

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2015-0001408

RECEIVED

JUN 10 2016

SC Court of Appeals

The State,

Respondent,

v.

Rion McKissick Rutledge,

Appellant.

RECORD ON APPEAL

Stephen D. Schusterman
SCHUSTERMAN LAW FIRM, PA
PO Box 4211
Rock Hill, South Carolina 29732
Telephone (803)325-7788
Attorney for Appellant

Alan Wilson
Attorney General

William M. Blitch, Jr.
Assistant Attorney General
PO Box 11549
Columbia, South Carolina 29211
Telephone: 803-734-3727

Attorneys for Respondent

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State of South Carolina.,)	In the General Sessions
)	Court of York
)	
County of York.)	Case No.: 2012-GS-46-03369
	2012-GS-46-03370
	2012-GS-46-03371
	2012-GS-46-03372
State of South Carolina.,)	2012-GS-46-03373
)	2012-GS-46-03374
Plaintiff.,)	2012-GS-46-03375
)	
)	
-vs-)	
)	Transcript of Record
Rion McKissick Rutledge,)	
Junior.,)	
)	
Defendant.)	
_____)	
	June 22-24, 2015
	York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge , and a jury.

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

Mr. R. Kyle Senn
Assistant Deputy Attorney General
Ms. Bethany Miles
Assistant Attorney General
Office of Attorney General
State of South Carolina
P.O. Box 11549
Columbia, South Carolina 29211-1549
803-734-4159
Ksenn@scag.gov
For the Plaintiff

Mr. James W. Boyd
Attorney at Law
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, South Carolina 29732
803-328-2600
Jamesboyd@comporium.net
For the Defendant

Wanda Nelson, CVR-M
Official Court Reporter
To the Honorable John C. Hayes, III

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1 (COURT IN SESSION IN THE MATTER OF STATE V. RION
2 MCKISSICK RUTLEDGE, JUNIOR, AT 01:35 P.M..)

3 THE COURT: Take your seats, and good afternoon.
4 Call your case.

5 MR. SENN: The State calls Rion McKissick Rutledge,
6 Junior.

7 THE COURT: Mr. Boyd, you represent Mr. Rutledge?

8 MR. BOYD: I do, your Honor.

9 THE COURT: Mr. Senn, you're going to represent the
10 State?

11 MR. SENN: Yes, Judge.

12 THE COURT: All right. I've just been handed one,
13 two, three, four, five, six, seven indictments for
14 exploitation of a minor. Three are in the second degree,
15 and the other four are in the third degree.

16 The State intends to move forward on all seven?

17 MR. SENN: That's correct, Judge.

18 THE COURT: All right. Anything else, before I hear
19 what issues the Defense may have?

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

21 THE COURT: All right. Mr. Boyd.

22 MR. BOYD: Yes, sir. Your Honor, I have several
23 motions I'd like to make.

24 THE COURT: Okay.

25 MR. BOYD: Your Honor, my first motion is a motion to

1 sever indictments, basically. I'm not moving to sever all
2 seven from each other, but I am moving to sever the
3 indictments for second degree from the indictments for
4 third degree. And the grounds for this motion is as
5 follows your Honor, that the allegations in the indictment
6 for the second degree allege that, on or about December the
7 16th, my client had, basically, files available for
8 downloading, and as a result of that, that constituted a
9 violation of the statute.

10 Basically, on that date, there was, due to some
11 research being done by the State, I believe Officer
12 McKellar found these files that connected these files to my
13 client's IP address. And so, as a result of that, he is
14 charged with those charges.

15 The third degree charges indictments, which are four
16 of them, basically arose when my client's home was searched
17 as a results of a search warrant. Several computers were
18 seized. One particular computer had the three files or
19 images or videos that were subject to the indictments.
20 There was, also, at that time, a CD taken from the desk
21 drawer that is the subject of one of those indictments.

22 My motion is, your Honor, basically, the State has
23 alleged different offenses that occurred on different
24 dates. The grounds for trying the case together,
25 indictments together, your Honor, as set forth, and I can

1 pass up this case.

2 THE COURT: Please.

3 MR. BOYD: It's *State versus Tate*.

4 THE COURT: All right. Go ahead and pass it up.

5 MR. BOYD: Okay.

6 THE COURT: All right. Go ahead.

7 MR. BOYD: Your Honor, they - it must be that they can
8 be tried together when they arise out of a single chain of
9 circumstances. Here, we don't have the same chain of
10 circumstances. We've got several months apart in dates.
11 They have to be proved by the same evidence.

12 They - they're not proved by the same evidence. One
13 is concerning an IP addr - things that were on a - at an IP
14 address, basically, I guess, out of the Cloud, for lack of
15 a better word. And the others are images that were found,
16 actually, on a laptop, and on a - on a disc, on March the
17 2nd. And the - Also, they have to be of the same general
18 nature, but the State may be able to meet that
19 qualification, and no real right of the defendant has been
20 jeopardized.

21 They - And in the *Tate* case that the Court noted, in
22 this case, the offenses are of the same nature, but they
23 are not misdemeanors. I think that's the case here, too.
24 These are felonies, not misdemeanors. And so, basically, I
25 think the Court has said that misdemeanors can be joined

1 and tried together, but it's a separate issue when you're
2 dealing with felonies.

3 And I would submit that it would be prejudicial for
4 him to be - Mr. Rutledge to be tried for two separate
5 indictments for instances that allegedly occurred on
6 different dates, and are not provable by the same general
7 evidence.

8 THE COURT: All right. What does the State have to
9 say?

10 MR. SENN: Judge, the State would respectfully
11 disagree. And just as a preliminary matter, we - I don't
12 believe that that - those factors apply only to
13 misdemeanors. We've seen them - there's other cases where
14 felony conviction - felony charges have been consolidated;
15 burglary and murder, arson and false insurance. And I can
16 kind of go through but we - there are - there is case law
17 that felonies --

18 THE COURT: I'm not that concerned about the degree.

19 MR. SENN: Okay.

20 THE COURT: I'm concerned more about the fact that
21 there are two separate dates, and if the allegations are
22 two separate offenses.

23 MR. SENN: Absolutely, Judge. Well, as opposed to
24 this as it pertains to those factors, the first factor was
25 the one arrest of the single chain of circumstances and

1 absolutely, Judge, this does arise out of a single chain of
2 circumstances.

3 Investigator McKellar downloaded the files, the child
4 pornography, on the December 16th, 2010. To determine
5 where those files were coming from, she has to go and trace
6 the IP address and she does that by actually obtaining the
7 IP address during the downloads. Her program will give her
8 that information. Then, she finds where that IP address is
9 owned. And that - the person that - the company that has
10 that IP address was Comporium Communications.

11 She obtained a 18 USC 2703(d) order, which is a order
12 that allows investigators to obtain subscriber information
13 from Internet service providers, like Comporium, and she
14 did that through our office. Our office went and talked
15 with a circuit judge, and she did she did get that back.
16 And then, once she got that back, she obtained driver's
17 license information for the house and everything like that,
18 and she contacted Investigator Bomar, who is in with the
19 York County Sheriff's Office.

20 And once she sent him that case, and that's when he
21 got the search warrant for the house, he was able to see
22 several devices, and one of those devices was a laptop. As
23 Mr. Boyd said, it had other files that relate to child
24 pornography on it. And in addition to that, there was also
25 information on that computer that tied that computer,

1 specifically, back to the original downloads. It had
2 various information. One thing is that a GUID, which is a
3 word you may have heard before but it stands for Globally
4 Unique Identifier, and it basically says that a specific
5 program was the specific program that Investigator McKellar
6 was connected to when she was able to obtain the files.

7 THE COURT: All right. But is she connecting what she
8 saw, or what was revealed on December 16th? Is it directly
9 connected, or is it --

10 MR. SENN: It's - Absolutely, Judge. It is directly
11 connected. That computer that was at the search warrant is
12 directly connected to the downloads on December 16th. In
13 addition, she did not find those files, but she found
14 artifacts, if you will, of where - those files being on
15 that computer. One specific thing was thumb nails that had
16 been created when those files were in the computer. So,
17 you could see that the pictures were on the computer at one
18 point.

19 And so, Judge, basically, the forensic examination of
20 that computer, proved both, you know, the possession and
21 receipt and distribution of those files. And Judge, the
22 State would argue that, you know, the sexual exploitation
23 of a minor charges are clearly of the same general nature.
24 And we don't believe any right of the defendant is being
25 jeopardized by trying everything together.

1 Additionally, Judge, is a res gestae argument. You
2 need a full picture of this case, and that requires,
3 basically, everything on that computer to be tied together,
4 with both the sexual exploitation of a minor second degree
5 charges and sexual exploitation of a minor third degree
6 charges.

7 THE COURT: All right. Well, I deny the motion. I
8 believe, under the *State versus Tate*, wherein they cite
9 *Greenville versus Chapman*, that the full criteria does not
10 require severance in this particular set of circumstances.
11 Based on what I'm told, I haven't heard the evidence yet,
12 that the incidents do arise out of a single chain of
13 circumstances.

14 That is, as I understand it, that circumstances that
15 happened in December are continuing and are tied together.
16 As to the March charges, proof by the same evidence, they
17 are proved by not exactly the same evidence, but they're
18 proved by evidence which is connected.

19 They are the same general nature, and this one's
20 always out of argument for the Court to determine no real
21 right of the defendant has been jeopardized. I don't know
22 of any right that the defendant has been jeopardized. He
23 is entitled to confront the witnesses against him. He is
24 entitled to all of the *Constitutional* and other rules that
25 apply.

1 The only possible concern - and I don't know if this
2 is a - I'm not going to say this is jeopardizing his right,
3 is that we do, kind of, have some, I wouldn't call it
4 second thoughts, but some hesitancy when we have multiple
5 charges as to the fact that there are several giving more
6 weight to the charges. Although, I very specifically tell
7 the jury, when I charge them, that they are not to take
8 that in consideration. That is that they are to judge each
9 offense based on the evidence that's applicable to each
10 offense, so, I deny the motion to sever.

11 What's your next motion?

12 MR. BOYD: Your Honor, I've been told by the State
13 that the State intends to present other images that are not
14 subject to the indictment, or, perhaps, videos that are not
15 subject to the indictment, and I would like to know what
16 those are. And I would object to those, because I think
17 that violates *Rule 404*, in that it is intended to show my
18 client had other - might have had other images, and had a
19 propensity to engage in this type of behavior.

20 And also, I think some of it may not be such that even
21 can be connected together. And I realize that the - it may
22 be admissible to show - the State can argue it may show
23 motive, identity, common scheme or plan, or absence of a
24 mistake of accident or intent, but I don't see any of that
25 that's in this particular case.

1 And in particular, I think the State had said that
2 they intend to introduce some evidence about some images
3 that were found on a zip disc. And these are images that,
4 from my understanding, were not found on the computer, but
5 images that he's not charged with that are on a zip disc
6 found in a drawer. There was no date that can be made to
7 these images.

8 Actually, I think they may have even been erased and
9 recovered. A zip disc is ancient technology, basically,
10 from the '90's. My client, I believe the evidence will
11 show, didn't even have a computer that would play a zip
12 disc at the time that the search warrant was executed. So,
13 I submit that that one, in particular, is certainly not
14 something that should be admissible, under *Rule 404*.

15 THE COURT: All right. Mr. Senn.

16 MR. SENN: Judge, the State believes that all of these
17 are very relevant to the case. And specifically to that
18 zip disc, it was located in the defendant's desk drawer, in
19 his office, at the time of the search warrant, and it along
20 with the other files, which the other files that have not -
21 that he's not currently charged for, but it will be
22 introducing for, there were six downloaded image files by
23 Investigator McKellar, and he's been charged with three of
24 those. And the other three is basically to show that this
25 is what she was able to download from this defendant, and

1 they also involve children, Judge.

2 And the other images that would be displayed on the
3 laptop computer, or the files in the thumb cache that I
4 referred to earlier, Judge, that is, basically, when a file
5 is in a directory, and a thumbnail view has been turned on,
6 that leaves a record. And you can see those, the
7 thumbnails, even after the files have been deleted. And
8 so, you could see every file that had had a thumbnail and a
9 directory, and that includes the files that Investigator
10 McKellar had originally downloaded. Those were on that
11 computer, in that thumb cache file, along with several
12 other files of children in sexual positions and sexual
13 situations.

14 Judge, we do believe that these files are all relevant
15 under 404(b), and under just about every ground, Judge, we
16 believe that motive is, we ascertain, because it shows the
17 defendant was interested in these type of files, because
18 they were, you know, not only just on one laptop computer,
19 but they were on other media, such as a zip disc and a CD.
20 It shows - goes to identity, because these media were in
21 the defendant's office. Other computers and other computer
22 equipment was seized in this house, but everything that
23 relates to this case was just found in the room that we
24 were told was the defendant's office.

25 Additionally, it goes to an existence of a common

1 scheme or plan, because these are the same type of - types
2 of pictures, the same types of files across all the
3 devices, and the downloaded images. It goes to absence of
4 a mistake or accident, just because it's basically the same
5 argument as the other, Judge, and the same to intent. I
6 mean, every single one of those is addressed by the fact
7 that this defendant had - the State believes this defendant
8 had all of these types of pictures and files across
9 multiple media that were only in his office room, so, the
10 State would ask you to deny that motion.

11 MR. BOYD: Your Honor, particularly, the Frostwire -
12 I'm sorry, I'm talking about - thinking about something
13 else. The zip drive disc, those images, from my
14 understanding, were not on the computer itself. This was a
15 separate item that was found in a desk drawer. This was a
16 separate item we have no time of the date of. We've got
17 dates where the other images were downloaded. We've got
18 time frames.

19 This, there's no time frame, except it's sitting in
20 his office. This - these - The zip drive, in fact, unless
21 I've said before, I don't think there was even any computer
22 or any manner in - found that he could play that at his
23 home. So, that - that's an entirely separate thing. I
24 mean, it could have been from years and years ago and
25 sitting there, and now the State wants to bring that in to

1 same place. I think that the - while there is some
2 evidence that assuming that I would find by clear and
3 convincing evidence, these are acts, crimes or wrongs, that
4 go to the character of Mr. Rutledge. And they show motive,
5 identity, existence of a common scheme or plan, the absence
6 of a mistake or accident, intent.

7 I find that, applying 403, to the 404 analysis, that
8 the prejudicial value outweighs the probative value. I
9 think he's charged with certain crimes, and if the State
10 can prove those, he will be convicted, and we're not - I'm
11 not going to allow you to go into the non-charged items.

12 MR. SENN: Thank you, Judge.

13 THE COURT: So, that motion is denied. And I don't
14 know how to be more specific than that, as far as . . .

15 Anything else?

16 MR. BOYD: Your Honor, I don't have any other motions
17 at this time. I do have proposed voir dire, and I believe
18 the State does too.

19 THE COURT: Hand it up. Both of you hand it up, and
20 the witness lists.

21 THE COURT: All right. Both of you take a minute and
22 look at the --

23 MR. BOYD: Your Honor, I've looked at the State's. I
24 have no objection to any of their voir dire.

25 THE COURT: All right.

1 All right. Call your first witness.

2 MR. SENN: Thank you, Judge. The State calls Lucinda
3 McKellar.

4 MADAM CLERK: Please raise your right hand and place
5 your left hand on the Bible.

6 (WHEREUPON, LUCINDA MCKELLAR,
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 LUCINDA MCKELLAR BY ATTORNEY GENERAL SENN:

10 Q. Please state your name for the record.

11 A. Lucinda McKellar.

12 Q. Okay. With whom are you currently employed?

13 A. I'm a special investigator with the South Carolina
14 Attorney General's Office.

15 Q. And what are your current duties?

16 A. My current duties, I'm part of the Internet Crimes
17 Against Children Task Force. I've worked on online
18 solicitation cases and undercover proactive cases. That is
19 involved with the solicitation of children, via the
20 Internet, and also, the trade of dece - of child
21 pornography images and movies.

22 Q. Okay. How long have you been employed by South
23 Carolina Attorney General's Office?

24 A. Since October of 2010.

25 Q. Okay. Can you describe your law enforcement

1 background, prior to working with the Attorney General's
2 Office?

3 A. I've been a certified law enforcement officer for
4 seventeen years. I started out at Chester County, and we
5 were a small county, so we were cross-trained on pretty
6 much everything. I've worked child - worked homicide
7 investigations, property crimes, crimes against persons. A
8 lot of my training was involved with child-related cases,
9 physical abuse cases of children and child sexual abuse
10 cases, so, I'm trained, dealing with sexual offenders,
11 dealing with child victims, and also, at one point,
12 interviewing child victims, so, I have the training for
13 finding words. And I'm also a specific skills instructor,
14 which meant that I could also train other officers to work
15 these types of cases.

16 Q. Okay. Are you familiar with the South Carolina
17 Internet Crimes against Children Task Force? Is that what
18 you mentioned earlier?

19 A. Yes, sir. I started working with the Internet Crimes
20 Against Children Task Force. When I left Chester County, I
21 started working at the South Carolina Law Enforcement
22 Division. I worked in their computer crimes center, so we
23 conducted forensics, and also, investigations, and that's
24 how I got involved with the Internet Crimes Against
25 Children Task Force.

1 Q. Okay. Have you ever received any kind of specialized
2 training associated with the Task Force?

3 A. Yes, I have. When I was a SLED agent, I was doing
4 computer forensics, and also investigations. I've had
5 basic battery recovery analysis training, which is for
6 forensics. Intermediate Data Recovery and Analysis
7 Training, which deals with forensics, EnCase, FTK, Image
8 Scan, Nafix, all of those deal with forensics. With
9 computer forensics, I've done about sixteen hundred hours
10 worth of cases; and also, I've worked undercover proactive
11 cases, online investigations, and I think every version of
12 file-sharing programs that we've had. Fairplay, Round-up,
13 Operation, Peer Precision, GNUtella, also Ares and email
14 training.

15 Q. We'll go to them last. Did you conduct any
16 investigations with the Task Force in 2010?

17 A. Yes, sir, I did.

18 Q. Okay. What types of investigations?

19 A. I was working - the - at that point, it was called
20 Roundup. That was the newest version of file-sharing
21 programs that we were working. So, I was working
22 undercover proactive cases with that, and also handling
23 reports that came from the National Center for Missing and
24 Exploited Children.

25 Q. Okay. Were these investigations dealing with child

1 pornography?

2 A. Yes, sir.

3 Q. Okay. Well, how many child pornography investigations
4 have you conducted?

5 A. When you look at all the cyber tip reports from the
6 National Center that have come into our office, thousands.

7 Q. Okay. And these investigations, how many involved the
8 Internet?

9 A. All of them. Pretty - Well, a major majority of those
10 would.

11 Q. Okay. And I know you mentioned a whole bunch of
12 program names.

13 A. Yes, sir.

14 Q. All right. So, what, exactly, is a file-sharing
15 network?

16 A. Basically, a file-sharing network is if you - with
17 this is was a Gnutella program, which is an open-source
18 program that anyone could go out on the Internet and
19 download. And it allows you - Your computer becomes a
20 peer, and you're connected with other people that are using
21 the same software, so, all of us could be peers on this
22 same network. And if I have - if I'm looking for music,
23 Elvis, if you're an Elvis fan, and you want to type in
24 Elvis, anybody else that is in that network that has Elvis
25 music out there, you could download that music from them.

1 So, you're file-sharing. You're sharing the files that you
2 have with everybody else that's on this network.

3 Q. Okay. So, all someone would have to do to access
4 file-sharing network is download this program?

5 A. Yes, sir.

6 Q. Does it use the Internet connection to?

7 A. Yes, sir. You connect to the Internet, download that
8 program, and then you - once you type in that search term,
9 you're connected with other people in that network.

10 Q. Okay. Well, how would you begin an investigation into
11 a file-sharing network?

12 A. Well, through the training and experience that I've
13 had working these types of cases, they also - We learn
14 about the program and how it works, but we also learn about
15 terms that are associated with child pornography. And we
16 would type in key words or search terms that we knew were
17 associated with child pornography, and it would send us
18 back a list of peers, of people that would have files that
19 had these types of words in them. And I could look at the
20 peers - The software that we had also showed the IP
21 address, and kind of, a general location of where that
22 person was, so we knew it would be a case in South
23 Carolina. So, we could - At that point, I knew who had
24 files, and I could download from those particular persons.
25 Q. Okay. Do you use any kind of special software to

1 conduct this?

2 A. It's - What we were using was called Round-up. That
3 was the newest version. It's basically Phex which was a
4 software, an open-source file-sharing software, and they
5 did some enhancements for it to be a little more user-
6 friendly for law enforcement.

7 Q. Okay. When you said open-source, what exactly does
8 that mean?

9 A. It's the code that's out there for anybody to be able
10 to manipulate. It's free, and the code can be manipulated
11 by others.

12 Q. Okay. So, anyone could download this kind of type of
13 software program?

14 A. Right.

15 Q. Okay. All right. When you see other users out there,
16 can you see the file names and the files they're sharing?

17 A. Yes.

18 Q. Okay. So, say you see somebody sharing files, I
19 guess, had these terms, as you mentioned. What do you do
20 next?

21 A. I would go through and actually download from that
22 person. You would have to look at the file and double-
23 click on it, and that would start a download, and that file
24 will start downloading to your computer.

25 Q. Okay. Does someone have to actually be using the

1 computer to send you that file?

2 A. No. As long as their computer is on, connected to the
3 network, they don't have to be sitting there. And what I
4 would actually do is double-click on those files that I
5 thought were files of interest, and allow those to start
6 downloading. And then, I can walk away and start doing
7 other work, and come back and check on it periodically.

8 Q. Okay. You had to be at your computer, so you don't
9 have to be there?

10 A. No, sir. I have to be there for the initial double-
11 clicking to make those files start, but I can walk away, at
12 that point.

13 Q. Okay. So, once you download a file, do you view the
14 file?

15 A. Yes, sir.

16 Q. Okay. What do you look for in determining whether it
17 contains a visual representation of a minor?

18 A. Well, at the time, our statute, it had to be a minor
19 engaged in sexual activity. The statute has since changed,
20 but then it had to be sexual activity involved in that file
21 of a - with a minor.

22 Q. Okay. How do you determine whether it - the person in
23 the video appears to be a minor?

24 A. Through years of experience and training, working
25 child sexual abuse cases, and child physical abuse cases,

1 so, I'm versed on the - At one point in time, Tanner Scale
2 was one of the things we used in law enforcement. So, I
3 would look at the developmental aspects of that child. And
4 it's a little bit easier for me to determine age of a
5 little girl, because I was a little girl.

6 Q. Do you compare what is in the file and the image or
7 video with the title of the file?

8 A. Sometimes the title does give a relatively good
9 depiction of what's going on in that video.

10 Q. Okay. All right. So, once you've downloaded and
11 viewed files, what do you do to identify the person that
12 was sharing the files?

13 A. The IP address, I would get - find out who that IP
14 address belongs to. The American Registry of Internet
15 Numbers, ARIN, we can actually search for that IP address,
16 and determine what Internet service provider has that, and
17 then legal process would go to them.

18 Q. All right. What, exactly, is an IP address?

19 A. An IP address is how you connect to the computer, and
20 it's basically like the house number on your house. We
21 know that if this IP address was assigned to your house at
22 a partic - on a particular date and time. So, that way,
23 we're actually going to the location of that computer where
24 it's connected at.

25 Q. Okay. Can there be more than one location for an IP

1 address at any one time?

2 A. No. It's directly to that person.

3 Q. Okay. So is two --

4 A. Two people are not using the same IP address. It's
5 not going to show up the - Two people in different
6 locations are not going to show up with the same IP address
7 on this account.

8 Q. Okay. So, that IP address is basically for one
9 location?

10 A. Yes, sir.

11 Q. Okay. And can persons own that IP address? Is that
12 how that works?

13 A. The actual Internet service provider owns that, and
14 it's assigned by the Internet service provider to that
15 person that has an account with them.

16 Q. All right. What's an Internet service provider?

17 A. Internet service provider would be Time-Warner,
18 Charter. Up here, I think Comporium is - covers this area
19 so, Comporium is your Internet service provider. That's
20 the person you're paying for, to provide Internet to your
21 house.

22 Q. And how do you determine which service provider is
23 assigned the IP address?

24 A. The American Registry of Internet Numbers assigns IP
25 addresses to different companies. So, there's a net range,

1 or a block, of IP addresses that Arin has actually assigned
2 to Comporium, who then can assign them to their customers.

3 Q. Okay. All right. And so, once you've determined
4 which service provider is assigned the IP address, what do
5 you do next?

6 A. We send our legal process, it's called the 2703(d)
7 Order. It's a subsection of the federal law. But that D
8 Order, we actually ask for subscriber information
9 associated with that IP address for the date and time that
10 we would have received that file. So, I know that, on this
11 date, this IP address that I saw sending child pornography
12 was assigned to this person.

13 Q. Okay. All right. And were you involved in a sexual
14 exploitation of a minor investigation on December 16, 2010?

15 A. Yes.

16 Q. Okay. How did you become involved with this
17 investigation?

18 A. I was conducting online undercover proactive
19 investigations, and I started up the software that day, put
20 in several different search terms that I knew were
21 associated with child pornography. Usually, I use the
22 search terms, PTHC, Hussyfan, R@ygold, Baby J, Vicky. All
23 these are terms that we know are associated with child
24 pornography, so, those were usually the ones that I would
25 type in, and I would wait for results to come back with

1 lists of files, telling me that there were people that had
2 these types of files. And then, I would look at IP
3 addresses for ones associated with South Carolina, and
4 start downloading those files.

5 Q. Okay. And did you find any users on December 16, that
6 were sharing files at those times?

7 A. Yes, sir, I did.

8 Q. Okay.

9 MR. SENN: Permission to approach the witness, your
10 Honor.

11 Q. All right. I'm showing you what's been pre-marked,
12 for the purposes of identification, as State's Exhibit One.

13 Please examine that for me.

14 A. Yes, sir, I've seen this before.

15 Q. All right. You recognize this?

16 A. Yes.

17 Q. What does that disc contain?

18 A. It contains the images that I downloaded on December
19 the 16th, and also a single-source download note. It's
20 actually a note that, when I start downloading from an
21 individual, it tells me when that file started downloading,
22 the title of that file, a cache value for that file, and
23 also, when that file completed download, and a browse
24 result list, which tells me the types of files that person
25 had that day. And also, a screen capture, which is, kind

1 of, a picture of me - that my camera would - my computer
2 would take a photo - screen capture of me downloading that
3 file.

4 Q. Okay. Did you generate any of this information
5 yourself, or is it basically generated by the --

6 A. It's generated by the program that we're using. I
7 have to initiate everything for it to happen, but the
8 actual program makes it happ - the - creates the documents.

9 Q. Okay. And does this contain accurate representations
10 of the information generated when you conducted your
11 investigation on December 16, 2010?

12 A. Yes, sir.

13 Q. Okay.

14 MR. SENN: Your Honor, the State would like to offer
15 State's Exhibit One for admission as evidence.

16 THE COURT: Any objection?

17 MR. BOYD: Your Honor, may I approach?

18 THE COURT: Certainly.

19 (BENCH CONFERENCE, OFF THE RECORD, OUT OF THE HEARING
20 OF THE JURY AT 10:25 A.M.)

21 MR. BOYD: No objection, your Honor.

22 THE COURT: In, without objection.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, IDENTIFIED AND
24 MARKED, RECEIVED INTO EVIDENCE.)

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

1 THE COURT: Yes, sir.

2 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY.)

3 BY MR. SENN:

4 Q. All right. What, exactly, are we looking at on the
5 screen, currently?

6 A. This would be a screen capture of me downloading the
7 files. The program has a screen capture ability. We can
8 click on the little camera icon, and it will take a screen
9 capture of what's happening right there on the screen. So,
10 this is showing the download of four different files. Yes.

11 Q. Okay. And this is what you would have seen from you
12 using the program to download the files?

13 A. Yes, sir.

14 Q. Okay. Are these the names - the pictures from
15 *Raunchy*, is that the name of the file?

16 A. Yes, sir. That's the file title, and the percentage
17 of the file that I'm receiving, the file size. And it's
18 also telling me the status of, if it's - the download's
19 completed. And then, the very bottom pane, it shows the IP
20 address that I'm actually getting that file from.

