

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY

Robin B. Stilwell, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

FREDERICK R. CHAPPELL,

APPELLANT

---

RECORD ON APPEAL

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**SC COURT OF APPEALS**

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 COUNTY OF GREENVILLE )  
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 )  
 )  
 STATE OF SOUTH CAROLINA )  
 PLAINTIFF )  
 vs. )  
 )  
 FREDERICK R. CHAPPELL )  
 DEFENDANT )

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COURT OF GENERAL SESSIONS  
 2011-GS-23-3327-3332

**ORIGINAL**

TRANSCRIPT OF RECORD

March 5 & 6, 2012  
 Greenville, South Carolina

B E F O R E :

THE HONORABLE ROBIN B. STILWELL, Judge; and a jury.

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

MARK MOYER, ESQ.  
 Attorney for the State

SUSANNAH ROSS, ESQ.  
 Attorney for the Defendant

APRIL HERRON  
 Official Court Reporter

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**STATE EXHIBITS**

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Computer	94	95
2	Spreadsheet	115	121
3	Spreadsheet	121	121
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**COURT EXHIBITS**

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Search Warrant	50	50
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1 THE COURT: Yes, sir.

2 MR. MOYER: I have a motion to amend one of  
3 those Indictments, Judge. So I bring that up.

4 THE COURT: Okay. Okay. Now, do you have the  
5 amendment?

6 MR. MOYER: I do, Your Honor. May it please the  
7 Court, Indictment No. 2011-3331 is for sexual exploitation  
8 of a minor, second degree. Whereas the other ones are  
9 sexual exploitation of a minor, third degree. I would  
10 move to have Indictment No. 2011-3331 amended to the  
11 lesser included offense of sexual exploitation, third  
12 degree. The only change that would involve, Your Honor,  
13 is when reading the Indictment, is to go to where it says,  
14 on the second line, Knowing the character or the content  
15 of the material possessed. Then after that skip to the  
16 next word, Duplicate, distribute, transport, exhibit,  
17 receive, exchange or solicit. Then pick back up with  
18 material that contain visual representation.

19 THE COURT: Okay. Any objection to the  
20 amendment?

21 MS. ROSS: No objection, Judge. But I would  
22 move to quash the Indictment based on, I think it's Rule  
23 5.

24 THE COURT: Yes, ma'am.

25 MS. ROSS: About the 90 days, the Indictment has

1 to be done in 90 days. They rarely are so I move to  
2 dismiss on that basis. Furthermore--

3 THE COURT: You feel very strongly about that  
4 motion, do you not?

5 MS. ROSS: I would like to put on the record,  
6 furthermore, as far as that motion to quash, I'd also move  
7 to quash based on Constitutional issues, a violation of  
8 First Amendment, freedom of speech through the 14th along  
9 with the Fifth, due process, Amendment 14th. I would  
10 argue that the statute itself is vague and overbroad.  
11 Hill v. Colorado states in part, A conviction fails to  
12 comport with due process if the statute under which it is  
13 obtained fails to provide a person of ordinary  
14 intelligence fair notice of what is prohibited, or is so  
15 standardless that it authorizes or encourages seriously  
16 discriminatory enforcement.

17 Here this is surfing the web which opens a whole  
18 new world of things that can come into your computer and  
19 come in -- into you world without any pre-warning. Like,  
20 I guess, we get on Westlaw, you're going outside your safe  
21 zone, we're going to charge you a lot of money or put you  
22 in jail. There's nothing like that when you're surfing on  
23 the net. To give just a warning that this is going  
24 outside the law.

25 Furthermore, as far as -- in the statute itself,

1 it talks about using any terms like Lolita and teen or  
2 teen angel, terms that certainly would be overbroad to  
3 infer intent to have child pornography. I mean, some of  
4 these would arguably a book, literature, stuff that would  
5 be protected by the constitution. And by stating that the  
6 use of such language is automatically -- would add an  
7 inference that something in child pornography, I would  
8 argue is overbroad. So I would move to quash based on  
9 those constitutional arguments and the parallel State  
10 Constitution for that as well.

11 THE COURT: Okay.

12 MS. ROSS: And, I guess, we could -- if I can  
13 just get a ruling on that. And I've got another sort of  
14 related motion as well.

15 THE COURT: Okay. With respect to those two  
16 motions, I believe as the law is couched presently, that  
17 I'm compelled to deny the same. I think those issues that  
18 you complain of regarding the breath of the statute are  
19 issues to be taken up either by the Appellate Courts of  
20 this State or by the legislature. Therefore, I'll  
21 respectfully deny the same. And respect to the timing of  
22 the Indictments, again, respectfully deny the same.

23 MS. ROSS: Thank you, Your Honor.

24 THE COURT: Okay, anything else?

25 MS. ROSS: Well, Judge, just as far as voir

1     dire --

2                     THE COURT:   Yes, ma'am.

3                     MS. ROSS:   I did hand up voir dire request.  And  
4 here, I think, it has to do with voir dire, we would move  
5 to stipulate that material pictures and video images that  
6 were removed from the hard drive of this computer, did  
7 contain visual representation of a minor engaged in sexual  
8 activity.  We would stipulate to that right now.  I think  
9 here these images were such that just to be, you know, not  
10 shocked in trial, I went to look at some of the images and  
11 stopped it.  Just because it's that graphic.  And frankly  
12 would encourage the jurors to react emotionally.  That's  
13 just what -- what child pornography is.  And here, unlike  
14 you might have a teenager or young adult, these are  
15 clearly children.  And based on Rule 403 and 404, we'd  
16 argue the prejudicial effect would outweigh any probative  
17 value.

18                     And we would certainly ask that -- I can renew  
19 this motion later on after we pick a jury but I think the  
20 jury needs to be specifically asked whether viewing or  
21 being forced to view child pornography and very graphic  
22 images like that would appeal to their emotions and could  
23 effect the impartiality of their decision.  And I think --  
24 I think they themselves could comment on that but I also  
25 think that there's a waive test that, you, the Judge,

1 would have to do to find out whether the prejudicial  
2 effect would outweigh the probative value. Which I think  
3 it would.

4 THE COURT: Do you have any objection to the  
5 voir dire?

6 MR. MOYER: Judge, I really haven't had a chance  
7 to look over this too closely.

8 THE COURT: I will tell you as I look at it, I'm  
9 inclined to ask these questions simply based on -- I agree  
10 with the argument Ms. Ross has advanced. I don't think  
11 these questions are over the line.

12 MR. MOYER: You -- which argument?

13 THE COURT: Her argument that giving the  
14 sensitivity of some of the issues that will arise in this  
15 case, it is appropriate to ask at a threshold some of  
16 these questions.

17 MR. MOYER: I mean, without having read this  
18 closely, my only fear is that the question needs to be  
19 asked very carefully because I think--

20 THE COURT: Read the questions and tell me if  
21 you disagree with the questions. Because I would read  
22 them exactly as they are. I think really think it's  
23 number three that we're talking about.

24 MR. MOYER: Yeah, I don't think I have an  
25 objection to--

1 THE COURT: Yeah, I thought that was a pretty  
2 reasonable way of posing that question. Kudos to  
3 Ms. Ross.

4 MR. MOYER: I'm not sure if request number two  
5 would have bearing or should be asked. I think question  
6 number three I understand. But this case is not about --  
7 we all have a victim coming in to testify to things.

8 THE COURT: I understand. That's a fair  
9 question, I'm going to ask that as well.

10 MR. MOYER: Okay.

11 THE COURT: I think that would certainly color  
12 the cloud in their perspective. I think that's fair for  
13 the Defendant to ask.

14 MR. MOYER: I would object to number seven, Your  
15 Honor. That is essentially just a matter of law. Once we  
16 start explaining legal issues in voir dire--

17 THE COURT: With respect to number seven and  
18 number eight, probably will ask those in another way.  
19 I'll make it very clear to them that the State has the  
20 burden of proof. And I'll explain all of that in  
21 excruciating detail ultimately by the end of the trial.

22 MR. MOYER: I understand that, yes.

23 THE COURT: Okay. All right. And I'll allow  
24 the amendment, obviously, based on -- based on the -- no  
25 objection from the Defense.

1           Okay, we can bring them in.

2           THE COURT: Good morning, ladies and gentlemen,  
3 good to see you again. Welcome to courtroom six. We're  
4 going to pick a jury on the cases at bar currently. Now  
5 you will remember that downstairs I asked you is a series  
6 of questions. And those questions were designed to  
7 determine whether you were qualified to serve as jurors in  
8 the State of South Carolina in the County of Greenville in  
9 the United States. I'm going to ask you additional  
10 questions today but these questions determine whether  
11 you're qualified and or whether it is suitable for you to  
12 serve as a juror on this particular case. So remember  
13 that you continue under your oath that you took downstairs  
14 to be truthful in your responses. And when I ask you  
15 these questions, the same rule applies. And that is if  
16 the answer is in the affirmative, I'd ask you to stand up  
17 and state your name and your juror number.

18           But before we get started, it's important for me  
19 to give you some idea of what this case is. What it's  
20 about, what some of the factual allegations are and to  
21 announce the case for you. So first I will tell you that  
22 this is the case of Frederick Chappell.

23           Or is it pronounced Chapel, Ms. Ross?

24           MS. ROSS: Chapel.

25           THE COURT: Mr. Frederick Robert Chappell. And

1 these are Indictments 2011-GS-23-3327, 3328, 3329, 3330  
2 and 3331. The State has charged Mr. Chappell with five  
3 counts of sexual exploitation of a minor in the third  
4 degree. Now, ladies and gentlemen, before I read to you  
5 the allegations there's something I need to tell you. And  
6 this is very important. And that is as follows. In  
7 criminal court in the United States of America, in every  
8 court in United States of American, a defendant is  
9 presumed innocent until proven guilty beyond a reasonable  
10 doubt by the State. The State has the burden of proving  
11 each and every element of the offense beyond a reasonable  
12 doubt.

13 Now, until such time as 12 of you make a  
14 determination that the State has met its burden of proving  
15 each and every element of each of these Indictments, the  
16 defendant is presumed innocent. As Mr. Chappell sits in  
17 this courtroom right now, he has a cloak of innocence  
18 around him that has not been pierced or compromised in any  
19 way, shape or form. And you will make a determination as  
20 to whether the State has met its burden of proof. The  
21 reason I tell you that is because it's a very fundamental  
22 premises of our justice system, the presumption of  
23 innocence. And I also need to tell you that before I read  
24 these allegations. Because I'm going to read what the  
25 allegations are and I don't you to presume from the fact

1 that I'm reading to you factual allegations that I'm  
2 telling you what happened. I am not. I'm telling you  
3 what the allegations are.

4 Indictments are charging papers. And that is  
5 the charging paper which gets us to where we are now.  
6 Brings the charges which comes to trial. So I caution  
7 you, when I read to you the allegations, don't take that  
8 at face value. Twelve of you in this matter will  
9 determine whether those factual allegations are correct,  
10 what the facts are in this case and whether the State has  
11 met its burden of proof.

12 Now, ladies and gentlemen, I have five  
13 Indictments here and I've read to you all of the  
14 Indictment numbers. And they are essentially the same.  
15 And the State would allege that Mr. Frederick Robert  
16 Chappell, did in Greenville County, between December 1st,  
17 2010 and January 13th 2010, knowing the character or  
18 content of the material, possessed material that contained  
19 a visual representation of a minor engaged in sexual  
20 activity. In each and every Indictment there is an  
21 allegation that he was in possession of a separate video.  
22 Collectively five videos.

23 Now, ladies and gentlemen, the reason I read you  
24 the allegations is so that you can answer questions from  
25 an informed perspective and intelligently. And the first

1 question that I have to ask you is whether there is anyone  
2 among you who has any prior knowledge any prior  
3 disposition or any prior opinion regarding the parties or  
4 the allegations in this case?

5 All right, let the record reflect no affirmative  
6 response.

7 Ladies and gentlemen, Ms. Susannah Ross of the  
8 Greenville County bar is representing Mr. Chappell in  
9 lawsuit. I will ask you, is there anyone among you who  
10 has a professional, family or personal relationship with  
11 Ms. Ross?

12 All right, let the record reflect no affirmative  
13 response.

14 Ladies and gentlemen, as you know the Defendant  
15 is Mr. Frederick Robert Chappell. Is there anyone among  
16 you who has a personal, professional or personal  
17 relationship or family relationship with Mr. Chappell?

18 There was no response.

19 All right, ladies and gentlemen, the 13th  
20 Circuit Solicitor's Office is prosecuting this case.  
21 Mr. Mark Moyer is the assistant solicitor who will be  
22 prosecuting this case on behalf of the State. Is there  
23 anyone among you who has a personal or professional or  
24 family relationship with Mr. Moyer or anyone employed by  
25 the 13th Circuit Solicitor's Office?

1 Yes, sir.

2 PROSPECTIVE JUROR: Yes, Your Honor, I represent  
3 several clients who are being prosecuted by the  
4 Solicitor's Office. I don't know Mr. Moyer personally.

5 THE COURT: Okay, Mr. Neal, for the record would  
6 you state your name and juror number.

7 PROSPECTIVE JUROR: Jonathan Neal and my number  
8 is 152.

9 THE COURT: Okay, thank you, Mr. Neal. Let me  
10 ask you this, knowing that do you think that you could  
11 still be a fair and impartial juror in the trial of this  
12 case and render a verdict in accordance with the law as I  
13 give it to you?

14 PROSPECTIVE JUROR: I do, Your Honor.

15 THE COURT: All right, thank you, Mr. Neal, I  
16 appreciate you telling me that, sir.

17 Anyone else?

18 There was no response.

19 Okay, ladies and gentlemen, I'm going read to  
20 you a list of prospective witnesses in the case. This may  
21 be a comprehensive list, it may not be. But as we look at  
22 the case going forward, these are witnesses who maybe  
23 called. And I'm going to read that list off to you.

24 Those are Jim Perry, Michael Rainey, Corazon Navalle,  
25 Phyllis Lewis, Beverly Pettit, Corporal Whitner, Jenny

1 Moran, Corporal Cook. Now, ladies and gentlemen, is their  
2 anyone among you who has a personal or professional or  
3 family relationship with any of those perspective  
4 witnesses?

5 All right, let the record reflect there was no  
6 affirmative response.

7 Ladies and gentlemen, is there any member of the  
8 jury who has been a victim of a violent crime?

9 Yes, ma'am, if you'd stand and state your name  
10 and juror number.

11 PROSPECTIVE JUROR: Sharon Lavelle, juror 127.

12 THE COURT: Yes, ma'am.

13 PROSPECTIVE JUROR: Jim Perry, if it's the same  
14 Jim Perry, is someone that I hired on my ex husband. I  
15 don't know if this would...

16 THE COURT: As a private investigator?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. All right. Do you think  
19 knowing that you could still be a fair and impartial juror  
20 in the trial of this case and render a verdict in  
21 accordance to the law as I give it to you?

22 PROSPECTIVE JUROR: I sure could.

23 THE COURT: All right, thank you, I appreciate  
24 you telling me.

25 Okay, I know that was the question before. So

1 the next question was is there anyone among you who has  
2 been a victim of a violent crime?

3 All right, no affirmative response.

4 Is there anyone among you who has been sexually  
5 abused or have a close friend or relative who has been  
6 sexually abused?

7 PROSPECTIVE JUROR: My best friend was sexually  
8 abused by her father.

9 THE COURT: Okay, name and juror number?

10 PROSPECTIVE JUROR: Sue Boeker, 27.

11 THE COURT: Okay. Do you think you could still  
12 be fair and impartial given that fact?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right, thank you.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: I was sexually abused by a  
17 family member.

18 THE COURT: Okay, giving that fact do you think  
19 you could still be fair and impartial in this case.

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Okay, thank you for telling me, I  
22 appreciate that.

23 Yes, sir.

24 PROSPECTIVE JUROR: Yes, my wife was sexually  
25 abused by her father.

1 THE COURT: Okay. Do you feel that you could  
2 still be fair and impartial given that fact?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Okay, thank for telling me, I  
5 appreciate it, sir.

6 Okay. All right. Ladies and gentlemen, in this  
7 case the Defendant has been accused of possessing child  
8 pornography, depicting young children involved in graphic  
9 sexual acts. Is there any member of the jury panel who  
10 cannot put their motions aside and render a fair and  
11 impartial and objective decision in a case dealing with  
12 this subject matter?

13 Okay, let the record reflect there was no  
14 affirmative response.

15 Is there any member of the jury panel who works,  
16 volunteers or contributes in a financial support to any  
17 rape crises center?

18 There was no response.

19 Is there any member of the jury panel who  
20 financially supports, volunteers or works with the victim  
21 related services? And when I say that, is there anyone  
22 among you who contributes to or works with or is a member  
23 of any organization such as MADD or SADD or any  
24 organization that advocates for victims rights for  
25 criminal prosecution?

1           Okay, let the record reflect no affirmative  
2 response.

3           All right, is there anyone among you who is  
4 related, has a close family relationship by blood or  
5 marriage to someone who works in law enforcement?

6           Yes, ma'am.

7           PROSPECTIVE JUROR: My husband.

8           THE COURT: What's your name and juror number?

9           PROSPECTIVE JUROR: Tracy Winetroub, juror 219.  
10 He's a sheriff's deputy for Spartanburg County.

11          THE COURT: Do you think you still can be fair  
12 and impartial given that fact?

13          PROSPECTIVE JUROR: Yes, sir.

14          THE COURT: Thank you for letting me know, I  
15 appreciate it.

16          Yes, ma'am.

17          PROSPECTIVE JUROR: My husband was with Anderson  
18 County as a deputy and now he's a captain for Anderson  
19 County.

20          THE COURT: Okay, given that fact you think you  
21 can still be fair and impartial on this case?

22          PROSPECTIVE JUROR: Yes, sir.

23          THE COURT: Okay, thanks for letting me know, I  
24 do appreciate that.

25          Is there anyone among you who served on the

1 grand jury during the term at which this Indictment was  
2 handed down?

3 There was no response.

4 Okay, is there anyone among you who believes  
5 that for whatever reason, you could not be a fair and  
6 impartial juror in the trial of this case and render a  
7 verdict in accordance with the law as I instruct you?

8 All right, let the record reflect no affirmative  
9 response.

10 Any additional questions on voir dire?

11 MR. MOYER: Not from the State.

12 MS. ROSS: No, none from the Defense.

13 THE COURT: Okay. Good enough.

14 All right, ladies and gentlemen, now we're going  
15 to move forward with selecting a jury. I know you saw the  
16 video downstairs and it's going to go just like the video  
17 suggested. The Clerk of Court is going to read off your  
18 name. And when she reads your name, I just need you to  
19 come forward and face back out toward the rear of the  
20 courtroom, looking at that clock. The attorneys will then  
21 make preemptive challenges, that is strikes. And each  
22 side is going to get five strikes. So when you come up  
23 bring everything with you because you may be sitting in  
24 the jury box immediately. So bring your bag, backpack,  
25 pocketbook, man purse, fanny pack, whatever you may have

1 with you, bring it up. And if you hear twice, Please  
2 swear the juror or please seat the juror, then you will  
3 have been selected for case. If you hear just once, just  
4 once, either, Please excuse the juror from the trial of  
5 this case or please strike the juror, then you will have  
6 been excused from the trial of this case.

7 Now attorneys are given very wide discretion as  
8 to whom they may strike. And under the law they can  
9 strike just about anybody for any reason. So I don't know  
10 what your pre-disposition is about getting on this jury or  
11 not but please don't take it as an insult if you are  
12 either stricken or if you're put on this jury. Because as  
13 I suggested to you, they've got very wide latitude. If  
14 you are stricken or selected you may never know exactly  
15 why that is.

16 So having said that, you may call. Five and  
17 five.

18 THE CLERK: Juror 218, Philip Turner.

19 (Philip Turner, a white male, came forward.)

20 What says the State?

21 THE COURT: Mr. Turner, before we proceed, did I  
22 excuse you for one day this week?

23 PROSPECTIVE JUROR: Thursday.

24 THE COURT: Thursday, okay.

25 Counsel, we don't anticipate going as along as

1 Thursday on this case, do we?

2 MR. MOYER: No, not all, Your Honor.

3 THE COURT: Okay, good enough.

4 If I gave you an excusal for a day this week or  
5 any period of time, please let me know when you get  
6 called, okay.

7 Thank you, Mr. Turner.

8 MR. MOYER: Please present Mr. Turner.

9 THE CLERK: What says the Defendant?

10 MS. ROSS: Please excuse Mr. Turner.

11 THE CLERK: All right, Mr. Turner, you may be  
12 seated, you have been excused from this case.

13 Juror number 194, Edward Thompson.

14 (Edward Thompson, a white male, came forward.)

15 What says the State?

16 MR. MOYER: Please present Mr. Thomason.

17 THE CLERK: What says Defendant?

18 MS. ROSS: Please seat the juror.

19 THE CLERK: Mr. Thompson, please have a seat in  
20 the jury box.

21 Juror 217, Michael Segee.

22 (Michael Segee, a white male, came forward.)

23 What says the State?

24 MR. MOYER: Please present Mr. Segee.

25 THE CLERK: What says the Defendant?

1 MS. ROSS: Please seat the juror.

2 THE CLERK: Sir, please have a seat in the jury  
3 box.

4 Juror number 219, Tracy Winetroub. 219.

5 (Tracy Winetroub, a white female, came forward.)

6 What says the State?

7 MR. MOYER: Please seat the juror.

8 THE CLERK: What says the Defendant?

9 MS. ROSS: Please excuse Ms. Winetroub.

10 THE CLERK: All right, ma'am, you may be seated,  
11 you've been excused from the trial of this case.

12 Juror 165, Barbara Rigg. 165, Barbara Rigg,  
13 R-I-G-G.

14 (Barbara Rigg, a white female, came forward.)

15 What says the State?

16 MR. MOYER: Please present Ms. Rigg.

17 THE CLERK: What says the Defendant?

18 MS. ROSS: Please excuse Ms. Rigg.

19 THE CLERK: All right, Ms. Rigg, you may be  
20 seated, you've been excused from this case.

21 Juror 206, Barbara Wilke.

22 (Barbara Wilke, a white female, came forward.)

23 What says the State?

24 MR. MOYER: Please present Ms. Wilke.

25 THE CLERK: What says the Defendant?

1 MS. ROSS: Please seat the juror.

2 THE CLERK: Ms. Wilke, please have a seat in the  
3 jury box.

4 Juror 216, Subhadra Sathyanathan.

5 (Subhadra Sathyanathan, an Indian female, came  
6 forward.)

7 What says the State?

8 MR. MOYER: Please present the juror.

9 THE CLERK: What says the Defendant?

10 MS. ROSS: Please seat the juror.

11 THE CLERK: Ma'am, please have a seat in the  
12 jury box.

13 THE COURT: Ma'am, how do we pronounce your  
14 name?

15 MS. SATHYANATHAN: Sathyanathan.

16 THE COURT: Sathyanathan, very good.

17 THE CLERK: Juror 197, Gina Turner.

18 (Gina Turner, a white female, came forward.)

19 What says the State?

20 MR. MOYER: Please present Ms. Turner.

21 THE CLERK: What says the Defendant?

22 MS. ROSS: Please seat Ms. Turner.

23 THE CLERK: Ms. Turner, please have a seat in  
24 the jury box.

25 Juror 89, Richard Gunter.

1 (Richard Gunter, a white male, came forward.)

2 What says the State?

3 MR. MOYER: Please present Mr. Gunter.

4 THE CLERK: What says the Defendant?

5 MS. ROSS: Please seat the juror.

6 THE CLERK: Sir, please have a seat in the jury

7 box.

8 Juror 138, Marvin Clark.

9 (Marvin Clark, a white male, came forward.)

10 What says the State?

11 MR. MOYER: Please present Mr. Clark.

12 THE CLERK: What says the Defendant?

13 MS. ROSS: Please seat the juror.

14 THE CLERK: Sir, please have a seat in the jury

15 box.

16 Juror 15, Karen Bashkami.

17 (Karen Bashkami, a white female, came forward.)

18 What says the State?

19 MR. MOYER: Please present Ms. Bashkami.

20 THE CLERK: What says the Defendant?

21 MS. ROSS: Please seat the juror.

22 THE CLERK: Ma'am, please have a seat in the

23 jury box.

24 Juror 21, Thomas Black.

25 (Thomas black, a white male, came forward.)

1                   What says the State?

2                   MR. MOYER: Please excuse the juror in this  
3 case.

4                   THE CLERK: All right, sir, you may be seated,  
5 you have been excused from this case.

6                   Juror 88, Janet Griffin.

7                   (Janet Griffin, a white female, came forward.)

8                   What says the State?

9                   MR. MOYER: Please present Ms. Griffin.

10                  THE CLERK: What says the Defendant?

11                  MS. ROSS: Please seat the juror.

12                  THE CLERK: Ma'am, please be seated in the jury  
13 box.

14                  Juror 53, Sanda Crider.

15                  (Sanda Crider, a white female, came forward.)

16                  What says the State?

17                  MR. MOYER: Please present Ms. Crider.

18                  THE CLERK: What says the Defendant?

19                  MS. ROSS: Please seat the jury.

20                  THE CLERK: Ma'am, please take your seat in the  
21 jury box.

22                  Juror 131, Jeffery Light.

23                  (Jeffery Light, a white male, came forward.)

24                  What says the State?

25                  MR. MOYER: Please present Mr. Light.

1 THE CLERK: What says the Defendant?

2 MS. ROSS: Please excuse Mr. Light.

3 THE CLERK: All right, sir, you may be seated,  
4 you've been excused from this case.

5 Juror 152, Jonathan Neal.

6 Jonathan Neal, a white male, came forward.)

7 What says the State?

8 MR. MOYER: Please--

9 THE COURT: Mr. Neal, I excused you for?

10 MR. NEAL: Wednesday and Thursday.

11 THE COURT: Wednesday and Thursday, okay.

12 THE CLERK: What says the State?

13 MR. MOYER: Please excuse the jury in this case.

14 THE COURT: All right, sir, you may be seated.

15 Juror 169, Elizabeth Rose.

16 (Elizabeth Rose, a white female, came forward.)

17 What says the State?

18 MR. MOYER: Please present Ms. Rose.

19 THE CLERK: What says the Defendant?

20 MS. ROSS: Please excuse Ms. Rose.

21 THE CLERK: All right, Ms. Rose, you may be  
22 seated.

23 THE COURT: Count five for the Defense.

24 THE CLERK: Juror 39, Veronica Burton.

25 (Veronica Burton, a black female, came forward.)

1                   What says the State?

2                   MR. MOYER:   Please present Ms. Burton.

3                   THE CLERK:   What says the Defendant?

4                   MS. ROSS:    Please seat the juror.

5                   THE CLERK:   Ma'am, please have a seat in the  
6 jury box.

7                   Juror 27, Susan Boeker.

8                   (Susan Boeker, a white female, came forward.)

9                   What says the State?

10                  MR. MOYER:   Please present Ms. Boeker.

11                  THE CLERK:   What says the Defendant?

12                  MS. ROSS:    Please seat the juror.

13                  THE CLERK:   Ma'am, please have a seat in the  
14 jury box.

15                  THE COURT:   All right, two alternates.  Strikes  
16 are one and two per alternate.

17                  THE CLERK:   Juror 173, Lori Sears.

18                  (Lori Sears, a white female, came forward.)

19                  What says the State?

20                  MR. MOYER:   Please present Ms. Sears.

21                  THE CLERK:   What says the Defendant?

22                  MS. ROSS:    Please seat the alternate.

23                  THE CLERK:   Ma'am, please have a seat in the  
24 jury box.

25                  Juror 127, Sharon Lavelle.

1 (Sharon Lavelle, a white female, came forward.)

2 What says the State?

3 MR. MOYER: Please present Ms. Lavelle.

4 THE CLERK: What says the Defendant?

5 MS. ROSS: Please excuse Ms. Lavelle.

6 THE CLERK: All right, Ms. Lavelle, you may be  
7 seated, you have been excused from this case.

8 Juror 186, Kimberly Sottung.

9 (Kimberly Sottung, a white female, came  
10 forward.)

11 What says the State?

12 MR. MOYER: Please present Ms. Sottung.

13 THE CLERK: What says the Defendant?

14 MS. ROSS: Please seat the alternate.

15 THE CLERK: All right, ma'am, please have a seat  
16 in the jury box.

17 THE COURT: All right, Counsel, any matter of  
18 law or issues to take up with respect to the qualification  
19 or selection of this jury?

20 MR. MOYER: Not from the State, Your Honor.

21 MS. ROSS: Not from the Defense.

22 THE COURT: Okay. All right, ladies and  
23 gentlemen, we have our jury in this case. I extend to you  
24 either condolences or congratulations for either having  
25 been picked or not having been picked, depending on your

1 pre-disposition of jury service. For those of you who  
2 weren't picked, you can go back downstairs, Ms. Olsen will  
3 give you instructions from there. They may be picking  
4 another jury today and they not, I don't know. There's a  
5 civil court going on and I think they may have already  
6 sent a jury pool to that courtroom. There's another  
7 criminal trial -- or excuse me, criminal courtroom but I  
8 don't know if they're picking a jury today or not. So go  
9 down and Ms. Olsen will give you further instructions.  
10 Thanks for coming up and I hope y'all have a good week.

11 If y'all want to come up real quick.

12 (WHEREUPON, a bench conference was held.)

13 THE COURT: All right, ladies and gentlemen of  
14 the jury, what I was talking to them about was scheduling.  
15 I'm going to release you for lunch now. I was just trying  
16 to determine how long I need to give you for lunch. Well  
17 not necessarily give you for lunch but to give us for  
18 about an hours worth of business and then a lunch period  
19 until y'all get back. We do have some business to take up  
20 on this case before we get started. I'm going to listen  
21 to some motions regarding evidence and the way and manner  
22 of proceeding so hopefully when we get started we'll go a  
23 lot more efficiently than we would have otherwise. And  
24 hopefully you won't be sitting in that box any longer than  
25 you absolutely have to in this case.

1           I also have some business to take up on some  
2 other cases that I want to resolve before we get started  
3 on this case. Because I don't want to be distracted once  
4 we get started on this case. So I'm going to release you  
5 until 2:30 this afternoon. That should give us about an  
6 hours and a half worth of court time to get rid of some  
7 business and then about an hour for lunch. If you will,  
8 please, I have not sworn you in yet, y'all don't know  
9 anything about the case yet other than the allegations  
10 that have been presented in this case. So please don't  
11 discuss the case. Don't discuss it with one another,  
12 don't discuss it with anyone else. Because it's not  
13 appropriate that you discuss it yet. You shouldn't begin  
14 any deliberations, any discussions, any analysis until  
15 you've heard all of the evidence in this case. That is  
16 all of the evidence in this case.

17           Because you know from your own personal  
18 experience and from your common sense, that you cannot  
19 come to any intelligent resolution or any intelligent  
20 conclusion until you know all the facts that bear upon an  
21 issue. So keep your power drive, don't discuss it.  
22 You're going to be able to go to lunch, don't get on your  
23 phone and call your significant other, your brother, your  
24 sister, anyone and start talking about the case. And if  
25 someone invites you to discuss it just tell them I can't

1 discuss it yet because I've been told not to. Also, don't  
2 go back to your office, your home, get on your little  
3 smart magical phone and start doing research on this case.  
4 And see if you can find something on the Clerk of Court's  
5 website or in the media or any other source. I'm not  
6 certain that you could, as a matter of fact, I think you  
7 probably couldn't.

8 But understand that the only thing that's  
9 appropriate for your consideration in this case is what is  
10 presented accordance to the law and accordance with the  
11 law and accordance with the rules of the Court. So if you  
12 consider anything outside of court or if you deliberate  
13 about this case with anyone else other than the jurors at  
14 the appropriate time, then you will have violated the oath  
15 that you're about to take when you get back. And you  
16 would have also caused me a significant problem. So  
17 please do not discuss the case. I'll see y'all back 2:30.  
18 Thank you, very much. Y'all have a great day -- sorry,  
19 great lunch, excuse me.

20 (WHEREUPON, the jury left open court at  
21 approximately 12:50 p.m.)

22 THE COURT: Okay, do y'all think that half an  
23 hour is going to be sufficient for the arguments that  
24 you're going to make? Y'all want me to go ahead and just  
25 plow through it now?

1 MS. ROSS: It doesn't matter.

2 THE COURT: Let's go ahead and do that.

3 MR. MOYER: You want to take a plea first?

4 THE COURT: To me it doesn't make a difference.  
5 It may make a difference to Mr. Varner and it may make a  
6 difference to Mr. DeLoach. So I'm going to let the four  
7 of all put your heads together and decide who wants to go  
8 first.

9 MR. MOYER: I just assume let them get it out of  
10 he way then we can go forward. But however, Your Honor,  
11 wants to do it.

