honor, the jury has been selected and
3 seated.

4 THE COURT: Any motions regarding the
5 selection of the jury from the state?

6 MR. SIMPSON: None from the state.

7 THE COURT: From the defense?

8 MR. SMILEY: None from the defense.

9 THE COURT: Ladies and gentlemen, we
10 appreciate your patience. You are excused for the
11 remainder of the day. Please call the jury
12 information line after 6 o'clock this evening for
13 further instructions.

14 Ladies and gentlemen, you have been selected
15 for the case of the State of South Carolina versus
16 Willie Don Horry. I'm in the process of trying
17 another case, and we will begin the trial of this
18 case once I have concluded that case.

19 We anticipate that we will finish that case on
20 today. But things happen and they can change. What
21 I need for you all to do is Ms. Faye is going to show
22 you where and how you are going to need to report
23 when you return to the courthouse. She's going to
24 have a notebook. I need for each of you to write
25 your most current cell phone number on that notebook

1 I hope that you all have a wonderful day.
2 Please call after 6:00, we look forward to seeing
3 you. If you would go with the bailiffs.

4 (Whereupon, the jurors exit the courtroom.)

5 THE COURT: You may take your seats.

6 For the record, so that we all know the rules
7 of the road so to speak, I do not take speaking
8 objections. I expect you to strictly adhere to the
9 rules which means if you object, and I say basis, I
10 expect you to state the basis of your objection.
11 Unless I ask for argument, there is to be none.

12 So you need to -- whether it be leading,
13 bolstering, pitting, whatever it is, you need to
14 state your objection. If I allow you to approach the
15 bench, all bench conferences are recorded. If I say
16 no, that means there is no recording so you need to
17 succinctly state your basis, or I really don't feel I
18 need additional argument so I'm not going to
19 entertain any.

20 Is there anything before we adjourn for the
21 afternoon?

22 I anticipate that we will conclude the case,
23 we are a little behind now. I suspect -- in the case
24 that I'm now trying, we had about pretty much finished
25 most of the substantive witnesses. We have about

1 four additional witnesses. I don't know if the
2 defense is going to call any witnesses. But I
3 anticipate that we will finish this case today and be
4 able start you all's in the morning.

5 My clerk will call you when we get a real
6 handle on it so that you can have adequate time to
7 prepare.

8 MR. SMILEY: I will file any pretrial motions
9 that I have by 3 o'clock this afternoon.

10 THE COURT: What time is it? You might want
11 to do it earlier than that if you can. Or tell us
12 what they are.

13 MR. SMILEY: Well the rule --

14 THE COURT: I know what the rules are, I'm
15 very familiar with them.

16 MR. SMILEY: Yes, ma'am. I'm not saying that
17 you don't.

18 THE COURT: I understand. But when you give
19 the Court a complicated question that you have lived
20 with and I have not, it's really unfair to me.

21 And I understand the whole strategic, but
22 really there ain't nothing new under the sun. So the
23 quicker you can get it to me, the better it is for
24 me. It's purely selfish on my part. But it's unfair
25 to your client when I have to then take a break and

1 have to think about something because I have been
2 blind-sided by it and I haven't had adequate time to
3 think about it.

4 So the sooner you can get it to me the better.
5 I appreciate it.

6 MR. SMILEY: Yes, ma'am.

7 THE COURT: Thank you. You all have a good
8 day.

9 (Whereupon, the proceedings in this matter
10 before the Court were adjourned for the evening.)

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1 THE COURT: This is 2008-GS-10-1626, the State
2 versus William Don Horry, an indictment for sexual
3 exploitation of a [REDACTED] in the second degree.

4 The state is represented by Chad Simpson and
5 Jessica Baldwin. And the defense is represented by
6 Jim Smiley and Laree Hensley.

7 Bear with me one second, I'm shifting gears
8 from one case to another.

9 The Court is in receipt of -- Mr. Smiley, it
10 looks like you gave me your original motions. And I
11 need to make sure that they get filed if that is in
12 fact the case. And I'm referring to a motion to
13 sequester, this looks like your original signature to
14 me. Did you give me your originals?

15 MR. SMILEY: I might have, Your Honor.

16 THE COURT: I always ask so that I won't write
17 on them and they will get to where they're supposed
18 to go. And we have already resolved that, correct,
19 the witnesses will be sequestered by agreement?

20 MR. SMILEY: Yes, ma'am.

21 MR. SIMPSON: Will that include our pretrial
22 motions as well, Your Honor?

23 THE COURT: Yes. Are there going to be any
24 statements? Do we need to have a Jackson versus
25 Denno?

1 MR. SIMPSON: We do, Your Honor.

2 THE COURT: What are the statements alleged to
3 have been made?

4 MR. SIMPSON: One moment, Your Honor.

5 MR. SMILEY: There is an audio.

6 MR. SIMPSON: We have an audio recording of
7 the statements.

8 THE COURT: Were they made to law enforcement?

9 MR. SIMPSON: Yes, Your Honor.

10 THE COURT: How many witnesses do you have on
11 that?

12 MR. SIMPSON: Just one, Your Honor.

13 THE COURT: Are there going to be -- is the
14 state going to seek to introduce any prior bad act
15 testimony?

16 MR. SIMPSON: I believe what -- and maybe I
17 can clarify with Mr. Smiley is referring to is the
18 North Carolina investigation similar to this one.

19 We don't intend to introduce any mention of
20 that in our case in chief. However, we would reserve
21 the right if it becomes pertinent to impeachment.

22 THE COURT: He says, I've never done anything
23 like this.

24 MR. SIMPSON: Yes, Your Honor.

25 THE COURT: So we don't need to deal with that

1 then at this point if they're not seeking to
2 introduce any prior bad acts, except potentially for
3 impeachment.

4 Does the defendant have any record?

5 MR. SIMPSON: Not to my knowledge, Your Honor.

6 MR. SMILEY: He does not.

7 THE COURT: I ask that so that I can deal with
8 it in advance and you can have a meaningful
9 discussion with him about testifying if he so desired
10 to do that.

11 Okay, would the state like to respond to Mr.
12 smiley's motion which he filed on yesterday, looks
13 like at 3 o'clock?

14 MR. SIMPSON: Yes, Your Honor.

15 THE COURT: 3:09 it was faxed to me.

16 MR. SIMPSON: Yes, Your Honor, we would. If I
17 may present the Court with some legal support.

18 THE COURT: Absolutely.

19 MR. SIMPSON: I've handed the Court New York
20 versus Furver, a 1982 U.S. Supreme Court case, and
21 United States versus Williams, a 2008 U.S. Supreme
22 Court case.

23 In response to the defense's motion, and I'm
24 assuming that that is an over-breadth First Amendment
25 challenge of our state [REDACTED] pornography laws.

1 THE COURT: That is how I read it.

2 MR. SIMPSON: The defense, and I'm sure they
3 will respond to this, wants to present the Ashcroft
4 free speech coalition case as a ruling that declared
5 [REDACTED] pornography laws as a whole unconstitutional.

6 THE COURT: Well we can skip all that. I have
7 read Ashcroft, I have read it before. It talks about
8 visual depictions, and basically says that part of
9 the statute. But our state statute is far more
10 restrictive than any of them.

11 And we did research yesterday. We looked at
12 other state's statutes. Ours by far is the most
13 restrictive. I mean, when I say the most
14 restrictive, ours is the least broad of all the ones
15 I read.

16 MR. SIMPSON: Right. Ashcroft involves the
17 CPPA which was a broadening of [REDACTED] pornography.

18 THE COURT: Under the federal act.

19 MR. SIMPSON: And U.S. vs. Furver that I
20 presented to you was more of the classic First
21 Amendment challenge to a statute like South Carolina.

22 In Furver the U.S. Supreme Court seemed to
23 have no problem saying, of course that's not a
24 violation of the First Amendment, the First Amendment
25 is an absolute. The government has an interest in

1 criminalizing the distribution and possession of
2 actual [REDACTED] pornography.

3 THE COURT: What I glean from the case, just
4 sort of cutting to the chase, is that if you're
5 fantasizing that's one thing, versus something that's
6 actually real. Cartoons versus actual depictions.

7 MR. SIMPSON: Right. And as digital
8 technology improves, the realism of those cartoons
9 improves, that's what the federal government was
10 trying to prohibit in CPPA, and they successfully did
11 so in the protect act, which is U.S. vs. Williams,
12 that's a recrafting of the issue in Ashcroft and
13 which the Supreme Court upheld.

14 That's not the subject of the South Carolina
15 statute. I acknowledge my burden. We have some
16 contentions on how I have to go about proving that
17 burden. But I acknowledge my burden in this case to
18 prove actual [REDACTED] pornography, not the appears to be
19 standard of --

20 THE COURT: Our statute requires actual, not
21 appears to be.

22 MR. SIMPSON: Right. To just get it out on
23 the table now, it's the State's possession that
24 subsection B of that statute allows us to do that
25 through showing the actual titles of the videos and

1 the content. And leaving it up to the common sense
2 of the jury, which we rely on in many areas of the
3 law, to determine if that is an actual minor, or if
4 it is a cartoon of a [REDACTED]

5 And so for the purposes -- and I'm getting
6 ahead of myself before the motion. We have evidence
7 of that element by just showing the videos and the
8 actual titles, Your Honor.

9 MR. SMILEY: May I respond?

10 THE COURT: Yes.

11 MR. SMILEY: I actually don't disagree with a
12 lot of what Mr. Simpson said. But where I disagree
13 is that it shifts the burden to the defense to show
14 it's not a minor.

15 Because they're going to show a video and say,
16 hey, you look at it and you decide if that's a [REDACTED]
17 That then shifts the burden to Mr. Horry to show,
18 hey, that's not a minor.

19 So it's impermissible burden-shifting, number
20 one. Or to show that it's an actual adult and not
21 photo-shopped in or made with any other design. It's
22 relieves the state of the burden of showing that it's
23 an actual person, that it's a [REDACTED] by saying, here
24 jury, I don't have to prove it, you just look at it
25 and you decide.

1 Because then it shifts the burden to us to
2 have to say no, no, no, you can look at it. It may
3 look like one, but they don't have to prove it
4 anymore, we've got to prove that it's an adult.

5 So it then shifts into some burden shifting at
6 that point in time when it relieves him of the burden
7 to have to prove the element of the crime that it is
8 a minor engaged in -- because it has to be actual.
9 They can use it, it says -- the part of the statute I
10 have is subsection B that he believes allows him just
11 to show it, doesn't have to make any proof of who the
12 minor is, or if it is a [REDACTED] or if it is a person.

13 THE COURT: I'm listening.

14 MR. SMILEY: Well the bottom line is I believe
15 that Ashcroft made it so that subsection B of our
16 statute does not survive.

17 THE COURT: I don't think so. Because
18 Ashcroft, the federal statute actually said digital
19 comic -- I'm using the wrong language, but they
20 actually made it illegal to have basically fantasy
21 cartoon-like visual digital depictions which appear
22 to be juveniles, I mean which appear to be [REDACTED] but
23 were not illegal. And that's different than what our
24 statute requires.

25 And I'm not saying it very articulately

1 because I'm trying to shift gears from finishing that
2 other case. But -- what was the actual language?

3 It was such visual depiction as a digital
4 image, computer image, or computer-generated image
5 that is or indistinguishable from that of a [REDACTED]
6 engaged in sexually explicit conduct. Which is
7 different.

8 They went into some protracted discussion
9 about that being overly-broad. Because what it does
10 is it basically says, I can -- it prohibited someone
11 from looking at something that wasn't real, in other
12 words, that wasn't really what it was depicted to be.
13 Again I'm not being articulate.

14 MR. SMILEY: Yes, ma'am. I would argue a
15 couple things in response to that. He is not going
16 to show this to show that it's real, he's going to
17 show the video. He is not going to have anything to
18 say that this is a -- this was a person.

19 You decide, is what it's going to come down
20 to. We don't know how this video was made. Who, if
21 any, minors are involved. As you've seen through the
22 movie industry, digital representations have become
23 very lifelike.

24 I don't know. I shouldn't have to prove that
25 in this case. He has the burden to show it.

1 THE COURT: You don't have the burden to prove
2 anything.

3 MR. SMILEY: Yes, ma'am.

4 THE COURT: Under the statute, you don't have
5 the burden to prove anything. He has to meet his
6 burden of proof.

7 MR. SMILEY: However, if I could, the second
8 part of this. Our statute through subsection B makes
9 adult pornography illegal, and let me tell you how.
10 If the title said -- and I'm going to use very
11 exaggerated for the purposes of illustration -- if
12 the title of it said, a 10-year-old giving another
13 gentleman fellatio, all right, a 6-year-old fellatio,
14 and you put it in and it showed Betty White giving
15 Dick Clark fellatio, under our statute that could
16 be --

17 THE COURT: Not necessarily.

18 MR. SMILEY: It says appears.

19 THE COURT: That's so beyond the logic.

20 MR. SMILEY: You can take it from the title.

21 THE COURT: That's so beyond the logic you can
22 infer that.

23 MR. SMILEY: That's what it says, though.
24 Secondly, if in fact there is a person, an actual
25 person in the video who is of age, an adult, made to

1 look young, he does not have to prove the age. He
2 doesn't.

3 So you're criminalizing the adult possession
4 of pornography, possession of adult pornography at
5 that point. Because he doesn't have to do anything
6 to prove age. He can show it. And if they think the
7 person looks underage and is a [REDACTED] then, hey, you
8 get convicted.

9 The burden is on him to establish that the
10 person is a [REDACTED] And section B of our statute --

11 THE COURT: How old is the person alleged to
12 be in these videos?

13 MR. SIMPSON: Well, to answer that question is
14 we don't know who this person is so we don't know how
15 old they are.

16 THE COURT: Well you can look at somebody and
17 tell.

18 MR. SIMPSON: Well I can tell my common sense
19 is that we are talking 5 if I were to guess, 5 to 7.
20 What the statute does--

21 THE COURT: You can't make an adult look like
22 a 5-year-old or a 7-year-old.

23 MR. SMILEY: On that video. But other videos
24 may be --

25 MR. SIMPSON: Some in the collection get

1 closer to maybe -- and they advertise themselves
2 through their titles as -- like Jim says, anybody can
3 put an age in the title, I acknowledge that -- as 14.

4 In totally we are looking at a range from I
5 would guess 5 to 7 to the 14 to 15. But the video we
6 plan to use in the prosecution, I would ballpark it 5
7 to 7 years old.

8 MR. SMILEY: But he is not going to offer any
9 proof to that fact. Your Honor, and here's where I
10 think it differs.

11 THE COURT: I don't want to get into proof
12 because that's not where we are at at this stage of
13 these proceedings. He does not have to show the
14 burden of proof at this point. We are talking about
15 the constitutionality of the statute.

16 MR. SIMPSON: I can acknowledge at this point
17 that according to section B what I would be showing
18 as proof, and I know this is a bit of semantics, but
19 I disagree slightly with what Jim said, I do have the
20 burden of proving these are [REDACTED]

21 But what subsection B -- and you will charge
22 the jury that, I'm sure. What subsection B says is
23 that it is a permissible inference, and we will just
24 argue in closing what to make of this permissible
25 inference, that through title, text, visual

1 representations and content of the videos, they can
2 make that common-sense determination.

3 We have permissive inferences all the time in
4 the law. Look at the drug laws, 1.5 grams of crack
5 we can argue that the jury from that can infer the
6 intent to distribute. The jury is here as the common
7 sense in the courtroom.

8 What this statute does, acknowledging that we
9 can't search the globe to find these little kids who
10 are often not even in the United States, to prove
11 their age the statute allows the jury to use their
12 common sense, see the videos, and determine if this
13 is in fact [REDACTED] pornography.

14 MR. SMILEY: And I have two points, Your
15 Honor. Point one, similar in federal prosecutions is
16 they bring an expert in who identifies known
17 pornography, who will then testify that this is known
18 pornography, the age of the [REDACTED] was so-and-so, it
19 was created on so-and-so a date. There is a
20 database.

21 He is not relying on that. He is not bringing
22 in an expert.

23 THE COURT: Again that's a factual issue, that
24 is not about the constitutionality of the statute.
25 You are now getting into the directed verdict stage

1 of your case and I have not heard any testimony. And
2 that's a weight issue.

3 I need you to stick to the constitutionality
4 of the statute.

5 MR. SMILEY: I'm just following up. And then
6 the second would be the inference about that he used
7 with cocaine. The difference is you bring it in, you
8 identify it as cocaine, you show how it's packaged.
9 Here it's just, hey, this is what we think it is.
10 They don't identify it. There is a big difference.

11 And lastly, and I'm sticking to the point on
12 this one, Your Honor, is the legislative intent
13 behind the state's statute is to protect [REDACTED] it
14 seems like that. So when you don't even identify the
15 [REDACTED] or where it was conducted, where it was made --

16 THE COURT: That's a directed verdict
17 argument, not a constitutional validity argument.

18 MR. SMILEY: Okay. Yes, ma'am.

19 THE COURT: I am of the opinion at this point
20 I'm going to give myself a little more time to think
21 about it. And I may well do a written order on it, I
22 am not certain at this point, and I reserve the right
23 to do that if I should decide that it is appropriate
24 under these circumstances.

25 But I'm of the opinion, based on the limited

1 research I was able to do yesterday between
2 concluding the trial in the evening, as well as the
3 limited amount I have been able to do this morning,
4 I'm of the opinion that the South Carolina statute is
5 not overly broad; that it does not regulate a
6 substantial amount of protected speech; that it is
7 targeted at an appropriate policy interest, that
8 being protection of [REDACTED]

9 And I think what is most important in our
10 statute is that our statute is not abstract, it is
11 not vague. The Supreme Court draws a very
12 interesting distinction. They say what renders a
13 statute vague is not the possibility that it will
14 sometimes be difficult to determine whether the
15 incriminating fact established has been proven, but
16 rather the indeterminacy -- rather the indeterminacy
17 of precisely what the fact is. And our statute is
18 very clear as to what is targeted, and what has to be
19 proven.

20 And again, based on my limited research, I
21 read several statutes from several states yesterday.
22 Our statute probably is the -- those statutes are far
23 broader than our statute. Our statute is more
24 targeted, and the Supreme Court -- and I'm referring
25 to the U.S. Supreme Court -- has found that those

1 statutes are constitutionally valid. And they are
2 far more reaching than our statute is.

3 And I'm referring to 16-15-405. And the
4 statute is very clear. It requires the state to
5 prove beyond a reasonable doubt that records,
6 photographs, films, developed, duplicates, produces
7 or creates digital electronic file material that
8 contains a visual representation of a minor engaged
9 in sexual activity, or distributes, transports,
10 exhibits, receives, sells, purchases, exchanges or
11 solicits materials that contain a visual
12 representation of a [REDACTED] engaged in sexual activity.

13 Subsection B does provide for an inference,
14 that being in the prosecution under this section
15 trier of fact may infer that the participant in
16 sexual activity depicted in the material as a minor
17 through its title, text -- and several, not just the
18 title -- the text, the visual representation itself,
19 or otherwise a [REDACTED] which gives the jury the
20 ability to determine factually what age a person is.
21 In other words, whether they are a [REDACTED]

22 And that is no different, I think, than any
23 other inferences that we have in the law. And I
24 would instruct, although I'm getting a little ahead
25 of myself, I would say that it's just like any other

1 factual inference. It's for you to give it the
2 weight and value you think it deserves. You can
3 disregard it, you can regard it, you can give it no
4 weight, you can give it some weight.

5 It just becomes a factual determination just
6 like any other. No different than a .08 in a DUI, in
7 a drug case where you have different weights of drugs
8 like 10 to 28 grams, 28 to 100 grams. When you deal
9 with distribution cases, how something is packaged
10 irregardless of weight.

11 I think here the law is replete with
12 inferences. And basically the jury can consider, not
13 in and of itself, but in the entire context of the
14 case is how it is usually instructed.

15 So based on my limited ability to look at this
16 up to this point, I do not believe the statute is
17 constitutionally vague, which is really the focus of
18 the Supreme Court's analysis. And their real focus
19 is to make sure that we don't cross over into
20 constitutionally protected speech.

21 And again making sure that -- the focus seems
22 to be how specific the statutes are. And they are
23 looking at them really on a state-by-state basis as
24 most challenges come up because we are in a digital
25 age, statutes are cropping up everywhere.

1 I'm certain that the Supreme Court will
2 consider, especially with there being dissenting
3 opinions, I'm sure that the issue will be considered
4 again. It's no different than when we first started
5 having pornographic magazines. I think the law will
6 evolve.

7 But the Supreme Court has really drawn a very
8 clear distinction between what is real and what is
9 fantasy. And basically says that protected speech is
10 when an adult indulges in fantasy basically. If you
11 are looking at cartoons or whatever, I mean that's
12 free speech no matter how vial it may be to anyone in
13 this courtroom, they're protected to do that.

14 But when you are talking about real people or
15 what -- I don't want to misstate it. The language
16 that is used is -- I'm trying to think of the other
17 statute that I read.

18 But where it is clear that there is
19 participation of a [REDACTED] in sexual activity, that is
20 not protected. And that all speech is not protected.
21 Obscene speech, sexually explicit material that
22 violates fundamental notions of decency is clearly
23 not protected by our First Amendment.

24 So at this point I'm of the opinion that our
25 statute would pass the constitutional muster, that

1 being those precedents established by the United
2 States Supreme Court, as our court has not considered
3 it and it has not been challenged. This may be the
4 first one, who knows. We will see. Maybe we will
5 get some clear guidance regarding it.

6 But at this opinion I'm of the opinion that it
7 does not violate the First, Sixth or the Fourteen
8 Amendment. It is not protected speech. We are going
9 to go forward. And again I reserve the right to do a
10 written order, I'm going to see, do a little more
11 research. If my opinion charges, I'll let you know.

12 Are you ready to proceed? State ready to
13 proceed?

14 MR. SIMPSON: Yes, Your Honor, proceed with
15 the Jackson v. Denno?

16 THE COURT: You know, I forgot about that.
17 How soon are those statements going to come up?

18 MR. SIMPSON: Fairly quickly in the case, Your
19 Honor.

20 THE COURT: How fairly quickly?

21 MR. SIMPSON: First witness, maybe ten minutes
22 in.

23 THE COURT: Can we maybe go ahead and start
24 with opening arguments, opening instructions and then
25 do that in camera. Because it will be close to lunch

1 and I can let the jury go and then we could do that.

2 MR. SIMPSON: That would be fine.

3 THE COURT: Is that acceptable? Because they
4 have been waiting.

5 MR. SMILEY: As long as he does not bring it
6 up in his opening statement until it has been ruled
7 on.

8 THE COURT: Can you stay away from it in your
9 opening?

10 MR. SIMPSON: I can, Your Honor. I prefer not
11 to, but I can do that.

12 THE COURT: I find that the less you say in
13 opening argument, the better.

14 MR. SIMPSON: I do agree with that.

15 THE COURT: I think I have gone the opposite
16 and done myself some great disservice. You never
17 know how a case is going to develop. It is best to
18 say very little in the opening.

19 MR. SIMPSON: I think you just said my theory
20 on trying cases, Your Honor.

21 THE COURT: People say stuff and then they
22 have to backtrack later. But, you know, everybody
23 tries cases differently. I try not to interfere.

24 Okay. Are we ready to proceed from the state?

25 MR. SIMPSON: Yes, Your Honor.

1 THE COURT: From the defense?

2 MR. SMILEY: Yes, Your Honor.

3 THE COURT: Bring in the jury, please.

4 MR. SMILEY: Your Honor, I didn't say note my
5 objection on that. I assume it has been protected.

6 THE COURT: You filed it, we argued it. And I
7 have given Mike your other motion so that they will
8 go into your client's file.

9 MR. SMILEY: Thank you. Yes, ma'am.

10 (Whereupon; the jurors enter the courtroom.)

11 THE COURT: You may be seated if you all bear
12 with me one second. Where is Number 263? Could you
13 switch seats with the young lady in the pink. I am
14 appointing number 263 as the foreperson.

15 Ladies and gentlemen, please stand for me,
16 please, and raise your right hand so that the clerk
17 can administer the oath.

18 (Whereupon, the clerk administers the oath to
19 the jurors.)

20 THE COURT: You may take your seats.

21 Ladies and gentlemen, we appreciate your
22 patience. I was finishing the first cases that we
23 started this week with closing arguments and
24 instructions. And we had some jurors that were late
25 this morning due to some challenges, so it threw us

1 MR. SIMPSON: None from the state, Your Honor.

2 THE COURT: From the defense?

3 MR. SMILEY: No, Your Honor.

4 THE COURT: You made proceed.

5 MR. SIMPSON: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 MR. SIMPSON: Good afternoon. We met briefly
8 yesterday. My name is Chad Simpson, and along with
9 Jessica Baldwin, it is my honor to represent the
10 State of South Carolina in the case again Willie
11 Horry.

12 As you heard from the Judge, the charge in
13 this case is a charge of sexual exploitation of a
14 [REDACTED] in the second degree. It's one of those
15 charges that doesn't really tell you in its title
16 what we are talking about, so let's get right to the
17 point. What we are talking about is [REDACTED]
18 pornography, the distribution and possession of it.

19 And so I want to begin in kind of an
20 unconventional, and that's by apologizing to you.
21 We've already asked an incredible amount of you to
22 take time out of your normal week, come here and a
23 lot of sitting and waiting. But that, I don't mean
24 to belittle that, but that's an inconvenience that
25 lasts one week.

1 But I apologize to you because some of the
2 subject matter, things you will have to hear about
3 and possibly see, might hang with you a little
4 longer. And I'm sorry for that, but it's my job and
5 I have got to present my case.

6 Peer-to-peer networking is what we are talking
7 about. Some of you may be familiar with that, some
8 of you may not. It's also called public file sharing
9 program is another way it's described.

10 If you don't know what I'm talking about,
11 perhaps you've heard of Napster, Limewire, Kazaa,
12 eMule, all examples of public file sharing networks.
13 Even though we are talking about computers, you don't
14 need to really be a computer expert to understand
15 these are public networks, anyone for free can join
16 who has an Internet connection, and you go on to file
17 share.

18 You put in your share drives, what you want to
19 put in it is what you have, and you get in exchange
20 access to these hundreds, probably millions of other
21 users what they have in their file sharing folder,
22 other members of the network.

23 And the main purpose of these programs, as you
24 all probably already know, is sharing music. Now I'm
25 not going to judge the copyright law implications of

1 that, that's a rather benign, in my opinion, use for
2 it. Getting free songs is the main reason people use
3 these programs.

4 As they developed, though, it became clear
5 that the same technology that allowed people to share
6 songs for free, also allowed people to share videos
7 for free. Some of your friends, I won't make you
8 admit to this, but he may watch movies before they
9 come out on a DVD on these file sharing programs.