21 Q. Okay. That 67197, is that the IP address?

22 A. Yes, sir.

23 Q. What is country, region, city? What is that?

24 A. That maximize software is part of this program, and it
25 gives us a relative location of where these files are

1 coming from, where that IP address is assigned.

2 Q. Okay. And what - In the top right, what, exactly,
3 does single source mean?

4 A. Single - On a file-sharing network, if - you can
5 actually get pieces of files from different people. I
6 could - if all of us were on the network, I could get
7 pieces of the files from each one of you, to make my file
8 complete. With a single-source download, I'm getting
9 connected to one person on that network, and getting pieces
10 of that file from just one person. So, it's not a multiple
11 source; it's a single-source outlet.

12 Q. All right. What, exactly, is this document?

13 A. That would be the browse list for that person that's
14 using that IP address, to trade with me.

15 Q. Okay. Were all of these files available for download?

16 A. Yes, sir.

17 Q. And all these were files available from just, the same
18 user?

19 A. Yes.

20 Q. Okay. Let me scroll up here. What, exactly, is a
21 GUID?

22 A. A GUID is a Globally - A GUID actually stands for
23 Globally Unique Identifier. It's basically like a VIN for
24 your car. It's - that's a number that's assigned to that
25 software that that person's using. When I was talking

1 about earlier, the file-sharing program that they're using,
2 when that person downloads it to their computer, it tags
3 their computer with, basically, like, the serial number
4 associated with that software.

5 Q. Okay. And what's the likelihood of two programs
6 having the same GUID?

7 A. It's not. The IP address would change, but the GUID
8 does not. That's part of our training. The IP address -
9 We could be on there numerous times with the same person.
10 That GUID would remain the same, but their IP address may
11 change, depending on what that company has assigned.

12 Q. Okay. And is it the same GUID for all these files,
13 because it's the same user?

14 A. Yes, sir.

15 Q. Okay. All right. Let me direct you to 147. Is this
16 a file title?

17 A. Yes, sir.

18 Q. Okay. Do you recognize any of those terms? I
19 apologize, I know it's kind of --

20 A. Yes, I'm going to need to - blow it up, or I'm going
21 to have to step down.

22 Q. Okay.

23 A. Okay.

24 Q. Do you recognize any of those terms as being related
25 to child pornography?

1 A. Yes, sir. *Pedo, KDB, Kidzilla, PTHC, 0yo, 1yo, 2yo,*
 2 *3yo, 4yo, 5yo, 6yo, 9yo, Tara, and Baby J,* are terms that
 3 I've seen associated with child pornography images. The
 4 numbers with the YO usually indicates the age of the child
 5 that's depicted in that file.

6 Q. Okay. And what, exactly, are - Does PTHC, does that
 7 stand for anything?

8 A. Yes, sir. It stands for Pre-Teen Hard Core.

9 Q. Okay. Okay. So, were you able to successfully
 10 download any of these files??

11 A. Yes, sir, I was.

12 Q. Okay. Were you able to download the one on Line 147?

13 A. Can I step down to look at that?

14 THE COURT: Yes, you may.

15 LUCINDA MCKELLAR: Thank you. I'm 41, and blind.

16 THE COURT: Just try to make sure that the jury can
 17 also see.

18 LUCINDA MCKELLAR: Yes, sir.

19 (WITNESS LEAVES WITNESS STAND.)

20 A. Yes, sir. Pictures *Raunchy Torpedo*, downloaded in
 21 2009. *Pedo, KDB, Kidzilla, PTHC, Toddlers,* and then the
 22 ages again, *Tara, Baby J.* And to say jp which means it's a
 23 picture.

24 Q. Okay. Were you able to - With these others, they
 25 appear to have pretty similar names, are those different

1 files? You have, like, 149 and 150.

2 A. Yes, sir, they would be.

3 Q. Okay. Were you able to download 149 and 150?

4 A. Yes.

5 Q. Okay. All right. Sit back down.

6 A. Thank you.

7 (WITNESS RETAKES THE STAND.)

8 Q. Okay. What is this document, this single-source
9 download note?

10 A. That's telling me that it's a single-source download,
11 and it means that I'm connected to one person, getting the
12 pieces of this file from one person. It's telling me when
13 I started the download of that file, when the file
14 completed, the version of software that I was using at the
15 time, who the investigator is, being me, who I'm connected
16 to, which is that IP address, and the title of the file,
17 the cache value of the file, the size, the GUID. And
18 because the naming conventions of these can be so long,
19 once that downloads to our computer, it makes it difficult
20 to print to a disc. So, once it goes on our computer, it's
21 tagged by the cache value and then Jpeg and then, the cache
22 value again, and then the - when that file completed.

23 Q. Okay. And this original file name, is this the file
24 name that would have been shown to the user on their
25 computer?

1 A. Yes. That's what I saw when I double-clicked on it,
2 to start the download.

3 Q. Okay. And this is the file as the name would have
4 been the other user's computer, as well?

5 A. Yes.

6 Q. Okay. All right. Is this GUID the same GUID that was
7 on that browse list that you showed us?

8 A. Yes, sir. It appears to be.

9 Q. Okay. All right. When was this - I think it's the
10 top line - when was this download started?

11 A. December 16, 2010, at 11:50:47..

12 Q. Okay. So, it would be 11:50. Is that in the morning?

13 A. That's in the a.m., yes, sir

14 Q. Okay. And were you able to complete this download?

15 A. Yes, sir. It completed December the 16th, 2010, at
16 11:53:32 a.m.

17 Q. Okay. All right. Let me show you the file that you
18 downloaded. Is this the file that you downloaded?

19 A. Yes, sir, it is.

20 Q. Okay. How - What did you look at to determine the age
21 of the --

22 A. Oh. I look at the development of the child. There's
23 no breast tissue development, and the vaginal area of the
24 child, there's no pubic hair that has developed, and
25 there's no indication that there's like, razor bumps, or

1 anything like that. That, compared with the development of
2 the child. And also, sometimes, the size of the child,
3 compared to the adult, can give you - lends a little extra,
4 as far as how - the size of that child and the age of that
5 child.

6 Q. Okay. Let me show you this. This is - is this
7 another ---

8 A. That's a single-source.

9 Q. --- Internet download?

10 A. Yes, sir. Single-source download note for a different
11 file.

12 Q. Okay. When was this download started?

13 A. 12/16/2010, at 11:50:48.

14 Q. I'll zoom in for you. I'm sorry.

15 A. Thank you.

16 Q. All right. And when was the download completed?

17 A. December 16, 2010, at 11:51:52 a.m.

18 Q. Okay. Is this - this file name is the file name that
19 would have been displayed?

20 A. Yes, sir.

21 Q. Okay. Is this that - Is this GUID the same GUID in
22 the browse list, and the same as the previous download
23 note?

24 A. Yes, sir.

25 Q. Okay. Let me show you the file associated with this.

1 Is this file associated with that?

2 A. Yes, sir.

3 Q. And what did you look at in determining this one?

4 A. The vaginal development. That child - her vaginal
5 area, she appears to be a pre-pubescent. I would say
6 somewhere between the ages of four and six, possibly. And
7 that looks like a child - in comparison to size, her - of -
8 this - licking her vagina.

9 Q. Okay. And this is another single-source download
10 note. Can you tell when the - your download started?

11 A. It started on December 16, 2010, 11:50:49 a.m.

12 Q. Okay. And when was it completed?

13 A. December 16, 2010, at 11:52:12 a.m.

14 Q. Okay. And this is the same GUID, as well?

15 A. Yes, sir.

16 Q. Okay. Is this the file that was downloaded?

17 A. Yes, sir.

18 Q. Okay. All right. And you used the same methods as
19 previous to determine whether it was a minor?

20 A. Yes, sir. There's no breast development and small
21 vaginal area, and no pubic hair.

22 Q. Okay. All right. Once you download and view these
23 files, did you determine from where these files were being
24 sent?

25 A. Yes, sir. Through the Internet service provider and

1 subscriber information for that IP address.

2 Q. Okay. What Internet service provider was assigned the
3 IP address used for sending these files?

4 A. Comporium Communications.

5 Q. Did you request information from Comporium?

6 A. Yes, sir, I did.

7 Q. Did they provide you any information?

8 A. Yes, sir. They provided subscriber information.

9 Q. Okay. Where did the information they provided direct
10 you?

11 A. To Rion Rutledge home. I think it's 1108 Hummingbird.

12 Q. Okay. Is that the address?

13 A. I think that's the proper address.

14 Q. Okay. Is that address in York County?

15 A. Yes, sir, it is.

16 Q. Before visiting or before doing anything more with
17 this case, do you do any other investigation?

18 A. Yes, sir. I normally ask for driver's license
19 information, a clear report, which shows us, like,
20 different locations the person may have lived at. Also, a
21 criminal history check and vehicle information for those
22 individuals that live at that location. I also ask for a
23 customers at same residence, through the DMV, which would
24 show us other drivers that have license at that location.

25 Q. Okay. And what do you do next, after getting all that

1 information?

2 A. I realized that it was in York County, and part of the
3 Internet Crimes Against Children Task Force, we have a lot
4 of local agencies that are assigned. Our goal is to try to
5 get these out, so they can get investigated as quickly as
6 possible. So, I referred that case to Chris Bomar, in York
7 County.

8 Q. Okay. When you say you referred, what, exactly, does
9 that mean?

10 A. I actually package up my entire case file, including
11 the informa - everything - everything that we've seen here,
12 I provided that investigator. I also provide all the
13 copies of the subscriber information, copies of my legal
14 process that I used to obtain that subscriber information.
15 And I also write up a signed, notarized affidavit, swearing
16 to the facts of my investigation. And all that's packaged
17 up, and then sent to the investigating agency.

18 Q. Okay. So you provided pretty much everything you were
19 investigating.

20 A. My entire case file, yes, sir.

21 Q. Okay. When did you contact them?

22 A. I think was either January or February. I think it
23 was February of 2010.

24 Q. Okay.

25 A. That would have been after I had all of the

1 information in front of me.

2 Q. Would that have been 2011?

3 A. I'm sorry, 2011, yes, sir. Because the downloads
4 happened in 2010, so it would have been 2011. I'd have -
5 the - would have to see the report in front of me to give
6 you the exact date.

7 Q. Okay. All right. Please answer any questions the
8 Defense has for you.

9 A. Thank you.

10 CROSS-EXAMINATION

11 LUCINDA MCKELLAR BY MR. BOYD:

12 Q. Good morning, Ms. McKellar.

13 A. Good morning.

14 Q. I want to just ask you, first, some general questions.
15 You talked about IP address, and basically an IP address is
16 the - a company, like Comporium, assigns an IP address to a
17 certain location; is that correct?

18 A. Yes, sir.

19 Q. Okay. And the IP address is the - that location
20 accesses the Internet through that IP address; is that
21 correct?

22 A. Yes, sir.

23 Q. Okay. And it may be through a cable connection, or it
24 may be through a router, a wireless router.

25 A. Yes. Yes, sir.

1 Q. Something of that nature. But in any event, anything
2 from that location goes through that IP address; is that
3 correct?

4 A. Yes, sir.

5 Q. And this IP address is not specific to a certain
6 computer, is it?

7 A. No, it's assigned to that location.

8 Q. Okay. So, any - you can have multiple computers at
9 one location, and all of those computers use that same IP
10 address; is that correct?

11 A. Yes, sir.

12 Q. Okay. And in fact, the - an IP address, potentially
13 at least there's some distance in which someone can access
14 that IP address; is that correct? Or use that IP address.

15 A. I'm not understanding. Are you --

16 Q. Well, if somebody, say, a neighbor can potentially, if
17 they're close enough, log on through that IP address.

18 A. If it is unprotected, wireless activity, yes. If it's
19 unprotected, someone else could connect to it.

20 Q. Okay. So, say, a neighbor can do that; is that
21 correct?

22 A. If it's unprotected, yes, sir.

23 Q. Okay. Or somebody, perhaps you don't have to be in
24 the house. You can be in the driveway, or be out by the
25 road and -

1 A. Yes, sir. If you're within close proximity, and it's
2 an unprotected wireless network, yes, you could.

3 Q. Okay. And based on your investigation, was this
4 system at this location, Hummingbird, was it password
5 protected?

6 A. I would not know. That would be something I would
7 have to be at the location, to check to see if it's open
8 access or secured.

9 Q. Okay. Now, you mentioned a, I think you called it a
10 GUID; is that correct?

11 A. Yes, sir.

12 Q. Okay. Now, that - a GUID is specific to a certain
13 computer; is that correct?

14 A. Yes, sir.

15 Q. Okay. And a GUID is, I think you called it Global -
16 Can you pronounce that?

17 A. Globally Unique Identifier.

18 Q. Okay. And that identifies a certain computer; is that
19 correct?

20 A. Yes, sir.

21 Q. Okay. And the computer and that GUID identifies that
22 computer, no matter where the computer is located.

23 A. Correct.

24 Q. Okay. So, if I take my computer, or my laptop, and
25 bring it from my office to the courthouse, it's still going

1 to show - that identifies that particular laptop; is that
2 correct?

3 A. Yes, sir. The IP would be different, but the GUID
4 would be the same.

5 Q. Okay. And that was my next question. The IP address
6 that I'm using at my office would be different from the IP
7 address, if I bring my laptop here and use it in the
8 courtroom.

9 A. Yes, you're correct.

10 Q. The - And basically, I think, actually, anybody at
11 that location - a certain location, or particularly
12 Hummingbird, anybody at that location can connect through
13 that I - Internet through that IP address.

14 A. Yes, sir.

15 Q. Now, the - can you tell - you mentioned about - Well,
16 let me back up a minute. Do you have - you - December
17 16th, 2010 was the date in which you downloaded this -
18 these photographs from this IP address; is that correct?

19 A. Yes, sir.

20 Q. Okay. Were you able - are you able to determine when
21 the, for lack of a better word, for when these photographs
22 were put on the system at that IP address?

23 A. Not from where I'm sitting, in Columbia, connected
24 through the Gnutella Network. No, sir. That's something
25 would - that could be found out forensically, once that

1 computer is seized.

2 Q. Okay. And do you know if that was done in this case?

3 A. Yes, sir.

4 Q. Okay. And do you know what date that was that these
5 photographs were placed?

6 A. No, sir, I don't.

7 Q. Okay. And did Officer Bomar do a forensic
8 investigation?

9 A. Yes, sir.

10 Q. Okay. Will he have the answer to that?

11 A. If he found it, yes, sir.

12 Q. Okay. Now, the - When you talked about the IP - I
13 think getting it from a - things from a single source; is
14 that correct?

15 A. Yes, sir.

16 Q. And basically, how it works when there is a file on a
17 certain - at a certain IP address, there's somebody
18 searching for a certain thing, whether it be pornography,
19 whether it be music, or whatever is out there, the person
20 who's searching puts in certain words, or; ---

21 A. Yes, sir.

22 Q. --- is that correct?

23 A. Yes, sir.

24 Q. Okay. And their computer searches out through the
25 networks and locates where these items may be; is that

1 correct?

2 A. Yes, sir. They would be connecting to other peers,
3 and find out the same information, as far as other people
4 having those files.

5 Q. And you mentioned things coming in through fragments.
6 Basically, how it works, the computer may seize a fragment
7 of the same thing from here and a fragment there, and a
8 fragment here, and puts it all together -

9 A. Not from single source, no, sir.

10 Q. But, but you're using a single source.

11 A. Uh-huh.

12 Q. But normally, the normal person doesn't have a single
13 source.

14 A. No, sir. They would be downloading it from different
15 places.

16 Q. Okay. And you use a special program that enables you
17 to get through it from a single source; is that correct?

18 A. Yes, sir.

19 Q. Okay. And did you use the Ares program on this?

20 A. No, sir.

21 Q. What did you use?

22 A. It was Round-up, which is Phex. It was developed from
23 Phex.

24 Q. Okay. And - but that enables you to get it from a
25 single source.

1 A. Yes, sir.

2 Q. Whereas anybody else accessing what we've seen up here
3 would be getting a piece from here and a piece from
4 somewhere else, or multiple places; is that correct?

5 A. Yes, sir.

6 Q. Okay. So, basically, when you say it's a file-sharing
7 program, it's not a program that sends a file directly to
8 another person; is that correct?

9 A. It would be sent - if you're connected - Well, it's
10 going from peer to peer. So, it's not - I can't
11 specifically say that I got my files from you.

12 Q. Right.

13 A. I just know that I got it from someone on Gnutella.

14 Q. Someone??

15 A. If I was in the - civilian using this.

16 Q. Okay. All right. Now, is there a difference between
17 a created directory and a shared directory?

18 A. There is, yes, sir.

19 Q. Okay. What's the created directory?

20 A. I was - I know what a shared directory is. I don't
21 know what a created directory is, as far as file sharing.
22 I know what I shared directory is. I can comment on that.

23 Q. Okay. All right. What is a shared directory?

24 A. Once that person is downloading those files, if it
25 goes into a shared folder, that would be the files that I'm

1 actually able to get back from anybody that's on the
2 Gnutella network. Not just me, but anybody on the Gnutella
3 network could get files from that shared folder.

4 Q. Okay. All right. Now, these files in this case, were
5 they, if you can answer this question, were they accessed
6 and put on there through the Gnutella network, or?

7 A. I don't know. I think that, theoretically, if you
8 take any file, you can put it in that shared folder. Most
9 of the time, when you're using a file-sharing network, like
10 in this case, it creates a shared folder for you. So, once
11 you're downloading, you can put those files in there. You
12 can take them out. You can delete them. You can put in.

13 Q. Okay. So, but when you said that it creates a shared
14 network, part of the --

15 A. A shared folder. Yes, sir.

16 Q. The computer or the program just does that
17 automatically?

18 A. The program does that. No, you can actually go
19 through, when you're setting up, and ask for it not to
20 share out.

21 Q. Um-hmm.

22 A. But in this case, it wasn't, so - because I was able
23 to get files from that person.

24 Q. Okay. And the - when you say you can opt out of it,
25 is that something you have to do when you set up a program?

1 A. Yes. When you're going through to set the program up,
2 you have to do the option of not sharing.

3 Q. All right. How do you get that program? Is that
4 something you get on a disc and download it on the
5 computer? How - is that something ---

6 A. No, sir. You can actually --

7 Q. --- you buy?

8 A. You can actually - You can Google the Internet, and
9 actually be able to download it. It's a free software.

10 Q. Okay. It's a free software. And so, you can just go
11 on the Internet, get the software, and it downloads; is
12 that correct?

13 A. Yes, sir. And you can start file sharing.

14 Q. Okay. And basically, file sharing is used for other
15 things, other than pornography. I mean, it's used for
16 music and numerous other things; is that correct?

17 A. Oh, yes, sir. Yes, sir. Um-hmm.

18 Q. Plenty of legal purposes.

19 A. Yes, sir.

20 Q. Okay. Now, tell me about - you were using - was - was
21 this a Frostwire program?

22 A. Well, no, sir. Phex. Phex, Limewire, Frostwire,
23 BearShare, they're all Gnutella programs.

24 Q. All right.

25 A. It's - But since it's an open-source program, Limewire

1 took Phex, and they decided, I'm going to use the same
2 program, but I'm going to do a few enhancements. And then,
3 that spins off Frostwire, where they do a few enhancements.
4 And then, BearShare does the same thing. They're all of
5 the same network. It's different titles, and some of them
6 have different things that you can do. If you have
7 Frostwire, you may be able to do something just a little
8 bit different that you couldn't do on Limewire. So, that's
9 - mine is a - Mine is based off of Phex which is like
10 Limewire, like BearShare, like -- they're all Gnutella
11 networks.

12 Q. All right. What was on this particular - the address
13 you got, what was it using?

14 A. In the bottom pane, it shows - it would show Limewire
15 as being one of the programs, and Limewire and Frostwire
16 are similar in the construction of that program.

17 Q. Okay. So, in the directory you had, you had Livewire
18 on that; is that correct?

19 A. In the bottom pane of my screen captures, it shows the
20 IP address, and it would show the possible version of a
21 software that person is using. And it's Limewire, L-i-m-e.

22 Q. Okay. Now, the property's wire file was a Frostwire
23 file; is that correct?

24 A. I don't - I didn't do the forensics on this case.

25 Q. Okay. So, you wouldn't know that.

1 A. No, sir.

2 Q. Okay. Can't explain it anyway.

3 A. No, sir.

4 Q. That would be something for Officer Bomar?

5 A. Yes, sir. He conducted the forensic examination.

6 Q. Is there a difference between the - We talked about
7 the GUID. Is there a difference between a GUID for the
8 computer a GUID for a certain program?

9 A. Yes, sir. That - that's for that particular program.

10 Q. Okay. So, there's a GUID for the particular program,
11 and there's a GUID for the computer itself?

12 A. Yes, sir. I believe so, yes, sir.

13 Q. And those are separate things?

14 A. Yes.

15 Q. And of course, what you have here, what you were able
16 to download, that identifies an address. It doesn't
17 identify the particular person that was using it; is that
18 correct?

19 A. No, sir. It's - the IP address goes back to the
20 location, and then, that's when we refer that case out, the
21 other forensic or the other investigator would then go
22 through and do their investigation, to determine who was
23 behind the computer at the time.

24 Q. All right. Thank you.

25 MR. BOYD: That's all the questions I have.

1 THE COURT: Re-direct?

2 RE-DIRECT EXAMINATION

3 INVESTIGATOR LUCINDA MCKELLAR BY MR. SENN:

4 Q. Special Investigator McKellar, you mentioned about
5 protecting the Internet. Someone can put a password on
6 their Internet; is that correct?

7 A. Yes, sir. They can password-protect their Internet.

8 Q. Okay. Is that difficult to do?

9 A. No, sir. A lot of times, when the Internet service
10 provider comes out, they can actually instruct you, and
11 walk you through on how to set that up. Time-Warner
12 actually did mine for me.

13 Q. Okay. All right. And when we talked a little bit
14 earlier with - Defense was saying that somebody that was
15 using their own civilian program, they could be downloading
16 from multiple users; is that correct?

17 A. Yes, sir.

18 Q. Okay. When you use your program, you only directly
19 download from one person.

20 A. Yes, sir. Single-source download.

21 Q. Okay. You mentioned a shared folder. Can someone
22 exclude files from the shared folder?

23 A. Yes, sir.

24 Q. Okay. So, once it's then created, someone can take
25 files and move them. Correct?

1 A. Yes, they can.

2 Q. Okay. I also want to ask you, I know we've said the
3 name, and I know we have lots of program names and network
4 names. What, exactly, is Gnutella?. When you said
5 Gnutella, what, exactly?

6 A. Gnutella it is a free, open-source program, file-
7 sharing program. And Gnutella, that's basically what
8 Gnutella means. It's an open-source, free software, and
9 there's just different - It's a type of network, and
10 there's just different brands. Just like you drive a car,
11 but there's different brands. There's Ford, Pontiac.
12 Those are different. BearShare and Limewire are all
13 different types of cars. It's all one car, but it's
14 different versions.

15 Q. So, Gnutella is a network, and, I guess, Phex,
16 Limewire, Frostwire, these are all using that same network?

17 A. Yes, sir. People using BearShare, Phex, Limewire, as
18 long as they're a Gnutella client, we all are in a Gnutella
19 network together. I could be using Limewire; somebody else
20 could be using Frostwire, we're all in there together.

21 Q. Okay. So, like what you're saying with the -
22 Basically, is the network a road, and all these other
23 programs basically cars that can use that network?

24 A. Yes.

25 Q. Okay. Earlier, we were talking about your screen

1 capture, as well. I believe that he - you spoke with Mr.
2 Boyd, and he said that you could show Limewire. Or you
3 said that Limewire and Frostwire are very similar; is that
4 correct?

5 A. Yes, sir. In our training's, one of the training's
6 that I attended, they were actually showing - telling us
7 that sometimes, when you see Limewire, it could be a false
8 positive, because Frostwire and Limewire are so closely
9 constructed together. So, that - that's more of an
10 investigative tool that we would - things that we would
11 look for in the house. That's not set in stone; okay, he's
12 got Limewire, he needs to go to jail. It's, this is just
13 one other thing - the totality of the case. So, that would
14 be something, when we're going out to do an on-site
15 preview, or do a forensic analysis, we would look for
16 Limewire, but we may see some other type of Gnutella
17 software on there.

18 Q. Okay. So, could your program show Limewire, and it
19 could, possibly, actually be a Frostwire?

20 A. Yes, because they are so closely constructed. Yes,
21 sir.

22 MR. SENN: Nothing further from the State.

23 THE COURT: Re-cross.

24 MR. BOYD: Nothing further.

25 THE COURT: All right. You can step down.

1 INVESTIGATOR MCKELLAR: Thank you.

2 THE COURT: Thank you.

3 (WITNESS LEAVES WITNESS STAND.)

4 THE COURT: We'll take about ten-minute refresher
5 break before we do our next witness. So, you can go to the
6 jury room, and we'll send for you in ten or so minutes.

7 (JURY EXITS COURTROOM AT 10:58 A.M.)

8 OFFICER HAGER: Everybody stay seated until the jury
9 gets out.

10 THE COURT: We'll be at ease ten or so minutes.

11 (COURT IN RECESS AT 10:58 A.M..)

12 (COURT BACK IN SESSION AT 11:13 A.M..)

13 THE COURT: Thank you, you may take your seats.

14 Is the State ready??

15 AG SENN: Yes, Judge.

16 THE COURT: Defense ready?

17 MR. BOYD: Defense is ready, your Honor.

18 THE COURT: Bring the jury in.

19 (JURY REENTERS COURTROOM AT 11:15 A.M.)

20 THE COURT: Call your next witness.

21 MR. SENN: The State calls Chris Bomar.

22 THE COURT: Please come up and be sworn.

23 MADAM CLERK: Please raise your right hand, place your
24 left hand on the *Bible*.

25 (WHEREUPON, CHRIS BOMAR,

1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 DIRECT EXAMINATION

3 CHRIS BOMAR BY ATTORNEY GENERAL SENN:

4 Q. Please state your name, for the record.

5 A. Chris Bomar.

6 Q. Okay. With whom are you currently employed?

7 A. I'm currently employed with the South Carolina
8 Attorney General's Office.

9 Q. Okay. And what is your title and current duties?

10 A. My title is a Special Investigator, computer forensic
11 investigator, with the Attorney General's Office. And my
12 current title and duties are, is to examine electronic
13 devices that are submitted by investigators for any
14 evidence pertaining to a case.

15 Q. Okay. How long have you been employed by the Attorney
16 General's Office?

17 A. I've been employed by the Attorney General's Office
18 since August 22nd of 2013.

19 Q. Okay. Please describe your law enforcement
20 background, prior to working for the Attorney General's
21 Office.

22 A. Okay. Back in 1996, I started as a road officer with
23 the York City Police Department. From there, I worked in -
24 transferred over into York County Sheriff's Office, worked
25 as a road deputy for about a year and half, and then as a

1 school resource officer for nine years. From then, I went
2 directly to the Violent Crimes Unit, Sex Crimes Unit, for
3 the York County Sheriff's Office as a detective.

4 Q. Okay. So, you - were you employed by the York County
5 Sheriff's Office in 2011?

6 A. I was.

7 Q. Okay. And what were your duties at that time?

8 A. My duties was that I was as detective, like I said. I
9 investigated sex crimes, homicides, crimes against persons;
10 and also, backslash computer forensic examiner for the York
11 County Sheriff's Office.

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

14 A. Okay. Prior to law enforcement, I have a computer
15 science background from Winthrop University. Also,
16 attended several training through the Task Force in
17 forensics software, such as FTK, EnCase, Cellebrite. Those
18 are types of software that analyzes devices for evidence.
19 I also went through IDRA BDRA which is classes put on by
20 NW3C, which teaches you the basic concepts of where
21 artifacts could be on a particular device.

22 Q. What is NW3C?

23 A. National White Collar Crime Center. It's a non-profit
24 organization that puts on free training for law
25 enforcement.