12 THE COURT: All right, counsel we have motions?

13 MS. ROSS: Judge, yes, I had one on the jury, I  
14 didn't want to say it in front of them. I should have  
15 argued that some of those people who stood up should have  
16 been struck for cause. But as it ended up I had to take  
17 juror number 27 and could not strike her. She was the one  
18 who stated her best friend had been molested by her  
19 father. I would argue that that is a situation that would  
20 cause a great potential for unfair prejudice and  
21 interferes with my client's right to a fair trial.  
22 Therefore, I move to have her struck for cause. And at a  
23 minimum the alternate put in her place at this time.

24 I would point out that the other ones I struck  
25 of the first one, I guess was a choice. He did the

1 alternative music choir for his church. The second one  
2 was the one for cause. She stood up and said that I  
3 believe that she had been molested. The third one, also  
4 either had law enforcement in the family or stood up. The  
5 fourth one his wife had been molested. And the fifth one  
6 her and her husband both taught and worked at Bob Jones.  
7 And that was my basis. So I feel like giving the nature  
8 of this charge, at least take number 27 and I believe that  
9 there is an argument that she could be unfair and  
10 impartial in this case. Though she said she wouldn't be  
11 given that this involved images of older men with  
12 children, I would say that that certainly could cause  
13 unfairness so I do strike her for cause.

14 THE COURT: I understand.

15 All right, the State's position on that, sir.

16 MR. MOYER: Your Honor, first off, too late.

17 The objection should have been made at the time. My  
18 second response is this, Your Honor asked them that very  
19 specifically whether they could be fair and impartial.  
20 And all the jurors who responded to your questions  
21 unequivocally, with firm voice and quickly told Your Honor  
22 that they could be fair and impartial. And it's not our  
23 place to second guess them. So for those reasons, Your  
24 Honor, I would argue there's no reason to set those jurors  
25 aside.

1 MS. ROSS: Judge, I would argue that it's your  
2 place to ensure a fair trial for my client. And also,  
3 some cases there is an opportunity to strike for cause.  
4 It puts the defense attorney in a bad place when they  
5 would be forced to say in front of the entire jury who's  
6 going to hear the case that they want to strike one of the  
7 people for cause at that point. And that's my basis for  
8 doing that so I don't think I missed my opportunity. I  
9 took the first opportunity out of the presence of the jury  
10 and the venire pool to make my objection.

11 THE COURT: Okay. This what I'm going to do. I  
12 do prefer that you make it contemporaneous with the jury  
13 selection. Even if you asked to approach, it puts me in a  
14 position of being able to adjust and get another  
15 alternate. Right now I'm not going to make a ruling on  
16 that, I'm going to leave her on the juror. At the close  
17 of the case, before it goes back to the jury, if we still  
18 have 14 jurors left standing, then I'll reconsider that  
19 motion. Renew it at that point. What I don't want to  
20 happen is us to get through a day of testimony and  
21 proceedings only to find out we're down to 11 jurors and  
22 for some reason have a mistrial. So as a practical matter,  
23 I'm going to take that under advisement. Renew it before  
24 I give it to the jury for deliberations. Okay.

25 MS. ROSS: All right, Your Honor.

1 THE COURT: All right, next motion.

2 MS. ROSS: I've got a Brady motion. We  
3 requested Brady and Rule 5. And was -- received discovery  
4 in the case. What that didn't include was the records  
5 that Mr. Chappell was actually on electronic monitoring  
6 during the entire time of this. I subpoenaed or requested  
7 that those records be subpoenaed last week or week before  
8 last, Friday before last. And actually requested someone  
9 be here from the records home incarceration program and  
10 they're not here either. And I received those records  
11 Friday afternoon. After going through those records, it  
12 is apparent that at some periods when -- it gets kind of  
13 complicated. When there's alleged manipulation or access  
14 or modification made on the computer, working with the  
15 child pornography. And I don't have a very great  
16 understanding of this but I got a printout showing images  
17 and when they were accessed and when they were modified.  
18 And during some of those periods Mr. Chappell was actually  
19 at work. And has evidence of that that came in through  
20 these home incarceration records.

21 These records are kept in regular course of  
22 business by the law enforcement center. Under Kyles v.  
23 Whitley and Brady the State has a duty to provide  
24 evidence -- evidence that is exculpatory or could lead to  
25 exculpatory evidence that is in their possession of

1 purview. And this I certainly would argue that it would  
2 be. So I would argue that a violation has been made  
3 there.

4 THE COURT: Is the violation it's missing  
5 information or that it was provided late?

6 MS. ROSS: Well they never provided it. I got  
7 it at the last minute and spent the weekend kind of going  
8 through trying to create like a calendar of going through  
9 pages and pages of different times. And in doing that, I  
10 found that -- found something out. But because of --  
11 because I just found it out now that during these times  
12 that he's allegedly looking or modifying child  
13 pornography, he was at work or away from his computer. So  
14 it's really a situation where I move to dismiss based on  
15 that. And certainly move for a continuance so if I need  
16 to I can hire an expert to figure out what these things  
17 mean. Because at this point I don't. And so that would  
18 be my allegation on the Brady.

19 THE COURT: Okay, Mr. Moyer, did you have those  
20 documents in your possession, your case file and that part  
21 of your investigation?

22 MR. MOYER: No, Your Honor. In fact, that's the  
23 first I've heard of it is this morning. So I guess,  
24 before I fully respond, I'm not quite sure I understand  
25 the relief that's being requested. It certainly wouldn't

1 be grounds for a dismissal. I guess my understanding the  
2 relief requested is a continuance. Your Honor, as far as,  
3 as I stated, as far as this being a Brady issue, it was  
4 never any question to me that that was an issue in this  
5 case. The defense certainly knew that her client was on  
6 electronic monitoring, she could subpoena his records just  
7 as easily as anyone or as easily as I could. And when  
8 Ms. Ross stated that she requested the records last week,  
9 it was not don't through us so it must have been done  
10 directly through that agency. So I don't see how this is  
11 a Brady issue, Your Honor.

12 THE COURT: Okay. All right.

13 Let me make sure, Ms. Ross, that I understand  
14 what you're saying is there is a conflict in the time when  
15 it is alleged that there was this type of illegal material  
16 accessed, your allegation is that your client was at work?

17 MS. ROSS: Right. During some of those times.  
18 Certainly not all because he's not at work all the time  
19 but he just happened to be at work some of these times.  
20 And I'd add this whole incident came up through Beverly  
21 Petit or someone in the where the sex offender registry  
22 office who would certainly be aware that Mr. Chappell was  
23 on home incarceration as well. You know, again, people  
24 who are in the law enforcement center who oversee that  
25 program.

1           THE COURT: Okay. And what would a continuance  
2 afford you the opportunity to do that you couldn't do  
3 today or tomorrow?

4           MS. ROSS: Well, to simply make some  
5 determination about -- it's complicated. On these sheets  
6 they have different dates and times, they have access time  
7 and modification time. I don't know whether modification  
8 time is the time that required presence of the person or  
9 not. I simply do not know that. And I did not know that  
10 it was an issue until over the weekend as I'm putting  
11 these calendars together and seeing wow, these  
12 modification times were all when Mr. Chappell was at work.  
13 Or away from his home according to his electronic  
14 monitoring bracelet.

15           THE COURT: Okay. All right. At this point I'm  
16 going to respectfully deny the motion to dismiss and for a  
17 continuance. I think that first of all, I don't think it  
18 was subject to Brady. I recognize there is a requirement  
19 on the State to turn over exculpatory evidence that's in  
20 their possession. However this was evidence that wasn't  
21 in their possession. It was received by and through an  
22 additional subpoena which was issued. So I don't know  
23 that the State had any ability to effect the timing of the  
24 issuance of that subpoena. Also, I will say that I see  
25 that there has been a subpoena issued for those custodians

1 of record, Corporal Whitner and Corporal Smith, and is  
2 Jenny Moran one of those persons as well?

3 MS. ROSS: Yeah, we were simply trying to get my  
4 investigator, Cam Jones, has had some difficulty trying to  
5 figure out who she was supposed to subpoena. Originally  
6 she did subpoena Jenny Moran then she was told to do  
7 Corporal Whitner who was out of town last week. And then  
8 she was told no to do the Sentinel, independent contractor  
9 who reviews these.

10 THE COURT: Okay.

11 MS. ROSS: So we have done all that we could,  
12 sort of re-faxed everything last Thursday to try to assure  
13 that those subpoenas went out.

14 THE COURT: Okay, this is what I'm going to do.  
15 It sounds to me, if I'm not mistaken, like we got a little  
16 bit of time in this case. That is that the State's  
17 probably going to put up evidence today that's going to be  
18 about an hour and a half. And if you want to wait until  
19 tomorrow morning to put any evidence in the record and  
20 have the opportunity to talk with somebody. And if you  
21 tell me that it's absolutely necessary, perhaps we can  
22 start late in the morning. Because the answer -- or  
23 excuse me, the question that you pose is a very simple  
24 question that can be answered fairly easily once you have  
25 the opportunity to talk to somebody.

1 MS. ROSS: Okay.

2 THE COURT: And then if you need to you can put  
3 that person on the stand and ask them questions related to  
4 the times and then present whatever evidence you need to  
5 present, demonstrate that he was someplace else. If you  
6 got it.

7 MS. ROSS: All right, thank you. Then I'd like  
8 to move on to another motion to dismiss that I have based  
9 on lack of probable cause to the issue the search warrant  
10 in this case. That's pursuant to Section 17-13-140 South  
11 Carolina Code Annotated and South Carolina Article 1  
12 Section 10 of our Constitution and the US Fourth and 14th  
13 Amendment of due process. Essentially you got a search  
14 warrant issued in this case. And it's based on a long  
15 attached affidavit. It's printed out. On the front of  
16 the search warrant there's no -- it says, See attached  
17 affidavit. There's no mention of an oral amendment to  
18 that affidavit.

19 THE COURT: Yes, ma'am.

20 MS. ROSS: And no indications that there was any  
21 kind of oral amendment. It just simply says attached --  
22 based on attached affidavit. In that affidavit, it states  
23 quite a bit, I think it's five or six pages long. And it  
24 talks about information gained from a confidential source.  
25 Stating that Frederick Chappell had images and videos of

1 pornography on his home laptop located  
2 in Greenville, South Carolina. The confidential source  
3 stated a video of a four to five year-old female child was  
4 seen naked with her legs spread and pointing to the  
5 camera. Then it goes on. That's the extent of the  
6 affidavit around the confidential source. There's no  
7 indication of any independent reliability of that  
8 confidential source. In the affidavit or in the warrant  
9 itself.

10 My understanding from Illinois v. Gates, that a  
11 warrant based solely on information from the CI must  
12 contain information supporting the credibility of the  
13 informant and the basis of his knowledge. And that's also  
14 State v. 192 Coin Operated Machines of South Carolina  
15 state, case from 2000. Here we'd argue that's simply not  
16 sufficient information presented for the magistrate to  
17 make that a determine of a probable cause. So we'd move  
18 to dismiss or suppress to introduce any found pursuant to  
19 that search warrant.

20 THE COURT: Okay, Mr. Moyer.

21 MR. MOYER: May it please the Court. Two  
22 arguments as to why this should not be suppressed. First  
23 argument I would have, Your Honor, is that the search  
24 warrant wasn't needed in this case. The computer was  
25 seized from the Defendant's home on January 13th of 2011

1 after this Defendant's mother called law enforcement  
2 stating that she saw child pornography on the Defendant's  
3 computer. Officers went to the home--

4 THE COURT: Is the mother the confidential  
5 informant?

6 MR. MOYER: Yes, sir, Your Honor. The mother is  
7 the confidential informant. The two investigators went to  
8 the residence where this defendant lived, while he was not  
9 there, while he was away at work. Officers got a consent  
10 to enter the home to search the home.

11 THE COURT: From whom?

12 MR. MOYER: From the mother who lived there.

13 THE COURT: She lived there. Did she have a  
14 ownership interest in the house?

15 MR. MOYER: Yes, sir, Your Honor. Yes. I mean,  
16 she lived there, it was her home.

17 THE COURT: She owned it or she was on the  
18 lease?

19 MR. MOYER: I'm assuming so, Your Honor. I do  
20 know that it was her home and that the Defendant was  
21 living there with her.

22 THE COURT: Okay.

23 MR. MOYER: She pointed out the computer to the  
24 officers and the officers seized the computer at that  
25 time. They took it back to their offices and before

1 conducting an examination, just to be safe, they got a  
2 search warrant. I would argue to, Your Honor, that they  
3 don't need a search warrant. They have the evidence  
4 lawfully by other means. Once they have it, there's no  
5 reason for them to have to get a search warrant to examine  
6 it. I think it would be analogous to having a firearm.  
7 When you have a firearm in a murder case you don't have to  
8 get a search warrant to then go forward to do an  
9 examination of the firearm. So I would argue they don't  
10 have to.

11           However, they do get a search warrant. And I  
12 would argue that there's nothing wrong with the search  
13 warrant. They got the search warrant on the following  
14 day, January 14th, 2011. We can enter the search warrant,  
15 obviously, if, Your Honor, wants to look at. The search  
16 warrant was returned within 10 days. Search warrant was  
17 served on the computer.

18           And in the search warrant and under probable  
19 cause, the officer talks about the confidential informant.  
20 And due to the fact that it was this Defendant's mother  
21 and she did not wish that to become known at the time,  
22 she's the one that turned him in. The independent  
23 reliability of this confidential informant is established  
24 in several ways. First off, she says she saw this child  
25 pornography herself. So the fact that she saw it is

1     corroboration of her reliability right there.  And  
2     secondly, Your Honor, the officers did get a written  
3     statement from her on the day they took the computer.  And  
4     the officers tell me that when they got the search warrant  
5     that that information was relayed to the magistrate at  
6     that time.  That the officers told the Magistrate who the  
7     confidential informant was.  She did not want that in the  
8     search warrant because obviously -- because earlier on she  
9     did not want her name being out there in written form.  
10    But the officers did let the Magistrate know.  So there's  
11    two independent sources of reliability for this  
12    confidential informant.

13             THE COURT:  Okay.  Good enough.

14             Mr. Ross, anything you'd like to say in  
15    response?

16             MS. ROSS:  Well, yes.  Firstly, there's plenty  
17    of room on the search warrant itself to say, Based on the  
18    attached, written affidavit and oral amendments made to me  
19    personally by law enforcement, I issue this warrant.  That  
20    is specifically not there.  It says, Based on the attached  
21    information alone, that affidavit.  There's no other  
22    evidence to show that this statement or written statement  
23    was shown to the Magistrate or given to the Magistrate.  
24    And the issue here under the statute is simply, did the  
25    Magistrate have probable because to issue that search

1 warrant?

2           Now as far as with a confidential informant,  
3 they have to show independent reliability of some sort.  
4 And that can be based on some circumstances. I would  
5 certainly give that if someone says this is a new  
6 informant but because he said it was going to be a bright  
7 yellow van with white side walls that meets in the yard at  
8 10:30 at night. That degree of specificity gives some  
9 credibility to the CI's knowledge being -- information  
10 being reliable. Here is simply a recitation of what would  
11 be child pornography. It's not anything that gives any  
12 kind of specificity such that it would be independently  
13 reliable or give independent credibility to the CI. So  
14 for that reason, I would maintain that the search warrant  
15 does not pass mustard to give probable cause to that  
16 issuing Magistrate.

17           THE COURT: All right, it's very difficult in a  
18 vacuum to determine whether those factors which you  
19 enumerated, Ms. Ross, were actually met. And whether it  
20 was issued with sufficient probable cause. Who was the  
21 affiant? Who was seeking the warrant, which officer?

22           MR. MOYER: Investigator Perry.

23           THE COURT: Investigator Perry, would you come  
24 up and be sworn in, please, sir.

25           INVESTIGATOR PERRY: Yes, sir. And.

1 THE CLERK: Sir, would you, please place your  
2 left hand on the Bible, raise your right hand.

3 JIM PERRY, after being duly sworn, testified as  
4 follows:

5 THE CLERK: Thank you, please be seated.

6 THE COURT: I'm going to ask questions from the  
7 Court, okay.

8 EXAMINATION

9 BY THE COURT:

10 Q Investigator Perry, would you tell me what you  
11 told -- what you gave, what you told the Magistrate  
12 Judge to present as probable cause for the issuance  
13 of the search warrant at issue in this case?

14 A Yes, sir. When I went in and presented the search  
15 warrant to the Judge I said, My confidential source  
16 of the search warrant is the Defendant's mother. She  
17 requested not to be named in it because obviously it  
18 is her son. And she was also scared if he were to  
19 find out. So I said, And I had told her, I said, If  
20 it goes to trial it's going to come out that you were  
21 the confidential source. And she understood that.  
22 So I told the Judge that. Just exactly that. That  
23 the mother was the confidential source.

24 Q Okay. And did you attach the affidavit that's  
25 attached to the search warrant at the time you

## JIM PERRY-EXAMINATION BY THE COURT

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1 presented it to the Judge for his signature?

2 A Yes, sir. I mean, it was all in one, yes, sir.

3 Q So he had the opportunity not only to hear that  
4 information from you but also the affidavit?

5 A Correct.

6 Q Okay. And the affidavit was sworn to, is that  
7 correct?

8 A That's correct.

9 Q And you were sworn in at the time to tell the truth  
10 as well, sir?

11 A That's correct.

12 Q Did you, in fact, tell the truth?

13 A I did.

14 Q When you effected the search, sir, were you given  
15 consent by the owner or the supposed owner of the  
16 home to effect that search?

17 A Actually I was given it twice. Once over the phone.  
18 I called her to set up a time to come out to see her.  
19 And those questions were asked at that time. Whose  
20 house is it?

21 She says, it's my house. Mine and my husband.

22 I said -- I asked her, you know, where was the  
23 computer? Because she was telling me what she had  
24 seen on it. She told me it was in the common area of  
25 the den. Then I said, the third thing I said, Will

1 you give me consent to search your house?

2 She said, Yes, I will.

3 We went out there, knocked on the door, she  
4 invited us in. I had her sign a consent to search.

5 She said, There it is, right there. Pointed to  
6 the computer.

7 It was right where she said it was on the phone.  
8 We took possession of it, had her sign a evidence  
9 sheet saying that we took that from her residence.

10 THE COURT: Okay. All right, thank you.

11 Ms. Ross, do you have any questions you'd like  
12 to ask the officer?

13 CROSS-EXAMINATION

14 BY MS. ROSS:

15 Q One second. Just looking at the actual search  
16 warrant, did you make out the search warrant? I'll  
17 show you a copy. This is the search warrant itself.

18 Judge, would you like to see a copy of it?

19 THE COURT: Sure.

20 BY MS. ROSS:

21 Q Now on that search warrant it says, that the Judge  
22 signed, it says, Simply based on the attached  
23 affidavit?

24 A Correct.

25 Q And it doesn't say, As well as the oral amendments

## JIM PERRY-CROSS BY MS. ROSS

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1 presented to me by Jim Perry today?

2 A I never presented that in the past.

3 Q Okay.

4 A We always told the Judge any additional information  
5 needed.

6 MS. ROSS: All right, I got no further  
7 questions.

8 THE COURT: Okay. All right.

9 Mr. Moyer, I think I asked all the questions I  
10 need to know from your perspective but you're welcome to  
11 ask any if you have any.

12 MR. MOYER: I don't think I do at this time,  
13 Your Honor. I would just move to have a copy of the  
14 search warrant entered into the record.

15 THE COURT: Any objection to that, Ma'am?

16 MS. ROSS: No objection.

17 THE COURT: Okay, then we'll enter that into the  
18 record as Court's Exhibit No. 1.

19 (WHEREUPON, Court's Exhibit No. 1 was marked for  
20 identification and received into evidence.)

21 THE COURT: All right, having heard the  
22 testimony of Investigator Perry and the argument from  
23 counsel, I respectfully deny the motion. I don't know of  
24 any requirement under the law that any oral amendments be  
25 specifically referred to on the face of the affidavit. My

1 experience in issuing search warrants as a City Court or  
2 Summary Court Judge would indicate that it's -- the  
3 Magistrate is given broad discretion in determining  
4 whether there is a threshold of probable cause to issue  
5 the warrant. On the face of the warrant it is certainly  
6 sufficient in conjunction with the affidavit.

7 With respect to reliability, I take note that  
8 although there may not have been a specific finding of  
9 reliability of the confidential informant by the  
10 Magistrate Judge, it's apparent that it was the mother of  
11 the Defendant who was very reluctant to disclose her  
12 identity as the person who had -- who had informed. And  
13 also, I take judicial notice of the natural infinity that  
14 exists between a mother and child. Therefore, I find that  
15 the liability prong of the test has been met.

16 All right, you may step down.

17 Additional motions?

18 MS. ROSS: Thank you, Judge. I would just renew  
19 my motion to stipulate that the -- I believe the State is  
20 going to attempt to show the Jury show --

21 THE COURT: You want to stipulate to that?

22 MR. MOYER: No, Your Honor.

23 THE COURT: Okay. That may be something that I  
24 need to look at, I don't know. In order to make a 403  
25 analysis -- and for the record, I don't mean to cut you

1 short, Ms. Ross. I think you made that argument before  
2 and I recognize it. And I took it to note. Your argument  
3 is essentially that under 403 analysis its prejudicial  
4 value is much greater than the probative value. I really  
5 can't make that determination without seeing it. I don't  
6 know whether it would really be instructive or whether it  
7 would be gratuitous to give them -- to show them a copy of  
8 it. If there is an acknowledgment and admission from the  
9 defense that, in fact, he was in possession of  
10 pornographic material.

11 Is that a stipulation, Ms. Ross?

12 MS. ROSS: Yes, we would stipulate that there  
13 was on that computer visual representation of a minor  
14 engaging in sexual activity which quotes the statute. I  
15 don't care how you phrase it, child pornography or  
16 anything like that. But we would stipulate that what  
17 those videos contain is -- certainly meets with the  
18 statute.

19 THE COURT: Okay. Beyond presenting evidence  
20 that there was pornographic material which displayed  
21 minors, children, what is the probative value of those  
22 videos?

23 MR. MOYER: Probative value, Your Honor, is to  
24 show -- well, Your Honor, the videos are the crimes  
25 themselves. I mean, the videos are the actual crimes. So

1 the jury -- are you ready to hear my entire argument on  
2 this issue, Your Honor?

3 THE COURT: Sure. Yeah.

4 MR. MOYER: First off, couching in terms of  
5 stipulation, would be incorrect at this stage. As, Your  
6 Honor, knows, stipulation is an agreement between the  
7 parties.

8 THE COURT: Yes, sir.

9 MR. MOYER: There is no requirement that the  
10 State agree to this.

11 THE COURT: I understand.

12 MR. MOYER: And as, Your Honor, is well aware,  
13 the cases of burglary and burglary first degree,  
14 introducing two prior convictions as an element of the  
15 crime. There have been several decisions where the Court  
16 declined to make the State agree to that. Therefore, the  
17 State has to prove those elements. The elements of the  
18 crime that the State has to prove are first off, is it a  
19 visual representation? Does it contain sexual activity?  
20 Does the sexual activity involve a minor? And did the  
21 Defendant know the character or content of this material?  
22 We have to prove all those elements to the jury. In order  
23 to do so the jury has to see these videos.

24 Now, this is very different from cases in which  
25 the courts have overturned cases where photographs have

1    been introduced.  Graphic photographs that appeal to the  
2    emotion of the jury.  In fact, the most recent case was  
3    from the Court of Appeals, State v. Collins just last  
4    week.  The difference, Your Honor, is that in those cases,  
5    the photographs go to help the jury understand an element  
6    of the crime.  For example, graphic autopsy pictures to  
7    help the jury understand perhaps an element of malice.  
8    The difference in this case is these videos are not to  
9    help the jury understand some element but these videos are  
10   the actual crime in and of itself.  It would be like drugs  
11   in a drug case.  Or firearm in an unlawful possession of a  
12   firearm case.

13           And I am prepared to give, Your Honor, several  
14   cases in which the Courts have declined to -- forced the  
15   government to stipulate to the videos.

16           THE COURT:  I wouldn't force you to stipulate.  
17   And you're right, I wouldn't begin to force you to  
18   stipulate.  But the question is, and I understand exactly  
19   what you're saying, you're exactly right, you got to prove  
20   it.  But the question is, can you prove it by and through  
21   the testimony of the witnesses who say all of those  
22   various things?  The video, it's in his possession, it's a  
23   graphic and salacious video that depicts minors engaged in  
24   sexual conduct.  And that in and of itself proves it.  
25   Now, if there is exception taken to that proposition by

1 the defense in cross-examination or by way of evidence  
2 that is admitted in their case in chief, then it may  
3 become appropriate to put it actually in the record. Just  
4 know that I'm real reluctant to show the jury kiddie porn.  
5 I just am. I mean, at a threshold, at exception.  
6 Particularly, if there is an actual acknowledgment and  
7 there's no exception taken to that by the defense. I'm  
8 not going to make you enter into the stipulation. But on  
9 the other hand, I wouldn't let the defense deny that  
10 either.

11 Now, like I said, there's often time graphic  
12 materials presented to the jury which help the jury  
13 understand the nature of the offense or some important  
14 element that cannot be described and explained through  
15 testimony. Such as malice. Such as an entry wound which  
16 would describe how an act may have happened. Or some  
17 other graphic display of some person's body. Whether it  
18 be dismemberment or whether it be some other type of  
19 untoward act that was committed. But in this case, I  
20 don't know what -- I don't know what children  
21 participating in sexual acts is going to demonstrate to  
22 the jury which will help them in any way, shape or form to  
23 determine that he was in possession of kiddie porn. It is  
24 what it is. Right?

25 MR. MOYER: I mean, the jury is going to have to

1 decide whether it is what it is. The jury has to decide  
2 if they're minors.

3 THE COURT: The defense doesn't take exception  
4 to the fact that it was child pornography?

5 MS. ROSS: No. And I just want to pass up one  
6 case that I just printed out, it's kind of on point. It's  
7 not the whole case, it's just going through if the  
8 stipulation would have been accepted. I don't care if it  
9 comes in as a stipulation or it comes in as weighing the  
10 probative effect versus prejudice here. I think it  
11 becomes the same. There's also some cases that about  
12 gruesome autopsy photos that just go over and above  
13 demonstrative evidence and starts to appeal to the jury's  
14 emotion too much.

15 And further, just to put on the record, my  
16 understanding of this statute, the actual exploitation of  
17 the child, where the child is being abused is by being  
18 viewed. In fact, I feel like it's more exploitation of  
19 these children to let more people view them. So again, I  
20 would move that we don't show the videos unless, of  
21 course, I open the door in some way suggest that they  
22 weren't children or that it wasn't kiddie porn. Which I  
23 don't intend to do.

24 THE COURT: Okay.

25 MR. MOYER: If it please the Court, I would like

1 to hand up first off, United States vs. Danes case from  
2 federal circuit that is very similar to this situation  
3 that dealt with child pornography. Dealt with the same  
4 issue of the defense offering to stipulate as the Court  
5 stated that the prosecution's generally entitled to prove  
6 its case free from the defense offering to stipulate to  
7 the evidence.

8 THE COURT: You understand I'm not making you  
9 stipulate. You can disabuse yourself of any notion that  
10 I'm requiring you to stipulate.

11 MR. MOYER: Okay.

12 THE COURT: I'm unequivocally not going to make  
13 you stipulate. It's just a question of whether the actual  
14 video is going to be introduced. Okay. So this is what I  
15 want to do to protect the record. I want to put those  
16 videos into the record. In as much I can tell you right  
17 now as, distasteful it is for me, as much as I don't want  
18 to do it, I'm going to look at them. Then I'm going to  
19 see if there's anything in those videos which are  
20 probative to the issues that you must prove in this case.  
21 Other than their mere existence. Okay.

22 MR. MOYER: Okay.

23 THE COURT: You're going to make me watch them,  
24 aren't you? You're killing me, you're killing me. All  
25 right, if you'll put them into the record and mark them as

1 Court Exhibits, please.

2 MR. MOYER: Your Honor, would you like for me to  
3 make this a Court's Exhibit?

4 THE COURT: Make it Court's exhibit No. 2 if you  
5 would, please.

6 MR. MOYER: Okay.

7 (WHEREUPON, Court's Exhibit 2 was marked for  
8 identification and received into evidence.)

9 MR. MOYER: At this time, rather than a disk --  
10 I'm sorry.

11 INVESTIGATOR PERRY: Your Honor, do you have DLC  
12 on your computer? It's a free download for watching  
13 videos.

14 THE COURT: I'm sorry, sir, you'll have to get  
15 an interpreter in here. I know not what you are speaking  
16 of. I have this.

17 INVESTIGATOR PERRY: We may have to let you look  
18 at it on this one then. We know--

19 THE COURT: The CD won't allow it to work?

20 MR. MOYER: It needs a special program in order  
21 to play some of it. We can give you our laptop.

22 THE COURT: Okay, that's fine. And while you're  
23 at it, I do want you to give me the case law, too. I  
24 don't want you to think I'm not interested in case law  
25 that you have. I will look at that as well. I'll look at

1 it all in the context of the outstanding case law. Do I  
2 need any particular access code to do that?

3 MR. MOYER: I'll make sure it's up and running,  
4 Judge.

5 THE COURT: Okay. If I put it in my chambers  
6 and go to lunch and come back, is it going -- am I going  
7 to have to control, alt, delete, sign in some way, shape  
8 or form?

9 MR. MOYER: You may have to but I can give you  
10 the password.

11 THE COURT: Okay, while you're doing that,  
12 Ms. Ross, do you have additional motions, ma'am?

13 MS. ROSS: Yes, I have other motions on  
14 admissibility. This is a situation where Mr. Chappell  
15 has -- is on the sex offender registry.

16 THE COURT: Yes, ma'am.

17 MS. ROSS: And I would ask that that not be  
18 revealed to the jury nor would -- I would ask that his  
19 prior conviction or a pending charge be brought in as long  
20 as he does not testify.

21 THE COURT: Okay.

22 MR. MOYER: I don't dispute that, Judge.

23 THE COURT: About the registry? You agree with  
24 her that's not admissible?

25 MR. MOYER: I do.

1 THE COURT: All right, sir.

2 MS. ROSS: All right. And I think I'm going to  
3 have to bring up the electronic monitoring. I would just  
4 ask for a limiting [sic] instruction on that.

5 THE COURT: We'll see how it comes out and see  
6 if we can satisfy everybody on that.

7 All right, anything else, Ms. Ross?

8 MS. ROSS: No, Your Honor.

9 THE COURT: Okay, Mr. Moyer.

10 MR. MOYER: A couple of issues, Your Honor.  
11 First off, there is one video that is not the subject of  
12 one of the Indictments that's before the court. I would  
13 like to bring in testimony and either show the video or  
14 have officers testify about that video under Rule 404(b).  
15 The only reason that that Indictment is not before the  
16 court, I notice a problem with the Indictment this  
17 morning. So that charge, the jury's not going to be able  
18 to determine whether he's guilty or innocent of that  
19 charge. However, I believe under rule 404(b) it's  
20 certainly admissible. The testimony is going to be it was  
21 downloaded about the same time, same general nature of all  
22 the other videos. So I would move for that.

23 THE COURT: Okay. Do you have any exception to  
24 that under the noted rule?

25 MS. ROSS: If we're going to allow, without

1 showing the video, I would object to it. I think it's not  
2 the purpose of the Indictment, therefore it's irrelevant.  
3 So therefore, I would object to it. However, given in  
4 light of certain rulings as to you might make as to  
5 whether the videos are shown or not, that relevance or  
6 prejudice might be effected.

7 THE COURT: Okay. Well, I'll have to -- I'll  
8 have to see. But if it's for -- the purpose for the  
9 introduction is to demonstrate a prior bad act, and or to  
10 demonstrate a propensity to act in conformity therewith,  
11 then I just need to look at it. I might have to see the  
12 context. I'm going to go back and read the rule. So I'll  
13 let you know before we get started, just remind me, okay.

14 MR. MOYER: And my final motion, Your Honor,  
15 would concern some testimony that we would seek to elicit  
16 from the very first witness. So this is not quite right  
17 for the hearing, however, rather than having to stop and  
18 send the jury out, I thought I'd bring this up to you  
19 right now.