10 Probably doesn't surprise you that once the
11 technology evolved in such a way as to share the
12 videos that -- I don't know if you know this, but
13 pornography is quite popular on the Internet --
14 people began sharing pornography on file sharing
15 programs. You may find that distasteful, but it's
16 legal, it's a free country.

17 But what is not legal, a line that we
18 definitely draw in the law, is [REDACTED] pornography. To
19 get right to the point, we are not talking about
20 sexual videos that perhaps it's someone who is 17
21 years old, we are talking about [REDACTED] molestation
22 caught on video being shared and exchanged on these
23 file sharing programs.

24 To investigate the sharing of [REDACTED]
25 pornography is fairly easy. As I told you, these are

1 free networks, they are open to the public. Law
2 enforcement merely joins the free network, it's open
3 to anyone, searches out videos they know to be [REDACTED]
4 pornography, gets the IP address of the person
5 sharing it. And IP address stand for Internet
6 Protocol or Internet Provider address. It's just a
7 series of numbers that designates a specific user on
8 the Internet.

9 Through a legal process finds the location
10 from the Internet provider of that computer sharing
11 the [REDACTED] pornography; obtains a search warrant;
12 seizes the computer; they give it to the computer
13 forensics who look at it and say, sorry you are wrong
14 there is no pornography on this; or yes this computer
15 has -- sometimes, as in this case -- multiple
16 instances of [REDACTED] pornography on this computer.

17 Because it's a rather simple investigation,
18 the good news that I can give you is this will not be
19 a prolonged trial. You'll hear from two witnesses.
20 Trish Taylor, who on 7/23/2007 found ISP 68592521
21 sharing a video compilation of little girls being
22 ejaculated upon.

23 She didn't get the search warrant then,
24 instead she checks back three days later on July 26,
25 2007. A video file is being shared by the same IP

1 address, a little girl being tied up and blindfolded,
2 engaging in sexual activities. As well as the little
3 girl bound by a rope and forced to perform oral sex.

4 And again this is what we got to talk about in
5 this trial and I apologize again. On the two days
6 viewing the three videos available for downloading by
7 that ISP address, she served the warrant, seized the
8 defendant's computer, took the computer to the
9 computer forensics lab and you'll hear from Jerry
10 Roberts.

11 The computer forensics lab first confirmed
12 that the -- all three videos that she had viewed were
13 once on that computer. It's very hard to delete
14 something from a computer forever. There is
15 something called a SHA value that you'll hear about.
16 The forensics determined that although it had been
17 deleted since, that those three videos did at one
18 time reside on that computer, as well as locating
19 other instances of [REDACTED] pornography residing on the
20 defendant's computer.

21 Ladies and gentlemen, this trial is going to
22 be hard because we have to talk about the difficult
23 subject matter. But I submit to you that once you've
24 heard all of the evidence, your decision in that jury
25 room will not be guilty -- I mean will not be

1 difficult, and you'll return a verdict of guilty.

2 Thank you

3 THE COURT: Mr. Smiley.

4 MR. SMILEY: May it please the Court.

5 I'm Jim Smiley. This case isn't about making
6 pornography, all right. As you can tell there is no
7 victim in this courtroom. The state is not going to
8 be able to tell you who is on these video. They are
9 not going to be able to tell you their age. They are
10 not going to be able to tell you they're even real
11 people. So listen for that when the evidence is
12 presented in this case.

13 I'm not going to sit here and defend
14 pornography. That's not my job. I have my personal
15 views on that. Professionally our constitution says
16 that the First Amendment protects a lot of things,
17 free speech. And it protects pornography, it does
18 not protect [REDACTED] pornography.

19 Because it's the state's burden, not mine,
20 it's the state's burden to prove beyond a reasonable
21 doubt that the actor or image that is portrayed in
22 the video is a [REDACTED] is a [REDACTED] an actual [REDACTED]

23 Mr. Horry does not have to prove anything. He
24 comes in as a citizen just like you, he lives his
25 life in a very law-abiding sense. So the burden is

1 on the state to prove.

2 This isn't guesswork. They have got to
3 provide you with the facts. They can't -- you took
4 an oath to decide this case on the facts. Not on
5 emotion, not on how disgusted you may be at looking
6 at the images and trying to decide what they are.

7 I got a pretty strong stomach, all right. I
8 have been doing this a long time. The images aren't
9 ones that make you feel very good. But, that does
10 not relieve the state of their burden to prove that
11 it is a minor, an actual [REDACTED] You aren't going to
12 hear from one.

13 Now there are other issues going on in this
14 case. He has already highlighted in his opening the
15 evidence he's going to show. Once was on the
16 computer. So what is possession? The Judge is going
17 to give you a charge, and you are going to hear the
18 facts. And you are going to have to decide if Mr.
19 Horry actually possessed, knew he possessed [REDACTED]
20 pornography. And then whether he knew he possessed
21 [REDACTED] pornography with the intent to distribute.

22 He talked about these file sharing programs,
23 you'll hear the evidence. I will tell you, I'm no
24 computer expert. And a lot of this has been over my
25 head and I have had an education. But as you hear

1 the evidence of this file sharing program, it's used
2 to download lots and lots of things.

3 And as you share it, sometimes what you
4 download is not what you are looking for. I have
5 done plenty of searches on the Internet. I think the
6 evidence will show in this case that you put in a
7 search, you get a bunch of results, and it may be
8 what you are looking for and it may not be what you
9 are looking for. It will be your job to determine
10 what Mr. Horry's intent was, whether he possessed any
11 [REDACTED] pornography.

12 Two witnesses, but a lot of information to get
13 to you through that. This is a complicated case.
14 This case starts to impinge on what I call the bought
15 boys. Because the state, the government, the police
16 -- and I never knew this -- can reach out and look at
17 what is on your computer. And this is them going in
18 and looking at what you are looking at and deciding
19 whether it meets the elements of a crime, then they
20 come in seizing your computer.

21 So in the simplest sense this starts with Mr.
22 Horry sitting at his house with a computer in front
23 of him, surfing the Internet, using his file sharing
24 program to go out and do what Mr. Simpson has
25 described, some illegal act like getting music,

1 getting videos. Even if he got pornography, that's
2 the only thing he describe that wasn't illegal.

3 And sitting there and getting results, whether
4 he viewed them or not, whether it was what he was
5 looking for. The state is going to tell you that Mr.
6 Horry purposely, intentfully went out, got, looked
7 at, possessed, and then put back out there [REDACTED]
8 pornography.

9 It's your job to first decide whether it is
10 actually a [REDACTED] [REDACTED] And then second, whether he
11 possessed it and whether he intended to distribute
12 it. At the end of that, the answer to that question
13 is going to be he is an innocent man.

14 Thank you very much.

15 THE COURT: State may proceed.

16 MR. SIMPSON: Your Honor, may we approach?

17 THE COURT: Yes.

18 (Whereupon, the following discussion was held
19 at the bench.)

20 MR. SIMPSON: We will be jumping into the
21 statement.

22 THE COURT: I thought you said you had
23 questions to ask of him before you jumped into the
24 statement.

25 MR. SIMPSON: Yeah.

1 THE COURT: Go ahead and start. And when he
2 gets to that point tell me you have a matter of law
3 and then I will see.

4 MR. SIMPSON: Okay.

5 (In open court.)

6 THE COURT: Your Honor, state calls Sgt.
7 Trish Taylor.

8 MS. TRISH TAYLOR,
9 after having first been duly sworn to state the
10 truth, the whole truth and nothing but the truth,
11 testified on her oath as follows:

12 THE COURT: You may proceed.

13 MR. SIMPSON: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 DIRECT EXAMINATION

16 BY MR. SIMPSON:

17 Q Sgt. Taylor, how are you today?

18 A Fine, thank you.

19 Q What agency do you work for?

20 A Charleston Police Department.

21 Q And you just mentioned this, what is your
22 rank?

23 A Sergeant.

24 Q And where are you currently assigned at CPD?

25 A Central detectives.

1 Q How were you assigned back in 2007?

2 A I was at that time part of the computer crime
3 unit. And I was under a task force called the
4 Internet crimes against [REDACTED] task force.

5 Q And what kind of crimes did the Internet
6 crimes against [REDACTED] task force investigate?

7 A [REDACTED] exploitation, which could involve
8 soliciting [REDACTED] over the Internet, or [REDACTED]
9 sexual abuse photos found on the Internet.

10 Q And do photos include videos as well?

11 A Videos as well, yes.

12 Q Did you have -- ever have the occasion to have
13 any specific law enforcement training in this area?

14 A Yes. I went through extensive training
15 through the ICAC task force.

16 Q And how much of your training and your work
17 for the ICAC task force focused on [REDACTED] pornography
18 investigations?

19 A For the task force that was all that we did
20 was [REDACTED] exploitation. I did work some white-collar
21 crime as well.

22 Q Did your investigations into [REDACTED]
23 exploitation focus on what we call peer-to-peer
24 investigations?

25 A Yes. For the [REDACTED] exploitation, for the

1 pictures and the videos was through peer-to-peer.

2 Q And can we just start out generally for the
3 jury, can you explain what we mean when we say
4 peer-to-peer network?

5 A Well, what we were investigating was the
6 Gnutella network. The Gnutella network is an
7 open-source public network. And the computers that
8 utilize it are called peers. And that's where hence
9 the name peer-to-peer. You go from computer to
10 computer.

11 It's a file sharing network. And that's what
12 it's used for is to share files; it could be
13 pictures, videos; it could be music, you've all heard
14 of music sharing. So what happens is people who want
15 to use the Gnutella network have to have a client,
16 and they could be a program that is used it access
17 that network in order to get these files.

18 And what happens is you agree when you
19 download this program, and for this particular case
20 it was the Limewire program which is one of the most
21 popular in the state, you make an agreement that you
22 share certain files with other users. So you become
23 peer and you share with other peers. So it's really
24 the connection is from computer to computer.

25 Q And is there a way you identify these files

1 other than just by their title?

2 A Yes. You can change file names but there is
3 something called a SHA-1, and it's a value, it's a
4 hash, it's a collection of numbers and letters that
5 are specific to a file.

6 And what's important to know, let's say you
7 have two pictures in front of you and they each have
8 SHA values and they're the same, so they were
9 identical pictures. If you were to change one
10 megapixel on an image, it's going to change that
11 hash, that SHA value.

12 Q And on these networks does it identify files
13 both by their title and SHA value?

14 A And by their SHA values, yes.

15 Q Let's talk about the titles for a second. Can
16 anyone name a file whatever they want?

17 A Yes.

18 Q So do user's name files containing [REDACTED]
19 exploitation by certain terms in your experience?

20 A In my experience there were certain terms that
21 you could query the network for that were very
22 valuable in returning [REDACTED] pornography.

23 And these terms that were found, for instance,
24 one term might be pedo. And I could type in pedo and
25 it would return all the files that contain that word

1 pedo in it.

2 Q Can you give some other examples from your
3 experience that you've seen for the code words?

4 A PTHC, which is preteen hard core is another
5 one that was popular. There was also Lolita,
6 preteen. So those were all terms I could use to find
7 [REDACTED] pornography that was being distributed on this
8 network.

9 Q Could you explain for the jury how a user,
10 yourself being a frequent user of this program,
11 access and looks for certain files on a peer-to-peer
12 network?

13 A Well as I said I would use a term, like one
14 who would be looking for a music file. You would put
15 in -- you could put in the name of the file, the
16 music, the song, the album, all those things.

17 But I was looking for specific [REDACTED]
18 pornographic videos or pictures. So I would put in
19 terms like pedo, and it would return all these
20 particular, at the time, users who were on this
21 program who had these files available to share.

22 And they would also list those SHA values.
23 And it was through the SHA values that don't change
24 that I could recognize which ones were, by the state
25 of South Carolina, were deemed illegal.

1 MR. SMILEY: Objection, Your Honor.

2 THE COURT: Basis.

3 MR. SMILEY: Expertise. Foundation.

4 THE COURT: She has been established by
5 foundation, training and experience.

6 MR. SMILEY: May we approach?

7 THE COURT: Yes.

8 (Whereupon, the following discussion was held
9 at the bench.)

10 MR. SMILEY: There is a list, she hasn't
11 established there is a list that the state of South
12 Carolina deemed certified illegal.

13 THE COURT: That's not what she said. She
14 said she -- based on where people are located in
15 South Carolina.

16 MR. SMILEY: Ones she's seen before. She is
17 not talking about the --

18 MR. SIMPSON: I can clear that up.

19 (In open court.)

20 THE COURT: You may proceed.

21 MR. SIMPSON: Thank you, Your Honor.

22 Q (By Mr. Simpson) You said that often you look
23 at the SHA values and determine from prior experience
24 that these meet the definition of [REDACTED] pornography?

25 A Yes.

1 Q In your opinion?

2 A Yes.

3 Q So once you find a file, or a user finds a
4 file, that seems through its title to be what they're
5 looking for, what can a user do?

6 A Well if you choose to download that file what
7 it does is it gives you a list of all of the
8 computers that have that file available for you to
9 download that they're distributing the file.

10 And at that time they also give an IP address.
11 And the IP address is very specific to a computer.
12 And there is public software that you can use to
13 determine where that is.

14 And I would find people in my area, my
15 jurisdiction who were downloading [REDACTED] pornography.
16 And I would initiate a download from them, from that
17 IP address.

18 Q Just to clarify, when you identify another
19 user on the network, can you then access their entire
20 computer?

21 A I can access whatever they had when they
22 initially downloaded this program, this client
23 program. They determine what files they're going to
24 share.

25 And I can make a direct contact with that

1 other computer and look at what is available in that
2 file they have chosen to share, which is usually
3 called a share file.

4 Q So a user, any user determines what they make
5 available to the public?

6 A Yes.

7 Q By placing it in their?

8 A Share file.

9 Q Share filed. Now, Sgt. Taylor, what is an IP
10 address?

11 A It stands for Internet Protocol. And Internet
12 service providers have a list of these numbers and
13 they assign them to particular computers.

14 Q So an IP address doesn't show name or place,
15 it's just a series of numbers?

16 A It is a number. When I say publicly
17 available, I can find out what company holds that
18 number. And then I can initiate and find out who the
19 subscriber is to that number.

20 Q And once you initiate that legal process, the
21 Internet provider provides you with what?

22 A Provides me with who's paying the bill and
23 where the location of it is, the subscriber
24 information.

25 Q Sgt. Taylor, I'd like to now get into this

1 specific case. Do you remember conducting one of
2 these peer-to-peer investigations on July 23rd, 2007?

3 A Yes.

4 Q And can you describe to the jury how you went
5 about that specific investigation?

6 A Can I refer to my report?

7 Q Would that refresh your recollection?

8 A If I need to.

9 Q Yes.

10 A So on July 23rd I was --

11 MR. SMILEY: Objection.

12 THE COURT: Basis.

13 MR. SMILEY: She is reading.

14 (Whereupon, the following discussion was held
15 at the bench.)

16 THE COURT: What's the basis of your
17 objection?

18 MR. SMILEY: She is just reading from her
19 report.

20 THE COURT: What did you just hand her?

21 MR. SIMPSON: She has a copy of her report. I
22 asked her -- she asked if she could refer to her
23 report.

24 I asked, would it refresh your recollection,
25 she said yes. Now she is referring to her report as

1 she answers my questions.

2 MR. SMILEY: She's just reading it into the
3 record.

4 THE COURT: She created it. It's not hearsay
5 unless she repeats something someone said in her
6 report. She's using it to refresh her memory.

7 MR. SMILEY: Yes, ma'am.

8 (In open court.)

9 THE COURT: Overruled, except to the extent
10 she cannot say what someone said to you.

11 Q (By Mr. Simpson) You can continue, Sergeant.

12 A Okay. It says, on July 23rd I was conducting
13 a proactive investigation, so I was on the Gnutella
14 network. I was querying the network for terms like
15 pedo and PTHC. It was giving me a list of files that
16 contained those names.

17 At which point it also has the SHA values. I
18 have been doing this for several years and I have
19 memorized the SHA values of particular items of
20 interest to me. Ones that I knew before that I had
21 seen and viewed that met the state -- what I found to
22 meet the state requirements for [REDACTED] pornography.

23 MR. SMILEY: Objection.

24 THE COURT: Basis.

25 MR. SMILEY: May we approach?

1 THE COURT: Yes.

2 (Whereupon, the following discussion was held
3 at the bench.)

4 MR. SMILEY: She is saying she has read a
5 list, it's hearsay.

6 THE COURT: What she said was she memorized
7 the SHA values.

8 MR. SMILEY: She said she --

9 THE COURT: You need to tell me what the basis
10 of your objection is.

11 MR. SMILEY: Foundation. She was referring to
12 a list of illegal material that meets the definition
13 of the state's illegal --

14 MR. SIMPSON: Through my explaining in viewing
15 the files of.

16 THE COURT: Her exact testimony was what,
17 through her experience, she has memorized certain SHA
18 values of interest to her that come within the ambit
19 of what is illegal in South Carolina.

20 You need to lay the appropriate foundation of
21 what she is referring to. The rest of her answer is
22 completely appropriate. The objection is overruled.

23 (In open court.)

24 THE COURT: You may proceed.

25 Q (By Mr. Simpson) Sgt. Taylor, when you say

1 what is legal and illegal, this is by your opinion,
2 correct?

3 A Right.

4 Q Through your investigatory experience?

5 A Yes.

6 Q If you could continue.

7 A They presented me with a list of files. I
8 looked at the SHA values of the ones that I
9 recognized that I had seen before, I initiated
10 downloads of those files.

11 At that point it gave me a list of IP
12 addresses that were at that time on the network with
13 their share files with those particular videos or
14 images that were in their file folders to be shared.

15 At which time I saw at 10:45 a.m. an IP
16 address 68.59.25.21 which I recognized to be a
17 Comcast number. Comcast very regularly brought back
18 results in our area, it's the main ISP that most
19 people use here.

20 Q So because it was a Comcast IP address, you
21 had reason to believe this might be in your
22 jurisdiction?

23 A Yes. At that time I made a direct connection
24 to that computer that belonged to 68.59.25.21. And
25 what I saw in that file listing on their computer in

1 their shared file was a video that had the SHA value,
2 and if you'd like me to read that, the CCH file.

3 Q The first few digits.

4 A It's quite long. It begins with CCH-5 is the
5 way I recognize it. And it matched the SHA value of
6 a video that I had already seen. And it was a
7 compilation of [REDACTED] exploitation videos that had
8 been strung together.

9 Q If I could, stop you there for a moment.

10 (Whereupon, State's Exhibit No. 1 is marked
11 for identification.)

12 MR. SIMPSON: Your Honor, may I approach the
13 witness?

14 THE COURT: You may.

15 Q (By Mr. Simpson) Sgt. Taylor, I am handing
16 you what has been marked for identification only
17 State's Exhibit 1. Do you recognize that?

18 A Yes.

19 Q Can you describe that item for the jury?

20 A It's a thumb-drive that I gave you that has
21 the CCH-5 video on it.

22 Q So the video you were just describing that ISP
23 68.59.25.21 had available for download is on that
24 flash-drive?

25 A Yes.

1 MR. SIMPSON: Your Honor, may counsel
2 approach?

3 THE COURT: Yes.

4 (Whereupon, the following discussion was held
5 at the bench.)

6 MR. SIMPSON: We are going to ask to publish
7 this exhibit, enter this exhibit and publish it.

8 THE COURT: Any objection to the publication?

9 MR. SIMPSON: I was going to -- perhaps you
10 might want to clear the courtroom.

11 THE COURT: I cannot, it's a public courtroom.
12 I have no ability to do that.

13 Any exception to the admission of the
14 document?

15 MR. SMILEY: This is going to be the one from
16 yesterday?

17 MR. SIMPSON: The one we watched yesterday,
18 30-second section.

19 MR. SMILEY: No objection.

20 (In open court.)

21 THE COURT: Without objection.

22 Have you had it marked and admitted?

23 MR. SIMPSON: Your Honor, at this point we
24 move into evidence State's Exhibit 1, the flash-dive
25 containing the video.

1 THE COURT: Marked and admitted without
2 objection.

3 (Whereupon, State's Exhibit No. 1 is admitted
4 into evidence.)

5 MR. SIMPSON: Your Honor, permission to
6 publish the exhibit to the jury.

7 THE COURT: You may proceed without objection.

8 MR. SIMPSON: May I approach the witness, Your
9 Honor?

10 THE COURT: You may.

11 MR. SIMPSON: Court's indulgence. It may take
12 us a moment to cue this up.

13 (Whereupon, the videotape is played in open
14 court.)

15 Q (By Mr. Simpson) Sgt. Taylor, do you
16 recognize this video as the SHA value that you
17 described to the jury?

18 A Yes.

19 Q Sgt. Taylor, we just watched a few moments of
20 that video. Does it continue?

21 A Yes.

22 Q And does it continue as a compilation of
23 similar images to those we have just seen?

24 A Yes.

25 Q Is that the only video file on that

1 thumb-drive?

2 A Yes.

3 Q And did that thumb-drive remain in your
4 possession until it had been given to me in
5 preparation for this trial?

6 A Yes.

7 Q Can you just repeat, if you don't mind, the
8 first, let's say, eight or nine digits of the SHA
9 value on that?

10 A CCH-5 is what I know it as.

11 Q If you referred to your report, would that
12 refresh your recollection?

13 A Yes. CCH5WP7M75G2NKLXBGET.

14 Q That will be enough, thank you. You refer to
15 that as CCH-5 file?

16 A Yes.

17 Q Did your investigation into this particular IP
18 address continue three days later on July 26, 2007?

19 A Yes, it did.

20 Q How so?

21 A Well at 8:49 on July 26th I saw -- I went in
22 and you can also search, other than query by file,
23 you can search by IP address. So I can go back in
24 and put in 68.59.28.21 to see if that same individual
25 is online with his share file and what is in his

1 share file.

2 At which time I was able to make a direct
3 connection to that computer again. And I saw two
4 files that I recognized from their SHA values, and 2
5 particularly were [REDACTED] where -- I look for
6 certain files and these were two files where [REDACTED]
7 were blind-folded or tied and in a bondage situation.
8 And those were always two files that I could see
9 available for distribution.

10 Q Could you describe in a little more detail the
11 two additional files you viewed on that day?

12 A One actually came from a series titled, Bound.

13 MR. SMILEY: Objection.

14 THE COURT: Basis.

15 MR. SMILEY: I'm being a little proactive.

16 May we approach?

17 THE COURT: Uh-hum.

18 (Whereupon, the following discussion was held
19 at the bench.)

20 MR. SIMPSON: Certified hearsay.

21 MR. SMILEY: Yes.

22 THE COURT: Okay. It's hearsay because the
23 next part of it?

24 MR. SIMPSON: I know where he is going, I'm
25 going to avoid that.

1 THE COURT: Okay.

2 (In open court.)

3 Q (By Mr. Simpson) Could you just describe the
4 content of the video as previously viewed by
5 yourself?

6 A A prepubescent female displaying her genitals
7 and then being tied up by her hands and her chest and
8 being blindfolded by an adult male.

9 Q And the other?

10 A The other video was a prepubescent female
11 [REDACTED] bound by a rope with an artificial penis being
12 pushed into her mouth. Then she did perform oral sex
13 on an adult male, and then was penetrated by an adult
14 male penis..

15 Q And did you note the SHA values of these two
16 files?

17 A Right. And that's how I recognized them as
18 ones I had seen before. One was H4BIB and then the
19 rest. And the other one I know is YUOX.

20 Q So just to review. On two separate dates you
21 viewed what you believed to be [REDACTED] pornographic
22 videos being made available by IP address
23 68.59.25.21?

24 A Yes.

25 Q And so at this stage in the investigation,

1 what do you do with that information?

2 A I had already begun my paperwork, which I was
3 working for the South Carolina Attorney General's
4 office through this task force. And in order to get
5 the information from Comcast they required a court
6 order which is called a 2703-D.

7 It's like a search warrant. And so I prepared
8 that. I sent it to the Attorney General's Office.
9 They have a circuit court judge sign it and then they
10 send it to Comcast. I'm waiting from Comcast to find
11 out who the subscriber is.

12 Q How do you usually receive compliance from
13 Comcast for an Internet provider?

14 A It could be faxed to me, and then I will get
15 it in the mail.

16 Q Did you receive such a fax in this case?

17 A Yes, I did.

18 Q And on what date?

19 A It was August 17, '07.

20 Q What did that response from Comcast reveal to
21 you?

22 MR. SMILEY: Objection.

23 THE COURT: Basis?

24 MR. SMILEY: Hearsay.

25 THE COURT: I don't know that it's hearsay

1 yet. Are you eliciting hearsay? Is it going to be
2 what someone said to you or what she did as a result?

3 MR. SIMPSON: The response to the legal
4 process.

5 MR. SMILEY: May we approach?

6 THE COURT: Yes. As long as it's not what
7 someone said to you.

8 (Whereupon, the following discussion was held
9 at the bench.)

10 MR. SIMPSON: It's some order filled cause --

11 MR. SMILEY: The custodian is not here. Not
12 what the content was.

13 MR. SIMPSON: Okay.

14 (In open court.)

15 THE COURT: You may proceed.

16 Q (By Mr. Simpson) Having received a response
17 from Comcast, how did you then proceed?

18 A They gave me the subscriber information and
19 the location of that computer at that particular
20 time.

21 Q Avoiding what they told you, what did you do
22 with the information they gave you?

23 A I prepared a search warrant.

24 Q For what address did you prepare the search
25 warrant?

1 A 1534 Evergreen Street, Apartment E -- as in
2 Edward -- Charleston, South Carolina, 29407.

3 Q Is that address in Charleston County?

4 A Yes, sir.

5 Q And did you have that search warrant signed by
6 a magistrate?

7 A Yes, I did.

8 Q And did you execute that search warrant?

9 A Yes, I did.

10 Q On what day did you execute the search
11 warrant?

12 A September 10th, '07.

13 Q Who was present at that residence when you
14 executed that search warrant?

15 A The subscriber, Hazel Horry, was present and
16 also the defendant.

17 Q I'm sorry, whenever you hear Mr. Smiley say
18 anything, if you could stop your answer at that
19 point.

20 MR. SMILEY: I'm going to move to strike the
21 previous answer was hearsay.

22 MR. SIMPSON: Who was present when she
23 arrived?

24 THE COURT: Overruled.

25 MR. SMILEY: The next one.

1 THE COURT: I have not heard any hearsay up to
2 this point.

3 Q (By Mr. Simpson) Just naming the names of the
4 people who were there, who was present when you
5 arrived to execute that search warrant?