1 Q. Okay. And you said you were a member of the South
2 Carolina Internet Crimes Against Children Task Force?

3 A. I - I was, yes.

4 Q. Okay. And were you affiliated with the Task Force in
5 2011?

6 A. I was.

7 Q. Okay. And you received this training through the Task
8 Force, some of this training?

9 A. That is correct.

10 Q. Okay. When you said you received some specialized
11 training in computer forensics, what, exactly, is computer
12 forensics?

13 A. Computer forensics is basically taking an electronic
14 device, anything that stores information, you analyze it,
15 you try to gain information, and apply it to the case,
16 whatever that case may be. For the Sheriff's Office, of
17 course, that could be anything from homicides to
18 burglaries. For the Attorney General's Office, everything
19 that I deal with is through child exploitation or
20 solicitation cases.

21 Q. Okay. How long have you been conducting forensic
22 examinations of computers?

23 A. Started back in 2006 with the York County Sheriff's
24 Office, and to this date.

25 Q. Okay. How many forensic examinations do you think

1 you've conducted?

2 A. I've had over 500 cases. I would say over a thousand
3 devices, through my years, conducted from 2006 to this
4 date.

5 Q. Okay. Were these all Internet Crimes Against Children
6 cases?

7 A. I would say about eighty percent of the cases were
8 Internet crimes against children.

9 Q. Okay. So, how many of those cases would you say are
10 probably Internet crimes against children?

11 A. Well, if you had five hundred cases, about eighty
12 percent, I'd say close to around four, three hundred and
13 fifty cases would be Internet crimes against children.

14 Q. Okay. Apart from forensic examinations, were you
15 involved in any investigations with the Internet Crimes
16 Against Children Task Force?

17 A. Besides, I'm sorry, repeat?

18 Q. Besides just forensic examinations, did you actually
19 conduct investigations with the Internet Crimes Against
20 Children Task Force?

21 A. With the Sheriff's Office, yes, because I was the lead
22 liaison between our office and the Attorney General's
23 Office, being on the Task Force. Any type of cases that
24 were referred to us, I had to investigate, as a detective.

25 Q. Okay.. What kind of investigation would these kind of

1 cases be?

2 A. They can be anything from ----- referral, which could
3 say, hey, you have someone in your jurisdiction that has
4 the potential of downloading files that would be
5 questionable. So, we'd either do a knock-and-talk if we
6 had enough evidence, we'd actually go do a search warrant.
7 It could be from another investigator who was part of our
8 task force that says a - through their proactive
9 investigation, they found an individual, an IP address
10 within my jurisdiction, that is in violation of our state
11 law, and they would refer a case to us.

12 Q. Okay. So, did you actually receive any of these
13 referral-type investigations?

14 A. I did. I did.

15 Q. Okay. And can you explain a little bit more about
16 what, exactly, the referral would entail?

17 A. Well, a lot of the referrals, especially coming from
18 the investigator, if it's a peer-to-peer case, they would
19 give me their downloaded files, all the Intel they had done
20 prior to giving me the case, as well as any legal
21 compliance and any other clear reports that would help us
22 out in the investigation.

23 Q. Okay. What would you do, once you received a
24 referral?

25 A. Once I receive a referral, I look over the information

1 for any type of correctness, make sure that, in fact, that
2 the violation that they claim has occurred, that it did
3 occur within our jurisdiction, because jurisdiction is a
4 very big issue among local law enforcement agencies. Also,
5 I just look for any information about where I can further
6 continue with this case, or could not continue with this
7 case.

8 Q. Okay. Were you involved in a sexual exploitation of a
9 minor investigation involving Rion Rutledge?

10 A. I was.

11 Q. Okay. How did you become involved this investigation?

12 A. I'm sorry?

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

14 A. I received a referral from Lucinda McKellar, from the
15 South Carolina Attorney General's Office, where she had
16 done a peer-to-peer investigation, where she had downloaded
17 multiple files, which were believed to be in violation of
18 our South Carolina code of laws. She referred the case to
19 me. I then looked over the information and began our
20 investigation here.

21 Q. Okay. Once you received all of that information from
22 Special Investigator McKellar, did you review it all?

23 A. I did. I reviewed the downloads, reviewed the
24 pictures. Also reviewed her legal compliance, where she
25 got the information back from Comporium, and to make sure,

1 for any correctness, and make sure that it was definitely
2 in violation of our South Carolina Code of Laws.

3 Q. Okay. What did you do next?

4 A. From that point forward, we did our Intel. We'd -
5 since we had the address of 1108 Hummingbird Lane, which is
6 what Comporium says that that IP address came back to, we
7 began our Intel, taking pictures, making sure we actually
8 had the right address. From then, I would also look at the
9 pictures, to see that they did, in fact, violate our South
10 Carolina Code of Laws. And then, I obtained a search
11 warrant through our judge, here in our jurisdiction, to
12 actually search and seize any type of electronic equipment
13 from that residence at 1108 Hummingbird Lane.

14 Q. All right. Is that - is that address in York County?

15 A. It is.

16 Q. Okay. Did you execute a search warrant at that
17 location on March 2nd, 2011?

18 A. We did.

19 Q. Okay. Please describe what you did and what you
20 observed during the search warrant.

21 A. Okay. On March 2nd, 2011, approximately around six
22 o'clock in the evening, we made contact at 1108 Hummingbird
23 Lane. I knocked on the door. The wife, Mrs. Rutledge,
24 answered the door. I explained to her I was Detective
25 Bomar, with the York County Sheriff's Office. I was here

1 to do an investigation concerning the Internet, and asked
2 if we could come in; we had a search warrant for the
3 residence.

4 Once I entered in, I have a standard set of questions
5 I usually ask, because in these type of investigations, you
6 don't know who could be behind the computer system. All
7 you know is that, hey, something happened here at this
8 address. So, I began into small talk with the wife.
9 Getting no kind of indicators from her, I asked if there
10 was anybody else in the residence. She said her husband
11 was there in the bedroom, in the shower. The daughter -
12 there was an older daughter there at that time, too. And
13 so, I just basically waited for the husband to come out of
14 the shower. She went back into the bedroom and told the
15 husband, hey, there's some investigators here with the
16 Sheriff's Office; they need to talk with you.

17 When he came out, out of the shower, that's when I
18 began to start getting some what I call physical
19 indicators. Appeared to be nervous. For a guy who just
20 got out of the shower and dried off, seemed to be sweating
21 a little bit more. So, I began to focus more on this
22 particular individual than anybody else in the household.

23 When I started sitting down with Mr. Rutledge, I
24 explained to him, I'm Detective Bomar, with the York County
25 Sheriff's Office. I have a search warrant for the house,

1 for computers. Began to explain in more detail about why
2 we were there. I asked Mr. Rutledge, I said, we're here
3 dealing with a file-sharing program. I said, by the way,
4 do you have file-sharing program on the computer system at
5 your house? He stated, yes.

6 Q. Let me stop you real quick.

7 MR. SENN: Judge, permission to approach?

8 THE COURT: Yes.

9 BY MR. SENN:

10 Q. I'm showing you what's been pre-marked, for the
11 purpose of identification, as State's Exhibit Two.

12 Can you please examine that?

13 A. Yes.

14 Q. Do you recognize that?

15 A. Yes. This is a Waiver of Rights Form that we give to
16 anybody that we ask questions that might be of a particular
17 interest in an investigation.

18 Q. Can you kind of read through that --

19 THE COURT: Before you do, it's not in evidence yet is
20 it?

21 MR. SENN: My fault, Judge.

22 Q. Did you witness the defendant initial each place, next
23 to the item?

24 A. Yes.

25 Q. Okay. And can you generally describe the document to

1 the jury? It's just the -

2 A. It's the standard Waiver of Rights. You know, "you
3 have the right to remain silent". And then, you ask them
4 if they understand those rights, and they either mark yes
5 or no. If they mark no, then, you re-read it again, and so
6 that they do understand it. Once they sign that, then, you
7 get to the next part of the waiver, saying, "understanding
8 these rights, and with these rights in mind, do you wish to
9 talk to me?" And they either sign it or don't sign it, at
10 that point in time.

11 Q. Okay. And is this a fair and accurate representation
12 of what you had the defendant sign on March 2nd, 2011?

13 A. It is.

14 Q. Okay.

15 MR. SENN: Your Honor, State would like to offer
16 State's Exhibit Two, for admission as evidence.

17 MR. BOYD: No objection.

18 THE COURT: In, without objection.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO, IDENTIFIED AND
20 MARKED, RECEIVED INTO EVIDENCE.

21 MR. SENN: Permission to publish to the jury.

22 THE COURT: You may.

23 BY MR. SENN:

24 Q. Can you read through the form, and tell the jury?

25 A. Right. On the top part of the form, it's standard.

1 It says,

2 "You have the right to remain silent. Anything
3 you say can and will be used against you in a court of
4 law. You have the right to talk to an attorney,
5 and have him or her present with you while you
6 are being questioned. If you cannot afford to
7 hire an attorney, one will be appointed to
8 represent you before any questioning, if you wish.
9 You can decide at any time to exercise these rights
10 and not answer any questions and make any statements."
11 And then, the questions says, "Do you understand these
12 rights?"

13 It's marked, "Yes", signed by Rion Rutledge, on
14 3/2/2011.

15 Q. Okay.

16 A. And then, on the bottom part of that, this is where
17 the waiver comes in. It says,

18 "I'm not willing -- It says, "I am willing to
19 talk to police and answer questions. I do not want
20 and attorney at this time, and understand and know
21 what I am doing. No promises or threats have been
22 made to me, and no pressure of any kind has been
23 placed on me."

24 If you wish to waiver this, then, you sign it. And
25 it's got his signature, March 2nd, 2011. Another witness

1 also witnessed it. And then, some basic information about
2 the suspect is on the bottom part. When the interview took
3 place and that type of stuff.

4 Q. Okay. And did you go through all these questions
5 before you started asking him questions?

6 A. That's correct.

7 Q. Okay. All right. Let me ask you, though, what,
8 exactly, you talked to him about. What all questions did
9 you ask him?

10 A. Well, basically, when we sat down, like I said, we're
11 still trying to figure out what's going on in the
12 household. So, we'll ask specific questions about file-
13 sharing, because that's what we're there for. He
14 acknowledged, yes, there is file-sharing, and he does use
15 file-sharing.

16 In this particular situation, I kind of went to -
17 directly to the point. And I said, when you use file-
18 sharing programs, do you use particular search terms? And
19 I actually, specifically described these search terms. I
20 said, did you use PTHC, Lolita, Russell - I mean Hussyfan
21 or Regal. And at that point in time, he responded to me -
22 Well, he took a little bit of time to answer at first. And
23 then, he just basically said, I don't know. And then, I
24 said, okay. I said, well, do you have anything unlawful on
25 your equipment, or anything that you're not supposed to

1 have? And he said, no.

2 Q. Let me ask you real quick. Are those terms that you
3 asked him about, are those terms - how are those terms
4 related to this case?

5 A. Well, those terms, like I said, those are terms that
6 people actually use to search for these particular files.
7 There are common terms in the child pornography that people
8 look for. So, the PTHC, which means Pre-teen Hard Core,
9 the Hussyfan, those are all particular titles. When you
10 start looking and downloading these child porns, you will
11 see these terms and terminologies in the titles of these
12 files.

13 Q. Okay. Were these terms, were they part of that - your
14 referral packet that you received?

15 A. Yes. Some of those terms were in those --in those
16 titles of those files.

17 Q. Okay. And did you ask Mr. Rutledge about any file-
18 sharing programs?

19 A. I did. I asked him if he had any file-sharing
20 programs, and he specified he did.

21 Q. Okay. Did you ask him about whether or not his
22 Internet had been password protected?

23 A. We asked about the Internet, and I believe he said it
24 was protected, but we did not check to verify whether it
25 was protected or not.

1 Q. Okay. Is the individual you talked to, is he in the
2 courtroom today?

3 A. He is. He is to the right and front, right there with
4 the Defense.

5 (WITNESS INDICATED TOWARD DEFENDANT AT DEFENSE TABLE.)

6 Q. Okay. What else did you do at Mr. Rutledge's
7 residence?

8 A. At that point in time, like I said, we had several
9 other investigators there. We began to look through the
10 house for any electronic equipment that can store photos,
11 digital videos, those type of things. So, we began to
12 seize and take equipment there at the house.

13 Q. Okay. What items did you seize at the house?

14 A. We seized several laptop computers, a desktop
15 computer, a CD, a couple of DVD's, some memory cards, and I
16 believe that's it.

17 Q. Okay. And once you seized all that equipment, what
18 did you do next?

19 A. After seizing the equipment, you mark and identify
20 them and then you take them to the York County Sheriff's
21 Office and then you enter them into evidence.

22 Q. Okay. Were you the ones - the person that took those
23 items from the residence?

24 A. Yes. I am the one.

25 Q. Okay. Did you examine those items that were seized

1 from the residence?

2 A. Yes. Since having that title as Computer Forensic
3 Examiner, it became my duty, also, to examine those items,
4 as well.

5 Q. Did you examine all of the items?

6 A. I examined all - they were either examined or
7 previewed, yes. Every one of them.

8 Q. All right. What, exactly, is a preview?

9 A. A preview, like I said, when you start looking at
10 particular items, you look to kind of narrow your focus,
11 because you'll get a lot of items in when you seize things.
12 And so, you don't always image every single item. You try
13 to focus on the items that are in question, or may have
14 been used in the commission of a crime.

15 So, when you do a preview, you might be looking for
16 things like file-sharing programs, because if there's none
17 of that on there, and you don't see any readily-available
18 files that are violation of code law, you may exclude that
19 so, you don't go ahead and just image those particular
20 items. So, a preview is just a quick view of things, to
21 see what or does not exist on that. An image is a totally
22 different process.

23 Q. All right. What, exactly, is an image?

24 A. An image is basically a representation of that
25 computer system. So, basically, you take a hard drive or a

1 flash drive or a CD, and then, you make a representation of
2 that, so that you can analyze it, without having to touch
3 the original evidence.

4 Q. Okay. What, exactly, is a hard drive?

5 A. A hard drive is a storage device. It comes in a hard
6 casing and it has a platter that spins, and basically has a
7 little write head that sits there and writes information
8 onto it.

9 Q. Is this a way to save information?

10 A. It is.

11 Q. Okay. Where would you find a hard drive? What kind
12 of process --

13 A. You can find hard drives on - inside of a computer
14 system that lays on the table. You can find them on
15 external hard drives that you plug into the side. And some
16 people just have them just laying around, hard drives.

17 Q. Okay. Did you examine any hard drives in this case?

18 A. I did.

19 Q. Okay. So, what was the first - Can you explain the
20 process of creating an image of a hard drive?

21 A. Right. Once we begin to - Before we start to examine
22 a computer system, we'll take it, a computer system, we'll
23 catalog some information about that system. If it's a
24 laptop, we, you know, classify what type of laptop it is.
25 We would then remove the hard drive from the laptop. And

1 then, we have another computer system that has what we call
2 physical write blocker's, hardware write blocker's, and we
3 will attach that hard drive to that write blocker. And for
4 the purpose of that is, is to keep from anything writing
5 back to the evidence, because you don't want to alter any
6 evidence in a case. So, the hardware write blocker's is
7 there to keep from anything writing back.

8 Then, the computer system on this end will actually
9 use a different software package and in this situation, I
10 used FTK Imager. An FTK Imager would then go in and start
11 to make a copy of that hard drive, which we call an image.
12 And then, that image is then saved to the computer system
13 for further analysis.

14 Q. Okay. Why would you - Why would you make an image of
15 a hard drive and not just use the - the actual computer
16 itself?

17 A. As I said, you don't want to write back or have any
18 accidental write-backs to the evidence, so, everything you
19 want to do is, you want to do it on the image.

20 Q. Okay. And you say you use FTK Imager to create this
21 image?

22 A. That's correct.

23 Q. Is this a standard software used in the forensic
24 field?

25 A. It is.

1 Q. Okay. Were you able to create an image of - Well,
2 actually, did you create an image of a CD, as well?

3 A. Yes, you can.

4 Q. Okay. Were you able to create images of items seized
5 from Mr. Rutledge's residence?

6 A. Yeah. We created an image of, I believe, two computer
7 systems, but one we just focused on, two zip discs and a
8 CD.

9 Q. Okay. All right. So, once you've created an image of
10 a hard drive, did you create - what kind of computer was it
11 that you created an image of? I think you said it was two.
12 Which one was a -

13 A. There were two laptops I believe we looked at. But
14 the one in question was Item 7.

15 Q. Okay. All right. So, once you created an image of
16 this hard drive in Item 7, which is, I believe, a laptop?

17 A. Yes.

18 Q. What did you do next?

19 A. Then, we have another software tool. And in this
20 situation, I used Forensic Tool Kit. What, then, it does
21 is, it attaches the image to the program and then you can
22 do further analysis in it. What it does is, starts to
23 index files. It starts to create search terms, well search
24 indexes, so you can do quick searches on the hard drive.
25 It also starts to categorize things. It puts things in

1 categories, like graphic files go in one category, video
2 files go in another category, emails. And so, it does a
3 lot of neat things that helps the forensic investigator to
4 find information quicker.

5 Q. Okay. You said you used, was it Forensic Tool Kit, or
6 FTK?

7 A. Yeah, FTK, Forensic Tool Kit, is the actual name of
8 it.

9 Q. Okay. And is this a standard program used to conduct
10 forensic examinations?

11 A. It is.

12 Q. Okay. All right. In this case, what kind of
13 information, generally, were you looking for in your
14 forensic examination?

15 A. Well, specifically, on the computer system, you're
16 looking for the file-sharing programs. You're looking for
17 the files in question themselves, and you're looking for
18 any other contraband that may be on that computer system.
19 Forensic examiners may also look for any other files that
20 may help tie in the cohesiveness of the case, such as other
21 files that may be opened, Internet histories, thumb caches,
22 those type of things.

23 Q. Okay. And this - when you searched for Item 7, did
24 you find any files of interest on this?

25 A. I did.

1 Q. Okay.

2 MR. SENN: Permission to approach, Judge.

3 THE COURT: You may.

4 BY MR. SENN:

5 Q. I'm showing you what has been pre-marked for the
6 purpose of identification as State's Exhibit Three.

7 Do you recognize that?

8 A. I do.

9 Q. Okay. What is that?

10 A. It's a - It's a CD that contains videos, video file
11 information, the evidence list in this case, and programs
12 that were in the program file folder on Item 7.

13 Q. Is this an accurate representation of your findings
14 from your forensic analysis of the hard drive on the
15 computer seized from Rion Rutledge's residence?

16 A. It is.

17 Q. Okay.

18 MR. SENN: Judge, the State would like to move State's
19 Exhibit Three into evidence.

20 MR. BOYD: Your Honor, I think I have a matter to take
21 up.

22 THE COURT: Okay. We'll take up a matter of law out
23 of your presence. I'll let you go to the jury at this
24 time. We'll send for you as promptly as we can.

25 (JURY EXITS COURTROOM AT 11:37 A.M..)

1 (SIDE BAR BETWEEN ATTORNEYS OFF THE RECORD.)

2 THE COURT: The jury is dismissed. Yes, sir.

3 MR. BOYD: Your Honor, as far as introducing that
4 entire CD into evidence, I have no problem with the images
5 or anything connected with the charges that are here. But
6 that appears, from the description of it, to be much more
7 on that CD than that, so.

8 THE COURT: Mr. Senn, we took a early break yesterday
9 so these could be - these exhibits could be redacted to
10 just cover what needs to be covered.

11 MR. SENN: Yes, Judge. This has been redacted. This
12 - the - The videos that are on there, there are only four
13 videos that we'll be showing and those are the files that
14 are the sexual exploitation of a minor, third degree,
15 charges are based on. There's a document that shows the
16 file information, and it shows other videos that were
17 there, but we will immediately scroll just to the ones that
18 are relevant to this case, and it just has file information
19 about that.

20 There is an evidence list that shows the items that
21 were looked at in this case, and the only thing we were
22 looking at, specifically, are the CD and the laptop that
23 he's about to describe. Those are the only items we're
24 going to talk about on that list. And then, finally,
25 there's programs that were on the laptop computer that

1 we'll go through on this disc.

2 THE COURT: You kind of lost me there. In fact while
3 you talk about some things that you're going to scroll
4 through, are they not relevant?

5 MR. SENN: We're not showing any kind of images or
6 videos, Judge. It's just file information. We didn't - We
7 don't know how to redact any of that, but there's nothing
8 that somebody would - should be able to see. I don't
9 believe the file names actually have information. We can -
10 - we can look.

11 I can let you see, just real quick, but I don't think
12 they have any information.

13 MR. BOYD: I would like to see.

14 (SIDE BAR BETWEEN ATTORNEYS OFF THE RECORD.)

15 MR. SENN: This is the evidence list, and these are
16 the items that were - were searched. We're only going to
17 be talking about Items 12 and 7, which are the bottom two,
18 just briefly, just to say these were the items that were
19 searched.

20 We have this document, which is items of interest
21 videos. The only thing - this is what I was talking about,
22 the other file names on this list, Judge, that we're going
23 to scroll straight through, but they all have names, like
24 IBEO03. It's not very indicative of anything with the
25 file.

1 And the ones that we're looking for are after these
2 previous - it's the *PTHC, 15yo Shaved German Girl*, that
3 file. It's *PTHC Daddy's Girl* file. *Uncle's Lust*, the
4 *Young Blond* file; and then, this final file would be where
5 there's the Chinese characters and the King Pass.

6 And that's what we're showing. We aren't going to
7 show the videos for these other files, Judge. They're -
8 we're just immediately going to scroll past those. And
9 then --

10 THE COURT: Well, the question, though, is, are those
11 videos - If I took that home, could I --

12 MR. SENN: You could not see the videos. Those are
13 not videos.

14 THE COURT: Not that I'm concerned with me taking it
15 home, but the jury having it in the jury room.

16 MR. SENN: No, the jury could not view the files.

17 THE COURT: That -

18 MR. SENN: No, Judge. They could not see those files.

19 THE COURT: Okay.

20 MR. SENN: The only files that are on this, those
21 files that are on that report are hyperlinks, which just
22 means you've got to click through, like, a website. And
23 they basically would not work, Judge. The only files that
24 can be accessed are these four files right here.

25 THE COURT: Mr. Boyd?

1 MR. SENN: Those are the four videos that Mr. Rutledge
2 has been charged with.

3 MR. BOYD: Your Honor, if that's all it is, I don't -
4 Let me - One of those is . . .

5 MR. SENN: I'm sorry, Judge. Just to be clear, too,
6 three of those videos were on the laptop computer, and one
7 that's on the CD that Mr. Bomar will be talking about??

8 MR. BOYD: Your Honor, I don't have a problem; if
9 that's what's shown. I just wanted to make sure ---

10 THE COURT: Okay.

11 MR. BOYD: --- it was --

12 THE COURT: That's understandable. They're in -Well,
13 I'll wait until the jury comes back in.

14 Let's bring the jury in.

15 (JURY REENTERS COURTROOM 11:43 A.M..)

16 THE COURT: Are you offering that into evidence?

17 MR. SENN: Yes, Judge.

18 THE COURT: And without objection, it's in evidence.
19 In, without objection.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE, IDENTIFIED
21 AND MARKED, RECEIVED INTO EVIDENCE.

22 MR. SENN: All right. Permission to publish to the
23 jury.

24 THE COURT: You may. Yes, sir.

25 (WHEREUPON, STATE'S EXHIBIT THREE PUBLISHED TO THE

1 JURY.)

2 Q. All right. Investigator Bomar, I just want to be
3 clear, too. Does this also contain your investigation into
4 a CD that you seized from the residence?

5 A. It is.

6 Q. Investigator Bomar, what is this information, this
7 list - evidence list?

8 A. The evidence list is, when we start an FTK report, it
9 will actually list the items that I'm attaching to that
10 case, and that lists all the different types of images that
11 I was attaching to the case. So, you have Item 7, which
12 goes back to the laptop computer system. And then, you
13 have Item 12, which is a CD.

14 Q. Okay. Is this Item 7, is that the bottom one, the
15 ITM 7?

16 A. Yes.

17 Q. Okay. What is it - It says, display name. What,
18 exactly, is a display name?

19 A. The display name is just the display of the image.
20 It's the actual image name that I gave it when I created
21 that image.

22 Q. Okay. And why does it have a display name? Why do
23 you need that?

24 A. Because it's more for the forensic investigator, kind
25 of indicative. When I name things, I name the item as I

1 entered them on the evidence sheet. And also, kind of give
2 another descriptor of whether it's a hard drive, a CD, a
3 zip disc, thumb drive. It's like giving it another
4 indicator, so those are the naming schemes that I created.

5 Q. Okay. And this Item 7 is a laptop computer. Correct?

6 A. That's correct?

7 Q. Okay. Where was this located in Mr. Rutledge's
8 residence?

9 A. Item 7 was located on a desk in what he calls his
10 office space, there on the first floor of the house.

11 Q. Okay. And where was Item 12 located? Is that a CD?

12 A. That is a CD, and that was also located in a desk
13 drawer in what he classified as his office space, on the
14 first floor.

15 Q. Okay. And these's are in the same room?

16 A. It's in the same room.

17 Q. All right. Okay. This, I guess it says, programs in
18 the program folder, what, exactly, is this information?

19 A. Basically, when the operating system, which is Vista
20 in this situation, it creates a programs folder. So, every
21 time you install a program, it installs that program in a
22 programs folder. And basically, what I did is, I did a
23 capture of all the programs that were installed in that
24 folder.

25 Q. Okay. Were these programs still installed on the

1 computer at the time it was seized?

2 A. That is correct.

3 Q. Okay. Let me direct you to a couple of programs.

4 Okay. This program, is this a program named
5 Frostwire?

6 A. Well, that's the folder name called Frostwire.

7 Correct.

8 Q. Okay. What kind of program is this?

9 A. It's a file-sharing program.

10 Q. Okay. All right. Let me direct you to another
11 program. This one labeled Limewire, what, exactly, is this
12 program?

13 A. Limewire is another file-sharing program on the
14 Gnutella network.

15 Q. Okay. And so, are Frostwire and Limewire both
16 programs that are used for file-sharing?

17 A. Yes.

18 Q. And they're both used in Gnutella Network?

19 A. That is correct.

20 Q. Okay. Would these be the type of file-sharing
21 programs used - that could be potentially picked up in
22 Special Investigator McKellar's investigation that she
23 referred to?

24 A. Yes. They would.

25 Q. All right. What is this Items of Interest videos?

1 A. When I go through and start marking things that I've,
2 what I call, either extracted or recovered, or found on a
3 particular image, I'll create folders. And what I call
4 items of interest is basically for the investigator, which
5 is me in this situation, that I considered interesting in
6 this case. In other words either they - they may or may
7 not violate the South Carolina Code of Law, but they may
8 have some interest, as far as evidence in this particular
9 case.

10 Q. Okay. And what is all this information? Let me zoom
11 in for you. The - You kind of go through what a name,
12 physical size, logical size, all those? What, exactly, is
13 a name? Is this a file name?

14 A. The name is the name of the file that was on the
15 system itself. You've got a physical and logical size.
16 The logical size is the actual size of the file. The
17 physical size is basically, things are broken up into
18 sectors on a hard drive and so, each sector only holds so
19 many bytes so, if you have a file size, it'll take up
20 certain sectors.

21 But sometimes, that file size would be small. And so,
22 what happens is, between the logical and the physical, if
23 you take the difference between a logical and the physical,
24 it's what we call slack space. So, your physical size can
25 be bigger than the logical size, but the logical size will

1 never be bigger than the physical size. If that happens,
2 then, you have some type of error, or some erroneous things
3 that you need to look for, if that's the case.

4 Q. Okay. And what are created, modified, and access
5 dates?

6 A. When a file is saved to a computer system, it gets a
7 created date, a modified date, and an access date. And
8 then, when you start doing things with that file, those
9 dates can change.

10 Q. Okay. And what, exactly, is path?

11 A. Path is where that file is located on that hard drive,
12 according to that file structure. So, if you follow that
13 file structure, if you were to open it up, and you would go
14 to the very root, which, sometimes, in most people's
15 situations, is C, and then you continue to follow that
16 path, that is exactly where you will find that file and
17 that structure of that file.

18 Q. Okay. Let's specifically talk about this file. What
19 is the file name? Can you read that file name to the
20 Court?

21 A. Yes, sir, I can. It says, PTHC. Then, you have a
22 dash and then you have 15yo Shaved German Girl. Steffi
23 Moores Teaching 13-Year-Old Boys With Sound, 2004, dot mpg,
24 which specifies a video.

25 Q. Okay. Are you familiar with the term PTHC?

1 A. I am.

2 Q. What does that - What does that stand for?

3 A. Pre-teen Hard Core.

4 Q. Okay. And have you encountered that in child
5 pornography investigations?

6 A. I have.

7 Q. Okay. Are you familiar with this 15yo and 13yo?

8 A. Those are usually signifying an age.

9 Q. Okay. So, would that be fifteen years old?

10 A. Yes.

11 Q. Okay. All right. And is this - this file path, what
12 - can you - can you tell me, is root, is that what you said
13 would be the C - What is the information before root? What
14 does that stand for?

15 A. Well, basically, you have a petition. And then, you
16 have - Well, when you image a hard drive, the hard drive
17 can have several partitions. And so, it will list them -
18 list the partition type on what partition it is and then,
19 it would give it a name, if it has a name. And in this
20 situation, there is no name. But it tells you the type of,
21 what I should say, file structures on there, which is NTFS.
22 And then, it goes into the root, which is basically
23 whatever letter the starting of that directory starts at,
24 at the very base.

25 Q. Okay. So -

1 A. And then, it continues out.

2 Q. So, when - After the root and is says, users, Captain
3 Mahi, is that - are those folders?

4 A. Yes. You have the main root, and then you'll go to
5 the user folder. And then, within the user folder, you
6 have another folder called Captain Mahi. And then, within
7 Captain Mahi, you have another folder called Desktop. And
8 then, within Desktop, you have another folder called Save
9 File. And then, within Save File, you have another folder
10 called Limewire. And then, within Limewire, you have
11 another folder called Incomplete. And then, within the
12 Incomplete folder, you have Trash, and then, you have the
13 file name.

14 Q. Okay. So, the file would be located in this file, in
15 this Trash folder.

16 A. It would be located within that Trash folder, is where
17 the file is actually residing.

18 Q. And then, let me ask you about these creation dates.
19 What, exactly, is the created date for this file?

20 A. The created date is marked December 16th, 2010.

21 Q. Okay. And that's at 1:42 p.m.?

22 A. 1:42 p.m.

23 Q. Okay. And would this be when this file was created in
24 this computer?

25 A. It appears to be so.

1 Q. Okay.

2 A. And I will say, creation date is not necessarily
3 something he created, or anything like - just when that
4 file was saved to that computer system.

5 Q. Okay. So, that's --

6 A. Or, into that directory.

7 Q. And is that information that might be generated by the
8 computer?

9 A. Yes. By the operating system.

10 Q. Let me go back to this - this file path. Is there
11 anything unusual in this file path?

12 A. It is not typical of a default setting for Limewire or
13 Frostwire.

14 Q. Okay.

15 A. It appears to be user-created.

16 Q. Okay. So, is Trash - is Trash a folder that's
17 normally created when using Limewire or Frostwire?

18 A. It is not.

19 Q. Okay. Does - does Limewire or Frostwire use trash
20 folders?

21 A. It does not.

22 Q. Okay. Is there anything significant about these
23 folders having their names being in lowercase?

24 A. That it's not typical of the default program in
25 Limewire. When it gets to its default settings, when it

1 wants to save and create folders, that is not a default
2 setting. That is a user-created setting.

3 Q. Okay. So, this appears that someone may have created
4 this for themselves?

5 A. That is correct.

6 Q. Okay. All right. Is this - Is this the file that is
7 the PTHC, 15yo Shaved German Girl? Is this that - Is this
8 that file inside that computer?

9 A. It is.

10 Q. I'm going to try to be brief with this. And how long
11 is this video? I'm not sure if you can see - the full
12 length of this video?

13 A. I have - Well, I can't really see, but it looks like
14 forty-something minutes. Yeah, forty minutes and fifty-one
15 seconds.

16 Q. Okay. All right. Let's go to this next file. Is
17 this - Can you read this file name?

18 A. That one says PTHC, Daddy's --

19 Q. I apologize.

20 A. All right.

21 Q. Can you go down this, the --

22 A. The next one?

23 Q. The Uncle's Lust. Can you read this full name?

24 A. I can, if you go over some. It says, Uncle's Lust for
25 Young Blond, 13yo Niece, Daniella, PTHC Incest.avi.

1 Q. Okay. Can you see the created date for this file?

2 A. Created date has December 16th, 2010, around 1:42 p.m.

3 Q. Okay. And was this file found in the same - Is this
4 the same file path, the

5 desktop/savefile/Limewire/incomplete/trash?

6 A. It is.

7 Q. Okay. How long is this video file, total?

8 A. It says twenty minutes and thirty-six seconds.

9 Q. Okay. So, we've only shown portions of this video,
10 just as previous -

11 A. Yes.

12 Q. The previous two?

13 A. Yes.

14 Q. All right. I'd ask you to read the name of this file.
15 Can you read all of the characters in this file name?

16 A. No, sir, I cannot.

17 Q. Okay. But is this a third different file? And the
18 other two files, these are all different files?

19 A. Yes. The only thing noticeable in English, of course,
20 is the KINGPASS and the PTHC and Dark Studio.

21 Q. Okay. I know you've previously mentioned PTHC, but
22 are you familiar with the term KINGPASS.

23 A. I am.

24 Q. How are you familiar with that term?

25 A. Those are also common terms of files that I've come

1 across in my forensic inter - forensic examinations as
2 files associated with child pornography.

3 Q. Okay. And when was this file created?

4 A. It states that it was created on December 20th, 2010,
5 around 10:20 in the morning.

6 Q. Okay. Is this, this top file, is this the file with
7 the Chinese characters? I think it's --

8 A. Yes.

9 Q. Okay. Why would it have a different name than - from
10 what the --

11 A. Because that file path is so long, it has to change
12 it.

13 Q. Okay. Is that just for your computer or would it be
14 different in the computer - the defendant's computer?

15 A. It would definitely be different on the defendant's
16 computer.

17 Q. Okay. Is this - is just - Is this just necessary for
18 your software?

19 A. Correct.

20 Q. Okay. And how long is this entire video?

21 A. It says it's fifty-three minutes and thirty-four
22 seconds.

23 Q. Okay. So, we've only shown a portion of this video.
24 Correct?

25 A. Correct.

1 Q. Were those three files we just viewed, were those
2 located in the laptop computer?

3 A. They were.

4 Q. I'm going to show you another file. What is this?
5 what is the name of this file?

6 A. The --

7 Q. The top one only.

8 A. The file name is PTHC, Daddy's Girl, Jessi, 12yo. And
9 then, you have what appears to possibly be a date or
10 numeric's, FS NEW 2007.

11 Q. Okay. And when was this file created?

12 A. Has a creation date of August, 19th, 2009, 3:26 p.m.

13 Q. Is this file on a CD?

14 A. This file is on a CD.

15 Q. Okay. Would this create - creation date, is this the
16 date the CD was created?

17 A. I'm trying to remember. I did a - I believe that that
18 is the date. It takes the modified date from the date of
19 where the file was burned from. File folders get the dates
20 of when it was actually burned to the CD, but files
21 actually take the modified date, and that modified date is
22 used as a creation date and the modified date on the CD.

23 Q. Okay. How does a computer typically get files onto a
24 CD?

25 A. They have to exist somewhere else, such as, on another

1 storage device, or a computer. And then, they have to be
2 burned to a CD. So, it's a manual act.

3 Q. Okay. And so, would someone have had to specifically
4 make this CD?

5 A. That is correct.

6 Q. Okay. Where was this CD located in Mr. Rutledge's
7 residence?

8 A. This was located in the desk drawer, in the office
9 area, on the first floor.

10 Q. Do you know what was on this CD? Was it just this
11 file?

12 A. There's another file, I believe, that was on there,
13 and that was the only two files that were on that CD.

14 Q. All right. Is this file the only one that is relevant
15 to this case?

16 A. That is correct.

17 Q. Did the CD have any sort of title to it?

18 A. The - has a title to - As far as the title to the CD
19 not written on the CD, but the title to the CD as PTCH.

20 Q. What, exactly, is a title to a CD?

21 A. Well, it's when you create a CD, you can put a title
22 to it. So, you can actually enter a name, whatever, onto
23 that CD.

24 Q. Okay.

25 A. As you burn it.

1 Q. And is this - Is this the file that was on the CD?

2 A. It is.

3 Q. Did you ever have the opportunity to examine that
4 laptop again?

5 A. I did. And the reason for that, when we did the first
6 examination on the laptop computer system, we were unable
7 to find the files that the investigator actually
8 downloaded. Or we also were not able to make a connection
9 to the GUID that was specified before, which shows that
10 there was a clear connection to that device. So, we - With
11 newer software and newer technology that we had, we had a
12 later chance to go back and re-examine those - that item,
13 and to see if we could find those particular files and that
14 particular GUID, which was detrimental, because it shows a
15 clear connection.

16 Q. Okay. And when did you do this?

17 A. The re-examination was done this year.

18 Q. Okay. And how, exactly, would you examine the hard
19 drive again? Did you use the same image?

20 A. Yeah, we used the same images that were done prior,
21 when we did the first examination.

22 Q. Okay. And did you verify the image you used was the
23 image previous?

24 A. We verified it, but it did have the a different hash
25 value.

1 Q. Okay. Why would - Well, what exactly is a hash value?

2 A. A hash value is almost like a DNA print of a file.

3 It's unique to that file, so if you make any changes to

4 that file whatsoever, it will change. In this situation,

5 the hash values were different, so there was some change to

6 the image.

7 Q. Okay. Why would it be different? What --

8 A. In this situation, it was believed that, when I copied

9 the image from one hard drive to another hard drive, it

10 came from a bad sector and, so, we believe some information

11 may have been lost in that image.

12 Q. Okay. So, some of your information may be lost in the

13 transfer?

14 A. That's correct.

15 Q. Okay. Would any new information be created?

16 A. No.

17 Q. So, this would basically just be losing ---

18 A. That is correct.

19 Q. --- data. Correct? Okay. And did you use new

20 software to examine this image?

21 A. I did. I used a software called IEF, which is

22 Internet Evidence Finder, by Magnet Forensics.

23 Q. Okay. And you would have - Was that standard program

24 used?

25 A. It is a standard program.

1 Q. Okay. Were you able to find any additional evidence
2 on Mr. Rutledge's computer, in reference to the initial
3 downloads?

4 A. We did. We found the two props files, one for the
5 Limewire, one for the Frostwire. And we were able to
6 locate and match up the GUID that was reported by the
7 investigator to the client ID on the props file on the
8 Frostwire props.

9 Q. Okay.

10 MR. SENN: Permission to approach, Judge.

11 THE COURT: Yes, sir.

12 BY MR. SENN:

13 Q. I'm showing you what's been pre-marked as State's
14 Exhibit Four. Do you recognize this?

15 A. I do.

16 Q. Okay. What, exactly, is that?

17 A. It contains the prop style, which is created by
18 Frostwire, which shows the client I.D., along with other
19 information; the thumb cache, which we were able to
20 retrieve, which is representations of files; the Internet
21 history; some screen captures; and then a Cantasia video
22 recording, which I showed kind of, how and where the files
23 were located as you clicked through the different folders.

24 Q. Okay. Is this an accurate representation to your
25 findings from your second forensic examination of the hard

1 drive from the laptop computer seized from Rion Rutledge?

2 A. It is.

3 MR. SENN: State would like to - We'd ask to move
4 State's Exhibit Three into evidence. It's Four, I
5 apologize.

6 THE COURT: Cause I thought three was already entered.

7 MR. SENN: Sorry, Judge.

8 THE COURT: Any objection?

9 MR. BOYD: No objection.

10 THE COURT: In, without objection.

11 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR, IDENTIFIED
12 AND MARKED, RECEIVED INTO EVIDENCE.)

13 MR. SENN: Permission to publish to the jury.

14 THE COURT: Yes, sir.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR PUBLISHED TO
16 THE JURY AT 12:13 P.M..)

17 BY MR. SENN:

18 Q. Before we move on, I just want to ask you a quick
19 question. How did you determine those files that we just
20 viewed, those four video files, contained minors?

21 A. The particular one on the - Let's go back to the
22 German Shaved. The girl was kind of hard to determine age
23 on, but I focus mostly on the boys, because any time we
24 have any minor engaged in sexual activity is against the
25 law. So, the boys, to me, having a son, being a boy, also,

1 working sex crimes for as many years as a I have against
2 children, I believe them to be under the age of 18. The
3 girl, I couldn't tell. Only by that title of the video
4 only, kind of, gives you an indication.

5 The other ones, just by the development, especially on
6 the girls. Development size gave me the indication that
7 they were all minors, under the age of 18. Plus, as a
8 forensic examiner, you come across these files, same files
9 over and over and over again, so you have some experience
10 with those particular files.

11 Q. Okay. Is this your report that you created using --
12 IEF, is that what you call it?

13 A. Yes.

14 Q. Is - did you - Was this conducted on the laptop
15 computer?

16 A. It was conducted just on the laptop computer.

17 Q. Going to Frostwire props file. What, exactly, is
18 this?

19 A. This is a file that's created by Frostwire. It
20 basically tells you the client I.D., which is unique to
21 that software. It tells you directories, where things are
22 being stored. It even tells you where directory's things
23 are being shared. And it tells you some other things. I'm
24 not sure about every bit of information that's on there,
25 but those are some of the particular items that it - it

1 stores in that prop's file.

2 Q. All right. Let me direct you to a couple of points.

3 Do you see the forced IP address stream?

4 A. I do.

5 Q. Okay. Is this the same IP address identified by
6 Investigator McKellar, with her referral information?

7 A. It is.

8 Q. Okay. Let me direct you to the portion that says the
9 client I.D. Do you see that ---

10 A. Yes, sir.

11 Q. --- down the middle of the page? What, exactly, is
12 the client I.D.?

13 A. Client I.D. is also another name for GUID. It is the
14 I.D. that is broadcast by the software when you make a
15 connection. And in the investigative world, it's the I.D.
16 that we actually capture, so we know that that is the
17 device that we connected to.

18 Q. Okay. And is this the same GUID that was identified
19 by Investigator McKellar, in connection with her downloads
20 on December 16th, 2010?

21 A. It is the exact GUID, exact same.

22 Q. What would be the likelihood of having matching
23 GUID's?

24 A. I like it to finding your twin with the same DNA
25 makeup.

1 Q. Okay.

2 A. The exact same DNA makeup. The likelihood of finding
3 that.

4 Q. Let me direct you to the - where it says, directory
5 for saving files. Do you see that below the shared
6 information?

7 A. Yes, sir.

8 Q. Okay. What is that?

9 A. That is telling you directly where the files - every
10 time you download a file from Frostwire, this - the program
11 is telling you that's exactly where it wants to save the
12 files to.

13 Q. Okay. Can you read this, this file path?

14 A. Yes. It starts with the C colon which is the root.
15 And then, it goes to the user folder. And then, it goes to
16 the Captain Mahi folder, which is in the user folder. And
17 then to the desktop folder, then to the saved file folder,
18 then to the Limewire folder and then to the incomplete.

19 Q. Okay. And why is this significant?

20 A. Because that is not a default location. That is a
21 user-specified location.

22 Q. Okay. Let me show you one of the video files. Okay.

23 What is this - What would this video show?

24 A. This video right here shows, when I mounted the image
25 on my computer system, basically, I'm showing --

1 Q. Hang on a second. What, exactly, is mounting an
2 image?

3 A. Basically, you're taking the image that I created and
4 mounting it as a logical file on my system, so that I can
5 go to it, just like any thumb file, or any other external
6 hard drive, and I can just click though and go through
7 information.

8 Q. So, is this the - Is this the laptop's image that you
9 described earlier?

10 A. This is the laptop's image.

11 Q. So, you, basically, can go through this and click
12 through folders; is that correct?

13 A. Correct. And it gives a better visual to a user, what
14 they would understand and see. If they were going through
15 and just opening that C drive, they would see the folders,
16 and being able to open and see what's inside.

17 Q. Okay. And did you create this video?

18 A. I did.

19 Q. Okay. And how did you create this video?

20 A. I created it using a program called Cantasia, which
21 actually takes a video screen capture as I'm going through
22 and physically clicking through things.

23 Q. Can you describe what's going on in this video --

24 A. If you can zoom in just a little bit, I'll tell ya.
25 Basically, what I did is, I went directly to the

1 desktop first, which is what that file path shows you it's
2 going to, and then showing you on the desktop what files
3 and folders existed there. And then, directly going to the
4 next file path that you showed, and clicked on it, which is
5 the share file. I think the saved file, excuse me. And
6 now, we're in the saved file folder right now.

7 Q. Okay. Okay. And what did you just do?

8 A. I clicked on another folder within that saved file,
9 which is the Limewire folder. And basically, it shows you
10 a visual representation of the folders there, as well as
11 another metafile.

12 Q. Okay. What is this file, this Word document file?

13 A. It appears to be a personal Word document created.

14 Q. Okay. Did you view this file?

15 A. I did.

16 Q. Okay. What is this document?

17 A. It appears to be a letter.

18 Q. Okay.

19 A. Written by Mr. Rutledge to a brother.

20 Q. Okay. I'll show you one other thing. Is this the
21 information for this Word document?

22 A. Yeah, if you click on the properties of that folder,
23 it will show you the created, modified, and access dates
24 and it has the modified - I mean, it has a created date of
25 September - I think it's 20. I can't really see from here,

1 but - because of the way --

2 Q. It says September 28th, 2010.

3 A. September 28th, 2010.

4 Q. Okay. This - And can you see where this letter was,
5 what folder was this letter located?

6 A. It was actually in the Limewire folder.

7 Q. Okay. What did you just do at this point?

8 A. I clicked on another folder in the Limewire folder,
9 called, Incomplete. So, if you saw back in the props file
10 where it should say to save in all the files, here are the
11 files that are now in that Incomplete folder.

12 Q. Okay. So, the --

13 MR. BOYD: I'm going to - I have an objection.

14 THE COURT: Let me let the jury go to the jury room,
15 just for a minute, while we take up a matter outside your
16 presence.

17 (JURY EXITS COURTROOM AT 12:23 P.M..)

18 THE COURT: Okay.

19 MR. BOYD: Your Honor, what is showing, some of the
20 things up there are showing other sexual-orientated videos,
21 including those that mention minors, like fifteen-year-old
22 sister, other matters out there. So, I would object. I
23 think it's been shown to the jury, and that goes outside
24 the scope of your - what you said the State could introduce
25 to introducing evidence.

1 THE COURT: Look like we're moving into 404.

2 MR. BOYD: Sir?

3 THE COURT: It looks like that would be 404, kind of,
4 evidence that I ruled out. I can't really see it from
5 here, but it appears to me to be a dozen or two dozen,
6 maybe even three dozen, photos of folders with images. I
7 can't see from here the names, and I can't see what's on
8 them. Maybe I better come - Maybe I better come and look
9 but I think I know what's on there, but let me come and
10 look.

11 (COURT LEFT THE BENCH.)

12 MR. BOYD: He had it enlarged a minute ago, so.

13 THE COURT: I beg your pardon?

14 MR. BOYD: He had - It was enlarged a minute ago, so I
15 just -

16 THE COURT: I mean, I don't have to read it all. I
17 just - I can't even read it up here. I really can't tell.

18 I really can't tell much from it, but it does appear
19 to show images of people. That's about all I can - all I
20 can decipher from it.

21 MR. BOYD: Well, it's got language, too, your Honor.

22 If you - it's got --

23 THE COURT: Girls Gone Wild.

24 MR. BOYD: In particular up there, it says - it's got,
25 using the F word, My Cute fifteen-year-old Sister.

1 THE COURT: Big T-I-t-s. Teens Like something.

2 Mr. Senn, I thought we had decided that was not going
3 to be --

4 MR. SENN: Judge, we're not actually showing any of
5 these files, what they are. These are just files that --

6 THE COURT: The jury can see them from there and read
7 them from there. I couldn't, but.

8 MR. SENN: Judge, I'm not saying - we're not alleging
9 these are anything as related to children, or illegal
10 files, or anything like that, Judge. We're just showing
11 that this is the folder structure as it appeared.

12 THE COURT: Teens like something big. That's not -

13 MR. SENN: What's that, Judge? I apologize.

14 THE COURT: It says, Teens - I can't read it very
15 well. It looks like it says, *Teens*. Is that what that
16 says? Teens Like - something.

17 MR. BOYD: Can you enlarge it any?

18 MR. SENN: Yes.

19 THE COURT: Yeah.

20 MS. RUTLEDGE: That's the size we took --

21 (COMMENT FROM COURTROOM.)

22 THE BAILIFF: Ma'am, ma'am.

23 THE COURT: Of course, some of it's in Chinese or
24 something but Sex 12, Big T-i-t-s At School. Teens Like.
25 Hungry Teens. Other word Teen. I mean, it definitely

1 references minors.

2 MR. SENN: Teens - Judge, the State would argue that
3 Teens doesn't necessarily imply that it has to be illegal
4 material. Eighteen and nineteen year-olds can be
5 considered teens. It doesn't make those files illegal.

6 MR. BOYD: It's got one that says fifteen-year-old
7 right at the --

8 THE COURT: Yeah, Sex - Sex 12, that's under 18.
9 There's - Can barely see something about 15.

10 (COURT RETURNS TO THE BENCH.)

11 MR. SENN: Judge, the State would say that none of
12 these - since you can't actually see the sex acts, that
13 these - none of these, we are not alleging these are bad
14 acts. These are just files that are in this directory. As
15 we had the browse list earlier, there were clearly other
16 files that were available that had sexual titles.

17 THE COURT: Well, two things bother me. One is, we
18 ruled we're not going to present the jury with anything
19 regarding character evidence that is indications of prior
20 bad acts as we usually refer to them. And the other is
21 that, we took a early break yesterday to redact these
22 exhibits, to avoid having anything like this happen.

23 MR. SENN: Your Honor, the State's understanding was,
24 that was any files as related to minors. And it's our
25 understanding these are not those files. We have no -

1 These were never bookmarked in the initial investigation,
2 either.

3 THE COURT: Well, I know, but that doesn't mean that
4 they - now, they've been presented to the jury. And that
5 certainly shows that, on the computer, whatever - wherever
6 these came from, not only were there the images for which
7 he's being prosecuted, but there's an indication that there
8 are other sexually-oriented material involving individuals
9 under the age of eighteen.

10 MR. SENN: I don't know that this is saying that there
11 are, necessarily, individuals under the age of 18 engaged
12 in sexual activity, Judge. I don't believe that's what's
13 being indicated here. This is - this is -

14 THE COURT: Well, you're more naive than I think you
15 are, and you do this - you do this for a living, and I just
16 - I don't doubt your credibility, obviously, or your
17 forthrightness, but I have a hard time, myself,
18 disassociating those type - that type of language with
19 single shots that, obviously, are indications that they're
20 films or images associated with them, that they are not,
21 number one, sexual in nature, and number two, involve
22 teens.

23 MR. SENN: Judge, could we clean this up by asking
24 Investigator Bomar, was anything - and we can close this
25 out if we - if - was anything investigated in that folder

1 of relevance to his investigation? Or shown to be child
2 pornography in any kind of way? Because I - he did review
3 these files, Judge.

4 THE COURT: Anything else, Mr. Boyd, while I'm
5 thinking?

6 MR. BOYD: Well, your Honor, I just - I've discussed
7 this with Mr. Rutledge some. I think I may have grounds
8 for a mistrial here. I'm not moving for a mistrial, but I
9 do want it - I do want that not shown to the jury. I
10 think, maybe, some curative instruction would be
11 appropriate, also.

12 THE COURT: Any objection to that?

13 MR. SENN: None from the State, Judge.

14 THE COURT: We'll just move on from here, and I'll
15 just tell the jury that I determined that the last things
16 shown on the screen are not relevant, and they're not to
17 consider them in their deliberation.

18 MR. SENN: Thank you, Judge.

19 THE COURT: All right. Bring in the jury.

20 MADAM COURT REPORTER: I need a break, Judge.

21 THE COURT: Okay. All right.

22 MADAM COURT REPORTER: I'm sorry.

23 THE COURT: That's fine. The court reporter - Catch
24 the jury. Just tell them to keep the jury out for about
25 ten minutes, and we'll all take a refreshment break.

1 I'm sorry. We'll take a ten-minute break.

2 You can step down. Thank you.

3 INVESTIGATOR BOMAR: Thank you.

4 (COURT IN RECESS AT 12:32 P.M..)

5 (COURT BACK IN SESSION 12:39 P.M..)

6 THE COURT: Thank you. You may take your seats.

7 All right. You can bring the jury back in.

8 MR. BOYD: Your Honor, I have one matter.

9 THE COURT: Okay. Whoa.

10 MR. BOYD: I could bring this up later, but my concern
11 - another concern I have is that this has been introduced
12 into evidence. To the extent --

13 THE COURT: Well, I - Yeah, I'm concerned about that,
14 too, and here's part of my concern that I didn't articulate
15 it earlier. Of course you did not object to it coming in,
16 but I don't know that you had an opportunity to view it in
17 its redacted form, so. It's just, kind of, bothersome, in
18 a way, that it is in evidence, without objection.

19 MR. BOYD: Well, that bothers - I mean, I talked to -
20 This is Al Johnson, he's the forensic expert hired by the
21 Defense. He has concern that there may be other things on
22 some of the other discs too. But the problem, I don't
23 know, in jury deliberations is to require them, if they
24 want to see them, to have to come out in the courtroom and
25 observe it. I have concern about that.

1 THE COURT: We can do that.

2 MR. BOYD: The jury just playing things in the jury
3 room.

4 THE COURT: We'll do that. We'll do that.

5 THE COURT: Bring in the jury.

6 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE, IDENTIFIED
7 AND MARKED, RECEIVED INTO THE RECORD.)

8 (JURY REENTERS COURTROOM 12:42 P.M..)

9 THE COURT: Madam Forelady, and members of the jury, I
10 received your note, and it's really turned out to not be
11 relevant, because I have ruled that that last screen not
12 relevant to the prosecution of Mr. Rutledge under these
13 indictments, and it's not to be considered as evidence.
14 You're not to consider or discuss that particular screen
15 that came up in any way whatsoever, because I'm ruling it
16 out of evidence. It's not relevant. So, it does not have
17 to be sized up, because it's not to be considered at all.

18 You may continue.

19 MR. SENN: Thank you, Judge.

20 DIRECT EXAMINATION - CONTINUES

21 INVESTIGATOR CHRIS BOMAR BY MR. SENN:

22 Q. In that last screen, the Incomplete, not the
23 Incomplete slash Trash, were there any files in that folder
24 that are currently - Mr. Rutledge is currently charged with
25 today?

1 A. There are not.

2 Q. Okay. The only files he was charged with were in the
3 Trash folder. Right?

4 A. That is correct.

5 Q. Okay.

6 (PAUSE.)

7 Q. I apologize for the technical delay. Let me show you
8 Internet Explorer Main History. What is this? What is
9 this Internet Explorer Main History, generally?

10 A. It's a history dot file that keeps track of all the
11 activity that goes on, on the Internet history - on the
12 Internet Explorer system.

13 Q. Okay. Let me show you a specific entry. Number
14 three. What - Is this - It says URL at the top. What is
15 URL?

16 A. Usually, that's a path of either a website or a file
17 that was entered into the Internet Explorer.

18 Q. Okay. Can you read the file path, the second one,
19 file?

20 A. If you will blow it up for me, I could.

21 Q. All right.

22 A. That says, file path C, user is Captain. And then, it
23 has the percent 20, which is - stands for space Mahi
24 Desktop, Save, percent 20, which is space again. File,
25 Limewire, Incomplete, Trash. And then, it's got the

1 Uncle's, and then that title with the - every time you see
2 the percent 20, it means space - Incestdotavi.

3 Q. So, would this video, Uncle's Lust For Young Blond,
4 13yo Niece, Daniella, PTHC Incest?

5 A. It - it is.

6 Q. Is this one of the files that we showed earlier?

7 A. It is.

8 Q. Okay. This - It says, last visited date/time. What
9 is the last visited date/time for that file?

10 A. That's the last time stamp it received when that file
11 was visited.

12 Q. Okay. And when was this file last visited?

13 A. It says February 10th, 2011.

14 Q. Okay. Okay. Here is another URL. What is this URL
15 appear to be?

16 A. That is the - appears to be the one with all the
17 Oriental characters that you can't understand. So, you
18 have those different percent signs trying to represent
19 those characters. And then, you have the kink pass and
20 then, of course, every time you see percent 20, which
21 specifies space; the PTHC, and then the Dark Studio but
22 it's that same file of that Oriental bunch of characters
23 and --

24 Q. Okay. And then, this file, when was it's last visited
25 time?

1 A. The time stamp it has for that is January 27th, 2011.

2 Q. Okay. Okay. What, exactly, is a thumb cache?

3 A. Now, any time you have pictures or videos within a
4 folder, you can create thumbnails of them, and they come in
5 different sizes. But every time you create a thumbnail of
6 it, you have a cache that is created. And so, these are
7 just caches of some of those thumbnails of some files that
8 gives a representation of what those files were.

9 Q. Okay. And do the files in the thumb cache still have
10 to be on the computer?

11 A. The - No. The files do not have to necessarily still
12 be on the computer, no.

13 Q. Okay. So, are these thumbnails and files that were on
14 the computer at some point?

15 A. Yes. They had to be on the computer at some point in
16 time.

17 Q. Okay.

18 A. Or - or - I should clarify. Or viewed, somehow, on
19 the computer system at some point in time.

20 Q. Okay. Did you find any thumbnails of significance in
21 this case?

22 A. I did.

23 Q. Okay. Why were they significant?

24 A. Because they matched the - The visual representation
25 of those thumb caches matches the same files that the

1 investigator downloaded.

2 Q. Okay. And so, that file is three files. Were these
3 on the computer at some point?

4 A. Yes.

5 Q. Okay.

6 A. The thumb - no representations of them.

7 Q. All right.

8 MR. SENN: Permission to approach, Judge.

9 Q. I'm showing you what's been pre-marked as State's
10 Exhibit Five. Do you recognize this?

11 A. I do.

12 Q. What is this?

13 A. This is a CD that I created, basically showing the
14 install of what you see when you install Frostwire, the
15 steps that you go through, and the default settings that it
16 puts, if you just leave it as Default. And then, it also
17 shows the props files, the data files that it creates when
18 you open or actually install the Frostwire program.

19 Q. Is this installation - Is this version of Frostwire a
20 version the defendant would have used in his installation?

21 A. It is.

22 Q. Okay. And is this an accurate representation of the
23 installation process of Frostwire?

24 A. It is.

25 Q. And how the client I.D.'s, or the GUID's, are

1 assigned?

2 A. It is.

3 Q. All right.

4 MR. SENN: Judge, we'd like to use this as a
5 demonstrative exhibit to the process of how Frostwire is
6 installed on a computer.

7 MR. BOYD: No objection.

8 THE COURT: You can do it without objection.

9 AG SENN: It's already been assigned as an exhibit.
10 Permission to publish to the jury.

11 (WHEREUPON, STATE'S EXHIBIT FIVE IDENTIFIED AND
12 MARKED, RECEIVED INTO THE RECORD/PUBLISHED TO THE JURY AT
13 12:52 P.M..)

14 Q. Is this the first screen someone would see when they
15 begin to install Frostwire?

16 A. That is correct.

17 Q. So, what exactly are we seeing as we go through?

18 A. Right now, that's the license agreement, saying that
19 it is an open-source program. Basically, telling you what
20 kind of agreement that you're going into when you actually
21 install the software onto your computer system. Most
22 people don't read that stuff, but I scrolled through it,
23 just in case someone did. But basically, it just tells you
24 it's a Frostwire website that you can get it from, and then
25 also, the license agreement that it's an open-source

1 program. And basically, you're just agreeing to the
2 license of that software.

3 Q. Okay. What exactly is happening right now?

4 A. Right now, it's installing the program onto the
5 computer system, putting data files, marking -
6 specifically, it's creating the props file, and some other
7 things - artifacts onto the computer system.

8 Q. And it's finished at this point?

9 A. Yeah, it's finished installing the program, so the
10 program now is on your computer system.

11 Q. It's kind of difficult to see, but what is this
12 information?

13 A. Basically, this is going to be your - When you run the
14 program for the very first time, you're basically setting
15 up certain settings. You can tell it whether you have a
16 broadband, T1, or dial-up. So, it's trying to configure
17 things to its optimal settings, based upon what type of
18 Internet connectivity you have.

19 Q. So, what is the difference between broadband and T1
20 and T3 and dial-up?

21 A. Well, broad - dial-up is going to be your slowest
22 connection that you possibly can have. And then, your
23 broadband is going to be your next step. That could be
24 like, your cable modem, DSL, something that can accept more
25 information and faster transmissions of data going back and

1 forth. And then, of course, T1 is the next step up. And
2 then, T3 is of course, the fastest that you have out there
3 as far as amount of information that can flow between you
4 and the outside world, and how fast it gets to you.

5 Q. All right. Let me show you the Frostware -
6 Frostwiredotprops file. This is - Is this for your
7 installation?

8 A. It is for that first installation, yes.

9 Q. Okay. Let me direct you to the directory for saving
10 files. Can you read what that directory is?

11 A. I can. It says C then, the user directory. And then,
12 under C the cbomar which is my username, documents, and
13 then Frostwire and Saved. And those are all the default
14 settings. I made no changes, didn't direct it to go
15 anywhere. This is where - This is what Frostwire defaults
16 to if you just go through and click, click, click, click
17 through.

18 Q. Was this the directory that Frostwire was set to
19 download files to on Mr. Rutledge's computer?

20 A. It was not.

21 Q. Okay. Would that mean that someone would have had to
22 change the default directory?

23 A. They - they would have to make changes to where they
24 wanted things saved to, yes.

25 Q. Okay. I'll also want to show you, is this - is this -

1 The client I.D., is that the I.D. that --

2 A. That is the client I.D. that was assigned to that
3 software during that installation.

4 Q. Okay. Did you install this program twice on your
5 computer?

6 A. I did, because I wanted to see if it would give you a
7 different client I.D. after you remove the software, and
8 then re-install it. So, that way, someone can't say that,
9 well, I installed it, and it gave itself the same I.D. It
10 created a new - another unique I.D. every time you did an
11 installation.

12 Q. So, if a program is on a computer, and it's be un-
13 installed and then re-installed, the same exact program, it
14 could have a different client I.D.?

15 A. That is correct.

16 Q. Okay. And is this file the second installation?

17 A. It is. It's the props file that was created during
18 the second installation, after removal of Frostwire, and
19 then re-installing it.

20 Q. And is this a different - Is this directory for saving
21 files, is that the same default directory?

22 A. Same default directory.

23 Q. Okay. And is this client I.D., is that different?

24 A. It is different.

25 Q. Okay. And what are the chances a program would have

1 the same client I.D. twice?

2 A. It would be astronomical. Like I said, if you had
3 your twin with the same DNA makeup, more likelihood,
4 probably, of finding that than finding the same client I.D.

5 Q. Okay.

6 MR. SENN: Judge, can we approach?

7 THE COURT: Yes.

8 (BENCH CONFERENCE OFF THE RECORD, OUT OF THE
9 HEARING OF JURORS AT 12:59 P.M..)

10 MR. SENN: That's all we have from the State. Please
11 answer any questions from the Defense.

12 THE COURT: All right. This is a good time to break
13 for lunch. It's almost 1:00. We'll break 'til 2:30. That
14 sounds like a long - I have a two o'clock hearing that I
15 have to - that I hope won't take a half an hour, but, make
16 it 2:15. Be back at 2:15. Hopefully, we'll be able to
17 start at 2:15. So, have a pleasant lunch, and we'll see
18 you back at 2:15.

19 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 01:00 P.M..)

20 THE COURT: We'll be at ease until 2:15.

21 Mr. Bomar, of course, you're on the stand, and so, you
22 won't be talking about the case with anyone.

23 INVESTIGATOR BOMAR: Yes, sir.

24 (COURT IN LUNCH RECESS AT 1:00 P.M..)

25 (COURT BACK IN SESSION AT 02:02 P.M. IN THE MATTER OF

1 - that file there.

2 Q. Okay. So, this - does created date mean the same
3 thing as the date that the file was downloaded?

4 A. Not necessarily. No, sir.

5 Q. Okay. And so, as far as that particular file, you
6 have a creation date. Do you have a download date?

7 A. No, sir. But you do have other two dates. Three
8 dates - excuse me - two other dates that are copying that,
9 and that's a modified date and an access date. And when
10 you start looking at modified dates and access dates and
11 created dates, and if they're all at the same time, and
12 nothing else changes, there's something - there's certain
13 assumptions you can make, as a forensic examiner, that that
14 was, maybe, the first time that that file was placed on
15 that system. It wasn't copied from anywhere. Because when
16 you copy files from somewhere, access date and modified
17 date and created dates do different things.

18 Q. Okay. Now I think the last access date was also
19 February 16th, 2010, at the same time.

20 A. Yes, sir.

21 Q. Is that correct?

22 A. Yes, sir.

23 Q. Okay. And when you say access, does that mean the
24 file was actually looked at, at that point?

25 A. Yeah, access date, if it is different than the created

1 date, and it's later than the created date, then you can
2 make an assumption that the file was opened.

3 Q. Okay. So, basically, I can download something, and
4 then, if I look at it at a later time, weeks or months or
5 even years later, I can actually - you, in your
6 examination, can see the date I accessed it.

7 A. Yes, sir.

8 Q. Is that correct?

9 A. Yes, sir.

10 Q. Okay. And the last access date on that was February
11 16th, 2010?

12 A. Yes, sir.

13 Q. Okay. So, it was created and accessed at the same
14 time.

15 A. Yes.

16 Q. Okay. And so, it appears that the file wasn't looked
17 at since February 16, 2010.

18 A. Yes, sir.

19 Q. Okay. And so, it - it appears, if it was downloaded
20 on February 16th, 2010, it was downloaded and basically
21 never looked at again.

22 A. Yes, sir. You could make the assumption. If all the
23 dates and times are exactly, then, you can make an
24 assumption the file has not been opened.

25 Q. Okay. And can something - can a file be downloaded

1 without looking at it?

2 A. Yes, sir.

3 Q. The - Now, the image, this image in particular, that
4 was on this laptop - I'm talking about the 15-Year-Old
5 Shaved German Girl photo image was a video - was not -
6 that's not connected to a particular IP address is it?

7 A. It's - I wouldn't say that anything is connected to a
8 particular IP address. It's just connected to a particular
9 folder on the - on the computer system.

10 Q. Okay. Well, what I'm saying, you don't have anything
11 as to what IP address; if that was downloaded from the
12 Internet, you don't have an IP address that was used to
13 download it.

14 A. No, sir.

15 Q. Okay. I mean, I think we talked about Investigator
16 McKellar looked at an IP address and found these images
17 ~~earlier; is that correct?~~

18 A. Yeah. In her investigation, when - in the
19 file-sharing program, it would give you that. Now, if I
20 had my file-sharing program opened up on my computer
21 system, let's just say a normal user, and I have it opened
22 up, I can see the IP address that I'm downloading from.
23 Or, from multiple clients who have bits and pieces of that
24 folder, I can see that IP address.

25 Q. Okay.

1 determine who was using the computer at the time that was
2 downloaded?

3 A. Now, that could be a misnomer, too. Because what - as
4 a forensic examiner, you try to also do is, you try to look
5 at other things that might have been open and used during
6 that time frame, to kind of give you an idea of a potential
7 person who might be using it. And so, there were other
8 files that we looked at, modified files and stuff of that
9 nature, that kind of helped us, guide us in a direction of
10 a potential user.

11 Q. Okay. Now, the - the - another one, the PCP Dark
12 Studio.

13 A. Yes, sir.

14 Q. Okay. Now, that file, I think you have that was made
15 on December 20th, 2010; is that correct?

16 A. Yes, sir. I believe so.

17 Q. Approximately 10:20 a.m.?

18 A. Yes, sir.

19 Q. Okay. And again, would that be - and that was last
20 accessed the same date; is that correct?

21 A. I don't have my notes, but I'm trusting yes. Yes,
22 sir.

23 Q. Okay. So, that would indicate a download, and it was
24 never looked at again; is that correct?

25 A. Yes. Those are the exact same times, yes, sir.

1 Q. And the other, Uncle's Lust - I think For Niece for
2 lack of a better word I'll put - that was on the December
3 16th, 2010, at 1:42 p.m.; is that correct?

4 A. Yes, sir.

5 Q. Created.

6 A. Yes, sir.

7 Q. And also, that is also a last access date; is that
8 correct?

9 A. I believe so, yes, sir.

10 Q. Okay. So, that was downloaded one time, or it was
11 never looked at again; is that correct?

12 A. Yes, sir.

13 Q. Okay.

14 A. We can make that assumption, yes, sir.

15 Q. All right. Now, I asking concerning the CD, you - Do
16 you have a creation date that it was - this - I believe
17 it's --

18 A. The creation date and modified date on there ---

19 Q. Uh --

20 A. --- should be the same date and time, if I'm not
21 mistaken.

22 Q. Well, that's Daddy's Girl, Jessi. Do you have a
23 creation date for that?

24 A. There is a creation date there.

25 Q. Okay. What is that? Was that August 19th, 2009?

1 A. Yes, sir.

2 Q. Okay. Would that be the date that was put on the CD?

3 A. No, sir.

4 Q. Okay.

5 A. The way file properties move, particularly to CD's, if
6 you create and transfer a folder over to a CD, it will get
7 some dates. And those dates, you can look at and say, yes,
8 that was the date that the file - the CD was burned on.

9 Why it does that, I wish I could tell you. I don't know,
10 because I'm not Microsoft. I didn't develop the software.
11 But through our tests, when we start moving just files over
12 to a CD, what happens is, if you look at all those access
13 dates, the modified dates, and then the created dates, it
14 appears, when I did my copies, that the modified date
15 crosses over during this - the creation.

16 Q. Okay.

17 A. And the creation date and the modified date gets that
18 modified date, whatever that date was, when - from where it
19 was burned from. Now, it does not necessarily mean that
20 that's the date and the time that the CD was actually
21 burned on.

22 Q. Okay. So, you don't know what date that the CD was
23 actually burned on.

24 A. No, sir, I do not.

25 Q. Okay. The - So, let me - Explain, what does creation

1 into this computer?

2 A. No, sir. I - To tell you whether it was password
3 protected or not, I did not record that information, so, I
4 couldn't tell you whether it was password protected or not.
5 But the forensic software tool that I use bypasses those
6 type of settings, so I don't need a password to be able to
7 - to gain the information from - from the computer system.

8 Q. Now, we - we talked about, or you talked about, I
9 believe, thumb nails; is that correct?

10 A. Thumb caches?

11 Q. Thumb caches, yeah. Now, there are or thumb caches
12 are created by the computer; is that correct?

13 A. By the operating system, yes, sir.

14 Q. Okay. Now, the - the - What was shown earlier, during
15 Investigator McKellar's testimony concerning those images
16 that were shown.

17 ~~A. Yes, sir.~~

18 Q. Now, I believe you said you went back and found - you
19 used what's called a GUID, and you were able to locate
20 those thumb caches of that on this laptop; is that
21 correct?

22 A. That's correct.

23 Q. Okay. Now, as far as - So, those, we know this laptop
24 would have been used, and the IP address that was used; is
25 that correct?

1 A. We know that - We have identified that computer system
2 associated with that IP address through the props file of
3 the Frostwire file tied to that computer. Yes, sir.

4 Q. Do you know at what date these - those images came in
5 to this laptop?

6 A. No, sir. I could - Because the file no longer exists
7 on that computer system. We just see remnants of once the
8 file existed at some point in time on there. But I can't
9 tell you exactly when those files came in to that computer
10 system.

11 Q. Okay. So, the date they came in was not - well,
12 unlikely the same date, December 16th, 2010, when Officer
13 McKellar, or Investigator McKellar, was doing her exam, or
14 her search?

15 A. Well, to be honest with you, I couldn't tell you that
16 at all. I couldn't tell you if happened the same day, the
17 same hour. I couldn't tell you if it happened two years
18 ago, to be honest with you, because I have no information
19 to back that up.

20 Q. Okay. So, when those came in, you just don't know.

21 A. I do not know.

22 Q. Okay. All you could say is that it was sometime prior
23 to December 16th, 2010, basically.

24 A. Yes, sir.

25 Q. Now, in some of this I noticed in front of the U-R-L

1 is the word, file, is in front. What does that mean?

2 A. Well, in Internet Explorer, you can open up files,
3 just like you can open up websites. So, if you have a
4 picture, and it's associated to your web browser, you can
5 click on it and go to the web browser, and it'll go to that
6 location of where that file is, and it'll make a record of
7 that.

8 Q. So, just let me - Do you know, based on your
9 investigation, the CD that was found, do you know if it was
10 played on this laptop or not?

11 A. I did not - I did not look for that information about
12 mounted devices, so I cannot tell you if it was or was not
13 played on that computer system.

14 Q. Okay. So, this computer system - and do you have - Do
15 you have any idea of the age of this computer?

16 A. Well, I don't - I don't know the exact date that Vista
17 ~~came into existence on the operating system.~~ If I did some
18 research, I could probably tell you that. Without entering
19 this information on the website from Hewlett Packard, I
20 don't know the exact date that this computer system was
21 manufactured.

22 There is information on the computer system that shows
23 when the operating system was installed. I don't have that
24 information for the Court here today. It also can show you
25 when the user accounts were created. I also don't have

1 that Officer McKellar talked about, there's no IP address
2 that we know that it was at a certain location?

3 A. For those three files, no, sir.

4 Q. Okay. And - But we do know that, at some point, when
5 the - the fragments that you found from what Officer
6 McKellar testified to, at some point, the computer would
7 have had to have been at that IP address for that to
8 happen?

9 A. Well, the computer would have to be at the IP address
10 during the download that McKellar initiated, yes. As far
11 as when the files got on there, whether it was still at
12 that same IP address, I couldn't tell you that. Like I
13 said, I have no other information about those files, except
14 for the day that the files that she downloaded. Now, as
15 far as when those files were placed on it, where the IP
16 addresses were when those files were placed onto that
17 computer system, or once existed on that computer system, I
18 couldn't tell you that information.

19 Q. Okay. I want to just make sure I understand that.

20 A. Okay. I understand.

21 Q. Because you know more about this than I do.

22 A. Well, yes, sir. Yes, sir.

23 Q. So, I'm going to - So, those files, are you saying
24 they could have been - Well, let me back up a minute, just
25 make sure I understand what you're saying. Those files to

1 be on that file-sharing program ---

2 A. Yes, sir.

3 Q. --- did they, at one time, have to be downloaded on
4 this computer?

5 A. There's two ways that they can be shared on that
6 computer system. One, either in the past, it had been
7 downloaded and placed into that shared folder by that
8 program, or, if the files were moved from some other
9 location and placed into that shared folder. What I can
10 tell you by the Send Us Report is, is those files had to
11 exist in that shared folder, and that shared folder being
12 shared and up and running during the time which she did the
13 download.

14 As far as forensics, as far as me telling you how
15 those files or where those files came from, I can't tell
16 you that, because that information is not there for me to
17 see. As far as IP address where it was when those files
18 got there, I can't tell you that.

19 I can tell you that the GUID matched with the GUID of
20 the investigator when she did the downloads, and I can tell
21 you that the files once existed on that system because of
22 the thumb caches had a representation of those files.

23 Q. Okay. I understand. Yeah, I understand that.

24 A. Okay.

25 Q. But your -- the -- We understand. I think you've shown

1 they once existed on here.

2 A. Yes, sir.

3 Q. But as far as the - the time period that - Well, let
4 me just ask it this way, simply. The laptop could have
5 been at another place, other than - than Hummingbird at
6 that IP address when those files were placed on the
7 computer?

8 A. Yes, sir. I can't tell you anything of where the com
9 - where the files came from, so. I mean, they could come
10 from anywhere.

11 Q. Okay.

12 A. They could have been files that once existed on
13 another system and saved to the system. It could have been
14 files that the - you know, were downloaded. I can make a
15 lot of assumptions on how the files got there. I don't
16 know that information. I couldn't tell you that
17 information about how the files got there on that computer
18 system.

19 Q. Uh-huh.

20 A. I could tell you that there was a representation of
21 those files at one time on that computer system.

22 Q. Okay.

23 A. But that's about it.

24 Q. All right. How long did the download take using the
25 IP address? How long does it take?

1 A. Well, now you're getting into a lot of particulars.
2 It depends upon your speed where you're at. It depends
3 upon the speed of who you're getting it from, and it
4 depends on whether or not they're up and running.
5 Sometimes, you can see an instance of a person there but
6 because of lag time. You can start a download, and all of
7 the sudden, it'll stop, and it could be for multiple
8 reasons. It could be because there's multiple users
9 getting on there, and they're getting to it first, before
10 you. It could be because they went ahead and got off the
11 network, but it hadn't quite registered that they're off
12 the network. And so, things can go into pause mode. Some
13 things can go into download.

14 But it depends - it's going to depend upon the size of
15 the file. It's going to depend upon the transfer speeds
16 between your Internet and whoever you're downloading from.

17 It's all going to be in a factor about how fast something
18 downloads. Pictures are going to download a lot faster
19 than videos, because of sheer size.

20 Q. Now, if there's no password on the computer, there's
21 no way anyone can log in; is that correct?

22 A. Well, I couldn't tell you if there was, but if there
23 was no password on it, yeah, anybody can get onto the
24 computer system. Yes, sir.

25 Q. Okay. And can the computer also have a password

1 basically saved, and anyone can get on it that way?

2 A. Well, even if they had a password, yeah. You can give
3 the password to anybody, and they can then get onto it, if
4 it was password protected, so.

5 Q. Thank you.

6 MR. BOYD: That's all the questions I have.

7 THE COURT: Re-direct?

8 RE-DIRECT EXAMINATION

9 INVESTIGATOR CHRIS BOMAR BY MR. SENN:

10 Q. Investigator Bomar, when you talked with the
11 defendant, you asked him about file sharing. Correct?

12 A. Yes, sir.

13 Q. And did he say that he had used file sharing?

14 A. Yes, sir.

15 MR. BOYD: I'm going to object. This is not in the
16 response to anything on direct.

17 THE COURT: I sustain the objection. On cross. You
18 mean, on cross.

19 MR. BOYD: Yes, on cross. I'm sorry.

20 BY MR. SENN:

21 Q. The default directory, where the Frostwire files were
22 saved, was that the trash folder? The default directory
23 for the Frostwire files, was that in that trash folder, or
24 was it in a different folder?

25 A. The default for Frostwire would not have been that

1 trash folder. That was user-created and pointed through
2 Frostwire to go to that folder.

3 Q. Okay. So, any files in that directory would have had
4 to been specifically moved there by someone. The program
5 would not automatically download those.

6 A. That's correct. It was not pointing to that folder to
7 download to.

8 Q. Okay. The files that were in this folder were the -
9 was this the PTHC 15yo Shaved German Girl?

10 A. Yes.

11 Q. And the Uncle's Lust for Young Blond, 13yo?

12 A. Yes.

13 Q. And the - can't write these - the Chinese characters
14 and KINGPASS PTHC?

15 A. The Dark Studio, I believe.

16 Q. Yes.

17 A. Yes.

18 Q. So, all three of those files were in this directory?

19 A. Yes.

20 Q. This trash directory. And they would have had to have
21 been placed there?

22 A. Yes.

23 Q. At the time that you saw the Frostwire directory, they
24 were not set up to be automatically downloaded.?

25 A. At the time that we read the props file, it was not

1 indicating that that was the directory that it was showing
2 pointed to, to save files for download.

3 AG SENN: Nothing further from the State.

4 THE COURT: Re-cross.

5 MR. BOYD: Nothing further, your Honor.

6 THE COURT: You can step down. Appreciate your time.

7 INVESTIGATOR BOMAR: Thank you, your Honor.

8 (WITNESS LEAVES WITNESS STAND.)

9 MR. SENN: The State would rest its case at this
10 point.

11 THE COURT: All right. Members of the jury panel, the
12 State is resting. That means they're telling us they've
13 presented their case. And so, we have to take a short
14 break now before we move forward but you've heard the
15 State's evidence, at this point. You're not yet in a
16 position to discuss the case among yourselves or try to
17 make up your mind. You're not at that point yet. We'll
18 take a break at this time.

19 (JURY EXITS COURTROOM AT 02:50 P.M..)

20 THE COURT: Anything from the State?

21 MR. SENN: Nothing from the State.

22 THE COURT: Mr. Boyd.

23 MR. BOYD: Your Honor, I would, at this time, move for
24 a directed verdict on several grounds. First, your Honor,
25 ground is, there's been no evidence to show that Rion

1 Rutledge had possession of the images in this file. I
2 think the statute requires the - he have knowledge.
3 There's been no testimony that he was the person who
4 created the file, or that he was the person who had access
5 to the file. All the State has shown is that there was an
6 IP address connected to his address that - that, on the
7 three the second degrees, there's an IP address connected
8 to his physical address, and that's all they've shown.

9 They haven't shown who was the person who was involved
10 with this. I don't know as they even testified concerning
11 - anything else concerning identifying -

12 THE COURT: I'm looking at that statute, and I don't
13 see where it says knowing - about knowing the character or
14 content of the material.

15 MR. BOYD: That's correct.

16 THE COURT: It doesn't say knowing - knowingly create.

17 Go ahead.

18 MR. BOYD: And the statute says, knowing the character
19 - I'm looking at the wrong one - of knowing the character
20 and content of the material, he possesses material. I
21 submit there's been no evidence showing that he knew the
22 character or content of the material, that he was the
23 person who used it, or if he ever viewed it.

24 So, I would - and I would make that motion, also, on
25 the third degrees, that there's no evidence connecting Rion

1 Rutledge to the - to - as to having knowledge of the
2 character or content of the material. There's no evidence
3 that he was the person who ever viewed it, or that he
4 downloaded it, or that he created it. So, I would move on
5 those grounds. I have some other grounds.

6 THE COURT: Let's hear from the State on that.

7 MR. SENN: Yes, Judge. The - This laptop computer and
8 the CD were located in Mr. Rutledge's office. I believe
9 Investigator Bomar testified there were other items seized,
10 but the only items relevant to this case were only in his
11 office area. And those items, they contained, you know,
12 the files, as we saw, the four video files of child
13 pornography.

14 In addition to having the GUID, which tied that
15 specific program with the initial downloads, and
16 additionally, the - the IP address for the initial
17 downloads, as well, all of this information was in just the
18 defendant's - his office area.

19 THE COURT: Well, I deny the motion. I find there is
20 substantial circumstantial evidence sufficient for the case
21 to go forward, and under the statutes, so I deny that
22 motion.

23 MR. BOYD: Your Honor, my second ground for the
24 directed verdict is that there was no evidence presented
25 that these are actual individuals, and not computer-

1 it now.

2 A. Media specialist, yes.

3 Q. And are there any other members of your immediate
4 family who live with you?

5 A. Yes. I have two daughters. One is eighteen, is Emma
6 Caroline Rutledge. And I have another daughter that is
7 currently sixteen, Allison Grace Rutledge.

8 Q. All right. And let me ask, back in the 2010, 2011
9 time frame, did you have a number of computers?

10 A. We had a bunch.

11 Q. Okay.

12 A. I'm thinking at least ten or twelve. But I can't
13 remember the exact number.

14 Q. All right. And I believe that they came in with a
15 search warrant on March the 2nd, 2011, and seized computers
16 from your home; is that correct?

17 A. Yes, sir. They - they took some computers and
18 everything else they could find.

19 Q. All right. And let me - this computer, is this one of
20 the computers that was in your home at that time?

21 A. I believe it is.

22 Q. Okay.

23 A. It appears to be.

24 Q. All right. Do you recall how you obtained that
25 computer?

1 A. Originally?

2 Q. Yes, sir.

3 A. Originally, I went to the Pillowtex auction and bought
4 -- I don't know the number, but I think it was like, thirty
5 computers; and like, fifty printers; and I think it was
6 like, four or five servers, and a pallet jack, and cabinets
7 full of junk. It was their data center, and the plan was
8 to clean it up and sell the stuff, as much as I could. I
9 went there to buy a pallet jack, and I got kind of carried
10 away.

11 Q. And let me show you this item. And is -- does that
12 appear to be the list of what you bought at that time?

13 A. Yes. Yes, sir, that's the list.

14 Q. Did you find those in your records?

15 A. Yes, sir. I searched and searched in boxes 'til I
16 found those.

17 Q. Okay. And what date does it appear that those
18 computers were bought?

19 A. Sometime in 2004. March 11th, 2004.

20 Q. All right.

21 MR. BOYD: I'd like to offer this.

22 THE COURT: Any objection?

23 MR. SENN: None from the State.

24 THE COURT: In, without objection.

25 (WHEREUPON, DEFENSE EXHIBIT NUMBER ONE, IDENTIFIED AND

1 MARKED, RECEIVED INTO EVIDENCE.)

2 BY MR. BOYD:

3 Q. Now, let me ask you, concerning your home, back in the
4 time frame of 2010, 2011, did you have Internet
5 connectivity at your home?

6 A. Yes, sir.

7 Q. Okay. And how was this - how was this done?

8 A. It --

9 Q. Was it cable, router, or how was it?

10 A. It was cable to a wireless router, and it was not
11 password protected.

12 Q. Okay. And the - did - Now, the laptop we see here,
13 did anyone else have access to this laptop?

14 A. Yeah. I had loaned this laptop out about 2008, and I
15 had not seen it again during that period of time.

16 Q. All right. Who did you loan it to?

17 A. I have loaned several to my brother, William Rutledge.

18 Q. All right. Now, did - so, what - at what point did
19 William Rutledge, your brother, get the computer?

20 A. Around 2008. He helped me with the Pillowtex auction,
21 and I gave him anything he wanted, and then he - I think he
22 broke one, or something, then I - I said, just pick another
23 one. He picked that one, and I set it up and gave it - I
24 think I - I'd been using it a little bit, or something. I
25 gave him that one, because I couldn't use that one any

1 more. It didn't - it would not hold my - my - my old
2 QuickBooks. It was too old. It didn't have enough memory.
3 It didn't have enough speed, and I had - I had to buy a new
4 computer, and then put QuickBooks on it.

5 Q. Okay. Did you have anyone working for you at - near
6 that time?

7 A. I had several. I had three or four, and I had a girl
8 help me in the office all the time.

9 Q. Okay. And what was her name?

10 A. Jeane Thompson.

11 Q. Okay. And did you tell Jeane Thompson about giving a
12 loan of a laptop to Will?

13 A. I do, I - I believe I did, because she was the one
14 trying to help me load Quickbooks, and we had to - I think
15 she may have even helped me load Word and stuff on it, or
16 something. I can't remember now.

17 Q. Okay.

18 A. But she knew about it.

19 Q. All right. And then, so, describe your relationship
20 with your brother.

21 A. We loved each other, but it was very volatile. We
22 helped each other out, but it was a lot of fights involved,
23 and a lot of - lot of heartbreak on both sides, I'm sure.
24 He - he was a mean drunk. I liked him a lot, but when he
25 started drinking, I couldn't - I couldn't hang with him.

1 Q. Was your brother married?

2 A. No, never married.

3 Q. Okay. And where did he live?

4 A. I don't know the address, but it's Bailey Avenue, in
5 Rock Hill.

6 Q. And did anyone else live with him back then?

7 A. He always had numerous people living with him. One of
8 them was Mark. He had several girls that lived with him
9 during periods of time. One was Leah something that he - I
10 know he got CDV charges on him for her, and they broke up.
11 Criminal domestic violence, or something. And he had
12 another one named Sharon before that, and he had - good
13 lord. I don't remember them all, but he had a lot of
14 people that lived in and out of the house.

15 Q. Okay. And is your brother alive now?

16 A. No. He died about two years ago.

17 Q. In 2013?

18 A. That sounds correct. He was forty or forty-one so,
19 that would have been about right. He was born in '70 -
20 '74? I can't remember now.

21 Q. All right. Now, the - when you were - your brother
22 was alive, did - you said he had - you had loaned him, or
23 given him that computer; is that correct?

24 A. Yes, sir. I've loaned him so much stuff besides
25 computers, but computers was one thing of many.

1 Q. Okay. Did you ever - there was some introduction
2 about - there was something shown on the screen about a
3 letter being written to your brother, at one point, that
4 was on the computer. Do you remember writing that letter?

5 A. I've written him when he was in prison at different
6 times. I don't remember when they are, and I've - like I
7 said, I tried to use that computer for a short period of
8 time, and I could not get it to work for me. And then,
9 also, there's been times before, too, that I have given him
10 copies of stuff that I sent to him in prison he did not
11 receive because he had got out too early, or didn't so I'm
12 not really sure where that letter came from or when, but I
13 - I don't even remember it, but I'm sure I wrote it.

14 Q. Okay. Would - Now, did your brother ever come to your
15 home?

16 A. Way too much. Yes.

17 Q. All right. Describe your garage area.

18 A. It's your basic rough-looking man cave. It's - I have
19 a projector similar to this, a screen similar to this. I
20 have a T.V. I have cable, heat, refrigerator, freezer, a
21 couch. Just tables and stuff. I don't know, just stuff
22 like that.

23 Q. Okay. And did your brother ever come over to your
24 home?

25 A. He used to come over quite a bit, and I asked him not

1 to come over when Jeane was there, because I didn't want
2 the drinking and the cursing to be around the girl that was
3 working for me. I was kind of ashamed of that. So, he
4 started coming over when I wasn't there, and he would just
5 hang out in the garage and steal my beer and anything else
6 he could get his hands on. And he'd leave and he'd come
7 back, and the neighbors were telling me he'd been there,
8 and I'd get calls, or usually I could see the peel-out
9 marks from the driveway, or something. And he would leave
10 beer cans upside down on my steps. I knew he was there.

11 Q. Okay. And let me ask you, is there a way to get in
12 your garage if it's shut up?

13 A. Yeah, I usually didn't even lock it, because I had
14 dogs, and the dogs liked him, so it didn't matter. But if
15 it was locked, I got a big cat door, pretty much,
16 everybody, including my family members, they just reach

17 their hand in the cat door and unlock it and walk in. The
18 house is locked, but getting in and out of the garage is
19 easy. And if you knew the code, you could open the big
20 door, so.

21 Q. Okay. Did Will ever bring other people over to your
22 home?

23 A. Yes. I'm not really sure who, but I know Mark has
24 been there numerous times. And I know - I'm really not
25 sure who all he brought, but yes, he brought people over

1 there. Sometimes, it was Leah. Sometimes, it was another
2 one, another girl, and sometimes it was Mark. Sometimes,
3 it was another guy. He didn't have a driver's license, so
4 he'd either beg a ride or drive illegally to get over
5 there. And I really never knew what he was going to be in,
6 or who he was with.

7 Q. All right. Did - what kind of car would your brother
8 drive?

9 A. He - At that period of time, I think he had two or
10 three in the driveway. He had a - he had an old - I don't
11 even know how to describe it. I think it was an old police
12 car, or something, dark, kind of rigged-up looking. I
13 can't describe that real well. He had a pickup truck that
14 was like, primer red, and the bed was cut out, and all the
15 air bags and all that stuff was in there, and it would go
16 up and down and drag the ground. And then, sometimes, I've
17 seen him over there before in somebody else's pickup. I
18 don't know whose.

19 Q. Okay. Did - Now, how did - the laptop was there when
20 the police searched. How did you come to get the laptop
21 back in your possession?

22 A. Okay. He - we had - we shared a river place in a
23 shack, a double-wide out at the river that my father owned,
24 and with my sisters, too, except they quit using it. So,
25 my father - Will and I kind of fought over it. And the

1 river place was kind of a volatile subject between us.

2 I tried to keep it clean and somewhat presentable, and
3 he'd blame me for trashing it, but he'd trash it. I'd go
4 out there and pick up all the broken bottles and the - out
5 of the fire pit, and several times, I had to pull the
6 Rebel's flag off the flagpole, because my wife's principal,
7 that summer, had said something about that. He thought we
8 controlled it, the principal did, Shane Goodwin. He said
9 something to Lisa about it, so I did my best to keep the
10 Rebel's flag down.

11 The house had a T.V., couches, and all that in it. It
12 would be contraband or something lying around, so any time
13 I went out there, I tried to pick everything up and hide
14 it, or return it to Will before my family or anybody would
15 go out there with me. I kept my boat out there, my pontoon
16 boat.

17 I know one time, I wrapped all of his discs and
18 paraphernalia and stuff in the Rebel's flag, and I put it
19 on the steps of his house, because I didn't want it out
20 there. And somebody else came by and took the discs and
21 stuff out and left the flag. And then, he blamed me for
22 that, and we had a fight.

23 And that February, Valentine's Day of 2011, we had
24 been arguing. I was out there. I was trying to have a - I
25 was planning to have a luncheon or we were gonna eat and

1 just go on the boat and just do something different instead
2 of going to a restaurant because they're so crowded, my
3 wife and I, and maybe another couple. I think it was David
4 and Candace Zerra but I can't swear right now who it was.
5 And I went out there after I had cleaned the whole place
6 up, and it was trashed, and it was bottles broken again.
7 He was out there, and I said, well, maybe we could just get
8 on the boat and leave. I went to get on the boat. The
9 batteries were dead on my boat. He had the radio on and
10 playing it, and it had gone dead. I couldn't even leave,
11 and we had a pretty - it wasn't a fist fight, it was a
12 shoving fight and a lot of words.

13 And then, after that, we just - I just - let's just
14 separated ways. I just - just leave me alone; I'll leave
15 you alone. Because this fighting had continued for awhile,
16 for probably weeks, and he came back and dropped off a - he
17 had borrowed a trailer - he dropped a trailer off in my
18 yard, in my driveway, lawnmower, a couple other things, and
19 the computer was lying on the couch in my garage. And this
20 was sometime after February of 2011, after Valentine's Day,
21 and I'm not exactly sure of the day. 15, 16, or 20, I
22 don't know.

23 Q. And did you turn the computer on and try to use it?

24 A. I tried to. When he returned it, it had no power cord
25 with it. It was dead. I tried different cords. I had a

1 box of cords. I kept trying to turn - I was going to turn
2 it on and re-format it and give it to one of my kids or
3 something to use, and I never could get it on.

4 There was a disc in the computer when I got it back,
5 and I couldn't get it open, and I used a paper clip to get
6 the disc drive open, and I shut the - I think I threw it in
7 a drawer, like I said. That disc came out of that
8 computer, and I didn't know what was on it. I just figured
9 it was probably porn and full of - I figured it was full of
10 viruses. I was scared to put it in anything and look at it
11 and infect my computer. That wasn't the computer I used.
12 I was scared to put it in my computer and look at it. I
13 just wanted to get that one back going. I never did get
14 that computer back going.

15 Q. Now, there was some photographs shown of videos found
16 on that computer. Did you put those videos on that
17 computer?

18 A. No, I did not. I didn't - I had never seen them
19 before. And honestly, I was expecting child rape or
20 something, from all the descriptions and stuff, the AG's
21 Office had sent me. They wouldn't allow me to view or do
22 anything with the - the evidence because of the nature of
23 the crime. And I didn't even know what the - what they
24 were until today.

25 Q. Okay. Did you - Now, did you download those on the

1 computer?

2 A. No, I did not.

3 Q. Had you ever seen those images before today?

4 A. No, I have never seen 'em.

5 Q. The images that were shown earlier, during
6 Investigator McKellar's testimony, had you shown - seen
7 those images before today?

8 A. No, I hadn't ever seen those.

9 Q. Did you put those images out on the Limewire?

10 A. No, I would never send stuff out or do anything. I
11 did not do that.

12 Q. Okay. Now, the date of - that Investigator McKellar
13 was doing this investigation, December 16th, 2010; is that
14 correct?

15 A. Yes, sir. That's what I was told.

16 Q. Okay. Did - did you go back and look in your records
17 as to what you were - tried to discover what you were doing
18 on that day?

19 A. Yeah, we - they gave me some dates and times. That's
20 all I had to really go with on, what, four and a half years
21 ago or something, whenever this was? And I went through
22 all my - I was trying to go through checks and records, to
23 figure out where I was, and I found a couple - a couple of
24 invoices, and - to figure out where I was that morning.
25 Because we were preparing to go to Charleston, South

1 Carolina, since the kids got out of school that next day or
2 something, and I was trying to get all my stuff out and put
3 out for the weekend. I think it was a Thursday. And I was
4 - I can't remember which one I did first. I think I did
5 the Mormon Church farm first.

6 Q. And where is that located?

7 A. That is located on - It's a golf course out there.
8 It's behind Red River Road, between that and the river, on
9 - it's not Manchester, but that area down there, where that
10 golf course is on the river. You go down through that
11 neighborhood. It's behind that, and then it's - it's
12 gated. You have to - I have to meet somebody, and they
13 have to unlock the gate and get in and show me where to put
14 it.

15 Q. And what were you doing out there?

16 A. They were having a - some kind of a youth conference

17 or something. I was putting port - I was putting Port-A-

18 Johns out. I mean, that's what I was doing. But I think
19 they were doing a youth conference or something. I had to
20 get it out for the weekend, before I left.

21 Q. Okay. And were you doing some - did you do some other
22 business that morning?

23 A. I did. The same day, I had to meet the guys at B and
24 B Distributors right after that, and they had - they had a
25 water main break or something they had to fix, and I had to

1 go put out two port-a-pots and a sink and all for those
2 guys. And I was over there with the guys at B and B
3 Distributors, which is a beer distributor over on - it's
4 not Anderson. It's way out there in, I guess you call it
5 Catawba. I don't know what you call that area.

6 Q. Okay. And did you go anywhere later that day?

7 A. Yeah. I always go back and clean toilets, because I
8 have to get my route done. Like, for instance, right now,
9 there's the toilets across the yard over here that I had to
10 clean this week, I need to clean. So, what I do is, I go
11 hit the rest of my routes, so I can get the heck out of
12 town. I had to get everything finished and cleaned up for
13 the week for Port-A-Johns on construction.

14 MR. BOYD: Indulge me one moment.

15 (PAUSE.)

16 Q. I'm going to show you these documents and ask you,
17 what do they constitute?

18 A. They are QuickBook documents. This one is B and B
19 Distributors, and I was meeting Bill, and I have forgotten
20 Bill's last name. Deliver early as possible, water shut
21 off in the office, and it was on the 12/16/2010.

22 Q. Okay.

23 A. And that's the bill. And I don't have the check for
24 that one, but this - it paid that one. And this one's
25 Church Farm, Tom Chaney. He's from Waxsaw. Farm Rock

1 Hill, camping, young singles. Deliver them Thursday,
2 12/16. Call Carson Blue, and he's the Tire - Tire Kingdom
3 or Tire Town, or whatever, their off of Dee Street. That's
4 who would meet me, is Carson Blue. And then, Carson would
5 give me the check, and here's the check from the Church of
6 Jesus Christ of Latter Day Saints, with the invoice and the
7 paid. Those are the documents I was - I tried to find
8 documents for these dates.

9 MR. BOYD: I would move these into evidence.

10 THE COURT: Any objection?

11 MS. MILES: No objection from the State.

12 THE COURT: In, without objection.

13 MADAM COURT REPORTER: Each?

14 MR. BOYD: That's Number Two.

15 MADAM COURT REPORTER: All of it?

16 MR. BOYD: That - yeah, one exhibit.

17 MADAM COURT REPORTER: Okay.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER TWO, IDENTIFIED
19 AND MARKED, RECEIVED INTO EVIDENCE.)

20 BY MR. BOYD:

21 Q. Let me ask you, the - the images that were shown in
22 this courtroom today, did you have knowledge that they were
23 on this laptop?

24 A. No, I did not.

25 Q. Okay. Did you download them on this laptop?

1 A. Correct.

2 Q. Okay. And you recall law enforcement coming to your
3 house in February of 2011.

4 A. Yes.

5 Q. Okay. And you recall discussing that you had used
6 file-sharing networks.

7 A. I have used file-sharing networks

8 Q. Okay. So, you're familiar with how they work.

9 A. Uh-huh.

10 Q. Okay. And you have used file-sharing networks in the
11 past.

12 A. Yeah. I have one in the den, another Presario that
13 they took, and they gave back. I think it had file-sharing
14 on it.

15 Q. Okay. So, you're not surprised that file-sharing was
16 found on this computer?

17 A. No, not really.

18 Q. Okay. And you testified that you were not
19 responsible, but believed your brother to be responsible;
20 is that correct?

21 A. Correct.

22 Q. Did you relay that information to law enforcement when
23 you spoke with them?

24 A. They didn't ever - I didn't know what they were
25 wanting. They just took all my stuff, and asked me if I

1 A. At York Comprehensive High School, down the street
2 from here.

3 Q. And let me ask you, did you - are you on good terms
4 with the Rutledge family?

5 A. Yes, I am.

6 Q. Okay. And let me ask, did - back in - Well, do you
7 know Lisa Rutledge?

8 A. Yes, I do.

9 Q. And do you know both of the Rutledge daughters?

10 A. Yes.

11 Q. Let me take you back to the, about 2010 time frame.
12 Did you ever have occa - Well, did you sort of - Did you
13 all kind of look out for each other's yards, property?

14 A. Yes, we did. We - if anything odd was going on, part
15 of being a good neighbor is that you call your neighbor,
16 and you tell them.

17 Q. Okay.

18 A. So, we - we did that. We reciprocated that to each
19 other.

20 Q. Okay. Now, did you have occasion in the 2010 time
21 frame to call - have occasion to call Lisa about something
22 going on at her house?

23 A. Yes, I did.

24 Q. And tell us what - don't tell what she said, but tell
25 what you saw and what you told her.

1 A. Okay. I was at home, and the girls were ages that the
2 oldest, Emma, was old enough to babysit the younger. So,
3 they would have been, let's see, Emma's eighteen now, so,
4 five years ago, she would have been - so, they would have
5 been like, thirteen and eleven at the time. And so, I knew
6 that, occasionally, they were there for short periods of
7 time by themselves, and I heard a car. And so, whenever I
8 - it was kind of a loud-sounding vehicle, not something
9 that I recognized as being one of the neighbors' cars. It
10 caught my attention. And I looked, and there was a dark
11 car going into the driveway, and there were two men who got
12 out and went to the back yard of the house. Well, that
13 concerned me, because I didn't recognize the people. And
14 so, I called - I tried to call the house, and then also
15 called Lisa Rutledge. And then, whenever I got - I can say
16 what she said to me?

17 Q. No, don't say what she said.

18 A. Okay.

19 Q. Did you tell them - tell her what you saw?

20 A. Yes, I did.

21 Q. Okay.

22 A. To let her know I didn't know whether I should call
23 police, if it was someone there looking for Rion, because I
24 know that he's employed different people over the years.
25 Maybe someone looking for a pay check, or - I didn't know

1 whether to be concerned or not. I didn't want to ignore
2 it, but I also didn't want to cause any alarm, if it was
3 someone who should have been there.

4 Q. Okay. As a result of your conversation with Lisa, did
5 you end up calling the police or taking any action?

6 A. No, I did not.

7 Q. Okay. And have you - is that the only time you've
8 seen those individuals there?

9 A. No, it was not.

10 Q. Okay. How many other times have you?

11 A. I know of at least two times, possibly three, that -
12 that I saw these individuals or that vehicle at the house.
13 And whenever I happened to be there, that they were there,
14 noticed it, it caught my attention, because like I say, the
15 girls are - were young, at the time, and I'm a school
16 teacher, I protect kids. It's part of my instinct.

17 Q. Did you see - did you have occasion to speak with
18 Allison at one time about people being over there?

19 A. Yes. I called, and Allison said that - she said, oh,
20 that - Oh.

21 Q. Don't go into what she said.

22 A. I'm sorry.

23 Q. But as a result of that conversation, did you do
24 anything else?

25 A. No, I did not.

1 Q. Okay. And sort of describe the car you saw.

2 A. I'm horrible at car description, but it would have
3 been an older car, probably not well-kept because of a - it
4 - you could hear it running. It was loud, and it was a
5 sedan-type car, a larger sedan-type car.

6 Q. All right.

7 MR. BOYD: Thank you. That's all the questions I have.

8 THE COURT: Cross.

9 AG MILES: Just briefly, your Honor.

10 CROSS-EXAMINATION

11 SUSAN NICHOLS BY MS. MILES:

12 Q. Good afternoon, Ms. Nichols. You testified that you
13 saw two men, and you didn't recognize them. Correct?

14 A. That is correct.

15 Q. Okay. And you would recognize people who would be
16 over there frequently?

17 A. Well, not from that distance. Their driveway is - I
18 don't know if you - Their driveway is probably at least
19 twice as long as this courtroom. And so, I would not have
20 been able to recognize someone, unless they were there all
21 the time and someone that I'd met, and I've never met,
22 will, if that's who this person was. And the Rutledge's
23 believed that to be so.

24 Q. Okay. But you didn't recognize this person?

25 A. No.

1 Q. Or you knew Will. He's deceased.

2 A. I did know Will.

3 Q. Okay.

4 A. Yes.

5 Q. And what kind of relationship did you all have with
6 Will?

7 A. Will was a very difficult person. If Will had ever
8 gotten on the right track in life, he could have been one
9 of those swampland sellers in Arizona. He was quite a
10 salesman, had a fabulous personality, but he never quite
11 got himself together. And he died of alcoholism several
12 years ago, just a day or two short of his forty-first
13 birthday.

14 Q. Okay. Do you have knowledge of him coming to your
15 house at times?

16 A. Yes.

17 Q. Okay.

18 A. He did come to our - my house. A few times, I invited
19 him. I tried to establish a good relationship with him.
20 He did have some long-term relationships with girls. I
21 tried to get to know him. Rion's father really wanted us
22 to become a family, and we tried. We tried to do a lot for
23 Will. It didn't always work out as planned.

24 Q. And would he come to your house when you weren't
25 there?

1 A. Yes. Will did come to my house when I wasn't there.
2 Being a school teacher, he would know that I would be home
3 at 3:30 or four o'clock, and he would know to leave by that
4 time. So, I do believe Will came to my house when I wasn't
5 there. There would be evidence that he had been in our
6 garage. Things were moved. Items out of the garage
7 refrigerator would disappear. You kind of knew he had been
8 there, and he did that to his other siblings, too. He
9 would visit his sisters and do little things. Or you might
10 have a tag, you know, a vanity plate on your car, and that
11 vanity plate would disappear from your garage and end up on
12 one of the vehicles that he was currently driving.

13 Q. All right. Let me - You were present in the courtroom
14 when Susan Nichols testified?

15 A. Yes, sir.

16 Q. Do you recall receiving the phone call that she
17 testified to?

18 A. Yes, sir. I do remember that phone call.

19 Q. All right.

20 A. And she described the car to me, and she said, do you
21 know this car. And I said, yes, does it look like an old
22 police car that someone would have purchased from an
23 auction? And she said, yes. And I said, does the person
24 look like a taller, heavier version of Rion? And she said,
25 yeah, I can tell from a distance, you know, that they did

1 have some of the similar features. And I said, I believe
2 that's his brother Will. If he does not leave within a
3 certain amount of time - we're on the way back home - If he
4 doesn't leave in a certain amount of time, then, yes, go
5 ahead and call the police. Or, if you see him carry out
6 large items from our house, call the police.

7 Q. Okay. Is there a way to get in your garage without
8 using a key or even a door?

9 A. Yes. We - we have two dogs. One's a poodle, so he's
10 smaller. And then, we have a mutt that we adopted from the
11 animal shelter that really belongs to my oldest daughter.
12 But Moe couldn't fit through the smaller dog door, so, we
13 had to get the larger size for Moe to get through. And so,
14 you can actually, if your arms are long enough, you can
15 stick your hand up and turn the doorknob and get in. It
16 doesn't have a deadbolt on it.

17 Q. Okay. And the car that Will drove at that point in
18 time, was it - did it meet the description you were given
19 by Susan?

20 A. Yes, it - yes, it definitely did.

21 Q. Let me ask you, do you recall, in 2010 - There was
22 some testimony about the date of the 16th, do you recall
23 whether you all were going anywhere after that date?

24 A. My parents have a home in James Island, and we would
25 usually go down there, and the girls and I would go

1 Q. Okay. Where do you go to school?

2 A. South Pointe High School.

3 Q. And let me - I just have a few questions to ask you.

4 You - you live there with your parents, don't you?

5 A. Yes, sir.

6 Q. Okay. And five years ago you lived there with your
7 parents, didn't you?

8 A. Yes, sir.

9 Q. Okay. Do you remember your Uncle Will, who's dead
10 now?

11 A. Yes, sir.

12 Q. All right. And do you remember him ever coming to the
13 house, going in your garage?

14 A. I do.

15 Q. Okay. Do you know how often he would do that?

16 A. Three or four times a month. I tried to stay away
17 from him, because he wasn't - I mean, he was a pleasant guy
18 when he was around me, but I knew of things he had done,
19 and I tried to stay away from that.

20 Q. Okay. Now, the - as far as - Do you remember getting
21 a call from Susan Nichols one time?

22 A. Yes, sir.

23 Q. And did she give you a description of a car?

24 A. Yes, sir.

25 Q. And based on that description, did you know who it

1 was?

2 A. I could tell it was Uncle Will. Yes, sir.

3 Q. Did you go out and see him or anything like that?

4 A. No. I stayed inside the house. I would usually stay
5 in my room or in the living room, because those were
6 further away from the garage. And I knew that I could stay
7 away from him and not talk to him, and he would just do
8 what he wanted to do, and I would let him be.

9 Q. Okay. Let me ask you, did you ever go over to Will's
10 house with your father?

11 A. Yes, sir, I have been over there.

12 Q. Okay. And in that time period, 2009, 2010, did you
13 ever see this?

14 A. Yes, sir.

15 Q. Where -

16 A. I saw a black laptop.

~~17 Q. Where did you see that?~~

18 A. When you walk into his house - I didn't go in the
19 house, but he had punched out the window because he had
20 locked himself out - and you could reach your hand in and
21 turn the knob. So, my dad had opened the door, and when
22 you look in the back door, you see the kitchen. And
23 there's an island sort of thing that reaches off the rest
24 of the counter, and the laptop was open and sitting on the
25 counter.

1 A. I'm going to Coastal Carolina University in Conway.

2 Q. All right. And let me ask you, do you have any
3 knowledge of your Uncle Will coming to your home and going
4 into the garage?

5 A. Yes, sir. Sometimes - I went to Northwestern for
6 Freshman and Sophomore year of high school, and I would
7 walk home from school sometimes, because I didn't drive, or
8 someone would drop me off, and I would be there, and he
9 would be in the garage, and I would just go to my room.
10 Other times, he would come over when I'd already been home,
11 before my parents were home, and Allison and I would stay
12 upstairs in our rooms.

13 Q. All right. Let me ask you, were you over - ever over
14 at your Uncle Will's house?

15 A. I was there a few times with my dad, to talk to my
16 uncle, but I never went inside the house. But like my
17 sister said, you could see in the house.

18 Q. Okay. Did you ever have occasion to see this laptop
19 at the house?

20 A. Yes, sir. I saw it on the island bar in the kitchen
21 area. And sometimes, I think it was in the living room.

22 Q. Thank you.

23 MR. BOYD: That's all the questions I have.

24 MS. MILES: The State has no questions for this
25 witness, your Honor.

1 A. I do. My husband and he - my husband is an IT guy,
2 and I walked into his garage the first time and saw all
3 these printers and all, not too many computers, but he
4 would, you know, he would talk computer with my husband,
5 and he would ask me, you know, can I do this, or, what do
6 you think about this.

7 Q. Okay.

8 A. So, yeah, he had a lot of different laptops.

9 Q. Let me - And were you in the courtroom when he
10 testified?

11 A. Yes.

12 Q. Okay. And I believe he testified that he told you
13 about giving a laptop to his brother Will.

14 A. He did.

15 Q. Okay. Did he tell you that? Did he tell you that he
16 had given a laptop to Will?

~~17 A. Yes. He told me that he was giving Will a laptop for~~
18 helping him. He had given him some stuff for helping him.

19 Q. And did he tell you that back in 2008.

20 A. Yes, yes, yes.

21 Q. Before this came up?

22 A. Yes, yes.

23 MR. BOYD: That's all the questions I have.

24 MS. MILES: Just briefly, your Honor.

25 CROSS-EXAMINATION

1 JEANE THOMPSON BY MS. MILES:

2 Q. Ms. Thompson, did he tell you specifically what laptop
3 he gave him?

4 A. No. No. There were - there were so many laptops
5 that, you know, as far - from my perspective, that, I mean,
6 ones that he had, the ones we worked on, the ones that
7 wouldn't work for what we needed them to work for, I
8 wouldn't have known one from the other. So, no.

9 Q. Okay. So, Mr. Rutledge just told you he gave a laptop
10 to his brother at some point in time.

11 A. Yes.

12 Q. Okay. Thank you.

13 A. Uh-huh.

14 THE COURT: You can step down and be excused. We
15 appreciate your time.

16 (WITNESS LEAVES WITNESS STAND.)

17 THE COURT: Members of the jury, it's almost five so
18 we're going to stop for the day. You're not yet in a
19 position to make up your mind or discuss the case, or use
20 any electronic means, or necessarily be exposed to any news
21 coverage, anything like that. We'll start back at 9:30,
22 and hopefully have - well, not hopefully - but I think
23 we'll have the case in your hands later in the morning.
24 So, have a pleasant evening, and we'll see you at 9:30.

25 Whoa, whoa, whoa, whoa, I'm sorry. Sit back down just

1 a minute. I have not had a chance to discuss with you your
2 note from after lunch with the attorneys. I will, but I
3 can go ahead and respond now. I struck from the record a
4 computer page which showed a number, maybe a dozen or two,
5 still pictures with wording beneath each. Do not consider
6 that page in any way whatsoever. That's what I ordered
7 stricken. Whether another question seemed to allude to
8 that, that's what - all I ordered stricken, was that page.

9 You also asked a question about previous history
10 regarding the - the laptop, and I'm going to go over the -
11 the attorneys don't know what the question is, but I'll go
12 over it with them after you leave. But the answer is, you
13 - it's up to you to determine what the evidence proves in
14 this case. It's not up to me or the lawyers. They can
15 certainly argue their case and tell you what the facts are.
16 That is your job, as I told you yesterday.

17 So, the answer to that question is, you are the ones
18 who will make that factual finding, if that is an issue
19 that needs a factual find. Thank you.

20 (JURY EXITS COURTROOM 4:56 P.M.)

21 THE COURT: First, before I go over the notes,
22 whenever we start getting notes during the trial, we always
23 wonder about whether or not the jury is starting
24 deliberating, discussing the case. This note does not
25 indicate that to me. This is in only one handwriting, and

1 looks like it's torn off a page and, so, I don't take this
2 to indicate that there's been any pre-charged deliberation.
3 I just want to call that to your attention, because it
4 always raises that little flag with me.

5 They asked first, "What is previous history on laptop
6 that links Brother Rutledge to laptop?" That's what I was
7 responding to when I said, that's for you to decide. The
8 other, "We were to strike the, quote, letter, end quote,
9 Word document, but when we came back from lunch, Defense
10 brought it up. What are we to strike?"

11 I don't remember the Defense bringing it back up. I
12 do remember there being a question about that was basically
13 requested by the Defense to Mr. Bomar about whether or not
14 any of that material constituted anything, any of that
15 material - and using a pronoun - that connected to the
16 material on that page.

17 Mr. Bomar was asked whether any of the material on
18 that page related to the charges and the allegations for
19 which this trial is taking place, and he answered, no. So,
20 that may be what they're talking about. I'm not real clear
21 exactly.

22 MR. SENN: Judge, I think they may be mistaken. There
23 was right before we got to the page that we struck from the
24 record, there was a folder right before that, that had a
25 Word document that was purported to be a letter.

1 charge, and I believe we have that fashioned appropriately.
2 I had some errors in mine that have been corrected, and we
3 had an addition from the Defense. We had two requests the
4 State proposed, request number two and number one. They
5 objected to both, but I am going to charge both.

6 Anything else before we do an in-camera on the reply
7 from the State?

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

9 THE COURT: Anything, Mr. Boyd?

10 MR. BOYD: Your Honor, just addressing the jurors'
11 notes. I have voiced - I am concerned now, this is the
12 second - since this is the second note, it indicates,
13 possibly, there's some discussion going on, and I would ask
14 the Court, at some point, to question the jury.

15 THE COURT: I am. When they come back in, I'm going
16 to inquire whether or not there's been any discussion among
17 the jurors regarding the case. And if that's the case,
18 I'll have to let them go back out and decide what to do.

19 MR. BOYD: Yes, sir.

20 THE COURT: Bring - No, don't bring in the jury.

21 Let's go forward with the proposed reply.

22 MR. SENN: Judge, when the State presented the case,
23 there was no - no indication that the laptop - the Item 7
24 laptop, where three of the video files were found and the
25 CD were not in possession of Rion Rutledge, Junior in his -

1 in his house, and so, the State did not present evidence at
2 the time, based on that.

3 Once the Defense presented their several witnesses,
4 their testimony indicates that that laptop may not have
5 been at that location for a period of 2008 to 2011. And
6 the State intends to go through the forensic report, which
7 is already in evidence, different pieces of the forensic
8 report that show that that computer was in use during that
9 time period.

10 THE COURT: If it's already in evidence, why do you
11 have to have - call a reply? I mean, you're off the bat
12 telling me that this is not anything that - The issue of
13 where it was came up, but you've already presented the
14 evidence that addresses that - you're telling me.

15 MR. SENN: I know. I'm sorry, Judge.

16 THE COURT: You're telling me that the forensics
17 report addresses your concern.

18 MR. SENN: Well, we have not went through that portion
19 of the forensic report.

20 THE COURT: Well, but you had a chance to.

21 MR. SENN: And I don't believe they're going to be
22 allowed to take it back with them. It's just pieces in the
23 report that show when that computer was in use, which is
24 another issue, because when the computer was supposedly
25 back at Mr. --

1 THE COURT: Well if it's in evidence, why - I mean, I
2 can't remember -

3 AG SENN: Well, we discussed it, because we - we
4 wanted to avoid any of the pictures and videos and the file
5 names and so, we did not go into that in our case-in-chief.

6 THE COURT: Well, can't you argue to the jury though?
7 It's in evidence, can't you argue to the jury, and show
8 those portions through, like, a PowerPoint? I mean, your
9 concern of what cannot go back doesn't preclude your
10 showing and arguing what is admissible.

11 MR. SENN: Well, Judge as you saw in the forensic
12 reports, they are kind of complicated and kind of difficult
13 in just reviewing. And they're - this - The sections we're
14 going to be showing are ones that I'd like Investigator
15 Bomar to be able to explain a little bit more, because they
16 have not arguing --

17 THE COURT: Well, I know you'd like that, but how is
18 that - That's already in evidence. You wanted to explain a
19 piece of evidence that was presented during the case in
20 chief.

21 MR. SENN: It's - Judge, it's basically to directly
22 contradict the evidence presented by the Defense witnesses.
23 And it's basically to address the credibility of what they
24 were saying and everything they said.

25 THE COURT: Anything else, Mr. Boyd?

1 MR. BOYD: Well, your Honor, I think it's already in
2 evidence. They're asking to explain something already in
3 evidence. And plus, I think It would be prejudicial,
4 because, I mean, certainly, on cross-examination they
5 didn't ask my client, what about this; what about this. He
6 doesn't get a chance to get up and explain what Officer
7 Bomar's going to testify to, so.

8 THE COURT: I'll let you can make a proffer, if you
9 wish, but I find that it's not appropriate reply testimony.
10 and I'm not going to allow you to present it.

11 MR. SENN: Okay. Can we proffer his testimony right
12 now?

13 THE COURT: Yeah.

14 MR. SENN: Okay. State calls Investigator Chris
15 Bomar.

16 THE COURT: You're still under oath.

17 INVESTIGATOR BOMAR: Yes, sir.

18 DIRECT EXAMINATION - IN CAMERA

19 INVESTIGATOR CHRIS BOMAR BY MR. SENN:

20 Q. Investigator Bomar, during your second forensic
21 examination of the laptop computer where the video files
22 were found, did you find any files or information showing
23 who may have been using that computer?

24 A. Yes. Several indications of Internet Explorer where
25 website's were accessed, personal accounts like Netflix,

1 personal documents that were even opened up, were indicated
2 in that report.

3 Q. Okay. Is this your - Is this document, is this your
4 second forensic examination?

5 A. It is.

6 Q. And you can see everything from where you're at.

7 A. I can.

8 Q. Okay. I'd like to direct you to this portion. You
9 know what this is? What is this information?

10 A. Those are artifacts from the Gmail web account. So,
11 accessing Gmail through the Internet leaves artifacts, and
12 IEF is able to find those particular artifacts on the hard
13 drive.

14 Q. Okay. So, someone would have had to use Gmail on this
15 computer for these artifacts to exist in this computer?

16 A. That is correct.

17 Q. Okay. Let me direct you to picture number four. What
18 is the email? I believe there's a comma that says email on
19 it. What email is that?

20 A. Can I step down and --

21 THE COURT: Yes.

22 A. It's hard from this angle.

23 THE COURT: Sure.

24 (WITNESS LEAVES WITNESS STAND.)

25 A. The email reads it's got me, which is basically the

1 user of that account. And then, it says
2 tidytoilets@gmail.com. And then, it has a snippet of what
3 that email is.

4 Q. Okay. Are you familiar with Tidy Toilets in relation
5 to this case?

6 A. I believe it is the suspect's business.

7 Q. Okay. I see the sent date and time, the last modified
8 date and time. Do you know what those times would be?

9 A. Well, sent date means, usually, that's a record
10 indication that something was sent on that particular date
11 pertaining to that email. Last modified, if he made any
12 changes to the email, would be that time stamp.

13 Q. Okay. Can you -- can you read those times? Let me
14 make sure.

15 A. The sent date and time has January 4th of 2011, at
16 1:15 p.m., Tuesday. And then, again, you have a modified
17 date after that. It's 1/25/2011, around 8:18 p.m.

18 Q. And would that have been -- So the user at that email
19 account would have been using that computer at that time?

20 A. That is correct.

21 Q. Let me show you entry number 25 there at the bottom.
22 What does that appear to be, that you know?

23 A. Appears to be an email from somebody, a Frank Hart,
24 and it's got fhart111@comcast.net as the email address.

25 Q. And what's the snippet from that one say?

1 A. The subject matter which says Saint Patrick's Day on
2 Main Festival toilet order. And then, there seems to be an
3 order from a client. It says, "Hi, Rion: per our
4 conversation today I would like to order eight regular
5 toilets and one handicapped one." Of course, that's just a
6 snippet. There's more to it, but it just provides a
7 snippet of that email.

8 Q. Okay. And can you see when that was sent?

9 A. Well, the date that it appears to be received, because
10 that, also, would be that sent time, because, obviously, he
11 received the email, would be February 2nd, 2011, at 5:18
12 p.m., on that Wednesday.

13 Q. Okay. Let me show you a different portion of the
14 report. Okay. This one says history index. What is this
15 information?

16 A. Basically, it's just a history index. When you open
17 up Chrome it starts to index certain websites. It appears
18 that Chrome was opened up and had a website welcome screen
19 is basically what that is.

20 Q. Okay. Let me show you entry two. When does it appear
21 that this was visited?

22 A. That date, looks like somebody accessed, or tried to
23 access Face book on December 22nd, 2010, around 7:28 p.m..

24 Q. Okay. Let me scroll up. Do you see this information
25 in the body?

1 A. That is correct.

2 Q. Okay. What does that appear to be?

3 A. Per - excuse me. It appears to be the profile of the
4 account of whatever Facebook account that they accessed.
5 So, it provides a little snippet of some of the information
6 on that page that was visited.

7 Q. What is - is there any names that you see?

8 A. One of them is a home profile account that says Emma
9 Rutledge.

10 Q. Okay. Are you familiar with that name?

11 A. It appears that Emma - This is the account of Emma's.

12 Q. All right. Are you familiar with that name, Emma
13 Rutledge?

14 A. I believe that is the daughter of the suspect.

15 Q. Okay. Let me show you another portion of the report.
16 Chrome auto fill, what is this information?

17 A. Those are types of terms that will be auto filled if
18 you started entering information into Chrome.

19 Q. Okay. And can you say, what is the value? What does
20 that mean?

21 A. The value? Basically, that is the actual auto fill
22 part in Chrome. It appears that rionrutledge@aol.com had
23 been entered. And so, when he starts typing in
24 rionrutledge@aol it starts to finish that stuff for you.
25 So, it just basically provides an auto fill form, so it

1 makes it a quick access to fill in those fields.

2 Q. And when does it appear this was created?

3 A. This one appears to be created 7/22 of 2010, at 9:09
4 p.m.

5 Q. Okay. And can you look at the second entry?

6 A. I can. And it appears to be a different email address
7 that it would have probably tried to autotype in, which is
8 the rlonrutledge@netscape.net. And that created date's
9 7/22 of 2010, as well.

10 Q. Okay. Let me show you a different portion of this
11 report. This Chrome log ins, what is this information?

12 A. It tries to keep count of different accounts that it
13 makes notice. And so, every time you go to that web
14 address, it says, hey, I've recognized you've been here and
15 you have an account and you've entered some information and
16 so I'm going to remember some stuff for you. And so, it

17 appears that a Netflix account, login account, with
18 rlonrutledge@netscape.net was actually done and entered, as
19 far as on 7/22 of 2010, that he accessed that login
20 account, and it wanted to try to remember that information
21 from that login account.

22 Q. Okay. Let me show you another portion. What,
23 exactly, is a Firefox input history?

24 A. Firefox input history is just basically things that he
25 enters into the search log of Chrome. So, different web

1 addresses, whatever he types in there, it kind of captures
2 some of those image.

3 Q. When you say Chrome, did you mean Firefox?

4 A. Firefox, yes.

5 Q. Is that an Internet browser?

6 A. It is.

7 Q. Okay. Let me direct you to entry 68, at the very
8 bottom. Can you say, what is that URL?

9 A. That URL is www.facebook.com. And it looks like a
10 group page belonging to a Rion M. Rutledge, Junior.

11 Q. Okay. And so, would this - does this appear to be a
12 Facebook page for Rion Rutledge?

13 A. In one of his groups, yes.

14 Q. Okay. All right. Okay. And what is this
15 information? Did you go through this earlier?

16 A. We went through some of them, not all of them. But
17 basically, when you use Internet Explorer, which,
18 basically, the operating system of Windows is Internet
19 Explorer; when you type in things it keeps a history of
20 some of those things that you look at, see, or even go onto
21 the Internet to.

22 Q. Okay. Let me show you the very first entry. Can you
23 see that URL?

24 A. I can. It says file. Basically, it points to a
25 particular directory, under the user account of Captain

1 Mahi, and the document that was opened up is Tidy Toilets,
2 location sheet version 2-0-2, and it appears to be a Word
3 document.

4 Q. Is the percent 20, is that --

5 A. Those are spaces in between the words.

6 Q. Okay. And what does it appear the last visited date
7 for this information?

8 A. The last date that's recorded on there is around
9 February 23rd of 2011.

10 Q. Okay. And is this when this file would have been
11 opened?

12 A. That would be the last visited date of that file.

13 Q. And - okay. Okay. Can you look at entry 41? Can you
14 see? What is the URL?

15 A. Here again, it's pointing to another file. Basically,
16 that file is located on the desktop, under the username of

17 Captain Mahi. The file that was last visited is Tidy
18 Toilets and Septic Solutions and Pad Drawings and it
19 appears to be another Word document. Last visited date of
20 March 1st of 2011.

21 Q. Okay. Look at entry 44. What - the date and URL for
22 that?

23 A. The date is February 28th of 2011, and appears to be
24 another file under Documents in the downloads under the
25 username of Captain Mahi. And Simple Machines, Allison

1 Rutledge, it looks like to be a PowerPoint.

2 Q. Okay. And are you familiar with the name Allison
3 Rutledge?

4 A. I am.

5 Q. All right. Who is that?

6 A. I believe that is the wife of the suspect.

7 Q. Did - could it be the - Are you sure it's the wife or
8 the daughter of the defendant?

9 A. I guess Alicia, I'm sorry. Alicia.

10 THE COURT: Did he testify one date was March 3rd?

11 MR. SENN: I believe the search warrant was on March
12 2, 2011.

13 THE COURT: I know, but I thought I heard him say
14 something - an entry was on March 3rd.

15 MR. SENN: March 1st, Judge.

16 THE COURT: Gotcha. All right. Okay. Go ahead.

17 BY MR. SENN:

18 Q. Okay. And we look at entry 61. And can you say the
19 URL and the last visited date for that?

20 A. That is February 25th, 2011, again pointing to another
21 file. It's going to be on the Desktop, under the Captain
22 Mahi username
23 TidyToiletsandSepticSolutionsPad20dwawing.pdf.

24 Q. Okay. Can you look at entry 64, I believe at the top.
25 Can you read the URL and the last visited date and time for

1 that?

2 A. Again, this appears to be an Excel document that's
3 located in the downloads folder in the documents of - under
4 username Captain Mahi. The actual Excel report is from
5 2011. Come See Me Porta-Johns 20's list, and its an Excel
6 document. And the date, February 25th of 2011.

7 Q. Does this information appear to be relevant to the
8 defendant?

9 A. It does.

10 Q. How is it - how is it relevant?

11 A. I believe testimony was is that, he could never get
12 the computer system opened, once he received the computer
13 from - from his brother. He was unable to access the
14 computer. The computer wasn't working. But yet, we have
15 his files being visited and accessed.

16 Q. Specifically, this file, the Come See Me Porta-Johns.

17 Does that relate to the defendant?

18 A. It does, because it appears to be some type of Excel
19 document relating to his porta-john business.

20 Q. I believe we went through this earlier. Is this - is
21 this the Frostwire prop file that we went through earlier?

22 A. It is.

23 Q. Okay. Can you look at the second line at the top?

24 A. The second line has a date value. It says, Wednesday,
25 March 2nd, 15:48:29, Eastern Standard Time, 2011.

1 Q. All right. What is this information?

2 A. That is the last marked time that Frostwire was open.

3 Q. Okay. Would this be Frostwire on just this specific
4 computer?

5 A. Yes.

6 Q. Okay. So, Frostwire -

7 MR. SENN: Judge, that's all we have for this
8 testimony.

9 THE COURT: Cross?

10 MR. BOYD: Not since it's a proffer I'll not cross at
11 this time.

12 THE COURT: All right. You can step back down.

13 (WITNESS LEAVES WITNESS STAND.)

14 THE COURT: Yeah, I sustain the objection. This is in
15 evidence. All of the information that he's explaining kind
16 of speaks for itself. I don't know that you need an expert
17 to tell what dates, not that he's testifying as an expert,
18 although he has already been qualified as such, but this is
19 already in evidence, and could have been covered in the
20 case-in-chief.

21 The fact that the evidence reflected on - well, it
22 didn't reflect on it. The fact that a more detailed
23 explanation seemed to be warranted, based on this defense's
24 case, I don't think reaches the hurdle of allowing the
25 State to offer a reply so I'm not going to allow it.

1 MR. SENN: Okay, Judge. I'd just like to put the
2 State's argument on the record, if that's okay.

3 THE COURT: You may.

4 MR. SENN: Okay. The State would argue that this does
5 contradict the Defense witnesses, and this would aid the
6 jury in determining the Defense witnesses' credibility.
7 And we also argue that it would go to rebut the Defense
8 testimony that the computer could not actually be powered
9 on, once he received it back from his brother in February
10 or March of 2011. And this was not an issue presented
11 before the Defense testimony, so the State couldn't address
12 it in it's case. But we understand your ruling.

13 THE COURT: I disagree with that last statement. This
14 could have been addressed in the case-in-chief, and all the
15 things you say it shows can certainly be argued to the
16 jury. I agree it does show all those things, at least to a
17 layperson. And - I mean it's loaded up, appears the dates
18 that do contradict, or appear to contradict, the testimony
19 of the defendant, and you can certainly call all that to
20 the jury's attention.

21 MR. SENN: Okay. Thank you.

22 THE COURT: All right. Anything else?

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

24 THE COURT: State waive opening?

25 MR. SENN: Yes, Judge.

1 THE COURT: All right. You need a few minutes before
2 we get the jury in? Well, let's get the jury in first.

3 Well, let me see how I want to do this. I'm going to
4 bring the jury - I'm going to bring the jury in, and I'm
5 going to make an inquiry as to whether or not there's been
6 any deliberations and if so, we'll have to deal with that.
7 If not, if they indicate that there's not been any, is the
8 State ready to go forward?

9 MR. SENN: Yes, Judge.

10 THE COURT: Defense?

11 MR. BOYD: Defense is ready, your Honor. I think I
12 need to put some motions on the record.

13 THE COURT: Okay. You do. And before you do that,
14 we've received one other note from whoever wrote those, the
15 previous notes. And this says, "what is the saved date on
16 letter?" So, somebody's got an active mind. Whether or
17 not they're discussing it, or whether this is one person
18 pumping out all these questions, I don't know.

19 Go ahead with your motions.

20 MR. BOYD: Your Honor, at this time, I would renew the
21 motions I made at grounds for a directed verdict. In
22 addition, your Honor, the - I would argue that, under the
23 violation of the indictments charging violation of 16-15-
24 405 second degree sexual exploitation, there's been no
25 testimony that my client distributed, transported,

1 exhibited, or received, sold, purchased or exchanged or
2 solicited materials that - that contained a visual
3 representation of a minor engaged in sexual activity.

4 The evidence is that it was on a Limewire, that it
5 could potentially be accessed by someone, or pieces of it.
6 I think the testimony is actually that, anyone searching
7 for it couldn't receive the whole thing. But if we get
8 pieces from here and pieces from somebody else over here,
9 it takes a special program that law enforcement had to
10 actually access this. So, I would submit that there's no
11 evidence to go forward on that charge.

12 THE COURT: That's from which one? December 16th?

13 MR. BOYD: That concerns the second degree - charges
14 for second degree, those three indictments.

15 THE COURT: Okay.

16 MR. BOYD: 16-15-405(a)(2) is the

17 THE COURT: I got it. But they're all from December
18 16th.

19 What does the State have to say about that? These
20 were, as I understand it, still - at least what was shown
21 was just one photograph.

22 MR. SENN: Those were three image files, Judge, on
23 December 16th, 2010. Investigator McKellar testified that
24 she was able to capture the IP address and the GUID for
25 those files. And Investigator Bomar was able to later

1 testify he found both that IP address and GUID on that
2 computer.

3 THE COURT: I guess my concern, though, is, this says
4 a minor engaged in sexual activity, as defined by 16-375.
5 And sexual activity - Well, I couldn't see what they
6 showed, so I don't know whether they fall into any of these
7 definitions or not.

8 MR. SENN: Judge, we can show you the pictures. I
9 believe they do. I believe that's a question for the jury,
10 whether they do.

11 THE COURT: All right. I probably didn't - I could not
12 see. So, I'm going to step down and let you show them,
13 because --

14 MR. SENN: Okay.

15 THE COURT: Is that your -- Is that where your emphasis
16 is?

17 MR. BOYD: That really wasn't my emphasis, your Honor.
18 I think they show sexual activity, to be frank with you.

19 THE COURT: Okay.

20 MR. BOYD: My motion is that, I don't think there's
21 any evidence that it was a distribution or exhibit for
22 anyone else, because frankly, it takes a special program to
23 go in - that law enforcement had, according to testimony -
24 to go in there and see that. Anybody else that wants to
25 access - if they're typing in, from the testimony, and

1 THE COURT: Take your seats. Is the State ready?

2 MR. SENN: Yes, Judge.

3 THE COURT: Defense ready?

4 MR. BOYD: Yes, sir.

5 THE COURT: All right. Bring in the jury.

6 (JURY REENTERS COURTROOM 10:45 A.M..)

7 THE COURT: Members of the jury panel, sorry to keep
8 you waiting so long. We had several issues to take up,
9 which I need to discuss with you. We've received notes,
10 now three, but two of them are the same - appear to be in
11 the same handwriting. The one yesterday was a different
12 handwriting. And I had instructed the jury not to
13 deliberate, try to make up your own mind, until we reached
14 the point in the trial where I told you to go ahead and
15 deliberate.

16 Has the jury been discussing the case, Madam Forelady?

17 MADAM FORELADY: Have we been discussing the case in
18 the --

19 THE COURT: In the jury room.

20 MADAM FORELADY: In that room, yes, sir.

21 THE COURT: You have?

22 MADAM FORELADY: Yes, sir.

23 THE COURT: Well, I had instructed you not to jointly
24 deliberate. But you all have been discussing it?

25 MADAM FORELADY: It has. The case has been discussed,

1 yes, sir.

2 THE COURT: Okay. All right. Let me let you go back
3 to the jury room for a few minutes.

4 MADAM FORELADY: Okay.

5 (JURY EXITS COURTROOM 10:47 A.M..)

6 THE COURT: Any position by the State?

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

8 THE COURT: All right.

9 MR. SENN: Judge, the State's only question is, if we
10 could possibly ask the jury is there's any way that, apart
11 from these discussions they've had about the case, if they
12 could still be fair and impartial in the case, then if
13 what's left to handle in the case. But I'm not sure if we
14 can talk with them and ask that, or not.

15 THE COURT: What's -

16 MR. BOYD: Your Honor, I've discussed this with my
17 client extensively, anticipating earlier, anticipating that
18 that might be the answer to the jury. After discussion
19 with my client, he's made the decision he does not want to
20 ask for a mistrial, but I think we'd be entitled to it if
21 we asked for it. He does not want to ask for that at this
22 time, for a number of reasons I don't need to go into, that
23 we've discussed but we would not request a mistrial at this
24 time. And I'd just like the record to reflect - I'd just
25 like to ask Mr. Rutledge, on the record, that he concurs

1 with that.

2 THE COURT: Is that correct, Mr. Rutledge?

3 MR. RUTLEDGE: Yes, sir, I concur.

4 THE COURT: Thank you. Well, the only other time I've
5 had this occur I have brought the jurors in. In that
6 particular trial, the Defense did make a motion for a
7 mistrial, and I brought the jurors in and inquired of each
8 as to whether or not they could disabuse their mind of what
9 they had discussed, and be fair and impartial, and each
10 said they did, and we went forward with the trial. I can
11 dispense with that if, based on where we are now unless -

12 You want me to do that, Mr. Boyd?

13 MR. BOYD: Your Honor, I think it would be proper to
14 inquire of the jurors individually.

15 THE COURT: All right. Let's bring the jurors in one
16 at a time.

17 THE BAILIFF: Yes, sir.

18 THE COURT: And we'll start with - let's go down the
19 list here. I've got Ms. Moffatt.

20 THE BAILIFF: Ms. Moffatt?

21 THE COURT: Moffatt.

22 THE BAILIFF: Yes, sir.

23 (JURORS QUESTIONED BY THE COURT INDIVIDUALLY AT 10:51
24 A.M..)

25 (JUROR NUMBER ONE SIXTY-TWO, TIFFANY MOFFATT, ENTERS

1 COURTROOM.)

2 THE COURT: You can just stand right there, Ms.
3 Moffatt. I'm not going to single you out. I need to ask
4 this. Based on the fact that the jury has been discussing
5 the case, which I had instructed you not to do, would that
6 affect your ability to still be fair and impartial in the
7 trial of Mr. Rutledge?

8 MS. MOFFATT: I don't think it will.

9 THE COURT: You don't think it would affect your
10 ability?

11 MS. MOFFATT: It wouldn't affect my ability.

12 THE COURT: You would still be able to be fair and
13 impartial.

14 MS. MOFFATT: Uh-huh.

15 THE COURT: Is that a yes?

16 MS. MOFFATT: Yes.

17 THE COURT: Okay. Thank you. All right. Next, Mr.
18 Bunge.

19 (JUROR NUMBER THIRTY-FOUR, MICHAEL BUNGE, ENTERS
20 COURTROOM.)

21 THE COURT: All right. Mr. Bunge, I have to ask each
22 of you, even though the jury has discussed the case, which
23 was against my admonition not to, but I'm not going into
24 that, other - but I need to ask you, could you put aside
25 what you've already discussed, and still be fair and

1 impartial to the defendant?

2 MR. BUNGE: Oh, yes, sir. I mean, that's - Honestly,
3 that's why we gave you the questions, because we're trying
4 to clarify some things. That's - I mean, we're not - we're
5 not deliberating back there. We're not saying -

6 THE COURT: Okay. But you can still be - My question,
7 though, basically, is, in spite of the fact that you all
8 have had these questions that I've addressed.

9 MR. BUNGE: Oh, yes, sir. Yes, yes.

10 THE COURT: Could you still be fair and impartial

11 MR. BUNGE: Oh, yeah. Yes, sir.

12 THE COURT: --- and base your verdict on the law and
13 the evidence presented?

14 MR. BUNGE: Oh, yes. Yes, sir.

15 THE COURT: Thank you.

16 MR. BUNGE: All right.

17 THE COURT: Mr. Young.

18 (JUROR NUMBER TWO FIFTY, DAVID YOUNG, ENTERS
19 COURTROOM.)

20 THE COURT: Mr. Young, I just need to ask each of the
21 jurors, even though you've already discussed the case, or
22 some of the aspects of the case, would that affect your
23 ability to be fair and impartial, or could you still be
24 fair and impartial in this trial?

25 MR. YOUNG: I would still be fair and impartial.

1 THE COURT: Okay. Thank you. Now Ms. Blackwell.

2 While Ms. Blackwell's coming in, the last note I
3 received said -

4 (JUROR NUMBER NINETEEN, PAULA BLACKWELL, ENTERS
5 COURTROOM.)

6 THE COURT: Ms. Blackwell, I just need to ask each of
7 you, even though you've discussed the case, or at least
8 some facets of the case in the jury room, would you still
9 in spite of that be able to be fair and impartial to Mr.
10 Rutledge?

11 MS. BLACKWELL: Yes, sir.

12 (NOTE RECEIVED UP BY THE COURT.)

13 THE COURT: Okay. Thank you.

14 The last - You can bring in now Cody Rice.

15 Not the last, next to the last note I received, it
16 says, "what is the save date on letter?" So, I'm just
17 going to leave that up to being covered. And the latest
18 note says, "We are not deliberating the case we are trying
19 to clarify confusing evidence."

20 We'll make that a Court's exhibit.

21 (WHEREUPON, COURT EXHIBIT NUMBER FIVE, SIX, AND SEVEN,
22 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.

23 (JUROR NUMBER ONE EIGHTY-SIX, CODY RICE, ENTERS
24 COURTROOM.)

25 THE COURT: Mr. Rice, you can just stand right there.

1 Even though the jury has been talking about the evidence in
2 the case, and I would call that discussing the case, could
3 you still be fair and impartial to Mr. Rutledge, and not
4 let that affect your decision in this case?

5 MR. RICE: Yes, sir.

6 THE COURT: Okay. Thank you. All right. Pilarski.

7 THE BAILIFF: Yes, sir.

8 (JUROR NUMBER ONE SEVENTY-SIX, MICHAEL PILARSKI,
9 ENTERS COURTROOM.

10 THE COURT: You can just stand right there.

11 MR. PILARSKI: Okay.

12 THE COURT: I just need to ask, since you all have
13 already been discussing the case, whether it was
14 deliberation or whatever, would that fact affect your
15 ability to be fair and impartial, or could you set aside
16 what you all discussed, and still be fair and impartial to

17 Mr. Rutledge in the trial of this case?

18 MR. PILARSKI: Yes, I could be.

19 THE COURT: Okay. Thank you. All right. Bring in
20 Pipa, the Forelady.

21 THE BAILIFF: Bring in the four ladies?

22 THE COURT: Yes. No, the Forelady.

23 THE BAILIFF: The Foreman.

24 THE COURT: Forelady.

25 (JUROR NUMBER ONE SEVENTY-EIGHT, PATTY PIPA, ENTERS

1 COURTROOM.)

2 THE COURT: All right. I appreciate your candor in
3 telling me you all have been talking. I understand from
4 one juror that has already been in here and a note that you
5 were talking about the evidence, as opposed to what you all
6 consider deliberating. But in spite of that, based on the
7 fact that you all have already been discussing the
8 evidence, could you set all of that aside, and still be
9 fair and impartial to Mr. Rutledge in this trial?

10 MS. PIPA: Absolutely. Yes, sir.

11 THE COURT: Okay. Thank you.

12 THE COURT: Barber, Reico Barber.

13 THE BAILIFF: Okay.

14 (JUROR NUMBER TWELVE, REICO BARBER, ENTERS COURTROOM.

15 THE COURT: You can just stand right there. Even
16 though you have - the jury's been involved in some
17 discussions involving the evidence in the case, could you
18 set that aside and still be fair and impartial to Mr.
19 Rutledge in the trial in this case?

20 MR. BARBER: Yes.

21 THE COURT: Okay. Thank you.

22 THE COURT: Wyatt is next, Wyatt.

23 (JUROR NUMBER TWO FORTY- EIGHT, RICHARD WYATT, ENTERS
24 COURTROOM.

25 THE COURT: Mr. Wyatt, you all have already been

1 talking about the evidence in the case, I understand and
2 so, I need to ask, could you set aside what you all have
3 already discussed, and base your verdict solely on the law
4 and the evidence in the trial? That is, could you be fair
5 and impartial?

6 MR. WYATT: Absolutely.

7 THE COURT: Even though you've had some discussions?

8 MR. WYATT: The discussion was about clarification of
9 evidence, not the trial itself.

10 THE COURT: Right. Okay. So, you can still be fair
11 and impartial.

12 MR. WYATT: Absolutely. Yes, sir.

13 THE COURT: All right. Thank you. Thank you. Yoder.

14 (JUROR NUMBER TWO FORTY-NINE, MICHELLE YODER, ENTERS
15 COURTROOM.)

16 THE COURT: Hi, Ms. Yoder.

17 MS. YODER: Hi.

18 THE COURT: Even though the jury has been talking
19 about the evidence in this case, could you set aside what
20 you all have been discussing, and base your verdict on what
21 the evidence and the law as I instruct it? That is, could
22 you still be fair and impartial, and set aside what you all
23 have already discussed?

24 MS. YODER: Yes, I can, sir.

25 THE COURT: Okay. Thank you.

1 Bring in Bradley.

2 THE BAILIFF: Okay.

3 (JUROR NUMBER TWENTY-FIVE, WILLIAM BRADLEY, ENTERS
4 COURTROOM.

5 THE COURT: Hi, Mr. Bradley. In spite of the fact
6 that the jury has been talking about the evidence, and to
7 that degree discussing the case, could you still be fair
8 and -- set that aside, and be fair and impartial to Mr.
9 Rutledge in the trial of this case?

10 MR. BRADLEY: Yes, sir.

11 THE COURT: Okay. Thank you, sir. Spargo.

12 (JUROR NUMBER 2--0--5, PATSY SPARGO, ENTERS COURTROOM.)

13 THE COURT: Hi, Ms. Spargo.

14 MS. SPARGO: Hello.

15 THE COURT: You all have been talking about the
16 evidence and discussing the case, at least to that degree.
17 Could you set what you all have already discussed aside,
18 and still be fair and impartial to Mr. Rutledge in his
19 trial?

20 MS. SPARGO: Absolutely.

21 THE COURT: Okay. Thank you. Now, Sturkie.

22 (JUROR NUMBER TWO THIRTEEN, CHANTLY STURKIE, ENTERS
23 COURTROOM.

24 THE COURT: You can just step right -- Ms. Sturkie,
25 you're the alternate, but I still need to ask you, in spite

1 of the discussions that the jury has already had regarding
2 the evidence, if you end up being on the jury for this
3 deliberation, could you set aside what you all have
4 discussed, and be fair and impartial to Mr. Rutledge?

5 MS. STURKIE: Yes, your Honor.

6 THE COURT: Okay. Thank you.

7 (PAUSE.)

8 THE COURT: That's it. Anything from the State
9 involving my discussions with the jurors?

10 MR. SENN: None from the State.

11 THE COURT: Anything, Mr. Boyd?

12 MR. BOYD: No, your Honor.

13 THE COURT: After going through that exercise, does
14 Mr. Rutledge still want to go forward, and waive any right
15 to a mistrial?

16 MR. RUTLEDGE: Yes, sir.

17 THE COURT: Okay. Thank you. All right. Ready for
18 the jury?

19 MR. SENN: Yes, Judge.

20 THE COURT: State's waiving opening. All right.
21 Bring in the jury.

22 THE BAILIFF: Yes, sir.

23 (JURY REENTERS THE COURTROOM AT 11:07 A.M..)

24 THE COURT: The attorneys will now make their closing
25 arguments for you, and unlike their opening statement,

1 They introduced a lot - a number of items about things
2 that were on the computer. You know, there may be other
3 things on the computer that I haven't addressed. I mean,
4 certainly, if - if the - there may even - you know, there
5 may even be - we don't know what else is on there as far as
6 other things. But you know, if - who knows what the person
7 who was using the computer, whether it was Will or Mark
8 Hatfield, or whoever, was using it to do during that period
9 of time.

10 I think, if you look at it, there are some emails on
11 there. There are emails that appear to be connected to
12 Rion Rutledge on there. Just know, using your common sense
13 and what you know, you know, if you have emails, they can
14 come from more than one machine. If it's set up, for
15 instance, email on my laptop, I can get the email on my
16 phone, they can be at multiple places. So, it doesn't -
17 that doesn't show that Rion Rutledge had the machine during
18 that period of time.

19 The - And you may say, well, have I come into court
20 and proven Rion Rutledge innocent? And I would say, no, I
21 haven't. But that's not my job to prove his innocence.
22 The State has to prove his guilt. Rion Rutledge is
23 presumed to be innocent. What that means is, as I told you
24 in my opening statement, that he does not have the burden
25 of coming into this courtroom and proving himself innocent.

1 declaration of innocence. It's - What it means is not
2 proven. That's what a verdict of not guilty means.

3 The - I will submit to you that, in this case, there's
4 a lot of questions. There's a lot of things about dates
5 and computer questions and all of that. A lot of those
6 haven't been answered for you. You have the - you have the
7 duty, I think, to resolve any doubts in favor of Rion
8 Rutledge. So, I'm asking you to look at all the evidence.
9 Look at the evidence that the State has produced. Look at
10 the evidence the Defense has produced. We've produced all
11 the evidence we can with the time, trying to go back in
12 time, and figure out what happened.

13 But after deliberating this case carefully, I submit
14 to you that the State has not proven guilt beyond a
15 reasonable doubt, and I ask you to do the right thing under
16 the law and find Rion Rutledge not guilty. Thank you.

17 MR. SENN: May it please the Court?

18 THE COURT: Yes, sir.

19 CLOSING ARGUMENT BY MR. SENN:

20 MR. SENN: Ladies and gentlemen, sexual exploitation
21 of a child is a horrible crime. Rion Rutledge sought out
22 these type of files of this abuse, downloaded them,
23 possessed them, and made them available for anyone who
24 wanted to download them. We don't know how many times, or
25 if anyone else were able to actually download these files.

1 We do know that they were available December 16th, 2010,
2 and Special Investigator McKellar downloaded three of these
3 files.

4 You heard Special Investigator McKellar testify that
5 all the files were downloaded from a single computer and a
6 single IP address. She testified that Comporium confirmed
7 this IP address as assigned to Rion Rutledge's residence at
8 the exact date and time for downloads. You heard her
9 testify that all the files came from a file-sharing program
10 with one GUID.

11 Both Investigator McKellar and Investigator Bomar
12 testified that the GUID, otherwise known as the client ID,
13 was such a unique number it would be like walking around
14 and finding your twin. Investigator Bomar later confirmed
15 that both this IP address and the GUID were located on the
16 laptop, located in Rion Rutledge's residence, in his
17 office. And unfortunately, you had to see all the files,
18 the image files downloaded by Special Investigator McKellar
19 and the video files found on both the computer and the CD
20 by Investigator Bomar.

21 Investigator McKellar testified and Investigator Bomar
22 testified that all of these files had terms related to
23 child pornography in their titles. One of those terms was
24 PTHC, which they stated was - stood for Pre-teen Hard Core.
25 I would remind you of some of the file names. One of the

1 files Investigator McKellar downloaded all had the same
2 title, except for numbers at the end. But the words that
3 every file had similar were pictures from *Raunchy Torpedo*,
4 *Pedo*, *Kidzilla*, *PTHC*, *Toddlers*, and *zero yo*, *1yo* all the
5 way up to *9yo*, which they testified stood for year-old.

6 Other files that were on the laptop, one file was
7 labeled *PTHC 15yo Shaved German Girl, Steffi - Teaching*
8 *13yo Boys*. Another file was labeled *Uncle's Lust for Young*
9 *Blond*, *13yo Niece, Daniella, PTHC Incest*. One of the other
10 files, we couldn't read much of it, because it was in Asian
11 characters, but appeared it had the words *KINGPASS*, *PTHC*,
12 and *Dark Studio* in the title. And finally, the file that
13 was on the disc itself was labeled *PTHC Daddy's Girl*,
14 *Jessi, 12yo*.

15 Every single one of these files had that term, *PTHC*,
16 in the title, that *Pre-teen Hard Core*. And apart from
17 that, all of these files clearly show that someone's very
18 likely to be viewing when you open these files. And you
19 saw the content in the files. You can make your own
20 determinations whether those were minors in the files. You
21 heard both Investigator McKellar and Investigator Bomar
22 talk about how they would identify the individuals in the
23 photos and the videos by breast development and other
24 factors.

25 In addition to both the GUID and the IP address

1 information tied to the original downloads, Investigator
2 Bomar found other connections to file-sharing on the laptop
3 computer. He testified that he found two file-sharing
4 programs on the laptop computer. He testified that the
5 Frostware - Frostwire.props file showed that the default
6 directory for installing files and saving files here was
7 not the default location that Frostwire would put it when
8 it was installed. And you saw him go through the process
9 of installing Frostwire. This shows that someone had to
10 manipulate that program, apart from the default settings
11 when the program was installed.

12 Additionally, you have heard Investigator Bomar
13 testify that thumb cache files showed that the three files
14 downloaded by Investigator McKellar were on that computer
15 at some point. They weren't there any more, but we know
16 they were there at some point on that computer. And you
17 also heard Rion Rutledge himself admit to previously using
18 file sharings.

19 Apart from the laptop, there was a single CD that was
20 in the desktop drawer of Mr. Rutledge's office. You heard
21 Investigator Bomar say that this CD was titled *PT - PTCH*,
22 which is suspiciously similar to *PTHC*. This disc had two
23 files on it, only one of which you had to view that
24 appeared to be relevant to our case, and that was the file
25 named *PTHC, Daddy's Girl, Jessi, 12yo*.

1 You heard Investigator Bomar state that CD's aren't
2 just created out of nowhere. Someone had to have made the
3 CD, and this was that CD found in Rion Rutledge's office,
4 in his desk drawer. And even though those files were no
5 longer on the computer, Investigator McKellar had
6 downloaded, Investigator Bomar did testify that he found
7 those three videos. He testified that he found evidence
8 that two of these files had been viewed several weeks after
9 the creation dates that's shown in the Internet history
10 file. And someone had to have moved these files, as well,
11 as you heard Investigator Bomar testify, the default
12 directory was not the trash folder. It was a separate
13 directory, the incomplete directory, so someone had to have
14 moved these files into a trash directory. It's a directory
15 that somebody would have to create themselves. The program
16 would not just create it automatically.

17 And you also saw that, very deep within these folders,
18 what appeared to be a letter written by Rion Rutledge to
19 his brother. And I believe that date - I can show you the
20 date in a minute, but if, as Mr. Boyd stated, we don't know
21 when the letter was written. We didn't know if it was
22 saved in that computer at that time. I'm not sure why
23 someone would write a letter and save that at a later date,
24 but it's possible.

25 Let's talk about Mr. Rutledge's brother for a second.

1 You heard Mr. Rutledge and several of his friends and
2 family discuss the kind of person they say that Will
3 Rutledge was. And despite this, Rion Rutledge testified
4 that he let Will Rutledge take the laptop in question, in
5 this case, sometime in 2008, and Rion didn't see the laptop
6 again until three weeks after the Valentine's Day dispute,
7 sometime in February of 2011. So, Valentine's Day, 2011.

8 Three weeks after that would be March 7th, 2011, which
9 is after the time that the search warrant was actually
10 executed at Mr. Rutledge's residence. But let's just say
11 the dates may have been - it's been a few years; people get
12 dates wrong. But you also heard that Rion Rutledge state
13 that, once he got that laptop back, which had to be
14 sometime before law enforcement reached that house, he
15 testified that, once he got the laptop back, he didn't have
16 a power cord, so he couldn't get that computer working.

17 And he even - he decided to use a paperclip, for
18 whatever reason, and open the computer and get a CD out,
19 and he just took that CD and threw it in a desk. Ladies
20 and gentlemen, I want to show you something in
21 Investigator's second - Investigator Bomar's second
22 forensic examination of that laptop computer.

23 (STATE'S EXHIBIT NUMBER FOUR PUBLISHED TO THE JURY AT
24 11:46 A.M..)

25 MR. SENN: Ladies and gentlemen, this - this forensic

1 report is in evidence, but you only saw portions of what
2 Investigator Bomar found. I direct you to a few other
3 things which are important. This portion is the Gmail web
4 mail. This information appears to show emails to and from
5 several email addresses. One email address - I'll make it
6 look bigger for you - is tidytoilets@gmail.com.

7 Ladies and gentlemen, Rion Rutledge entered several
8 exhibits that appear to be invoices and checks written to
9 Tidy Toilets. I would ask you why emails to and from the
10 tidytoilets@gmail were on this computer, and I'll show you
11 the dates these were being accessed. The first entry that
12 you saw was the second entry at tidytoilets@gmail.com. It
13 says, me. It appears that the sent date was February 15th,
14 2011. Let me show you a couple more emails. It appears
15 this Tidy Toilets Gmail address was on this computer many
16 times. This little snippet of this email says, "I'm still
17 waiting on the five hundred dollar the County said they
18 were sending."

19 We have an email right here that appears to say,
20 "Hello, Rion, spelled a little bit differently than the
21 defendant's name. That appears to be sent on October 22nd,
22 2010. In his email is a reply. There appears to be a
23 reply, "got it" in reply to a email written -- on October
24 22nd, 2010. We have an email that appears to be sent from
25 mblair@standingschool.com. The snippet here says, "Rion,

1 please send two porta-pots sometime today. Thanks a
2 million, Margie." I believe that appears to have been sent
3 February 25th, 2011. It made references to Tidy Toilets
4 throughout this, these emails, February 22nd, 2011.

5 Here's another email: "I did. Thank you so much."
6 Original message from Rion Rutledge. January 25th, 2011,
7 sent date. An email from Frank Hart, asking about - it
8 appears the subject is Saint Patrick's Day Festival toilet
9 order. "Hi, Rion. Per our conversation today, I would
10 like to order eight regular toilets." February 2nd, 2011.

11 There appear to be many other references to Tidy
12 Toilets and Rion Rutledge throughout these emails. There's
13 an email here for Allison, which is also the defendant's
14 daughter's name. That appears to be created on February
15 27th, 2011, Allison Rutledge, with an attachment.

16 There appears to be another portion of this report
17 called the *Chrome History Index*. Now, Google Chrome is a
18 web browser you can use to go to many different web sites.
19 It appears there - the website, Facebook.com slash home was
20 visited on December 22nd, 2010, which is approximately six
21 days after the initial downloads by Investigator McKellar
22 and the creation dates of two of the files, and two days
23 after one of the files that were on the laptop computer.

24 And you can see in the body the information on this
25 page. It's a lot of information, but it appears to be a

1 profile page. At the top, it says, "Chat, home profile
2 account" - I'll zoom in a little bit - "chat, 16, home
3 profile account, Emma Rutledge." It appears that the
4 profile page of Emma Rutledge was up. We recognize that
5 name being one of the defendant's daughters. So, it
6 appears that, on December 22nd, 2010, one of the
7 defendant's daughters was using this computer.

8 Let me show you another portion of the report. Here's
9 a portion of the report called *Chrome Autofill*. Now,
10 Google Chrome, we mentioned, was the web browser, so the
11 autofill is, you know, sometimes when you type in, you
12 know, one of your passwords, the program wants to make
13 things a little bit easier for you, so it will start
14 filling in the rest for you.

15 You can see right here that the value for
16 rionrutledge@aol.com, and the one below it is
17 rionrutledge@netscape.net appear to be created on this
18 computer at July 22nd, 2010.

19 Let me show you another portion of the report. This
20 is the *Chrome Logins* portion of the report, and it appears
21 to be, when different people log in different web sites,
22 kind of similar to the autofill, and it appears that the
23 username rionrutledge@netscape.net was used to access the
24 website, Netflixdotcom, and this was created on July 22nd,
25 2010. And I only have a couple more portions of this

1 report to go through with you.

2 This next portion is called the *Firefox Input History*.
3 It appears that the Facebook.comslashgroup, Rion M.
4 Rutledge, Junior, was visited on Firefox. At some point,
5 the Facebook was typed in. We explored the Internet
6 Explorer main history for a little while during
7 Investigator Bomar's testimony. There's another entry in
8 there, too. Last visited date and time, February 23rd,
9 2011. The URL appears to be - the user is Captain Mahi,
10 documents, and the file appears to be, as Investigator
11 Bomar told us, percent twenty basically stands for space,
12 Tidy Toilets location sheet, version two dot dot. And as
13 you can remember, Tidy Toilets appears to be the
14 defendant's business.

15 Another file that appears to be open, Internet
16 Explorer, on March 1st, 2011. This file appears to be user
17 is Captain Mahi desktop, and the actual file name appears
18 to be Tidy Toilets and A Septic Solution Pad Drawing dot
19 dot. One document appears to be created - or visited on
20 February 25th, 2011, labeled, *Come See Me Porta-Johns List*.
21 It appears to be a spreadsheet document.

22 The last file I want to show you on this - in this
23 Internet History is March 1st, 2011, it appears there's a
24 file open called *Correct Simple Machines, A. Rutledge,*
25 *Powerpoint*. It appears to be A. Rutledge. Mr. Rutledge

1 has a wife known as Alicia. Mr. Rutledge has a daughter
2 named Allison. It appears to be a Powerpoint that was open
3 in that computer March 1st, 2011.

4 And the last file I want to show you in this report is
5 that Frostwire props file. And we looked at this earlier,
6 and we found several things. There's a lot of information
7 in this, but the one I want - thing I want to direct you to
8 is the very second one at the top, the Wednesday, March
9 2nd, at 15:48 Eastern - Eastern Standard Time, 2011. It
10 appears the last time that this properties file was written
11 to was 15:48:29, which, I believe that would be 3:48, on
12 March 2nd, 2011, right around the time that the search
13 warrant was executed at the defendant's residence.

14 Ladies and gentlemen, based upon Special Investigator
15 McKellar and Investigator Bomar's testimony, the IP
16 addresses and GUID's, we know the downloads happened at
17 Rion Rutledge's residence, and that specific computer. I
18 want you to ask yourselves which scenario you believe is
19 more likely that Will Rutledge had this computer, happened
20 to come by at 11:00 a.m., on December 16th, 2010, where
21 Special Investigator McKellar was able to download three
22 files from, or his friend. And the next time that laptop
23 was at that location was just in time for the police to
24 execute a search warrant, based on the downloads from
25 December 16th, 2010. And along with that, there was a CD,

1 just tossed into a drawer in Rion Rutledge's office, next
2 to this laptop in the office that Rion Rutledge knew
3 nothing about.

4 Or, could this laptop have been in Rion Rutledge's
5 possession the entire time? Could his daughters have used
6 the computer for Facebook and Powerpoint presentations?
7 Could Rion have used this computer for his Tidy Toilets
8 business? Does it make sense that Rion Rutledge would let
9 his brother use his information about his Tidy Toilets
10 business, including operating the Gmail account, where all
11 those mails were found?

12 Or, could this computer have been used to download and
13 store files of minors engaged in sexual activity while it
14 was in Rion Rutledge's office? Could this CD have been
15 created by Rion Rutledge, and then placed in the drawer for
16 later viewing?

17 Ladies and gentlemen, the scenario that makes the most
18 sense, this computer belonged to Rion Rutledge, and this
19 computer was used by him, and it was used by his family.
20 Rion Rutledge was familiar with file-sharing technology,
21 downloaded these files, and set up his file-sharing
22 directory to be a different place than normal. Rion
23 Rutledge downloaded and received files appearing to be
24 minors engaged in sexual activity, three of which were
25 distributed to Special Investigator McKellar, three were

1 placed in a user-created trash directory, and one was
2 placed on a CD that was in his desk.

3 Rion McKissick Rutledge, Junior, solicited and
4 received files of minors engaged in sexual activity, and
5 then distributed three of these files on December 16th,
6 2010, to Special Investigator McKellar. When a search
7 warrant was executed at Mr. Rutledge's house on March 2nd,
8 2011, he was in possession of four additional files of
9 minors engaged in sexual activity across a laptop computer
10 and a CD.

11 When you go back to the jury room, please consider all
12 of the evidence and all of the testimony and everything
13 you've heard all this week. When you reach a conclusion,
14 the State is confident that you're going to render the only
15 verdict the evidence and the testimony supports, that Mr.
16 Rutledge, Rion Rutledge, Junior, is guilty of three counts
17 of sexual exploitation of a minor, second degree, and four
18 counts of sexual exploitation of a minor, third degree.

19 Thank you.

20 THE COURT: Members of the jury panel, my charge will
21 not be long but do you need a break before we go into it?

22 Okay. Let's take about a five-minute refresher break,
23 we're not in a hurry. We'll take a short break.

24 Madam Forelady, just tell the bailiff when you all are
25 ready.

1 indictments.

2 (JURY DISMISSED AT 04:33 P.M..)

3 THE COURT: The jury is dismissed. Anything from the
4 State before we get into sentencing?

5 MR. SENN: Nothing from the State.

6 THE COURT: Anything further from the Defense?

7 MR. BOYD: Yes, sir, your Honor. At this time, I
8 would renew my prior motions, and move for judgment
9 notwithstanding the verdict and motion in arrest of
10 judgment based on the same grounds I made in my motion for
11 a directed verdict at the close of the State's case, and
12 also, at the close of evidence altogether.

13 I would also, your Honor, move for a new trial, based
14 on the denial of the motion for severance of the charges
15 made prior to the call - not prior to the call of the case,
16 but before the beginning of the testimony.

17 THE COURT: Those motions are denied.

18 MR. BOYD: Yes, sir.

19 THE COURT: I believe my rulings - I feel comfortable
20 with my rulings, and I stick by them so those motions are
21 denied.

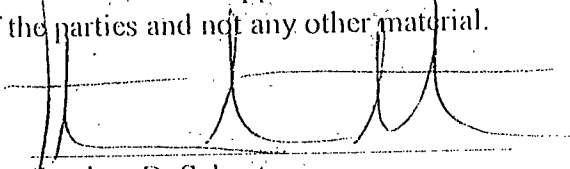
22 MR. BOYD: Yes, sir.

23 THE COURT: You want to bring around Mr. Rutledge;
24 I'll be glad to hear from anybody on his behave.

25 First, I want to hear from the State. I understand

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Stephen D. Schuster
SCHUSTERMAN LAW FIRM, PA
PO Box 4211
Rock Hill, South Carolina 29732
Telephone (803)325-7788
Email: sdslaw@comporium.net
Attorney for Appellant

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