20 THE COURT: Yes, sir.

21 MR. MOYER: The first witness, Your Honor, we  
22 anticipate testifying about some comments made by a  
23 witness who is not present. That witness being the person  
24 who is referred to as the confidential informant. We  
25 anticipated calling her as a witness and she actually died

1. yesterday. The defendant's mother. The witness is going  
2 to be a person with law enforcement who spoke to this  
3 defendant's mother on January 13th of 2011. I would like  
4 her to testify as to what the defendant's mother told her.  
5 Specifically that--

6 THE COURT: Who specifically is going to be  
7 testifying about it?

8 MR. MOYER: It would be Ms. Phyllis Lewis who  
9 works for the Greenville County Sheriff's Office.

10 THE COURT: Okay.

11 MR. MOYER: The basis of that is under State v.  
12 Thompson and lines of cases that explain that officers can  
13 testify as to out of court statements that go to explain  
14 why the officer acted as he or she did. If it please the  
15 Court, I would like to pass up a copy of that case for,  
16 Your Honor. Just give you just a real brief--

17 THE COURT: So your argument is that it's not  
18 offered to prove the truth of the matter asserted, only to  
19 show the context in which the search was effected?

20 MR. MOYER: Exactly, Your Honor.

21 THE COURT: All right, Ms. Ross.

22 MS. ROSS: Judge, I would object to any specific  
23 statements as to what we're saying. I think clearly if  
24 something came in to the effect of, I saw child  
25 pornography on my son's computer, that would be hearsay.

1 And clearly that would be, in fact, offered to prove the  
2 truth of the matter asserting. So I would object to that  
3 under rule 804. Saying that it is actually hearsay or  
4 attempt elicit hearsay through the backdoor. Here,  
5 however, you know, I understand that they may have reasons  
6 to say, Based on information I received we went over and  
7 confiscated this computer. I would state that that would  
8 explain what the officer did without bringing in hearsay.  
9 Which clearly designs [sic] since they do have an  
10 unavailable witness. That would serve the purpose without  
11 actually bringing in hearsay that I couldn't  
12 cross-examine.

13 THE COURT: Mr. Moyer.

14 MR. MOYER: Just a brief reply, Your Honor. The  
15 officers are going to need to explain why they went to  
16 this residence on this date. Quick overview of the case I  
17 just handed to the Court was a kidnapping, criminal sexual  
18 conduct case out of Columbia where the victim was  
19 approached as she was getting out of the car. The suspect  
20 made her get back into the car, took her to a rural area  
21 where he raped her. The following day, while officers got  
22 a name for the suspect in that case and then they also  
23 found the victim's car. And when the officers found the  
24 victim's car there was a bystander there who did not wish  
25 to be identified. This bystander says, Yeah, the person

1 you saw who was in that car is over in that house over  
2 there. The officers went and sure enough there was the  
3 person and they made the arrest of the suspect based on  
4 that bystander's testimony.

5 Your Honor, the officer was permitted by the  
6 trial Court and it was upheld on appeal, was permitted to  
7 testify exactly what that bystander told them. That they  
8 saw the person get out of the car and go over into that  
9 residence. And the rationale was that the bystander's  
10 comments were admissible because it offered to explain and  
11 outline the officer's investigation. And their reason for  
12 going to that home. And this case also gives numerous  
13 other examples of where the Courts have upheld that.

14 So for those reasons, it's not hearsay, it's not  
15 offered for the truth of the matter asserted. And the  
16 officers have -- the jury has the right to have an  
17 understanding of why the officers conducted the  
18 investigation as they did, the way they did and what led  
19 them to the Defendant's house that day, so.

20 THE COURT: Okay.

21 MS. ROSS: And I object. I think that's a clear  
22 misstatement of this case. This case is simply saying he  
23 went that way. Which is not the testimony as the ultimate  
24 issue in the trial. Here the ultimate issue was was this  
25 child pornography on the computer belonging to the

1 Defendant. And to have the testimony of his dead mother  
2 come in and just allege it's not for the truth of the  
3 matter asserted would be highly prejudicial for one. And  
4 I would not be able to cross-examine the mother under  
5 Crawford v. Washington. And it clearly is hearsay under  
6 804(a). Unlike this case where someone's just saying --  
7 telling the officer where to go, this, I believe, would be  
8 testimony as to the ultimate issue of go get -- you'll  
9 find child pornography on this computer because I saw it  
10 there.

11 THE COURT: I understand and appreciate the  
12 distinction that you draw. What ultimately is your  
13 defense in the case, Ms. Ross? That it wasn't his, he  
14 didn't put on there, he didn't download it?

15 MS. ROSS: Yeah, his defense is someone else  
16 that may be in the house had downloaded it. It was  
17 downloaded or seen times when he was out of the house.

18 THE COURT: Is there any dispute but that this  
19 material was on his computer?

20 MS. ROSS: No, I don't think they could dispute  
21 that it was on the computer that was in the living room of  
22 this house.

23 THE COURT: Okay. All right. So the statement  
24 that momma said she saw child pornography on that  
25 computer, doesn't necessarily go to the ultimate issue for

1 the jury. That statement -- the ultimate issue for the  
2 juror is whether he was the one who downloaded it and  
3 actually possessed it, correct?

4 MS. ROSS: Well I don't think so. I think it  
5 would also go because it's a mother saying that of him. I  
6 mean, how would we know--

7 THE COURT: And it depends on how the testimony  
8 comes out. It's very tricky and sensitive and I get you,  
9 I'm sensitive to it as well. I agree with both of you.  
10 And, you know, which way I go depends on how the testimony  
11 comes out.

12 MS. ROSS: All right.

13 THE COURT: Yeah, if -- if the testimony clearly  
14 goes to the ultimate fact to be determined by the jury and  
15 there is an assertion made thereby, then that's a problem.  
16 But if they are saying, She called and said that there was  
17 child pornography on this computer and that's the extent  
18 of what is put into the record, then that's probably okay.  
19 Now, the character and complexion of that testimony could  
20 change. But I do believe that you always have to look at  
21 the purpose for which it is introduced. And if I agree  
22 that it is admissible if it's not introduced to prove the  
23 truth of the matter asserted. But you get to a point  
24 where you can't help but get around the fact that the  
25 assertion has been made and the jury gets it.

1           So if there's no contest from the defense, that  
2 that pornographic material was on that computer, then I'll  
3 let you say that. Now going beyond that, you might be  
4 getting into some treacherous territory. But you haven't  
5 suggested to me that you intend to go beyond that.

6           MR. MOYER: And I'm not quite sure what you're  
7 alluding to but that's -- that's -- not those exact words  
8 but that's the gist of what she's going to testify to.

9           THE COURT: Well what I'm alluding to and I  
10 don't know because I don't have the testimony in front of  
11 me. But if the investigator were to get on the stand and  
12 say, We got a tip from the momma that there was this  
13 pornographic material on the computer. Okay. And whose  
14 material was that? Whose was it? It was the son's. And  
15 did he download that? Yeah. And how do you know that he  
16 downloaded that? Because x, y and z. And that puts the  
17 defense in the position of not being able to cross-examine  
18 that person who is accusing him.

19           MR. MOYER: I understand. The witness is not  
20 going to try to say that she indicated who downloaded it.

21           MR. PERKINS: If you're just putting the  
22 investigation into context, then probably that's okay.

23           MS. ROSS: And again, I would only object  
24 because, frankly, we don't know whose this was. Whether,  
25 you know, who it was at all or whether it could be hers.

1 But I cannot cross-examine her on than that issue since  
2 she's not here. So I would object to even coming in. The  
3 mother -- certainly, like I said in the beginning would  
4 think the statement -- that that's all the jury would need  
5 to receive information that there was pornographic  
6 material on this computer, went and seized it.

7 THE COURT: Okay. All right. I think what I've  
8 done is I've denied the motion with very specific  
9 qualifications. Then like I said, the mother provided, as  
10 the confidential informant, the mother provided  
11 information that there was a computer in her house that  
12 had pornographic -- or child pornography on it.

13 MR. MOYER: That's the gist of it.

14 THE COURT: And then you're going to have to  
15 prove some other way, shape or form that it was the  
16 Defendant's. That's going to have to happen in a  
17 different way and different form. It can't happen from  
18 the mother. Because Ms. Ross is right, she can't  
19 cross-examine her on it. Okay. Fair enough?

20 MR. MOYER: Yes, sir, Your Honor. Just the  
21 final thing I want to put in the record is that we'll be  
22 introducing some statements made by the Defendant that the  
23 defense has indicated to me that they do not wish to have  
24 a Jackson v. Denno hearing.

25 THE COURT: Okay, is that correct, Ma'am?

1 MS. ROSS: Yes, Your Honor.

2 THE COURT: Okay. Good enough. All right.  
3 Anything else?

4 MR. MOYER: No, Your Honor. If I can just show  
5 you what to do with the computer.

6 THE COURT: Oh, yeah. Yeah.

7 All right, we'll be in recess until 2:30.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: With respect to the videos, I had  
10 the opportunity to watch them, they are very short,  
11 obviously. But I am going to exclude them as evidence.  
12 And because I don't know think that there is really any  
13 probative value over and beyond the fact that they exist  
14 and that it is illegal material. Which depicts minors  
15 engaged in sexual activity.

16 Now, with respect to the jury, I think it's fair  
17 as well to tell the jury that the State had offered that  
18 into evidence and that I, as the Court, had made a  
19 determination not to have child pornography entered into  
20 the record. But that that was not a failing or lacking on  
21 the part of the State in its a case in chief. And that  
22 the defense acknowledges that that material would depict  
23 illegal child pornography. Therefore, the State's not put  
24 in a position of being at fault for not having provided  
25 evidence and the defense is kept to its acknowledgment on

1 the record here-fore that it does not object or take  
2 exception to the fact that that is illegal pornographic  
3 material as contemplated under the Indictments in the  
4 case. Okay.

5 MR. MOYER: May it please the Court, just to  
6 make sure I understand completely, I have instructed my  
7 investigators to be ready to give a description of what is  
8 shown in each of those videos.

9 THE COURT: In accordance with the case law that  
10 is -- that's admissible. That's admissible. I know that  
11 we had a discussion before we went off the record before  
12 lunch regarding the admissibility of the statement from  
13 the mother. And I think that I ruled on that. I don't  
14 know if you took that as an advisory opinion or not, but I  
15 do think that that's the appropriate ruling. That it  
16 could be introduced for the purpose of putting the  
17 investigation in the context but not to prove the truth of  
18 the matter asserted. Okay.

19 MR. MOYER: Okay.

20 THE COURT: Is there anything that I have failed  
21 to rule on that we need before we go into jury arguments?

22 MR. MOYER: I don't think so, Your Honor.

23 THE COURT: All right, Ms. Ross, you're  
24 satisfied?

25 MS. ROSS: Yes, Your Honor. There's nothing I

1 can think of.

2 THE COURT: Okay. All right, good enough.

3 MR. MOYER: One other matter is there is a  
4 spreadsheet on that flash drive that we gave, Your Honor,  
5 that we would like to use. Doesn't show any --

6 THE COURT: Okay.

7 MR. MOYER: So I will need that at some point.

8 THE COURT: Okay. I'm not ruling on it yet, you  
9 haven't set a foundation but you're certainly --

10 MR. MOYER: Okay.

11 THE COURT: And when you introduce it, are you  
12 going to introduce it as evidence or is it going to be a  
13 demonstrative aid? Because I can't send it back to the  
14 jury if that's the form in which you intend to admit it.

15 MR. MOYER: Well I intend to enter into the  
16 record as evidence. However, when we get to the jury  
17 deliberations, I would --

18 THE COURT: Are you going to print it?

19 MR. MOYER: I would send...

20 THE COURT: Print the hard copy.

21 MR. MOYER: We could do a print out.

22 THE COURT: Yeah, just admit the hard document.  
23 And you can show that, publish it. That's right. No  
24 problem with that.

25 MS. ROSS: And I don't know either. If that's

1 what it looks like. The one that I have is about a  
2 million of pages long, has 60 something and has the same  
3 thing over and over again. So I'm assuming that's not  
4 what they're talking about.

5 MR. MOYER: We just did a summary that shows  
6 some of the information that is contained in all of that.

7 THE COURT: Okay. All right. Okay. I don't  
8 see a problem with that. And we'll cross it with  
9 specificity when we get to it.

10 MR. MOYER: Thank you, Your Honor.

11 THE COURT: Okay, y'all ready for the jury?

12 MS. ROSS: Yes, sir, Your Honor.

13 THE COURT: Okay, good enough. Bring them in.

14 (WHEREUPON, the jury came into open court at  
15 approximately 2:41 p.m.)

16 THE COURT: All right, welcome back from lunch,  
17 ladies and gentlemen. We're about to start the trial of  
18 this case. And it is always helpful both for you and for  
19 me for me to take a few minutes before we get started and  
20 describe for you, first of all, the procedure that we'll  
21 follow, how we'll proceed in this case so that you will  
22 know what to anticipate as we move forward. And then to  
23 tell you what your role is as jurors in the case and  
24 distinguish that from what my role is as the Judge of the  
25 case. So I'm going to start out by telling you something

1 important that I have already told you before. Because as  
2 you go through this trial you need to keep this in mind.  
3 And that is that the Defendant is presumed innocent until  
4 proven guilty beyond a reasonable doubt by the State. The  
5 State has the burden of proving each and every element of  
6 the offense beyond a reasonable doubt.

7 Now, you will determine in your deliberations  
8 whether the State has met its reasonable doubt by  
9 determining what the facts are based on the evidence  
10 that's presented in this trial. Then applying the law to  
11 those facts in making a determination. Now, in saying  
12 that, I've suggested to you already that you are the  
13 finders of fact. You are the judges of the law -- excuse  
14 me, of the facts. You will decide what the facts are in  
15 this case. That is your exclusive province and authority.  
16 Nobody else has any authority to determine what the facts  
17 are or tell you what you should believe about those facts.  
18 You will decide what those facts are based on the evidence  
19 that's presented in this case.

20 Now, you're going to have evidence presented in  
21 this case in any number of forms. I don't know exactly  
22 because I don't know a whole lot more about the case than  
23 y'all do. All the witnesses are going to take this stand,  
24 I'm going to hear for the first time and see for the first  
25 time just like y'all are. So I'm just suggesting to you

1 that you could see evidence in this case in the form of  
2 eye witness testimony, testimony from witnesses. You can  
3 have objects that are actually presented into the record  
4 as evidence. You could have documents presented into  
5 evidence in this case. You could have audio tapes, you  
6 could have video tapes. And you'll take all that evidence  
7 and you'll determine what the facts are in this case.  
8 You'll look at all the evidence in total and determine  
9 what has a significant amount of weight or no weight. You  
10 will determine if witnesses are credible or whether  
11 they're not credible. And you'll look at it all and  
12 you'll analyze it to determine what the facts are. And  
13 you will then you will apply the law as I give it to you  
14 to those facts to determine whether the State meets its  
15 burden of proof.

16 Now, I'm the judge of the law. Which means that  
17 you have to accept the law as I give it to you. And if  
18 you come into this courtroom with any predisposition about  
19 what you think this law is or what you think it should be,  
20 then I'll charge you now forget about that. You have to  
21 accept it as I give it to you. So during the course of  
22 this case, what I'm charged with is making sure that the  
23 State and defense and you get a fair trial. That's all  
24 I'm concerned with. I'm the umpire calling balls and  
25 strikes. That is all I do. I have no stake in this case,

1 I have no bias; I don't have any concern about what your  
2 verdict is or what you determine. My only concern is that  
3 everybody gets a fair trial. So during the course of this  
4 trial, you're going to see me making rulings on evidence  
5 and making other rulings on motions that are presented to  
6 the Court.

7 Now when I make those motions, understand that  
8 I'm going to rule for one side and against the other.  
9 Because I must necessarily either sustain an objection or  
10 overrule an objection. Allow a piece of evidence in or  
11 disallow that piece of evidence. And when I do that I'm  
12 ruling for somebody or against somebody. But don't think  
13 that says or demonstrates any prejudice or preference that  
14 I have one way or the other. I truly do not have one. I  
15 will tell you that if you hear me saying anything during  
16 this case that suggest to you that I have an opinion about  
17 what the facts should be, about what y'all decide, I tell  
18 you to ignore that. Because truly if I say something that  
19 gives you that impression, then you're mistaken. All  
20 right. Know that. Because I don't have any opinion, I  
21 truly don't. I'm just an objective umpire. And all the  
22 decision that I'm going to make are based and calculated  
23 solely on the law. And it's going to be an objective and  
24 sterile analysis of what I believe the law to be. Okay.

25 So when we go through this case what we'll do is

1 we'll start with opening arguments from counsel. Opening  
2 statements. Opening statements are essentially a way of  
3 the attorneys introducing themselves and their case to  
4 you. Kind of giving you a road map for what they're going  
5 to attempt to show you in this case. Now, opening  
6 arguments, questions from the lawyers and closing  
7 arguments, all of them are not evidence to be considered  
8 by you in the trial. Those opening arguments are simply  
9 arguments. They're the attorneys advocating their  
10 respective positions. So that's not evidence, it's just  
11 argument.

12           After you heard opening arguments from each  
13 side, then the State would have the opportunity to put  
14 into record its case in chief. What will happen is the  
15 State will call witnesses to the stand. And then through  
16 those witnesses will introduce evidence by and through  
17 their testimony and may offer other evidence into the  
18 record at that time. The defense will have the  
19 opportunity to cross-examine any of those witnesses.  
20 After the State had put in all the witnesses, all the  
21 evidence that they intend to put in in the trial, then the  
22 State will rest. Then the defense has the opportunity,  
23 they're not required to, but the defense has the  
24 opportunity then to put evidence into the record as well  
25 and to present testimony and witnesses.

1           Now, if they decide to put witnesses on the  
2 stand, then what will happen is, again, the State would  
3 have the opportunity to cross-examine any of those  
4 witnesses. After the defense rests, then under certain  
5 limited circumstances, the State could present reply  
6 testimony. Ordinarily that reply testimony is fairly  
7 short and just addresses something that came out in the  
8 defense's case. That doesn't happen often but it can  
9 happen. And if it's going to happen I'll let you know.

10           After you've heard all of the testimony in the  
11 case then what will happen is we will go to closing  
12 arguments. Closing arguments again will be the attorneys  
13 getting up and advocating their respective position.  
14 That's not evidence, it's just arguments. And they're  
15 going to comment at that point on all the evidence that  
16 has been presented in the trial and make their arguments  
17 to you about whether or not the State has met its burden  
18 of proof in this case. After you've heard closing  
19 arguments, then I will give you a closing charge on the  
20 law. Now the reason I wait until the end, I don't do it  
21 now is because I don't know all the law that's going to be  
22 applicable in this case. Because I haven't heard any of  
23 the evidence. So I can't give you it to you now because I  
24 don't know precisely what the charge on the law will be  
25 when I give it to you.

1           So when I give you that charge on the law, after  
2 we both heard all of the evidence, then I'm going to send  
3 you back to your jury room. And what will happen is I  
4 will send you a signal to begin your deliberations. Now,  
5 it's very important that you know you cannot begin your  
6 deliberations until such time as I tell you to  
7 specifically. And I'll tell you very clearly it will  
8 unmistakably and it will be at the end of the case after  
9 you've heard everything, the evidence, closing arguments  
10 and the charge on the law. And the reason I wait until  
11 the end is because, as you now, in your common sense, that  
12 you can't make a fully informed, intelligent decision  
13 until you've heard everything. In your common experience  
14 you know that you've spoken to a friend or your children  
15 or someone who has told you one side of the story. And  
16 you may have had come to a conclusion based on one side of  
17 the story. When you hear that second side of the story or  
18 the other side of the story or another important piece of  
19 information, you come to find out that the decision that  
20 you had made initially may not be accurate. So just wait  
21 until the very end of the trial. Then you can begin your  
22 deliberations. So until that time don't discuss the case  
23 with one another, don't discuss it with anyone outside of  
24 this courtroom. Just wait and take in the evidence and  
25 then you will have the opportunity to begin your

1 deliberations at the very end.

2           Now, during the conduct of this trial, and I  
3 suspect, this is what I think's going to happen. I'm not  
4 in the business of making guarantees because I don't  
5 always control the way things go. But based on my  
6 understanding of the way we'll proceed is we'll probably  
7 get four, five witnesses this afternoon from the State.  
8 And then the State may end up concluding its case today,  
9 this afternoon. Putting all the evidence into the record.  
10 It may bleed over into tomorrow morning. But if it does  
11 it will only be a little bit more evidence from the State  
12 that we'll hear tomorrow morning. Then the defense will  
13 have the opportunity to put evidence into the record. And  
14 it maybe that we will have concluded the presentation of  
15 all of the evidence sometime tomorrow morning. That's  
16 kind of what I'm thinking based on my conversations with  
17 the attorneys. It could be shorter, it could be a little  
18 longer but that's what I'm thinking.

19           So then after they've presented all the  
20 evidence, then tomorrow morning or first thing tomorrow  
21 afternoon, what we'll try to do is go to closing arguments  
22 and charge. But I'm hopeful that we can come to a  
23 conclusion of this case tomorrow. Whether it's tomorrow  
24 morning or tomorrow afternoon. To the extent that that  
25 changes or we start to flex one way or the other, I'll

1 trying to make sure you know. We're going to keep regular  
2 hours. So for instance, today I'll try to adjourn 5:00,  
3 5:30 just to keeping with the normal business day because  
4 I know that y'all have commitments. And I know it's  
5 unfair for me to ambush you and tell you you're staying  
6 here until 8:00. It's going to be 5:00, 5:30. Tomorrow  
7 morning we're either going to start 9:30 or 10:00  
8 depending on what issues are outstanding, what I may need  
9 to deal with with these attorneys.

10 During the course of the trial we'll take  
11 regular breaks. I psychologically have to take a break  
12 about every, to hour and a half. So I take a break every  
13 hour to hour and a half. But understand that if you need  
14 to take a break before then let me know. For whatever  
15 reason. Don't be shy about it. You are the 14 most  
16 important people in the courtroom. Without a doubt. So  
17 it's important that y'all are paying attention. So if  
18 you're thinking to yourself, Boy, I really need to take a  
19 break and these people need to shut up. Then I would  
20 rather you tell me that then just be not paying attention  
21 to the evidence that's being presented on the stand.  
22 Okay. So let me know, we'll take breaks however you need  
23 to and however you want to, all right.

24 So the first thing that we need to do is swear  
25 you in. You took an oath earlier this morning to tell

1 truth. This oath is going to be to essentially comply  
2 with the law and enter a verdict truly and verily in  
3 accordance with the law.

4 Yes, ma'am.

5 THE CLERK: Please stand, raise your right hand  
6 for the oath. The proper response is, I will.

7 (WHEREUPON, the jury was sworn.)

8 THE CLERK: Thank you, please be seated.

9 THE COURT: Mr. Moyer.

10 MR. MOYER: Thank you, Your Honor, may it please  
11 the Court?

12 THE COURT: Yes, sir, absolutely.

13 OPENING STATEMENT

14 MR. MOYER: Ladies and gentlemen of the jury, my  
15 name is Mark Moyer once again. I'm an assistant  
16 solicitor, I work here in Greenville County. I work for  
17 the head solicitor, Walt Wilkins. I'm one of his  
18 assistance. It is my job as an assistant solicitor to  
19 prosecute cases, to represent the State in criminal  
20 charges. To prosecute people who have been indicted by  
21 the Greenville County Grand Jury for various crimes.  
22 That's what we're doing here today. Because this  
23 Defendant has been indicted for the charges that you have  
24 heard explained to you by His Honor. Sexual exploitation  
25 of a minor, third degree.

1           I have just a few opening remarks to you now  
2 before we get into the trial here in just a few moments.  
3 Which as you have heard is going to be a relatively short  
4 case. First off, what does this charge mean? In South  
5 Carolina it is unlawful to knowingly possess materials,  
6 materials are defined as drawings, pictures, video  
7 recordings or even digital download files that contain a  
8 visual representation of a minor. A minor is someone  
9 under the age of 18, engaged in sexual activity. Sexual  
10 activity is a broad term. It incorporates, sexual  
11 intercourse, masturbation, oral sex, the assertion of any  
12 object into the anus or vagina of a female. That's what  
13 the charge essentially is.

14           You're going to hear testimony from witnesses  
15 called by the State today that that's exactly what this  
16 Defendant did. He possessed such materials in December to  
17 January -- December 2010 to January 2011. You're going to  
18 hear that on January 13th, 2011, several Greenville County  
19 investigators went to this Defendant's residence while he  
20 was not there and seized his computer. You will hear that  
21 this is sed on a telephone call that the sheriff's office  
22 received from a woman, this Defendant's mother. The woman  
23 who is now deceased, whom you will not hear from today.

24           You will hear that officers seized that computer  
25 and then they conducted a search of that computer. A

1 search of the hard drive of that computer. And you will  
2 hear that they found video files of children engaging in  
3 sexual activity. You very well may not have to view those  
4 actual videos. You may be spared that. But if not shown  
5 to you, they will be described to you. And you will hear  
6 or see that these videos are graphic. That they entail  
7 children as young as three, four, five years of age  
8 engaging in sexual acts by themselves, with one another  
9 and with adult men.

10 Now, at the end of this case, I'm going to get  
11 back up in front of you and I'm going to argue to you why  
12 the evidence that was presented leads to convictions in  
13 this case. Verdicts of guilty. But for now all I ask of  
14 you is that you pay close attention to the testimony and  
15 evidence that is presented. That you use your good  
16 judgment and common sense to weigh that testimony. And  
17 then at the end of this case that will you do justice.  
18 Thank you.

19 OPENING STATEMENT

20 MS. ROSS: May it please the Court?

21 THE COURT: Yes, ma'am.

22 MS. ROSS: Counsel.

23 Ladies and gentlemen of the jury, my name is  
24 Susannah Ross and I represent Robert Chappell. What I  
25 would ask from you is to simply be able to hold your

1. emotions aside and render a fair and impartial judgment in  
2 this case. This case is so terrible. This kind of charge  
3 is so terrible because it can create so much anger and  
4 pain for anyone to hear about these kinds of materials.  
5 However, it is the State's duty when they bring a charge  
6 of proving guilt beyond a reasonable doubt.

7           Now, the reason that's required, some people say  
8 well if there's some evidence that's fine, why proof  
9 beyond a reasonable doubt? Why is that so important?  
10 Because without that innocent people get convicted. It is  
11 very hard to prove a negative. I didn't know that. I  
12 didn't think that. I didn't feel that. These are  
13 negatives that can be very hard to prove. Especially  
14 involving something like a computer. In a new world where  
15 there is access on the computer through the internet all  
16 over the world, the other side of the world in this case  
17 quite sadly.

18           However, as you heard, just bringing this charge  
19 is no way proof beyond a reasonable doubt. Robert  
20 Chappell is innocent until proven guilty. At the end of  
21 this case I'm going to ask you to find him not guilty  
22 because the State does not the evidence to prove guilt  
23 beyond a reasonable doubt. Thank you.

24           THE COURT: Mr. Moyer, you may call your first  
25 witness, sir.

1 MR. MOYER: Your Honor, the State calls Phyllis  
2 Lewis to the stand.

3 THE CLERK: Ms. Lewis, would you, please, place  
4 your left hand on the Bible and raise your right hand.

5 PHYLLIS LEWIS, after being duly sworn, testified  
6 as follows:

7 THE CLERK: Thank you, please be seated. State  
8 your full name for the record.

9 THE WITNESS: Phyllis Lewis.

10 DIRECT EXAMINATION

11 BY MR. MOYER:

12 Q Ms. Lewis, where are you employed?

13 A Greenville County Sheriff's Office.

14 Q How long have you worked with the Greenville County  
15 Sheriff's Office?

16 A Almost four years.

17 Q Were you working for the Greenville County Sheriff's  
18 Office on January 2011?

19 A Yes, I was.

20 Q Now during that month did you receive a telephone  
21 call that is related to the case that's before the  
22 court?

23 A Yes, I did.

24 Q And do you remember the exact date that you received  
25 that call?

1 A Not exactly but it was about mid January.

2 Q Okay. Who did you receive that telephone call from?

3 A Patricia Galloway.

4 Q What relation is this person to the Defendant that is  
5 in this case?

6 A It's his mother.

7 Q Okay. Now, you had a telephone conversation with  
8 her. Tell us what her emotional state was while  
9 you're speaking to her.

10 A She was very upset.

11 MS. ROSS: I object to the relevancy of that.

12 THE COURT: Okay. What's the question, again,  
13 sir?

14 MR. MOYER: Ms. Galloway's emotional state  
15 during the conversation.

16 THE COURT: Okay, I'll sustain the objection.

17 MR. MOYER: Okay.

18 BY MR. MOYER:

19 Q Tell us then, what was the content of what she told  
20 you?

21 A Ms. Galloway called stating that she was on the  
22 computer that's in her home and found some  
23 pornography. And she wanted someone to come and take  
24 the computer.

25 Q Did you follow up with her when she talked about

1           pornography? As far as getting more specific.

2    A       I asked her was it adult pornography. And she said,  
3           No, it was--

4           MS. ROSS: I would object to hearsay.

5           THE COURT: Okay. All right. Based on rulings  
6           that have been entered here before, I'm going to overrule  
7           that objection.

8           You may proceed, sir.

9    BY MR. MOYER:

10   Q       Did you specify the type of pornography when she  
11           mentioned to you pornography?

12   A       I asked if it was adult pornography.

13   Q       Why did you ask her that?

14   A       Because adult male looking at adult pornography was  
15           not necessarily a crime.

16   Q       Okay. And so when you asked that question, what was  
17           her response?

18   A       She said, No, it was children.

19   Q       Did she go into any specifics about the pornography  
20           other than that? Other than it was children?

21   A       Other than it was disturbing.

22   Q       Now, do you know where Patricia Galloway lived?

23   A       Yes.

24   Q       And where did she live?

25   A   in Greenville.

## PHYLLIS LEWIS-DIRECT BY MR. MOYER

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1 Q And the Defendant in this case, Robert -- I'm sorry,  
2 Robert Chappell, are you aware where he lived at this  
3 time?

4 A Yes.

5 Q Where did he live?

6 A

7 Q So he lived at the same location?

8 A Yes.

9 Q Okay. Now, after you received this information from  
10 her, what did you do with that information?

11 A I went directly to my immediate supervisor and gave  
12 her the information that I had just received.

13 Q And that is?

14 A Beverly Pettit.

15 Q Beverly Pettit. Okay. And are you aware of what she  
16 did with that information?

17 A She called our computer crimes investigators and  
18 relayed the information to them.

19 MR. MOYER: Okay, one moment, please. I have  
20 nothing further for the witness at this time.

21 THE COURT: Questions?

22 MS. ROSS: I've got nothing, no questions.

23 THE COURT: Okay, good enough.

24 Thank you, ma'am, for being here. You may step  
25 down.

1 MR. MOYER: State would call Investigator Jim  
2 Perry.

3 THE CLERK: Sir, please place your left hand on  
4 the Bible, raise your right hand.

5 JIM PERRY, after being duly sworn, testified as  
6 follows:

7 THE CLERK: Thank you, please be seated. State  
8 your name for the record.

9 THE WITNESS: James Phillip Perry.

10 DIRECT EXAMINATION

11 BY MR. MOYER:

12 Q Where do you work?

13 A I work at the Greenville County Sheriff's Office.

14 Q What's your position with the sheriff's office?

15 A I work in the criminal investigation division in a  
16 particular unit. It's the computer investigations  
17 unit.

18 Q Okay. Now how long have you been in law enforcement?

19 A I'll be getting my 30 year pen this year so 29 and  
20 some change.

21 Q Has it always been with the sheriff's office?

22 A No, some of it was with Greenville City and a little  
23 bit was with Greer City. Then I came to the  
24 sheriff's office for the last 20.

25 Q Okay. And just based a comment to me by one of the

JIM PERRY-DIRECT BY MR. MOYER

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1 jurors during jury selection, were you ever out on  
2 your own in private investigations?

3 A I was.

4 Q How long did you do that?

5 A I did that for seven years.

6 Q And that was in the 90's?

7 A Actually '85 to '93 and that's when I went to work  
8 with Greer for three years then came to Greenville  
9 County.

10 Q Okay. Now you mentioned -- what particular  
11 department are you in in criminal investigations?

12 A It use to be called the data recovery. It's now  
13 called the -- the new name just got given to us, it's  
14 the Computer Crime Investigations Unit.

15 Q Okay. And you've been doing that for how long?

16 A Since 2002.

17 Q What are your duties in that position?

18 A We do computer forensics, we have do cell phone  
19 forensics, GPS forensics. We also are members of the  
20 ICAT Task Force. Which is Internet Crimes Against  
21 Children out of the Attorney General's Office in  
22 Columbia. And we do the online predator type of  
23 investigations and other type of child porn  
24 investigations.

25 Q Okay. Now, were you working in this capacity in

1           January of 2011?

2    A       I was.

3    Q       Did you have occasion during that month to go to

4

5    A       I did.

6    Q       What date did you go there?

7    A       I went there on the 13th of January, 2011.

8    Q       What precipitated you going there?

9    A       I received a call from Beverly Pettie. And she asked  
10           me if I would give this lady, Patricia Galloway, a  
11           phone call. And she explained the situation to me.  
12           So basically that's how it got started.

13   Q       Okay. Did you call Patricia Galloway?

14   A       I did.

15   Q       And you heard what was testified to by Ms. Lewis?

16   A       Correct.

17   Q       Just a few minutes ago. Did she essentially tell you  
18           the same information when you spoke to her?

19   A       She did.

20   Q       Now, would you describe -- I'm sorry, let me stop for  
21           a moment and back up. Can you tell us about what  
22           time of day it was that you went there?

23   A       It was about between 10:30 and 11:00 in the morning.

24   Q       So during business hours?

25   A       Correct.

## JIM PERRY-DIRECT BY MR. MOYER

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- 1 Q Would you -- this residence at is  
2 that location in Greenville County?
- 3 A It is.
- 4 Q Okay. Now, would you describe that residence?
- 5 A It's a single wide trailer that basically you walk in  
6 the front door and you're walking into the den area.  
7 The kitchen was off to the left. It had a little  
8 porch on the front.
- 9 Q Okay. And did you go alone or did you have another  
10 officer with you?
- 11 A I had another officer with me.
- 12 Q And that's normal protocol for a situation like this?
- 13 A Correct.
- 14 Q When you arrived, who did you meet with?
- 15 A I met with Patricia Galloway.
- 16 Q Did you learn what relationship she is to the  
17 Defendant in this case?
- 18 A I did.
- 19 Q What is that?
- 20 A Patricia is the mother of the Defendant.
- 21 Q Okay. And did you -- did you enter the residence?
- 22 A I did. She invited us in. We came in.
- 23 Q Okay. And did you, in fact, get her to sign anything  
24 to indicate her permission to allow you into the  
25 residence?

1 A Well, I had her sign a consent to search after we  
2 talked with her. I asked her if she would allow us  
3 to search the residence.

4 Q Did she allow?

5 A She signed a consent to search.

6 Q Did you take any property from the home?

7 A I did.

8 Q What did you take?

9 A I took a Compaq computer.

10 Q Okay. Tell us how you located this computer.

11 A When I was talking with Ms. Galloway she just said,  
12 There it is over by the TV.

13 Q Okay. Were there any other computers in the home?

14 A No.

15 Q Okay. Now, when it was pointed out to you by  
16 Ms. Galloway, did you make any notations in your  
17 reports or anything as far as a serial numbers and so  
18 forth?

19 A Yes, we put the serial number in our report on our  
20 evidence sheet when we took it.

21 Q What did you do with it after you seized this  
22 computer?

23 A After we seized it we took it back to our computer  
24 crime lab. We have a secured area there for securing  
25 digital media, computers, cell phones, all this type

JIM PERRY-DIRECT BY MR. MOYER

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1 stuff. So that's where we took it back.

2 MR. MOYER: Okay. One moment, please.

3 (WHEREUPON, State's Exhibit No. 1 was marked for  
4 identification only.)

5 BY MR. MOYER:

6 Q Investigator Perry, I'm going to hand you what's been  
7 marked as State's Exhibit 1. Take a look at that and  
8 can you tell us what that is?

9 A Yeah, that's just a Compaq laptop computer. Running  
10 Windows 7.

11 Q In particular what computer is that?

12 A This belongs to the Defendant, Robert Chappell.

13 Q Okay. Is that the computer that you took from  
14 on January 13th of 2011?

15 A It is.

16 Q And how do you know that?

17 A Because the serial number matches the evidence sheet.

18 Q Okay. And you've kept it in your custody?

19 A We've had it in our custody.

20 MR. MOYER: At this time we move to have State's  
21 Exhibit No. 1 entered into the record.

22 THE COURT: Any objection?

23 MS. ROSS: No objections.

24 THE COURT: All right, without objection, same  
25 is entered into evidence.

1 (WHEREUPON, State's Exhibit No. 1 was admitted  
2 into evidence.)

3 BY MR. MOYER:

4 Q And you said there were no other computers, laptop,  
5 desk top --

6 A Not that I observed or that Ms. Galloway said were in  
7 there. We asked her.

8 Q Okay. Now, did you then later do a forensic  
9 examination of this computer?

10 A We did, I did.

11 Q When was that done?

12 A It was started on the 14th of January, 2011.

13 Q Okay. What do we mean by the forensic computer  
14 analysis?

15 A Forensic computer analysis is where we take a digital  
16 evidence, whether it's a hard drive, a flash drive,  
17 anything that stores media, we hook it up to a  
18 computer forensic machine. And we have a -- first we  
19 image it. And what that does is we take and make a  
20 total, I want to say copy of the image, of that hard  
21 drive. And once we make the image of the hard drive,  
22 then we can start a forensic examination of it. And  
23 what we do with a forensic examination, that's in  
24 order to go in there and recover stuff that's been  
25 deleted. We have analyze what's on there, we do key

1 word searches. All of this done in a forensically  
2 sound environment on our computer with a copy or an  
3 image of the suspect's hard drive. We don't actually  
4 use his in case something were to happen, we don't  
5 want to damage the original evidence.

6 Q Okay. Now, tell us about the training that you have  
7 had that enables you to be able to do this.

8 A I started the training back in 2002. Since then it's  
9 with the changing of computers every six months now  
10 it's just an on-going process. I've been to EnCase  
11 intermediate analysis and reporting, EnCase  
12 introduction to computer forensics, intermediate  
13 forensics tool kit boot camp, advance data recovery,  
14 basic data recovery, cell phone examination, advance  
15 responders for search and seizure of small business  
16 and small office--

17 Q So I take it you can go on and on to all the  
18 different schools you've been to?

19 A Yes.

20 Q Do you know roughly how many hours of training you  
21 have received?

22 A Since 2002 I've had probably over 2000 hours of  
23 training, formal, informal with other officers,  
24 webinars, just -- it's just constant. Fellow I work  
25 with, Mike Rainey, an investigator, we're all the

1 time bantering back and forth different things too  
2 which is a training process. Because he sees  
3 something new that I didn't see. And we're able to  
4 do that.

5 Q Just to keep up-to-date with all the changes --

6 A Oh yeah, it's --

7 Q -- that come about.

8 A -- it's a constant battle.

9 Q How many computers would you say you have examined  
10 forensically over the years?

11 A Well over 100.

12 Q Over 100.

13 A That's just computers. That doesn't count flash  
14 drives, cameras, the little cards that are in the  
15 cameras, stuff like that. Because we can do a  
16 computer forensics on those.

17 Q Okay. Now you touched on this just briefly but let  
18 me just go back over this. What is the very first  
19 thing you do, when you're going to do an examination  
20 of a computer to see what's on a computer, what is  
21 the first then you do that enables you to do the  
22 examination?

23 A Okay, we take the hard drive out, obviously. And  
24 when we connect it to our computer--

25 Q Let me stop you there. What do you mean by hard

1 drive?

2 A The -- basically the memory that's in the computer.

3 Q So you take it out?

4 A Take it out of that, just take the back off. It's a  
5 little -- in a laptop it's a little square thing  
6 about this big and about oh that thick.

7 Q Okay. So you take it out of the computer and then  
8 what do you do with that hard drive?

9 A Okay, then we connect it to our forensic machine with  
10 a write block. And what a write block is it prevents  
11 us from -- or the program, the EnCase program, which  
12 is the forensic program I use, it prevents any  
13 possibility of writing to his machine. Which would  
14 cause it to change date and time stamps, add  
15 evidence, delete evidence, anything like that we have  
16 to make sure we can't do. Because even when you  
17 first boot up a computer and you don't touch  
18 anything, you just boot it up and turn it right off,  
19 you've changed all kinds of programs on that  
20 computer. So if were to just boot the computer up  
21 and start looking around, it would change the dates  
22 and times that a program was created. Or a video was  
23 viewed. If I went in there and viewed the video on  
24 his computer, then the last access date is going to  
25 be me, that day. Because I'm the last one that

1           accessed it. So with a write blocker that prevents  
2           that from happening.

3    Q       So you take the hard drive then you make a exact  
4           duplicate copy?

5    A       Correct.

6    Q       And is that what you do your work on?

7    A       That's what we work on.

8    Q       Okay. Now once this, duplicate copy is made, it's on  
9           your computer?

10   A       Correct.

11   Q       And once that is made, are you able to go in and  
12           manipulate that at all?

13   A       No.

14   Q       And that's based on what you were just talking about  
15           this--

16   A       Write block.

17   Q       The write block?

18   A       Write block.

19   Q       How do you spell write?

20   A       W-R-I-T-E, like write.

21   Q       Write block?

22   A       Right.

23   Q       Okay. So maybe some of us has heard of a read only  
24           file.

25   A       Correct.

1 Q Is it similar to that?

2 A It basically is making it a read only file. The  
3 whole computer.

4 Q Okay. Now so once you make this image.

5 A Uh-huh.

6 Q You set the original hard drive back aside, right?

7 You don't --

8 A Put it back in that computer.

9 Q Okay. Then what do you do with that image? How do  
10 you actually go about examining the image?

11 A Well, it can be a tedious process. It depends on the  
12 type case. Because we don't do just child  
13 pornography, we do homicides, drug cases, internet  
14 fraud cases, any type of cases that our officers can  
15 come up with do. So each case we look at  
16 differently. This being a child pornography, we knew  
17 that we were looking for videos. So EnCase, the  
18 forensic program we use, has what's called a  
19 inscript. And that allows us to go in there and  
20 search for just video files on that. It's not going  
21 to pull up -- I can't punch in child pornography and  
22 it pull up child pornography. It will pull up all  
23 the videos that are on that computer. That meet the  
24 criteria of file extensions. Like a document file  
25 has dot.doc. Well a movie file may have dot.avi.

- 1 Q And that's what's on the end of that file?
- 2 A That's what's on the end of the file.
- 3 Q Let me stop you one moment and backtrack just a  
4 little bit. You used the word called EnCase.
- 5 A EnCase, correct.
- 6 Q Can you tell me how to spell that?
- 7 A En -- Capital E-N, capital C-A-S-E. Version 6.
- 8 Q What is EnCase?
- 9 A It's a brought by Guidance software that is used  
10 worldwide. Military, law enforcement, private sector  
11 to do computer forensics.
- 12 Q So it's a software program?
- 13 A Correct.
- 14 Q And that is on your computer, your --
- 15 A Licensed to my computer.
- 16 Q Okay. And you've been trained on how to use this?
- 17 A That is correct.
- 18 Q And you received training from the actual  
19 manufacture?
- 20 A I received training from EnCase itself.
- 21 Q The corporation that makes it?
- 22 A Correct.
- 23 Q Okay. So you then use this computer program called  
24 EnCase to search?
- 25 A Correct.

1 Q Okay. Now, you told us other agencies use that  
2 program, EnCase. What other kind of agencies use it?

3 A FBI, secret service. Like I said, the military.

4 Q Okay.

5 A It's the leading forensic tool in the industry now.

6 Q Okay. Now, so you did all of that that you just  
7 described, you did that to this Defendant's computer?

8 A Correct.

9 Q This State's Exhibit No. 1?

10 A Correct.

11 Q Okay. And that was all done starting January 14th  
12 2011, you said?

13 A Correct.

14 Q And you had it searched for video files?

15 A Correct.

16 Q Did it turn up any video files?

17 A It did.

18 Q Did it turn up numerous video files, more than the  
19 ones that are just before the court?

20 A Oh, absolutely, yes.

21 Q Okay. And was it just video files containing child  
22 pornography or were there other things as well?

23 A No, there were other. There were probably close to  
24 513 video files on the computer. And it'll have ones  
25 like if you transfer files from one folder to another

1 folder and you've got that little video that goes  
2 across your screen and shows it actually doing it,  
3 that's going show up as a video file because that's  
4 what it is. It's a Windows video file. So any type  
5 of video that's on there, anything that deals with a  
6 program or any type of -- anything you're doing on  
7 your computer that was downloaded by the manufacturer  
8 is going to show up also. In addition to downloaded  
9 videos.

10 Q So once you found these different videos, how did you  
11 go about determining which ones were illegal videos  
12 and which were not?

13 A You have to just view them.

14 Q Okay. That's what you did, you went through and  
15 viewed the videos.

16 A Viewed them.

17 Q Now, once you viewed these videos you actually made  
18 copies of the videos?

19 A Well you copy it out of the program. You're able to  
20 do that. You can bookmark it within the program and  
21 then for court purposes and this type thing, you can  
22 actually copy them out.

23 Q Okay. Now, what I would like you to do at this time  
24 is I would like for you to tell us about the  
25 different videos that you saw. In lieu of actually

1 showing the video at this point, I would like you --  
2 what I would like you to do is to give us the file  
3 name of the video then describe to us what is shown  
4 on those separate videos?

5 A One of the videos file name was lower case s,  
6 underscore, lolitkoi. So it's like lolit koi. That  
7 one was created on 1/7/11 at approximately 23 hours.  
8 Actually 11:14 p.m. basically.

9 Q Okay.

10 A You want me to read the description of it?

11 Q Yeah, I'd like for you to tell the jury now what is  
12 displayed on that video?

13 A When I opened that video, this is a representation of  
14 what I had to watch. The is a one minute and 22  
15 second video of a female child who looks to be five  
16 and seven years old. She is lying naked on her  
17 stomach with her buttocks cocked up in the air  
18 slightly. An adult hand comes in the view of the  
19 camera and has a vibrating dildo that is being rubbed  
20 between the child's buttock cheeks then on to her  
21 vagina with slight penetration. At one point the  
22 adult slightly taps the child on the buttocks. The  
23 child is looking back at the perpetrator and camera  
24 at that time.

25 Q And that video is about a minute and 22 seconds long?

- 1 A Correct.
- 2 Q Now you said, you used the word created. What do we  
3 mean by that?
- 4 A That was when the file was, that I was looking at,  
5 was created on -- in that folder at that time.
- 6 Q What do we mean created in a folder?
- 7 A Well, if you view something on the internet and you  
8 want to download it, it's going to ask you where do  
9 you want to put it? Well this is a download folder,  
10 on his computer, and it was under the user name,  
11 Robert. And it was in a folder called downloads. So  
12 that -- that was the time and date that it was  
13 actually created in his folder.
- 14 Q So put into that folder?
- 15 A Put into that folder.
- 16 Q Okay. So does that mean that video, it wasn't just  
17 watched, it was actually--
- 18 A Downloaded.
- 19 Q Downloaded. Okay. And you said the file name was  
20 what?
- 21 A S underscore--
- 22 Q No, I'm sorry the file name.
- 23 A The folder name was Downloads.
- 24 Q Downloads. And downloads was under?
- 25 A Robert's user name.

1 Q Under Robert?

2 A Correct.

3 Q And do you know this defendant -- what name this  
4 defendant goes by?

5 A Correct, he goes by Robert.

6 Q Which is his middle name?

7 A Correct.

8 Q It's Frederick Robert Chappell?

9 A Correct.

10 Q Okay. Let me ask you to move on to the next video.

11 A Okay. Okay, I'm not sure if you want to -- which one  
12 would like me to go next?

13 Q It does not matter.

14 A Well there's six here and there's only...

15 Q Yeah, I want you to talk about each of the six videos  
16 so move on to the next one.

17 A Okay. The next one was, it's name is wape,  
18 underscore, ru, underscore, 7yo, underscore, hand  
19 job.

20 Q Okay.

21 A This is a two minute, 17 second video of a naked  
22 female child who looks between three and five years  
23 old. She is sitting between a naked, at least from  
24 the waist down, adult male's legs whose penis is  
25 visible and erect. The toddler starts out with her

1 left hand and is stroking the penis. At first she  
2 has a blank look on her face. You can hear some  
3 music playing during the video. The toddler then  
4 looks off to her right as if being given directions  
5 and then smiles. But that is short lived and she  
6 goes back to her blank look.

7 While she is still stroking the perpetrator's  
8 penis, his hands come into view of the camera and  
9 pulls the toddler from her back, closer to him and  
10 has her vagina up against the base of his penis. She  
11 then begins to use both hands to stroke the penis.  
12 And toward the end of the video the male ejaculates  
13 and the toddler let's go of the penis, watches for a  
14 second and then kind of just rolls off him, off the  
15 bed.

16 Q And can you tell us when that video file was  
17 downloaded?

18 A That was 1/11/11 at 6:25 p.m.

19 Q Okay. Once again, that was not just viewed it was  
20 actually downloaded into that folder?

21 A Correct.

22 Q Still under the name Robert?

23 A Under the name Robert.

24 Q Okay. Let me ask you to move on to the next video.

25 A Okay. The next one is a 19 second video of a naked,

1 and you can only see from the waist up is all that is  
2 visible, female toddler who looks to be approximately  
3 two to three years old. She has dark hair with  
4 bangs. She is holding a fat, white male's penis with  
5 her hands while the male perpetrator is holding her  
6 right cheek with his left hand. It appears his thumb  
7 is also barely inside the child's mouth. At one  
8 point the penis comes out of her mouth and she is  
9 trying to get it back in. During some of the video  
10 she has her eyes closed, then looks off to the left  
11 in a staring type of gaze.

12 Q Okay, when was that video file downloaded?

13 A 1/10/11 at approximately 10:33 p.m.

14 Q Okay. And so once again, what folder?

15 A It's in the downloads under Robert, profile name  
16 Robert.

17 Q Okay. Okay. Please move on to the next video.

18 A The is a one minute 45 second video that starts off  
19 showing a very young girl's breast when a--

20 Q Let me stop you one second. Can you read the file  
21 name?

22 A Oh, I'm sorry, yes. It's that wape, underscore, ru,  
23 underscore, webcam, underscore, 10y.dwap.

24 Q Would you give us description of that?

25 A Okay, this video is a one minute and 47 second video

1 that starts how showing a very young girl's breast  
2 when a shirt is pulled up. It then continues with  
3 the camera panning down to the female vagina close up  
4 but still showing the stomach area. The camera,  
5 after several seconds then pans to the girl's face.  
6 And you see that she is a young girl between eight  
7 and ten years old. She's looking up and not at the  
8 camera as if she's being directed what to do. She  
9 appears then to be fumbling with her shirt and then  
10 it shows her turning her buttocks at the camera and  
11 there's a pencil protruding from the crack in her  
12 buttocks.

13 She then reaches around and it appears that she  
14 is pushing it in with her hand. She then moves her  
15 hand and still has the pencil in the crack of her  
16 buttocks. She moves closer to the camera and then  
17 reaches back to the pencil again as it appears she  
18 removes it as the video stops.

19 Q Okay. And was that video file also downloaded on the  
20 computer?

21 A It was.

22 Q What was the date and time for that?

23 A That was 1/11/11 at 7:25 p.m.

24 Q P.m, okay. And once again, the -- under what  
25 profile?

1 A Robert. Under Robert profile.

2 Q Okay. Would you move on to the next video, please.

3 A Next one the name of it wape, underscore, ru,  
4 underscore, wape again, underscore, ru again, loli83,  
5 bracket 1, closed bracket.

6 Q Okay. What is described -- or what is shown in that  
7 video?

8 A This is about a four minute and 23 second. And it's  
9 a black and white video as compared to the others  
10 which are colored. Of a female between what appears  
11 to between the age of 10 and 12 years old who is  
12 sitting on the bed naked with a boy who appears to be  
13 in the same age category but who is fully clothed.  
14 The female starts to undo the boy's pants and begins  
15 to play with the boy's penis while he's just sitting  
16 there looking at a magazine. He's kind of on his  
17 side looking at a magazine or book of some kind.

18 After a short time the girl pulls his pants down  
19 just enough to totally expose the young boy's penis.  
20 The young girl then begins to masturbate the boy. A  
21 short time later they both take off the boy's pants  
22 close up with the camera, shows the girl sitting on  
23 top of the boy's pubic area with her head and face --  
24 her face and body facing toward his feet. She takes  
25 her hand and is trying to put the boy's penis into

1 her vagina. The camera then pans out to show the  
2 girl and the boy and they are trying -- they are  
3 trying to have sex. However, she is having trouble  
4 keeping the penis in her vagina. They keep trying to  
5 have sex by moving in and up and down in a in and up  
6 and down manner. But the boy's having trouble with  
7 the girl vagina do his size and the angle they're at.  
8 Eventually the girl changes her position to make it  
9 easier to enter the girl.

10 After a short time they change positions where  
11 the young girl is on her back with her legs pulled  
12 back and her arms securing them in that position.  
13 The boy then kneels at her vagina and begins having  
14 sex. This last several seconds and then it switches  
15 to the girl masturbating the boy while he is in a  
16 seated position. The camera then pans over to the  
17 girl's vagina --

18 MS. ROSS: Judge, I stipulated to the sexual  
19 nature of the material in this and I would object to going  
20 on in this detail.

21 THE COURT: Okay, I'll overrule the objection.  
22 You may proceed.

23 THE WITNESS: The video then goes to the boy  
24 kneeling, reaching around her legs and pulling her vagina  
25 open. The video finishes up with him lying down on her

1 while she is still pulling her vagina apart and they start  
2 to have intercourse again.

3 BY MR. MOYER:

4 Q And was that file downloaded also?

5 A It was.

6 Q And under the same profile name, Robert?

7 A Correct.

8 Q What was the date and time for that one?

9 A That was 1/12/11 or January 12th, '11 at 9:01 p.m.

10 Q Please tell us about the final video.

11 A Final one, it's again, the wape, underscore, ru,  
12 underscore, ptch, underscore, five year old,  
13 underscore, deas, underscore, dick, underscore, debut  
14 1.

15 Q Okay. And what is depicted in that video?

16 A I'm sorry?

17 Q What is shown in that video?

18 A This is a one minute, 33 second video of what appears  
19 to be a three to four year old toddler with shoulder  
20 length brown hair with bangs. It appears she is  
21 kneeling on a sofa with her chest facing and leaning  
22 up against the back of the sofa. Her head is leaning  
23 over the back of the sofa with as an adult male's  
24 penis comes into view. She begins by licking the  
25 penis and then goes from licking to sucking it and

1 back to licking it. It appears that the video is  
2 edited as the lighting and quality of the video  
3 changes.

4 There appears to be -- there appears in the  
5 video now a penis -- not just the penis but the  
6 perpetrator in blue jeans and a orange shirt, he now  
7 comes into the picture. His penis is exposed from  
8 the fly of the jeans. He still has his jeans up but  
9 his zipper's down and his penis is out. He moves  
10 toward the little girl and she takes her left hand  
11 and grabs the penis. She then puts it in her mouth  
12 and let's go with her hand. The perpetrator then  
13 puts his right hand to the back of the toddler's  
14 head, she continues to suck and lick the  
15 perpetrator's penis with the video ending with the  
16 child victim backing off and just staring at the  
17 penis.

18 Q And when was that file downloaded?

19 A That was on 1/11 -- January 11th, 2011 at 7:25 p.m.

20 Q Okay. Once again it was in the same download file  
21 under --

22 A Under Robert and downloads.

23 Q Okay. Now in any of these videos could you see the  
24 face of any adults in the videos?

25 A No, you could not.

1 Q Okay. Now, this file, or this folder, profile name  
2 Robert, was that folder password protected?

3 A The?

4 Q I'm sorry, this folder or profile name Robert?

5 A Robert.

6 Q I'm sorry.

7 A Correct. The profile name Robert was password  
8 protected.

9 Q What does that mean?

10 A Just like when you go to your profile you have to  
11 enter a password to enter.

12 Q Okay. Now were you able to determine what program  
13 was used to download those videos on the computer?

14 A What program was used?

15 Q Yeah, were any programs used by the person who  
16 downloaded them on the computer? Was there a program  
17 used to go find these videos or anything like that?

18 A I mean, you go out and do a search and it all came  
19 down dealing with that wape as the search.

20 Q Is there something called, Lime wire?

21 A Yes but these particular ones were, I believe, just  
22 searched for under that website, wape ru.

23 Q Now, did you create any spreadsheets or documents  
24 that displayed the information that you were just  
25 describing to us?

1 A Well it--

2 Q I mean, I'm not talking about the description of the  
3 videos but as far as when they were downloaded, the  
4 file name and so forth?

5 A Right.

6 Q Did you do that?

7 (WHEREUPON, State's Exhibit No. 2 was marked for  
8 identification only.)

9 Q Let me hand you what's been marked as State's Exhibit  
10 No. 2. Would you take a look over those and tell the  
11 jury what they are.

12 A This is a screen shot of the way I look at somebody's  
13 computer in the forensic mode. When I look at it it  
14 doesn't come up like your normal one does where it's  
15 got the backdrop, your back page and icons over all  
16 like that with the Windows splash screen and  
17 everything. It totally -- well this gives you an  
18 indication of how we look at it and then the  
19 different, up here in the tool bar, the different  
20 things we can do. The searches and things like this.  
21 And this one here indicates --

22 Q You're looking at State's Exhibit 2 right now?

23 A Right.

24 Q Okay.

25 A State's Exhibit 2, the top ones, they have the blue

1 checks, are the ones that we just read. Those are  
2 the videos.

3 Q Okay.

4 A It gives you a file, create, last written, last  
5 modified, last access, dates.

6 Q Okay so that is what you were actually reviewing  
7 while you were doing the forensic examination?

8 A This is what I would see and then I would click on  
9 it, open it up and view it.

10 Q Okay. And take a look at State's Exhibit No. 3, how  
11 is that different?

12 A This just starts, it just shows the start of his user  
13 name on the computer. It's just showing his user  
14 name with a tree, showing a bunch of the different  
15 folders that are on there.

16 Q Bunch of different folders that are on that computer?

17 A Correct.

18 Q The information contained in those two exhibits, are  
19 they true and accurate representations--

20 A They are.

21 Q -- of the information that you found during your  
22 forensic examination?

23 A Correct.

24 Q Okay. You didn't change or manipulate those in any  
25 way?

1 A No.

2 MR. MOYER: Your Honor, I move to have State's  
3 Exhibits 2 and 3 moved into evidence.

4 THE COURT: Any objection?

5 MS. ROSS: Yes, Your Honor. First, I didn't get  
6 these in discovery. I got a whole different thing that  
7 I've been sitting over here trying to figure out because I  
8 went through with dates and times on what I received which  
9 is completely different from this. So -- and, in fact, a  
10 couple of them I can't even find the same times for the  
11 same data files. I'm trying to go through that. This is  
12 different from what I received in discovery.

13 THE COURT: This is what I want you to do, I  
14 want you to look at that and reconciles. We've got to a  
15 point where I personally need to take a break. Okay. So  
16 we're going to take a break, please return to the jury  
17 room. Don't discuss the case, we'll come right back in.  
18 Okay.

19 (WHEREUPON, the jury came into open court at  
20 approximately 3:43 p.m.)

21 THE COURT: All right, y'all take a look at it  
22 and reconcile. I think probably what it is is you've  
23 given it to her in a different form than what you're  
24 presenting. It probably is included in all that discovery  
25 but you've put it in a different form. So y'all can

1 reconcile it and make sure that it's been disclosed in  
2 substance. If not in that specific form. And then we'll  
3 come back on the record.

4 Mr. Perry, you're still on the stand so you can  
5 take a break, too, but you can't discuss your testimony  
6 with anybody, okay.

7 All right. Good enough, thank you.

8 MS. ROSS: I wouldn't mind discussing it with  
9 him because he could probably tell me.

10 THE COURT: You want to discuss it with him, I  
11 don't have any objection with it as long as the two of you  
12 agree.

13 MS. ROSS: Great, that would suit me.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: Y'all worked through your  
16 differences?

17 MS. ROSS: Well, Judge, just -- I printed out  
18 this disk that I got.

19 THE COURT: Yes, ma'am.

20 MS. ROSS: And went through and looked at all  
21 these times. And some of the times for these six videos  
22 aren't even in here. Most of them are. I think there's  
23 just one that's a different time that isn't in there at  
24 all. So -- and I just got this today. And so I object to  
25 it going in front of the jury. I have no objection. And

1 it's just the one. I don't know if it's three or four  
2 that has three checks, one through six on it. As far as  
3 the other one, that's fine with me, I've got no objection  
4 to that.

5 THE COURT: The other one is? Exhibit what?

6 MS. ROSS: Exhibit 2 or 3. I'd have to see  
7 which one's marked how. So objection to 2 but not 3.

8 THE COURT: All right, now what specific entry  
9 do you take exception to?

10 MS. ROSS: Let's see, I believe it's the one  
11 well 1/11 -- well 1/11/11, the first one that says, Last  
12 access 18:25:46. You know, that's certainly possible that  
13 I had missed that. That's 6:25:46 in military time. And  
14 I could have missed that but I did not see that one. In  
15 my--

16 THE COURT: Is that one of the first six that  
17 are checked that you are referring to?

18 MS. ROSS: Yes, it's number 1. The date is  
19 January -- is January 11th, 2011. And it's -- the time is  
20 6:25:46. I believe there was a second one was there.

21 THE COURT: Okay. And those are -- that's one  
22 of the videos to which he just testified?

23 MS. ROSS: Right.

24 THE COURT: So the substance of the entry he  
25 testified to verbally, did he not?

1 MS. ROSS: Yes.

2 THE COURT: Okay. All right. I'm not -- I  
3 don't take exception to your representation but I'm not  
4 convinced that it wasn't in all of the information that  
5 they had originally sent to you. And I don't think that  
6 the introduction of this, which essentially corresponds to  
7 the testimony that was given under oath, really prejudices  
8 you in any substantial or significant way. I'm not so  
9 certain otherwise that it adds to the State's case in any  
10 significant or substantial way.

11 MS. ROSS: All right.

12 THE COURT: But in as much as that it is just a  
13 print out, it looks like to be a fairly mensural print out  
14 of those videos. I'm going to overrule the objection,  
15 I'll let it in.

16 MR. MOYER: I just want to state something for  
17 the record, Your Honor. We gave Ms. Ross a disk that  
18 contains a good bit of information that Investigator Perry  
19 was talking about as far as some of the findings from his  
20 forensic analysis. So we also made it known from the very  
21 beginning that Investigator Perry has all of these  
22 documents and that we could no give it all up.  
23 Particularly the videos. I don't even have copies of  
24 these videos. I mean, it would be like me having crack in  
25 my office. It's a crime and we're not going to dispense

1 it. I gave Investigator Perry's cell phone number to  
2 Ms. Ross and said Investigator Perry was willing to sit  
3 down and show all the videos, show all his findings that  
4 we're not given in written form. So I just want to make  
5 sure the record is clear that we have complied with Rule 5  
6 in this regard. That we made all this information  
7 available to the defendant.

8 THE COURT: Okay, good enough, thank you.

9 All right, we ready for the jury?

10 MR. MOYER: We're ready, Your Honor.

11 MS. ROSS: Yes, sir Your Honor.

12 (WHEREUPON, the jury came into open court at  
13 approximately 4:02 p.m.)

14 (WHEREUPON, State's Exhibit No. 2 was admitted  
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 3 was marked for  
17 identification and received into evidence.)

18 THE COURT: All right, welcome back, ladies and  
19 gentlemen. Where we left off Investigator Perry under  
20 direct examination, I believe that the State had moved  
21 into evidence State's Exhibits 2 and 3. And over  
22 objection I am allowing those to be admitted into evidence  
23 as State's Exhibits 2 and 3.

24 You may move on, Mr. Moyer.

25 MR. MOYER: Thank you, Your Honor. May it

1 please the Court.

2 BY MR. MOYER:

3 Q Just a couple of questions about those exhibits  
4 before we move on. Investigator Perry, do these  
5 exhibits that have just been put into evidence, do  
6 they show the file names that you just described?

7 A That is correct.

8 Q They show the dates and times that was downloaded?

9 A Correct.

10 Q What you're talking about is the folder that these  
11 files were placed into?

12 A Correct.

13 Q Shows they were placed in the folder named Robert?

14 A Uh-huh. It's actually, you can see it's a little bit  
15 highlighted, that's the folder downloads. It has a  
16 blue check in it which corresponds to the fact that  
17 these over here are checked.

18 Q And that State's Exhibit No. which?

19 A Two.

20 Q Two, okay. Okay. Thank you. Now, let me move on.

21 Did you then, base on this information that you  
22 gleaned from this hard drive, did you then  
23 participate in the arrest of the Defendant?

24 A I did.

25 Q Where did that take place?

1 A Took place at Jeff Lynch Appliance out on Roper  
2 Mountain.

3 Q Why did take place there?

4 A He was working there doing deliveries for Jeff Lynch.

5 Q Okay. And what was the date and time that you made  
6 the arrest?

7 A It was on the 18th, I believe, of January 2011 at  
8 about 6:40 p.m.

9 Q Okay. Now, did he know you were coming prior to your  
10 arriving there?

11 A No.

12 Q You did not let him know you were coming?

13 A No.

14 Q Did you do this along or were any other officers  
15 involved?

16 A I had Investigator Mike Rainey, a gentleman that  
17 works with me in the office.

18 Q He also participated in this case?

19 A That's correct.

20 Q How did you approach the Defendant?

21 A Well we were sitting off at a distance. And as we  
22 saw him walking across the parking lot to his car,  
23 which was a white Malibu, no Impala, excuse me. And  
24 he started to get into his car, just as he sat down,  
25 we pulled up in our car blocking him in. And jumped

1 out and advised him who we were. At that point I  
2 told him he was under arrest, we had warrants on him  
3 for sexual exploitation of a minor.

4 Q Okay. Now, did you place him in handcuffs at that  
5 time?

6 A We did.

7 Q So he's clearly in custody at that point?

8 A Clearly in custody.

9 Q Did you advise him of his rights?

10 A I did.

11 Q And how did you advise him of his rights?

12 A I read him his Miranda warnings.

13 Q You said you read them, what did you read them off  
14 of?

15 A A card.

16 Q A card. Do you keep that with you at all times?

17 A Most of the time.

18 Q Well whenever you --

19 A Go to do an arrest, yeah.

20 Q Okay. Would you please read into the record the  
21 warnings that you advised this Defendant of -- the  
22 rights you advised this Defendant of on January 18th,  
23 2011?

24 A Yes, I advised him, Before we ask you any questions  
25 you have to understand your rights. You have the

1 right to remain silent. Anything you say can be used  
2 against you in court. You have a right to talk to a  
3 lawyer for advice before we ask you questions and to  
4 have him with you during questioning. If you have no  
5 money to pay a lawyer's fee, the Court will appoint  
6 one to represent you without cost if you wish. If  
7 you decide to answer questions now without your  
8 lawyer present, you will still have the right to stop  
9 answering at any time. You also have the right to  
10 stop answering at any time until you do talk to a  
11 lawyer.

12 Q So you read those rights to him?

13 A I did.

14 Q And did he appear to you to understand those rights?

15 A I asked him, Do you understand what your rights are?  
16 And he acknowledged that he did.

17 Q He acknowledged that he understood those rights?

18 A He did.

19 Q Now, did you make any threats, use any coercion or  
20 was there any intimidation?

21 A No.

22 Q Used to get him to talk to you?

23 A None.

24 Q Did you hold out any promises or hope of reward to  
25 get him to talk to you?

1 A None at all.

2 Q Okay. Now, you said after you read him the rights,  
3 he indicated to you that he understood the rights?

4 A That's correct.

5 Q Did he indicate to you that he wanted an attorney  
6 present?

7 A No, he made no indication that he wanted an attorney.

8 Q Did he ever tell you that he did not wish to talk  
9 about these charges?

10 A He never said anything about not wanting to talk with  
11 us or wanting an attorney there.

12 Q Now, after going over these rights with him and  
13 determining that he understood those rights, did you  
14 have a conversation with him there in the parking lot  
15 of Jeff Lynch about these videos on his computer?

16 A Well he first made a comment based on me telling him  
17 what he was under arrest for. And he said that he  
18 hadn't downloaded or he hadn't seen or looked at any  
19 child porn.

20 MS. ROSS: I object to hearsay.

21 MR. MOYER: What?

22 THE COURT: Okay, I believe that under the rules  
23 of -- is hearsay evidence. Is that your...

24 MR. MOYER: That's correct, Your Honor.

25 THE COURT: Okay. All right, I'm going

1 sustain -- excuse me, overrule on the basis of hearsay.

2 BY MR. MOYER:

3 Q Okay, so when you told him why you were arresting  
4 him, what was his response? What was his reaction?

5 A He reaction was, because obviously he knew what the  
6 charges were, he said, I haven't looked at or  
7 downloaded any child porn.

8 Q Okay. Did he say anything further along those lines  
9 that if there was anything?

10 A He also made the comment that if there was any child  
11 pornography on his computer, it was already there  
12 when he bought it at the jockey lot. He said he got  
13 it at the jockey lot.

14 Q Okay.

15 A And that it was he already there, on there.

16 Q Okay. Now, so you had already told him at this point  
17 why he was being arrested? What the charges were  
18 for?

19 A Correct.

20 Q And you told him that involved pornography involving  
21 minors?

22 A Correct.

23 Q Okay. Now, did he admit to you that the computer was  
24 his?

25 A He didn't come out and say, It was my computer. But

1 he did say he bought it at the jockey lot.

2 Q Okay. So he didn't use those words but by saying he  
3 bought it at the jockey lot?

4 A Correct.

5 Q So in that way he acknowledged that it was his?

6 A Correct.

7 Q Now when he made that comment about their being no --  
8 about him not downloading any child pornography and  
9 that it must have been there when he purchased it  
10 from someone at the jockey lot, did you ask him when  
11 he purchased the computer?

12 A I did. I asked him at that point, I said, When did  
13 you purchase the computer? And he responded by  
14 telling me before Christmas.

15 Q What did you say to that?

16 A When I said that -- or when he said that, I said to  
17 him, Well we've checked the dates and times of  
18 downloads and they were after that point in time.

19 Q And what was his response to that?

20 A Well -- he said that, Well, it's in the common area  
21 of my house, anybody could have done it.

22 At which time I responded to that with, Well we  
23 know your user name was password protected and we've  
24 got the dates and times that it was done. At that  
25 point we had let him -- we were waiting on a uniform

1 car to come transport him because we were in a plain  
2 clothes car, we can't transport him. And he wanted a  
3 cigarette, so we gave him a cigarette and he stood  
4 there and was smoking a cigarette. Well, after that  
5 comment I made to him about, you know, being password  
6 protected and we knew the dates and times of the  
7 download, the cigarette just fell out of his mouth  
8 and then he kind of started doing dry heaves like he  
9 was going to throw up. And then he sat down in the  
10 car. He sat down in the car.

11 Q What did he have to say then after he sat down?

12 A He just referred to the...

13 Q Okay, do you have your report with you?

14 A No, it's right there on the top.

15 Q Would it refresh your memory if you had chance to  
16 take a look at this report?

17 A Yeah.

18 Q Okay. If you could look and tell us what he said  
19 after he sat back down in the back of the car.

20 A Okay, after that he said he did look at porn but it  
21 wasn't child porn that he was looking at. It was  
22 porn from a site called wape underscore ru.

23 Q Okay, did you respond to that?

24 A Yeah, I told him that was where we found the child  
25 porn on his computer.

1 Q Okay. All right. Well did he have anything more to  
2 say to you about this incident there at Jeff Lynch  
3 Appliance?

4 A No, at that point in time he said he didn't want to  
5 talk to us -- he would talk to us but he wanted to  
6 talk to his mother first, tell her where he was and  
7 that he was all right and everything. So at that  
8 point in time we transported him. The uniform car  
9 got there, we transported him down to the law  
10 enforcement center. And we were walking him up to  
11 our office--

12 Q Okay, let me stop you there for a second.

13 A Sure.

14 Q So he was taken to the law enforcement center --

15 A Right.

16 Q In downtown Greenville?

17 A Downtown Greenville.

18 Q Did you meet up with him back at the law enforcement  
19 center?

20 A That's correct. The uniform officer waited for us at  
21 the backdoor, we met him. We took him at that point  
22 in time.

23 Q Who is we?

24 A Mike Rainey and myself, investigator back there.

25 Q So y'all accompanied him then into your office?

1 A Correct. We went down to the elevator and started up  
2 the elevator.

3 Q And tell us what, if anything, he said while you were  
4 going to your office?

5 A Yeah, well we were getting off the elevator he says,  
6 Look can I just go ahead and plead guilty to this,  
7 will you recommend probation? We told him we can't  
8 do that. We can't.

9 And then he said, Look we all know what I looked  
10 at and what I downloaded, can I just get probation  
11 for this? I again told him that we cannot recommend  
12 probation on that.

13 Q Okay. Then you took him to your office?

14 A Then we took him to our interview room.

15 Q Now, tell us about the interview room.

16 A The interview room, it's just a basic room. It's got  
17 a desk in there with a computer on it, telephone, a  
18 couple of chairs. Pretty much just a bland room.

19 Q Okay. It is used for just interviewing suspects or?

20 A Witnesses, suspects, it's a multi-purpose room,  
21 really.

22 Q Okay. When you took him there did you allow him at  
23 that time to call his mother?

24 A We did. We went ahead and let him call his mother  
25 and talk to her for a few minutes.

1 Q Now after he was finished with that conversation with  
2 his mother, did you then advise him again of his  
3 Constitutional rights?

4 A I did. I read them again to him using our rights  
5 form.

6 Q Okay. One moment.

7 A To get him to sign it.

8 (WHEREUPON, State's Exhibit No. 4 was marked for  
9 identification only.)

10 BY MR. MOYER:

11 Q So at this time advising him of his rights, you did  
12 so using what methodology?

13 A I just read them to him off of the waiver there.

14 Q Okay, you actually printed out the waiver of rights  
15 form?

16 A Right, the print out form.

17 Q Let me hand you State's Exhibit No. 4, do you  
18 recognize that document?

19 A I do.

20 Q What is that document?

21 A This is the--

22 MS. ROSS: Judge, I object to that. He's got a  
23 perfect right to remain silent. I don't think that  
24 document's relevant anyway. And it's a comment on  
25 Constitutional right of the Defendant to remain silent.

1 THE COURT: Okay. Good enough.

2 What's the purpose of the entry of that  
3 advisement of rights form?

4 MR. MOYER: To show that he was advised of his  
5 rights, Your Honor.

6 THE COURT: Okay. All right. I think he can  
7 testify to that without admitting it into evidence. And I  
8 will tell you to massage any concerns that you may have  
9 with respect to that. I certainly would give a jury a  
10 charge on that at the conclusion of the law if it's  
11 necessary and appropriate.

12 MR. MOYER: Okay.

13 THE COURT: Assuming as much that it's simply  
14 cumulative to his testimony, I'll sustain the objection.

15 MS. ROSS: Judge, just looking at it, normally  
16 they're initials going all the way down here, there's no.

17 MR. MOYER: Wait. Judge, I thought prior to --  
18 may we approach, Your Honor?

19 THE COURT: Sure.

20 (WHEREUPON, a bench conference was held in the  
21 presence of the jury but out of the hearing of  
22 the jury.)

23 BY MR. MOYER:

24 Q So you went over his rights with him again?

25 A I did.

1 Q Did you go over the same rights, I won't have you  
2 read them again, but did you go over the same rights  
3 that you just -- you just described that you went  
4 over with him at Jeff Lynch Appliances?

5 A That is correct.

6 Q Okay. And after going over those rights with him,  
7 did he indicate to you whether or not he understood  
8 those rights?

9 A He did. He stated he still understood them from  
10 previously.

11 Q Okay. Now, after going over that form with him,  
12 based on your observations of him and your  
13 conversation with him, did he appear to understand  
14 those rights?

15 A He did.

16 Q Did he appear to be in his right frame of mind when  
17 you talked to him?

18 A He appeared to be.

19 Q Once again, you didn't make any threats--

20 MS. ROSS: Judge, I think this has been asked  
21 and answered already.

22 THE COURT: Okay. I'll overrule the objection  
23 because I think this is subsequent to the initial inquiry  
24 at Jeff Lynch.

25 Am I correct?

1 MR. MOYER: That's correct.

2 THE COURT: Okay.

3 MR. MOYER: We're now talking about at the law  
4 enforcement center.

5 THE WITNESS: Correct.

6 BY MR. MOYER:

7 Q Okay, once again, you did not make anymore threats --  
8 or didn't make any threats at all?

9 A No threats, promises, coercion.

10 Q Now, after going over those rights with him again,  
11 did he make any other comments about the videos that  
12 were on his computer?

13 A He did. He -- well he made the comment that -- I'm  
14 not sure -- talking about...

15 Q Okay, if you need to refer to your --

16 A Well I --

17 Q -- report to refresh your memory but after going over  
18 those rights with them again at your office, did he  
19 make another comment about the videos?

20 A About the descriptions as we were reading the -- as  
21 we started reading the description of the videos to  
22 him that were on the warrants, he said that he did  
23 not want to hear, he'd seen the videos and he did not  
24 want to hear the description read out loud to him.  
25 On the warrants -- that were on the warrants.

1 Q Did he say why he did not need those?

2 A Yeah, he said because he knew what was -- he had seen  
3 them, he knew what was on them.

4 Q So he had seen them so he didn't need you to describe  
5 what they were?

6 A Right.

7 Q Does not your report state before that that he made  
8 another comment about these videos? You can look at  
9 your report if you have to.

10 A Yeah, he did make a comment earlier that he had  
11 looked at the videos and downloaded them but he had  
12 not touched any children.

13 Q Okay. He was just looking at the videos?

14 A Correct.

15 Q Okay. So he told you then in there that he did look  
16 and download those videos?

17 A He did.

18 Q Okay. Now, did he give you a written statement to  
19 this effect?

20 A No, he did not.

21 Q Okay. Now during your conversation with him, did he  
22 tell you where he lived?

23 A Yes, he did. in Greenville County.

24 Q That being the place where you got--

25 A Got the computer.

1 MR. MOYER: Okay. All right, one moment,  
2 please. Okay, please answer any questions the defense  
3 has.

4 CROSS-EXAMINATION

5 BY MS. ROSS:

6 Q Isn't it true that at that time of questioning you  
7 told Mr. Chappell that you didn't need a written  
8 statement because you could attribute whatever  
9 statement you wanted to to him?

10 A No, ma'am.

11 Q Now, is there a video of this conversation from your  
12 car?

13 A We don't have -- the unmarked cars don't have the  
14 cameras. Our uniform cars have cameras in them but  
15 our plain clothes vehicles do not.

16 Q Uniform cars are required by law to have cameras,  
17 right?

18 A I think it's just for DUI.

19 Q UH-huh. For any DUI.

20 A Right but not --

21 Q Video evidence is considered.

22 A Yeah.

23 Q And you didn't have any video from the interview room  
24 either?

25 A We don't have video in the interview room.

1 Q Do you have a phone that dose video or recordings at  
2 all? Or any kind of ability to make a video of  
3 recorded statements?

4 A I have a cell phone, a personal cell phone, I don't  
5 have a county cell phone.

6 Q All right. Now, did you get Frederick Chappell's  
7 cell phone along with the computer?

8 A I don't recall getting a cell phone.

9 Q All right. So you never asked for or tried to get a  
10 cell phone from his house?

11 A There was no indication that it was used. We had to  
12 have probable cause to do that.

13 Q And as far as going over to his house, his mother,  
14 Patricia Galloway, lived there along with her  
15 husband, Dewayne Galloway, is that correct?

16 A That is correct.

17 Q And when you went there the laptop was in the den,  
18 correct?

19 A That is correct.

20 Q And Ms. Galloway had said that she had seen child  
21 pornography on that laptop?

22 A That is correct.

23 Q And Mr. Chappell was not there in the trailer? He  
24 had not taken the laptop with him to work?

25 A Not that day.

1 Q And ms. Galloway had access to that laptop?

2 A She did because she was there in the house with it.

3 Q And so despite the password protection, she had  
4 access to the contents of that laptop?

5 A I don't know that for 100 sure but do believe she  
6 did.

7 Q And wasn't the password Rob, R-O-B?

8 A I have no idea.

9 Q So in your forensic study of the laptop you didn't  
10 need a password or access the password?

11 A (The witness shook his head.)

12 Q Now, did she mention another person, John Cooper, who  
13 had access to the computer as well?

14 A That's the first I've ever heard that name.

15 Q All right. And after taking the computer, did you  
16 take any DVD's or thumb drives or any other kind of  
17 media?

18 A No, we did not.

19 Q Now, going back, I just want to go over one thing.  
20 This a hard to read. I think it's the -- one of  
21 these two Exhibit 3. Do you have it there?

22 A It's on the table there.

23 Q Okay, under this part that says, Robert, there's also  
24 a lot of files including Google, Microsoft, media  
25 player, every thing up under that file, correct?

1 A Correct.

2 Q All right. Now when -- I did meet with you and  
3 discuss some of the content found on the computer in  
4 question, correct?

5 A That is correct.

6 Q And at that point you gave me a disk that actually  
7 accidentally had material on it that was inappropriate  
8 to say the least, child pornography on it; correct?  
9 The one disk had the wrong -- accidentally had pictures  
10 on it, correct?

11 A That's correct.

12 Q Okay. So you gave me another one?

13 A Correct.

14 Q That didn't. And I just made a printout of this.  
15 And I didn't make two so I'll refer you to certain  
16 pages and different parts. On page 12, I just refer  
17 you to one--

18 MR. MOYER: I would object without knowing what  
19 she is showing the witness, without being into evidence.  
20 Would just object to lack of foundation at this point.

21 MS. ROSS: This is discovery provided to me by  
22 the State.

23 THE COURT: Ask him if he recognizes what that  
24 is.

25 MS. ROSS: Okay.

1 THE COURT: Or if he recognizes what you purport  
2 it to be.

3 MS. ROSS: Okay, gottcha.

4 BY MS. ROSS:

5 Q Do you recognize this? And you can just look through  
6 it, I mean.

7 A It a looks like the data that's contained on the disk  
8 I gave you.

9 Q And would you -- would you agree that there are a lot  
10 of different dates and times for when stuff was  
11 modified and or accessed on this printout?

12 A I mean, without going through it, I specifically...

13 Q I'll just show you. So looking at that, does it say  
14 last accessed and last modified?

15 A Uh-huh.

16 Q Now, when the last modified here is January 3rd,  
17 2011, right?

18 A Correct.

19 Q At 10:22 a.m.

20 A Uh-huh. Okay. Now, the last modified shows an early  
21 date than last access.

22 Q Correct.

23 A What that is telling me is that it was looked at on  
24 that date, something was accessed on it and modified.

25 Q Okay.

1 A Then on 1/12/11 it was accessed again but nothing was  
2 done to the file so it was not modified. So this  
3 date did not get changed to coincide with that date.

4 Q Okay. So something happened with that file on  
5 January 3rd, 2011 at 10:22?

6 A Correct.

7 Q So someone went into that computer and looked at that  
8 file?

9 A The computer could have actually modified that. That  
10 didn't have to be necessarily specifically modified  
11 by a person. The computer can do that. If I just  
12 click on that and open it and look at it, then it can  
13 be modified.

14 Q So a computer can be -- could modify a file?

15 A Sure. When Windows updates, it goes in there and  
16 makes all kinds of changes. So when you have your  
17 Windows updates done automatically.

18 Q So you are saying someone would have had to be there  
19 though?

20 A Yes.

21 Q And someone with a file if it had to be -- the  
22 computer had to be on?

23 A Yes, oh absolutely, yeah.

24 Q Okay. Now -- so, I'll just let you have this and let  
25 you look at this since that's the only copy. And is

1           this correct of what you gave me in discovery?

2           A     Correct.

3           Q     Now, I'm just going to be very meticulous here and go  
4           just through. On page four of that report, I marked  
5           pages -- there's a modification --

6           MR. MOYER: Judge, I would object to the  
7           relevance of this line of questioning. The only thing --  
8           I don't know what kind of document she's referring to that  
9           have been looked at or modified but certainly isn't the  
10          ones we've been talking about here that are the subject of  
11          this case. I object to the relevance, first of all.

12          THE COURT: Okay. I'll overrule, I'll allow her  
13          to ask it. I believe what she's trying -- well, I'm not  
14          going to say what she's trying to demonstrate but I think  
15          it's relevant and I'll ask her to ask the question and  
16          proceed.

17          BY MS. ROSS:

18          Q     All right. On page four there's a modification time  
19          of January 7th at 6:02:13, correct?

20          A     I'm sorry, what file name?

21          Q     I didn't mark the file, I simply marked the dates.  
22          January 7th, 2011 at 6:02:13. And there were some  
23          sort of modification on that computer then. And the  
24          same down below on October 21st, 2010?

25          A     Correct.

1 Q At 2:36. And I'm just going on to page five,  
2 January -- page five, the following page of  
3 January 9th, 2011 at 12:46 p.m.

4 A Now you understand there's several reasons a  
5 modification shows up on a file. If you take a thumb  
6 drive -- let's say you take a picture, because these  
7 are gift files, which means it's a picture. If I  
8 take a thumb drive that's got a picture on it and I  
9 plug it into the computer and download it on to  
10 there, it's going to show the date modified was the  
11 last date that was on your thumb drive, when it was  
12 created there. And then it's going to show a create  
13 date actually ahead of the modification. Where you  
14 think because it was created today, it had to be  
15 modified today. But the computer's going to show it  
16 as an earlier date. But that's coming off of a thumb  
17 drive or something. I mean, that's just one other  
18 way--

19 Q That's one way but you can't say that's the way?

20 A So I can't say how that modification happened.

21 Q You just know it's a modification --

22 A I just know there was a modification --

23 Q -- because earlier you said a modification could be  
24 caused or would be caused by someone accessing that  
25 computer.

1 A It could be someone accessing the computer, it could  
2 be somebody downloading a picture on that computer  
3 from a thumb drive.

4 Q Someone doing something to that computer on that day?

5 A Right. The last access date would be the more true  
6 date of when it was actually accessed.

7 Q Yet the modification date --

8 A Modification date --

9 Q -- modification was made through that computer, to  
10 that file.

11 A You can't say -- modification date, you can't say  
12 that specifically it was accessed on that day on that  
13 computer.

14 Q Now, you testified earlier that it could be from  
15 being accessed?

16 A It would be from that but it doesn't have to be from  
17 that.

18 Q But it's a real possibility that it could be?

19 A They're both possibilities.

20 Q Okay. Go on to page seven, there's a modification  
21 time again of 10/4/10, is that correct? At 8:43?

22 A That's correct.

23 Q And on 1/6/11 at 8:02?

24 A Correct.

25 Q And on 1/8/11 at 4:35?

1 A Correct.

2 Q And going on, oops, I believe to page eight, there's  
3 the 1/8/11 at 5:41.

4 A Correct.

5 Q And page 10 of 1/6/11 at 2:16?

6 A Correct.

7 Q Page 12, 1/3/11 at 10:22?

8 A Correct.

9 Q And page 20 of 1/9/11 at 12:46?

10 A Correct.

11 Q And let's see page 21, 1/6/11 at 7:32?

12 A Correct.

13 Q Then there's some from 2010 11/30/2010 at 10:35 and--

14 A Okay, now something I noticed on here on the last  
15 modification time, and this may explain to us why  
16 this is happening, the date is 10/4/10. That's  
17 before he bought the computer. Which would be --  
18 this -- a gift file usually--

19 Q I just ask you answer my questions--

20 MR. MOYER: Judge, I ask that he be allowed to  
21 answer.

22 THE COURT: Okay, I'll let you explain the  
23 answer to the question.

24 If you'd repose the question.

25 And you can answer it yes or no appropriately.

1 And you can explain the question thereafter, okay.

2 MS. ROSS: Okay.

3 BY MS. ROSS:

4 Q So we're on page 21, a modification time of 10/4/10  
5 at 1:22 p.m.?

6 A Right.

7 Q Right. And there's one, going on to page 22, there's  
8 modification time of 1/6/11 at 8:02, 1/8/11 at 4:35,  
9 1/8/11 at 5:41, is that correct?

10 A Yes.

11 Q And page 27 finally, 1/13/2010 at 9:24?

12 A Correct.

13 Q Now, all these times are listed on the discovery of  
14 times where some kind of images on this computer were  
15 manipulated or modified?

16 A Right. And if you'd like I can explain that now that  
17 I saw the dates on those.

18 Q Most of the dates, the computer was actually at the  
19 home of Patricia Galloway or Robert Galloway but some  
20 of them were before?

21 A Right. Which makes sense because as you own a  
22 computer you download more programs which contain  
23 images in them. In other words, when you look at a  
24 internet page on your computer, every image that's on  
25 that computer or on that page when you shut that

1 computer down, it is saved onto your computer in the  
2 temporary internet file. So every time you shut it  
3 down it's showing that that was modified on that  
4 date. So as you move along -- your computer life  
5 moves along, you're going to continue to add new  
6 images onto your computer that are going to have  
7 different modifications dates and last access dates.

8 Q And you're saying, essentially, the computer is doing  
9 this itself?

10 A Absolutely. I can explain.

11 Q Without your -- without your input--

12 MR. MOYER: I would ask that he be allowed to  
13 explain his answer.

14 THE COURT: Okay, you can explain it then.

15 MS. ROSS: I think I've given him some leeway on  
16 the explanations.

17 MR. MOYER: If it pleases the Court, he was in  
18 the middle of answering a question.

19 THE COURT: I'll allow him to complete his  
20 answer.

21 THE WITNESS: Some of those dates she was  
22 referring to the times, the dates were like October of  
23 2010, prior to him buying the computer. Well, when the  
24 programs are put on the computer by the company or Windows  
25 or whatever the program is that is actually on that

1 computer, that's the date that's going to show up. Then  
2 the last access, which was a different date was when the  
3 owner of the computer boots his computer up and looks at  
4 something and boom there it is with a different access  
5 date and it was modified back when it was first put on to  
6 the computer. And that's why you have stuff showing up  
7 way before the actual purchase of the computer. Because  
8 everything is put on that computer program wise, the  
9 computer is going to log it in many places.

10 BY MS. ROSS:

11 Q The computer itself is doing this?

12 A Absolutely.

13 Q With these images?

14 A Uh-huh.

15 Q Okay. And then when -- did you ever go to see  
16 whether Mr. Chappell was at work during the hours  
17 work schedule when he supposedly was accessing these  
18 materials or?

19 A Had he not told us he downloaded them, we would have  
20 done that. But since he told us he downloaded them,  
21 we didn't see the need to verify what he was telling  
22 us.

23 Q So you didn't get the work records to see?

24 A No.

25 Q Now, and there's no written, obviously we've already

1           gone over that, there's no signed statement regarding  
2           the statement and there's no video of any statement  
3           from Mr. Chappell?

4   A       No.

5           MS. ROSS:  Beg the Court's indulgence.

6           THE COURT:  Yes, ma'am.

7   BY MS. ROSS:

8   Q       Isn't it true that you did actually take a phone from  
9           Frederick Chappell when he was leaving Jeff Lynch and  
10          you picked him up there at his Impala?

11  A       We may have taken anything in possession, knives,  
12          guns, wallet, everything we search them down and take  
13          stuff off them.  We did not take his phone and keep  
14          it and do a computer analysis on it.

15  Q       You didn't look at the phone for any kind of  
16          materials on that?  Or open it up?

17  A       I don't recall whether I did.  If I had I would have  
18          noted it.  But I'm not going to 100 percent say I  
19          didn't.  But incident to an arrest we're allowed to  
20          do that.  Anytime we arrest somebody--

21  Q       It is fair to say if you found materials, illegal  
22          materials on the phone, they would be in evidence and  
23          presented to the court today?

24  A       If we looked at the phone and there was illegal stuff  
25          on the phone it would be in here today, yes, ma'am.

1 MS. ROSS: All right, no further questions.

2 THE COURT: Redirect, sir?

3 MR. MOYER: Just a couple of follow up  
4 questions.

5 REDIRECT EXAMINATION

6 BY MR. MOYER:

7 Q First of all, let me ask you this. Could that  
8 computer had been used by somebody else other than  
9 this Robert profile? Just using a different profile  
10 name? Maybe I'm not asking the question right but  
11 without logging in to the Robert --

12 A In other words, could it be multiple profiles on  
13 there?

14 Q Yes.

15 A There could be.

16 Q So you didn't necessarily have to be Robert and know  
17 that password in order to use that computer?

18 A No, you did not.

19 Q Okay. Now, can you just explain, you've been asked  
20 about all these modification dates, what do you mean  
21 by modification?

22 A Somehow the file is, whether it's downloaded and that  
23 causes it to be modified or you go -- if you went  
24 into a word document and changed one little thing,  
25 take a period out, it's going to show that that had

1           been modified. Now, if you go in, read the document,  
2           shut it down, there's not going to be a change in the  
3           modification date. It'll just say, last access date.  
4           The last access will be different than the last  
5           modified because you accessed it but you didn't  
6           modify it. So the last modified date is going to say  
7           to whenever the last modification happened. If that  
8           makes any sense.

9       Q     Okay. Just to make clear, all these different  
10           modifications and dates that you were asked about  
11           here in cross-examination, none of those referred to  
12           those six videos that you just talked about?

13    A     No, they did not.

14                   MR. MOYER: Okay, nothing further for this  
15           witness.

16                   Thank you.

17                   THE COURT: Any recross, ma'am?

18                                   RECROSS-EXAMINATION

19    BY MS. ROSS:

20    Q     You talked about these modifications, they did refer  
21           to other images?

22    A     Well images as in, in other words, most images that  
23           are downloaded onto your computer that are pictures  
24           are j pegs. Probably 99 percent of them are. Gif,  
25           with which she's referring to is G-I-F- is the file

1 extension. Those are like the little icons, the  
2 specific --

3 Q Well --

4 A -- emoticons type things, the Windows logo, those are  
5 normally gif files.

6 Q Okay. But I would just point to this one on page 21  
7 that we went through before. That top one, what is  
8 that called, the name of file? I mean, it's one of  
9 those...

10 A It's a image, it's a gif image.

11 Q Image. And it's from that wape ru site?

12 A Yeah, wape.ru, my files, preview.

13 Q Okay. And isn't that the files the same place that  
14 this came from?

15 A No, because this is a gif file. I mean, it came from  
16 the same place.

17 Q That's my question. Okay.

18 MS. ROSS: I've got nothing further.

19 MR. MOYER: Nothing further, Your Honor.

20 THE COURT: All right, thank you, Mr. Perry, I  
21 appreciate your being here. You may step down.

22 Mr. Moyer, how many additional witnesses do you  
23 intend to present, sir?

24 MR. MOYER: Two, Your Honor.

25 THE COURT: Two.

1 MR. MOYER: They will be much shorter.

2 THE COURT: Okay, the next one will be short? I  
3 just want to make sure. I promised this jury I wasn't  
4 going to keep them here past 5:30 and I want to make sure  
5 I keep my word on that.

6 MR. MOYER: I fully anticipate we'll be done.

7 THE COURT: Okay, good enough. You may call  
8 your next witness, sir.

9 MR. MOYER: The State calls Corazon Maria  
10 Navalle.

11 THE CLERK: Place your left hand on the Bible,  
12 raise your right hand.

13 CORAZON NAVALLE, after being duly sworn,  
14 testified as follows:

15 THE CLERK: Thank you, please be seated.

16 DIRECT EXAMINATION

17 BY MR. MOYER:

18 Q Ms. Navalle, let me ask you to lean forward there,  
19 ask you speak into that microphone so everyone can  
20 hear you. Have you ever testified in a courtroom  
21 before?

22 A Not in this kind, no.

23 Q Civil case?

24 A Yeah, civil case.

25 Q Completely unrelated. Let me ask you to tell the

- 1 jury your full name.
- 2 A Corazon Navalle.
- 3 Q And would you spell your name for the Court Reporter?
- 4 A C-O-R-A-Z-O-N and then last name is N-A-V-A-L-L-E.
- 5 Q How old are you, Ms. Navalle?
- 6 A Forty-five.
- 7 Q Okay. And okay. Are you married?
- 8 A No, sir.
- 9 Q Okay. Do you have any children?
- 10 A Dogs.
- 11 Q You have dogs. Okay. All right. Now let me ask
- 12 you, how far did you go in school?
- 13 A College.
- 14 Q Where did you -- where did you grow up and where did
- 15 you go to college?
- 16 A Philippines.
- 17 Q The Philippines. When did you move to this country?
- 18 A 1993.
- 19 Q Where do you work?
- 20 A At Jeff Lynch Appliance.
- 21 Q Where's that located?
- 22 A 17 Roper Mountain Road.
- 23 Q In that the only Jeff Lynch Appliance in Greenville?
- 24 A Yes, sir.
- 25 Q The only store?

- 1 A Yes, sir.
- 2 Q How long have you worked there?
- 3 A Since 1995.
- 4 Q Since 1995?
- 5 A Yes.
- 6 Q What is your position?
- 7 A Payables.
- 8 Q You work in the accounting department?
- 9 A Yes.
- 10 Q Now, do you know this Defendant, Frederick Robert
- 11 Chappell?
- 12 A Yes, sir.
- 13 Q How did you get to know him?
- 14 A Well he worked there.
- 15 Q He worked at Jeff Lynch?
- 16 A Yes, sir.
- 17 Q What name did he go by?
- 18 A Rob or Robert.
- 19 Q Robert or Rob?
- 20 A Uh-huh.
- 21 Q And do you remember when he started working there?
- 22 A When we first moved in 2006 to the new building.
- 23 Q Okay. And was he a friend of yours?
- 24 A We became friends after.
- 25 Q After getting to know him for a little while?

- 1 A Yeah.
- 2 Q Was he ever a boyfriend?
- 3 A No.
- 4 Q So you didn't have a romantic relationship with him?
- 5 A No.
- 6 Q But he was your friend?
- 7 A Yes.
- 8 Q Now, do you have knowledge that he ever owned a  
9 computer?
- 10 A If he ever owned a computer in the past, no I don't  
11 have any knowledge of it.
- 12 Q Before you got involved, is that correct?
- 13 A Yeah, yeah.
- 14 Q Now, did you have any involvement with him getting a  
15 computer?
- 16 A Yes.
- 17 Q When was that?
- 18 A This was in December of 2010. I got it from Best  
19 Buy.
- 20 Q So you actually purchased the computer?
- 21 A Yes, I loaned him the money, actually.
- 22 Q You were loaning him the money?
- 23 A Yes.
- 24 Q Who actually went to Best Buy and purchased the  
25 computer?

- 1 A Me.
- 2 Q I'm sorry?
- 3 A Me.
- 4 Q You did?
- 5 A Yeah.
- 6 Q Do you remember what date it was specifically?
- 7 A It was a Saturday of December 11.
- 8 Q How were you able to remember the date?
- 9 A My check. My duplicate check is still present.
- 10 Q I'm sorry, say that again, please.
- 11 A My duplicate check is still in tact.
- 12 Q So by duplicate check, whenever you write a check  
13 your checkbook makes a duplicate copy?
- 14 A Yes. I keep for about three years worth of duplicate  
15 checks.
- 16 Q Okay. And you've gone back and you found that  
17 duplicate check?
- 18 A Uh-huh.
- 19 Q Did you make a copy of that duplicate check?
- 20 A Yes.
- 21 Q Okay. And do you remember how much you spent on the  
22 computer and accessories?
- 23 A On the computer itself yes, it was 1999 at the end it  
24 was cheap.
- 25 Q I'm talking about the computer and the accessories?

1 A Five hundred plus.

2 Q Okay. And is the actual amount on the check stub,  
3 that check?

4 A Yes, sir.

5 (WHEREUPON, State's Exhibit No. 5 was marked for  
6 identification only.)

7 MS. ROSS: I object, that is not the original,  
8 it's simply a duplicate check from the checkbook and she  
9 testified, that's her testimony.

10 MR. MOYER: Hold up, I'll lay that foundation.

11 THE COURT: Okay.

12 MR. MOYER: I'll cover that.

13 THE COURT: All right. I won't rule on it yet.  
14 You haven't moved to move it into evidence so it might not  
15 be right for adjudication right yet.

16 BY MR. MOYER:

17 Q All right, Ms. Navalle, I'm going to hand you what's  
18 been marked as State's Exhibit No. 5. Just take a  
19 look at that document, do you recognize what I just  
20 handed you?

21 A Yes, sir.

22 Q What is that?

23 A This is my duplicate check. It's actually -- the  
24 original check was electronic, so they deducted it  
25 from my bank right then and there.

1 Q Okay. But you actually had to write out something  
2 the day you wrote this check?

3 A Yes.

4 Q And that's a copy, a duplicate copy of that?

5 A Yes.

6 Q Now, did you make this copy that is right before you  
7 here, State's Exhibit No. 5?

8 A Yes.

9 Q Is that an exact copy of the duplicate check that you  
10 have?

11 A Yes, sir.

12 Q You didn't change it or make any --

13 A No.

14 Q Deletions or additions at all?

15 A No.

16 Q That's the way it looked on December the 11th of  
17 2010?

18 A Yes, sir.

19 Q When you filled that out, is that correct?

20 A Yes, sir.

21 MR. MOYER: Your Honor, at this time I move to  
22 have State's Exhibit No. 5 entered into the record.

23 THE COURT: Objection?

24 MS. ROSS: Again, I have to get the original  
25 rule. It's not the original, it's a copy of the duplicate

1 check. So I object on that basis.

2 THE COURT: Okay. All right, I'd respectfully  
3 overrule the same as State's Exhibit 5.

4 (WHEREUPON, State's Exhibit No. 5 was admitted  
5 into evidence.)

6 BY MR. MOYER:

7 Q Would you tell us now, based on State's Exhibit No.  
8 5, does that indicated where you made the purchase of  
9 that computer?

10 A Best Buy.

11 Q Does it say how much you spent?

12 A 513 and 97 cents.

13 Q Okay. Were you by yourself when you bought it?

14 A Yes, sir.

15 Q Was this a gift for him?

16 A He -- I loaned him the money.

17 Q You loaned him -- when you say you loaned him the  
18 money, you actually -- you didn't actually give him  
19 the money?

20 A No, no.

21 Q But you were expecting to be paid back?

22 A Yes, sir.

23 Q Now, how did you decide on what computer to get?

24 A Whatever's on sale.

25 Q So you just got something inexpensive?

- 1 A Yes, sir.
- 2 Q Did you buy the computer on your own initiative or  
3 did he ask you to buy it for him?
- 4 A He asked me.
- 5 Q He asked you to do it?
- 6 A Yes.
- 7 Q Okay. You said December 11th was a Saturday?
- 8 A Yes.
- 9 Q When did you give the computer to him?
- 10 A I think it was a Sunday, the next day. Because they  
11 had to -- they had to install, I think, it was the --  
12 I'm not sure the Microsoft Office or the virus thing.  
13 They had to install that. And since the store's full  
14 of people, they tell everybody that bought computer  
15 that day, that they can only get the computer the  
16 next day.
- 17 Q Okay. So you went back and got it the next day?
- 18 A Uh-huh.
- 19 Q And you gave it to him the next day.
- 20 A Next day.
- 21 Q And where did you actually give it to him?
- 22 A At their house. His momma's house.
- 23 Q Okay, do you remember where that was?
- 24 A Hilltop Avenue.
- 25 Q Okay. What kind of residence was it, a mobile home?

- 1 A Looks like a trailer.
- 2 Q Okay. Is that where he lived?
- 3 A From I understand, yes.
- 4 Q Is that where he was when you met with him on that  
5 date?
- 6 A Yes, sir.
- 7 Q Had you ever been over there to see him on any other  
8 occasions other than when you gave him the computer?
- 9 A No, sir.
- 10 Q So just that day?
- 11 A Yes, sir.
- 12 Q Do you remember who else was there when you gave it  
13 to him?
- 14 A His mom.
- 15 Q Okay. Who else did he live with?
- 16 A His mom's husband.
- 17 Q Okay. And you're aware that his mother is deceased  
18 now, is that right?
- 19 A I heard a while ago.
- 20 Q Okay. Now, other than that date that you brought him  
21 the computer, did you ever go over to that residence  
22 on any other occasions?
- 23 A After he was arrested I went to see his mom.
- 24 Q You went over to see his mom.
- 25 A Yeah.

1 Q Did you ever see anyone else over there when you  
2 would go over there?

3 A Yes, just her husband.

4 Q Okay. Was she in bad health then?

5 A Very bad, yes.

6 Q Now, have you seen what's -- well let me ask you  
7 this, before you took the computer over to the  
8 Defendant, this residence on December the 12th, 2011,  
9 did you do anything to the computer?

10 A No, sir.

11 Q Did you download anything?

12 A No.

13 Q Did you even turn it on?

14 A No. It was after -- they handed it to me in a box.  
15 So I gave it to him in a box.

16 Q So you didn't take it out of the box?

17 A No.

18 Q You just took right from the store, right to him?

19 A That's correct.

20 Q Have you had a chance to take a look at State's  
21 Exhibit No. 1?

22 A Uh-huh.

23 Q Does that look like the computer that you purchased  
24 for him?

25 A Yes, sir.

1 Q Was it brand new when you bought it?

2 A Brand new.

3 Q Did you ever use the computer after you gave it to  
4 him?

5 A Sir?

6 Q Did you ever -- after you gave the computer to the  
7 Defendant, did you ever go over to his house and use  
8 it?

9 A No. No.

10 Q As far as you know.

11 A No.

12 MR. MOYER: Okay, please answer any questions  
13 the defense has.

14 CROSS-EXAMINATION

15 BY MS. ROSS:

16 Q I guess they gave it to you in a box but the Geek  
17 Squad or someone had worked on it at Best Buy at some  
18 point?

19 A Well they work on everybody in there that bought a  
20 computer. Like I said, the store's full of people,  
21 it was the holidays. So they could not really  
22 install everything right there and then. They had to  
23 give it you the next day.

24 Q All right. And you worked with Mr. Chappell at Jeff  
25 Lynch for some time?

1 A Not really work with him. He's in housekeeping, I'm  
2 in accounting.

3 Q Okay. Do you know by any chance his hours? Did you  
4 have any idea of his hours at Jeff Lynch?

5 A From -- I know they're supposed to be there from  
6 8:00. He worked in deliveries too. And since we  
7 were -- since my employer is a stickler to overtime,  
8 he wants everybody sent home early. As much as  
9 possible if nobody's doing anything.

10 Q Okay. So you know that they started at 8:00 but  
11 you're not sure how far that would go in the  
12 afternoon?

13 A Some them are sent home early.

14 Q Okay. Do you know -- can you just tell me what early  
15 means?

16 A Sometimes two o'clock, sometimes three o'clock.

17 Q Okay. All right.

18 MS. ROSS: I have no more questions.

19 MR. MOYER: Nothing further.

20 THE COURT: Thank you, ma'am. I appreciate you  
21 being here.

22 May she be excused?

23 MR. MOYER: Please, Your Honor.

24 MS. ROSS: Yes, Your Honor.

25 THE COURT: Okay, thank you, ma'am, I appreciate

1 you being here.

2 Do you have one more short witness, sir?

3 MR. MOYER: I do, Judge.

4 THE COURT: All right.

5 MR. MOYER: The State would call Investigator  
6 Mike Rainey to the stand.

7 THE CLERK: Sir, please place your left hand on  
8 the Bible, raise your right hand.

9 MIKE RAINEY, after being duly sworn, testified  
10 as follows:

11 THE CLERK: Thank you, please be seated. State  
12 your name for the record.

13 THE WITNESS: Investigator Michael Rainey.

14 DIRECT EXAMINATION

15 BY MR. MOYER:

16 Q Where are you employed?

17 A Greenville County Sheriff's Office.

18 Q How long have you been with the sheriff's office?

19 A Since 1994.

20 Q What department are you in in the sheriff's office  
21 now?

22 A I'm currently assigned to our CID, Criminal  
23 Investigations Division. Specifically our Computer  
24 Crimes Investigations Unit.

25 Q Okay, with Investigator Perry?

1 A Yes, sir.

2 Q All right. And you have the same duties and  
3 responsibilities that Investigator Perry has and that  
4 he described to us earlier?

5 A Yes.

6 Q Would you tell us about your training and experience?

7 A I have been to numerous training, EnCase forensics  
8 training. Been assigned to our ICAT task force, ICAT  
9 training. Been to the National Computer Forensics  
10 Institute. Which is part of the United States Secret  
11 Service Computer Forensics Training. I have several  
12 different trainings curriculum under their training.  
13 Access data, Peer to peer training, different  
14 trainings.

15 Q Like Investigator Perry do you keep up with the  
16 literature and the updates in the your field?

17 A Yes.

18 Q So you receive continuing education all the time?

19 A Constantly.

20 Q Okay. Now, let me ask you this, did you also  
21 participate in the examination of the computer,  
22 State's Exhibit No. 1 that's in evidence?

23 A I did.

24 Q And did you -- did you work independently with  
25 Investigatory Perry or did you work off his computer

1 as well?

2 A No, I have my own computer, my own forensics unit.

3 Q Okay. So you work completely independently of  
4 Investigator Perry?

5 A That's correct.

6 Q Did you have -- we heard about how images are made of  
7 the hard drive, did you have an image of the hard  
8 drive as well?

9 A That is correct, sir.

10 Q How did you get that image?

11 A Took the hard drive from the computer using our  
12 forensics software. Which in my case I used access  
13 data, which is FTK imager, imaged the hard drive.  
14 And replaced the hard drive back into the computer,  
15 thus giving myself a forensic image of that drive.

16 Q Okay, so you didn't make your image of off  
17 Investigator Perry's?

18 A No, sir.

19 Q You each made a separate image--

20 A Off of the original hard drive.

21 Q Okay. Now you mentioned some software that you used.  
22 What was the name of the software that you used?

23 A Access data. Which is access data forensic tool kit,  
24 FTK. It's a imaging tool and forensic software  
25 program.

1 Q And is that the same sort of tool as Investigator  
2 Perry used?

3 A It's just made by a different company.

4 Q And he talked about using something called EnCase?

5 A Yes, sir. I also have EnCase.

6 Q Okay. But you used a completely different set of  
7 software?

8 A Yes, sir.

9 Q Did you an independent examination of that hard  
10 drive?

11 A Yes, sir, I did.

12 Q And did the results of your analysis of that hard  
13 drive reveal the same videos that Investigator Perry  
14 found on his examination?

15 A Yes, sir, it did.

16 Q And that's using a completely different?

17 A Yes, sir, I used access data FTK, which is -- they  
18 abbreviate Forensic Tool Kit as FTK. The version of  
19 software I used was Version 3.

20 Q Okay. And did you also participate in the arrest of  
21 the Defendant on January 18th of 2011?

22 A Yes, sir, I did.

23 Q And you were present when Investigator Perry and you  
24 made the arrest and took him to the law enforcement  
25 center, you with them both the entire time?

1 A Yes, sir, we were in my vehicle.

2 Q Okay. Did you hear the statements that the Defendant  
3 made while at Jeff Lynch Appliance?

4 A Yes, sir, I was standing next to the Defendant when  
5 he made the statements.

6 Q Okay. Were you present when he was given his Miranda  
7 warnings?

8 A Yes, sir, I was.

9 Q In your opinion did he understand those rights?

10 A Yes, sir, he did.

11 Q And he still made those statements at that time?

12 A Yes, sir, he did.

13 Q Okay. And I'm not going to bother to go back through  
14 them all, but you heard Investigator Perry's  
15 testimony earlier, is that what he said?

16 A Yes, sir.

17 Q And did you later put all those comments and  
18 statement into a report?

19 A Yes, sir, I did.

20 Q You put them into your report. So does that refresh  
21 your memory now? And did you do so shortly after  
22 those comments were made?

23 A Yes, sir.

24 Q Okay. Within a period of a few days or how long  
25 afterwards?

1 A Well the -- we made the arrest on January 18th, 2011.

2 I wrote my report on January 21st, 2011.

3 Q Okay, let me ask you just a couple other questions  
4 about that. You were present then when the warrants  
5 were given to the Defendant that told him what the  
6 charges were?

7 A Yes, sir, I was the one that was reading -- was going  
8 to read the warrants to the Defendant.

9 Q Okay. And tell us what took place as you started to  
10 read the warrant to the Defendant?

11 A I was then served the warrant on Chappell and  
12 attempted to read the warrants to him but was advised  
13 by Mr. Chappell he did not want to hear the  
14 descriptions of the videos, that he knew what the  
15 videos were.

16 Q Okay. And before that did he make any comments in  
17 your presence indicating who downloaded those videos?

18 A Yes, sir.

19 Q What did he say?

20 A He stated he knew what the videos were, that he  
21 looked at the videos and he downloaded the videos.

22 Q Okay. And specifically referring to the images of  
23 the child pornography?

24 A That's correct, sir.

25 MR. MOYER: Okay, please answer any questions

1 defense may have.

2 CROSS-EXAMINATION

3 BY MS. ROSS:

4 Q Again -- so it's your testimony that there's no video  
5 of any of this, no video in your car?

6 A No, sir -- no, ma'am. My car is not equipped with  
7 video or audio.

8 Q Okay. All right.

9 MS. ROSS: I've got no further questions.

10 MR. MOYER: Nothing else.

11 THE COURT: All right, thank you, Officer, you  
12 may step down.

13 All right. Anything additional from the State?

14 MR. MOYER: Not at this time, Your Honor.

15 THE COURT: So the State rests at this point?

16 MR. MOYER: Yes, Your Honor, the State rests.

17 THE COURT: Okay. Good enough.

18 All right, ladies and gentlemen, you've heard  
19 all the evidence that you'll hear in this case from the  
20 State in their case in chief. Tomorrow morning we'll come  
21 back on the record. The Defense will have the opportunity  
22 to put evidence into the record and to call witnesses to  
23 the stand. I don't know what we may hear tomorrow but  
24 we'll see. We're going to come back on the record,  
25 please, at 10:00 in the morning. I have an appointment in

1 the morning at 8:30 and I don't want to keep y'all  
2 waiting. So I'm going to give you a little bit of a  
3 buffer. So we'll start at 10 o'clock so y'all don't have  
4 to wait on me.

5 So if you'll please be here on time, I'd  
6 appreciate it. Tonight please don't discuss the case.  
7 Somebody in your house is going to invite you tell them  
8 what this case is about, I guarantee it. I know. And  
9 what you got to say is, I'm sorry, I can't discuss it with  
10 you. And I know they're going to wear you out, prevail  
11 upon you to discuss it. But the problem that that creates  
12 is they're going to start asking you questions. And then  
13 you have to make qualitative decisions about what you  
14 heard. And then they ask more questions. And then you  
15 start essentially deliberating with somebody outside the  
16 jury. So when they ask you just say the Judge ordered me  
17 not to discuss it. So I can't talk to you about it.  
18 After the case is over you can talk to them about it as  
19 much as you want. Y'all have a great evening, I'll see  
20 you tomorrow.

21 (WHEREUPON, the jury left open court at  
22 approximately 5:10 p.m.)

23 THE COURT: All right. Just as a matter of  
24 housekeeping before we proceed, I know that there was  
25 evidence entered into the record of the statement by the

1 Defendant made upon question pursuant or subsequent to the  
2 advisement of Miranda rights. I do think that pursuant to  
3 Jackson v. Denno, his Miranda rights were given and that  
4 the statement was voluntarily. And that at a threshold it  
5 should be admissible. The jury will determine whether it  
6 was, in fact, a voluntary statement on the reasonable  
7 doubt standard. I recognize that we did not have a  
8 Jackson v. Denno hearing outside the presence of the jury  
9 before we started. But I just wanted to make very clear  
10 that based on the evidence I heard, had we had one in  
11 camera, I would have found that given the circumstances it  
12 is a voluntary statement that was made in compliance with  
13 Miranda. Okay.

14 Motions?

15 MS. ROSS: Well at this point we would move to  
16 dismiss and -- I'll just leave it at that at this point.

17 THE COURT: Okay. All right. Understanding and  
18 recognizing the directed verdict motion on a directed  
19 verdict motion, the Court must consider the same in the  
20 light most favorable to the non-moving party. And must  
21 not weigh what value evidence but just determine whether  
22 there is evidence in the record. And on that very low  
23 standard I respectfully deny the motion for a directed  
24 verdict.

25 All right, anything else, we need to put on the

1 record this afternoon?

2 MR. MOYER: Not from the State, Your Honor.

3 THE COURT: Okay. As I suggested, I do have an  
4 appointment tomorrow at 8:30.

5 So I don't know, Ms. Ross, what you're intent  
6 is, do you intend to offer any evidence?

7 MS. ROSS: I've not decided yet, frankly. I  
8 want to confer with my client before making that  
9 determination.

10 THE COURT: Okay, that's fine. Would you like  
11 for me to present an allocution on the record with respect  
12 to his rights?

13 MS. ROSS: Yes.

14 THE COURT: Okay, good enough.

15 All right, Mr. Chappell, stand up, raise your  
16 right hand.

17 ROBERT CHAPPELL, after being duly sworn,  
18 testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q You have a right to take the stand and testify if  
22 you'd like, okay. But you also have a right to  
23 remain silent under the Constitution. Now what that  
24 means is that you don't have to say do or prove  
25 anything to the jury. The State has the burden of

1 proof. And I know you heard me advise the jury any  
2 number of times that the State has the burden of  
3 proving you guilty beyond a reasonable doubt. And,  
4 in fact, proving each and every element of the case  
5 beyond a reasonable doubt. Which means that you  
6 don't have to say or do or prove anything to that  
7 jury. And you don't have to take the stand.

8 If you elect not to take the stand, I'll advise  
9 the jury that you are exercising your Constitutional  
10 right. And that they can't hold that against you.  
11 Because you can't hold it against an individual who  
12 elects to exercise his or her Constitutional right.  
13 As a matter of fact, that right is so sacred, what I  
14 will tell them is they cannot even consider it in  
15 their jury room. That it's inappropriate for their  
16 consideration.

17 Now, understanding that, you do have a right to  
18 take the stand, as I told you to begin with. And you  
19 can testify, tell the jury your side of the story and  
20 present witnesses and evidence. But understand that  
21 if you elect to take the stand, then you would be  
22 subject to cross-examination. Which means that the  
23 State would have the opportunity to impeach you.  
24 That is to throw your credibility into question and  
25 ask you potentially some very hard questions about

1           your past. If you have a record and I don't know if  
2           you do and I don't know what might be admissible but  
3           they could. They could also ask you some hard  
4           questions regarding the facts in this case. So you  
5           understand that if you decide to elect to take the  
6           stand, that you do subject yourself to that  
7           cross-examination. Do you understand all those  
8           rights, sir?

9       A     Yes, sir.

10      Q     Okay, I will give you the opportunity to discuss  
11           whether you elect to testify or not with your  
12           attorney and y'all can make a decision and advise me  
13           in the morning, okay?

14      A     Yes, sir.

15                   THE COURT: Okay, good enough.

16                   All right, anything else we need to put on the  
17           record?

18                   MR. MOYER: Your Honor, only thing, tomorrow  
19           morning, I would ask that, Your Honor's, already suggested  
20           some comments that you will make to the jury about the  
21           nature of the videos and the defense essentially is not  
22           going to -- essentially trying to stipulate that it is  
23           child pornography. And I would ask that before we move on  
24           any further tomorrow that, Your Honor...

25                   THE COURT: You want me to do it before we get

1 started?

2 MR. MOYER: Before we get started.

3 THE COURT: Remind me tomorrow morning. Okay.

4 Ms. Ross, you need anything?

5 MS. ROSS: I just had some request for jury  
6 instructions. I don't know if we're there yet.

7 THE COURT: Yeah, yeah, I was going to tell you  
8 when you're ready you can give it to me.

9 All right, Mr. Moyer, do you have any request to  
10 charge?

11 MR. MOYER: I do not at this time, Your Honor.

12 MS. ROSS: A this is fairly broad.

13 THE COURT: I'm with you and I'm just looking at  
14 it. And most of this -- most of it is in my standard  
15 charge. But I'll go through it specifically with you  
16 tomorrow morning. And it may end up--

17 MS. ROSS: And number four is non-applicable  
18 since there's no third and second degree anymore. So they  
19 wouldn't even apply.

20 THE COURT: And what I intend to do is before we  
21 charge, just have a conference in chambers about charge.  
22 Just give y'all an informal idea of what I'm going to  
23 charge so you will be able to fashion your argument  
24 appropriately. Okay.

25 MR. MOYER: Okay.

1 MS. ROSS: All right.

2 THE COURT: Okay, see y'all tomorrow morning,  
3 have a great evening.

4 (WHEREUPON, the proceedings were concluded for  
5 the day to be reconvened on March 6, 2012.)

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1 fair and impartial. And that she is a -- that she is an  
2 appropriate juror.

3           However, I also want to make sure that there's  
4 no perception and there can be absolutely no perception  
5 that Mr. Chappell wasn't afforded a fair trial in this  
6 case. And I'm very sensitive to that. And if you have --  
7 if the perception is by virtue of someone being on the  
8 juror who is in that position, that it would not be a fair  
9 verdict regardless of what it is, then I will would tend  
10 toward replacing her. Particularly since we do have two  
11 qualified alternates as well.

12           And, Mr. Chappell, I put you under oath  
13 yesterday and I asked you several questions and I remind  
14 you that you're under your oath, sir, do you wish to waive  
15 your right to testify in this matter, sir?

16           MR. CHAPPELL: Yes, sir.

17           THE COURT: Have you had the opportunity to  
18 discuss it fully with your attorney?

19           MR. CHAPPELL: Yes, sir.

20           THE COURT: All right, good enough, sir. Thank  
21 you, very much.

22           MR. MOYER: Your Honor, may it please the Court?

23           THE COURT: Yes, sir.

24           MR. MOYER: Are you going to voir dire that  
25 juror again before making the decision?

1           THE COURT: No because it's based on something  
2 that really I don't need to ask any additional questions  
3 about. Because I know she had that prior experience. And  
4 I agree with you. I agree with you that Ms. Ross should  
5 have brought it up to me at the time that we were striking  
6 the jury, I agree with you. But this is one of those  
7 instances where discretion in the greater part of valid.  
8 And if I just replace a juror with another juror, there  
9 are no appellate issues, no post-conviction relief  
10 application issues either. And I think that the State and  
11 the defense will have a fair jury to adjudicate this case.  
12 So from my perspective, it's a very, very conservative and  
13 safe thing to do for everyone concerned to include the  
14 State.

15           MR. MOYER: I just like to state again for the  
16 record, if the Defense did not want that juror, they also  
17 could have used a preemptive strike for that juror.

18           THE COURT: I know that they were out of  
19 preemptive strikes at that time. They had already  
20 exhausted their five. And I agree with you, she should  
21 have approached and made a strike for cause. At that  
22 point I probably would have stricken her for cause. So  
23 she probably should have. But I'm not going to create a  
24 situation where we have on the record a Judge saying she  
25 probably should have. So then in a post-conviction relief

1 application, it's a problem. If you're going to get a  
2 conviction in this case, and I don't know whether you are  
3 not, it's my job to make sure that it's a real sound  
4 conviction. And that's going to help us get a sound --  
5 not us, I don't care, it's going to help us get a fair  
6 verdict. Okay.

7 Okay, bring them in, please.

8 Oh and, before you bring them in, the foreperson  
9 of the jury is Ms. Crider, juror 53. Ms. Crider,  
10 C-R-I-D-E-R.

11 MR. MOYER: Just to clarify also you're going to  
12 talk the jury about the videos before I do my closing?

13 THE COURT: Yes, sir.

14 MR. MOYER: Okay, thank you.

15 (WHEREUPON, the jury came into open court at  
16 approximately 10:25 a.m.)

17 THE COURT: All right, ladies and gentlemen,  
18 welcome back and good morning. I'm sorry that we're  
19 starting a little bit later than I had told you to begin  
20 with but we've been handling some business. And I think  
21 we've saved us all a little bit of time going forward  
22 based on some of the issue that we resolved while you were  
23 waiting for us. A couple of things that I need to tell  
24 you.

25 As a matter of housekeeping, Ms. Crider, I have

1 appointed you as foreperson of the juror, congratulations.  
2 You can add that to your resume. Well, the duties of a  
3 foreperson of a jury is fairly amorphous. Technically  
4 what you are charged with doing is ensuring that while  
5 you're in the jury room, that everyone has the opportunity  
6 to be heard. That every single person has a voice in the  
7 jury room. And you're charged with making sure that that  
8 happens. Now what you do beyond that, I really can't tell  
9 you. I don't have any way of knowing and I don't have any  
10 authority to tell you what to do. Because the jury room  
11 is y'all's exclusive province and I can't tell you how to  
12 conduct business. I can't even physically go into the  
13 jury room or this would be a mistrial. So it just tells  
14 you how I can't essentially mess or mess with or  
15 micromanage what it is that you're doing in the jury room.

16 So just know that you're the one who's in charge  
17 of making sure everybody has the opportunity to be heard.  
18 I'm hopeful that you won't have any questions while you're  
19 deliberating. But if you do, Ms. Crider, you can write  
20 those down and you can hand them to the Bailiff. Knock on  
21 the door, put the light on and give them to the Bailiff.  
22 And he'll give them to me. And if I'm able to answer the  
23 questions, a lot of times I'm not, but if I'm able to  
24 answer them I'll give you an answer. Also you will be the  
25 one who actually executes the verdict form when the jury

1 has reached a unanimous verdict.

2 As you know yesterday the State rested its case  
3 and did not -- elected not to put any additional evidence  
4 into the record. I do want to tell you that the State did  
5 offer to put into the record the actual video tapes and  
6 play those video tapes for you. I made a determination  
7 that I didn't think it was necessary or appropriate to  
8 show you that type of video. I had to watch the videos to  
9 make sure that there wasn't anything on those video tapes  
10 that were necessary for you to see to come to a  
11 determination in this case. And I found in my discretion  
12 that is was not. So I wanted -- and also tell you that  
13 the defense concedes and acknowledges that what the State  
14 purports to be on those videos is actually on those  
15 videos. The reason I told you is so that you won't think  
16 that the State has lacked in some way or failed in some  
17 way to put something into the record they should have  
18 otherwise put into the record. Now that I in my  
19 discretion decided not to show those. Okay.

20 Now the Defense has the opportunity now to put  
21 evidence into the record. The defense certainly doesn't  
22 have to put anything evidence into the record. The  
23 Defendant has a Constitutional right to remain silent.  
24 Which means that the Defendant can't be compelled to do or  
25 say or prove anything to you. Because the State has the

1 burden of proof. Ms. Ross indicates to me that the  
2 Defense does not intend to put any evidence into the  
3 record in this case. And, in fact, would rest.

4 So at this point what we will do is we will move  
5 to closing arguments. You remember when we started the  
6 case I told you that arguments from counsel is just that.  
7 That's advocacy from counsel for their respective side.  
8 You have received all of the evidence that you will  
9 receive in this case. And you will make a decision based  
10 on the evidence that you have received and the law as I  
11 give it to you. So when the attorneys argue to you in  
12 this case, I just want to remind you that it is not  
13 evidence. It is argument from counsel. All right.

14 So having said that, Mr. Moyer, I believe it's  
15 your argument, sir.

16 CLOSING STATEMENT

17 MR. MOYER: Thank you, Your Honor, may it please  
18 the Court.

19 Madam Forelady, ladies and gentlemen of the  
20 jury, good morning. As, His Honor, just told you we are  
21 now to the stage of final arguments. And it is my  
22 opportunity now to summarize the evidence that you have  
23 heard in this case and to argue to you why the testimony  
24 and the evidence that was presented in this case proves  
25 beyond any reasonable doubt that this Defendant is guilty

1 of the charges that are before you. These charges of  
2 sexual exploitation of a minor, third degree.

3 As, His Honor, said, the record is closed. And  
4 that means you're not going to be receiving any further  
5 witnesses or testimony. Every once in a while we have  
6 juror who are in the middle of deliberations, come out  
7 with questions saying we would like to have a witness  
8 statement or a police report. That's not going to happen.  
9 Except in very, very, very rare circumstances, things like  
10 witness statements and police reports are not admissible  
11 into evidence. You heard the witnesses testify and that  
12 is the evidence that you have before you.

13 So let me talk about first, just to comment  
14 about burden of proof. Excuse me, I'm fighting a bit of a  
15 cold. You have heard many times already and you're going  
16 to hear many more times before you begin your  
17 deliberations, that the State has the burden of proof.  
18 Which means the State must prove its case beyond all  
19 reasonable doubt. And I want to start off by saying that  
20 as prosecutors, we accept that burden of proof. We  
21 recognize that we have to prove cases beyond a reasonable  
22 doubt. We do not seek to minimize that whatsoever.

23 And I want you to know, ladies and gentlemen,  
24 that that burden of proof is universal in criminal cases.  
25 In all jurisdictions. All State courts and all Federal

1 courts, it is the same burden of proof whenever someone is  
2 charged with a criminal offense. From the most seemingly  
3 important case, a death penalty case, has the burden of  
4 proof. Down to the most seemingly insignificant case, a  
5 traffic ticket. Now in South Carolina you can have a jury  
6 trial for running a red light. And if you were to do so,  
7 the State would have to prove that case beyond a  
8 reasonable doubt. So that is something we accept gladly.  
9 In all cases and in particularly this case that's before  
10 you here today.

11 What is prove beyond a reasonable doubt? What  
12 does that mean? It is prove that leaves you firmly  
13 convinced of the guilt. Prove beyond a reasonable doubt  
14 does not mean prove beyond all doubt. There are very few  
15 things, if anything, in this world that we can know beyond  
16 all doubt. And the criminal justice system does not  
17 require that either. It is not beyond a shadow of a  
18 doubt, whatever that means. I've heard that term used  
19 before. It is beyond a reasonable doubt. Are you firmly  
20 convinced, after hearing all the evidence, that the  
21 Defendant is guilty?

22 Now, ladies and gentlemen, in order to determine  
23 the Defendant's guilt, you need to know what the law is.  
24 What is sexual exploitation of a minor? And, His Honor,  
25 is going to instruct you here very shortly that sexual

1 exploitation of a minor is this. A person that's  
2 committed this offense, if that person knowing the  
3 character or content of the material, he possess that  
4 material that contains a visual representation of a minor  
5 engaging in sexual activity. So essentially it boils down  
6 to three questions. First, was it child pornography?  
7 Secondly, did he possess it? Thirdly, did he possess it  
8 knowingly? Knowing what it was.

9 Now, ladies and gentlemen as, Your Honor, just  
10 told you a few minutes ago, I don't think you're going to  
11 have much trouble with the first two questions. I think  
12 you can answer those rather quickly. What is child  
13 pornography and did he possess it? You heard the  
14 description of the child pornography that was read into  
15 the record yesterday. And you also heard that the Defense  
16 does not argue that it is child pornography. I'm sorry  
17 you had to hear that very graphic description of what was  
18 shown on those videos. I'm show just hearing it was  
19 disturbing. But that is the nature of a case like this.  
20 That is the nature of having to deal with charges like  
21 this. And I think you can be comforted at least somewhat  
22 my knowing that it would have been much more disturbing if  
23 you had to actually view those videos.

24 It's not like this was a close case. It's not  
25 like we had 15 and 16 years old who were borderline

1 engaging in sexual activity. Where you had to make a  
2 close call. What we had in this case were children. We  
3 had toddlers, child, children from ages three to at most  
4 10 years old engaging in the most blatant and explicit  
5 sexual acts. So there's no dispute that these videos that  
6 are before you are child pornography. Are children  
7 engaging in sexual activity.

8           So the second question is did he possess it?  
9 Again, ladies and gentlemen, I think you're going to  
10 answer this question rather quickly also. And that is  
11 because these videos were on his computer. You have his  
12 computer. You have his computer that's going to be back  
13 in the jury room with you. This computer contained those  
14 six videos that were described to you. It's his. We know  
15 it's his computer. Because first off it was in his home.  
16 We know he lived there with his mother. On 11 Hilltop  
17 Drive. And we know that his mother's the one that found  
18 those videos and called the police. And unfortunately and  
19 sadly, you heard how she passed away and was unable to  
20 come in and provide detail testimony about that. But you  
21 heard that she saw the video on this computer and she  
22 wanted it out of her home.

23           You also heard from Ms. Navalle. You remember  
24 her? The very short woman from the Philippines. And  
25 remember what she told you about? She was one who

1 actually got that computer for him. She was a friend of  
2 his. She knew him at work. She did a good turn for a  
3 friend. She said, Yeah, I'll loan you the money, I'll  
4 allow you to get this computer. So she went and she  
5 bought it and she bought it new from Best Buy. She  
6 actually took it to his residence and gave it to him. We  
7 know it's his computer. And we know that those images  
8 came off this computer.

9           So ladies and gentlemen, it was sexually  
10 explicit material involving children and he possessed it.  
11 It's clearly child pornography and he clearly possessed  
12 it. And that takes us to the third and final question.  
13 And that is, did he possess it knowingly? And if you  
14 answer that question yes, then he guilty of these charges.  
15 Under the statute, to be guilty of this crime, the person  
16 must possess the child pornography knowing the character  
17 or content of the material. Now keep in mind, ladies and  
18 gentlemen, this statute does not require that he bought  
19 this child pornography. It does not require that he owned  
20 the child pornography. Only that it was in his  
21 possession. It doesn't even require that he looked at it.  
22 If he possessed it. It could have been for a friend. If  
23 he possessed it and he knew what it was, then he's guilty.

24           Now, what evidence do we have in this case that  
25 this Defendant knew that the child pornography was on his

1 computer? And there's a multitude of evidence that shows  
2 that is in this case. And I'll start off by saying first  
3 his mother knew it was there. His mother did not even own  
4 the computer. And the child pornography was so blatant  
5 and so obvious on this computer, that she found it. If  
6 somebody who doesn't own a computer, if somebody who does  
7 not, you know, use a computer all the time, like one would  
8 assume the actual owner of the computer would do, saw this  
9 pornography and it was so obvious to her, it only goes  
10 logically to show that the person who owned it would know  
11 it was there as well.

12           What's another reason that we know this  
13 Defendant knowingly possessed that child pornography?  
14 That is because that child pornography was downloaded into  
15 a file under his user name. Do you remember the testimony  
16 from this investigator yesterday? And you have a little  
17 printout that shows the progression and the different  
18 files. That there was -- that these images were filed  
19 under. Filed under a user name, Robert. We know his name  
20 is Robert. Frederick Robert Chappell or Chapel. And we  
21 know that he goes by the name Robert. Those videos were  
22 not simply looked at. It is not as if someone were just  
23 suffering the internet and happened upon them, clicked  
24 away. Those videos were actively downloaded. It took  
25 somebody making that effort, not just to look at that

1 video, but to download it and put it under his file. So  
2 it was his. And when did this happen? It happened just a  
3 few days before he was arrested. Between January 7th and  
4 January 11th of 2011. Between 6:30 and mid-night.  
5 Between 6:30 p.m. and mid-night at night. That's when  
6 they were downloaded.

7 Ladies and gentlemen, finally how can you know  
8 that it was his child pornography and that he knew it was  
9 there? And I'll close by going over this point. And that  
10 is because he confessed to it. He told those officers  
11 that. And I want you in closing, ladies and gentlemen,  
12 just to think about over the progression of what he said.  
13 And his admission follows the classic progression of  
14 somebody from out right -- from out right denial to slow  
15 acknowledgment and then to finally admitting with  
16 justification. You would see this in a child who's caught  
17 with his hand in the cookie jar. What did he do when he  
18 was immediately confronted with the fact that child  
19 pornography was on his computer? Do you remember the  
20 officers went unannounced to his work and arrested him as  
21 he was leaving. He did not know this was coming. He had  
22 not had time to think about it. And what was his first  
23 reaction? I don't know what you're talking about. I  
24 didn't download or look at any child pornography. If it  
25 was on that computer, it must have been there when I

1 bought it at the jockey lot.

2           Now what do we know at that point? He didn't  
3 buy it at the jockey lot. Ms. Navalle bought it for him  
4 brand new at Best Buy. It would be convenient if it had  
5 come from the jockey lot, right? If somebody had owned it  
6 before him. Somebody unanimous. Somebody you couldn't  
7 trace. That would be convenient. And that's the first  
8 thing that popped into his mind but it wasn't true. He  
9 lied about that. Why would he lie if he wasn't trying to  
10 hide something? Then what happened as the officers  
11 continued to talk to him? He progressively changed his  
12 story. Well the officers said, When did you buy the  
13 computer?

14           He said, Oh, before Christmas.

15           The officer says, We know these videos were  
16 downloaded after that.

17           And he said, Well the computer was in this  
18 common area and anybody could have used it.

19           And the officers countered that statement and  
20 said, We know this computer is password protected. And we  
21 have the dates and times those videos were downloaded.  
22 What happened then? The Defendant was smoking his  
23 cigarette and he dropped it. And he acted as if he was  
24 going to throw up. He knew he was caught. He sat down.  
25 And he said, Yes I looked at porn but it wasn't child

1 porn. Again, getting closer and closer to the truth.

2 At this point the Defendant said, Well I want to  
3 talk to my mother first. They took him back to the law  
4 enforcement center. While they were walking to these  
5 officers office, what did the Defendant say? He looked at  
6 the look officer and said, Well, we all know I downloaded  
7 those videos. Can I get probation for that?

8 And the officer said, Well no, we can't promise  
9 you that. We can't say you're going to get probation.

10 And he said, again, reiterated, You sure I can't  
11 get probation? Y'all know I downloaded them. You know  
12 they were my videos.

13 The officer said, No, we can't promise that.

14 So they go back to the officers office. They  
15 sit down, the officers go over the Miranda warnings again,  
16 with him. Then again, he made the final admission where  
17 he said -- he admitted to both officers, you heard them  
18 both testify, he said, I did look at and download those  
19 videos but I didn't touch any kids. I was just looking at  
20 the videos. And what do we have now? We have the final  
21 step. He finally admits but with justification. Okay,  
22 yes, I did look at those videos. However, I didn't touch  
23 any kids. He came to that point.

24 Then if you recall the officer said, It's time  
25 to serve these warrants on you. And they had to read

1 those warrants that has the description of those videos.  
2 Do you remember what the Defendant's reaction was? No,  
3 no, I don't know to hear that, I know what's on there. He  
4 knew he was caught.

5           So ladies and gentlemen, I ask you not to  
6 overlook the ramifications of that admission. I want you  
7 to consider, could anybody, under any circumstances, ever  
8 admit to having something as horrible as these images if  
9 you didn't really have it? What would it take for you to  
10 say, Yeah, I really had them, to lie about that? You  
11 wouldn't do it. Because it's that's horrible of a thing  
12 to do. So he either admitted it and is guilty or these  
13 officers made all this up. And that mean, and I don't  
14 want you to cross over this point, that would mean that  
15 two officers conspired with each other in framing this  
16 man. That would mean two officer with the combined what  
17 40, 50 years experience decided, they're going to let the  
18 real criminal go free and they're going to frame this  
19 innocent man.

20           Now, in closing, ladies and gentlemen, I told  
21 you at the outset of this case that at the end of the  
22 trial I would ask you to do justice. And I argue to you  
23 now that doing justice in this case means holding this  
24 Defendant responsible for having these explicit videos of  
25 children engaging in sexual acts. I think it's

1 instructive, keep in mind what our legislature calls this  
2 crime. They didn't call it possessing child pornography.  
3 They call it sexual exploitation of a minor. And that's  
4 because our legislature recognized that when somebody owns  
5 material like this, children are being harmed. And that  
6 is because children like this would not be violated like  
7 the children in those videos were if there were not a  
8 market out there for people to watch them. So someone who  
9 downloads and someone who looks at those videos is  
10 exploiting and violating a child. And justice demands  
11 that we hold people responsible to possessing materials  
12 like this. I ask you, ladies and gentlemen, to find this  
13 Defendant guilty of these charges. Thank you.

14 THE COURT: Ms. Ross.

15 MS. ROSS: Thank you, may it please the Court?

16 THE COURT: Yes, ma'am.

17 MS. ROSS: Counsel.

18 CLOSING STATEMENT

19 Ladies and gentlemen of the jury, I recently saw  
20 a documentary of a guy who had an iphone. And he looked  
21 on his brand new iphone and there was a photograph on it.  
22 The photograph had come from somewhere in China where the  
23 iphone was made. It was simply of a room and he never  
24 done it before. And that led to this whole documentary  
25 about who makes these, who creates this stuff and what's

1 on there. And what's the background on there. And I  
2 couldn't tell you what's on this iphone, frankly. I know  
3 there's stuff and I'm surprised with and don't know how to  
4 work that I come across everyday on the iphone, as on my  
5 laptop computer. But it's -- so I couldn't tell you  
6 what's on there.

7 But when someone says they are not guilty, it's  
8 the State's burden to prove guilt beyond a reasonable  
9 doubt. And that's what's happened here today. Now, we're  
10 not mind readers, none of us are. You're not expected to  
11 be a mind reader. That's why the State has the burden of  
12 proof beyond a reasonable doubt. To force you not to have  
13 to be read minds. Because the State has given you all the  
14 tools you need to make a determination of guilty or not  
15 guilty.

16 Now, here, I just want to add that there have  
17 been no reports of anyone seeing Robert Chappell watching  
18 this pornography on his computer. There no reports that  
19 his phone or anything on his person had pornography on it.  
20 There was a report by his mother that she saw child  
21 pornography. And I don't challenge and the Defense does  
22 not challenge that that could have been on Robert  
23 Chappell's computer. Now, the State talks about him  
24 living with just his mother, he lived with his mother and  
25 his step-father in a trailer. And it was a very small

1 trailer and this laptop was found out in the main room.  
2 Just out in the main room. I'd ask you, ladies and  
3 gentlemen, if you have knowledge of explicit child  
4 pornography on your computer, do you leave it out in the  
5 main room where your mother uses it all the time? Where  
6 everyone has access to the computer. And that's what  
7 happened here in this case.

8 Now, when investigators went to the house, his  
9 mother had the ability, had the right, to give them the  
10 computer. She had the right to do that. That's why there  
11 was no issue of challenge of the computer because she had  
12 a right to give it away. Because she possessed it. She  
13 as well as Robert Chappell possessed the computer. And  
14 she had the right to give it away. If she didn't have  
15 legal possession of the computer, she would never have the  
16 right to give it to law enforcement. But she did because  
17 she had the right and she had possession. And I submit to  
18 you because it was in a open room in her house, that her  
19 husband had possession as well.

20 Now, I thought of a lot of things about this  
21 case because it's very interesting about things getting on  
22 computers. What's not very interesting to me and  
23 disgusting to me and the Defense is child pornography.  
24 And no one is saying that's not horrible and horrendous.  
25 No one is saying that. But what we're saying is that when

1 there's information on a complicated machine, possession  
2 needs to be proven beyond a reasonable doubt. Because  
3 Robert Chappell has been charged with a serious crime  
4 here.

5 Now I'll ask you, I can barely, barely read you.  
6 I'll ask you to look at this, it's just so tiny back  
7 inside it's a bit like my computer, and this is Exhibit 3,  
8 where you go on the computer and it has my name, it has  
9 just other stuff and then it has my name, it will have  
10 pictures, videos, all kinds of stuff and everything kind  
11 of goes in there. It's not like I have to do a special  
12 code word to put anything under my name, everything's  
13 under my name on that computer. Unless I create another  
14 user which I haven't done. And that's what you can see  
15 here. Almost everything's under the name Robert. And it  
16 says Goggles under there. Just a whole file of Goggle.  
17 Any time you Goggle, it's all going to there. So anyone  
18 downloaded anything or used the search engine Goggle, is  
19 going under there. Or at least that's my experience. And  
20 I'd ask you to go to your own experience of your computer.  
21 But that's my experience.

22 Now, like I said in opening, it's so difficult  
23 to prove a negative. To prove when you weren't at your  
24 home or -- it's very difficult to go back a year, and this  
25 is over a year ago, to prove that. But here we did see

1 some modification times and that's what I was trying to  
2 do. I really don't understand computers and I'm not very  
3 good at this. I can go by my own experience but when I  
4 was going through trying to ask about modification times,  
5 wasn't there one October 21st, 2010? Before Robert  
6 Chappell got the computer. Wasn't there one  
7 November 30th, 2010, before Robert Chappell got the  
8 computer? October 4, 2010 before he got the computer.

9           And then other times where Corazon Navalle did  
10 say that Robert Chappell worked. He had a job at Jeff  
11 Lynch. And he was working there, starting have to be  
12 there at 8:00 and he went until. Which that's not a lot  
13 of super, solid information to go with, 8:00 until, but  
14 there was one on a Thursday at 8:02, January 6th which was  
15 a Thursday. There was one at 2:16 p.m, kind of in the  
16 middle of the day, the work day. There was one on a  
17 Monday, the 3rd at 10:22. There's one on January 10th  
18 through 12th was a Monday, Tuesday and Wednesday. And  
19 these -- some were in the morning, some were not. But the  
20 State didn't prove to you that Robert Chappell was not at  
21 work or elsewhere at the time. Because the State, as they  
22 said, were depending on well, he gave a statement, he  
23 confessed so we didn't bother to get that information.

24           Ladies and gentlemen, I'd ask that you demand  
25 prove beyond a reasonable doubt. Which is to get the

1 information. It's the State's burden to get that  
2 information and present it to you so you can determine  
3 whether it was Robert Chappell or someone else on that  
4 computer. We know some of the times that modifications  
5 were made to child porn, he was not there. It was before  
6 he had the computer. Some of the times were times where  
7 it looked like he was at work. And, ladies and gentlemen,  
8 that's reasonable doubt. And that's what we're talking  
9 about here because it is a pretty frightening situation  
10 with possession and that kind of thing. And I'd ask you  
11 to remember that any kind of -- each of you has a right to  
12 say the State did not prove this beyond a reasonable  
13 doubt. And stand by that right. No one is going to blame  
14 you for doing that.

15 Now, one thing about this downloading of videos.  
16 What's weird about that is there was no allegation even of  
17 any kind of charge. Sometimes -- I have something,  
18 there's a legal search engine called Westlaw. And you go  
19 on Westlaw and you start searching and you go over and you  
20 look for case law over here and you're all over the place.  
21 And then sometimes a warning, thank goodness, will pop up  
22 and say, You're about to go outside of your search engine.  
23 Which means you're going to get a big bill in the mail  
24 that says we're going to charge you a bunch because you  
25 went outside of South Carolina law or whatever like that.

1 But there's some kind of warning saying, You're going  
2 outside the law, stop. Here, you know, there's no  
3 warning. There's no evidence of a warning like that in  
4 the terms of a credit card payment. For instance,  
5 sometimes if you're on line and it says, Give me your  
6 credit card number, that's something like a stop, think  
7 about this. This is some kind of warning that you're  
8 going outside where you're supposed to be. And that's  
9 just an aside.

10 As far as admissions to police, understand that  
11 police officers want to prove a case. It's their job to  
12 prove a case, that's their job once they get a case. So  
13 once someone's seen stuff on a computer, like these  
14 officers saw, I'm not saying they don't believe it was  
15 Robert Chappell and that's why they didn't do a video tape  
16 or didn't get any proof to show you of his supposed  
17 confession. They might fully believe and it's their job  
18 to get a conviction. But, ladies and gentlemen, they  
19 didn't give you a video of that. Again, with a phone or  
20 anything. This is modern times. And the idea that the  
21 State went through that he confessed not once, but two,  
22 but three over this long period of time in a car over and  
23 over again, where is a video or anything of that? It's  
24 your right and you should demand that of the State for  
25 proof beyond a reasonable doubt in this day and age.

1           Now there's one area where they have. And it's  
2     in the DUI law. The legislature has made a determination  
3     that any time there's a DUI, there must be a video. And  
4     there's a statute that says you must put video cameras in  
5     all cruisers. And the reason was is at some point, even  
6     the legislature realized, some officers were lying to get  
7     DUI convictions. They were exaggerating the truth to get  
8     that conviction. Because that's their job. And I'm not  
9     saying they were evil and they were trying to frame an  
10    innocent man, they probably thought the guy or girl was  
11    guilty. But somebody was lying. And that's why they  
12    started having video tapes. And sure enough they show  
13    some action by law enforcement and the State, it's not  
14    that great, not that pretty. So that exists out there.  
15    And that exists in this case.

16           Because my client has said he is not guilty.  
17    And this is a situation where other person add access to  
18    that computer. And there is reasonable doubt. And other  
19    people -- something happened to this computer when Robert  
20    Chappell did not have access to it. Something that was  
21    going on with this pornographic website was going on when  
22    Robert Chappell didn't having access to the computer.

23           Just one last thing, this is again from my  
24    experience about stuff. I recently had my computer  
25    something called Speedy PC Pro, something that came into

1 my computer and said you need to fix all this stuff now.  
2 And I didn't. And I started messing with it and it ended  
3 up my computer guy said it was the blue screen of death.  
4 It just ended up where it looked like my computer hard  
5 drive had crashed. But actually hadn't, somebody had come  
6 into my computer and taken it over. And I had anti-virus  
7 protection and stuff. And he told me, get something  
8 called Malwarebytes to protect you from this. But I had  
9 that stuff on my computer and I thought I was protected  
10 and something took over my computer. And it wasn't me, I  
11 didn't do that. And I didn't know what was going on with  
12 that.

13 So I would say just in the end, say that, Well,  
14 one more thing crazy about computers, I'll just add, my  
15 husband puts a little piece of tape over the computer, the  
16 camera on a computer because he's paranoid that someone --  
17 that the computer might just turn on and start filming or  
18 something like that. And I asked an investigator who does  
19 computer crimes and he said, That's not a stupid thing to  
20 do. I'll say to him, That's ridiculous to do that. And  
21 they say, That's not a stupid thing to do in this day and  
22 age. And I would just ask you to consider all that and  
23 consider your burden -- or the State's burden and that  
24 your oath that you have to uphold them to their burden of  
25 proof beyond a reasonable doubt.

1           Robert Chappell's pled not guilty, he's not  
2 guilty and I ask you to give him the benefit of the doubt  
3 and find him not guilty. Thank you.

4                                 JURY CHARGE

5           THE COURT: All right, ladies and gentlemen, the  
6 time's come for me to give you the charge on the law.  
7 It's going to take me 15 or 20 minutes. I hope it won't  
8 be too gosh awful dry but I'll ask you before I get  
9 started, is there anyone who needs to take a break before  
10 I get started?

11                                 There was no response.

12           No. Okay. Good. All right, as I told you when  
13 we began the case, you have certain duties to perform as  
14 jurors and I have certain duties to perform as the Judge.  
15 Now your duty as jurors is to look at the evidence and  
16 determine what the facts are in the case. My role is to  
17 be the judge of the law and to define what the law is in  
18 this case. Therefore, when I give you the law you must  
19 accept it under your oath. If you come into this  
20 courtroom with any pre-disposition about what you think  
21 the law is or what it should be or you have an opinion in  
22 that regard, I tell you now to disabuse yourself of that  
23 notion. Forget about everything that you've heard before.  
24 You must accept the law as I give it to you in this case.

25                                 Now, again, I'll restate for you something that

1 I've said several times and you've heard it many times in  
2 this case. And that is the Defendant is presumed innocent  
3 until proven guilty beyond a reasonable doubt. The State  
4 has the burden of proving each and every element of the  
5 crimes beyond a reasonable doubt. And the State has the  
6 burden of proving each and every element of all five of  
7 the Indictments beyond a reasonable doubt. Now, the  
8 reason I've told you that very many times is because  
9 that's not just a legal theory. It's not just something  
10 that academics talk about. It's something that actually  
11 is applied in our justice system. And it's fundamental to  
12 our justice system. So when you go forward recognize that  
13 the Defendant is presumed innocent until you determine by  
14 and through your analysis of the evidence whether the  
15 State has met its burden of proving of each and every  
16 element beyond a reasonable doubt.

17 Now, I bandied about this term reasonable doubt  
18 and you've heard that from the attorneys as well. So it's  
19 important that I define that for you. You may have served  
20 on other juries in your lifetime or you may have watched  
21 television shows and you may have seen other burdens of  
22 proof. For instance, in most civil cases you have the  
23 burden of proof of preponderance of the evidence. Which  
24 is essentially the greater weight of the evidence. Which  
25 means that if you prove your case to a higher likelihood

1 than not, over 50 percent, then you win. You also have  
2 another intermediate burden of proof which is clear and  
3 convincing evidence. Which is somewhat more than  
4 preponderance of the evidence. But not as much as beyond  
5 a reasonable doubt.

6 Beyond a reasonable doubt is the highest burden  
7 of proof that is placed on anyone in court. And proof  
8 beyond a reasonable doubt is that proof which leaves you  
9 firmly convinced of the Defendant's guilt. Now, there are  
10 very few things in this world, if anything, that can be  
11 proven to an absolute certainty. And understand that the  
12 law doesn't require that the State provide proof beyond  
13 any possible doubt. However, if after your review of the  
14 evidence you're firmly convinced of the Defendant's guilt,  
15 then you must find him guilty under your oath. However,  
16 understand that after your review of the evidence you  
17 believe there is a real possibility that the Defendant is  
18 not guilty, then under your oath you must likewise find  
19 him not guilty of the offenses.

20 Now, they're multiple charges in this case.  
21 Five different Indictments. All for sexual exploitation  
22 of a minor third degree. Now, you must consider each and  
23 everyone of those Indictments separately and  
24 independently. And you must determine whether the State  
25 has met its burden of proof on each one. I'm going to

1 give you five separate verdict forms so that you can  
2 review each separate case and determine whether the State  
3 has met its burden of proof on each and every separate  
4 case. Now the reason I tell you that and I'm careful  
5 about that, is because you have to know that they are  
6 independent and antonymous. You can find the Defendant  
7 guilty or not guilty of anyone of these Indictments. And  
8 find him guilty or not guilty of the remainder of them.  
9 So just because you were to find him guilty of one doesn't  
10 mean you have to find him guilty of a remainder. And if  
11 you find him not guilty of one, it doesn't mean that you  
12 have to find him not guilty of the remainder. They don't  
13 all have to be alike. You may look at the evidence and  
14 find that they're distinct and they're separate. And that  
15 you should do different things based on the evidence that  
16 you saw. So consider them all independent of one another.

17 Now, you'll determine whether the State has met  
18 its burden of proof in all of these Indictments based on  
19 your review, your analysis, of the evidence that was  
20 presented in this case. Evidence takes one or two forms.  
21 It's either direct evidence or circumstantial evidence.  
22 Direct evidence is that type of evidence which immediately  
23 establishes the fact to be proven. Such as an eye witness  
24 who said I saw it, touched it, I smelled it, I tasted it.  
25 Circumstantial evidence is a proof of collateral facts or

1 a chain of facts which taken together prove the main fact  
2 to be proven.

3 Now that's a very simple definition. I'll give  
4 you an example of it that hopefully will make you  
5 conceptualize it just a little bit better. Let's say that  
6 one January evening you go to bed, you walk past your  
7 front door or front window and you look at your front yard  
8 or parking lot and you see that it's free of any  
9 precipitation, it's bare. You go to sleep that night.  
10 The next morning you come back in front of that same  
11 window or door and you look out at your front lawn or your  
12 parking lot and you see a blanket of snow which covers the  
13 parking lot or your front lawn. But you also see in that  
14 snow footsteps which come to your door and which lead  
15 away.

16 So what you know, you have direct evidence that  
17 it snowed last night. And that's because you can see the  
18 snow, you can feel it, you can touch it. It's right  
19 there. It's immediately proven by the fact that the snow  
20 is there. But you also have circumstantial evidence that  
21 someone either early that morning or late that night, came  
22 to your front door and then left. Now you don't see that  
23 person, you can't smell them, you can't touch them. But  
24 you know they arrived. Because of the timing of the snow.  
25 And you see the footsteps which come to your door and lead

1 away. It could have only happened in that time frame. So  
2 you have circumstantial evidence that somebody came to  
3 your door and left that morning. Even though you don't  
4 see that person. And you can't smell them and you can't  
5 touch them. You have circumstantial evidence that they  
6 came.

7 Now, under the law neither circumstantial or  
8 direct evidence are preferred over the other. They both  
9 have whatever weight you decide to put on the evidence.  
10 Meaning you wouldn't take direct and say it is preferable  
11 or has greater value than that circumstantial or vice  
12 versa. They're both valid forms of evidence which are to  
13 be -- which are to be considered by you. And you take  
14 that evidence, whether direct or circumstantial, and you  
15 determine whether that in the aggregate, has caused the  
16 State to meet its burden of proving the Defendant guilty  
17 beyond a reasonable doubt.

18 Now, credibility of witnesses. You are charged  
19 with determining who is credible and who's not credible.  
20 It's all part of your weighing the evidence in this case.  
21 Now you may take a person's testimony and decide that it  
22 is very valuable and that what he or she said is very  
23 credible. Or you may look at it and say I don't believe  
24 any of it and I'm not going to accept any of it. I'm not  
25 going to put any value on it. You can also take a part of

1 that person's testimony and believe it and discount the  
2 rest of it. It's all up to you. It's all up to you and  
3 nobody's telling you who to believe and who not to  
4 believe. You will determine whether a witness was  
5 credible by just your common sense. You had the  
6 opportunity to look at the people who testified. You had  
7 the opportunity to look at their facial expressions and to  
8 judge their body language. You had the ability to make to  
9 determination whether they were bias or prejudiced in some  
10 way. Whether they had something to gain or lose as a  
11 consequence of their testimony. You'll make the decision  
12 of who's credible.

13 Now I didn't see it but the Bailiff told me that  
14 somebody was taking notes and that's okay. That's  
15 perfectly fine. I just want to caution you that know when  
16 you take notes, sometimes when you're looking down you  
17 don't see those witnesses. So you may have missed some  
18 facial expression or some body language or some nuance  
19 that may have been meaningful to another juror. So having  
20 said that, just because someone may have some notes, a lot  
21 of times jurors will default to that written note.  
22 Understand that those notes that someone may have taken  
23 are not preferable to another juror's recollection. Those  
24 notes may be valuable to that individual but understand  
25 they have the same import and the same effect as any other

1 juror's personal recollection of what happened in the  
2 trial. So don't default to notes.

3 Now, it's obvious to you and I told you that the  
4 Defendant in this case elected not to testify. Now under  
5 the constitution, each and every citizen of the United  
6 States of America has a right to remain silent. Again,  
7 not just a legal theory, it is a very, very real right  
8 that is afforded to each citizen under the Constitution.  
9 So you cannot hold it against the Defendant that he  
10 elected not to testify. Because you can't hold it against  
11 anyone that they elect to exercise a Constitutional right  
12 that they enjoy. As a matter of fact, it's so sacred that  
13 it's not enough that you can't hold it against him, it's  
14 inappropriate for you to even discuss it in your jury  
15 room. During your deliberations.

16 All right, ladies and gentlemen, on some of  
17 these -- some of the things I'm going to tell you, I'm  
18 going to read to you a little bit. I apologize to you in  
19 advance for that. I don't like to read to you. Sometimes  
20 it's kind of boring when I'm just reading things to you.  
21 Some people would suggest that if you have to read either  
22 you're not smart enough to know the law or too lazy to  
23 memorize it. And I know there are a lot of lawyers in  
24 town who would argue that that's true of me. But what I  
25 would tell you is that some of these definitions are very

1 precise. It bows well for me and for you and for the  
2 parties to this case for me to get it preciously right so  
3 there won't be any question about it at a later date. So  
4 I'm going to default to reading on a few of these  
5 remaining charges. And I don't have a whole lot left.

6 A statement alleged to have been made by the  
7 Defendant has been admitted into evidence in this case.  
8 And you remember that there were statements or testimony  
9 elicited from the officers wherein it was alleged that a  
10 statement had been made by the Defendant. While I've  
11 determined that the statement is admissible, I instruct  
12 that you make the ultimate decision on whether or not the  
13 Defendant made the statement. If the Defendant did make  
14 the statement, you must determine whether the statement  
15 was made by the Defendant voluntarily and of his own  
16 freewill. This means that the statement was not caused by  
17 pressure, force, fear, threats, coercion or intimidation  
18 or by hope or promise of leniency or rewards of any kind.

19 In determining whether the statement was  
20 voluntarily you should consider both the characteristics  
21 of the Defendant and the details of the questioning. Some  
22 of the factors that you must consider are the age of the  
23 Defendant, the Defendant's education or lack of education.  
24 The Defendant's mental ability or capacity. The  
25 Defendant's IQ or intelligence. The Defendant's

1 background and environment. The place and length of  
2 detention. The nature of the questioning and the advice  
3 or lack thereof to the Defendant of his Constitutional  
4 rights. But not limited to the right to remain silent.  
5 That any statement could be used against him in a court of  
6 law. The right to have a lawyer present. That if he  
7 could not afford a lawyer, a lawyer would be appointed to  
8 represent him without any costs. And that he could stop  
9 making a statement at any time. You must carefully  
10 consider all the surrounding circumstances before you give  
11 any weight to an alleged statement.

12           The State has the burden of proving beyond a  
13 reasonable doubt that an alleged statement was  
14 voluntarily. If you determine it was you may give the  
15 statement any further consideration that you deem proper.  
16 You must decide what weight, if any, should be given to  
17 the alleged statement. If you determine the alleged  
18 statement was not the free and voluntarily statement of  
19 the Defendant, you should not consider the statement at  
20 all.

21           Now, five counts of sexual exploitation of a  
22 minor in the third degree. The legislature has defined  
23 sexual exploitation of a minor in the third degree as  
24 follows. An individual commits the offense of third  
25 degree sexual exploitation of a minor if knowing the

1 character or content of the material, he posses material  
2 that contains a visual representation of a minor engaging  
3 in sexual activity. I'll read that for you again since I  
4 stammered a little bit. An individual commits the offense  
5 of third degree sexual exploitation of a minor if knowing  
6 the character or content of the material, he possess the  
7 material that contains a visual representation of a minor  
8 engaging in sexual activity.

9 Now, ordinarily, ladies and gentlemen, I would  
10 give you a very precise definition of a minor under the  
11 law in the State of South Carolina and the definition of  
12 sexual exploitation. But in this instance the Defense has  
13 conceded that, in fact, the video does depict a minor and  
14 it depicts a minor who is engaged in conduct that  
15 constitutes sexual exploitation in the State of South  
16 Carolina. Therefore, it's unnecessary for me to give you  
17 those definitions because it is conceded in this case.

18 Ladies and gentlemen, conviction of sexual  
19 exploitation of a minor third degree requires prove of  
20 possession. Either actual or constructive coupled with  
21 knowledge of its presence. Possession may be either  
22 actual or constructive. Actual possession occurs when the  
23 items are found to be in the actual, physical custody of  
24 the person charged with possession. To prove constructive  
25 possession the State must show a Defendant had dominion

1 and control or the right to exercise dominion and control  
2 over the item. Constructive possession can be established  
3 by circumstantial as well as direct evidence and  
4 possession may be shared. Knowledge can be proven by the  
5 evidence of acts, declarations or conduct of the accused  
6 from which the inference may be drawn that the accused  
7 knew of existence of the prohibited substance or item.

8 Ladies and gentlemen, mere presence at the scene  
9 of the crime is not sufficient to prove someone guilty of  
10 a crime. A Defendant's presence where a crime is being  
11 committed or mere association with a person who commits  
12 crime does not make a Defendant an accomplice or aider or  
13 abettor of the person committing the crime. The burden is  
14 on the State to prove each and every element of the crime  
15 charged beyond a reasonable doubt. If you find after  
16 viewing all the evidence that the State has proved the  
17 Defendant was only present at the scene of the crime and  
18 they did not prove beyond a reasonable doubt any other  
19 participation in the crime, then you must find the  
20 Defendant not guilty. The law is that proof of someone  
21 present at the scene of the crime is not sufficient to  
22 find someone guilty.

23 All right, I'm going to come down and I'm going  
24 to show you the verdict forms. Just so you'll see them  
25 clearly and they will be clear to you when you go back

1 into your verdict room. Five separate and distinct  
2 verdict forms, okay. On these verdict forms I have the  
3 Indictment number. Then right under the Indictment number  
4 I've written the file number that corresponds to the  
5 Indictment. So that you will know which video  
6 specifically the Indictment or the verdict form refers to.  
7 Okay. Now, very, very simple, not tricky, I think they're  
8 fairly self-explanatory.

9 But the important part is that you know upfront  
10 what it says, We, the jury, with respect to the charge of  
11 sexual exploitation of a minor third degree unanimously  
12 find the Defendant either one or two things, either guilty  
13 or not guilty. The important word is unanimous.  
14 Understand that your verdict must be unanimous. It must  
15 be the verdict of 12 of you. It can't be 11 to 1 or 10 to  
16 2 or any other combination of numbers which add up to 12,  
17 it has to be a unanimous verdict. Means you have to  
18 agree. Your verdict cannot be based on any bias or  
19 prejudice or emotion. It has to be a deliberate and  
20 objective decision based on the evidence that was  
21 presented in trial in this proceeding.

22 Now, once you have come to a determination on  
23 each of these verdicts, separate from one another, then,  
24 Ms. Crider, you can sign as foreperson. And what you will  
25 do is you'll either check not guilty or guilty on each

1 one, then sign. Again, I have these choice on here.  
2 They're two. So one has to come in order. I just want  
3 you to know that I don't put them in any particular order,  
4 I don't have any preference. I told you before it doesn't  
5 matter to me what your verdict is. I defer to you in any  
6 event and I'll support your verdict whatever it may be. I  
7 don't have a stake to speak in it. So you will simply X  
8 it or initial by it, either one, just so it's clear to me,  
9 then sign. Then after you come to a unanimous verdict on  
10 all five of the Indictments, then let the Bailiff know and  
11 we can come in and we can receive the verdict.

12 Now, please don't begin your deliberations yet.  
13 Because what will happen now is I am going to talk to  
14 these attorneys and give them the opportunity to correct  
15 me if I misstated some premise of law or if I failed to  
16 say something that I should have said, they'll correct me  
17 and let me know. And I'll either -- I'll bring you back  
18 in and I'll either correct something I've said or I'll  
19 tell you something in addition. But don't start yet.  
20 Give them the opportunity to correct me. Then when it's  
21 time for you to begin your deliberations, I'll send back  
22 to you very clearly notice to start. And that will come  
23 back with your verdict and with all of the evidence that  
24 was presented in this case. So you'll have it for your  
25 review. All right, thank you, ladies and gentlemen.

1 (WHEREUPON, the jury left open court at  
2 approximately 11:20 a.m.)

3 THE COURT: All right, counsel any exception to  
4 the charge?

5 MR. MOYER: Not from the State.

6 MS. ROSS: Your Honor, I would just -- I had --  
7 I would ask that my request for jury instructions be made  
8 a Court Exhibit and that I would object to them not being  
9 given as they were in there.

10 THE COURT: Okay. All right. I'm going to make  
11 your Defendant's request for jury instructions Court's  
12 Exhibit No. 3?

13 THE COURT REPORTER: Yes, sir.

14 THE COURT: And I will say that in all  
15 instances, as we had discussed, in substance I believe  
16 that I did charge the same. If not verbatim. The only  
17 one I did not charge was request number seven. Which I  
18 believe was exploitation charge that I didn't think  
19 applied to the evidence that was presented in this case.

20 MS. ROSS: Thank you, Judge.

21 (WHEREUPON, Court's Exhibit No. 3 was marked for  
22 identification and received into evidence.)

23 THE COURT: Okay, all right, ladies and  
24 gentlemen, what I'm going to do at this time is I'm going  
25 to replace Ms. Boeker was the one with whom you had

1 problem, is that correct? Juror number 27?

2 MS. ROSS: I believe so. Yes.

3 THE COURT: I'm going to put the first alternate  
4 Ms. Sears, Ms. Lori Sears, juror number 173 in her place,  
5 okay.

6 MS. ROSS: All right, thank you, Judge.

7 THE COURT: All right, if y'all would do an  
8 inventory of the evidence. And once you have done that,  
9 if you'd ask the Bailiff to send these verdict forms  
10 together with evidence back.

11 And I'm going to ask you, if you would, ask to  
12 come back to see me Ms. Boeker, B-O-E-K-E-R.

13 THE BAILIFF: Yes, sir.

14 THE COURT: And the second alternate, Ms. Sears  
15 is now among the 12.

16 THE BAILIFF: Yes, sir.

17 THE COURT: All right, I congratulate both of  
18 you having tried an excellent case. I thank you for  
19 having been civil and professional. It certainly makes my  
20 job easier. I wish you both good luck.

21 MS. ROSS: Thank you.

22 MR. MOYER: Judge--

23 THE COURT: Are y'all comfortable with the  
24 evidence?

25 MS. ROSS: Well my question was can they just

1 turn on this thing and start messing around on it?

2 THE COURT: I had the same question.

3 INVESTIGATOR PERRY: It should be dead but I'd  
4 like to take the battery out.

5 THE COURT: Okay. Take the battery out. And  
6 once you've done that -- oh you did it, I'm sorry. Okay,  
7 that's good.

8 Well then you can send it back to them, just  
9 have the two alternates come see me.

10 (WHEREUPON, deliberations began at approximately  
11 11:22 a.m.)

12 (WHEREUPON the alternate and juror number 27  
13 were excused.)

14 (WHEREUPON, court was in recess awaiting a  
15 verdict.)

16 THE COURT: It's my understanding that the jury  
17 has reached a verdict. Are each party prepared to receive  
18 the verdict?

19 MR. MOYER: Yes, Your Honor.

20 MS. ROSS: Yes, sir, Your Honor.

21 THE COURT: Okay, would you bring them in  
22 please.

23 (WHEREUPON, the jury came into open court at  
24 approximately 12:10 p.m.)

25 THE COURT: All right, Ms. Crider, has the jury

1 reached a unanimous verdict, ma'am?

2 MADAM FORELADY: We have, Your Honor.

3 THE COURT: Would you, please, hand the verdict  
4 forms to the Bailiff, please.

5 All right, Madam Clerk, you may publish the  
6 verdict.

7 VERDICT

8 THE CLERK: Your Honor, in the case of  
9 2011-GS-23-3327, the State of South Carolina vs. Frederick  
10 Robert Chappell, we, the jury, with respect to the charges  
11 of sexual exploitation of a minor in the third degree,  
12 unanimously find the Defendant, Frederick Robert Chappell,  
13 guilty. In case 2011-GS-23-3328, we, the jury, with  
14 respect to the charge of sexual exploitation of a minor in  
15 the third degree, unanimously find the Defendant,  
16 Frederick Robert Chappell, guilty. In the case of  
17 2011-GS-23-3329, we, the jury, with respect to the charge  
18 of sexual exploration of a minor in the third degree,  
19 unanimously find the Defendant, Frederick Robert Chappell,  
20 guilty. In the case of 2011-GS-23-3330, we, the jury,  
21 with respect to the charge of sexual exploration of a  
22 minor in the third degree, unanimously find the Defendant,  
23 Frederick Robert Chappell, guilty. In this case of  
24 2011-GS-23-3331, we, the jury, with respect to the charge  
25 of sexual exploitation of a minor in the third degree,

1 unanimously find the Defendant, Frederick Robert Chappell,  
2 guilty.

3           These are signed by Sanda Crider, our forelady.

4           Ladies and gentlemen, if you agree these are the  
5 verdicts you reached in your deliberation room, would you  
6 please raise your right hand.

7           (WHEREUPON, all the jurors raised their right  
8 hand.)

9           THE CLERK: Thank you.

10           THE COURT: All right, anything further for this  
11 jury?

12           MS. ROSS: No, Your Honor.

13           MR. MOYER: No.

14           THE COURT: Okay.

15           All right, ladies and gentlemen, thank you for  
16 your service here on this jury here this week. Past  
17 couple of days. I am going to proceed now to sentencing  
18 in this case. I'm going to have a short sentencing  
19 hearing. You're welcome to stay and be here for the  
20 sentencing hearing or you're welcome to go back to the  
21 jury room. I'm going to ask you to stay and wait for me  
22 in your jury room for just a few minutes until I'm done  
23 because I want to informally thank you and dismiss you as  
24 well. And give you the opportunity to ask me any  
25 questions or tell me anything that you think may be

1 important to you. And I might be able to answer some  
2 questions that you might have that are outstanding. So  
3 you may stay you may go back to your jury room but I  
4 promise I'm not going to keep you much longer.

5 Okay, you may proceed for sentencing.

6 MS. ROSS: Do you require the Defendant to sign  
7 the sentencing sheet or do you care one way or the other?

8 THE COURT: Not when it's a verdict of guilty.

9 MS. ROSS: Be happy to but it doesn't matter?

10 THE COURT: No, ma'am.

11 MS. ROSS: Again, he's willing to sign these  
12 just to saving time.

13 THE COURT: That's okay.

14 Okay. All right, Mr. Moyer, I heard the facts  
15 in this case, is there anything that you need to tell me  
16 which bears upon the issue of sentencing, sir?

17 MR. MOYER: Yes, Your Honor, I would like to  
18 tell you about his record. I would also like to make a  
19 statement to Court about what we would ask for as far as  
20 sentencing goes. Would you like to hear all that now?

21 THE COURT: Yes, sir, please.

22 MR. MOYER: This is the first case of type that  
23 I've ever tried. Most of these are handled by the  
24 Attorney General's Office but since we have a pending  
25 criminal sexual conduct case against this Defendant, they

1 kept this charge with us here. He faces, as Your Honor,  
2 knows, an aggregate of 50 years on this would be the  
3 maximum sentence. We are asking the Court to impose the  
4 maximum sentence in this case. Because I would argue to  
5 you that the maximum sentence is reserved for the most  
6 aggravated case. And I would argue to you that this is  
7 the most aggravated case based on his prior record, based  
8 on prior history of sexual abuse of children and based on  
9 the nature to these videos.

10 And I'll start with his criminal record. He was  
11 convicted in 1987 for three counts of burglary -- I'm  
12 sorry, 10 counts of burglary, third degree, three counts  
13 of burglary, second degree and 13 counts of larceny. In  
14 1991 he was convicted of criminal domestic violence and  
15 disorderly conduct. In 1994 he was convicted of criminal  
16 sexual conduct with a minor and received a 20 year  
17 sentence.

18 That takes me to my second point, Your Honor.  
19 Which is his history of sexual abuse of children. This  
20 is, I would argue to you as I argued in my closing  
21 argument, he is responsible, maybe not directly but  
22 certainly indirectly for harming the children in these  
23 videos due to the fact that he created a market for these  
24 videos. He also directly harmed a child in 1993 when he  
25 raped an eight year-old child. And he was convicted --

1 I'm sorry, he pled guilty on the date that case was  
2 scheduled for trial as I understand it, received a 20 year  
3 sentence. In that case it was aggravated. I have the  
4 police report, I've also spoken with the victim who now  
5 lives out of state.

6 As stated she was eight years old. He pled  
7 guilty and was accused of raping her orally, vaginally and  
8 anally and also causing her to have oral sex on him. The  
9 medical records are extensive in that case. It's one of  
10 the cases where there actually was very significant  
11 evidence of the trauma that he caused to her. He was  
12 released from that sentence in December of 2005. As, Your  
13 Honor, knows these -- he was charged with this in 2011,  
14 while he was on the sex offender registry. Point that out  
15 to the Court as well.

16 I would argue, again, that he shares collective  
17 guilt with whoever else watched these videos for the  
18 trauma to these five children who were depicted in these  
19 videos. The fact that his responsibility is indirect, I  
20 would argue should not be a point of mitigation. Because  
21 the sentence itself takes that into consideration. The  
22 sentence is a non-violent offense, it's only up to 10  
23 years as opposed to the 30 year to life sentence which is  
24 if he had done this directly. Certainly, I would argue  
25 that there is support for a strong sentence.

1           In United States vs. Wellman, which is a federal  
2 case. The Court after imposing a 25 year sentence on a 60  
3 year-old man in his late 60's, did mention while affirming  
4 the strict sentence in that case that Children are  
5 irreparably harmed when used to create the material that  
6 feeds a market composed of individuals who receive these  
7 images. The downloading of files of child pornography  
8 causes children to be exploited by contributing to the  
9 demands of such materials. Possessing and distributing  
10 child pornography are not activities that society's  
11 prepared to tolerate. By increasing the penalties  
12 pertaining to child pornography offenses, Congress has  
13 expressed its belief that distributing and possessing  
14 child pornography are repugnant and unsexual acts  
15 warranting serve punishment. The only South Carolina case  
16 I could find, Your Honor, was on a writ of habeas corpus  
17 in Federal Court where a defendant was sentenced to 30  
18 years in the aggregate for charges of this nature.

19           I would also point out to the Court, the  
20 Defendant only had this computer for one month and all  
21 these images were already on the computer. There were at  
22 least two other videos that were borderline that could  
23 have been used to create charges as well. There were also  
24 numerous still images of pornography involving children.  
25 There were dozens of photographs of children in suggestive

1 poses. And then there were dozen of photographs of  
2 children also in sexually explicative poses. The  
3 officers, based on the fact that we had videos, decided  
4 not to charge also for the still images. We actually  
5 had -- I had Investigator Perry download those on to a  
6 flash drive in case with decided to attempt to use those  
7 under 404(b).

8 And the final point I would just make to the  
9 Court is that you've seen the videos so you know the  
10 nature of the videos. I would argue to you that I don't  
11 think it could be worst. I mean as young as those  
12 children are. So I would argue that both his statement to  
13 society and to protect our society, that we would ask for  
14 the maximum sentence, Your Honor.

15 THE COURT: Okay, Ms. Ross, I'll be happy to  
16 hear from you, ma'am.

17 MS. ROSS: Thank you, Your Honor, may it please  
18 the Court. I just point out this charge does fall under  
19 the Sexually Violent Predator Act. Before Mr. Chappell  
20 would be released he would have to be evaluated by a  
21 mental health expert and have a civil hearing  
22 determination that he was not a danger to the community.  
23 And I would just point that out in here in these  
24 sentences. These were a number of charges. I ask you to  
25 consider concurrent sentences on these. I will tell you

1 that Mr. Chappell's been in jail for over a year on this,  
2 since I believe, January 18th, 2011. And I will say  
3 actually his mother passed away the day before this trial  
4 on the 4th of March. So I would ask you to consider that.  
5 Especially in light of the Sexually Violent Predator Act  
6 before any release.

7 THE COURT: Okay. Mr. Chappell, is there  
8 anything you'd like to tell me, sir?

9 MR. CHAPPELL: Your Honor, my past crimes I did  
10 admit and I did pay for my past crimes. Only thing I can  
11 say is that if you give me some leniency.

12 THE COURT: Mr. Chappell, does the date of  
13 January 18th, 2011 sound like the date on which you went  
14 to jail?

15 MR. CHAPPELL: Yes, sir, it's close.

16 SENTENCING

17 THE COURT: All right, Mr. Chappell, there's  
18 nothing in our society which we deem more sacred than our  
19 children. And that's you see that the legislature has  
20 enacted a substantial punishment for crimes of this sort.  
21 You have a substantial and significant problem. And I  
22 know that for some reason, whether it's mentally or  
23 biologically, you're compelled to do these sorts of  
24 things. That must, in fact, be the case with knowing that  
25 you had the potential to go to jail for a significant

1 amount of time. And had these types of materials not  
2 withstanding the punishment that you could potentially  
3 face. I recognize that pedophilia is a sickness. And  
4 often times it is a sickness that cannot be cured by any  
5 traditional either medical or psychological means.

6           The State of South Carolina has felt so strongly  
7 about this issue and about predators in our state that  
8 they actually enacted a civil statute, which I'm sure  
9 you're aware of, that could cause you to be committed  
10 under a civil statute for the rest of your life. And I've  
11 had the opportunity to preside over those trials in a  
12 civil setting and determine whether someone should be  
13 committed under that statute. And I've had occasion to  
14 look at the reports that comes from the doctor. And it  
15 has caused me to believe that it is a sickness. And it is  
16 apparently is a sickness, demonstratively a sickness from  
17 which you suffer. And the legislature has determined that  
18 those people who suffer from the sickness, who have a very  
19 difficult time conforming their conduct to the mandate of  
20 the constraints of civil society. And those people who  
21 are compelled, compelled, irrationally and illogically to  
22 prey on our children, should be protected from themselves  
23 essentially. And that by extension our children would be  
24 protected from that type of conduct as well.

25           In this case, sir, on Indictments 3331, 3330,

1 3329 and 3328, the sentence of the Court is that you be  
2 committed to the department of corrections for a period of  
3 10 years. Each of those four are concurrent. Credit for  
4 time served since January 18th, 2011. For Indictment  
5 2011-GS-23-3227, that's 10 years in the department of  
6 corrections, consecutive to all other sentences imposed.  
7 No credit for time served in that regard, sir.

8 Mr. Chappell I wish you luck. I truly and  
9 sincerely hope that you get help for the problems that you  
10 face. Good luck to you, sir.

11 MR. MOYER: Thank you, Judge.

12 THE COURT: All right, ladies and gentlemen, if  
13 you'd return to your jury room, I'll come back and talk to  
14 you.

15 (WHEREUPON, the jury left open court at  
16 approximately 12:28 p.m.)

17 (WHEREUPON, the proceedings were concluded.)  
18  
19  
20  
21  
22  
23  
24  
25



WITNESSES

James P Perry

Greenville County Sheriffs Office

1/18/2011

ARREST WARRANT NUMBER

1344106

ACTION OF GRAND JURY

TRUE BILL

*Bobby L. Damm*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*Guilty*

*Sandra Crick* 3/6/12

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-003327

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2011

*3-6-12*

THE STATE

vs.

FREDRICK ROBERT CHAPPELL

Indictment for

0381

SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE

VIOLATION § 16-15-0410

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE

At a Court of General Sessions, convened on  
County present upon their oath:

JUN 07 2011

the Grand Jurors of Greenville

That FREDRICK ROBERT CHAPPELL did in Greenville County, between December 1, 2010 and January 13, 2011, knowing the character or content of the material, possess material that contained a visual representation of a minor engaged in sexual activity, to wit: A video named "wape\_ru\_pthc\_5yo\_deas\_dick\_debut". This is in violation of §16-15-0410 of the South Carolina Code of Laws (1976) as amended.

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

  
\_\_\_\_\_  
SOLICITOR

WITNESSES

James P Perry

Greenville County Sheriffs Office

1/18/2011

ARREST WARRANT NUMBER

1344107

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

For person of Grand Jury

VERDICT

Guilty

Sandra Crider

3/6/12

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-003328

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2011

3-6-12

June

THE STATE

vs.

FREDRICK ROBERT CHAPPELL

Indictment for

0381

SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE

VIOLATION § 16-15-0410

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE

At a Court of General Sessions, convened on **JUN 07 2011** the Grand Jurors of Greenville  
County present upon their oath:

That FREDRICK ROBERT CHAPPELL did in Greenville County, between December 1, 2010 and January 13,  
2011, knowing the character or content of the material, possess material that contained a visual representation of a  
minor engaged in sexual activity, to wit: A video named "wape ru 2790 handjob". This is in violation of §16-  
15-0410 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

WITNESSES

James P Perry

*[Handwritten signature]*

Greenville County Sheriffs Office

1/18/2011

ARREST WARRANT NUMBER  
1344108

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND

*[Handwritten signature]*  
Foreperson of Grand Jury

VERDICT

*Guilty*

*Sandra Cichon 3/6/12*  
Foreperson of Petit Jury  
Date:

DOCKET NO. 2011-GS-23-003329

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

*3-6-12*

June

TERM 2011

THE STATE

vs.

FREDRICK ROBERT CHAPPELL

Indictment for

0381

SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE

VIOLATION § 16-15-0410

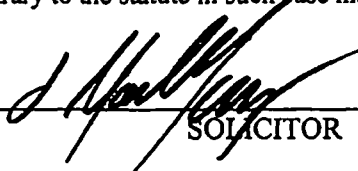
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT THIRD DEGREE

At a Court of General Sessions, convened on **JUN 07 2011** the Grand Jurors of Greenville  
County present upon their oath:

That FREDRICK ROBERT CHAPPELL did in Greenville County, between December 1, 2010 and January 13,  
2011, knowing the character or content of the material, possess material that contained a visual representation of a  
minor engaged in sexual activity, to wit: A video named "wape\_ru\_wape\_ru\_loli83[1]". This is in violation of  
§16-15-0410 of the South Carolina Code of Laws (1976) as amended.

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

  
\_\_\_\_\_  
SOLICITOR

WITNESSES

James P Perry

Greenville County Sheriffs Office

1/18/2011

ARREST WARRANT NUMBER

1344109

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Sandra Crider 3/16/12

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-003330

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2011

3-6-12

THE STATE

vs.

FREDRICK ROBERT CHAPPELL

Indictment for

0381

SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE

VIOLATION § 16-15-0410

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF GREENVILLE    )

INDICTMENT FOR  
SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE

At a Court of General Sessions, convened on **JUN 07 2011** the Grand Jurors of Greenville

County present upon their oath:

That FREDRICK ROBERT CHAPPELL did in Greenville County, between December 1, 2010 and January 13, 2011, knowing the character or content of the material, possess material that contained a visual representation of a minor engaged in sexual activity, to wit: A video named "wape\_ru\_webcam\_10y\_dwap". This is in violation of §16-15-0410 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

3331

DOCKET NO. 2011-GS-23-  
LMM

~~004159~~

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS  
June

TERM 2011

3-6-12

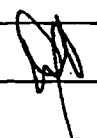
THE STATE

vs.

FREDRICK ROBERT CHAPPELL

WITNESSES

James P Perry



Greenville County Sheriffs Office

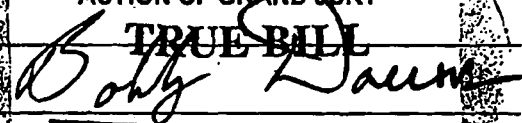
1/18/2011

ARREST WARRANT NUMBER

1344110

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Sandra Cichler 3/6/12

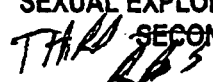
Foreperson of Petit Jury

Date:

10381  
0380

Indictment for

SEXUAL EXPLOITATION OF A MINOR  
SECOND DEGREE



VIOLATION § 16-15-0405

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
SEXUAL EXPLOITATION OF A MINOR  
SECOND DEGREE

At a Court of General Sessions, convened on

JUN 07 2011

the Grand Jurors of Greenville

County present upon their oath:

That FREDRICK ROBERT CHAPPELL did in Greenville County, between December 1, 2010 and January 13, 2011, knowing the character or content of the material, ~~possess, duplicate, distribute, transport, exhibit, receive, exchange, or solicit~~ material that contained a visual representation of a minor engaged in sexual activity, to wit: A video named "36774\_(wape\_ru).3gp". This is in violation of §16-15-0405 of the South Carolina Code of Laws (1976) as amended. 135

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

  
\_\_\_\_\_  
SOLICITOR

STATE OF SOUTH CAROLINA )

COUNTY OF Greenville )

STATE VS. )

Fredrick Robert Chappell )

AKA: \_\_\_\_\_ )

Race: WHITE Sex: \_\_\_\_\_ )

Address: \_\_\_\_\_ )

City, State, Zip: \_\_\_\_\_ )

DL#: 0008706735 SID#: \_\_\_\_\_ )

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was TO: Sexual exploitation of a minor, Third degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2303327

A/W#: I344106

Date of Offense: 1/13/2011

S.C. Code § : 16-15-0410

CDR Code #: 0381

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 16-15-0410 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)  §17-25-45

The 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: [Signature] Moyer/Mark SC Bar# 64155 Defendant [Signature] Attorney for Defendant SC Bar# 11205

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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: TO ALL END  
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. 135

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

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
% to County (if paid in installments)		\$
TOTAL		\$

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain 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 Fund

Other: \_\_\_\_\_

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Linderkramer

Court Reporter: A. Herron

SCCA/217 (03/2011)

Presiding Judge [Signature]

Judge Code: 2158

Sentence Date: 6 MARCH 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

Fredrick Robert Chappell

INDICTMENT/CASE#: 2011GS2303328

A/W#: I344107

Date of Offense: 1/13/2011

S.C. Code § : 16-15-0410

CDR Code #: 0381

AKA:

Race: WHITE Sex: M Age: 44

DOB: SS#:

Address:

City, State, Zip:

DL#: 0008706735 SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Sexual exploitation of a minor, Third degree

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-15-0410 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) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Moyer, Mark SC Bar# 64155 Defendant Attorney for Defendant SC Bar# 11205

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 120 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

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. JAN 18, 2011

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

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and fees.

PTUP

days/hours Public Service Employment

Obtain 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 Fund

Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickhamer
Court Reporter: A. Heron
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2152
Sentence Date: 6 MARCH 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville VS. STATE

Fredrick Robert Chappell

AKA:

Race: WHITE Sex: Age: 44

DOB: SS#:

Address:

City, State, Zip:

DL#: 0008706735 SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Sexual exploitation of a minor, Third degree

INDICTMENT/CASE#: 2011GS2303329

A/W#: I344108

Date of Offense: 1/13/2011

S.C. Code §: 16-15-0410

CDR Code #: 0381

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-15-0410 of the S.C. Code of Laws, bearing CDR Code # 0381
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The 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: Moyer/Mark SC Bar# 69155 Defendant Attorney for Defendant SC Bar# 11205

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 180 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

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. JAN 13 2011

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 days/hours Public Service Employment Obtain 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 Fund Other:

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, % to County (if paid in installments) \$, TOTAL \$

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickham Court Reporter A. Heron SCCA/217 (03/2011)

Presiding Judge Judge Code: 2158 Sentence Date: 6 APR 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville  
STATE VS.

INDICTMENT/CASE#: 2011GS2303330

Fredrick Robert Chappell

A/W#: 1344109

AKA:

Date of Offense: 1/13/2011

Race: WHITE Sex: M Age: 44  
5740

S.C. Code § : 16-15-0410

CDR Code #: 0381

Address:  
City, State, Zip:  
DL#: 0008706735 SID#:

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was  
TO: Sexual exploitation of a minor, Third degree

in violation of § 16-15-0410 of the S.C. Code of Laws, bearing CDR Code # 0381  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45 w/minor 1st or Lewd Act)

The 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: Mark Mark 64155 Paul B. Wickman 11205  
Moyer, Mark 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 10 days/months/years or  under the Youthful Offender Act not to exceed — years  
and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment  
of \$ —; plus costs and assessments as applicable\*; the balance is suspended with probation for —

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. SINCE JAN 13, 2011

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 — days/hours Public Service Employment

Total: \$ — plus 20% fee: \$ —  
Payment Terms: —  
 Set by SCDPPPS —

Recipient: —

\*Fine: — \$ —  
§ 14-1-206 (Assessments 107.5 %) \$ —  
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100  
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ —  
§ 56-5-2995 (DUI Assessment) \$12 \$ —  
§ 56-1-286 (DUI Breath Test) \$25 \$ —  
Proviso 47.9 (Public Def/Prob) \$500 \$ —  
§ 14-1-212 (Law Enforce. Funding) \$25 \$ —  
§ 14-1-213 (Drug Court Surcharge) \$150 \$ 25  
§ 50-21-114(BUI Breath Test Fee) \$50 \$ —  
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ —  
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

\$ — paid to Public Defender Fund  
Other: —

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

% to County (if paid in installments) \$ —  
TOTAL \$ —

Clerk of Court/ Deputy Clerk Paul B. Wickman  
Court Reporter: A. Heron  
SCCA/217 (03/2011)

Presiding Judge —  
Judge Code: 208  
Sentence Date: 03/14/2012

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville )

STATE VS. )

Fredrick Robert Chappell )

AKA: )

Race: WHITE Sex: )

DC )

Address: )

City, State, Zip: )

DL#: 0008706735 SID#: )

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was TO: Sexual Exploitation Of A Minor - 3rd Degree

INDICTMENT/CASE#: 2011GS2303331

A/W#: 1344110

Date of Offense: 1/13/2011

S.C. Code § : 16-15-0405(D)

CDR Code #: 0380

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 16-15-0410 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)  §17-25-45

The 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: Mark Moye SC Bar# 64155 Defendant Attorney for Defendant SC Bar# 11205

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed     years and/or to pay a fine of \$    ; provided that upon the service of     days/months/years and/or payment of \$    ; plus costs and assessments as applicable\*; the balance is suspended with probation for    

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. SINCE JAN 18, 2011.

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

Total: \$     plus 20% fee: \$    

Payment Terms:    

Set by SCDPPPS    

Recipient:    

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>25</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
% to County (if paid in installments)		\$
TOTAL		\$

PTUP    

    days/hours Public Service Employment

Obtain 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 Fund

Other:    

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickman

Court Reporter: A. Henson

SCCA/217 (03/2011)

Presiding Judge    

Judge Code: 21351

Sentence Date: 6 MAR 2012

COUNTY OF GREENVILLE )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 vs. )  
 )  
 FREDRICK ROBERT CHAPPELL, )  
 )  
 Defendant. )

THIRTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2011-GS-23-003327  
 wape - ru - p the - 5yo - dick - debut

**VERDICT**

We, the jury, with respect to the charge of SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE, unanimously find the Defendant FREDRICK ROBERT CHAPPELL;

       NOT GUILTY.

  ✓   GUILTY.

Sandra Oider  
 Foreperson

Greenville, South Carolina

Dated: 3/6/12

COUNTY OF GREENVILLE )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 vs. )  
 )  
 FREDRICK ROBERT CHAPPELL, )  
 )  
 Defendant. )

THIRTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2011-GS-23-003328  
 wape - ru - 7yo - hand job

**VERDICT**

We, the jury, with respect to the charge of SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE, unanimously find the Defendant FREDRICK ROBERT CHAPPELL;

NOT GUILTY.

GUILTY.

Sandra Criden  
 Foreperson

Greenville, South Carolina

Dated: 3/6/12

COUNTY OF GREENVILLE )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 vs. )  
 )  
 FREDRICK ROBERT CHAPPELL, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

THIRTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2011-GS-23-003329  
 wape - ru - wape - ru - 10183[1]

**VERDICT**

We, the jury, with respect to the charge of SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE, unanimously find the Defendant FREDRICK ROBERT CHAPPELL;

\_\_\_\_\_ NOT GUILTY.

GUILTY.

Sandra Crider  
 Foreperson

Greenville, South Carolina

Dated: 3/6/12

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 vs. )  
 )  
 FREDRICK ROBERT CHAPPELL, )  
 )  
 Defendant. )

COURT OF GENERAL SESSIONS  
 THIRTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2011-GS-23-003330  
 wape\_ru\_webcam\_1by\_dwap

**VERDICT**

We, the jury, with respect to the charge of SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE, unanimously find the Defendant FREDRICK ROBERT CHAPPELL;

       NOT GUILTY.

  ✓   GUILTY.

Sandra Crider  
 Foreperson

Greenville, South Carolina

Dated: 3/6/12

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 vs. )  
 )  
 FREDRICK ROBERT CHAPPELL, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

COURT OF GENERAL SESSIONS  
 THIRTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2011-GS-23-003331  
 36774- (wape - ru). 3gp

**VERDICT**

We, the jury, with respect to the charge of SEXUAL EXPLOITATION OF A MINOR  
THIRD DEGREE, unanimously find the Defendant FREDRICK ROBERT CHAPPELL;

\_\_\_\_ NOT GUILTY.  
 ✓ GUILTY.

Sandra Cider  
 Foreperson

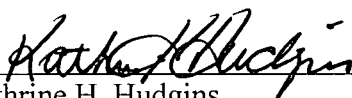
Greenville, South Carolina

Dated: 3/6/12

## 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."

January 25th, 2013

  
Kathrine H. Hudgins  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR APPELLANT

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