6 A Hazel Horry and Willie Don Horry.

7 Q Is Mr. Willie Horry in the courtroom today?

8 A Yes, he is.

9 Q Can you indicate where he is?

10 A He is right there.

11 MR. SIMPSON: May the record reflect --

12 THE COURT: Let the record so indicate.

13 Q (By Mr. Simpson) In the execution of the
14 search warrant, was a computer located?

15 A Yes.

16 Q Did that computer appear to you to have
17 Internet access?

18 A Yes, it did.

19 Q What was done with that computer?

20 A At that time my digital forensic analysts were
21 with me. They packaged that computer and took it to
22 the lab with them.

23 Q One moment, Sgt. Taylor.

24 (Whereupon, the following discussion was held
25 at the bench.)

1 courthouse. Do not do any independent research of
2 any type.

3 Do not allow yourselves to be exposed to any
4 media coverage about this case from any media
5 outlets. You will return directly to your jury room.
6 We appreciate your patience. Have a great luncheon
7 recess and we will see you at 2:30.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Are we ready to proceed with the
10 Jackson versus Denno?

11 MR. SIMPSON: Yes, Your Honor.

12 THE COURT: Proceed.

13 IN-CAMERA EXAMINATION

14 BY MR. SIMPSON:

15 Q Sgt. Taylor, your previous testimony you
16 discussed serving a search warrant?

17 A Yes.

18 Q And could you repeat the address of that
19 search warrant?

20 A 1534 Evergreen Street, Apartment E -- as in
21 Edward -- Charleston, South Carolina, 29407.

22 Q You've also already noted who was present at
23 the execution of that warrant. Can you repeat that?

24 A Hazel Horry and Willie Don Horry.

25 Q Did you, during the execution of the search

1 warrant, did you develop a suspect to the offense
2 that we have been discussing?

3 A Yes.

4 Q And who was that?

5 A Willie Don Horry.

6 Q Did you ask Mr. Horry if he would be willing
7 to talk to you about this incident?

8 A Yes.

9 Q And where did you have that initial
10 conversation?

11 A It was at his sister's apartment. I asked him
12 if he wanted to talk to us, he said yes. I asked him
13 if he would you like to come to my office, because it
14 was a very small apartment, and he said yes.

15 Q And did he then come with you to the office?

16 A Yes.

17 Q Was he under arrest at this time?

18 A No.

19 Q Did you place him in handcuffs?

20 A No.

21 Q Did you threaten him in any way to get him to
22 come with you?

23 A No.

24 Q Did you promise him anything to get him to
25 come with you?

1 A No.

2 Q Where was your office in '07?

3 A It was a doctor's office building on Tobias
4 Gadson.

5 Q Was this one of the police stations?

6 A No.

7 Q What kind of building is that? If you would
8 describe that to the Court.

9 A It's an office building with maybe 6 -- 2
10 stories, 6 to 10 offices there, mostly medical. And
11 it was actually, the room was just a conference room
12 that I used to use.

13 Q Did you note at that time Mr. Horry's age?

14 A I believe he was 49 at the time.

15 Q Were there any mental defects that were
16 apparent to you when you were having the initial
17 discussions about coming there?

18 A No.

19 Q Did he appear to be intoxicated in any way?

20 A No.

21 Q He agreed to come with you and talk to you?

22 A Yes.

23 Q Did you have any discussions with him
24 regarding the computer issue on your way to your
25 office?

1 A No. I told him that I would talk to him when
2 he got to the office.

3 Q Where did you take Mr. Horry when you arrived
4 at your office?

5 A We went upstairs to our office where we have a
6 conference room.

7 Q And what was the first thing you did before
8 asking Mr. Horry any questions regarding this
9 incident?

10 A I reviewed his Miranda rights with him.

11 MR. SIMPSON: Your Honor, may I approach the
12 witness?

13 THE COURT: You may.

14 Q (By Mr. Simpson) Sgt. Taylor, I'm handing you
15 what has been marked for ID only as State's 2. Do
16 you recognize that item?

17 A Yes.

18 Q Can you describe that item to the court?

19 A It's a Miranda card. It has the Miranda
20 warnings, I signed it, he signed it and dated it, and
21 I signed it as the warning officer. I was the only
22 one in there with him.

23 Q Did he appear to you to understand those
24 rights?

25 A Yes, sir.

1 Q Did he indicate to you he wanted to waive
2 those rights and speak about the incident?

3 A Yes.

4 Q After Mr. Horry waived his Miranda rights, I'm
5 sorry, I'm getting ahead of myself. Does that card
6 include the standard Miranda rights that you would
7 given to any criminal suspect?

8 A Yes.

9 Q What are those rights?

10 A You want me to read it off the card?

11 Q Okay.

12 A You have the right to remain silent. Anything
13 you say can and will be used against you in a court
14 of law.

15 You have the right to talk with a lawyer and
16 have him present during any questioning. If you
17 cannot afford to hire a lawyer, one will be appointed
18 to represent you before any questioning if you wish
19 one.

20 If you decide to answer questions without a
21 lawyer present, you have the right to stop answering
22 any questions at any time you so choose.

23 Q After Mr. Horry signed indicating he was
24 waiving his rights, did you proceed to question the
25 defendant?

1 A Yes, I did.

2 Q Can you describe for the Judge kind of your
3 interview style? What kind of tone you used with the
4 suspect?

5 A Very quiet, calm. Trying to understand why he
6 did what he did.

7 Q Did you ever scream at the defendant during
8 the course of this?

9 A No.

10 Q Raise your voice in any way?

11 A No.

12 Q Did you threaten him?

13 A No.

14 Q Did you make any specific promises to him over
15 the course of this interview?

16 A No.

17 Q Did Mr. Horry throughout the interview appear
18 to understand what you were saying?

19 A I believe so, yes.

20 Q And how long did this interview last in your
21 office approximately?

22 A Maybe 25, 30 minutes.

23 Q At any time did he express to you he wanted
24 questioning to cease and he wanted to leave?

25 A He did not verbally tell me that, no.

1 Q And, Sgt. Taylor, did you record on audio this
2 interview that you conducted with the defendant?

3 A Yes, I did.

4 MR. SIMPSON: Your Honor, I have no further
5 questions relevant to the Jackson hearing.

6 THE COURT: I need to hear the audio. How
7 long is it?

8 MR. SIMPSON: 30 minutes, Your Honor.

9 THE COURT: What -- can you give me a
10 parenthetic of what type of questions that were asked
11 and the answers? I need to know what the statements
12 are.

13 MR. SIMPSON: Sure. One moment, Your Honor.

14 THE COURT: Have the officer give us a
15 summary. Has it been transcribed?

16 MR. SIMPSON: I'm sorry, Your Honor?

17 THE COURT: Has it been transcribed?

18 MR. SIMPSON: It has not. I transcribed the
19 highlights for my own personal --

20 THE COURT: Go through the typical questions
21 so that we can have some idea what the questioning
22 entailed, what the answers were. I need to have some
23 idea what his answers were.

24 MR. SIMPSON: Okay.

25 Q (By Mr. Simpson) Sgt. Taylor, can you

1 describe for the Judge a general summary of how that
2 interview went, some questions you asked and his
3 answers to them?

4 A Without listening to it, he had admitted that
5 that was his computer and that he had downloaded
6 client Limewire a long time ago to utilize file
7 sharing. He did understand file sharing properties.

8 He stated that he knew what [REDACTED] porn was and
9 that it was illegal. He stated he had been looking
10 for the last month, then he said it could have been
11 six months.

12 Q When he answered you he had only been looking
13 at it about a month, do you recall in a mild tone
14 being somewhat confrontational about that assertion?

15 A I might have mentioned I knew he had been
16 looking at them longer. I might have questioned him.

17 Q Do you recall him changing his tune, so to
18 speak, on that timeline during the interview?

19 A Well I recall him saying it might have been
20 six months.

21 Q At any time during the interview did you
22 confront the defendant with the nature of the videos
23 you had actually seen available for download at his
24 IP address?

25 A Yeah. When I described to him the first video

1 that I had seen, the compilation, he remembered it.

2 Q Did he ever make any admission to you about
3 watching those videos?

4 A He said that he had been -- he stated that he
5 was curious, he downloaded and watched it.

6 Q Did he state to you at some point he had
7 attempted to delete the videos from his computer?

8 A He said -- he said he would delete them after
9 he watched them.

10 MR. SIMPSON: Your Honor, if that's sufficient
11 for you, that's all the questions I have. We do have
12 the option of playing the actual interview. It's a
13 rather lengthy interview. I think Ms. Taylor's
14 testimony covered the main points.

15 THE COURT: Any questions for the witness?

16 MR. SMILEY: So we are not going to play the
17 audio?

18 MR. SIMPSON: I plan to admit and play it to
19 the jury.

20 THE COURT: You've heard it, haven't you?

21 MR. SMILEY: I'd like because it's not --

22 THE COURT: I am going to listen to it at my
23 leisure.

24 MR. SMILEY: I haven't listened to this
25 particular copy.

1 THE COURT: He needs to give you a copy so
2 that you can listen to it. I don't think I'm going
3 to listen to it, however.

4 MR. SMILEY: Yes, ma'am.

5 THE COURT: I don't see any purpose in doing
6 that right at this moment.

7 MR. SMILEY: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MR. SMILEY:

10 Q All right. So when you arrived at -- by the
11 way, my name is Jim Smiley. I think we have met
12 before.

13 When you arrived at the Evergreen address, Mr.
14 Horry was present, about what time was it; do you
15 recall?

16 A I think it was in the morning, a little after
17 9:00 perhaps.

18 Q It was yourself and how many other officers?

19 A Four other officers, and it looks like the
20 digital evidence unit.

21 Q And the digital evidence unit consisted of how
22 many people?

23 A It could vary who showed up. I believe it was
24 Jerry Roberts and someone he was working with.

25 Q So two gentlemen?

1 A Could have been two or three, sometimes three
2 of them.

3 Q I know but on this specific occasion,
4 yourself, five officers, and two or three other
5 gentlemen?

6 A Or women.

7 Q Or women?

8 A Yes.

9 Q So minimum of eight, maximum of nine people?

10 A Yes.

11 Q Okay. And you were there to execute a search
12 warrant, correct?

13 A Yes.

14 Q And upon -- excuse me, Your Honor. And upon
15 arriving at Evergreen, who met you at the door?

16 A I believe it was Hazel Horry.

17 Q All right. Did you explain to her the purpose
18 of your visit?

19 A Yes.

20 Q What did you tell her?

21 A I told her that we were there because someone
22 from that location was involved in the distribution
23 of [REDACTED] pornography from a computer.

24 Q Okay. Did you explain that to Mr. Horry?

25 A Yes.

1 Q All right. And he admitted that at that
2 point, while you were there, it was his computer?

3 A Yes.

4 Q Did you ask him if it was his computer?

5 A I asked her. I spoke with her first and she
6 said, that is my brother's computer.

7 Q Okay. Then did you ask him, is that your
8 computer?

9 A Yes, I believe I did.

10 Q At that point in time was he in custody?

11 A No, he was not.

12 Q Free to leave if he wanted to?

13 A Yes.

14 Q At that point in time were all of the officers
15 inside this apartment?

16 A No.

17 Q Just yourself, how many officers were in the
18 apartment?

19 A Might have been myself, Stevens who was
20 working with me. It was city housing, so there was a
21 city housing unit, and then I think two out in the
22 hallway. Digital evidence unit remained in their
23 vehicle until the area was secure.

24 Q This apartment I think you said was pretty
25 small?

1 A Yes.

2 Q So it was pretty crowded inside that
3 apartment?

4 A Right.

5 Q It was pretty crowded when you started to
6 question Mr. Horry?

7 A No. Because once the area is secure we don't
8 want those other people there.

9 Q Okay. So when you started questioning Mr.
10 Horry at this apartment, you were the only one
11 present?

12 A No. I would imagine PFC Stevens was there
13 with me.

14 Q Yes, ma'am. And I'm not making little points
15 when you say you imagine, I'm asking you what you
16 remember?

17 A To the best of my recollection.

18 Q Okay.

19 A It was he and I.

20 Q Okay. And where in the apartment were you
21 located?

22 A In the living room.

23 Q All right. And that questioning again was, is
24 this your computer, this is why we are here, that
25 kind of conversation?

1 A Yes.

2 Q All right. You asked him if he would talk
3 with you?

4 A I asked him if he was interested in talking
5 with me and he said yes. And I said, because his
6 sister was present, I said would you like to come to
7 my office and speak with me, and he said yes.

8 Q All right. Did you tell him that he was going
9 to be arrested at that point in time?

10 A No. I told him he was not under arrest.

11 Q Okay. And that he was free to not come with
12 you if he didn't want to?

13 A I said, you are not under arrest. I made sure
14 that he understood. I said, would you like to come
15 and speak with me.

16 Q Okay. Was he allowed to take his own vehicle
17 to the police station?

18 A I gave him a ride. He rode in the front seat.

19 Q All right. So when you arrived at the -- of
20 course I think you already testified when he got in
21 the front seat with you he didn't have handcuffs,
22 anything like that?

23 A Right.

24 Q You weren't in uniform, were you?

25 A No.

1 Q It was an unmarked car?

2 A Yes.

3 Q Okay. So you take him back to the white color
4 unit there at Tobias Gadson and take him up to an
5 interview room?

6 A To a conference room.

7 Q Right, conference room. Was he accompanied
8 the entire time he was there?

9 A With me, by me.

10 Q So you all go into the conference room, at no
11 time was he left alone there?

12 A To the best of my memory.

13 Q Okay. While it's not per se a police station,
14 there are other police officers there, right?

15 A Nobody in uniform.

16 Q Okay. So you sat down, before we start I need
17 to read you your Miranda rights?

18 A (Affirmative head shake.)

19 Q You took out a card and read them to him?

20 A Yes, sir.

21 Q Did you tell him what crime specifically you
22 were going to be asking him about before you read him
23 his rights?

24 A I had already explained to him at his sister's
25 apartment that we were there in reference to [REDACTED]

1 pornography on the computer.

2 Q So you, right before you read him Miranda, did
3 not tell him what crime you were investigating
4 because that had already been done back at the house?

5 A Well the recording will tell.

6 Q Okay. So the recording will be everything
7 that was said between yourself and Mr. Horry once he
8 arrived at Tobias Gadson?

9 A Yes, sir.

10 Q Now after you read him those rights he signed
11 it and you signed it. And was there anyone else
12 present during that Miranda?

13 A No.

14 Q Just the two of you. And you said the entire
15 process was 25, 30 minutes long?

16 A I believe so.

17 Q At any time did you tell him he was under
18 arrest?

19 A No.

20 Q At the end of the interview he was allowed to
21 leave?

22 A Yes, I took him back home.

23 Q At any point in time did he indicate that he
24 was uncomfortable with the questioning?

25 A Specifically when I was talking about the

1 image of bondage, tying [REDACTED] up, I thought he
2 became uncomfortable with discussing that.

3 Q Okay.

4 MR. SMILEY: Beg the Court's indulgence.

5 THE COURT: Uh-hum.

6 MR. SMILEY: No further questions.

7 THE COURT: Any redirect?

8 MR. SIMPSON: No redirect, Your Honor.

9 THE COURT: Any argument as regards?

10 MR. SMILEY: Actually, Your Honor, I withdraw
11 it as to this conversation. I don't believe it was
12 an in-custody interrogation. I don't -- I withdraw
13 the Jackson v Denno challenge to these statements.

14 THE COURT: Okay. Do you need a copy of the
15 tape so that you can listen to it during lunch?

16 MR. SMILEY: Okay. I'm not going to listen to
17 the whole thing, I'm going to make sure this is the
18 actual recording.

19 MR. SIMPSON: Right. I understand totally.

20 MR. SMILEY: I don't imagine something will
21 come up.

22 THE COURT: All right. Is there anything else
23 before we break for lunch?

24 MR. SIMPSON: Nothing from the State, Your
25 Honor.

1 MR. SMILEY: Actually, I did not. But me and
2 Mr. Simpson had a little talk. And he has assured me
3 it's exact. And I told him if it isn't, that's a
4 mistrial. He has promised me it is.

5 MR. SIMPSON: To clarify, it wasn't a
6 discovery issue. He had it. He just wanted to make
7 sure my CD was the same one.

8 MR. SMILEY: Because it came off a
9 flash-drive, and He put it on a CD. I said that's
10 fine, I don't want to challenge any of that. I just
11 wanted to make sure it's the same.

12 THE COURT: Okay.

13 (Whereupon, the jurors enter the courtroom.)

14 THE COURT: You may be seated. Ladies and
15 gentlemen, I hope that you all had a pleasant
16 luncheon recess. We are now going to resume the
17 testimony of the witness.

18 Mr. Simpson, you may proceed when you are
19 ready.

20 MR. SIMPSON: Thank you.

21 THE COURT: You're welcome.

22 Q (By Mr. Simpson) Sgt. Taylor, I believe we
23 where left off testimony involved the execution of
24 the search warrant. Do you recall that?

25 A Yes.

1 Q If I could, I'd like to backtrack a little bit
2 back to your initial viewing of the files that were
3 available for download.

4 You had noted this before, but if you could
5 repeat what information is presented to you on the
6 screen about the files you are looking at?

7 A The file name, the SHA value. It also has the
8 client or program, the IP address that is utilizing
9 to get to the Gnutella.

10 Q And do you recall what is listed first on the
11 screen, is it file name?

12 A It is a file name.

13 Q And you also called that the title of the
14 file?

15 A Yes.

16 Q And do you recall you previously mentioned
17 three videos that you witnessed available for
18 download. Do you recall the titles of those three
19 videos?

20 A I do not, they change.

21 Q Any user can change that?

22 A It changes at all, yes.

23 Q Do you remember if they describe the content
24 of the video?

25 A I have the name of -- I know of for sure that

1 I have the one that I saw the first day.

2 Q Okay. Could you share that with the jury?

3 A It was Exploited Asian Teens, three Thai girls
4 14-year-old. If you want to know us I can tell you
5 how. Write me chaseavet@yahoo.com. I will show you
6 three sexy photos and one Lolita Pedo...AVI.

7 Q Moving on to the search warrant. You
8 mentioned that a computer was located at the
9 residence?

10 A Yes.

11 Q And that computer was seized?

12 A Yes.

13 Q By whom?

14 A By the digital evidence unit.

15 Q Who is -- excuse my terminology -- the manager
16 or sergeant of the digital evidence unit?

17 A At the time it was Sgt. Jerry Roberts.

18 Q Okay. What was the purpose of them seizing
19 the computer?

20 A That it's done forensically in a forensically
21 sound way. That evidence isn't lost or damaged. And
22 it goes -- has to do with the chain of custody. It
23 goes straight from that residence with them to their
24 lab.

25 Q You had also mentioned there were two

1 individuals present at the residence when you
2 executed that search warrant?

3 A Yes.

4 Q Who were they again?

5 A Hazel Horry and Willie Don Horry.

6 Q While at the residence did you develop a
7 suspect?

8 A Yes.

9 Q And who was that?

10 A Willie Don Horry.

11 Q Is that the individual seated here?

12 A Yes, sir.

13 Q Did you ask Mr. Horry if he would like to
14 speak with you about what was going on that day?

15 A Yes, I did.

16 Q What did he tell you?

17 A He said yes.

18 Q And how did you respond?

19 A I asked him, because there was a small
20 apartment his sister was there and she did not appear
21 to know anything about what was going on, I asked him
22 if he wanted to go to the privacy of my office to
23 talk about it.

24 Q And what did he say to that?

25 A He said yes.

1 Q Was he under arrest?

2 A No, he was not.

3 Q Did you handcuff him?

4 A No.

5 Q Did you put him in the back of a squad car?

6 A No. He sat beside me in my unmarked car.

7 Q Front seat or backseat?

8 A Front seat.

9 Q On the way to your office, did you pepper him
10 with questions, discuss this at all?

11 A No, I did not. I told him we would wait until
12 we got to my office.

13 Q How far away, approximately, was your office?
14 How long did it take?

15 A Maybe five minutes.

16 Q When we talk about your office, are we talking
17 about the police station?

18 A No. At the time we were in the computer crime
19 unit, and we were in like a doctor's office at 1475
20 Tobias Gadson. It's a two-story building that
21 contained lots of different doctors' offices.

22 Q I have to ask, did you threaten him in any way
23 to get him to come with you?

24 A No, I did not.

25 Q Promise him anything?

1 A No.

2 Q Did he appear intoxicated to you?

3 A No.

4 Q What was Mr. Horry's approximate age as it
5 appeared to you that day?

6 A I think he was 49 at the time.

7 Q Did he appear to you to have any mental
8 defects?

9 A No.

10 Q Did you have lucid conversations that he
11 appeared to understand?

12 A Yes.

13 Q Once you arrived at your office, what's the
14 first thing you did when you sat down with Mr. Horry?

15 A I read his -- I reviewed the Miranda rights
16 with him. And he signed the Miranda card saying he
17 understood his rights.

18 MR. SIMPSON: May I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 Q (By Mr. Simpson) Sgt. Taylor, I'm showing you
22 what has been marked for ID only as State's 2. Can
23 you identify that for the jury?

24 A It's a copy that I made on my copy machine of
25 the Miranda warnings, and on the other side where we

1 signed and dated it.

2 Q What's the date?

3 A 9/10/2007 at 9:00 -- looks like 9:27 a.m.

4 Q And did Mr. Horry indicate to you that he
5 wished to waive his Miranda rights and have a
6 conversation with you about this incident?

7 A Yes.

8 Q Did you then proceed to interview Mr. Horry?

9 A Yes.

10 Q Approximately how long did this interview
11 take?

12 A Maybe 25, 30 minutes.

13 Q At any point during this interview did Mr.
14 Horry indicate to you that he wished to cease
15 questioning?

16 A No.

17 Q Have to ask again, at any point in the
18 interview did you threaten him in any way?

19 A No, I did not.

20 Q What was your tone, for lack of a better word,
21 of your questioning of Mr. Horry?

22 A My style is pretty calm and factual and
23 truthful. I try to be very truthful with him.

24 Q Can be assertive at times?

25 A Yes.

1 Q Calmly assertive. This interview with Mr.
2 Horry, was it digitally recorded?

3 A Yes, it was.

4 Q You indicated earlier, you identified State's
5 Exhibit 1 as a flash-drive?

6 A (Affirmative head shake.)

7 Q On that flash-drive was there a digital file
8 also of the interview with Mr. Horry? The audio
9 interview?

10 A I believe so, yes.

11 MR. SIMPSON: Your Honor, at this time I would
12 like to offer into evidence State's Exhibit 3 which
13 is the CD.

14 THE COURT: Any objection?

15 MR. SMILEY: No objection.

16 THE COURT: Marked and admitted without
17 objection. You may proceed.

18 (Whereupon, State's Exhibit No. 3 is admitted
19 into evidence.)

20 MR. SIMPSON: Your Honor, permission to
21 publish State's Exhibit 3?

22 THE COURT: Any objection?

23 MR. SMILEY: As long as it's in its entirety,
24 Your Honor.

25 THE COURT: You may proceed.

1 (Whereupon, the audiotape is played in open
2 court.)

3 Q (By Mr. Simpson) Sgt. Taylor, during that
4 interview did you in fact take the defendant back to
5 Evergreen Street?

6 A Yes, I did.

7 Q Did you obtain an arrest warrant at a later
8 time?

9 A Later time, yes.

10 Q What was he charged with?

11 A Second degree child exploitation.

12 Q I want to backtrack a little bit. You have
13 handled more than one of these cases, correct?

14 A Yes.

15 Q Can you approximate how many do you think
16 you've worked in some capacity on?

17 MR. SMILEY: Objection, Your Honor.

18 THE COURT: Basis?

19 MR. SMILEY: Immaterial, irrelevant.

20 THE COURT: Goes to education and experience.
21 overruled. Subject to connection, you may proceed.

22 A Specifically these kinds of cases, probably 15
23 to 20.

24 Q (By Mr. Simpson) Over the course of those
25 you've seen a lot of different titles of files?

1 A Yes.

2 Q I just want to ask you, because it might be
3 possible earlier when I asked you to name the title
4 of the file that we talked about displayed that you
5 might have been mistaken?

6 A As I said the file names change all the time,
7 but the SHAs do not.

8 Q It seemed to me on the interview you named the
9 title, Little Girls Mix?

10 A Yes.

11 Q And described the -- even the date that you
12 viewed that seemed to be consistent with the video we
13 viewed in court?

14 A That might have been the title of what I had
15 seen.

16 Q Okay. You mentioned a couple of other titles
17 on the interview. Do you recall the title,
18 12-year-old Girl Rides Cock?

19 A Yes.

20 Q 10-year-old Preteen Rape, I believe, is
21 another?

22 A Yes.

23 Q That you could -- what, because we can't see
24 we only have the audio, when Mr. Horry is being
25 confronted with these titles, how would you describe

1 to the jury his reaction?

2 A I think I said he started to shutdown, which
3 means when I started mentioning the actual titles of
4 what I was looking at, what I had seen on his
5 computer, he just sat there. And he was having a
6 hard time speaking.

7 Q You have, again this calls for an
8 approximation, but you spent a lot of time on the
9 Limewire program or type programs, correct?

10 A Yes.

11 Q Just having spent some time navigating these
12 file sharing programs, explain to the jury what you
13 think is an idea of accidentally coming across these
14 items?

15 MR. SMILEY: Objection, Your Honor.

16 THE COURT: Basis?

17 MR. SMILEY: Speculation.

18 THE COURT: Rephrase the question.

19 MR. SIMPSON: Thank you, Your Honor.

20 Q (By Mr. Simpson) We have been through this a
21 little before, but when you are on looking to find
22 child pornography you mentioned search terms, explain
23 again to the jury what you did.

24 A Those are terms that you might query the
25 network where it is actually in the file name.

1 Generally the file names reflect a lot of what is in
2 there. So if I put in term pedo, which stands for
3 pedophilia, the things that will be returned will be
4 file names with somewhere pedo inside of that file
5 name.

6 Q Then the user must initiate the download?

7 A Yes. You have to actually physically click
8 and download, and hit download.

9 MR. SIMPSON: Sgt. Taylor, please answer any
10 questions Mr. Smiley might have for you.

11 THE COURT: Any cross-examination of the
12 witness.

13 CROSS-EXAMINATION

14 BY MR. SMILEY:

15 Q I'm going to start backwards a little bit.
16 You said during you're interview he was starting to
17 shutdown, and finding it difficult to talk. Is that
18 what you said?

19 A He just at one point it felt like he had
20 stopped talking.

21 Q Okay. And he is an interview room and you let
22 him know you were a police officer, right?

23 A Yes.

24 Q And that you're investigating a crime,
25 correct?

1 A Yes.

2 Q And that you are questioning him about that
3 crime, right?

4 A Yes.

5 Q So wouldn't it be fair to say that he was
6 being careful of what he said?

7 A Not -- I felt more like he just didn't want to
8 answer the question.

9 Q I understand. At one point he actually asked
10 you if he needed a lawyer, right?

11 A I did not hear that.

12 Q We can play it. At one point did he ask, do
13 you think I need a lawyer? And you said, you might.
14 You don't remember that?

15 A I don't.

16 MR. SMILEY: Your Honor, I'm going need to
17 play that to refresh her memory.

18 Q (By Mr. Smiley) If I replay that part of
19 states Exhibit No. 3, would that refresh your memory?

20 A Uh-hum.

21 Q Okay, thank you.

22 (Whereupon, the audiotape is played in open
23 court.)

24 Q (By Mr. Smiley) Does that refresh your
25 memory?

1 A Yes.

2 Q So in fact during this questioning he asked
3 you, do you think I need a lawyer, and you told him
4 he might, correct?

5 A Yeah, if I thought he needed a lawyer.

6 Q Again I will ask you, is it fair to say he was
7 being careful with what he said?

8 A You can interpret it that way.

9 Q You interpreted it as he was shutting down,
10 but it could be interpreted that he was being careful
11 with what he said?

12 A Could be.

13 Q All right. Now also during that questioning
14 you started asking him about masturbating to them?

15 A Uh-hum. (Affirmative head shake.)

16 Q And I believe you responded he said, I wasn't
17 masturbating to them, correct?

18 A Uh-hum.

19 Q So he did not masturbate to them, correct?

20 A No. He said, who said I was masturbating?

21 Q He certainly did not admit to masturbating to
22 them, did he?

23 A No, he did not.

24 Q He told you that upon downloading the things
25 and looking at them, he immediately deleted them,

1 correct?

2 A That's what he said, yes.

3 Q Now you asked him if he realized that those
4 things were illegal, and he told you that he realized
5 they weren't normal, correct?

6 A You'll have to replay it, I thought he agreed
7 in the affirmative.

8 Q I'm going to play that part in a little bit.
9 We will come back to it.

10 Now start a little bit with Limewire. Limewire
11 is not an illegal program, is it?

12 A No.

13 Q Businesses use Limewire, correct?

14 A I don't know about that. All I know is that
15 that's the way it's used here.

16 Q I thought you had training in Limewire,
17 peer-to-peer networks. You're not familiar with who
18 uses it?

19 A My training is with child exploitation.

20 Q So if businesses use this legal product, you
21 wouldn't know?

22 A I'm unfamiliar with that.

23 Q The purpose of Limewire is for -- to make
24 files available to one computer to be accessed by a
25 computer at a remote location, correct?

1 A Between two computers file sharing, yes.

2 Q Correct. So a computer in one place, you got
3 a computer in California and you need files to be
4 exchanged, that was the purpose of Limewire, correct?

5 A It can be used that way, yes, sir.

6 Q All right. And one of the advantages of
7 Limewire is that those files can be transferred from
8 one computer to another directly without having to be
9 put out on the Internet, correct?

10 A Not having to be stored on another server.

11 Q Right. Nice way, good way of putting it,
12 thank you. And from that use of this commercially
13 available software was that people started trading
14 music and what have you, right?

15 A Yes, sir.

16 Q And videos, movies, that kind of stuff?

17 A Uh-hum.

18 Q And as that -- those notes or computers
19 started to expand, a larger network of share files
20 was available, right?

21 A You mean when more computers joined the
22 network, more computers?

23 Q Right. If everybody in this room had a
24 computer and Limewire, we could all share what was
25 put out there to be shared, correct?

1 A If that's what we had agreed when we first
2 downloaded the Limewire program.

3 Q Okay. Well now when you do a search in
4 Limewire, you put in a search term, correct, or a
5 string of search terms, correct?

6 A You can, yes.

7 Q Okay. And when you put in that search, it
8 goes out and looks for computers on that network that
9 contain that search term, has files that contain it?

10 A File names.

11 Q All right. When you were doing your search in
12 July, do you remember the search terms you used? The
13 exact ones?

14 A I used a various amount of them. Judging from
15 the files that he had --

16 Q No, ma'am. No, ma'am, listen to my question.
17 When you were sitting at your computer, what search
18 string did you put in?

19 A For this particular case?

20 Q Yes, ma'am.

21 A I don't know which one exactly. There were
22 ones that I used over and over again.

23 Q Okay. So you don't know which one brought up
24 these files?

25 A Judging from the file names I could tell which

1 ones.

2 Q I want to know what search term you put in
3 that got these results. You used several different
4 ones, correct?

5 A I've used, in the course of my investigations,
6 I have used different search terms, yes.

7 Q Because is it fair to say, tell me if I'm
8 wrong, that if one search term is contained in the
9 title or what have you of those files, it will put it
10 in the list, right?

11 A Yes.

12 Q So I think when you were first testifying you
13 said some of the common terms would be like hardcore,
14 right?

15 A No, PTHC.

16 Q Well, ma'am, let me go back to your testimony,
17 and I could be wrong. Let me look here.

18 A That word is part of the PTHC, preteen
19 hardcore.

20 Q Okay, preteen hardcore. However, if you were
21 looking for pornography and you used the word
22 hardcore, it would bring up anything that had preteen
23 and hardcore in it, wouldn't it?

24 A It could, yes.

25 Q And if you used in your search term blow job,

1 and it had hardcore and preteen, it could include
2 that in your search too, correct?

3 A It could.

4 Q And it could bring up in your list perfectly
5 legal pornography, correct?

6 A It could.

7 Q Now you talked about this term SHA value,
8 right. That's SHA, S-H-A, value. And that's a
9 scientific term or a computer term, correct?

10 A Uh-hum.

11 Q When I am, as a -- when Mr. Horry, or any
12 citizen that is doing their searches, they are not
13 using SHA terms per se, are they?

14 A I imagine some people may, yes.

15 Q Okay. But there is no evidence to show that
16 Mr. Horry was looking up anything by SHA value or SHA
17 term, is there?

18 A Correct.

19 Q Is it fair to say that SHA value is a term of
20 art used by investigators like yourself?

21 A It's a what?

22 Q A term of art?

23 A Term of art?

24 Q Art, A-R-T. Specific to your occupation, a
25 SHA value?

1 A Not to my occupation.

2 Q It should be a normal term that everybody
3 should know?

4 A I don't know that, no.

5 Q Okay. Now --

6 MR. SMILEY: Beg the Court's indulgence.

7 THE COURT: Uh-hum.

8 Q (By Mr. Smiley) Now when you were talking
9 about, you were talking about a licensing agreement
10 with Limewire when you first download it. And that's
11 the thing that comes up that you click, I agree,
12 before you get the software?

13 A Also with Limewire you have to go through a
14 process of designating what files are going to be
15 shared.

16 Q Right. And when you download it it creates a
17 default directory, correct?

18 A Yes.

19 Q And the default directory puts whatever is
20 downloaded in that directory to be shared, correct?

21 A If you agree to that.

22 Q Right. And that's the standard, default
23 meaning the standard, right?

24 A Yes.

25 Q You would have to do something different to

1 make it not default?

2 A To tell you the truth there are so many
3 versions of it that come out, so I don't know what he
4 agreed to.

5 Q Okay. Let's talk about the license at the
6 very beginning. You know, that thing we never read
7 and we click, I agree, and move on at the beginning
8 of Limewire. Have you ever read that?

9 A I don't use Limewire, sir.

10 Q Okay. So you weren't using Limewire to find
11 this then?

12 A No.

13 Q So you are not familiar with Limewire?

14 A I am familiar as far as the study in law
15 enforcement, but it's not the program I choose to
16 use.

17 Q So you are saying that you can get into his
18 programs without Limewire?

19 A I can see if he has files that are available
20 for sharing. Part of the thing that comes up is what
21 client he is using.

22 Q Okay. I thought in the beginning of your
23 testimony you said that you used Limewire to access
24 his files?

25 A No, he was using Limewire.

1 Q Okay. So you weren't part of his network?

2 A No. We are all on the Gnutella network.

3 Q Okay. You're talking over my head now, I

4 apologize. So you have a different kind of?

5 A Client.

6 Q What's a client?

7 A A program.

8 Q Okay. So your client is a program?

9 A Uh-hum.

10 Q So his client is Limewire and your's was?

11 A PHEX.

12 Q Fix?

13 A PHEX.

14 Q All right. So PHEX and Limewire talk to each
15 other?

16 A They talk through the Gnutella network.

17 Q Okay. So you are not familiar with the
18 licensing agreement of Limewire?

19 A Not to be able to testify to it, no.

20 Q Okay. But you know what I'm talking about,
21 that you agree or disagree at the beginning?

22 A Right.

23 Q And you have never reviewed that agreement?

24 A Not within the last three years, no, sir.

25 Q Okay, fair enough. Now on the video that was

1 shown earlier today, what was the name of the -- any
2 of the individuals in that?

3 A I don't know.

4 Q All right. What were their ages?

5 A I don't know.

6 Q Where were they from?

7 A I don't know, sir.

8 Q Do you know if they're actually real people?

9 A Do I know if they're real people?

10 Q Yes.

11 A I don't believe they're digitally created, no.

12 Q Do you know what processes were used to put
13 together that video?

14 A No, sir.

15 Q All right. You did your investigation in July
16 the 23rd and the 26th is when you went out searching
17 and found some files you downloaded off that IP
18 address, correct?

19 A I began the investigation on the 23rd, and
20 continued.

21 Q Okay. And then it wasn't until September the
22 10th that you actually went to where the computer
23 was, right?

24 A Right. Yes, sir.

25 Q Now would it be your job to direct forensics

1 what to look for on the computer?

2 A What I would do is give them a list of what I
3 know I saw, what I know to be -- was on there on
4 those particular days.

5 Q Okay.

6 A And I know that would be part of their search.

7 Q Okay. would you direct them to look for any
8 pornography, adult or otherwise?

9 A Because it's not illegal, no, I would not.

10 Q So you wouldn't follow up to see if there was
11 any regular pornography on there too?

12 A I would ask what kind of pornography was on
13 there.

14 Q Did you make that request in this case?

15 A I don't remember.

16 Q Now the person that's going to be able to tell
17 us what was actually on the computer is going to be
18 Mr. Robertson?

19 A Yes.

20 Q So once you gave him the computer, he is the
21 one that's sort of looked at it, done his analysis,
22 and given you a report of what he found, correct?

23 A Yes.

24 Q All right. Now during the interview of Mr.
25 Horry, at no point in time did he tell you that he

1 knowingly put stuff out to be shared, did he?

2 A He agreed that those files were shared and
3 that those files were found in his shared folder. So
4 I would say that he did.

5 Q That he said that?

6 A That he agreed that they were what the shared
7 folder was. You'd have to play it again, sir.

8 Q Yes, ma'am. Now in your interview with him he
9 admits to watching adult porn also, correct?

10 A I asked him if we would find adult porn as
11 well and he said yes.

12 Q Okay. He also told you that he would get
13 these files, that they would pop up and he would
14 delete them, correct?

15 A I think he said he downloaded, he agreed that
16 he downloaded them. And then out of curiosity he
17 would watch them and then delete them.

18 Q Okay. We will listen to that part again.

19 MR. SMILEY: Beg the Court's indulgence.

20 Q (By Mr. Simpson) Now just a couple more
21 questions. You don't have any evidence in this case
22 of how long or if he watched any of the videos, do
23 you?

24 MR. SIMPSON: Objection.

25 THE COURT: Basis?

1 MR. SIMPSON: Calls for legal conclusion. If
2 he rephrased it.

3 THE COURT: I don't think -- I think it's
4 proper the way it's phased. He asked the length of
5 time the videos were watched. Overruled.

6 Do you need the question repeated? Do you
7 remember the question?

8 A Yes. But are you asking me for time period he
9 was viewing them?

10 Q (By Mr. Smiley) Well, do you have any
11 evidence that he viewed them at all?

12 A We do have the forensic people will be able to
13 tell you that.

14 Q Okay, so I'm asking the wrong person?

15 A Correct.

16 Q All right. And the forensic people will be
17 able to tell me how long they remained on his
18 computer before they were deleted?

19 A Not necessarily, no.

20 Q And you don't have any evidence about how long
21 they were on this computer before they were deleted?

22 I know you are going to sit down and I want to
23 make I get all my questions in.

24 A Right, I understand. I know that from the
25 23rd to the 26th they were not deleted.

1 Q From the 23rd to the 26th in his default
2 sharing directory you found the videos, correct?

3 A Yes.

4 Q Okay. All right. And is it fair to say that
5 if I ask the forensic person about --

6 MR. SIMPSON: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. SIMPSON: He can ask the forensic person
9 about it.

10 THE COURT: Basis, no speaking objections.
11 What the basis of the objection?

12 MR. SIMPSON: Calls for speculation.

13 THE COURT: Sustained.

14 MR. SMILEY: Okay.

15 THE COURT: Rephrase. Without the appropriate
16 foundation.

17 MR. SMILEY: Yes, ma'am.

18 Q (By Mr. Smiley) Do you know how Limewire was
19 set up on this particular computer?

20 A The forensic people can tell you that.

21 Q Thank you. In your experience, and doing this
22 job, what is in the title and what is in the video
23 don't always match, correct?

24 A Correct.

25 MR. SMILEY: That's all I have.

1 THE COURT: Any redirect of the witness?

2 MR. SIMPSON: Very briefly, Your Honor.

3 THE COURT: You may proceed.

4 MR. SIMPSON: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. SIMPSON:

7 Q Sgt. Taylor, just finally asked you if you had
8 any evidence that the defendant actually watched this
9 video. How about his confession that we just heard
10 on the interview you gave him.

11 MR. SMILEY: Objection, Your Honor.

12 THE COURT: Basis?

13 MR. SMILEY: There is nothing that shows
14 that's a confession, misstated.

15 THE COURT: No speaking objections. The
16 objection is sustained. Stay away from the leading
17 and the characterization. Rephrase.

18 Q (By Mr. Simpson) Officer Taylor, do you
19 recall, and we just reviewed the audio interview, we
20 are here to look about -- here about child
21 pornography, you don't look surprised. What was the
22 defendant's response?

23 A He said, no, he wasn't surprised.

24 THE COURT: I'm sorry, I can't hear you,
25 ma'am. You need to speak up for me, please.

1 A I believe he said, no, he wasn't surprised.

2 Q (By Mr. Simpson) You asked the defendant how
3 long he had been looking at the child pornography.
4 What was his initial answer?

5 A One month.

6 Q You challenged him as to the one-month
7 timeline. Did he change his answer?

8 A Yes, he did.

9 Q At one point you state, it's obviously that
10 this did happen, right? What was his response to
11 that?

12 A Yes.

13 Q At one point you said, oh, so you are not even
14 watching them? What was his response to that if you
15 recall?

16 A When I said, you are not even -- when he tried
17 to say he wasn't watching them, I don't know what his
18 response was. You'd have to play it again.

19 Q Mr. Smiley also asked you about any
20 information or guidance you would have given the
21 computer forensics examiners. Did you give them any
22 SHA values?

23 A That's what I did. That's what I knew to be
24 exact.

25 Q Which SHA values did you give them, just using

1 the first?

2 A I gave them the CCH-5, the H4BIB and the YUOX.

3 Q And what's the purpose of giving them those
4 specific SHA values?

5 A Because what they can do is plug that in and
6 find it in a myriad of locations on the computer if
7 it had ever been there.

8 Q Just a couple more questions to clear one
9 thing up that was a little bit confusing. The
10 peer-to-peer network is called what?

11 A The Gnutella network.

12 Q And are there several programs you can use to
13 access that one network?

14 A Hundreds of them.

15 Q What do we call those programs?

16 A They're called clients.

17 Q Is Limewire such a program?

18 A Yes.

19 Q Are there several other clients as well?

20 A Yes.

21 Q Do all these clients access the same network?

22 A Yes.

23 Q So it's possible through PHEX to access the
24 same network one would access through Limewire?

25 A Yes.

1 MR. SIMPSON: I have no further questions of
2 this witness.

3 THE COURT: Any objection to the witness being
4 excused from the State?

5 MR. SIMPSON: None from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. SMILEY: None, Your Honor.

8 THE COURT: Ma'am, you are excused.

9 You may proceed.

10 MR. SIMPSON: The State calls Jerry Roberts.

11 Your Honor, may we approach?

12 THE COURT: You may.

13 (Whereupon, the following discussion was held
14 at the bench.)

15 MR. SIMPSON: The witness was excused. If she
16 could now stay in the courtroom?

17 MR. SMILEY: If you don't intend to use her in
18 rebuttal. If you intend to use her in rebuttal, it's
19 a pretty good chance my client is going to testify.

20 MR. SIMPSON: I think I'll err on the side of
21 caution.

22 MR. SMILEY: Okay.

23 (In open court.)

24 THE COURT: Proceed with your next witness.

25 MR. WILLIAM JERRY ROBERTS, JR.,

1 after having first been duly sworn to state the
2 truth, the whole truth and nothing but the truth,
3 testified on his oath as follows.

4 THE COURT: You may proceed.

5 MR. SIMPSON: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. SIMPSON:

8 Q Mr. Roberts, what is your occupation?

9 A I'm the director of the digital evidence
10 laboratory, City of Charleston Police Department.

11 Q What kind of functions do you and your
12 laboratory perform?

13 A I'm the director of the digital evidence unit,
14 and also an active analyst.

15 Q Okay. And what kind of jobs does an analyst
16 do at your unit?

17 A We basically analyze digital media; cell
18 phones, cameras, computers, hard-drives, CDs,
19 anything that contains digital media.

20 Q And can you describe your educational
21 background to the jury?

22 A Yes. I have a bachelor's degree in business
23 management for Southwestern University. I have been
24 trained by the FBI at Quantico.

25 I spent a year at FBI headquarters in

1 Washington DC being trained by the CIU, which is
2 cyber ID unit. I have been trained in all the
3 software that we utilize in the lab, certified on the
4 software.

5 I have been chairman of the research
6 subcommittee for digital evidence at the University
7 of Southern Florida for three years. I'm a subject
8 matter expert for ASCLAD laboratory and digital
9 evidence.

10 Q You are an analyst and the manager of the
11 digital evidence unit?

12 A Yes, sir.

13 Q Tell the jury a little bit about that lab, is
14 it certified?

15 A Yes. It's an ASCLAD internationally
16 accredited laboratory. Which last count there were,
17 I believe, three in the world that had international
18 accredited digital evidence.

19 Q And what kind of factors go into accrediting a
20 lab in such a way?

21 A It's basically a quality assurance program
22 which states that we maintain a quality assurance
23 level that is appropriate for the work that we do.

24 We have policies and procedures and
25 safeguards. And we follow those policies and

1 everything from validating software to proficiency
2 testing the analysts in the lab.

3 Q Have you in this role ever had the occasion of
4 analyzing a computer for the presence of child
5 pornography?

6 A Yes, sir.

7 Q Can you approximate how many times?

8 A Maybe 400 or 500.

9 Q When a computer is brought to you by an
10 investigator and you are asked to analyze it for the
11 presence of child pornography, can you describe to
12 the jury just generally what that process entails,
13 what you do?

14 A Yes. Basically when we receive a request, a
15 written request to analyze a piece of evidence for
16 child pornography, we take a top-down approach.
17 which means we basically take the hard-drive out of
18 the computer, we place it on a machine that protects
19 us from writing to it or damaging the information or
20 putting information on the machine.

21 And then we make a copy of that machine. So
22 once we make a copy of the machine, then we can scan
23 the machine for images, videos. Once that's done
24 then we narrow it down even further looking for
25 specifics, if they were requested by the

1 investigator, or from our experience on what would be
2 normally considered child pornography.

3 Q And in assessing what would normally be
4 considered child pornography, what are you looking
5 for?

6 A Pretty simple, prepubescent children right off
7 the top would be considered possibly child
8 pornography.

9 And so those images or movies are tagged as
10 items of interest for extraction and given to the
11 investigator for follow-up by a professional in the
12 field.

13 Q Moving on to this specific case, do you recall
14 assisting Officer Trish Taylor with a search warrant
15 on September 10, 2007?

16 A Yes, sir, I do.

17 Q Was a computer seized at that location?

18 A Yes, sir, it was.

19 Q Was it brought to your lab for analyzation?

20 A Yes, sir.

21 Q Do you recall what type of computer that was?

22 A Yes, sir. It was a Dell Dimension 3000
23 desk-top computer.

24 Q And did you proceed with the protocol that you
25 just reviewed for the jury with that computer?

1 A Yes, sir.

2 Q Mr. Roberts, we have talked quite a bit today
3 about what we call a SHA value. With your expertise
4 I was wondering if you could describe what a SHA
5 value is to the jury?

6 A Pretty simple. Basically it's a fingerprint
7 of captions and characteristics of that individual
8 file. It equates something like DNA for a human
9 specimen.

10 It's a mathematical algorithm derived from the
11 complex mathematical function that is generally
12 accepted in our field as being able to identifying a
13 unique item. And once that number is generated, it's
14 assigned to that item just as DNA is assigned to an
15 individual.

16 Q In the present case, did Officer Taylor
17 indicate to you any specific SHA values she wished
18 for you to look for on that computer?

19 A Yes. She actually provided three unique
20 values that she was interested in seeing if existed
21 on the machine.

22 Q And what did your forensics reveal about those
23 three SHA values?

24 A We were actually able to locate remnants of
25 all three on the machine itself.

1 Q Did you then conclude that those files had
2 once resided on that computer?

3 A Yes, sir.

4 Q And a SHA value you said is scientifically
5 unique to one file, correct?

6 A Correct.

7 Q What happens if I take say a -- just a digital
8 picture file on my computer and just slightly darken
9 one tiny little mega-pixel, what happens to the SHA
10 value?

11 A Any altercations would actually change the
12 values. Any alteration; the compression, change in
13 the pixel.

14 Change in the file extension would not change
15 it. By that I mean if it was a picture and you
16 wanted to call it a word file, that would not change
17 the hash value of the file, the contents of the file
18 would still be the same.

19 Q And your forensics revealed on these very
20 specific values that all three of those videos had
21 resided on that computer?

22 A Yes, sir.

23 Q Did you also, once determining that, search as
24 you said for other items of interest?

25 A Yes, sir.

1 Q And could you explain to the jury again what
2 an item of interest is?

3 A What we consider an item of interest is
4 generally particular to the case. In this case we
5 were looking for child pornography, for child
6 pornography. So we're looking for images, videos,
7 that type of stuff that in our experience would be
8 deemed as possible child pornography, and thus we
9 call it an item of interest.

10 Q And how many items of interest did you find on
11 this computer?

12 Might -- I'm sorry -- might I clarify what you
13 are referring to there?

14 A This is our digital case summary report.

15 Q Okay.

16 A It's just a case synopsis of the digital
17 report we provided to the investigator; it's just a
18 handwritten, typed. There is a summary of what we
19 found.

20 I found 54 images of interest, excuse me,
21 items of interest.

22 Q I'd like to ask you a few questions regarding
23 those items of interest. I believe I've asked you to
24 bring the digital report you prepared in this case?

25 A Yes.

1 Q Would that refresh your recollection and aid
2 you in your testimony in talking about specific items
3 of interest?

4 A Yes, sir. I need it because the file
5 structure that it provides if you are going to ask me
6 things specifically.

7 Q Okay.

8 MR. SIMPSON: Your Honor, at this point --
9 unless there is an objection, I'm going to allow the
10 witness to look at his digital report that he
11 prepared in this case.

12 THE COURT: I would imagine there is no
13 exception to him using it to refresh his memory?

14 MR. SMILEY: Not to refresh his memory, no,
15 ma'am.

16 THE COURT: You may proceed.

17 Q (By Mr. Simpson) I'm mainly concerned, Mr.
18 Roberts, about what program were these items of
19 interest stored on the defendant's computer?

20 A You mean what software was utilized?

21 Q Yes.

22 A Limewire.

23 Q I'm also concerned, can you explain to the
24 jury a little bit about the titles of files, what
25 that is and?

1 A You mean by title?

2 Q The file name as opposed to the SHA value?

3 A The file name is just a name of the file. It
4 can be user-created, it can be created by anyone that
5 uploaded the file. Anyone could name it whatever.

6 It can be a Disney video and you could name it
7 Charleston's Finest. And it would show up as
8 Charleston's Finest, but the contents would still be
9 a digital video of Disney.

10 Q But in order to determine these video items of
11 interest, you actually viewed the videos, correct?

12 A Yes, sir. We determine the SHA, and then we
13 actually looked at them.

14 Q Looking at the items of interest you
15 designated in the Limewire file, can you explain or
16 account for the jury the titles of these video files?

17 A Give me one second.

18 MR. SMILEY: Your Honor, may we approach?

19 THE COURT: Uh-hum.

20 (Whereupon, the following discussion was held
21 at the bench.)

22 MR. SMILEY: I've got a problem with him using
23 that. I just want to make sure it's the same thing
24 I've got of the printout before he does.

25 MR. SIMPSON: The printout Mr. Smiley has is

1 the printout from his digital report. It does not
2 contain the whole thing. The whole thing has been
3 available to him. He came and reviewed it at the
4 digital forensics lab. It's what we looked at that
5 day.

6 MR. SMILEY: So this is --

7 MR. SIMPSON: This is a page of that, yes,
8 which is what I asked him to review.

9 MR. SMILEY: That's what I'm concerned about.
10 I don't know why he is not using paper.

11 MR. SIMPSON: This is Trisha's report.

12 MR. SMILEY: I just wanted to make sure.

13 THE COURT: Most people use a computer now.
14 (In open court.)

15 THE COURT: You may proceed.

16 Q (By Mr. Simpson) Have you pulled that
17 information up, Mr. Roberts?

18 A Yes, sir.

19 Q If you could, just read the titles of some of
20 the files you found residing in the Limewire program
21 on the defendant's computer?

22 A 12-year-old boy, such-and-such, 12-year-old
23 girl.

24 Q We understand that you have to use some words
25 that --

1 A That's okay?

2 Q -- that are distasteful. But I'd like for you
3 to use those words if they're in the title.

4 A 12-year-old boy fucks 12-year-old girl. Kitty
5 Pedo Boy Lolita. Best Russian Trio Father and Two
6 Young Daughters Incest. Vicky, 7-year-old and
7 10-year-old 69 Pedo Child Pornography.

8 Blonde Ukraine Girl Amateur First Time Sex.
9 Lolita Hard Girl Boy Sex. 7-year-old Crystal
10 Pleasuring her Pretty Child. Cunt Masturbation
11 Preteen Pedo.

12 8-year-old girl and 12-year-old boy fucking
13 Lolitas. Lolita Preteen Sex Child Underage.

14 THE COURT: Let me interrupt you one second.
15 Mr. Foreman, ladies and gentlemen, I am going to give
16 you all a brief restroom break. During the break,
17 please do not discuss the case and please leave your
18 notepads in your seats.

19 We will be going beyond 5 o'clock, so if any
20 of you need to make phone calls in anticipation of
21 that, please let the bailiffs know so that you can do
22 that as well. Again please do not discuss the case
23 and please leave your notepads in your seats.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: You all may take a restroom break.

1 Ladies and gentlemen, I hope that you all
2 enjoyed your break. We will now resume with the
3 testimony of the witness.

4 You may proceed, Mr. Simpson.

5 MR. SIMPSON: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 Q (By Mr. Simpson) Mr. Roberts, if you could
8 just continue with just two or three more of the
9 titles of the 56 that you found?

10 A 4-year-old Girl Pedo. Rigoal Hussy Fan Lolita
11 PTHC. 12-year-old Girl Blow Job PTHC. 3-year-old
12 Girl Pedo Rigoal Hussy Fan Lolita Guy PTHC.

13 Q That should do it, Mr. Roberts. And those
14 types of titles continued for 56 items?

15 A 54 I believe.

16 Q 54?

17 A 54.

18 Q Did you view each of those 54 items?

19 A Yes, sir.

20 Q And you are not doctor, correct?

21 A No, sir, I'm not.

22 Q But using your common sense --

23 MR. SMILEY: Objection.

24 THE COURT: Basis?

25 MR. SMILEY: It's going to call for --

1 THE COURT: Is it leading, is that the
2 objection?

3 MR. SMILEY: Opinion. It's going to ask for
4 an opinion.

5 THE COURT: He can ask his opinion based on
6 his education, training and experience if he lays the
7 appropriate foundation.

8 The appropriate objection is leading. Don't
9 lead, Mr. Simpson.

10 MR. SIMPSON: Understood, Your Honor.

11 THE COURT: Sustained, leading.

12 MR. SMILEY: Thank you.

13 THE COURT: You're welcome.

14 Q (By Mr. Simpson) What again led you to
15 conclude that these were items of interest?

16 A I tried to keep it very basic. And to me the
17 item is of interest if it appears to be a
18 prepubescent child in the videos or images that I
19 come across, I tag those as items of interest.

20 Q Moving on to the location on the computer.
21 You stated they were all within the Limewire
22 software?

23 A Yes, sir.

24 Q Mr. Roberts, we've heard some earlier
25 testimony involving that the defendant may have

1 deleted items from Limewire. Can you explain to the
2 jury a little bit about the different default
3 locations in the Limewire software?

4 A It basically you instal Limewire, it's a
5 peer-to-peer program to allow you to communicate
6 directly with another, it has some default settings
7 that was design by the software.

8 So for instance if you installed it, it has a
9 -- what is known as an incomplete folder down in the
10 folder structure and also a shared folder as the two
11 default folders.

12 The incomplete folder being a folder that
13 contains any files that you may have attempted to
14 start a download and it had not completed by
15 interrupted services, whether you cut your computer
16 off, maybe more people were trying to download it and
17 it hiccuped and stopped, but anyway it's loaded into
18 the incomplete folder until it's completed.

19 And once it's completed it's removed from the
20 complete folder, excuse me, incomplete folder and
21 placed in a folder called shared. Those are the two
22 default folders for Limewire.

23 Q So anything in the incomplete folder -- let me
24 rephrase. Would the user have to click to download a
25 file to get it into the incomplete folder?

1 A Not directly, no. Just downloading files
2 period. If they are not completed or by default
3 placed in the incomplete folder, that doesn't require
4 an individual user action.

5 Q Okay. But to download -- the files in the
6 incomplete folder, would -- a user would have had to
7 at some point attempted to download those files; is
8 that correct?

9 A Correct.

10 Q Were there any complete files found on the
11 defendant's computer?

12 A Let me look. I see two that appear to have
13 been completed.

14 Q And how many in the incomplete folders again?

15 A I would say resulting in 52, but they are not
16 individually numbered.

17 Q If a user went and deleted all of his child
18 pornography files from the complete folder, would he
19 still potentially have child pornography in his
20 incomplete folder?

21 A Yes.

22 Q Is finding such a large number in the
23 incomplete folder, and a relatively smaller number
24 completed, does that indicate to you potentially that
25 that is what a user did?

1 MR. SMILEY: Objection.

2 THE COURT: Basis?

3 MR. SMILEY: Conclusion, speculation, Your
4 Honor.

5 THE COURT: Although he has not been qualified
6 as an expert, he does not need to be under Rule 701.
7 He can provide lay witness testimony as long as it's
8 within his perception, and as long as it is based
9 within the ambit of his training and it is.

10 So the objection is overruled.

11 A Can you repeat that again?

12 Q (By Mr. Simpson) Would it be consistent with
13 your expertise of a user going into Limewire and
14 deleting all their child pornography files to find
15 many still residing in the incomplete folder, and
16 then a relatively small amount in the complete
17 folder?

18 A No, that's a little unusual.

19 MR. SIMPSON: Please answer any questions Mr.
20 Smiley may have for you.

21 THE COURT: Mr. Smiley, you may proceed.

22 CROSS-EXAMINATION

23 BY MR. SMILEY:

24 Q Do you go by should I call you Sgt. Roberts?

25 A No, Jerry Roberts.

1 Q Jerry. All right, thank you.

2 Let's talk a little bit about Limewire first.

3 Limewire is a legal program, right?

4 A Yes.

5 Q It's a program to share between computers, a
6 peer-to-peer kind of situation, correct? Sorry about
7 this, I said that very badly.

8 A Close enough.

9 Q Okay. Businesses use that to share?

10 A No.

11 Q Okay.

12 A They don't. You want me to continue?

13 Q Yeah, absolutely.

14 A No, they don't. Because of the illegal uses
15 it's ended up being used for, it's not widely used in
16 any organization anymore.

17 Q Because of things it's illegally used for like
18 music and videos?

19 A Yeah, music, copyright infringements, things
20 like that.

21 Q Okay. You are familiar with Limewire, though,
22 right?

23 A Yes, sir.

24 Q You are familiar with the licensing agreement
25 of Limewire?

1 A As in?

2 Q What, you know, when you download Limewire
3 there is a licensing agreement that you agree to
4 before you download Limewire, correct?

5 A That's standard for most software.

6 Q Right. It's the one we all go to the bottom
7 and click I agree?

8 A Don't read it and check it.

9 Q Right.

10 A Yes.

11 Q Are you familiar that it says that in the
12 licensing agreement that there will be no illegal
13 materials available on that network?

14 A I'm not familiar with that per se, no.

15 Q But that would be standard?

16 A But I would assume they would put it since it
17 can be used for that.

18 Q Right. All right. Now you said when you
19 download Limewire there is a lot of default settings
20 that unless you change them it's the way it's going
21 to be set up, right?

22 A Correct.

23 Q And one of those default settings is your
24 share folder, correct?

25 A Yes.

1 Q Isn't it true that whatever you download that
2 is downloaded completely is moved into the share
3 folder, correct?

4 A If you had it set that way, yes.

5 Q That's a default setting?

6 A Yes.

7 Q If you leave it at default?

8 A Yes. Yes.

9 Q Someone like me, doesn't know anything about
10 computers, I want to use Limewire, I download it, I
11 don't want to change anything because I don't want to
12 mess up anything, so I am using the default settings?

13 A Yes.

14 Q It's going to have this share folder that is
15 automatically going to move things out there, right?

16 A Yes, sir.

17 Q And it's not going to tell me I moved it out
18 there, is it?

19 A No.

20 Q It's not going to say, you just downloaded a
21 file X and it's now available to be shared by
22 everybody?

23 A No, sir.

24 Q Okay. Now when you are downloading files on
25 Limewire, you put in a search or look for a specific

1 file to find what you are looking for, right?

2 A Yes.

3 Q All right. And so in that search, let's say
4 we are looking for pornography, not necessarily child
5 pornography but pornography. And you put in a search
6 for hardcore, and you reach out there and you get
7 your list of where all the different things you can
8 get.

9 And there are folders on those shared
10 defaults, right, the other people's computers have
11 folders with files inside of them, right?

12 A Yes. But you don't see the folders directly,
13 you see the resulting files.

14 Q So I am going to see what is inside each of
15 those folders?

16 A Correct.

17 Q And then without being able to see what is
18 inside them --

19 A No, you would be able to see what's inside of
20 them.

21 Q Of the folder but not the files?

22 A Yes.

23 Q I'm sorry, I'm not very good.

24 A Yes.

25 Q So I see, Teen Raped, okay. I'm like, hum,

1 click on it. Not that it's really nice, but I'm
2 downloading it. I don't know what is actually in
3 that file when I click on it, correct?

4 A No, you do not.

5 Q So I click on a bunch of stuff. And it does
6 not download like that, does it?

7 A No. It depends upon your bandwidth and how
8 you're connected to the computer.

9 Q It depends on how fast your computer is
10 interacting with the other computer?

11 A Correct.

12 Q So I click on some stuff, and my computer
13 starts downloading, right?

14 A Yes.

15 Q Correct?

16 A Yes.

17 Q And whenever I've got my computer on and up
18 and running it goes back and keeps going back to try
19 to download the stuff I've clicked, unless I've
20 canceled that download?

21 A Correct.

22 Q And that conceivably could be over a long
23 period of time. It's not necessarily one sitting.

24 A It could be a week.

25 Q Okay, very good. And when that file finally

1 is finished downloading, does it pop up and say
2 complete for you to know that it's complete?

3 A No. I believe there is a little windowpane at
4 the bottom that just moves it out of the incomplete
5 and it will disappear up there and will be moved into
6 the share folder.

7 Q So you are not told it is a completed file?

8 A (Affirmative head shake.)

9 Q Now I'm going to switch it a little bit and
10 come back to this.

11 When you were examining the computer that you
12 were given for analysis, you found these, quote,
13 items of interest. Could you tell whether they
14 resided on the hard-drive or had they -- I'm not
15 going to say, let me try to break this question down
16 in little pieces. I think you know what I'm going to
17 ask, but I'm going to try to do it real simple.

18 You can tell on the hard-drive whether
19 something still resides there or whether it has been
20 deleted, correct?

21 A Correct.

22 Q It's still there, but when it's deleted it's
23 not available to you, correct?

24 A Not available to the end-user, correct.

25 Q Right. So when you look at the hard-drive you

1 can tell what is still available to the end-user and
2 what is not or deleted, correct?

3 A Yes, we call logically.

4 Q In this case these items of interest that you
5 found were not available to the end-user, they were
6 deleted, correct?

7 A Which ones?

8 Q The 52 of them?

9 A No, all of them were not deleted.

10 Q Can you tell me what was deleted and what
11 wasn't deleted?

12 A 24 were not deleted but were in the incomplete
13 folder.

14 Q So they hadn't finished downloading yet?

15 A Correct.

16 Q And the rest had been deleted, correct?

17 A Yes.

18 Q All right. Now of the ones, and those ones
19 that had been deleted, were those completed files
20 deleted or could you tell?

21 A According to Limewire they were also in the
22 incomplete folder.

23 Q And had already been deleted?

24 A Yes, sir.

25 Q Now can you determine by analyzing the

1 computer which files had been viewed by end-user?
2 Actually put up on the screen and looked at?

3 A Of course not.

4 Q So you don't know from your analysis, and I
5 thought that's the answer, but believe me I just
6 don't know.

7 A Okay. You cannot.

8 Q So when you say of course not, don't think I'm
9 asking you -- I'm just not that skilled, okay. So
10 I'm sorry if they are simple, stupid questions, but I
11 think they are important questions.

12 You cannot tell if Mr. Horry viewed, actually
13 looked at any of those, can you?

14 A No, sir.

15 Q Now you know he had to click on the file to
16 start the download. We know that, right?

17 A Someone, yes.

18 Q Excuse me?

19 A Someone.

20 Q Some what?

21 A Someone.

22 Q Someone?

23 Q Yes, sir.

24 A You can't say it's Mr. Horry, but if he is the
25 only one that had access to the computer logically it

1 would probably be him. But someone had to click on
2 the title to start the download, correct?

3 A Correct.

4 Q All right. When they click on that title it's
5 not on his computer, is it, it's on somebody else's
6 computer, correct?

7 A It's on the server being transferred. Yes,
8 it's not on his individual computer, no.

9 Q Wait, wait, now. You used a word that messed
10 me up here because I thought I understood
11 peer-to-peer but maybe I don't. Peer-to-peer means
12 my computer is connected to your computer, right?

13 A Yes.

14 Q With these clients or Limewire type programs?

15 A Right.

16 Q And I'm actually looking at your computer in
17 the shared file to see stuff I can download, correct?

18 A Yes.

19 Q So where does the server --

20 A When I say server, served.

21 Q Okay, I see.

22 A Served Up, yes. So it's not a server in the
23 business sense of a server.

24 Q Right. Served up would be that computer with
25 this computer?

1 A Yes, on the menu.

2 Q Got you. Just me not knowing my terms, okay.
3 So when he clicks on a title out there in space on
4 another computer, it's not on his computer, correct?

5 A No, sir.

6 Q All right. It's when you examined his
7 computer, you can't say whether he had ever viewed
8 the contents of those titles or not, correct?

9 A Correct.

10 Q All right. Did you do any analysis for just
11 regular old pornography to see if any of that resided
12 on the computer?

13 A I may have, but it wasn't the focus here. So
14 it would not have been put in here.

15 Q So it would not be part of your report if it
16 was?

17 A No, sir.

18 Q It wasn't part of the request?

19 A No, sir, it was not.

20 Q And in your analysis -- and I think I know the
21 answer, and again forgive me if I am asking a really
22 simple stupid question -- are you able to determine
23 his original search terms to find files out on the
24 Internet?

25 A No. But there is a file located within

1 Limewire, it's called spam.netfile. And it's
2 purportedly a catalog of search terms placed in by
3 the end-user.

4 Q Did you find one in this case?

5 A Yes.

6 Q Okay. Now when you were doing your analysis,
7 I'm trying to make sure I ask this question correctly
8 -- let's ask this question. SHA values, is that a
9 term of art for people like yourself that are --

10 A Term of what?

11 Q Art.

12 A Never heard of it.

13 Q Maybe I'm using the wrong words. Something
14 specific to your industry.

15 A In my field?

16 Q Yes, in your field.

17 A Yes, sir.

18 Q SHA. When somebody sits down at a computer,
19 they don't like think, I'm going to look up SHA value
20 66333?

21 A No.

22 Q No. That's something that you all use to
23 fingerprint a file, correct?

24 A Yes, sir.

25 Q Okay. So it's safe to say that no one in this

1 case looked up a file by their SHA value, an end-user
2 that is?

3 A Correct.

4 Q All right.

5 MR. SMILEY: May we approach Your Honor?

6 THE COURT: You may.

7 (Whereupon, the following discussion was held
8 at the bench.)

9 MR. SMILEY: Do you know about the spam dot?

10 MR. SIMPSON: I had no idea, but that's why we
11 had the whole computer available to you if you wanted
12 to utilize it.

13 MR. SMILEY: Well I want to ask the name
14 that's available on his computer without being in
15 front of the jury. Because if it's available right
16 there, I want to be able to examine it before I ask
17 him those questions before I put my foot in my mouth.

18 MR. SIMPSON: I had the same issue. We can
19 take a look together.

20 MR. SMILEY: I would ask for a moment without
21 the jury, Your Honor. If he says the information I
22 know exists I'm being told I should have known --

23 MR. SIMPSON: I did not either, I'm telling
24 you.

25 MR. SMILEY: I might have made your case for

1 you.

2 (In open court.)

3 THE COURT: Mr. Foreman, ladies and gentlemen.
4 We have a brief matter of law. We appreciate your
5 patience. Please leave your notepads in your seats
6 and please do not discuss the case. It should be
7 about five minutes.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: You may be seated. You all go
10 ahead and talk with the witness.

11 MR. SMILEY: Yes, ma'am.

12 (Whereupon, a recess was taken.)

13 (Whereupon, the jurors enter the courtroom.)

14 THE COURT: You may be seated. You may
15 proceed.

16 Q (By Mr. Smiley) All right. Back to where we
17 were. Tell me the name of that file again, spam?

18 A Spam.net.

19 Q Okay. That contains the file that had in it,
20 amongst other things, is search terms, correct?

21 A It has a multitude of things.

22 Q But needless to say, looking at it you cannot
23 tell what search terms he actually used in a search?

24 A No, you cannot.

25 Q I think you used the word ambiguous?

1 A Yes.

2 Q It has all kinds of stuff in there, right?

3 A Correct.

4 Q Now on the date that the computer was seized
5 is sort of like freezing it in time, nothing was
6 added or subtracted between the time it was seized
7 and you looking at the computer, right?

8 A Yes, sir.

9 Q In the shared folder on the date that you
10 seized that, all right, out there in the complete
11 folder, what title was found that would contain child
12 pornography?

13 A There is actually two. There is one, Triple X
14 Paula Homemade Amateur.

15 Q Okay.

16 A And there is another, Exploited Triple
17 Explanation Point Asian Teens, Three Thai Girls,
18 14-year, blah, blah, blah.

19 Q Okay. Make sure I heard the first one, Triple
20 X?

21 A Triple X Paula Homemade Amateur.

22 Q Triple X Paula homemade Amateur. And then the
23 other one about Thai teens, Asian teens?

24 A Three Thai 14-year-olds.

25 Q Those were the only ones that were out there

1 to be shared, right?

2 A They're not actually shared, just the only two
3 files that were logically on the machine.

4 Q They weren't in the share folder, they were
5 the only ones that were complete on the machine?

6 A Correct.

7 Q Okay. In the share folder, that default share
8 folder, what was out there of interest to be shared?

9 A There is no shared folder on this machine.

10 Q Okay. On the date that you got it.

11 A On the date that I got it.

12 Q Okay, very good. And if I understand
13 correctly the only complete files you found on the
14 machine were the two you just referenced, correct?

15 A Correct.

16 Q All right. Now so I don't get confused I'm
17 going to ask you one more to make sure I got this. I
18 know you are looking at me like, boy, he's dumb, but
19 forgive me.

20 So under Limewire there is an incomplete
21 folder file and there is a shared file, correct?

22 A Folder.

23 Q Excuse me, folder?

24 A Yes.

25 Q All right. When you begin the download, it

1 goes in the incomplete file, right?

2 A When you start the download?

3 Q Right?

4 A Yes, sir.

5 Q When it is finished it pops over to shared,
6 correct?

7 A Correct.

8 Q If you delete the file, it comes out of the
9 share folder?

10 A Yes.

11 Q Okay. And it comes off of what is coming in
12 to be downloaded?

13 A Yes.

14 Q But it resides, not available to the end-user
15 but it's still like -- still on your computer to a
16 certain degree?

17 A It would be on the hard disc somewhere.

18 Q You can't erase your fingerprints. If you
19 touch that file it's going to show up, right? Unless
20 you use some special apparatus?

21 A Correct.

22 Q If you are just like me and don't know what
23 he's doing with a computer, if you download something
24 or started to, it's going to show up in some form or
25 fashion, correct?

1 A Yes.

2 Q Now important question, tagging those files
3 and beginning a download doesn't necessarily mean
4 that you viewed them, does it?

5 A No.

6 Q Going out and tagging those files and
7 beginning the download, doesn't mean that you have
8 that file completely on your computer, does it?

9 A No.

10 Q And when you delete a file, it's not available
11 to you as the end-user, correct?

12 A Correct.

13 Q Without using some special program to bring it
14 back, correct?

15 A Correct.

16 Q And you didn't find any of that kind of
17 software on this computer?

18 A No, sir.

19 MR. SMILEY: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. SMILEY: That's all I have, Your Honor.

22 THE COURT: Any redirect of the witness?

23 MR. SIMPSON: Yes, Your Honor, briefly.

24 THE COURT: You may proceed.

25 MR. SIMPSON: Thank you.

REDIRECT EXAMINATION

BY MR. SIMPSON:

Q Talking about some files found that were incomplete files?

A Yes.

Q Can the user still access and view incomplete files?

A Access and view?

Q Yes.

A Yes, sir.

Q So what is meant by incomplete?

A Just not 100 percent. You can go up to 99.9 percent and it's still going to go in the incomplete folder up to that 99.9 percent. So if you play it into a player or looked at it you would see 99 percent or 99.9 percent.

Q And in the 54 items of interest, how many did you view?

A Did I view?

Q Yeah.

A I would have viewed all those.

Q All 54. One more quick clarification. Searching for files on a file-sharing network and downloading them, are those two separate steps to the process?

1 A Yes.

2 Q So if I put in a search term like porn, would
3 I download anything just by putting in porn?

4 A No. What would happens when you put in a
5 search term, and when the window below is populated
6 by files that Limewire thinks matches your search
7 request.

8 Q Then I have the option of reading the titles
9 of which I want to download?

10 A Correct.

11 Q And it was apparent to you that the titles
12 that you read, I believe about 10 or 12 of them, not
13 all of them, had been downloaded by this user,
14 incompletely some of them?

15 A Yes.

16 MR. SMILEY: Couple of questions and I will be
17 done, Your Honor.

18 THE COURT: Uh-hum.

19 RE CROSS-EXAMINATION

20 BY MR. SMILEY:

21 Q Titles don't always match what's in the file,
22 do they?

23 A Correct.

24 Q Titles can be manipulated?

25 A Yes.

1 Q That's why you like the SHA value, because it
2 can't be manipulated?

3 A While we actually view the files.

4 Q I understand. Even though they're incomplete
5 files, you said they can be viewed, right?

6 A Yes.

7 Q There is no way to tell if they were viewed?

8 A No.

9 MR. SMILEY: Nothing further.

10 THE COURT: Anything further from the State?

11 MR. SIMPSON: Nothing from the State, Your
12 Honor.

13 THE COURT: Any objection to the witness being
14 excused from the State?

15 MR. SIMPSON: None from the State.

16 THE COURT: From the defense?

17 MR. SMILEY: No, Your Honor.

18 THE COURT: Sir, you are excused.

19 THE WITNESS: Thank you, ma'am.

20 THE COURT: You're welcome, have a good day.

21 Anything further from the State or does the
22 State rest?

23 MR. SIMPSON: The State rests, Your Honor.

24 THE COURT: Ladies and gentlemen, the State
25 has rested their case. I have some matters of law I

1 need to take up with them that will be very brief, if
2 you will bear with me for just a moment. I will let
3 you know how we will be proceeding for the remainder
4 of the trial.

5 If you will go with the bailiffs for me,
6 please. Please don't discuss this case in any
7 manner. Please leave your notepads in your seats.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: The State has rested, are there
10 any motions?

11 MR. SMILEY: Yes, ma'am. I'd make a motion
12 for -- first before I forget, make a motion to renew
13 my pretrial motion as to the validity --

14 THE COURT: I don't think you have to. I
15 think you have already made that motion and the Court
16 has ruled.

17 MR. SMILEY: Yes, ma'am. Then I won't bring
18 it up again since you've made that.

19 THE COURT: And I'm also doing a written order
20 that I'm going to attach to the record.

21 MR. SMILEY: Yes, ma'am. And, Your Honor, as
22 I make a directed motion first on the second degree
23 sexual exploitation of a minor in that one of the
24 elements that the State must prove is the knowing,
25 that my client knowingly distributed, transported,

1 exhibited, selling, purchasing, exchanging or
2 soliciting.

3 In other words it comes down to the material
4 that was in the shared folder. And they haven't, in
5 this case, shown that he knew it was there to be
6 shared. As a matter of fact, the testimony is that
7 it's automatically put there. There is nothing to
8 show he knew it was there because it's a default.

9 Even in the light most favorable to the State,
10 they have not produced any evidence that he knowingly
11 shared any material, without going to their burden to
12 show that these files were child pornography, they
13 have not put any evidence up as to the age of the
14 participants or if they were actual individuals and
15 how these videos were produced and whether it meets
16 the elements of child pornography to begin with.

17 Nor have they established that my client has
18 viewed the files, videos in question, Your Honor. So
19 it's two-part. But I think the strongest part of the
20 directed verdict motion would be that they have not
21 shown any evidence that my client knowingly put out
22 there to share the files.

23 THE COURT: I don't think they have to. All
24 they have to prove under the section says or receives
25 is one of the elements. They don't have to prove all

1 of them.

2 says distributes, transports, exhibits,
3 receives, sells, purchases, exchanges or solicits.
4 And there is an or in the statute with a semicolon.

5 MR. SMILEY: Yes, ma'am.

6 MR. SIMPSON: Your Honor, if I may hand up a
7 case. I apologize to Mr. Smiley, I only have one
8 copy.

9 THE COURT: You can just give me the citation.

10 MR. SIMPSON: It's a -- oh, boy.

11 THE COURT: What's the case name?

12 MR. SIMPSON: It is a case out of the Eighth
13 circuit called the United States versus William Ralph
14 Dodd, D-O-D-D.

15 The posture of this -- and I just point you to
16 it, and I understand it's not binding. But the
17 posture of this is a little different. It was
18 actually an appeal of a federal sentencing
19 enhancement for the distribution element under the
20 federal sentencing guidelines.

21 But section one of this case, and I just point
22 it out, Your Honor, discusses this exact same issue
23 of was it proper to enhance this defendant's federal
24 sentence based on distribution from merely the
25 evidence being put forth that he was using a

1 file-sharing program, which by its very nature it's
2 meant to share and distribute files.

3 As to the evidence we presented, there was a
4 discussion on the audio interview as to the
5 properties of file sharing, which none of us are
6 alleging that Mr. Horry displayed a great computer
7 literacy. But he did make some acknowledgments of
8 the basic purpose of the Limewire which is to share
9 files.

10 And if I would, that alone and this Eighth
11 Circuit case the court found was enough to get to the
12 jury the element of distribution. And also I agree
13 with Your Honor, the statute itself --

14 THE COURT: Our statute does not require it.
15 It's just like the kidnapping statute or other
16 statutes that list lots of elements. You don't have
17 to prove all of them, you've just got to prove one.

18 But I need Mr. Smiley to finish making his
19 argument and then I'm going to let you respond.

20 MR. SMILEY: I am finished, Your Honor.

21 THE COURT: Okay. You may continued.

22 MR. SIMPSON: I was going to address Mr.
23 Smiley's second point which we have already discussed
24 pretrial to some extent, and that is the evidence
25 that these are actual children.

1 And I would just point again to subsection B
2 of the statute which whose very purpose is to address
3 this issue in the statute, which is that by the
4 titles, the content in viewing the visual
5 representation of the actual alleged pornography, the
6 jury can apply their common sense and experience to
7 make in fact a determination that these are actual
8 children, Your Honor.

9 THE COURT: When considering a motion for
10 directed verdict, the Court is concerned with the
11 existence or nonexistence of evidence and not its
12 weight. If there is direct evidence or substantial
13 circumstantial evidence reasonably tending to prove
14 the defendant's guilt, or from which his guilt could
15 be logically and fairly deduced, it is appropriate
16 that the matter go the jury.

17 The Court is not in the business of fact
18 finding, nor in the business of weighing evidence.
19 Of course the evidence has to rise above what is more
20 than mere suspicion. But the Court does not have to
21 find that the evidence infers guilt to the exclusion
22 of any other reasonable hypothesis.

23 16-15-405 is very specific. It indicates that
24 an individual commits the offense of second degree
25 sexual exploitation of a minor if knowing the

1 character or content of the material he, one,
2 records, photographs, films, develops, duplicates,
3 produces or creates digital electronic file material
4 that contains a visual representation of a minor
5 engaged in sexual activity; or, distributes,
6 transports, exhibits, receives, sells, purchases,
7 exchanges or solicits material that contains a visual
8 representation of a minor engaged in sexual activity.

9 Subsection B provides, in a prosecution under
10 this section, the trier of fact may infer that the
11 participant in sexual activity depicted in the
12 material as a minor through its title, text, visual
13 representations of otherwise is a minor.

14 The statute is very clear. It does not -- the
15 State Does not have to prove all of these elements
16 beyond a reasonable doubt. They can prove the
17 elements, one or any of the elements in subsection 1
18 by use of the word or. And then at the end of that
19 first provision, which is A(1), there is a semicolon
20 and an or. And then subsection 2 which provides
21 another list of things that the State -- they don't
22 have to prove all of them, they can just prove one.

23 The operative term is not distribute in this
24 case, it is whether he received it. And the term
25 that is used is receives. Although the State is free

1 within their ambit to argue that he distributed it by
2 file-sharing.

3 And I think even -- I don't claim to be astute
4 in digital technology or in terminology, but I think
5 even my basic knowledge I know that when you have
6 file-sharing, that's meant to distribute files among
7 different people, and it's meant for you to
8 distribute what you have to somebody else.

9 So I think certainly the State can argue that,
10 and that is within the clear, plain language of the
11 statute. If they want to argue that he distributed
12 it they can, by file-sharing. Or they can argue that
13 he received it by virtue of file-sharing.

14 But in the receiving part of that statute I
15 don't think it has to be file-sharing. I think you
16 can simply have downloaded it or had it sent to you
17 from someone else. With the operative language again
18 being receives.

19 The other I would think maybe even find Mr.
20 smiley's argument persuasive but for his client's own
21 admission to Sgt. Taylor that he knew what he was
22 doing, that he was curious. In his own statements to
23 her after he was Mirandized he said he knew what he
24 was downloading. That at first maybe he deleted
25 them, but then he got curious and looked at some

1 more. So I think that really mitigates against that
2 argument.

3 As it regards the argument regarding whether
4 the State has proven beyond a reasonable doubt the
5 age of the children depicted, or whether they are
6 actual children, that is an issue of weight for the
7 jury. But there is certainly direct evidence in this
8 record, as well as substantial circumstantial
9 evidence.

10 I viewed the videos. They do not look like
11 digital enhancements to me, although I'm not an
12 expert. The children in those videos are clearly
13 under the age of consent. I don't think there can be
14 really any question about that.

15 There is maybe one video where you could argue
16 that that child is more than 14. But clearly the
17 other images are of children under the age of 5. So
18 I don't think there are really, at least from this
19 Court's review and what I'm required to look at,
20 which is whether there is direct evidence or
21 substantial circumstantial evidence, and there is.

22 So the arguments made by the defense really go
23 to the weight to be afforded to the evidence. And
24 you certainly can argue that they really aren't
25 children, and we really don't know what age they are,

1 and the State failed to meet that element. That's up
2 to you. And that's up to the jury in their
3 fact-finding province.

4 As regards to subsection B which is the
5 inference that the jury can draw based on the title,
6 text, visual representations or otherwise, again
7 that's a factual issue to be argued to the jury as to
8 whether the titles match up, or whether it's actually
9 depicting what has been represented.

10 But clearly again that is an inference that is
11 permissible by statute. It's one of many that the
12 jury can consider and not consider, give weight or
13 not give weight. It's within their fact-finding
14 province.

15 I will find for the record that there is
16 direct and substantial circumstantial evidence
17 reasonably tending to prove the defendant's guilt, or
18 from which his guilt could be logically and fairly
19 deduced. It does rise above the level of suspicion.

20 And it is appropriate that the directed
21 verdict motion be denied and that the matter be
22 submitted to the jury. The Court stands by its
23 original ruling that the state statute is
24 constitutional. And as I have indicated, I'm in the
25 process of preparing a written order detailing the

1 Court's analysis and findings of fact and conclusions
2 of law of which I will file in the defendant's file
3 and make a Court's exhibit.

4 Sir, if you would stand for me, please, and
5 raise your right hand to be sworn.

6 (Whereupon, the Court places the defendant
7 under oath.)

8 THE COURT: You can put your right hand down.

9 Sir, state your full name for the record.

10 THE DEFENDANT: Willie Don Horry.

11 THE COURT: Sir, I am now going to explain to
12 you certain of your rights. If you do not understand
13 anything that I say, please let me know. If you need
14 me to repeat or clarify something, please let me know
15 in more detail. Do you understand?

16 THE DEFENDANT: Yes.

17 THE COURT: Sir, we have now reached the stage
18 of the trial where you may present your defense. You
19 have the right to claim the protections given to you
20 by the Fifth Amendment to the constitution. And that
21 Amendment reads in part that no person shall be
22 compelled in any criminal case to be a witness
23 against himself.

24 This means that you cannot be required to
25 testify in this case. You have the right to testify

1 about this case. And please do not do any
2 independent research of any type on the Internet. We
3 will resume in the morning at 9:00. You will come
4 directly to your jury room. I anticipate we will
5 finish this case on tomorrow for your scheduling
6 purposes.

7 And again you will come directly to the jury
8 room. Please don't have any contact with anyone in
9 or about the courthouse as you return. Please leave
10 your notepads in your seats and we will secure them
11 during the break. Have a wonderful evening and we
12 will see you at 9:00.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: Did you all have request to charge
15 you want me to look at?

16 MR. SIMPSON: We will probably agree to charge
17 lesser included third degree. I think it's obvious
18 that subsection B is charged about permissive
19 inference.

20 THE COURT: I was going to charge straight
21 from the statute and maybe do some tweaking and make
22 it more layperson friendly probably. But pretty much
23 I'm going to charge just the statute. And then I
24 will charge the lesser-included which is, you said,
25 third degree?

1 MR. SIMPSON: This degree is the possession.

2 THE COURT: And I assume that you want
3 criminal intent?

4 MR. SMILEY: Yes, ma'am.

5 THE COURT: Instructed. And I am -- you
6 wanted statement stuff instructed.

7 MR. SMILEY: Yes, ma'am.

8 THE COURT: And that was about it. Then we
9 will do the verdict form and we will have all that in
10 the morning.

11 MR. SMILEY: Yes, ma'am. When you do the
12 inference, will you do all the stuff about what
13 inference means?

14 THE COURT: I'm just going to say this is
15 simply an evidentiary fact for you to consider along
16 with all the other evidence in the case. And you can
17 give it the weight you think it deserves. Which is
18 all we are permitted to say when it comes to
19 inference.

20 MR. SMILEY: Yes, ma'am.

21 THE COURT: Yes.

22 (Whereupon, the proceedings in this matter
23 before the Court were adjourned for the evening.)

24 * * * * *

25

1 THE COURT: We apologize for the delay, we had
2 four late jurors this morning.

3 MR. SMILEY: Your Honor, my client of course
4 was put in custody last night.

5 THE COURT: Did they bring clothes for him?

6 MR. SMILEY: No, he has got the same clothes
7 he had on. They didn't have the opportunity to bring
8 any.

9 My concern is they put the jail band on him
10 and he has on a short-sleeve shirt. Can I have an
11 order to remove it during the trial?

12 THE COURT: Double-check. It's a security and
13 identity issue. I don't think anybody -- until you
14 pointed it out to me, I didn't even notice it.

15 THE OFFICER: No, ma'am, they can't take it
16 off because --

17 THE COURT: Identifying him, yeah. They would
18 have no way of processing him and getting another one
19 for him. It looks just like a hospital bracelet. I
20 really did not notice it until you pointed it out to
21 me. It's not like jumpsuit where you know that
22 someone is in custody.

23 MR. SMILEY: Yes, ma'am.

24 THE COURT: Now bear with me one moment.

25 Sir, if would you stand for me, please. I

1 would remind you that you are still under oath. Have
2 you had a full opportunity to discuss with your
3 lawyer whether you should or should not testify?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you need to speak with him any
6 further at this time?

7 THE DEFENDANT: No.

8 THE COURT: Sir, do you wish to testify?

9 THE DEFENDANT: No.

10 THE COURT: Okay, you may take your seat.

11 Mr. Smiley is there anything else you would
12 present in the defendant's case?

13 MR. SMILEY: No, ma'am.

14 THE COURT: You would be ready to rest,
15 correct?

16 MR. SMILEY: Yes, ma'am. While I'm standing
17 up, of course I have got to renew all my motions that
18 I did at the close of the State's case.

19 THE COURT: I'm going to deal with all of
20 that.

21 MR. SMILEY: Okay.

22 THE COURT: The defense has rested their case,
23 I'm going to allow you to rest in the presence of the
24 jury as well. Are there any further motions?

25 MR. SMILEY: Your Honor, I don't believe that

1 I need to elaborate on all of them because they would
2 be the same as you've already ruled, but I think for
3 appellate purposes I'd have to make record.

4 So I renew the motions that I did at the close
5 of the State's case; my directed verdict motion that
6 you've already ruled on; of course my constitutional
7 argument that you've already ruled on and said you
8 will issue an order. For purposes of record-keeping,
9 I renew those motions, Your Honor.

10 THE COURT: Anything further from the State.

11 MR. SIMPSON: Nothing from the State, Your
12 Honor.

13 THE COURT: The Court will stand on its
14 previous ruling. And also as I have indicated I'm
15 going to supplement the record with a written order
16 on the constitutional challenge.

17 MR. SMILEY: Yes, ma'am.

18 THE COURT: I will make sure you both get
19 copies of it.

20 I will give the jury a general charge
21 regarding their responsibility and my responsibility.
22 How they are to judge witness credibility and
23 believability.

24 I will also instruct them regarding any
25 statements given by the defendant, which is the

1 last night but I was tired and I didn't.

2 MR. SIMPSON: And just define -- the only
3 parts of that that would be relevant, define sexual
4 activity, the definition of sexual activity which is
5 rather an expansive definition, and the definition of
6 minor are listed in that definition.

7 THE COURT: I think those would be
8 appropriate. I'm going to look at the definition
9 section and see what else might need to be added and
10 I'm going to do that in just a moment.

11 Any exception from the defense?

12 MR. SMILEY: None, Your Honor.

13 THE COURT: You all want to look at the
14 verdict form, or is my explanation sufficient?

15 MR. SMILEY: May I look at it, Your Honor?

16 THE COURT: Absolutely.

17 MR. SMILEY: No exception.

18 THE COURT: Any exception from the State?

19 MR. SIMPSON: No, Your Honor

20 THE COURT: If you all give me one moment to
21 print that definitional section and look at it
22 quickly. And I assume, Mr. Smiley, you are reserving
23 last argument?

24 MR. SMILEY: Yes, ma'am.

25 THE COURT: You all might want to go to the

1 THE COURT: You all might want to be working
2 on finding an independent source for them to be able
3 to play it because we don't have a laptop either.

4 MR. SIMPSON: Your Honor, we have someone from
5 our office looking for a laptop that maybe they could
6 use.

7 THE COURT: Perfect. Appreciate it.

8 All right. Is the State ready to proceed?

9 MR. SIMPSON: We are, Your Honor.

10 THE COURT: Is the defense ready to proceed?

11 MR. SMILEY: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 (Whereupon, the jurors enter the courtroom.)

14 THE COURT: Ladies and gentlemen, I hope that
15 you all had a peaceful evening. We appreciate your
16 patience. We had some matters of law that we needed
17 to resolve before getting started this morning.

18 Mr. Smiley, you may proceed.

19 MR. SMILEY: Your Honor, the defense rests.

20 THE COURT: Mr. Foreman, ladies and gentlemen,
21 both the State and the defense have rested their
22 case. The next part of this process involves closing
23 arguments and the Court's instructions on the law. I
24 would ask that you give the attorney's your undivided
25 attention.

1 Mr. Smiley, you may proceed when you are
2 ready.

3 MR. SMILEY: Your Honor, I reserve last
4 argument.

5 THE COURT: I'm sorry, I apologize.
6 State may proceed.

7 MR. SIMPSON: Thank you, Your Honor.

8 Good morning, ladies and gentlemen. Nice to
9 talk to you again. I will begin my closing like I
10 began my opening, by thanking you. As I noted when
11 we got started, I think we are asking a little more
12 of you this week than we ask of some juries because
13 of the subject matter and the nature of what we had
14 to discussion, and what you viewed for a short
15 period. And I do thank you for your time and
16 attention these last couple of days.

17 Mr. Smiley said something in his opening that
18 I'm going to have to respectfully disagree with. And
19 that is he looked at you and said and he warned you
20 that this is a complicated case. And I'm going to
21 have to disagree with that.

22 while maybe we heard some terms about software
23 and SHA values and some new words that maybe you
24 weren't familiar with, it's not a complicated case.
25 I submit to you this is a very simple case in

1 deciding whether or not the defendant is guilty of
2 the crime he is charged with.

3 Peer-to-peer file sharing, we've heard a lot
4 about it. This is the online equivalent of the
5 Ladson Flea Market, the Citadel Mall. This is a
6 place the computer users willingly go to file-share,
7 to share files, to receive them, to share them with
8 others, to exhibit them. And it's open to the
9 public. It's open for free for any user. Like I
10 said, a lot of people use it to share music.

11 So I want to stop briefly there and point out
12 one of the defense's red herrings that he threw at
13 you in the opening statement, and that is that this
14 is about big brother. This is about the government
15 spying you on when you're on the Internet.

16 The government in these investigations don't
17 go on your computer and read your e-mails, look and
18 see where you are surfing. The government goes to a
19 public forum where people are literally saying, hey,
20 look what I have, look what I'm sharing, who wants
21 some of this? File sharing.

22 And in this case the defendant, just like they
23 might go to the Citadel Mall and patrol for auto
24 break-ins, or go to the Ladson Flea Market and patrol
25 for crime, they went to this online place where

1 people are saying, hey, look what I have, look what
2 I'm sharing, look what's in my folder that I'm
3 putting out there to share, and they found illegal
4 material.

5 Trish Taylor testified to July 23rd, 2007 she
6 viewed a video, the little girls mix. It's a longer
7 video than you saw, but to meet my burden of proof,
8 and I will discuss that a little later, unfortunately
9 I had to show you, and you all know, part of that
10 video. I tried to keep it as short as I could to
11 still meet my burden.

12 Two days later, she told you, once she had
13 that ISP address that was sharing that video, she
14 returns two days later to check again. Now that she
15 has got an IP address, she can check for a specific
16 IP address. What does she find then? Two more
17 videos being shared in a public network, here I am
18 look what I got, by the same IP address.

19 And what are the titles? Little girls mix,
20 the one we saw. The two on July 23rd, 12-year-old
21 Girl Rides Cock. I'm sorry for the language, but
22 that's what the title of the video is. Second one,
23 10-year-old Preteen Rape. The titles of the videos
24 being shared by Mr. Horry.

25 She viewed them, noted them, and paid

1 particular attention to note what we call the SHA
2 value. So why are we talking about SHA values? why
3 is that important? It's important because once the
4 computer was seized, she didn't tell the forensic
5 technicians, well, look for this video of child
6 pornography. Even the titles, which we've heard can
7 be changed, didn't say, look for these titles.

8 She noted the SHA value because the SHA value,
9 as we heard for a computer file, is like DNA, it's
10 like a fingerprint. She knows the SHA values. And
11 if he finds those SHA values on Mr. Horry's computer,
12 that confirms that the files she viewed were on that
13 computer. It corroborates that he was sharing them
14 on the day that she viewed them.

15 So what did computer forensics find when they
16 looked at the computer? Confirmation that all three
17 videos that Trish Taylor observed the defendant
18 sharing on the network did reside on that computer.

19 Now in the three months that she had to go
20 through the legal process to obtain the search
21 warrant, he may have deleted those files. But Jerry
22 Roberts told you there is no doubt those three files
23 resided on that computer.

24 Was it only those three files on the computer,
25 though? No, 54. 54 items of interest. 54 files

1 viewed by Jerry Roberts that he determined contained
2 child pornography. Let's go again to the titles, and
3 again you had to listen to some unpleasant stuff.

4 But these are the titles. These are what the files
5 are called on his computer that he can see, that he
6 looks and clicks to download to his computer.

7 12-year-old Boy Fucks 12-year-old girl. Father and

8 Two Young Daughters Insist. Pedophilia 13.

9 7-year-old Crystal Pleasuring her Pretty Child.

10 So we get to another issue that might be
11 raised by the defense. This was an accident. This
12 was an accident. He put in terms like porn and
13 voila, all of this stuff ends up on his computer. We
14 know that's not true from the testimony we heard.
15 It's a two-step process, ladies and gentlemen.

16 You want to search, your first step is a
17 search, you put in a search term. And let's assume
18 for the time being he puts in a search term and says
19 porn. Or I believe like Mr. Roberts said, blow job.
20 Things that while perhaps are distasteful, are
21 nevertheless legal among adults. The server will
22 then pull up a list of titles that it felt met this
23 definition. He would then, on the second step,
24 looking at the titles, have to click and download
25 them.

1 I won't review the titles again, but we heard
2 a lot about the kind of titles he clicked to download
3 on his computer. If we found one video, maybe he
4 searches for porn, pulls up these videos, the cat
5 jumps in his lap, he hits a button, and oh my God, I
6 accidentally downloaded the video. That's an accident.

7 What they're asserting to you is that he made
8 an accident 59 times; the 3 videos he was sharing,
9 the 1 on July 23rd, the 2 additional ones on July
10 26th; the 54 items of interest found in his
11 incomplete download folder; and the two complete
12 versions found on his complete folder when they did
13 the computer forensics.

14 This is not an accident. He did not -- his
15 hand did not slip on the mouse on multiple dates 59
16 different times

17 You are going to hear the Judge charge you on
18 criminal intent. Criminal intent means it's on
19 purpose, and it means just that. That this wasn't an
20 accident, it was purposeful. He saw this title was
21 7-year-old girl, 10-year-old with dog. And not only
22 received them, which becomes important, from the
23 network, but exhibited and distributed them on the
24 network. That's how we know about this. That's how
25 Trish Taylor made this case.

1 And so here at this point, and here alone, we
2 have proof of guilt beyond a reasonable doubt.
3 That's a legal phrase the Judge is going to explain
4 to you. She is going to say, few things in this
5 world are provable beyond any doubt, and so the
6 state's burden is not to prove things beyond any
7 doubt, it's to prove them beyond a reasonable doubt.

8 And what that means is that you are firmly
9 convinced. Firmly convinced. Right here, at this
10 point in the investigation, I submit to you we are
11 firmly convinced. You've seen the videos being
12 shared by him. We have looked on his computer. We
13 found the exact same videos he is alleged to have
14 shared, plus 54 others. Proof beyond a reasonable
15 doubt.

16 But guess what? We don't stop here, do we?
17 That's not all the evidence you have heard. You
18 heard a 30-minute interview of the defendant on the
19 day that they conducted that interview.
20 What are some of things you heard?

21 Is this your computer?

22 Yeah, it's mine. I have had two to four
23 years.

24 We are here about child pornography. You
25 don't look really surprised by that?

1 Uh-uh, not surprises.

2 Do you use programs like Limewire?

3 Uh-hum. Yeah, I do.

4 My favorite quote, what do you use Limewire
5 for?

6 For music and certain video clips.

7 We know what those video clips are. He
8 displays -- no one is alleging that Mr. Horry is a
9 computer scientist, a computer genius, but he does in
10 that interview display a working knowledge that this
11 is a file-sharing program. The purpose of this is to
12 receive and share, which becomes important.

13 How long have you been doing this, she asked,
14 Mr. Horry.

15 About a month. Then she says, really, about a
16 month? Because it was three months ago that I saw
17 you sharing these files.

18 Then he says, okay, you know.

19 Could it be more like six months?

20 Yeah, it could be longer.

21 How did you start viewing these images?

22 I downloaded it.

23 Mentions deleting. And we know that the three
24 files he was sharing, although the computer forensics
25 can tell you for sure they were on that computer,

1 appear to have been deleted from the computer.

2 Describes one of the videos, I believe it was
3 the little girl mix that we saw a brief portion of to
4 the defendant. Do you know which video I'm talking
5 about?

6 Uh-huh.

7 Now this stuff, Trish Taylor says to the
8 defendant, has to be a secret. I know you didn't
9 really tell anybody you were doing this stuff, did
10 you?

11 No.

12 Do you feel bad about doing it?

13 Uh-hum.

14 It's obvious that it did happen, right?

15 Uh-hum.

16 What do you do while you are watching it?

17 I just watch it and then I delete it.

18 Why?

19 I'm just curious.

20 Repeated during the interview assertions, that
21 yeah, that's the stuff I got, that's the stuff I was
22 sharing.

23 We have proof beyond a reasonable doubt
24 before, but after the interview certainly. Proof
25 beyond a reasonable doubt. Firmly convinced that Mr.

1 Horry was possessing, watching and sharing his files.

2 I'd like to take just a moment for you to go
3 through some of the law. And you are going to hear
4 the Judge instruct you on the law. She is the
5 source, but we do get an opportunity to talk a little
6 bit about what you are going to hear, and what we
7 think it means by that.

8 Sexual exploitation of a minor, second degree.
9 This is the charge that Mr. Horry faces today. An
10 individual commits the offense if knowing the
11 character or content of the material he distributes,
12 this is a file-sharing network, distribute.

13 Transport, i.e., moves from one computer to another.
14 Exhibits, if he was not exhibiting these files on a
15 public network, how would we have ever learned of it.

16 Receives, where did he get the files? Where
17 were they? Where did Jerry Roberts tell you they
18 were on his computer? In the Limewire file-sharing
19 program. Sells or purchases, not really relevant to
20 this case. Exchanges or solicits, solicits, asking
21 for, looks for, searches for.

22 This is the offense that Willie Horry is
23 charged with. And we submit to you that you have
24 proof beyond a reasonable doubt that this is the
25 offense he is guilty of. It does require that the

1 visual representations, the videos, we have to prove
2 to you, do show a minor engaged in sexual activity.
3 I apologize to you, but that's why I had to show you
4 that short clip of that video.

5 The definition of sexual activity you'll hear
6 from the Judge. I won't read it now, but it's broad.
7 It does not mean strictly vaginal intercourse as you
8 will see, you'll hear a longer definition from the
9 Judge that covers an arey of sexual activity.

10 A minor. A minor means an individual that is
11 less than 18 years old. And I've got to pause here.
12 we heard Mr. Smiley talk about this in his opening,
13 and I am sure he is going to talk about it in his
14 closing, let's stop here for a second.

15 There are lots of phrases that lawyers and the
16 law uses to describe your job, what a jury does in a
17 trial. Flowing legal language, long definitions, but
18 the best one is that you are the common sense.
19 Meaning no offense to any of the professionals in
20 this courtroom, but common sense is something lawyers
21 sometimes lack.

22 That's why we bring you in here. 12 people
23 that we chose from the community to represent
24 Charleston County to be our common sense. You viewed
25 those videos. You are all adults. You have life

1 experience. You know what a child looks like. You
2 know what a 5-year-old child looks like. You know
3 what a 19-year-old person looks like. So you use
4 that common sense to determine if, yes, in those few
5 seconds of video I saw kids. And I don't think any
6 one of you right now doubts that.

7 But the statute itself guides you in this
8 regard. It says, you'll hear this from the Judge,
9 and this is -- all of the Judge's charge is
10 important, please listen to it all, but this I really
11 want to focus on.

12 In a prosecution under this section -- being
13 the section we just talked about -- the trier of
14 fact, and that's you, that's the jury, may infer that
15 a participant in sexual activity depicted in material
16 as a minor through its title -- how many titles have
17 we heard, 6-year-old, 7-year-old -- text, visual
18 representations -- that's the video itself, you all
19 know what kids look like, you all saw that video --
20 or otherwise -- any other way you want to determine
21 those are under 18, using your common sense -- the
22 statute allows you to do that.

23 You may make that inference from the title,
24 from the video itself that those are real kids. I
25 don't think any of you doubt that. And if you need

1 to see that video again, nobody is going to think
2 that's it's weird. If you feel you need to see it
3 again to make this legal determination, you just let
4 the Court know. It has been entered into evidence.

5 We have in the law what we call
6 lesser-included offenses. It's a situation where a
7 defendant is charged with one offense, but also
8 included in that are lesser crimes where the jury
9 may, if you so choose, may find him guilty of a
10 lesser crime.

11 Sexual exploitation of a minor, second degree,
12 and we have already pointed out to you distribution,
13 exhibit, receive, why the defendant is guilty as
14 charged. But if you so choose you can find him
15 guilty of the lesser offense of third degree. What
16 we are talking about here is the mere possession,
17 just having it.

18 The evidence shows to you he has done more
19 than just have it. He has received it, distributed
20 it, exhibited it in a very public place. But you do
21 have that option and you will have that option back
22 there to find him not guilty of second degree but
23 guilty of third degree.

24 Ladies and gentlemen, we live in a free
25 country. And that's one of the reasons we are all

1 proud to live here. There is a part of living in a
2 free country is sometimes tolerating things you might
3 not be too crazy about, adult pornography for
4 example.

5 We have a whole, huge range of conduct that
6 living in a free place we allow. But any community
7 with any sense of goodness has got to draw around way
8 outside around the periphery some boundaries, and
9 that's what we are talking about here today.

10 Certainly we are not going to allow, let's
11 talk about what we are talking about, videos of child
12 rape to just be traded among one another on the
13 Internet. Your community, your government has drawn
14 that line. And we ask you, we need you, members of
15 the community, to stand here with us. You are the
16 ones that are going to make this determination.

17 As I said to you, I will try to get this
18 right, in my opening statement, this is a difficult
19 case. You had to be confronted with a lot of things
20 that weren't very pleasant. But the decision you are
21 about to make, I submit to you, is an easy one. Find
22 the defendant guilty as charged for sexual
23 exploitation of a minor in the second degree.

24 I thank you for your time.

25 THE COURT: Mr. Smiley.

1 MR. SMILEY: When you go to the flee market,
2 when you walk over and you look at the table, you can
3 look at what you are actually getting. If you look
4 at it, and that's illegal, you can walk away.

5 We start with the premise in this case that
6 Limewire has legal content. I asked Jerry Roberts if
7 Jerry Roberts if not in fact that's in the licensing
8 agreement. So when you go on the Internet, you
9 expect that what you are looking at on the Internet
10 is legal. Start with that same premise with
11 Limewire, that the materials that are out there are
12 legal.

13 Now when the police arrived to take this
14 computer, understand Mr. Horry did not know they were
15 coming, all right. I think that's important to note.
16 They come into his house, they take his computer,
17 nobody has touched it, they look at it and it's all
18 deleted. It's deleted.

19 They find two files, Triple X Paula Homemade
20 Amateur, and one Three Thai Girls, 14-year-old Giving
21 Blow Job. Don't know what the content of that was,
22 we didn't watch those videos. But that's all that's
23 on that computer, and there is no share file.

24 So they're asking you to do their work for
25 them in this case. So we start with the premise that

1 Limewire is legal. And that it's -- you go out and
2 you do searches for whatever you are looking for.
3 And then it downloads. And then it's put in a share
4 file by default. And I asked Mr. Roberts, if you
5 don't change it, does it go straight out there, you
6 don't even know it's out there being shared, and he
7 says in fact it does. So whatever you download is
8 put out there to be shared, whether you know it's
9 there or not.

10 I disagree, I think this is a complicated
11 case. Because they need to prove that he knew the
12 content and that he possessed it. Are you possessing
13 something if you begin a download, look at it and
14 say, uh-uh, delete.

15 For instance if I'm walking along and I see a
16 plant, and it looks like marijuana, and I pick it up,
17 oh, that's marijuana, and I put it down, did I
18 possess it? And there is an element to help you
19 figure that out and it's knowing the content in the
20 statute, knowledge, knowing.

21 You know they didn't tell you about the
22 pornography on his computer, but there is plenty of
23 it. They weren't looking for pornography. And when
24 you are downloading pornography, you go out there and
25 you've tagged everything, it's a slow process to

1 download. You start the downloads, you go back and
2 look at the list, click on it and see what is coming
3 on, delete it. It's disgusting. It's disgusting.
4 And he did what any citizen using Limewire could do,
5 thinking what he was doing was legal, and certainly
6 didn't want the stuff.

7 I want you to listen to that interview because
8 Mr. Horry doesn't have anything to prove. He didn't
9 need to talk to the police that day even though he
10 wasn't under arrest, but he did. He didn't say much,
11 though. Ms. Taylor was, and I want you to listen to
12 that conversation, was suggesting and putting a lot
13 of words in his mouth.

14 I would suggest to you that Mr. Horry wasn't
15 shutting down, he was being careful because she was
16 asking him compound questions and then pushing him
17 for the answer. He went, yeah, right. But when she
18 started to suggest things like he possessed that
19 pornography he said, no, I deleted it. I didn't keep
20 it, I deleted it.

21 That is shown when they go to his house,
22 unbeknownst that they're coming, and they go in and
23 grab his computer. Is it full of child pornography?
24 No. He has deleted it. Not because he knew the
25 police were coming, because when he downloaded it and

1 looked at it, as he told the police, saw what it was,
2 he deleted it.

3 Now should he have ever even opened those
4 files? Probably not. But he didn't possess it, he
5 got rid of it.

6 Mr. Simpson told you to use your comment
7 sense. And I am asking you to also. Think about the
8 person sitting in front of the computer doing
9 searches. I don't use it. I'm scared of computers.
10 I'm scared of the police looking on my computer. I
11 don't know where they go, all I know is I don't turn
12 one on unless I have to.

13 However, he did, he sat down at a computer. A
14 Person sits down and they start to do searches.
15 Things come up that they don't like, they don't want,
16 what do they do? Do they delete it? Did they
17 possess it? No.

18 And you also, I want you to think about this,
19 do a long list of things to download. You don't sit
20 there at your computer and watch it download. I --
21 patience isn't one of my biggest things. You start
22 downloading and you leave. You come back some time
23 later to see what is downloaded, right.

24 If you notice in the stuff that was deleted on
25 his computer, as Jerry Roberts told you, there was

1 only a couple of files that were ever completed. All
2 of the rest were incomplete in the download file.
3 They never even got there. They were still in the
4 process of coming.

5 And the video that was shown in court, that
6 was a deleted video. That was not a video that was
7 sitting there for the end-user, I made sure I asked
8 this question, for the end-user to look at or use in
9 any manner. It was gone.

10 Now Mr. Horry doesn't have to prove to you how
11 long it popped up, when he deleted it. They have to
12 prove it to you. He doesn't have to prove anything.
13 He is an innocent man who sat down at his computer,
14 probably with too much time on his hands, downloaded
15 things. When he saw what it was he did what any
16 regular citizen would do, he deleted it.

17 So he says, you know, we're at the flee
18 market. Well when you go to the flee market I hope
19 you think everything that's there is first of all
20 legal. You know, if I walk up to a table at the flee
21 market and I see something that tells me how I'm
22 going to be a better man at night, I think it's
23 legal.

24 But if I pick it up and start to walk away and
25 realize that, hum, this might be illegal, I'm putting

1 it back. I'm not taking it home. I assume
2 everything is legal there.

3 Just like sitting and using the Limewire
4 program. Anybody using it would assume that they
5 aren't doing something illegal. I'm sure our
6 government would stop Limewire from being used if it
7 was illegal.

8 So they have carved out a very small snapshot
9 of what they want you to see in this case. But they
10 cannot get away from certain things. When they got
11 his computer, there were two files on there. And by
12 title, one certainly doesn't suggest any kind of
13 child pornography; Triple X Paula Homemade Amateur.

14 And the other one has the age 14 in it, Three
15 Thai Girls Giving Blow Jobs. But I guarantee you if
16 that looked like a minor, you would have seen that
17 too. That's all that's on there. Everything else
18 was gone, deleted, just not there, so not possessed.
19 They have got to show he possessed it.

20 Now Trish Taylor three months later -- he said
21 because of the legal process, I did not hear that --
22 three months earlier because of the legal process
23 that it took so long to get to the house. She went
24 out there and found this IP address, and there were
25 in fact the videos that you saw, that you saw in the

1 courtroom, that's where she got that video that
2 corresponded to the deleted file that they found on
3 the computer. She downloaded that file. There is
4 nothing to show that he knew he had it out there.
5 Nothing.

6 As they said, you are downloading, it goes
7 into the download folder. You walk away from the
8 computer. When it finishes downloading, doesn't mean
9 he has viewed it, does not mean he knows what the
10 content is, it automatically moves over into the
11 default directory, which is available to everybody,
12 all right.

13 Then it's not there when they come to get the
14 computer, which tells you that at some point Mr.
15 Horry opened up that file, saw what it was, and
16 deleted it and it came out of that shared folder.
17 Does not tell that you he said, oh, here is a really
18 nasty minor having sex and I want everybody to share
19 it so let me put it out there.

20 There is nothing to show that he knew it was
21 out there. It shows, though, that he deleted it by
22 his statement to the police. When she brings up that
23 he downloaded it he said, yeah, I deleted it. When
24 she said, well were you were masturbating to it, he
25 said I wasn't masturbating, you know.

1 So I think when you sit down and look at the
2 situation, common sense tells you that Mr. Horry was
3 sitting in front of the computer downloading things,
4 which nothing to show he was keeping them. He got
5 rid of them. He did what anybody would do if they
6 had something that they looked at, and I don't think
7 even in his mind was done illegally, it was
8 disgusting, he got rid of it.

9 Each of us have different views of what is
10 good, bad or indifferent, you know. I think most
11 pornography is pretty disgusting, but that's my view.
12 Everybody has their own.

13 The government has said that child pornography
14 is illegal. Didn't find any child pornography that
15 was residing on his computer that hadn't been
16 deleted. There is nothing to show that he even
17 looked at it. There is no evidence in this case that
18 he opened up those files and looked at them.
19 Nothing. You have to make that leap.

20 He said he was curious. He didn't say
21 specifically minors, he said he was curious about
22 downloading the stuff, he downloaded it. You listen
23 to that interview. See the words that Ms. Taylor is
24 trying to shove in his mouth. Mr. Horry, didn't you
25 -- of course he knew why he was being dragged in

1 there. They took his computer, she is with the
2 abused children's task force. I'm sure that sitting
3 down there he knew that it was something to do with
4 that computer. The long and short of it is, he did
5 not possess anything.

6 He certainly didn't knowingly put anything out
7 there to be shared with anyone else. Because he sat
8 down at a computer, and these days it can be more
9 dangerous than it appears. He started downloading
10 the things, when it's things he did not like, he
11 deletes them. There's nothing to even show he viewed
12 them. You can delete something without ever looking
13 inside.

14 So also, and the last point I want to make,
15 they make it sound like he said, ooh, I want this
16 16-year-old file. The only thing that he was
17 downloading were these files for minors, there is
18 nothing to indicate that.

19 When you go -- there is nothing to indicate he
20 didn't download, try to download hundreds of files of
21 different kinds. There is nothing to do that. So
22 they're trying to paint a picture that Mr. Horry was
23 looking just for some kind of child pornography.

24 I would submit to you that what they found
25 were things that when he realized what it was when

1 being downloaded that he quickly deleted them, there
2 is no evidence to the contrary. Therefore, I would
3 ask to you return the only verdict that the evidence
4 upholds and that's not guilty.

5 Thank you for your time.

6 THE COURT: Why doesn't everybody stand up and
7 get your blood circulating a little bit.

8 During this trial, ladies and gentlemen, you
9 and I have certain duties to perform. As the trial
10 judge it is my responsibility to preside over the
11 trial of this case. I also have the duty to rule
12 upon or pass upon the admissability of evidence
13 offered during this trial.

14 You are to consider only the competent
15 evidence that is before you, which has been offered
16 during the course of this trial. You are to consider
17 only the testimony which has been presented from the
18 witness stand, together with any exhibits which have
19 been made a part of the record in this case.

20 I have the additional duty to charge you --
21 and again as I said on the other day, charge is just
22 a term of art that we use that means instruct you or
23 instructions -- on the law applicable to this case.
24 As the presiding judge I am the sole judge of the law
25 of this case. And it is your duty as jurors to

1 accept and apply the law as I now state it to you.

2 If you have a preconceived idea as to what the
3 law is or what the law ought to be in a case, or in
4 this case, and it should not agree with what I now
5 tell you the law is, you are obligated under the oath
6 which you have taken to abandon this preconception on
7 your part because you are sworn to accept the law and
8 apply the law precisely as I now state it to you.

9 In every case tried in this court before a
10 jury, the jury becomes the sole and exclusive judges
11 of the facts in a case. You, the jury, are the
12 judges of the facts in this case. This Court is the
13 judge of the law.

14 The constitution of our state has declared
15 that a trial judge shall not intimate, state, comment
16 upon or make any statement to a trial jury about the
17 facts in a case. Since you the jury are the sole
18 judges of the facts in this case, you are not to
19 infer anything from what I have said during the
20 progress of the trial in ruling upon the
21 admissability of evidence or otherwise, or anything
22 that I say to you now during the course of these
23 instructions, that I have any opinion about the facts
24 in this case. The law does not allow or permit me to
25 have an opinion about the facts.

1 This is a matter solely for you, the jury, to
2 determine. As jurors, then, it is your duty, as I
3 have instructed, to determine the effect, the value,
4 and the weight and the truth of the evidence
5 presented during this trial.

6 Necessarily you must assess the credibility of
7 the witnesses who have testified in this case.
8 Credibility is simply a legalistic term meaning
9 believability. It becomes your duty as jurors to
10 analyze and to evaluate the evidence, and determine
11 that evidence which convinces you of its truth.

12 I instruct you that in determining the
13 question of the credibility or believability of
14 witnesses who have testified in this case, you may
15 believe one witness as against several witnesses, or
16 several witnesses as against one witness.

17 You may believe a part of the testimony of a
18 witness, and reject the remaining part of the
19 testimony of that same witness. If you have a good
20 and sound reason, you may believe the testimony of a
21 witness in its entirety, or reject the testimony of a
22 witness in its entirety.

23 Again, some of the things you may consider as
24 you decide whether or not to believe a witness's
25 testimony about a particular matter include; what was

1 the manner and appearance of the witness who
2 testified; was he or she straightforward or hesitant
3 in answering; was the testimony of a witness
4 consistent or inconsistent; how did the witness come
5 to know the facts that he or she testified to; or
6 what was his or her ability to know these facts; is
7 there some reason a witness would want to give
8 testimony which would help or hurt one side or the
9 other, in other words was the witness biased or
10 prejudiced; and was the testimony of a witness
11 strengthened or weakened by other testimony or
12 evidence.

13 You may consider the demeanor of a witness.
14 That is the appearance and manner of the witness from
15 the witness stand. You can believe as much or as
16 little of each witness's testimony as you think
17 proper. Throughout this process, ladies and
18 gentlemen -- throughout this process, ladies and
19 gentlemen, you have but one objective, to seek the
20 truth regardless of its source.

21 A statement is alleged to have been made by
22 the defendant which has been admitted into evidence
23 in this case. While the Court has determined that
24 the statement is admissible, I instruct you that you
25 make the ultimate decision of whether or not the

1 defendant made the statement. If the defendant did
2 make the statement, you must determine whether the
3 statement was made by the defendant voluntarily and
4 of his own free will. This means that the statement
5 was not caused by pressure, force, fear, threats,
6 coercion or intimidation, or by hope or a promise of
7 leniency or a reward of any kind.

8 In determining whether the statement was
9 voluntarily, you should consider both the
10 characteristics of the defendant and the details of
11 the questioning. Some of the factors that you must
12 consider are the age of the defendant; the
13 defendant's education or lack of education; the
14 defendant's mental ability or capacity; the
15 defendant's IQ or intelligence; the defendant's
16 background and environment; the place and length of
17 detention; the nature of the questioning; and the
18 advise or lack thereof to the defendant of his
19 constitutional rights, including but not limited to
20 the right to remain silent, that any statement could
21 be used against him in a court of law, the right to
22 have an attorney present, that if he or she could not
23 afford an attorney that one would be appointed to
24 represent them without any cost, and that he could
25 stop making the statement at any time.

1 You must carefully consider all of the
2 surrounding circumstances before you give any weight
3 to an alleged statement. The State has the burden of
4 proving beyond a reasonable doubt that the alleged
5 statement was voluntary. If you determine it was,
6 you may give the statement any further consideration
7 that you deem proper. You must decide what weight,
8 if any, should be given to the alleged statement. If
9 you determine that the alleged statement was not the
10 free and voluntary statement of the defendant, you
11 should not consider the statement at all.

12 Ladies and gentlemen, there are two types of
13 evidence which are generally presented during a
14 trial; direct evidence and circumstantial evidence.
15 Direct evidence is the testimony of a person who
16 asserts or claims to have actual knowledge of a fact,
17 such as an eyewitness.

18 Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of a
20 fact. The law makes absolutely no distinction
21 between the weight or value to be given to either
22 direct or circumstantial evidence. Nor is a greater
23 degree of certainty required of circumstantial
24 evidence than of direct evidence.

25 You should weigh all of the evidence in this

1 case. After weighing all of the evidence, if you are
2 not convinced of the guilt of the defendant beyond a
3 reasonable doubt, you must find the defendant not
4 guilty. Conversely, if you are convinced of the
5 guilt of the defendant beyond a reasonable doubt,
6 then you must find him guilty.

7 I instruct you that the fact that the
8 defendant was arrested, charged and indicted is not
9 evidence in this case, and cannot be considered by
10 you as evidence of guilt in this case. Nor does it
11 create any presumption or inference of guilt. This
12 documentation, ladies and gentlemen, is simply the
13 formal written instrument which contains the charge
14 made against a defendant. It serves as the formal
15 document by which the case is processed or brought
16 into this court.

17 The defendant has pled not guilty to the
18 indictment. And that plea casts the burden on the
19 State to prove the defendant guilty because a person
20 charged with committing a criminal offense in South
21 Carolina is never required to prove himself or
22 herself innocent.

23 I instruct you, Mr. Foreman, ladies and
24 gentlemen of the jury, that it is a cardinal and
25 important rule of the law of evidence that the

1 defendant in a criminal trial, no matter what the
2 seriousness of the charge made against him may be,
3 will always be presumed to be innocent of the crime
4 for which he is indicted, unless his guilt has been
5 proven by evidence satisfying you of that guilt
6 beyond a reasonable doubt.

7 The presumption of innocence does not cease
8 when you retired to deliberate, but it accompanies
9 the defendant from the time of his appearance,
10 throughout the trial, until you've reached a verdict
11 based upon evidence satisfying you beyond a
12 reasonable doubt.

13 Our Supreme Court has said that the
14 presumption of innocence is like a robe of
15 righteousness placed about the shoulders of the
16 defendant. And it remains with him and assigns him
17 to that class, the innocent, until that presumptive
18 robe of righteousness has been stripped from his
19 person by satisfying you of that guilt beyond a
20 reasonable doubt.

21 The presumption of innocence is not mere legal
22 theory. It is not just a legal phrase. It is a
23 substantial right to which every defendant is
24 entitled unless you, the jury, are satisfied from the
25 evidence of his guilt beyond a reasonable doubt.

1 The State has the burden of proving the
2 defendant guilty beyond a reasonable doubt. Some of
3 you may have served as jurors in civil cases where
4 you were told that it is only necessary to prove that
5 a fact is more likely true than not true, such as by
6 the greater weight or the preponderance of the
7 evidence.

8 In criminal cases the State's proof must be
9 more powerful than that, it must be beyond a
10 reasonable doubt. Prove beyond a reasonable doubt is
11 prove that leaves you firmly convinced of the
12 defendant's guilt. There are very few things in this
13 world that we know with absolute certainty. And in
14 criminal cases the law does not require proof that
15 overcomes every possible doubt.

16 If based on your consideration of the evidence
17 you are firmly convinced that the defendant is guilty
18 of the crime charged, you must find him guilty. If
19 on the other hand you think there is a real
20 possibility that the defendant is not guilty, you
21 must give him the benefit of that doubt and find him
22 not guilty.

23 I instruct you and emphasize that the fact
24 that the defendant did not testify is not a factor to
25 be considered by you in any way in your

1 deliberations, and in your consideration on the
2 question of the guilt or innocence of the defendant.
3 It must not be considered by you in any manner
4 whatsoever.

5 A defendant has the constitutional right to
6 remain silent. And the assertion of this right must
7 not be considered by you in your deliberations. I
8 repeat, under your oath, you are to draw absolutely
9 no conclusion whatsoever from the fact that the
10 defendant in this case did not testify.

11 The fact that this defendant did not testify
12 should not be even be discussed in the jury room in
13 any manner whatsoever during the course of your
14 deliberations. The burden of proof, as I have
15 instructed you is, on the State. The defendant is
16 not required to prove his innocence. The burden of
17 proof remains on the State to prove guilt beyond a
18 reasonable doubt.

19 The defendant is charged with sexual
20 exploitation of a minor, second degree. The State
21 must prove beyond a reasonable doubt that the
22 defendant, knowingly the character or content of the
23 material, recorded, photographed, filmed, developed,
24 duplicated, produced or created digital electronic
25 file material that contained a visual representation

1 of a minor engaged in sexual activity; or
2 distributed, transported, exhibited, received, sold,
3 purchased, exchanged or solicited material that
4 contained a visual representation of a minor in
5 sexual activity.

6 The State does not have to prove that the
7 defendant did all of these things, instead if you
8 find beyond a reasonable doubt that the defendant did
9 any of these things, you may find the defendant
10 guilty of sexual exploitation of a minor in the
11 second degree.

12 I further instruct you that you may infer that
13 a participant in sexual activity depicted in material
14 as a minor through its title, text, visual
15 representations or otherwise is a minor. I further
16 instruct you, ladies and gentlemen, that this is
17 simply an evidentiary fact to be taken into
18 consideration by you, along with the other evidence
19 in this case, and is to be given the effect, value,
20 and weight you decide it should have.

21 I further instruct you, ladies and gentlemen,
22 that mistake of age is not a defense to a prosecution
23 under this section.

24 Included within the offense of sexual
25 exploitation of a minor, second degree, is the sexual

1 exploitation of a minor, third degree. To prove
2 sexual exploitation of a minor, third degree, the
3 State must prove beyond a reasonable that the
4 defendant, knowing the character or content of the
5 material, possessed material that contained a visual
6 representation of a minor engaging in sexual
7 activity.

8 I instruct you that you may infer that a
9 participant in sexual activity depicted as a minor
10 through its title, text, visual representation or
11 otherwise is a minor. Again, ladies and gentlemen, I
12 instruct you that this is simply an evidentiary fact
13 to be taken into consideration by you, along with the
14 other evidence in the case, and to be given the
15 effect, value and the weight you decide it should
16 have.

17 I further instruct you, ladies and gentlemen,
18 that under the code of laws of this section, a minor
19 means an individual who is less than 18 years old. I
20 further instruct you that sexual activity includes
21 any of the following acts or simulations thereof.
22 Masturbation, whether done alone or with another
23 human or animal; vaginal, anal or oral intercourse,
24 whether done with another human or an animal;
25 touching in any act -- touching in an act of apparent

1 sexual stimulation or sexual abuse of the clothed or
2 unclothed genitals, pubic area or buttocks of another
3 person, or the clothed or unclothed breasts of a
4 human female.

5 An act or condition that depicts bestiality,
6 sadomasochistic abuse, meaning flagellation or
7 torture by or upon a person who is nude or clad in
8 undergarments or in a costume which reveals the
9 public hair, anus, vulva, genitals or female breast
10 nipples. Or the condition of being fettered, bound
11 or otherwise physically restrained on the part of one
12 so clothed.

13 Excretory functions. The insertion of any
14 part of a person's body, other than the male sexual
15 organ, or of any object into another person's anus or
16 vagina except when done as part of a recognized
17 medical procedure.

18 Ladies and gentlemen, I further instruct that
19 in order to establish criminal liability, criminal
20 intent is required. For example, the mental state
21 required to be proven by the State for a particular
22 crime might be purpose, intent, knowledge,
23 recklessness or criminal negligence.

24 Criminal intent must be proven by the State
25 beyond a reasonable doubt. Criminal intent is always

1 a matter that must be determined by the jury from the
2 circumstances surrounding the situation. There is no
3 way to prove intent to a mathematical certainty.
4 There is no way medical science can dissect a
5 person's brain and determine what the person had in
6 mind.

7 So the law says that criminal intent may be
8 inferred from the circumstances shown to have
9 existed. This is how you make a determination of
10 whether or not the element requiring intent was
11 present.

12 It is not necessary to establish intent by
13 direct and positive evidence. But intent may be
14 established by inference and the same way as any
15 other facts by taking into consideration the acts of
16 the parties, and all of the facts and circumstances
17 of the case.

18 Criminal intent is a mental state, a conscious
19 wrongdoing. It is up to you to determine what the
20 defendant intended to do based on the circumstances
21 shown to have existed. Criminal intent can rise from
22 action or a failure to act. It may arise from
23 negligence, recklessness or an indifference to duty,
24 or to consequences that are considered by the law to
25 be the equivalent of criminal intent.

1 Ladies and gentlemen, you have been selected
2 as fair and impartial jurors, sworn to impartially
3 try the facts of this case. And when you comply with
4 your oath to do so, then no one will have the right
5 to criticize your verdict, and you will have fully
6 discharged your duty as jurors in this case.

7 You should not be influenced by opinions or
8 expressions of opinions, if any, which you may have
9 heard outside of the evidence of this case, but you
10 are to decide this case according to the testimony
11 that you have heard from the lips of the sworn
12 witnesses, and the other evidence that has been
13 introduced into the record.

14 There are three possible verdicts in this
15 case, and they are as follows -- and you don't have
16 to try write these down because the verdict forms
17 will go into the jury room with you. As to the
18 indictment number 2008-GS-10-1626, we the jury by
19 unanimous consent find the defendant guilty of sexual
20 exploitation of a minor, second degree; or as to the
21 lesser-included offense, guilty of sexual
22 exploitation of a minor, third degree; or not guilty.

23 There is absolutely no significance whatsoever
24 to the order in which these potential verdicts have
25 been stated. Ladies and gentlemen, your verdict must

1 be a unanimous one, which means all 12 of you must
2 agree in order to reach a verdict.

3 Mr. Foreman, it is your responsibility to fill
4 out the verdict form, and to sign and date the form
5 once the jury has reached its verdict. It also your
6 responsibility to knock on the door and advise the
7 bailiffs that the jury has reached a verdict.

8 Also if the jury has any questions during
9 deliberations, it is your responsibility to write
10 those questions out and follow the same procedure,
11 knock of the door and advise the bailiff that the
12 jury has a question.

13 Ladies and gentlemen, during the course of
14 your deliberations if you have a question, please
15 note that there will be a delay in us responding to
16 you. It's not that we are ignoring you, it's simply
17 that there is a procedure that we must follow in
18 answering your questions. So if you have a question
19 and there is a delay, just know that we are following
20 that procedure and that we are not ignoring you.

21 I'm going to ask that you return to the jury
22 room but do not yet begin your deliberations. I have
23 some matters of law that I need to take up with the
24 attorneys that may require further instruction or
25 clarification of an instruction.

1 However, if there is no further instruction we
2 will send in your notebooks and the evidence and the
3 verdict forms, and at that time we will excuse the
4 alternate and you will be allowed to begin your
5 deliberations. If you will go with the bailiffs for
6 me, please, and please leave your notepads in your
7 seats.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Are there any exceptions from the
10 state?

11 MR. SIMPSON: None from the State, Your Honor.

12 THE COURT: From the defense?

13 MR. SMILEY: No, Your Honor.

14 THE COURT: Please make sure all the evidence
15 is in place for me.

16 Did you all find something for them to play
17 the audio as well as the video on it if they desire
18 to?

19 MR. SIMPSON: We do have a laptop. We think
20 it's clear. We have got a computer that I think is
21 acceptable. We have got to make sure it plays stuff.

22 THE COURT: Go ahead and try it out.

23 MR. SIMPSON: Your Honor, I apologize, it
24 doesn't even have a CD drive.

25 THE COURT: I'm going to have to instruct the

1 You are welcome to discuss this case if you would
2 like, but I would ask that you not do that until the
3 entire panel is dismissed and the jury has completed
4 its deliberation.

5 If someone should persist in trying to speak
6 to you, however, please let the clerk's office know
7 so that we can protect your privacy. You are welcome
8 to stay with us during the jury's deliberations, but
9 you are also welcome to leave.

10 If you need a work excuse you can get one on
11 the first floor in the clerk's office, they will be
12 glad to give you one. Otherwise, they will be mailed
13 out to you today sometime along with your check.

14 Thank you so much, sir, have a wonderful day.

15 A JUROR: Thank you.

16 (Whereupon, the juror exit the courtroom.)

17 THE COURT: If we could have cell phone
18 numbers for everybody and I ask that you stick close.

19 (Whereupon, a recess was taken.)

20 THE COURT: I got a note from the jury. We
21 would like a definition of criminal intent and
22 definition of third degree charge.

23 So what I would do is just reinstruct them and
24 then make this note a Court's exhibit.

25 Is there any exception from the State?

1 MR. SIMPSON: None.

2 THE COURT: From the defense?

3 MR. SMILEY: No, Your Honor.

4 THE COURT: Have it marked.

5 Okay. We received a note from the jury, we
6 would like the definition of criminal intent,
7 definition of third degree charge signed by the
8 foreperson. I have had this marked as a Court's
9 exhibit. I'm going to re-instruct them on both of
10 these items.

11 Is there any exception from the state.

12 MR. SIMPSON: None from the State, Your Honor.

13 THE COURT: From the defense?

14 MR. SMILEY: No, Your Honor.

15 THE COURT: If you could bring in the jury for
16 me, please.

17 Do you all think I need to re-instruct the
18 definitions?

19 MR. SMILEY: I don't, Your Honor.

20 MR. SIMPSON: I don't.

21 THE COURT: I did not think I did either. I
22 just wanted to make sure we are all on the same page.

23 (Whereupon, the jurors enter the courtroom.)

24 THE COURT: Ladies and gentlemen, we
25 appreciate your patience. I was in the process of

1 doing bonds and motions and I needed to recess so
2 that I could address your note. So again, please
3 know that we were not ighoring when you sent in your
4 request.

5 And in respond to your note I'm going to
6 re-instruct you on the definitions of criminal
7 intent, and the elements of sexual exploitation of a
8 minor in the third degree.

9 Included within the offense of sexual
10 exploitation of a minor second degree, is the lesser
11 offense of sexual exploitation of a minor third
12 degree. To prove sexual exploitation of a minor
13 third degree, the State must prove beyond a
14 reasonable doubt that the defendant, knowing the
15 character or content of the material, possessed
16 material that contained a visual representation of a
17 minor engaging in sexual activity.

18 You may infer that a participant in sexual
19 activity depicted as a minor through its title, text,
20 visual representation or otherwise is a minor. This
21 is simply an evidentiary fact to be taken into
22 consideration by you, along with the other evidence
23 in the case. And to be given the effect, value and
24 weight you decide it should have.

25 In order to establish criminal liability,

1 criminal intent is required. For example, the mental
2 state required to be proven by the State for a
3 particular crime might be purpose, intent, knowledge,
4 recklessness, or criminal negligence.

5 Criminal intent must be proven by the State
6 beyond a reasonable doubt. Criminal intent is always
7 a matter that must be determined by the jury from the
8 circumstances surrounding the situation. There is no
9 way to prove intent to a mathematical certainty.

10 There is no way medical science can dissect a
11 person's brain and determine what the person had in
12 mind. So the law says that criminal intent may be
13 inferred from the circumstances shown to have
14 existed.

15 This is how you make a determination of
16 whether or not the element requiring intent was
17 present. It is not necessary to establish intent by
18 direct and positive evidence. But intent may be
19 established by inference in the same way as any other
20 fact, by taking into consideration the acts of the
21 parties, and all of the facts and circumstances of
22 the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you to determine what the
25 defendant intended to do based on the circumstances

1 shown to have existed.

2 Criminal intent can arise from actions or a
3 failure to act. It may arise from negligence,
4 recklessness, or an indifference to duty, or to
5 consequences that are considered by the law to be the
6 equivalent of criminal intent.

7 Ladies and gentlemen, that concludes the
8 additional instructions. Please let us know if you
9 have any further inquiries and we will accommodate
10 your request immediately. If you would go with your
11 caretakers.

12 (Whereupon, the jurors exit the courtroom.)

13 THE COURT: You may be seated. Any exception
14 from the State?

15 MR. SIMPSON: None from the State, Your Honor.

16 THE COURT: From the defense?

17 MR. SMILEY: No, Your Honor.

18 THE COURT: We will await further instruction
19 from the jury.

20 (Whereupon, a recess was taken.)

21 THE COURT: We have a note. In the second
22 degree charge are they charging him with
23 distribution?

24 what I'm going to do is read the elements and
25 read the same language, which is the State does not

1 have to prove all of these thing, it only has to
2 prove one.

3 MR. SIMPSON: That's right.

4 THE COURT: Then hopefully they said that they
5 will decide whether they want to go to lunch
6 depending on my answer to this question.

7 I'm inclined at this point to send them out to
8 lunch, because it just takes too long for me to order
9 it, as a group with the bailiffs and the deputies.

10 MR. SIMPSON: Yes, ma'am.

11 THE COURT: Probably send them across the
12 street.

13 Please bring in the panel.

14 Is there any exception from the State?

15 MR. SIMPSON: None from the State.

16 THE COURT: From the defense?

17 MR. SMILEY: No, Your Honor. My understanding
18 is that you are going to re-read --

19 THE COURT: I'm going to re-read the elements
20 of sexual exploitation of a minor in the second
21 degree. And then after I read those I'm going to say
22 that the State does not have to prove that the
23 defendant did all these things, instead if you find
24 beyond a reasonable doubt that the defendant did any
25 of these things you may find the defendant guilty.

1 May being the operative word which is how all --
2 that's the language in all cases where there are
3 variable degrees, it's what I originally instructed.

4 MR. SMILEY: Yes, ma'am.

5 THE COURT: Bring in the jury, please.

6 (Whereupon, the jurors enter the courtroom.)

7 THE COURT: You may be seated. Ladies and
8 gentlemen, in response to your note which is, in the
9 second degree charge are they charging him with
10 distribution? I respond to that question as follows.

11 The defendant is charged with sexual
12 exploitation of a minor second degree. The State
13 must prove beyond a reasonable doubt that the
14 defendant, knowing the character or content of the
15 material, recorded, photographed, filmed, developed,
16 duplicated, produced or created digital electronic
17 file material that contained a visual representation
18 of a minor engaged in sexual activity; or
19 distributed, transported, exhibited, received, sold,
20 purchased, exchanged or solicited material that
21 contained a visual representation of a minor engaged
22 in sexual activity.

23 The State does not have to prove that the
24 defendant did all of these things. Instead, if you
25 find beyond a reasonable doubt that the defendant did

1 any of these things, you may find the defendant
2 guilty of sexual exploitation of a minor in the
3 second degree.

4 Further you are instructed that you may infer
5 that a participant in sexual activity depicted in
6 material as a minor through its title, text, visual
7 representations or otherwise is a minor. Again this
8 is simply an evidentiary fact to be taken into
9 consideration by you, along with the other evidence
10 in the case. And is to be given the weight, effect
11 -- the effect, value and weight you decide it should
12 have.

13 That concludes the additional instruction. If
14 you would go with your caretakers. Please let us
15 know if you need anything else.

16 (Whereupon, the jurors exit the courtroom.)

17 THE COURT: Any exception from the State?

18 MR. SIMPSON: None from the State, Your Honor.

19 THE COURT: From the defense?

20 MR. SMILEY: No, Your Honor.

21 THE COURT: Let's see what they tell us. I
22 suspect that may resolve whatever it's going to be.
23 That will be marked as a Court's Exhibit.

24 I'm going to have to send them out. I'm going
25 to give them five more minutes and then I'm going to

1 send them out for lunch.

2 (Whereupon, a recess was taken.)

3 THE COURT: The jury has reached a verdict.

4 Is the State ready to proceed?

5 MR. SIMPSON: We are, Your Honor.

6 THE COURT: Is the defense ready to proceed?

7 MR. SMILEY: Yes, Your Honor.

8 THE COURT: Please bring in the jury.

9 (Whereupon, the jurors enter the courtroom.)

10 THE COURT: Mr. Foreman, is it correct that
11 the jury has reached a verdict?

12 A JUROR: Yes, ma'am.

13 THE COURT: If you would give the verdict form
14 to the bailiff for me, please.

15 Mike, if you would publish the verdict. If
16 the defendant would stand for publication of the
17 verdict.

18 THE CLERK: Verdict form in the matter of the
19 State of South Carolina versus Willie Don Horry,
20 defendant. As to indictment number 2008-GS-10-1626,
21 we the jury by unanimous consent find the defendant
22 guilty of sexual exploitation of a minor, third
23 degree. Signed by the foreperson of the jury on May
24 14th, 2010.

25 Ladies and gentlemen of the jury, if this was

1 your verdict please raise your right hand. Thank
2 you. Please let the record reflect that all 12
3 jurors raised their right hand

4 THE COURT: Is there any request to poll the
5 jury from the State?

6 MR. SIMPSON: None from the State, Your Honor.

7 THE COURT: From the defense?

8 MR. SMILEY: No, Your Honor.

9 THE COURT: You may take your seats.

10 Mr. Foreman, ladies and gentlemen, we thank
11 you for your time and your attention to this case. I
12 hope that jury service has been educational for you.
13 I hope that you realize how very important you are to
14 the process. We simply could not do what we do day
15 in and day out without you be willing to sit as the
16 fact-finders in a case and then apply the law to
17 those facts and render verdicts.

18 You are welcome to discuss this case. You are
19 excused for the week. That's not a whole lot of
20 consolation. You are excused for the week.

21 If you need a work excuse today, please go to
22 the civil side of the clerk's office and any deputy
23 clerk can give you one, otherwise they will be mailed
24 out to you today with your checks.

25 Again, you are welcome to discuss the case,

1 however if someone should persist in trying to speak
2 with you and you don't desire to speak with them,
3 please make the clerk's office aware so that we can
4 take any action necessary to protect your privacy.
5 You are excused with the Court's profound thanks. I
6 will hear post-trial motions in a moment.

7 (Whereupon, a recess was taken.)

8 THE COURT: Are there any post-trial motions
9 from the State?

10 MR. SIMPSON: None from the State, Your Honor.

11 THE COURT: From the defense?

12 MR. SMILEY: Only you've already ruled on all
13 of them that I would make. And I would just renew
14 them because I'm required to, Your Honor, to protect
15 my record.

16 THE COURT: Certainly. Would the State like
17 to respond to any of the renewed post-trial motions?

18 MR. SIMPSON: I believe the record complete,
19 Your Honor, on our response to this.

20 THE COURT: Okay. The Court stand by its
21 previous ruling on the constitutional argument as
22 well as directed verdict.

23 The Court would find that there is no basis
24 for a new trial as there is direct and substantial
25 circumstantial evidence to support the jury's verdict

1 in this case. And it's clear to me they gave it very
2 thoughtful consideration based on their notes to us,
3 and as well as the fact that they gave ample
4 consideration to the letter-included offense which
5 clearly was factually supported by the record.

6 Anything further from the State regarding
7 sentencing?

8 Yes, sir.

9 MR. SIMPSON: As to sentencing, Your Honor, we
10 leave that in your discretion.

11 THE COURT: Does he have any record?

12 MR. SIMPSON: He has no prior record, Your
13 Honor.

14 THE COURT: That's what I thought.

15 MR. SIMPSON: We would leave that in your
16 discretion.

17 I would note that under the federal sentencing
18 guideline, and obviously they don't apply here, but
19 there are enhancements for both the apparent age in
20 the videos, as well as any sign of bondage and that
21 there were some evidence of that in this trial.

22 You can consider that however you deem
23 appropriate, Your Honor.

24 THE COURT: Okay. Mr. Smiley, I will be glad
25 to hear from you.

1 MR. SMILEY: Yes, ma'am, Your Honor. I'm
2 going to ask you consider a probationary --

3 THE COURT: Let me ask you a quick question,
4 and I don't mean to interrupt you. And I need to ask
5 the State because we had a guilty plea on a very
6 similar charge while this jury was deliberating, and
7 the State recommended probation and counseling.

8 And I need to know if the State is averse to
9 that with Mr. Horry. And I will tell you why. I
10 think this is a smoldering situation. I do not think
11 under any circumstances that he just happened upon
12 it. I think he downloaded it because he was curious
13 about it and he watched it.

14 And I think everything starts as a seed and it
15 grows. It's cultivated, it's nurtured, it's
16 fertilized and it continues to grow. And I think
17 this could become a very problematic situation.

18 The images in those videos were quite
19 disturbing, extremely disturbing to me and I have a
20 seen lot. There ain't much that I can't watch
21 because I have seen it all pretty much. I think
22 they're very disturbing and it troubles me.

23 However, I do not want to have a situation
24 where he goes into the system and just comes back out
25 nothing having been done and it never having been

1 addressed. Because I think it has been smoldering
2 for a while.

3 MR. SIMPSON: I understand, Your Honor. Again
4 we leave the sentence completely up to you. There
5 are some key difference in the case that you heard
6 the plea and Mr. Horry's case.

7 THE COURT: Well the number of images.

8 MR. SIMPSON: Number of images, severity they
9 were pretty close. One of our main factors was that
10 the defendant who pled guilty had, while the case was
11 pending, actively achieved, and I think you heard
12 quite a bit of contrition on the part of that
13 defendant as well as his desire to seek out treatment
14 on his own. I should be clear, that was a condition
15 of his bond.

16 THE COURT: Well and that contrition was a
17 little -- it started out but then it had to be
18 forced.

19 MR. SIMPSON: Another big difference, Your
20 Honor, and honestly obviously the Court knows that it
21 not being a conviction is something for you to
22 consider as you will, but we received information
23 while this case was pending --

24 THE COURT: Yeah, I cannot consider anything
25 that is not the subject of a conviction. He's

1 presumed to be innocent on those charges until
2 another jurisdiction or our jurisdiction convicts
3 him.

4 What concerns me, and I'm not going to make
5 any bones about it, I think it's smoldering, I think
6 it has been going on for a long time, I don't think
7 it just started, stuff like this never does.

8 And I think it is so abhorrent that people go
9 through a lot of self-flagellation about it because
10 once they do it they're ashamed of it. And they know
11 they shouldn't be doing it, but then they feel
12 compelled, just like any compulsion, to go back and
13 continue to do it.

14 And the thing that troubles me about it is
15 something like that very easily goes from thought to
16 action. And anybody that can watch that can move
17 from thought to action very quickly.

18 And I am clear that this Court is in the
19 business of punishment, retribution, and all those
20 things. But it is also has to balance the public
21 interest in make sure that once people are released
22 that they were well.

23 Because sometimes what people do is they get
24 better at what they do. They really don't get
25 rehabilitated, they just get better at it. And then

1 they go below the surface or under the wire and then
2 we don't know where they are or what they're doing.

3 I'm not saying that I'm not going to give him
4 any jail time, but I don't know that a long period
5 would serve anyone's purpose. And I want to make
6 sure that when I balance that policy component in
7 protecting children, that I have something in place.

8 MR. SIMPSON: Totally understand, Your Honor.
9 I just -- I guess for the record completely correct
10 that you aren't to consider these things, but
11 obviously the State makes the decision. We consider
12 other factors outside of just prior convictions.

13 THE COURT: Absolutely. And your perspective
14 is different than mine.

15 MR. SIMPSON: True. All the interests you
16 noted, there are no disagreements.

17 MR. SMILEY: I'd like to say the State in
18 evaluating that before trial offered us probation.
19 And one of the key things that my client had a hard
20 time was the sex registry component.

21 Quite frankly, he was straightforward that the
22 curious brought him down. He looked at them, deleted
23 them, which is what they found when they got his
24 computer.

25 I'm not trying to excuse his behavior, Your

1 Honor. It's the sex registry that caused him the
2 biggest problem in this case. And I explained to him
3 when you go to trial that you risk going to prison,
4 the whole bit.

5 He has lived a fairly exemplary life until
6 this point, hadn't been arrested before this point.
7 I think more than anything else, he got on a computer
8 and started dwelling deeper and deeper. And I'm not
9 disagreeing with you.

10 THE COURT: No, I understand. I think it's
11 like anything else, this is no different. It's a
12 compulsion. And it's just like regular pornography.
13 People start watching it, they go from one image and
14 then before you know it they're watching it everyday.

15 And then, like I said, people go through the
16 whole stages of self-flagellation which is, I'm
17 enjoying watching this, I'm curious about it, but
18 when I get done with it I know I'm not supposed to be
19 doing it and I'm ashamed of myself. And then I don't
20 have the capacity to admit.

21 And that's really the key to him moving
22 forward is admitting that, no, I did not just sort of
23 watch -- you don't sort of watch 59 images. That's a
24 compulsion. That means I'm curious, and I've moved
25 beyond being curious.

1 So he is going to have to figure out, and
2 that's within him, he is a grown man, I can't tell
3 him what to do, grown folk make their own decisions
4 and I'm not in the habit of lecturing people and so
5 I'm not going to start now.

6 But I'm trying to fashion a sentence,
7 especially with someone with no record, I have to
8 consider that in mitigation, something that
9 appropriately balanced. Because I want him to get
10 treatment.

11 MR. SMILEY: Yes, ma'am.

12 THE COURT: I don't know that -- I'm going to
13 tell you what the rub is for me about sending him to
14 the penitentiary is that they're going to do that
15 whole SVP multidisciplinary team and all that other
16 stuff. I would say about 90 percent people don't
17 meet the criteria so they get out.

18 So I don't know that that really is that grave
19 a concern to me. But I want to know, I guess what
20 I'm asking is the State averse to some form of split
21 sentence?

22 And I'm asking, does your client have an
23 aversion to going into therapy because I don't want
24 to order that as a condition of probation and then he
25 not do it and then be violated.

1 MR. SMILEY: No, ma'am. While when he first
2 got out of jail I had suggested that he go to Dr.
3 Burke, he couldn't afford it.

4 THE COURT: It is expensive.

5 MR. SMILEY: We had talked about it, that I
6 could use the evaluation to show that he wasn't a
7 threat.

8 THE COURT: He doesn't do payments anymore?

9 MR. SMILEY: He couldn't pay me. He had to
10 got past me, quite frankly, Your Honor. And I don't
11 mean that as any disparaging on my client.

12 THE COURT: No, not at all.

13 MR. SMILEY: Unfortunately, he was above
14 indigency status, but just barely. So he couldn't
15 afford it. If it was ordered as part of probation,
16 he is going to comply with anything Your Honor puts
17 down. He has always been, to this point in his life,
18 a law-abiding citizen. He has had a hard time
19 grasping that he is sitting here in this courtroom.

20 THE COURT: Again, self-flagellation. People
21 get into something and then they think, why in the
22 world did I ever do this? Why am I compelled to look
23 at this?

24 MR. SMILEY: As you can see he has strong
25 family support. His sister, fiance, his mother,

1 everybody is here in his support. And he came -- we
2 tried to plead this case several times, and it always
3 came down to the sex registry that really caused him
4 pause when I explained the rest of your life you are
5 going to be on that thing. And that gave him a hard
6 time.

7 would you like to talk to the judge? You
8 don't have to, it's up to you.

9 THE COURT: You don't have to, sir. But if
10 you'd like to state something for the record I would
11 be glad to hear from you.

12 THE DEFENDANT: Yes. I just want to
13 apologize. Anything that you give me, Your Honor, I
14 will comply with.

15 MR. SMILEY: 63 days before he was released,
16 Your Honor.

17 THE COURT: Are you employed, sir?

18 THE DEFENDANT: No.

19 MR. SMILEY: He's having trouble getting a job
20 with that on his record, even the arrest.

21 THE COURT: Yes, I would imagine so. It would
22 be a bond issue for most employers.

23 MR. SMILEY: He was employed at The Pantry at
24 the time he was arrested. And he has been employed
25 the majority if not all of his adult life. Now he is

1 having trouble finding work.

2 THE COURT: What I'm going to do, sir, is I'm
3 going to give you a split sentence with a minimal
4 amount of jail time, and with what I think is an
5 appropriate amount of probation for you to get
6 treatment.

7 I need to advise you that once you are in the
8 system, before you are released, a multidisciplinary
9 team is going to review you to see if you qualify as
10 a sexually violent predator. And you will go through
11 that process which is a civil commitment process.

12 I cannot tell you what to do. I would not
13 presume to tell you what to do but I will tell you
14 this. That going through that multidisciplinary team
15 process, the more compliant you are in terms of
16 admitting what your issues are, the less likely they
17 are to commit you.

18 That's simple commitment process is
19 indefinite, and there are steps of treatment. So I
20 would strongly suggest to you that when you are going
21 through that process that you be very candid about
22 whatever your issues are.

23 Mr. Smiley can advise you better than I can,
24 but you need to be real because they can tell when
25 people are not being honest. They run you through a

1 myriad of tests that can fetter all that out, and
2 they will know exactly what is going on.

3 So the more compliant that you are, and the
4 more cooperative you are in terms of the ability to
5 comply with out-patient treatment, the less likely --
6 the definition is very strict in terms of what SVP
7 is. Being antisocial, narcissistic, that's not
8 enough for you to fit within the definition of
9 paraphilia or pedophilia.

10 And even that sometimes is not -- again, I
11 don't pretend to be a professional in that area, I
12 just know from hearing cases what the standards are.
13 Very few people probably per capita are part of that
14 process. But I'm just telling you that while you are
15 going through that process, it is best to be
16 completely candid. Because you work a detriment to
17 yourself when you don't.

18 Sir, based on your conviction, I'm sentencing
19 you to the state department of corrections for a
20 period of 2 years. That will be suspended upon the
21 service of 6 months and 3 years of probation.

22 As a condition of your probation you are to
23 have random drug and alcohol tests. I need to advise
24 you if you test positive that your probation can be
25 revoked, or they can require you to go to substance

1 abuse counseling.

2 I'm also ordering that upon your release you
3 are to report to Dr. Burke, or other appropriate
4 professional for sex treatment counseling, and follow
5 all the recommendations of that counseling.

6 Your probation is tolled during your active
7 sentence. And also, although not on this sentencing
8 sheet, you will have to comply with the sexual
9 offender registry. You will get any credit for any
10 time to be calculated and applied by the department
11 of corrections for any pre-detention time that you've
12 served.

13 The reason, probably under most circumstances,
14 Mr. Smiley, I will be very honest with you, I would
15 have been more inclined to give him more of the
16 maximum penalty just because of the graphic nature of
17 those images. But I have given substantial
18 consideration to his lack of record, and what I hope
19 will be his substantial compliance with treatment.

20 This is one of the few situations really where
21 someone can get better and become productive and
22 never come back into the system. And I am giving him
23 the tools to do that. So it's up to him whether he
24 does it or not.

25 MR. SMILEY: Thank you, Your Honor.

1 MR. SIMPSON: Thank you, Your Honor..

2 THE COURT: Thank you all. Have a great
3 weekend.

4 (Whereupon, the proceedings in this matter
5 before the Court were adjourned.)

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BCS20070910086

WITNESSES

TRISHA TAYLOR

Charleston City Police Department

AGENCY CASE NUMBER

0714910

ARREST WARRANT NUMBER

K152604

DATE OF ARREST

2007-09-11

ACTION OF GRAND JURY

TRUE BILL*Edkie Cochran*

Foreperson of Grand Jury

Date:

MAR 03 2008

VERDICT

Guilty of the lesser
Included Sexual exploitation of
a minor 3rd degree*Burton Horsey*

5-14-10

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1001626

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2008

THE STATE

Vs.

07-5823-1

WILLIE DON HORRY

DOB: 1960-09-11

B/M

Indictment for

Sexual Exploitation of Minor
2nd Degree2008 MAR -5 PM 2: 08
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By

DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

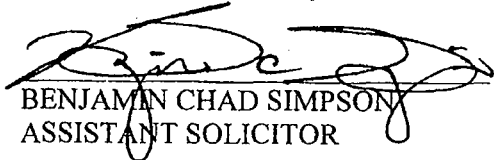
INDICTMENT

At a Court of General Sessions convened on March 3, 2008, the Grand Jurors of Charleston County present upon their oath:

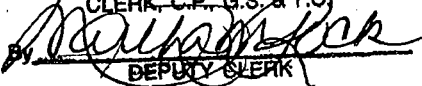
Sexual Exploitation of Minor
2nd Degree

That in Charleston County, South Carolina, on or between July 23, 2007 and July 26, 2007, knowing the character or content of the material, the Defendant WILLIE DON HERRY did record, photograph, film, develop, duplicate, produce, or create digital electronic file material that contained a visual representation of a minor engaged in sexual activity; or did distribute, transport, exhibit, receive, sell, purchase, exchange, or solicit material that contained a visual representation of a minor engaged in sexual activity, to wit: the Defendant WILLIE DON HERRY did participate in the distribution and transportation of video files that contained visual representations of child sexual abuse ; all in violation of Section 16-15-405 of the Code of Laws of South Carolina (1976) as amended.

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


 BENJAMIN CHAD SIMPSON
 ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.

By 
 DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CharlestonSTATE VS.WILLIE DON HORRY

AKA:

Race: B Sex: M Age: 49DOB: SS#:

Address:

City, State, Zip:

DL#: 090000066 SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Sexual exploitation of a minor, Third degree

INDICTMENT/CASE#: 2008GS1001626A/W#: K152604Date of Offense: 7/23/2007 - 7/26/2007S.C. Code §: 16-15-0405(D)CDR Code #: 0380

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-15-0410(C) of the S.C. Code of Laws, bearing CDR Code # 0381☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Simpson, Benjamin Chad71257
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of 6 days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$	
	\$	
\$100	\$	<u>100.00</u>
\$100	\$	
\$12	\$	
\$25	\$	
\$500	\$	
\$25	\$	<u>25.00</u>
\$100	\$	
\$50	\$	
\$40/ea	\$	
\$5	\$	<u>5.00</u>
\$	\$	<u>3.90</u>
\$	\$	<u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: Upon release to report to Dr. Burke or other appropriate professional for sex treatment counseling and follow all recommendations of that counseling.☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Probation halted during active sentence.

Presiding Judge Al JefferJudge Code: 2128Sentence Date: 5-14-10

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

CLERK C.P., G.S. & F.C.

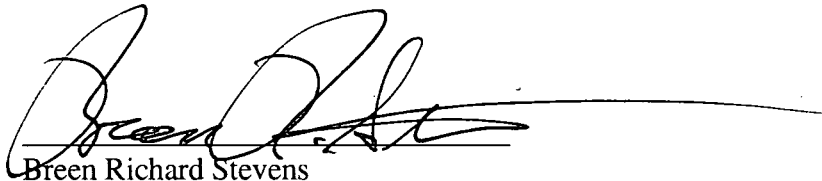
South Carolina

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 27th, 2012

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", with a long horizontal line extending to the right.

Breen Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT