

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3                   ANTHONY CASTANEDA,

)                   No. 64515  
)

4                                   Appellant,

5                                   v.

6                   THE STATE OF NEVADA,  
7

8                                   Respondent.  
9

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10                                   **APPELLANT'S APPENDIX VOLUME VI PAGES 1092-1317**

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**Case No. 64515**

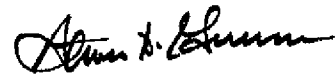
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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTHONY CASTANEDA,

Defendant.

CASE NO. C272657  
DEPT NO. V

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 4**

THURSDAY, JULY 11, 2013

APPEARANCES:

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1 LAS VEGAS, NEVADA, THURSDAY, JULY 11, 2013, 9:30 A.M.

2 \* \* \* \* \*

3 (In the presence of the jury panel.)

4 THE COURT: Thank you. Please be seated. Good  
5 morning. How are you doing this morning? Is it raining out  
6 still? It was this morning when I got here at 7:00, but  
7 dashed in before I got wet. All right.

8 So this is a continuation of Case No. C272657, State  
9 of Nevada versus Anthony Castaneda. The record will reflect  
10 the presence of the Defendant, with his Counsel, the Deputies  
11 District Attorney prosecuting the case, all officers of the  
12 Court, all 12 members of the jury, and the two alternates.

13 Will Counsel so stipulate?

14 MR. WESTBROOK: We will, Judge.

15 MS. ANTHONY: Yes, Your Honor.

16 THE COURT: Thank you. Ladies and gentlemen, the  
17 first thing I'm going to do is read to you a stipulation that  
18 was reached by the parties and ordered by the Court.

19 STIPULATION It is hereby stipulated and agreed to by  
20 both parties that each of the images referred to in Counts 1  
21 through 15 in the Second Amended Information consist of a  
22 film, photograph, or other visual presentation depicting a  
23 person under the age of 16 years as the subject of the sexual  
24 portrayal or engaging in or simulating or assisting others to  
25 engage in or simulate sexual conduct. The parties further

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1 stipulate as to the names of the files and the description of  
2 those files as listed in each count of the Second Amended  
3 Information.

4 And that was ordered by the Court. All right.  
5 State, would you like to recall your witness who is still on  
6 the stand?

7 MS. ANTHONY: Yes. Detective Ehlers, please.

8 THE COURT: Good morning. Detective, you're still  
9 under oath. You may be seated.

10 You may proceed.

11 PAUL EHLERS, STATE'S EVIDENCE, PREVIOUSLY SWORN

12 DIRECT EXAMINATION (Continued)

13 BY MS. ANTHONY:

14 Q Good morning, Detective Ehlers. Where we left  
15 off yesterday, we were going through the images that you found  
16 on the HP laptop. I'd like to back up a moment and get some  
17 information regarding that HP laptop. And do you want to go  
18 ahead and get your computer out and running if you need it?

19 A If I could.

20 THE COURT: Yes.

21 BY THE COURT:

22 Q So you can get that going and I can ask you some  
23 questions so I can start.

24 A I believe I'm ready.

25 Q Are we ready? Okay. Let's talk about the HP

1 laptop. You forensically analyzed that laptop?

2 A Yes.

3 Q And did you use the same program as you used  
4 with the shuttle analyzing the shuttle computer?

5 A I did.

6 Q And did you use the write block program as well?

7 A Yes, I did.

8 Q Or device?

9 A Yes.

10 Q When you use that write block program and the --  
11 do you use FTK?

12 A That is correct.

13 Q Okay. And when you use both of those, all of  
14 the information we went through yesterday, the written date,  
15 the created date, the last access date, that information  
16 doesn't change because you use that write block program,  
17 correct?

18 A That is correct.

19 Q Okay. Did you also determine who the registered  
20 owner of that HP laptop was?

21 A I did.

22 Q And who was that?

23 A It was registered to Tony Castaneda.

24 Q The same owner as the shuttle computer?

25 A Correct.

1 Q And was there an install date?

2 A There was an install date of 9/10 of 2006.

3 Q Why is an install date important?

4 A The install date is going to show that that's  
5 when it initially -- the programs were placed on a computer;  
6 so pretty much everything after that date is going to be what  
7 you'll be seeing within all the files systems as such within  
8 it. But that's the actual date that the operating system was  
9 placed onto that computer, whether it was an old computer, in  
10 a new one, or brand new computer and then fired up, that was  
11 the initial date that it was placed in under that operating  
12 system containing all the files.

13 Q And you verified that the time -- the date and  
14 the time was working on the computer?

15 A Yes. And again, looking at that computer it  
16 also came up to Pacific Standard Time, which was matching  
17 local Las Vegas time.

18 Q All right. Let's talk about the USB stick.  
19 Showing you State's Exhibit 16. Do you recognize this item?

20 A I do.

21 Q And where did you first see this item?

22 A I first saw this item when I had obtained the  
23 evidence from our evidence vault after receiving the request  
24 to conduct a forensic examination on it, so that was my first  
25 contact with it. It was packaged up and sealed as evidence,

1 so I took it along with eight other items, which included the  
2 shuttle and the laptop as well, back to my office to conduct a  
3 forensics exam.

4 Q And you obtained them from the evidence vault,  
5 all of these items?

6 A That is correct.

7 Q Okay. Let's specifically talk about this USB  
8 drive, and showing you State's Exhibit 16. On this USB drive  
9 there's also a folder that's behind that USB drive. Can you  
10 describe what that folder is?

11 A The folder depicted right here is an actual  
12 cover, it's an envelope; and this is our police department's  
13 evidence chain or formally placed on when we impound evidence.

14 Q And when you go through the -- the file, or this  
15 evidence folder here, each time that it's taken out of the  
16 evidence vault it's signed and sealed?

17 A That is correct.

18 Q Okay. So you would have done that when you --  
19 you would have taken it out, signed and sealed it, and placed  
20 it back in the evidence vault when you were done with the  
21 item?

22 A That is correct.

23 Q And this one is a photograph of a USB stick  
24 prior to you getting it, correct?

25 A Or as I got it then, initially taken. I can't

1 determine whether or not this was when I had taken it or prior  
2 when another officer, as I see that Detective Ramirez had  
3 previously signed it out and taken it. I'd have to look a  
4 little bit closer to see --

5 Q You actually took photographs of the items when  
6 you took them out of evidence, correct?

7 A I believe I only took a photograph of this  
8 Imation drive was the only one, and I believe this was  
9 actually impounded by Shannon Tooley --

10 Q And you took this --

11 A -- and then taken out by Vince Ramirez.

12 Q And you took this photograph?

13 A I did.

14 Q And when you took this photograph, this USB  
15 stick was as it's shown here to the same or similar condition  
16 as when you first took it out of the evidence vault, correct?

17 A Yes.

18 Q Okay. When evidence is stored at -- while you  
19 guys are viewing the evidence, especially a USB stick like  
20 this, back at your office, what type of security measures are  
21 in place?

22 A Well, we're located in the Secret Service  
23 office, which is accessed only by agents and authorized  
24 personnel. Within additionally that office are several locked  
25 doors. We have a computer forensics lab, part of the

1 electronic crimes task force. This is a separate kind of  
2 cordoned off room within inside that actual office space  
3 building and only access is granted to the forensics examiners  
4 that work in that lab.

5           Additionally, then, when we're not working with the  
6 evidence, as such we'll bring it to our desk working on it  
7 with our computer systems, when we're done or over the weekend  
8 or it's not physically in our control, then it would  
9 additionally be locked into an evidence room again that only  
10 has access to the personnel. Secret Service has their own.  
11 Las Vegas Metropolitan Police Department has their own. We  
12 only have access -- only five people have access from the  
13 Metro side that are working there to gain access into that --  
14 the secondary vault.

15           Q     Did you do comparisons between this USB stick,  
16 the shuttle, and the HP computer? I think that's a bad  
17 question. Let me ask a better question.

18           A     Okay.

19           Q     This USB stick, you did some forensic analysis  
20 on it?

21           A     I did.

22           Q     Okay. And when you did that forensic analysis,  
23 what were you trying to determine?

24           A     At that point I was trying to determine if or  
25 not I could show any linkage or if I could determine whether

1 that USB stick had been placed into either one of the  
2 computers after finding these common files within these three  
3 items.

4 Q And were you able to determine any linkage  
5 between this USB stick and the shuttle computer?

6 A Yes, I did.

7 Q And what did you determine?

8 A I was able to determine that it had been  
9 inserted at least one time. We're only given or able to be  
10 shown the last insertion date, or the last connection date.  
11 It could have been a hundred times before that, a thousand  
12 times, or this could have been the only time. But I am able  
13 to determine that at least it was and I'm given the last  
14 access time that it was actually inserted into it.

15 And this is done by matching, again, kind of a  
16 digital fingerprinting-type thing going through registry files  
17 and being able to determine that this [inaudible] has its own  
18 unique number and being able to match up through parts of the  
19 registry to show that certain devices were mounted and  
20 connected to, which is going to give a parent [sic] prefix ID  
21 specific to matching up that item to that machine.

22 Q And so this USB stick was matched up  
23 forensically and it was inserted into this shuttle computer?

24 A That is correct.

25 Q What date did that happen?

1           A     For the shuttle, the last recorded date that I  
2 had, so the one date that I was given was 2/8 of 2009, so that  
3 would be February 8 of 2009 for the shuttle.

4           Q     And were you able to determine if this USB stick  
5 was placed into the HP laptop?

6           A     Yes, I was.

7           Q     And same forensic digital fingerprint matched?

8           A     Yes, by matching up with parent prefix ID  
9 numbers, the same process, I was able to determine that, yes,  
10 it was also inserted into there.

11          Q     And what date did that happen?

12          A     For the laptop it was on 6/1 of 2009, so June  
13 1st of 2009. Now both of those times are just given a UTC,  
14 which is universal time code. It would be eight hours  
15 difference than Las Vegas. Looking at the times, it looks to  
16 be close to that same date though, just the hours would be  
17 eight hour's difference from that.

18          Q     So eight hours forward or eight hours back?

19          A     We're going to be eight hours back.

20          Q     All right. Were you also able to look at the  
21 file structure of where these items were located, where the  
22 child pornography specifically was located?

23          A     This is on the laptop.

24          Q     Well, I'm actually going to ask you about all  
25 three of them. So, in general, on the USB, the shuttle, and



1 the laptop, did you look at the file structure of each of  
2 those items?

3 A I did.

4 Q And were you able to determine this from the  
5 file structure of each of those that they had the same or  
6 similar file structure?

7 A Yes, very similar. Exact same tree almost, just  
8 a few files may have been different; but otherwise it was  
9 almost like a duplicate.

10 Q And when you say "same tree," what do you mean  
11 by same tree?

12 A Same tree, same folder structure, so as I think  
13 as we discussed a little bit yesterday, you're going to have  
14 maybe user or a downloads or an initial folder, and then  
15 you're going to have sub-folder categories down within that  
16 which are going to contain files, and this was the same.

17 Q All right. I'm going to show you what's been  
18 marked and admitted as State's Exhibit 25. Hold on just a  
19 minute. All right. So State's Exhibit 25 shows the file  
20 structure, and this happens to be of the USB flash drive?

21 A Yes.

22 Q Okay. And on that USB flash drive we learned  
23 previously that the child pornography was all found under the  
24 adult folder girlpics?

25 A That is correct.

1           Q     And when you said similar structure on each of  
2 these three devices, would this allow you to help explain to  
3 the jury what you meant by that?

4           A     Exactly. As you can see here when I say the C  
5 drive, so this would be the base or the actual storage device,  
6 the hard drive or the flash drive memory. As we go down then  
7 we see to the left, you can see folder area right here, and  
8 these are going to contain the folder structures, and then the  
9 sub-folders that are located underneath those. So when I say  
10 "tree," this is a forensic term that we use to showing that  
11 type of view.

12          Q     Based on your analysis of these three items, the  
13 USB, the shuttle, and the HP laptop, could you determine if  
14 this was -- these items were transferred all at one time or if  
15 they were put on each of these devices separately?

16          A     I -- I think I understand. Is the question  
17 asked: Were they all occurring at the same time within all  
18 three devices?

19          Q     No. Sorry. Bad question. So here's the  
20 diagram that we've been working with, the list, and we've  
21 talked about these images in detail when they were placed on  
22 the -- the items. And my question is: Basically, the shuttle  
23 laptop -- let's talk about the shuttle. Can you determine if  
24 all of those were placed on at the exact same time or not,  
25 each of these items charged in Items 1 through 15? What is

1 your opinion as to that?

2 A I -- I -- as far as the created date, as I  
3 remember, they were all the exact same, and that would be  
4 indicative that they were all placed on that same date or at  
5 once possibly, or they were first introduced into that  
6 operating system at that time.

7 Q And that date was December 8 ---

8 A I believe it was December 10 --

9 Q December 10, 2008?

10 A -- 2008, correct.

11 Q And that was the same date as what happened to  
12 that computer?

13 A That was the same date as the install date of  
14 that operating system from that XP eventually upgraded to the  
15 Service Pack 3; so that XP was placed into service or  
16 installed on that date. These files also show to be on as of  
17 that date additionally. Possibly as an explanation on that  
18 one is when you install a new operating system and you request  
19 to bring all of your old stuff into your new stuff, it will  
20 show a new created date because it's being placed into that  
21 new operating system hierarchy.

22 Q Okay. The HP laptop, were all of the dates on  
23 -- the created dates of all those images the exact same date?

24 A I believe they were.

25 Q Would looking at your report help refresh your

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1 recollection?

2 A It would. I'd have to kind of go through each  
3 of the files to quickly look.

4 Q Take a quick look.

5 A Well, I can just see offhand right now that  
6 they're not the exact date, no.

7 Q Okay. They were placed on that HP laptop on  
8 different dates, correct?

9 A Created, that is correct.

10 Q And how many different dates?

11 A I just have gone through -- I'm up to seven, I  
12 believe, and I've noticed at least three different dates.

13 Q So what does that suggest to you regarding the  
14 HP laptop?

15 A That would suggest to me that those files were  
16 not transferred or placed onto there all at once together or  
17 created at one time, but probably taken on different dates and  
18 placed onto there.

19 Q Did you go through forensically the shuttle and  
20 the HP laptop and determine if there was a virus program  
21 working on those computers?

22 A No, I did not.

23 Q You didn't check to see if there was a virus  
24 scanner working?

25 A I did determine and check to see if there was

1 software in place. I didn't run a virus scanner itself to  
2 determine if not -- if there was anything on there in  
3 reference to that; but normally and what we'll do is determine  
4 or not whether -- what type of programs are operating on the  
5 system. It's common that we'll look for that and determine or  
6 see if they did have anti-virus or security software in place  
7 and/or running is common, and I did do that on both of those  
8 computers.

9 Q Okay. So you saw virus software that was  
10 installed on both of the computers?

11 A Security software which prevents viruses or  
12 alerts you to it --

13 Q Apparently I'm using the wrong terminology.

14 A -- just to clarify; and, yes, I did.

15 Q Okay. So what does that mean?

16 A Well, it means to me that there was in place  
17 some security software. Additionally, I had determined  
18 through link files that it had been recently accessed and it  
19 was up to date and it was getting updates so, therefore, that  
20 would lead me to believe that the computer was currently up  
21 to --

22 MR. WESTBROOK: Sorry, Your Honor. I have an  
23 objection. Can we approach, please?

24 THE COURT: Yes.

25 (Off-record bench conference.)

1 THE COURT: Overrule the objection, overruled.

2 BY MS. ANTHONY:

3 Q Additionally, did you take a look at the  
4 computer and look to see if there was any evidence of any  
5 virus happening on this computer?

6 A I did not.

7 Q When you do a precursor and you look at the  
8 different types of files, when you look at them, you would --  
9 if something was out of the ordinary you would notice that,  
10 correct?

11 A That is true.

12 Q And if something was out of the ordinary, that  
13 could possibly lead you to a virus?

14 A If there was an anomaly while going through the  
15 investigation that that could be a cause of that and something  
16 that we would look at further then.

17 Q Did you find that here?

18 A I did not.

19 MS. ANTHONY: Court's indulgence. Your Honor, I'd  
20 actually like to have this diagram marked just as a Court's  
21 exhibit. We don't need it admitted. And actually, I changed  
22 my mind.

23 THE CLERK: You don't want it marked?

24 MS. ANTHONY: I do want it marked.

25 THE COURT: You want to use it?

1 MS. ANTHONY: [Inaudible.]

2 THE COURT: Okay.

3 THE CLERK: So you are going to move to admit it?  
4 Okay.

5 MS. ANTHONY: Your Honor, at this point I move to  
6 admit State's Proposed Exhibit 78, comports with all the  
7 testimony.

8 THE CLERK: What is that again? I'm sorry.

9 MS. ANTHONY: It's a diagram. Well, it's a list of  
10 images.

11 THE COURT: Chart.

12 MS. ANTHONY: Chart.

13 MR. WESTBROOK: I would object to that. It's a chart  
14 that was created by Counsel and if the jury wants to see any  
15 of the testimony they can request it. It's not appropriate  
16 for an exhibit that was made in court by an --- by a prosecutor  
17 to be given back to the jury as though it were evidence  
18 because it's not.

19 MS. ANTHONY: It's demonstrative evidence that  
20 purports exactly to the testimony the witness gave.

21 MR. WESTBROOK: I'm sorry. I have not had a chance  
22 to review that document and listen to the testimony at the  
23 exact same time to make sure that she copied everything down  
24 properly. She's not a court stenographer. It's not  
25 appropriate.

1 THE COURT: All right. Well, the Court watched while  
2 she was doing it and she did it in front of the jury and it  
3 was from the testimony, so it will be admitted.

4 MR. WESTBROOK: I'd like to make a record that during  
5 part of her writing down she had a menu on the screen. I  
6 don't know -- this wouldn't be part of the record probably. I  
7 don't think it would show up on JAVS. She had a menu on part  
8 of the screen that was blocking the screen. I'd also like to  
9 note for the record that we appear to have a 42-inch monitor,  
10 which is approximately 20 feet away from the bench and about  
11 30 feet away from myself, and I don't think that anyone could  
12 look at that monitor and see exactly what was written and  
13 whether or not it was accurate during the course of that long  
14 testimony yesterday. Thank you, Your Honor.

15 THE COURT: All right. And the Court will note that  
16 the Court has a monitor and that I watched while the -- the  
17 exhibit was being created and so I know it was accurate from  
18 the testimony.

19 MR. WESTBROOK: Thank you, Your Honor.

20 THE COURT: And that's why I'm admitting it.

21 (State's Exhibit 78 admitted.)

22 MR. WESTBROOK: Of course, I don't have that  
23 technology.

24 MS. ANTHONY: And during -- just to address the menu  
25 issue, we stopped the testimony during the menu issue. My



1 co-counsel fixed the Elmo, and then we proceeded.

2 THE COURT: Correct. All right.

3 MS. ANTHONY: Thank you, Your Honor. At this point I  
4 will pass the witness.

5 THE COURT: Cross.

6 MR. WESTBROOK: Court's indulgence.

7 CROSS-EXAMINATION

8 BY MR. WESTBROOK:

9 Q A lot of material here. It's hard to tell  
10 exactly where to start; but I would like to start with the  
11 information that you left out while you were creating that  
12 list we were just discussing. You didn't -- well, first let's  
13 talk about the word "access." Access is not a synonym for the  
14 word "open," is it?

15 A No.

16 Q It's not. Now when you testified yesterday you  
17 said "access means opening, touching it, viewing it, saving  
18 it," that's what you said, right?

19 A I -- I'd like to point back to that, yes,  
20 synonymous accessing and opening in reference to that file and  
21 time date that we're talking about in computer terminology,  
22 yes, accessing would include opening that file.

23 Q It would include it, but it's not a synonym? In  
24 other words, an access date does not mean an opening date,  
25 correct?

1 A It can, yes.

2 Q It can; but it doesn't mean it by definition,  
3 does it? If you see an access date, it doesn't mean the file  
4 was opened, does it?

5 A It could.

6 Q Okay. If you see an access date, it could mean  
7 something other than the file was open, doesn't it?

8 A It could.

9 Q Okay. It could mean a lot of things, couldn't  
10 it?

11 A A few things.

12 Q Let's go over the list, shall we? It could mean  
13 that it was saved, right?

14 A Yes.

15 Q Could it mean that it was moved?

16 A Yes.

17 Q More importantly, could it mean that some other  
18 program accessed it?

19 A Yes.

20 Q In an automated fashion, right?

21 A Yes.

22 Q Like a virus scanner, for example?

23 A Yes.

24 Q Okay. Or a program that catalogs images, for  
25 example, Windows Media Player, right?

1 A Yes.

2 Q Okay. In fact, any program that catalogs its  
3 images, correct?

4 A I wouldn't say any program, no.

5 Q That catalogs images?

6 A And I won't say any virus scanner, no. I would  
7 say that some programs have the capability of modifying or  
8 changing the access date if they are touching those files; but  
9 as such, just in general, that all media players or all  
10 anti-virus programs are going to change that date, that is not  
11 correct.

12 Q Okay. Detective Ramirez disagrees with you, do  
13 you find that surprising?

14 A I'm not quite -- he's disagreeing with me --

15 Q He said virus scanners can change the access  
16 date and they always change the access date whenever they  
17 touch a file, that's what he said; do you disagree with that?

18 MS. ANTHONY: Your Honor, I think that misstates his  
19 testimony.

20 MR. WESTBROOK: I don't believe it does.

21 THE WITNESS: I think what you said was a virus  
22 scanner can change --

23 THE COURT: All right. Wait, wait.

24 THE WITNESS: -- it not a specific --

25 THE COURT: Detective, just a second.

1 THE WITNESS: I'm sorry.

2 THE COURT: I'm here. Okay.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: So there's an objection that's made. I  
5 just want to caution the jury, you need to rely on your own  
6 memory as to what a previous witness said. So I just ask that  
7 maybe you just ask him a direct question about it rather than  
8 recharacterize.

9 MR. WESTBROOK: I'll do that, Judge.

10 THE COURT: Okay.

11 BY MR. WESTBROOK:

12 Q What do virus scanners do?

13 A Virus scanners are usually part of a security  
14 program that's going to scan the computer determining what  
15 level you may set it at.

16 Q Let's say you set it at complete scan, the  
17 deepest possible scan, scan every file, what does it do?

18 A Again, depending on which program it is, because  
19 there are several different security programs.

20 Q Let's say it's AVG Virus Security.

21 A Okay. I don't know specifically all that AVG  
22 does; but in a general term it is going to scan, if you did  
23 such as a full scan it's going to scan the directories and the  
24 file system and determine or not whether it's picking up any  
25 hits of possible viruses or any known viruses from it's

1 signature list, which may differ from company to company or  
2 product to product.

3 Q And if it scans a file like, for example, a jpg,  
4 which is a photograph file, right?

5 A Yes.

6 Q Jpg is a photograph file, if it scans a file it  
7 will change the access date, won't it?

8 A Not all security programs change the access  
9 dates.

10 Q Can you tell me one that doesn't?

11 A Offhand I -- I don't know, and the reason I say  
12 that it's a myriad of difference of, one, the file system  
13 that's in place on the operating system, the security program  
14 system, so that software product in and of itself, what it's  
15 going to be doing, and again then what settings have been set  
16 up as far as scanning or checking additionally whether or not  
17 it may change it. So I don't know specifically what each and  
18 every one of those do. I do know that there are some that can  
19 change it, but not all; and that is from my experience in  
20 doing forensics as well as what I've learned from classes as  
21 well as community boards interacting with other investigators  
22 across the world.

23 Q File cataloging program, you know that has to  
24 change the access date, right? It's job is to catalog files,  
25 cataloging is access, it has to change the access date, right?

1           A     If you're cataloging that file directly then,  
2     yes, it would change it; but again, I'm pointing to direct  
3     that file to have some type of program look at it and then,  
4     yes, it would change it.

5           Q     I'm talking about the automated process of a  
6     graphics viewer, such as Google Picasa, or the resident  
7     Windows programs, this is what I'm talking about. I'm not  
8     talking about anything done manually. I'm talking about an  
9     automatic process. You open it up and it searches your  
10    computer for pictures, does it not?

11          A     In general, no, that's not what a graphics  
12    viewing program does do.

13          Q     Have you ever used Google Picassa?

14          A     I -- I played with it before, yes, and several  
15    other programs, yes.

16          Q     Okay. You've played with it. Did you notice  
17    that there was a little box in the bottom right-hand corner,  
18    when you open it up it said, Searching for graphics files, did  
19    you notice that?

20          A     No, but I'm not using that tool all the time,  
21    so, no.

22          Q     Okay. Would you admit that it's possible?

23          A     If that's what that program is designed to do  
24    then, yes, it could.

25          Q     Okay. Would it be reasonable to assume that an

1 automated process can change an access log?

2 A If it's directed towards that file then, yes, it  
3 would.

4 Q So you've noted several different files that  
5 have certain access dates, right?

6 A Of the 15 files that we're discussing?

7 Q Correct.

8 A Yes.

9 Q They have access dates?

10 A Yes.

11 Q Is it reasonable -- is it a reasonable  
12 interpretation of the evidence that those access dates could  
13 have been changed by an automated process and not by a human?

14 A It could occur, yes.

15 Q Okay. That is reasonable?

16 A Yes, it could occur.

17 Q Based on the evidence?

18 A I'm -- the evidence of? I'm not understanding  
19 that.

20 Q It's reasonable based on the evidence, you agree  
21 with that, right?

22 A No, I don't.

23 Q You just said you did. I asked you: Is it  
24 reasonable based on the evidence that you have before you, the  
25 access logs and the files; and you said it was reasonable.

1 And then I said, Based on the evidence; and you said, No. I  
2 guess I asked one question too many. Is that a reasonable  
3 theory that I just came up with that an automated process can  
4 change access dates?

5 A Yes.

6 Q Okay. Thank you. Let's go back to virus  
7 scanners. You said there was some virus security on this. Do  
8 you have a report that says that you looked at the virus  
9 security?

10 A No.

11 Q All right. How many -- I'm sorry. Did you look  
12 at this in 2000 -- what year did you look at this?

13 A I believe it was 2010.

14 Q 2010?

15 A Yes.

16 Q So it's been two and a half, three years?

17 A Yes.

18 Q All right. Do you remember doing this?

19 A I do remember conducting this investigation.

20 Q Okay. How many cases have you done between now  
21 and then?

22 A I would say somewhere between 50 to 80.

23 Q Okay.

24 A Or maybe even a hundred.

25 Q How many computers have you looked at between



1 now and then?

2 A Computers, I -- I can't recall the exact number.  
3 Digital storage devices, we're more and more getting into  
4 cellphones. But actual computers since that date, I would  
5 have to put it somewhere in the ballpark of 10 to 50.

6 Q With 80 cases and only 10 to 50 computers?

7 A Again, yes, and --

8 Q Okay.

9 A -- just to clarify that because we're going a  
10 lot away and -- and to clarify that: Actual computers, I  
11 would say a laptop or hard drive in this context as opposed to  
12 maybe a digital storage device, which would be a cellphone,  
13 tablet, or something like that.

14 Q Oh, I see what you mean. Okay. That makes  
15 sense. All right. So other electronic devices are also  
16 included in your investigations?

17 A That is correct.

18 Q So a lot between this HP laptop and the little  
19 desktop unit and today, fair to say?

20 A I would say somewhere between close to 80 cases.

21 Q Okay. Obviously you've gone through extensive  
22 training not just in computers, but also in police work,  
23 right?

24 A Yes.

25 Q You're a detective?

1 A Yes.

2 Q They don't just hand out the gold badge to  
3 anybody; you have to do a lot of training, right?

4 A Yes.

5 Q Okay. One of the things you were trained in  
6 doing was keeping meticulous records in reports, correct?

7 A Yes.

8 Q And yet you have no record in this case of doing  
9 a virus scan on this computer, right?

10 A That's correct.

11 Q And you have no record in this case of  
12 determining whether or not there was security software  
13 installed, do you?

14 A Written record, no.

15 Q Okay. And you have no record, even though you  
16 just testified to it, of checking the security software to  
17 make sure that it was updated, do you?

18 A Written record in written form, no.

19 Q Okay. But you're saying you remember going  
20 through the security software and checking the virus  
21 definitions and seeing that they were updated, right?

22 A That it did contain security software programs  
23 and that they had been updated and run; but not exactly of  
24 which version at that time and which definitions that they  
25 were incorporated into that program, no, I didn't.

1           Q     So you don't know whether the virus definitions  
2 were updated, do you?

3           A     No, I don't.

4           Q     Okay. And you don't even know the name of the  
5 program, do you?

6           A     I do recall the programs on these two computers.

7           Q     What are they?

8           A     On the shuttle desktop there was a Semantic  
9 Security Suite and on the laptop there was a Norton Anti-virus  
10 Program. Additionally, I did recall seeing Spybot, which is a  
11 search and destroy program, security-type program also.

12          Q     You didn't write that down anywhere, did you?

13          A     I didn't bookmark those specifically; but I do  
14 recall seeing them and whether or not they're somewhere in the  
15 digital report, they may be. Offhand right now I don't know.

16          Q     Would it surprise you to learn that he actually  
17 had AGV free installed, a free version of the AVG virus  
18 software?

19          MS. ANTHONY: And, Your Honor, I'm going to object.  
20 There's no foundation for that.

21          THE COURT: Sustained.

22          MS. ANTHONY: And motion to strike.

23          MR. WESTBROOK: I'm asking if he was surprised.

24          THE COURT: It's based upon facts not in evidence, so  
25 I'll grant the motion to strike. The jury will disregard --

1 it's merely a question, so you're to disregard any and not try  
2 to guess at a response until you lay an adequate foundation.

3 BY MR. WESTBROOK:

4 Q So your recollection of three years ago, Spybot,  
5 Norton, Semantic?

6 A Yes.

7 Q Okay. Why is it important to update your virus  
8 -- let's start even more broad than that. What are virus  
9 definitions?

10 A Well, the virus definitions -- to explain it  
11 commonly would be is what's known at that time of known  
12 viruses or exploits that have been uncovered or produced or  
13 identified by security companies. And so if there was a virus  
14 or an exploit that's been known, let's just say one that can  
15 attack Microsoft Word, then there's usually going to be a  
16 patch in for that to fix that direct product because the virus  
17 is going in and finding ways to maybe get into a computer  
18 system and exploit it in such manner, way or form. So the  
19 definitions are usually going to identify those and have  
20 patches then with the security product to block that path of  
21 -- of the files that they know up to that point of being  
22 malicious.

23 Q Why is it important to update your virus  
24 definitions?

25 A Because everyday new viruses are coming.

1 Q Every hour, right?

2 A Possibly, yes.

3 Q In fact, your software on your computer is  
4 updated every half an hour; is it not?

5 A No. In general, ours usually sometimes aren't  
6 even running virus scanners or virus software because we're  
7 not connected to the Internet insuring that our forensic  
8 machines can't get exploited.

9 Q What about the Internet-connected ones though?

10 A There's no set regulation. We do, as in  
11 general, at least for our unit, any laptops that we're going  
12 to use we employ security products and can insure that it is  
13 updated.

14 Q Do you have a different computer or computer  
15 system than Detective Ramirez? Obviously you have your own  
16 computer; but is he operating different software with  
17 different protocols than yours?

18 A Yes.

19 Q It is. All right. If someone has a product  
20 like Norton, that's a commercial product, right?

21 A Yes.

22 Q Semantic, it makes Norton; does it not?

23 A I believe so, yes.

24 Q And you have to actually pay for this program  
25 with money, right?

1           A     Depending. Some have three versions which may  
2 not be fully capable, and some others have a pay for them.

3           Q     To get new virus definitions you have to have a  
4 contract with Norton, you have to give them money, right?

5           A     I don't know.

6           Q     Okay. You don't know whether there was a  
7 contract with Norton on this computer that updated the virus  
8 protection, do you?

9           A     No, I don't.

10          Q     Okay. Now we know that you didn't search for a  
11 malicious virus on the computer, but you said you saw no sign  
12 of one, right?

13          A     Correct.

14          Q     Those signs are not always visible to human  
15 beings, are they?

16          A     No.

17          Q     That's why virus software exists, isn't it?

18          A     Excuse me.

19          Q     That's why virus software exists, so it can do  
20 the jobs we can't, right? One of the reasons?

21          A     I don't quite understand or follow the jobs that  
22 we did.

23          Q     Okay. As far as policing your computer for a  
24 virus, it would be very difficult every day to look through  
25 your registry and try to find some textual or — or

1 file-related clue that there's a virus on your computer,  
2 right?

3 A Correct.

4 Q It would be your full-time job?

5 A Without security software, which is the reason  
6 that you use it, yes, it would be.

7 Q Thus we have security software?

8 A Correct.

9 Q Okay. Do you know if there was a virus on the  
10 computer in 2008 when you allege that these files were put on  
11 the computer in the first place? And when I say "the  
12 computer," I'm talking about both computers, the desktop and  
13 the laptop?

14 A No, I do not know.

15 Q Okay. Cleaning a virus is not always an easy  
16 process, is it?

17 A Depends on the virus.

18 Q Right. Some of them are simple and known,  
19 right?

20 A Correct.

21 Q In fact, a lot of those viruses are what?  
22 Marketing viruses, does that make any sense?

23 A I guess for pop-up-type, logware-type stuff,  
24 yes, it could be.

25 Q Okay. Or like a malware, is that a term you're

1 familiar with?

2 A Yes.

3 Q Could you tell me what malware is -- or I'm  
4 sorry. Tell the jury what malware is. Me too.

5 A Well, these are all considered exploits. So  
6 malware along with viruses are going to be code that may be  
7 able to manipulate or do certain things within a computer. I  
8 -- I think that's the basic of it, to look at it of -- of what  
9 it can or can't it do and what the differences of these  
10 different types of exploits are; there's just a myriad of them  
11 of what you may want them to do. Some may be as simple as to  
12 throw a pop-up onto your screen.

13 Q Right.

14 A Some may be simple to just log your IP address.  
15 It just depends; but usually it is some type of code that is  
16 written to do something.

17 Q And then sometimes viruses are really hard to  
18 get rid of, aren't they?

19 A Some could be, yes.

20 Q There's different classifications even of  
21 viruses, aren't there?

22 A Yes.

23 Q There's, for example, viruses, trojans, and  
24 worms, oh my. Can you tell me the difference between those  
25 three?



1 A Specifically, no.

2 Q Okay. A trojan, do you know what that does?

3 A It could do certain different things as a  
4 classification; again, a myriad. A trojan generally as it's  
5 categorized by most of the security firms would be a -- pretty  
6 much a back -- back door exploit or something that's going to  
7 allow access to that computer.

8 Q Okay. Named after the trojan horse, wasn't it?

9 A Correct.

10 Q Because it looked like something that it's not?

11 A Correct.

12 Q When you get a virus that's difficult to clean,  
13 it's not just a push-a-button-make-it-disappear process, is  
14 it?

15 A I -- I would say it would depend.

16 Q Okay. Let's say it's the most difficult virus  
17 you've ever faced. It's not just push one button and make it  
18 -- make it go away, right?

19 A Correct.

20 Q You have to go into the registry and clean  
21 things up manually sometimes, right?

22 A Correct.

23 Q Okay. Now the registry is sort of the internal  
24 code in your computer that if most people saw it would just  
25 probably be an unintelligible list of -- of numbers and

1 letters, right? Lay people?

2 A Could be, yes. Normally you're not granted  
3 access to it. You have to specifically do work around it to  
4 get into it, yes.

5 Q Sure. In fact, you have to have administrator-  
6 level privileges even to open it, don't you?

7 A That is correct.

8 Q And sometimes you have to go in and delete  
9 things and rewrite things in order to get rid of a virus,  
10 right?

11 A Or tools that do that, yes.

12 Q Okay. And in the meantime the virus could have  
13 put things on your computer without your knowledge, correct?

14 A Could a virus do that?

15 Q Yes.

16 A Yes.

17 Q Okay. And if you don't know about them, and  
18 manually remove them, then they just stay where they were put,  
19 don't they?

20 A Depending what the virus is coded to do.

21 Q Sure. I mean, it could be even worse. They  
22 could be executable files that continually re-infect your  
23 computer if you don't remove them, right?

24 A Could be, yes.

25 Q Or they could be something like image files, for

1 example?

2 A Am I understanding that a virus could place an  
3 image file or is an image file?

4 Q Yeah. That's one of those many files of ours  
5 placed in our computer is an image file?

6 A It could place one, yes.

7 Q Okay. So if you had a virus -- could have been  
8 years ago -- and you got rid of it, there still could be some  
9 remnants left behind from the virus, couldn't there?

10 A I -- I -- remnants, pieces of code possibly  
11 written in somewhere.

12 Q Files, code, markers, other programs even. You  
13 got rid of the virus; but there could still be things that the  
14 virus delivered on your computer that you didn't get rid of,  
15 correct?

16 A Okay. I would say correct.

17 Q All right.

18 THE COURT: Mr. Westbrook, we're going to have the  
19 jury stand up and stretch. We have some noddors. Stand up.  
20 I'm seeing heavy lids and head nods. Got to pay attention.  
21 Anybody need any water or anything like that? All right.  
22 Everybody sit down. Mr. Westbrook, sorry.

23 BY MR. WESTBROOK:

24 Q One more thing about trojans, different types of  
25 files can carry that, right? For example, a trojan could be

1 inside a Word document, right?

2 A Yes.

3 Q And it could be inside really any executable  
4 file like a game program or something, right?

5 A Correct.

6 Q Okay. And it could be stuck inside a zip  
7 directory, which is, you know, a compressed file?

8 A Yes.

9 Q Correct? Okay. I want to go back to some of  
10 the information that you didn't discuss with opposing counsel  
11 on direct. You -- you didn't mention anything about access  
12 times on that sheet that was being written up here on the  
13 Elmo, did you? Just dates.

14 A I don't recall. On the access --

15 MS. ANTHONY: Objection, Your Honor. I'll withdraw  
16 it.

17 MR. WESTBROOK: Can I see the sheet? I don't have --  
18 my monitor was not working and I was way far away from it so I  
19 never actually saw what she was writing. Could I see it?

20 THE COURT: There are no access times written on the  
21 sheet.

22 MR. WESTBROOK: No access time.

23 THE COURT: There was testimony about different  
24 times.

25 MR. WESTBROOK: Okay.

1 BY MR. WESTBROOK:

2 Q Let's talk a little bit about access times. If  
3 you -- if you have an automated process, and let's say because  
4 you said it was reasonable and possible that an automated  
5 process can create an access log in a file, okay? We'll start  
6 from there. You have an automated program that's creating an  
7 access log on a file, okay? Sometimes it will get three or  
8 four files at once, right?

9 A I -- depending what the program is scheduled to  
10 do or what files, it may touch some, it may not touch others.  
11 I don't know.

12 Q Right. This is possible, though, correct? I'm  
13 asking if it's possible.

14 A If it's possible -- to understand the question  
15 -- is it possible if a program can change access times in a --  
16 in a group?

17 Q Yeah.

18 A Is that what the question was?

19 Q What I'm saying is if you have a program like a  
20 virus scanner and it's going around and it's scanning your  
21 files, sometimes it will scan every single file in a very  
22 organized fashion and sometimes it will jump around, is that  
23 correct, not hitting every file?

24 A I -- I would say that's up to the program  
25 whether -- whether -- how it actually is going to categorize

1 or what it's going to scan.

2 Q Correct. And it's possible depending on the  
3 program, right?

4 A That it's going to jump around?

5 Q Yeah.

6 A I don't know.

7 Q Detective Ramirez said that it was.

8 A I'm not Detective Ramirez.

9 Q Obviously.

10 MS. ANTHONY: Objection, Your Honor.

11 THE COURT: Counsel, I asked you not to make those  
12 kind of comments.

13 MR. WESTBROOK: I apologize, Your Honor. That was  
14 out of line.

15 THE COURT: Please don't make me --

16 MR. WESTBROOK: I retract that. Okay.

17 BY MR. WESTBROOK:

18 Q Let me ask you a different question. When a  
19 computer is looking at a file, it's possible for that computer  
20 program to look at it for a long period of time or really  
21 short period of time, right?

22 A I'm -- I'm not quite understanding. Can a  
23 program look at a file for a long period or a short period of  
24 time?

25 Q Yeah.

1           A     I guess it could. It could be programmed to do  
2 that.

3           Q     Okay. Is it possible -- strike that. Let's  
4 talk about the times that were left off the sheet. On  
5 3/24/2010 the file -- you had file access dates and -- and I  
6 think -- if I could see -- could I see that exhibit? Is that  
7 possible, since we're going to be [inaudible] to the jury I'd  
8 like to use it.

9           I think on 3/24/2010 you had file access dates for  
10 everything except for new-22 and new-38.jpg; is that accurate?

11          MS. BALLOU: Your Honor, Court's indulgence.

12 BY MR. WESTBROOK:

13          Q     And to be more specific, I think it's the  
14 shuttle computer that I'm talking about.

15          THE COURT: What was the question?

16 BY MR. WESTBROOK:

17          Q     3/24/2010 --

18          MR. WESTBROOK: Court's indulgence. I'm sorry.

19 BY MR. WESTBROOK:

20          Q     The laptop on 3/24/2010, did you have access  
21 dates for all the files, I believe, except for new-22 and  
22 new-38.jpg?

23          A     Okay. So on the laptop?

24          Q     On the laptop. I'm sorry. I got it confused.  
25 On the laptop.

1           A     I understand. Access dates of 3/24/2010, as I'm  
2 looking on those 15 identified or the images, that appears to  
3 be a common thing, yes. I'd have to check here for every  
4 single one. Yes, except for a couple of carved files which  
5 didn't have access dates, yes, they all appear to be  
6 [inaudible].

7           Q     Those accesses took place, according to your  
8 documentation which was not shared on direct, between 10:05  
9 and 2 seconds and 10:05 and 9 seconds, correct?

10          A     Yes.

11          Q     Seven seconds?

12          A     Yes.

13          Q     All those files?

14          A     Yes.

15          Q     Maybe other files that you didn't catalog too,  
16 correct?

17          A     Yes.

18          Q     Okay. A human didn't do that?

19          A     No.

20          Q     Same thing happens on 4/1 and 4/2/2010, multiple  
21 files accessed in a very small window of time, a few seconds?

22          A     Correct.

23          Q     You didn't bring that out on direct, that's not  
24 part of this list, is it?

25          A     I wasn't asked.



1 MS. ANTHONY: Objection, Your Honor. "Part of this  
2 list?" There's no dates and times on there.

3 BY MR. WESTBROOK:

4 Q You weren't ---

5 A Correct.

6 THE COURT: All right. What the objection? It's  
7 irrelevant? I mean --

8 MS. ANTHONY: He says -- it's misleading. His  
9 question is misleading. He says, And that's not part of this  
10 list. There's no dates or times on that list.

11 MR. WESTBROOK: Okay.

12 BY MR. WESTBROOK:

13 Q When we were going through the list --

14 THE COURT: Wait.

15 MR. WESTBROOK: I'm sorry. You're right. Need a  
16 ruling. Sorry.

17 THE COURT: Okay. I guess that's a correct  
18 statement. I'm more concerned with the question that he  
19 didn't bring it out on direct. I mean, it's -- he only can  
20 answer the questions.

21 MR. WESTBROOK: That's absolutely right.

22 BY MR. WESTBROOK:

23 Q You weren't asked that question by the State,  
24 correct?

25 A On those access dates or -- yes, [inaudible].

1           Q     The State is alleging that my client is guilty  
2 and they didn't ask you about the access times?

3           MS. ANTHONY: Objection, Your Honor. It's  
4 argumentative.

5           THE COURT: Overruled.  
6 BY MR. WESTBROOK:

7           Q     They didn't -- they're trying to prove that my  
8 client is guilty and they did not ask you about the access  
9 times which show that it's an automated process, did they?

10          A     No.

11          Q     Okay. Could you explain to me again what a  
12 modified date is?

13          A     A modified date is going to be when a file is  
14 actually changed or something is differentiated within it.

15          Q     Okay. And that can be an automated process too,  
16 can't it?

17          A     I mean, it could be. It could be scheduled to  
18 be one, yes.

19          Q     It could be an automated process that is in a  
20 piece of software automatically that doesn't change unless you  
21 change it, correct?

22          A     If you could -- if you could repeat that,  
23 please?

24          Q     Well, let me get it a little bit slower.

25          A     Okay.

1           Q     I just heard my own question in my own  
2 [inaudible]. When you get a program, some of them have  
3 processes and rules that they follow automatically, right?  
4 You don't program them in; they're designed to do it, right?

5           A     It's programmed to do it. But are you  
6 physically doing it, is that what you're asking?

7           Q     Yeah. What I'm saying is -- I'm trying to break  
8 it down a little bit. Sometimes when you buy a program there  
9 are certain things that it's designed to do by default, right?

10          A     Correct.

11          Q     Okay. Unless you change the defaults, it does  
12 what it's designed to do, correct?

13          A     That would be correct.

14          Q     Unless you studied it, you don't necessarily  
15 know what it's going to do, right?

16          A     That would be correct.

17          Q     Okay. So on 8/11/07 at precisely 2:06 and 30  
18 seconds a.m., new-35.jpg was modified, right?

19          A     I -- I would have to refer to find that file --

20          Q     Take your time.

21          A     -- and see what it actually says.

22          Q     I know it's a lot of material.

23          A     That was new-35?

24          Q     New-35.jpg on 11 -- 8/11/07, 2:06:30 a.m., and  
25 it's on the shuttle. It's on the shuttle. Thank you.

1           A     Okay. I'm seeing that and showing -- again, if  
2 you could repeat the modified date and time.

3           Q     Okay. New-35.jpg on the shuttle, modified, 2:06  
4 and 30 seconds a.m.

5           A     On 8/11/2007?

6           Q     Correct.

7           A     Yes, that is what I show.

8           Q     At the exact same moment, 8/11/07, 2:06 and 30  
9 seconds, new-35.jpg was modified on the HP laptop, a  
10 completely different computer? I'm sorry. 2:06 and 29  
11 seconds, I apologize. That one was one second earlier.

12          A     Yes. Now whether it was modified on that  
13 computer I -- I can't say specifically that; but I show that  
14 that was the last modified date on that file.

15          Q     So you can't tell which computer scans were even  
16 modified on?

17          A     Sometimes not specifically. Understanding that  
18 the times -- if I may, your created is going to be when it's  
19 placed onto that system. Well, the file can carry over the  
20 access and the modified dates and I think that's just  
21 important because when -- when you look at these dates  
22 sometimes a question will come up of how can a created date  
23 be, you know, after a modified or access date? Because the  
24 file keeps certain attributes that it does that a created date  
25 is going to be when it's placed within them.

1           Q     That makes the modified and created date sort of  
2 unreliable, doesn't it?

3           A     I don't think the created date is unreliable,  
4 and I don't think any of the dates are -- are specifically  
5 unreliable. It's -- it's in context of how the file system  
6 works and how it places it. So to say that one created may be  
7 after a modified, well, that would explain it because that's  
8 not when it was -- so when it was placed onto that file  
9 system, if it was changed and modified on that same day of  
10 that created date entered into there then it would be  
11 consistent with that date.

12           If it has a pre-dated one, maybe the question would  
13 be is: Well, how can you modify something if it wasn't even  
14 created yet? Because it's following or holding the attributes  
15 from that file coming into that environment or that system.

16           Q     All right.

17           A     So it -- it -- I can't guarantee that it was  
18 changed on there or not.

19           Q     Well, let's go back to the times. We did  
20 new-35.jpg on the shuttle. We did new-35.jpg on the HP  
21 laptop. Going back to the shuttle, new-33.jpg, 8/11/07, 2:06  
22 and 30 seconds, the exact same second as new-35.jpg; do you  
23 see that in there?

24           A     I don't. If you could go over it again?

25           Q     Sure.

1           A     I -- I'm not quite understanding if the question  
2 is: Why may some of these files be close in time?

3           Q     My question is: Is it true that those two files  
4 were modified at the exact same second, new-35.jpg and  
5 new-33.jpg? That's my only question.

6           THE COURT: On the same computer?

7           MR. WESTBROOK: Yes, on the shuttle.

8           THE COURT: Okay.

9           MR. WESTBROOK: Two files, the exact same second,  
10 modified.

11          THE WITNESS: Again, which files, please?

12          BY MR. WESTBROOK:

13          Q     New-35.jpg, the one you've already searched and  
14 confirmed, and new-33.jpg.

15          A     Yes. If you're asking -- to answer that  
16 question, yes, they have the same modified date and time.

17          Q     Okay. And then just for one more, let's go back  
18 to the laptop. New-33.jpg, modified 8/11/07, 2:06 and 28  
19 seconds.

20          A     That is correct.

21          Q     All right. Four files, two computers, two  
22 seconds, two files, exactly the same time, correct?

23          A     Correct.

24          Q     The fact is these are being automatically  
25 manipulated by some software, right?

1           A     That doesn't -- by those times and being that  
2 way, no, that doesn't indicate that to me.

3           Q     You think a person is doing that?

4           A     Possibly. I don't know.

5           Q     You don't know. You don't know, and you don't  
6 know if anyone has opened any of these file, do you?

7           A     I -- I would have to disagree with that and --  
8 and I would say that there is indications that files were  
9 accessed and interaction with them were done. And I would say  
10 that because of the few files that were found in unallocated  
11 space that were deleted; there would have to be interaction  
12 placing them there.

13          Q     Oh, you think the files were deleted? You think  
14 the files were deleted; is that correct?

15          A     Yes.

16          Q     Okay. Are these your carved files that you say  
17 are deleted?

18          A     Yes.

19          Q     Okay. You know that you don't get a carved file  
20 from deletion, right? It's not even true.

21          A     Excuse me?

22          Q     Is your theory that a carved file is created  
23 because of a deletion?

24          A     A deleted graphic file can be carved, yes.

25          Q     Okay. It can also be a partial download, right?

1           A     It could be, but that would be carving of it,  
2     yes.

3           Q     And you can't tell the difference between a  
4     deletion and a carved file, right? Or a deletion and a  
5     partial download, can you?

6           A     I -- I can in the fact of looking at that. If  
7     there was a partial download of a graphic file it's not going  
8     to have the same hash value or the digital signature  
9     fingerprint of what the full file would be, as well as there  
10    probably -- just depending on how much of it would be  
11    downloaded would be whether or not you're going to see some  
12    differences in the pixelation of a partial picture as to a  
13    whole picture, if it was maybe stopped during the downloading  
14    process. So I -- I would say that that's not true.

15          Q     You've done none of this analysis in any report  
16    on your carved files in this case, have you?

17          A     What analysis?

18          Q     Analysis as to whether or not these files were  
19    carved because they're deleted or because they're partial  
20    downloads, there's not a single piece of paper in all these  
21    stacks of paper where you have done any written analysis  
22    saying that, is there?

23           MS. ANTHONY: Your Honor, I'm going to object. Can  
24    we approach for a moment?

25           THE COURT: All right.



1 (Off-record bench conference.)

2 THE COURT: All right. Ladies and gentlemen, we have  
3 to excuse you for a brief while. Would you like to roam the  
4 hall? Okay. All right. That's fine. We're going to take a  
5 15-minute recess.

6 During this recess it is your duty not to converse  
7 amongst yourselves or with anyone else on any subject  
8 connected with this trial or read, watch or listen to any  
9 report of or commentary on the trial by any person connected  
10 with this trial or by any medium of information, including  
11 without limitation newspapers, television, the Internet or  
12 radio, and you are not to form or express an opinion on any  
13 subject connected with this case until it is finally submitted  
14 to you.

15 We'll be in recess until 11:00.

16 (Jury recessed at 10:45 a.m.)

17 THE COURT: All right. The record will reflect we're  
18 outside the presence of the jury. The witness is still on the  
19 stand. All right.

20 MR. WESTBROOK: Your Honor, there was an objection  
21 just now, I'm not sure what the objection really was to; but I  
22 think that the concern of the State is that in their opinion  
23 there is some report out there where this witness has done --

24 MS. ANTHONY: I actually don't want Mr. Westbrook  
25 talking for me.

1 MR. WESTBROOK: I'm repeating what was said from my  
2 perspective at the bench since it's not recorded. I will make  
3 my record and then I will welcome the State to make their  
4 record.

5 THE COURT: That's fine.

6 MR. WESTBROOK: Okay. They were concerned it seemed  
7 because they thought that there was a very complete report  
8 that included a specific analysis of whether or not these  
9 carved files were partial downloads or deletions, what the  
10 difference is between the two of them, and the process used.  
11 I'm saying that that does not exist, and that analysis was  
12 never done, and that the witness is guessing on the stand in a  
13 way that helps the State. That is what I'm trying to get out.

14 It's classic bias and impeachment evidence and I  
15 should be allowed to do it, and it has nothing to do with all  
16 of the other information that might be in the report, much of  
17 what has been excluded from this trial. That's my record.

18 MS. ANTHONY: Your Honor, if I may. Mr. Westbrook  
19 has completely misunderstood or misstated what my whole  
20 objection was about. My objection was about he asked this  
21 witness -- he holds up the file, You have not read in the  
22 report, You've not done this analysis. This witness doesn't  
23 know what he's holding up and his question was completely  
24 misleading to the detective.

25 He did do a report, and when I had him on direct I

1 asked him each and every time, I put down on that chart  
2 regarding those images and there are several images that are  
3 carved; and then I asked him about the digital fingerprint of  
4 them. And he said, Yes, they matched, and we put them on the  
5 chart.

6 So now Mr. Westbrook is trying to say that he's  
7 making it up right now, that there's not a report about it.  
8 Mr. Westbrook has the report that Mr. Ehlers -- or I'm sorry  
9 -- Detective Ehlers testified from. He has it over there and  
10 it's exactly what he used to testify from. That's my point.  
11 I don't want this detective to be tricked, and I believe that  
12 that's what Mr. Westbrook's trying to do about these reports.  
13 It's not that he's making it up and he can't just hold things  
14 up and say you've never done this.

15 THE COURT: All right. So, Detective, did your  
16 report, in fact, document that both the -- the one image and  
17 then the -- basically duplicate carved image that you found  
18 have the same digital --

19 THE WITNESS: Yes, it is contained in the report,  
20 Your Honor. The problem to expediently pull all of that  
21 information out now would be very difficult for me. Most of  
22 the reason is there's 15 files out of how many that were  
23 initially contained within this report. So, in all honesty,  
24 yes, that information is in the report. To pull each one of  
25 those files out now specifically from that report, which

1 contains all -- everything else, is going to take a long time.

2 MR. WESTBROOK: Your Honor, that actually wasn't my  
3 specific question. May I voir dire the witness? Because I  
4 feel that maybe I wasn't being clear enough.

5 THE COURT: All right.

6 MR. WESTBROOK: Did you -- when you looked at the  
7 files in question, which would be the carved files that you  
8 call them, did you do an analysis to determine whether they  
9 were partial downloads or whether they were deleted?

10 THE WITNESS: No; but I wouldn't do that.

11 MR. WESTBROOK: Okay. You testified today that they  
12 were deleted, correct?

13 THE WITNESS: Yes.

14 MR. WESTBROOK: But you don't know that because you  
15 didn't do the analysis, correct?

16 THE WITNESS: Well, there's not an analysis to be  
17 done to necessarily see if it can be deleted. That is a  
18 common -- it -- that is indicative that if that file is in  
19 this type of space then it was deleted. It couldn't have  
20 gotten there any other way except being placed in there. So,  
21 yes, that is what I believe occurred, yes, that was --

22 MR. WESTBROOK: Detective, it wasn't in a file.

23 THE WITNESS: There's not a --

24 MR. WESTBROOK: It wasn't in a file, was it? You  
25 said -- you said, If it's in a file. This is on the record I

1 assume, right? You said it wouldn't be in the file any other  
2 way. It wasn't in a file. It was an unallocated space,  
3 wasn't it?

4 THE WITNESS: I'm not quite understanding if -- if  
5 your understanding of the file system works of is this  
6 unallocated space, was that placed or is that in a file? I'm  
7 not understanding.

8 MR. WESTBROOK: It wasn't in a file folder?

9 THE WITNESS: Is it in a file folder in an allocated  
10 space? No.

11 MR. WESTBROOK: Yeah, that's what I'm saying. So, in  
12 other words, you don't --

13 THE WITNESS: No, the file -- the files in  
14 unallocated space are not in folders.

15 MR. WESTBROOK: You can't -- right, but you just  
16 said, The reason I know it was deleted is because it's typical  
17 that when these files -- when these are placed into files --  
18 which this one was not -- that the only way they get removed  
19 is by being deleted. This was never fully downloaded, ergo,  
20 it was not deleted, it's a partial download, right?

21 THE WITNESS: No, that's not what I'm saying at all.  
22 I -- I don't understand how you're assuming that.

23 MR. WESTBROOK: I'm listening to the words coming out  
24 of your mouth, that's how I'm assuming.

25 MS. ANTHONY: Your Honor, I'm really going to --

1 THE COURT: That's argumentative.

2 MR. WESTBROOK: All right.

3 THE COURT: And, you know, I'm getting it.

4 MS. ANTHONY: I'm getting it.

5 MR. WESTBROOK: Apologies, this is incorrect  
6 information, and the jury will be misled by this information.

7 THE COURT: Well --

8 MR. WESTBROOK: And, furthermore, he just admitted he  
9 never did an analysis to determine whether they were partial  
10 downloads or deletions.

11 MS. ANTHONY: But he said he didn't have to, and this  
12 is the problem, and you can't just argue with him because you  
13 don't like his answer, Westbrook.

14 MR. WESTBROOK: All right.

15 MS. ANTHONY: You can't.

16 MR. WESTBROOK: Your Honor, I would like permission  
17 to call --

18 THE COURT: That's Mr., Mr. Westbrook.

19 MR. WESTBROOK: -- a rebuttal witness in this case.  
20 I want to talk to you about it today because we'll obviously  
21 have to go into tomorrow or possibly Monday. I think what  
22 this witness is testifying to is not what was in any of his  
23 reports, so I couldn't possibly have been prepared for it  
24 because, again, this idea that this was -- the fact that there  
25 were carved files was in the report. The idea that he's going

1 to sit up on the stand and say to a jury that he knows they  
2 were deleted is complete bollocks, all right?

3 THE COURT: Well, okay. Wait.

4 MR. WESTBROOK: It is not true --

5 THE COURT: Wait, wait.

6 MR. WESTBROOK: -- and I have an expert or I will  
7 have an expert --

8 THE COURT: Well, fine.

9 MR. WESTBROOK: -- that will be able to say that.

10 THE COURT: Counsel, if you have an expert witness  
11 that has been noticed --

12 MR. WESTBROOK: I have him.

13 THE COURT: -- that you're going to put on, that's in  
14 your case. This is not rebuttal. You haven't put on a case  
15 yet. The State's not rested.

16 MR. WESTBROOK: Your Honor, the experts can be called  
17 in -- I don't mean right now. I'm talking about in our case,  
18 but there is no notice witness. I didn't think I would need a  
19 witness because I thought that he would testify consistent  
20 with his report, and this is not in his report.

21 MS. ANTHONY: And, Your Honor, if I could just make a  
22 record regarding --

23 THE COURT: You need to be --

24 MS. ANTHONY: If I could just make a record regarding  
25 the expert. They had an expert that went down to the forensic

1 lab and they went over all of this information. They had an  
2 expert. They didn't notice him. They went down there. They  
3 looked at all of this evidence and -- I don't believe this  
4 detective was present when it happened -- but they had an  
5 expert that went down there and looked at this information.  
6 They didn't notice an expert. This isn't a continual: We'll  
7 bring an expert. They chose not to. I mean, this isn't even  
8 an issue.

9 MR. WESTBROOK: Your Honor, no expert has ever been  
10 confronted with this information because this information  
11 didn't exist until five minutes ago. This is not part of a  
12 report. These were never called deleted files in any report,  
13 and if it was, please show me the report.

14 MS. ANTHONY: I believe he even testified to it in  
15 the prelims.

16 THE COURT: His testimony is that these files were  
17 found in unallocated space. In his experience, and correct me  
18 if I'm wrong, in his experience and it is his belief that the  
19 only way it would have gotten there was by it being deleted;  
20 is that what you're saying? If that's wrong then correct me,  
21 please.

22 THE WITNESS: I -- I can't say that the only way it  
23 got there was it was deleted because it could be from a  
24 previous installation or previous owner or previous material  
25 if it's found in unallocated, just depending. Now in this --



1 and the reason I say this is in this situation what would lead  
2 me to believe that it had been a deleted file was there was  
3 numerous activity on this computer.

4 As you put more information on a computer, it writes  
5 over this unallocated available space, and it starts rewriting  
6 over previous files that were deleted from previous operating  
7 systems, from previous owners, from all types of things. So  
8 my belief and conclusion is that these files were deleted  
9 files and that's where they've been recovered from.

10 And, yes, it is in the report that the MB5 [sic]  
11 would match or the digital fingerprint hashing of them would  
12 match up to the other files, which would show that they did  
13 exist on the operating system and they -- they have been  
14 there, but you don't get it placed into a file. Once it's --  
15 it's deleted it does go to that area to view up and say, Now  
16 you can write over me, I no longer need you.

17 MR. WESTBROOK: And that's true, that's one of the  
18 possible explanations and it being a partial download is  
19 another possible explanation, right?

20 THE WITNESS: Could that file which has the same  
21 fingerprint match as the -- as the ones currently also in  
22 other places on there, could that be a partial download? Yes,  
23 if it initially came as a possible download --

24 MR. WESTBROOK: Okay. That's it.

25 THE COURT: Wait. Let him finish.

1 MS. ANTHONY: He needs to finish.

2 MR. WESTBROOK: I'm sorry.

3 THE WITNESS: -- if it could be made as a possible  
4 download and then that copy or that file was placed onto these  
5 other objects or devices they would all have the same digital  
6 fingerprint; I would say, yes, that could occur. I believe  
7 the question was is this was a digital download which differs  
8 from a deleted file, and I say that that's not true.

9 MR. WESTBROOK: You said that the deletion, though,  
10 is only one possible explanation and there are others,  
11 correct?

12 THE WITNESS: That is correct.

13 MR. WESTBROOK: All right. That's it. That's all I  
14 need. Why was it so hard?

15 THE COURT: Okay.

16 MR. WESTBROOK: I'm ready whenever you are.

17 THE COURT: All right. So --

18 MS. ANTHONY: Your Honor, just for the record, this  
19 is not new information. It's in the preliminary hearing  
20 transcript.

21 MR. WESTBROOK: Purports. The -- whoever was hired  
22 -- and remember, I've been on this case for two weeks, sorry  
23 to be the fly in everyone's ointment -- I've been on this case  
24 for two weeks and I've reviewed everything. The -- I don't  
25 believe that -- Leon?

1 UNIDENTIFIED SPEAKER: Leon.

2 MR. WESTBROOK: -- yeah, the person who was hired as  
3 an expert was asked any of these specific questions or even  
4 look at the preliminary hearing. So the fact that it might be  
5 in a preliminary hearing testimony, unless it was in a report,  
6 which I don't believe it was, then he wouldn't even have had  
7 access to it.

8 THE COURT: So?

9 MS. ANTHONY: You have access to it.

10 THE COURT: You have access. Your expert has access.  
11 You can give your expert anything you want.

12 MR. WESTBROOK: I understand. I understand, Your  
13 Honor; but I'm trying to correct the assumption that he looked  
14 at preliminary hearings. I don't even think they had been  
15 produced.

16 THE COURT: All right. So where are we? I mean,  
17 you're fine that you can use him, cross?

18 MR. WESTBROOK: Well, here's where we are, Your  
19 Honor, and I intend to resume cross with just one question if  
20 that's all right with everybody, and so it's not compound too.  
21 My question I intend to ask will be: It is your belief that  
22 these files were deleted, right?

23 THE WITNESS: The unallocated.

24 MR. WESTBROOK: Yeah, the -- the carved -- I'll be  
25 more specific, and tell me if I got -- if I've got this right.

1 It is your belief that the carved files were deleted?

2 THE WITNESS: These carved files which were found in  
3 unallocated, then yes.

4 MR. WESTBROOK: Okay. But there are other  
5 explanations for how those files could have gotten on there  
6 other than deletion, right?

7 THE WITNESS: No. Probable, but there -- there --  
8 just because it's in unallocated doesn't mean that it  
9 automatically was a personally deleted file.

10 MR. WESTBROOK: Your Honor, do you see the issue  
11 here? Because he's the one who came up with the explanation  
12 just a second ago and he didn't say "they weren't probable  
13 but." But when I ask him the exact same question, just  
14 echoing his own testimony to him, then he changes his answer.  
15 This is the big problem, and this is why I think I need to be  
16 able to call a rebuttal expert. I'm going to need to research  
17 this because he is giving us stuff that doesn't exist  
18 anywhere, we could not possibly prepared for, and we have a  
19 right to call a rebuttal expert, even if not noticed.

20 THE COURT: Well, I'm not seeing it at this point.  
21 You had -- you had your opportunity, you did have an expert  
22 that I presume, you know, was requested, paid for, and you've  
23 chosen not to put that person on and now you want to bring  
24 somebody else.

25 MR. WESTBROOK: We didn't have an expert on this

1 topic, Your Honor. This would be somebody completely  
2 different.

3 THE COURT: To me this -- this is all inclusive. I  
4 mean, you just -- I'm not seeing that.

5 MS. ANTHONY: Your Honor, if I --

6 MR. WESTBROOK: In that case --

7 MS. ANTHONY: If I --

8 MR. WESTBROOK: I'll just go back in with those  
9 questions.

10 THE COURT: Yes, go ahead.

11 MS. ANTHONY: We continued this trial the last time  
12 for them to hire an expert. That is why this trial was  
13 continued.

14 MS. BALLOU: It actually isn't because it was  
15 continued last time because of Officer Carpenter's report and  
16 to get an expert; but the main reason was because of Officer  
17 Carpenter's report or Detective Carpenter's report.

18 MS. ANTHONY: Okay. So it was part of the reason  
19 that the case was continued and since that time they did get  
20 an expert.

21 THE COURT: Well, I -- my recollection was -- I mean,  
22 we were ready to go that day and the Defense said they weren't  
23 prepared. They were resisting -- they had been resisting and  
24 -- and then a lengthy record was made about, I believe, you  
25 were new to the case; isn't that right? Or --

1 MS. BALLOU: No.

2 THE COURT: -- somebody else was.

3 MR. WESTBROOK: Warren Geller [phonetic] was on the  
4 case.

5 THE COURT: Okay.

6 MS. BALLOU: No. The first time it was continued in  
7 November with me was because I was new to the case; and then  
8 February when we were supposed to go I had announced not ready  
9 because I hadn't had contact with my client. You said we had  
10 to go anyway. And then when I did the file review with Ms.  
11 Anthony, we got that report that we didn't have before. I  
12 said that that was not Ms. Anthony's fault because she was,  
13 you know, she hadn't been the main person on it before and --  
14 and we hadn't had an opportunity to -- because Officer  
15 Carpenter or Detective Carpenter's report was about something  
16 he allegedly overheard when my client was speaking to his son,  
17 so we needed to then speak to the son and do some other  
18 things, and we did also say something about getting an expert.  
19 But my recollection is that the main reason we continued the  
20 trial in February was because of the detective's report that  
21 we hadn't had.

22 THE COURT: But then you did get an expert after that  
23 time?

24 MS. BALLOU: Yes.

25 THE COURT: Okay.

1 MS. ANTHONY: And when Mr. Westbrook is questioning  
2 Detective Ehlers, the problem that I see happens is that he  
3 asks general questions: It is possible, it is possible, it is  
4 possible. And, of course, the Detective says, Okay, yes, it  
5 is possible. But then when he asks him the question: In this  
6 case is that what happened? The detective says, No. And  
7 that's where the problem becomes with Mr. Westbrook because he  
8 doesn't like the answer and then he goes back and asks  
9 questions: But you just said that it's possible. He's like  
10 right, it didn't happen here.

11 THE COURT: Well then, then the proper objection is,  
12 you know, misstates the testimony. I mean, if he wants to ask  
13 general questions and, Is it possible, and you feel it's not  
14 relevant, then the proper objection is, you know: Objection,  
15 calls for speculation, it's irrelevant. But, I mean, you've  
16 got to make contemporaneous objections. It's not a matter of  
17 I -- I'm going to say to him: You can't ask these questions.  
18 And if you feel it's confusing, you know, that he's confused  
19 the issue, then you need to come back on redirect.

20 MS. ANTHONY: I was just explaining what just  
21 happened right here; but, yes, I understand. Thank you.

22 THE COURT: Right. I mean, I -- I see that too, that  
23 there's a difference between a general question in theory  
24 something could happen. Do you think it happened in this  
25 case? No, I don't. Why? Because, and he explains it. All

1 right. Are we ready to --

2 MR. WESTBROOK: I think we are, Judge. Thank you.

3 THE COURT: And, you know, I never made a record.

4 MS. ANTHONY: Dave, your jacket.

5 MR. WESTBROOK: Thanks.

6 THE COURT: The law clerk who is present with us, is  
7 he -- what is it? Rule 49 certified?

8 MR. WESTBROOK: Are you? He's not -- he's not doing  
9 anything as far as witnesses.

10 THE COURT: Then he's supposed to be behind the bar.

11 MR. WESTBROOK: Oh, I'm sorry. I didn't realize  
12 that, Your Honor.

13 THE COURT: Yeah. Only lawyers or people certified  
14 are. I just assumed he was certified.

15 MR. WESTBROOK: Yeah, I don't know whether he is or  
16 not, Your Honor. It's a training program function.

17 THE COURT: Okay. Then he needs to be behind the  
18 bar.

19 MR. WESTBROOK: My apologies. I didn't know the  
20 rule.

21 THE COURT: That's okay. Are we ready to recommence?

22 MR. CHEN: Yes, Your Honor.

23 (Jury reconvened at 11:04 a.m.)

24 THE COURT: All right. Please be seated. The record  
25 will reflect we are back within the presence of the jury.



1 Will Counsel so stipulate?

2 MR. WESTBROOK: We will, Your Honor.

3 MS. ANTHONY: Yes, Your Honor.

4 CROSS-EXAMINATION, continued

5 BY MR. WESTBROOK:

6 Q Okay. I think that when we left I had asked you  
7 whether or not you had done any specific analysis as to  
8 whether or not the files that you think were deleted were  
9 actually just partial downloads that failed at some point. Is  
10 that -- is that how you recall where we left off?

11 A I do, yes.

12 Q Okay. The -- what you're opining here is that  
13 these files were deleted, right?

14 A Yes.

15 Q Okay. And we're only talking about, I guess,  
16 the carved files, right?

17 A In specific -- of these 15, then yes, I believe  
18 there was two or three that were carved.

19 Q Okay. Were these files duplicates of other  
20 files that were elsewhere on the computer?

21 A Yes.

22 Q Okay. Were they exact duplicates or were they a  
23 different file format?

24 A I -- I know -- and just to clarify this, if I  
25 could. When you say "exact duplicates" and are they the same

1 file format, yes, they are duplicates, the digital  
2 fingerprints are the same. Are they the exact same file name  
3 and structure? No. As an example, there was a few bmp's,  
4 bitmap [phonetic], they're also a graphic file as well as a  
5 jpg, if that answers --

6 Q And these are specifically tiffs, right?  
7 T-I-F-F.

8 A They could be. I'm not positive. I'd have to  
9 look again.

10 Q Could you look [inaudible] for me because that's  
11 my recollection and I want to make sure it's right?

12 A This is on the carved unallocated ones  
13 [inaudible].

14 Q That's right, carved and allocated. And for the  
15 jury, a tiff file is another graphic file, correct?

16 A Correct.

17 Q Okay. Is it fair to say that jpg files -- while  
18 you're looking for that -- jpg files are small and really good  
19 for the web, but tiff files tend to be much larger?

20 A I -- I don't know that tiff files are much  
21 larger.

22 Q Okay.

23 A Of the three that I see from carved and  
24 unallocated, they were all jpgs.

25 Q Okay. No tiffs or bitmaps?

1           A     I believe there were bitmaps, but I do not  
2 recall tiffs.

3           Q     Okay. You found these in unallocated space,  
4 right?

5           A     Those ones from unallocated that are carved that  
6 we talked about before, yes.

7           Q     Okay. So were they in temporary Internet files?

8           A     I did not find those from temporary Internet  
9 files.

10          Q     Okay. Just unallocated, which I guess means  
11 they weren't in a specific file folder; is that fair to say?

12          A     No. I don't -- I don't believe it is.

13          Q     Okay. What does unallocated mean?

14          A     If I could clarify unallocated. Unallocated  
15 space is basically going to be free space on a drive. So if  
16 you had a 300-gigabyte drive, but your operating system and  
17 all your files are only using up 100 gigabytes of that area,  
18 then you would have 200 gigabytes available to write to and  
19 use, to continue to store and add things onto the file system.

20                The way file systems work is as I delete, remove  
21 other items and add other items, they go to areas on the  
22 computer, just depending -- it's not all at the end. It could  
23 be all over the place; but it's an available area.  
24 Unallocated will be that the file system reads and says, You  
25 may write to this area.

1           Now forensically we're able to sometimes go in and  
2 look at this and see that area and say, Did it contain data  
3 from previous things that's not currently in the logical being  
4 used file system, operating system?

5           Q     Okay.

6           A     So as in this case that's where these three  
7 files were located in this unallocated area, which it means  
8 it's available to write to.

9           Q     Okay. So if something is in an unallocated  
10 area, that means that the hard drive can write over it, it's  
11 not protected, right?

12          A     That is correct.

13          Q     Okay. So it's like if I've got a bike in my  
14 garage, I don't care about it anymore, I can put it out by my  
15 garbage can, put a sign on it that says, Free, and anybody can  
16 just take it; is that fair to say?

17          A     I -- I don't see the relation to being --

18          Q     I'm sorry to throw an analogy into this.

19          A     -- as far as taking something away, I didn't  
20 follow that.

21          Q     I apologize. I'll withdraw the question. I  
22 apologize for trying to throw an analogy into it. Okay.

23                It can be overwritten if it's in unallocated?

24          A     That is correct. It is available to hold data  
25 storage, new information.

1 Q Okay. All right. There are other ways that you  
2 can get a carved file other than deletion, correct?

3 A I -- I just want to clarify this -- this carved  
4 and unallocated because theoretically --

5 Q I'm sorry. That wasn't my question. That's  
6 non-responsive. There are other ways to end up with a carved  
7 file other than deletion, correct?

8 THE COURT: A carved file where, I guess?

9 MR. WESTBROOK: In unallocated space.

10 BY MR. WESTBROOK:

11 Q I'm talking about these files. Let's -- let's  
12 be specific to these files. There are other ways that these  
13 files or any files that are partial or carved can get that way  
14 other than deletion; isn't that right?

15 A Yes, they could be there from something  
16 previous, yes.

17 Q Okay. There are a couple other ways, aren't  
18 there?

19 A Well, what I want to say or just as an  
20 understanding as deleted is it's no longer -- either, one, it  
21 was deleted or it's previous information that is not currently  
22 being used. So, in essence, that would be a deleted data  
23 also, I'm not no longer wanting or using.

24 Q Oh, I see -- I see what you mean. So if it's in  
25 an unallocated space, it could also be overwritten by some

1 program and then it would be deleted, correct?

2 A It would be overwritten on that space of the  
3 drive, so, right, you wouldn't be able to carve it or retrieve  
4 it.

5 MR. WESTBROOK: Okay. Court's indulgence.

6 BY MR. WESTBROOK:

7 Q If something is an infected virus file and the  
8 virus scanner is trying to purge it, then you get a deletion,  
9 wouldn't you?

10 A I would have to say that would depend on the  
11 virus program. Most of them quarantine them first unless it's  
12 specifically set to automatically delete, so it's -- it's  
13 specific upon the actual program --

14 Q Well then let's be --

15 A -- and what the user settings are.

16 Q I'm sorry. I didn't mean to interrupt you. I'm  
17 sorry. Let's be really specific. Let's say Norton  
18 Anti-virus.

19 A I don't know specifically how Norton Anti-virus  
20 would quarantine or treat infected files. I don't know.

21 Q In -- in a lot of virus programs that you're  
22 familiar with, there are two settings, right? One that says  
23 send infected files to quarantine and one that says delete the  
24 files, right?

25 MS. ANTHONY: I'm going to object, Your Honor, at

1 this point to relevance regarding virus programs that are out  
2 there and they need to be specific as to this computer and  
3 what -- which computer he's talking about. Whether it  
4 happened on some virus system that's out there is irrelevant  
5 unless it happened here.

6 THE COURT: All right. Sustained. Let's narrow it  
7 to these computers.

8 BY MR. WESTBROOK:

9 Q You didn't record which specific virus program  
10 was on this computer, did you?

11 A I remember it, depending which computer you're  
12 asking about.

13 Q I'm talking about either computer, the shuttle  
14 or the laptop, did you record what specific virus program was  
15 on either of these two computers?

16 A I didn't write it down, no.

17 Q And you can't tell me right now that it was  
18 Norton Professional, you can't tell me whether it was Norton  
19 Network, you can't tell me whether it was Norton Freeware; you  
20 can't tell me the specific program that was used, right?

21 A That is correct.

22 Q That's information you don't have and you don't  
23 know, correct?

24 A It -- it is within our images of -- of the  
25 evidence; but, no, I don't have it written out directly, no.

1 Q There's an image in the evidence that shows the  
2 specific version of Norton Anti-virus that was on these  
3 computers?

4 A Well, there's an image which shows everything of  
5 the computer, everything that was on it, so, yes, that -- that  
6 is information that is there.

7 Q All right. Do you have any doubt that there are  
8 ways that you can set Norton Anti-virus to either quarantine  
9 files or delete them?

10 A Specifically, no, because I don't use Norton;  
11 but in general, yes, that is a practice of security files to  
12 quarantine or delete, yes.

13 Q Okay. And you don't know whether or not that  
14 happened here, right?

15 A In reference to these unallocated files?

16 Q Correct.

17 A In reference to that Norton program, no, I  
18 don't.

19 Q You don't know. Okay.

20 MR. WESTBROOK: Court's indulgence.

21 BY MR. WESTBROOK:

22 Q Computer dates can be changed and modified,  
23 can't they?

24 A Yes, they can. Are we talking in reference to  
25 computer dates, file dates, just typically everything?



1 Q File dates; yeah, everything.

2 A File date specifically then, yes, they can also  
3 -- any computer date, I mean, just depending -- of all the  
4 dates that are in there, how computers work, yes, they can be  
5 changed.

6 Q Okay. Now I know that you looked at the dates  
7 located -- I'm sorry. Are computer clocks located in the  
8 bios, BIOS, bios; is that what it's called?

9 A Yes.

10 Q Are there other places where computer clocks are  
11 located on a Windows machine?

12 A Well, it keeps track of several time zones in  
13 reference to different programs put times in differently,  
14 that's why we see UTC and conversions and things along this  
15 line. The basic operating system and the machine are on the  
16 bios, which is actually outside of the hardware to show the  
17 actual time frame of that machine. We then confirm that with  
18 the operating system the time that was set and insure that  
19 they are correlated at that time and that's what we can say  
20 was the time frame when we took the machine that it was set  
21 for. So, yes, the bios is initially how you set that time  
22 zone or time on your computer.

23 Q Okay. I know you looked at the bios and you  
24 determined that both the laptop and the shuttle were very  
25 close to Nevada meantime, within a few minutes, right?

1 A Correct.

2 Q Okay. You have no way of knowing whether they  
3 were, though, in 2008, do you?

4 A No.

5 Q No. Or any other time before the time that you  
6 actually viewed them?

7 A Right. I mean, I can only verify the time when  
8 I looked at it at that time to say yes.

9 Q Okay. This pornography was housed on a computer  
10 network, correct?

11 A Not that I know of, no.

12 Q It was two computers that were networked; is  
13 that more specific?

14 A I don't know if these computers were networked.

15 Q You don't know that these computers were  
16 networked?

17 A No.

18 Q Do you know whether there was a wireless router?

19 A I believe there was; but I didn't deal with that  
20 information and that wouldn't have been my job at that scene,  
21 no.

22 Q You're not familiar with the name Network  
23 Master?

24 A No, I'm not.

25 Q Okay. You know the computers were password

1 protected, right?

2 A Yes.

3 Q Okay. Password was dogcat123; does that sound  
4 familiar?

5 A I don't know.

6 Q You don't know the password?

7 A No.

8 Q How did you get in without the password?

9 A Our software allows us.

10 Q Okay. Windows passwords are breakable?

11 A All passwords are breakable, just depends how  
12 strong they are.

13 Q Okay. Did you ever go to the house in question?

14 A I was there at the search warrant, yes.

15 Q Okay. Did you see the password written down  
16 anywhere on the papers?

17 A I didn't, but I wasn't looking.

18 Q Okay. You weren't -- you weren't specifically  
19 looking for that?

20 A Correct.

21 Q Did you see the wireless router sitting right  
22 next to the computer?

23 A I -- I do remember seeing a router; but again,  
24 didn't take that information and that wasn't my function  
25 there.

1           Q     So I guess in reviewing this you also didn't  
2 look -- you didn't search anything involving the access of the  
3 router to the network because you didn't know there was a  
4 network?

5           A     That's not what I was tasked with. I initially  
6 was tasked to look at Craig, the son's laptop, as I had  
7 previously stated, so that was my function there --

8           Q     Okay.

9           A     -- that day at that search warrant.

10          Q     All right. This -- this password, you know it  
11 was password protected, just not about the network, right?

12          A     I'm sorry?

13          Q     I'm sorry. You know the computers, both of  
14 them, the laptop and the shuttle, were password protected?  
15 Whether or not there was a network, these individual computers  
16 were password protected, right?

17          A     Okay. Yes.

18          Q     Okay. And they had an administrative password  
19 under the Tony account, right?

20          A     For the Tony account had password protection on  
21 it? Is that the question?

22          Q     Yes.

23          A     Yes.

24          Q     And it was an administrative password, right?

25          A     Does -- are you asking if the Tony account had

1 administrative rights on his account?

2 Q Privileges, yeah.

3 A Privileges which you can allow when you set that  
4 up? Yes.

5 Q Okay. So you -- you have to have that level of  
6 privilege in order to download files onto the computer, right?

7 A No, not necessarily no. In general, no.

8 Q Did you review any of the other accounts that  
9 were on the computers?

10 A I -- I did look at a few of the other accounts,  
11 specifically as we're talking of the laptop and the shuttle in  
12 reference to who those users were and some of the material  
13 located within or the files located within those structures; I  
14 did -- I did recall looking at those, yes.

15 Q And none of those other ones had download  
16 privileges, did they?

17 A They would all have download privilege.

18 Q File installation, software installation  
19 privileges?

20 A Yes, they could.

21 Q But you don't know one way or the other?

22 A I don't know whether they were admin accounts;  
23 but you don't need to be an admin account to install software  
24 onto a machine.

25 Q That's true, but you do have to have software

1 installation privileges? I mean, that's a separate level of  
2 privilege, isn't it?

3 A No, there's -- there's not a software  
4 installation privilege, no.

5 Q What about the guest account, can they install  
6 software?

7 A Yes.

8 Q So every account on the computer had the ability  
9 to download and install software?

10 A Yes.

11 Q Okay. Certainly people had access -- let me  
12 strike that.

13 If someone has access to the password of the Tony  
14 account, then when they go onto the computer it would just say  
15 Tony, wouldn't it?

16 A Yes, if that's the -- if that's the account they  
17 logged into, yes.

18 Q Okay. If there's multiple people in the house  
19 and they have the password, then you can't tell if it's Mr.  
20 Castaneda or one of the other people in the house who's  
21 logging on as Tony, right?

22 A I can't specifically see who's behind the  
23 computer at that log-in time because I'm not there, so we rely  
24 on other means.

25 Q Okay. And there's no software in the world that

1 can tell you whether a file was opened, right, or reviewed?

2 A No, there is software to be able to determine or  
3 not if files have actually been viewed or open. There --  
4 there --

5 Q Not in this case, though, right?

6 A No, no, in this case, no.

7 MR. WESTBROOK: Court's indulgence.

8 BY MR. WESTBROOK:

9 Q You mentioned that you searched Mr. Castaneda's  
10 son's computer, right?

11 A Previewed it, yes.

12 Q Okay. Was that the Sony laptop, like a Sony  
13 Vaio, does that ring a bell?

14 A I believe that's what it was, yes.

15 Q Okay. And that was searched, I guess, because  
16 it was in the house, right?

17 A Yes. The search warrant directed to be able to  
18 look at all computers, preview, and determine or not, yes.

19 Q Okay. I mean, you couldn't very well overlook a  
20 computer in the house just because it belonged to somebody  
21 else, right?

22 A I -- I -- in general -- I'm not quite  
23 understanding. Did we look at all the computers? I don't  
24 know. I know the computer I looked at at the scene.

25 Q Okay. Would it be normal police procedure in a

1 case like this where what you're doing is searching for the  
2 presence of child pornography on -- on hard drives or flash  
3 drives or computers, would it be normal police procedure to  
4 ignore a computer that was inside the house?

5 A To ignore searching it, previewing it? Or  
6 seizing it? I -- I'm not quite understanding.

7 Q Searching it or previewing it.

8 A I would say it would have to be case specific;  
9 so I couldn't say in general, again, to understand directly on  
10 this one.

11 Q In this house are you aware of any computer that  
12 was not searched? And I'm including in the word "computer,"  
13 hard drive slash -- any -- anything capable of holding  
14 computer data.

15 A Either previewed?

16 Q Yes.

17 A As -- as searched I would say no because I don't  
18 know everything that was impounded. I know what was requested  
19 for me, the eight items I took from the evidence vault.

20 Q Previewed.

21 A But I don't -- so I don't recall. I don't know  
22 if there were computers there that weren't looked at, were  
23 left or -- or things like that. I know that they impounded  
24 these eight items that I further investigated and did search  
25 as well as the one laptop that I recall personally from Mr.



1 Castaneda's son.

2 Q Okay. Did you search any computers belonging to  
3 either Michael Landeau or Tami Hines?

4 A Not that I recall, no. They weren't part of the  
5 eight evidence items that I examined, no.

6 Q Okay. These files, these child pornography  
7 files, they've been around for many years, haven't they?

8 A These specific 15?

9 Q Yes.

10 A I don't know.

11 Q You don't know their origin?

12 A No, I don't.

13 Q You know they're on the FBI registry, right?

14 A I'm not sure what you mean by FBI registry.

15 Q Does the FBI keep track of child pornography  
16 files?

17 A I don't know of the FBI having a specific  
18 database of child porn. I know that the Department of  
19 Homeland Security, ICE, does have one as well as an  
20 organization called NcMec, which is utilized by FBI high- tech  
21 task forces, so to speak. So there are databases of child  
22 pornography photos, which are used for investigations to keep  
23 track of them. As a matter of fact, if in a case where we  
24 were to recover some and they weren't on that list, we would  
25 send them to those agencies to be added.

1 Q And they were on the list, right?

2 A I don't know.

3 Q You don't know. Okay. You know anything about  
4 Ephex, E-P-H-E-X?

5 A I do not.

6 Q Okay. Do you know what software is utilized by  
7 Federal agencies, like the ones you mentioned, in order to  
8 track these files across the Internet?

9 A I -- I don't specifically work with those, no.

10 Q Okay. You have the thumb drive in your  
11 possession. Did you have the full serial number of the thumb  
12 drive?

13 A I would have to review the paperwork to  
14 determine. Again, serial numbers, especially on digital  
15 devices differ a little bit because sometimes you'll have a  
16 written serial number on the outside of something, but a lot  
17 of times on digital devices you'll have a digital serial  
18 number also that may match or it may differ, depending on  
19 manufacturer.

20 Q Are you able to find that quickly or -- or -- I  
21 might be able to take a look. Let me take a look real quick  
22 and see if I can get it for you.

23 MR. WESTBROOK: May I approach the witness?

24 THE COURT: Yes.

25 BY MR. WESTBROOK:

1 Q Do you recognize this report?

2 MS. ANTHONY: Counsel, what page?

3 MR. WESTBROOK: I'm sorry. Page 3 of 6. It's the  
4 examiner's report.

5 THE WITNESS: Yes.

6 BY MR. WESTBROOK:

7 Q Okay. That's the same one you've got there?

8 A That is correct.

9 Q Okay. Great. I can just take mine and go back.  
10 Is the serial number on there?

11 A For Item No. 8, which was that Imation USB flash  
12 drive, yes.

13 Q Okay. Could you read the serial number?

14 A 2065, C as in Charlie, 9, B as in Baker, 48, D  
15 as in David, 30AA, Adam Adam.

16 Q So you got the full serial number and the  
17 company that manufactures it is Imation; is that correct?

18 A Yes.

19 Q Okay. Did you ever call Imation to try to  
20 figure out who the owner was?

21 A No.

22 Q Did you ever call Imation to find out what the  
23 manufacture date was?

24 A No.

25 Q Do you know where this thumb drive came from?

1           A     Specifically, no. I just -- I know where I  
2 retrieved it from and my contact with it from the evidence  
3 vault is where I first had contact with it. Previously to  
4 that I do not.

5           MR. WESTBROOK: Okay. And what's the magic button  
6 that makes that screen happen? That's not a question for you,  
7 sir, because I don't expect anybody no matter how much of an  
8 expert to be able to operate this. There we go. Thank you  
9 very much.

10 BY MR. WESTBROOK:

11           Q     This date up here that says "date prepared"?

12           A     Yes.

13           Q     February 8, 2010?

14           A     Correct.

15           Q     What is that [inaudible]?

16           A     You would have to ask the person that filled it  
17 out. It appears to be Detective Tooley; but normally that  
18 will be the date that that item was -- that package was  
19 produced and that item was placed inside of it.

20           Q     Okay. And so for the record I might be  
21 referring to State's 16. Okay. So 2/8/10 is when this  
22 package was prepared, this envelope and everything was written  
23 on it?

24           A     I don't know. I didn't prepare this package so.

25           Q     Generally that's what that date means?

1 A Yes.

2 Q Okay. I noticed at the bottom here that you  
3 don't have a signature on the chain of custody?

4 A That is correct.

5 Q Why is that?

6 A We -- we won't sign that until we return the  
7 material. We'll -- after we're completing, if we open an  
8 evidence package, we'll do whatever we have to with that  
9 actual item, evidence process, whatever it may be. Upon  
10 completion and no longer needing the item, we'll reseal it  
11 back in, then place our information there, and return it to  
12 the evidence vault.

13 Q Okay. So when this picture was taken you hadn't  
14 yet reviewed it, put it back in, sealed it and returned it; is  
15 that fair to say?

16 A That is correct.

17 Q Okay. That makes sense.

18 MR. WESTBROOK: Court's indulgence. Sorry to take so  
19 long. For a case about computers I have a lot of papers.

20 THE COURT: Mr. Westbrook?

21 MR. WESTBROOK: Sorry, Your Honor. Just a few more  
22 questions.

23 THE COURT: Okay.

24 MR. WESTBROOK: I'm drowning in paper. May I  
25 approach?

1 THE COURT: Oops. Almost a collision.  
2 MR. WESTBROOK: Almost. Sorry.  
3 THE COURT: Yes, you may.  
4 BY MR. WESTBROOK:  
5 Q Have you seen this before?  
6 A This is Detective Ramirez's.  
7 Q Okay. Have you reviewed this?  
8 A As in review, no. I've looked at it and seen  
9 it, yes.  
10 Q Okay. Do you know what it is?  
11 A Yes.  
12 Q What is it?  
13 A This is files that were bookmarked from  
14 Detective Ramirez's initial exam or looking at the USB device,  
15 the thumb drive.  
16 MR. WESTBROOK: Okay. I'd like to mark this as  
17 Defense next in order.  
18 THE COURT: Okay.  
19 MR. WESTBROOK: I'm not going to move to admit it at  
20 this time.  
21 THE COURT: Okay.  
22 MR. WESTBROOK: But I'd like to publish.  
23 THE COURT: No, you can't.  
24 MS. ANTHONY: Your Honor, I'm going to object.  
25 THE COURT: You can't publish something that's not

1 admitted.

2 MR. WESTBROOK: All right. Can I give you my copy  
3 and I'll get my own?

4 THE WITNESS: Sure.

5 MR. WESTBROOK: Thanks.

6 MS. ANTHONY: And what is that again, Mr. Westbrook?

7 MR. WESTBROOK: It's Defense next in line. It's --  
8 we'll call it the thumb drive report of Detective Ramirez.

9 BY MR. WESTBROOK:

10 Q Directing your attention to Number 3. The file  
11 name is EURO-001.jpg, correct?

12 A Yes.

13 Q Now according to this log it was last accessed  
14 on 2/7/2010, right?

15 A That's what is written here, yes.

16 Q Okay. And it was last written on 2/7/2010,  
17 right?

18 A That's the date, yes.

19 Q So written and accessed on that date?

20 A Yes.

21 Q Okay. Tell me again what -- what "written"  
22 means.

23 A Well, written basically is -- we covered it  
24 earlier -- is modified. It -- it's -- in this instance why  
25 that may differ a little bit from the other ones that we had

1 seen is again because of the file system. It's a FAT32 file  
2 system as opposed to the NTFS file system on the computer,  
3 laptop, and the shuttle.

4 Q Okay.

5 A But that as is written is the same as in  
6 modified.

7 Q Modified. Okay. So according to this, this  
8 file was modified on 2/7/2010?

9 A Yes.

10 Q This thumb drive?

11 A To this report, that's what that's stating.

12 MR. WESTBROOK: Okay. I'll pass.

13 BY MS. ANTHONY:

14 Q Since you have the report --

15 THE COURT: Redirect?

16 MS. ANTHONY: I'm sorry, Your Honor. Thank you.

17 REDIRECT EXAMINATION

18 BY MS. ANTHONY:

19 Q Since you have that report let me just ask you a  
20 quick question about Number 3, which happens to be for the  
21 jury State's Exhibit 12. We're talking about the shuttle  
22 device. The last written was 2/7/2010 with a time of 10:03:54  
23 p.m?

24 A Just clarification. This appears to be the  
25 thumb drive.



1 Q That's what I meant. Thank you. Thumb drive.

2 A Okay. I'm sorry again. The -- Counselor, the  
3 date?

4 Q I'm looking for the last-written date and I'd  
5 like also to inform the jury of the time.

6 A Last-written date shows it's 2/7 of 2010 at  
7 10:03:54 p.m. is what it states.

8 Q Okay. And on the same file, the file-created  
9 date is what?

10 A 11/25 of 2008.

11 Q And that date tells you what, created date?

12 A That was the date that file was placed onto that  
13 device or introduced into there.

14 Q Okay. Defense counsel spent a lot of time  
15 asking questions about things that were possible. It's  
16 possible this, it's possible that. I want to ask you specific  
17 questions directed to the evidence in this case. So let's  
18 first talk about in this case how many hours have you spent  
19 investigating the shuttle, the USB drive, and the laptop  
20 computer?

21 A I don't know.

22 Q All right. How many hours?

23 A I mean, on and off, working on other cases, I  
24 mean several hours, actually days were spent in reference to  
25 going through these, preparing this forensic report and

1 examination in reference to pulling certain things out.

2 Q Would you say 20 hours or more?

3 A More than 20 hours.

4 Q Defense counsel asked you about it's possible  
5 that the dates and times of any of the files that we've been  
6 talking about, it's possible that the dates and the times were  
7 changed; and you answered, It's possible, correct?

8 A Yeah. I think he asked is there programs or is  
9 it possible that dates can be changed. I think he asked it in  
10 files or others, but, yes.

11 Q In this case, State's Exhibits 1 through 15, the  
12 laptop, the shuttle, the USB, do you have any evidence that  
13 any of the dates or times were changed?

14 A As manipulated or altered from what they should  
15 be stating?

16 Q Correct.

17 A No.

18 Q Do you have any evidence in this case that any  
19 of these images were placed on the thumb drive, the shuttle,  
20 or the HP laptop by a virus?

21 A No.

22 Q What about malware?

23 A It would be the same as a virus. Were they  
24 placed there by that? There's no evidence of that, no.

25 Q Defense counsel spent a lot of time talking

1 about automated programs. In this case, do you have  
2 additional information regarding search terms that allows you  
3 to know that there were things in place that were happening on  
4 specifically the shuttle computer that would lead you to  
5 believe it wasn't automated regarding search terms?

6 A I'm not quite understanding.

7 Q Okay. Let me ask a better question. Defense  
8 counsel asked that and he went through the times of -- I  
9 believe it was the last access date and you went through the  
10 times?

11 A Yes.

12 Q And you said that it's possible that some of  
13 this -- they were accessed by automated program.

14 A Yes.

15 Q And you said that was possible?

16 A Yes.

17 Q I want to talk about some information that you  
18 have on that shuttle computer that shows that it's not  
19 automated and that would be you mentioned the search terms  
20 were used on that shuttle device, correct, of the Internet?

21 A I don't see how those are correlating if -- are  
22 you asking if search terms --

23 Q You're being -- I'm being not technical --

24 A I -- I'm just not quite understanding you.

25 Q Let me ask a better question. Did you have any

1 information on the shuttle device that it was accessing the  
2 Worldwide Web?

3 A Yes.

4 Q Okay. And accessing certain Internet sites?

5 A Certain, yes.

6 Q Okay. And special search terms were placed into  
7 those Internet websites?

8 A I looked and recalled and reported and pulled  
9 out a few search terms that I did find and recover from the  
10 Tony account, yes, that were included into my report.

11 Q Okay. Let's talk about those. So it was the  
12 Tony account. What search term was used under the Tony  
13 account?

14 MR. WESTBROOK: Your Honor, this is not responsive to  
15 cross. We never discussed any of this.

16 THE COURT: Well, I -- that's overruled. I think it  
17 is relevant to what was asked on cross.

18 THE WITNESS: Yes, I found search terms "young",  
19 Y-O-U-N-G, were entered in several sexual porn sites that were  
20 visited.

21 BY MS. ANTHONY:

22 Q And what are those sites? Read them for the  
23 jury.

24 A Fuq, F-U-Q, dot com; [Inaudible].com;  
25 Videosbang.com; Pornsunami.com; Xvideos.com; X2movies.com;

1 and [Inaudible]2.com. Those are the ones that I had listed  
2 and remember from.

3 Q And that search term would have been placed into  
4 each and everyone of those Internet websites?

5 A I'm not positive it was in each and every one.  
6 I do remember at least three of them had that "young" term  
7 placed into those.

8 Q Which three?

9 A I'm not positive. I don't recall.

10 Q And that was under the Tony user account?

11 A That is correct.

12 Q And it wouldn't have been an automated system?

13 A No, that was not an automated system.

14 Q When the last-written date and the created date  
15 are the same, what information does that tell you regarding  
16 that image?

17 A Well, if the last-written date and the created  
18 date are the same then that would be that that file was  
19 accessed and placed into the computer at the same date and  
20 time; that's what that would indicate to me.

21 Q What if the written date is before the created  
22 date, what does that mean?

23 A Again, as I explained a little bit earlier, you  
24 can have a modified date and a written date or access date  
25 that are going to be different or earlier than the created

1 date and the reason being is that file again maintains those  
2 attributes over, but it's created date is going to be when  
3 it's actually placed into that new environment or -- or that  
4 computer.

5         So as an example, a file on a SD card of a picture is  
6 taken and put into your computer. Well, the date that that  
7 picture was taken could actually be its modified date, but yet  
8 it's a month later and now you're going to put it and store it  
9 on your computer. Well, you're going to have that modified  
10 date of when that picture was taken and you're going to have a  
11 created date of that day that you're placing it into that new  
12 storage system.

13         Q     When Defense Counsel was asking you on cross, it  
14 appeared that you wanted to clarify regarding unallocated and  
15 carved space. You were trying to answer a question. So I  
16 just wanted to give you that opportunity now. Did you have  
17 some clarification regarding unallocated and carved space?

18         A     I was just getting a little confused in  
19 reference to -- to those pictures that were carved. All of  
20 these images that were recovered from these devices, all  
21 graphics, are carved out. Again, as I think I stated earlier  
22 yesterday, was to carve that image out and pull it, it's going  
23 to look at the file signatures or headers, determine that it's  
24 a graphic file, and it's going to place it into this area that  
25 I've asked it to. The difference being -- so there can be --

1 a carved image can be in, you know, your picture's folder or  
2 it could be on your desktop or it could be deleted or it could  
3 be from web pictures or wherever. So I didn't want to say  
4 that carved automatically meant that it was in an unallocated  
5 area.

6 We carve unallocated area to get material that is not  
7 part of the logical system out anymore, such as deleted  
8 pictures or previous material that was maybe on that hard  
9 drive, we're able to carve this unallocated space, again which  
10 is free spacing showing that it could be written to which no  
11 longer currently holding logical files or systems that you  
12 have up and running when you log in. I think that was the  
13 clarification I was just trying to understand and make.

14 Q And what -- so then he was -- Defense Counsel  
15 was asking some questions about carved and allocated.  
16 Unallocated, when a carved image is in the unallocated space  
17 it has special meaning to you in this case, correct?

18 A Yes.

19 Q And what does it mean in this case?

20 A In this case it appears that this was a deleted  
21 picture that was able to be pulled back out from previous and  
22 restored, so to speak, which matched other [inaudible].

23 Q And if it was a deleted picture, what does that  
24 mean had to have been done to it?

25 A Well, if it's an unallocated and deleted

1 picture, then it just -- to me, a forensic investigator, it  
2 would show that there had to have been some linkage or some  
3 type of interaction with this file. It doesn't automatically  
4 go there. So if this file was in unallocated, it would show  
5 that a user actually had contact or interaction with it as  
6 opposed to it just being placed on there or downloaded at one  
7 time, never viewed or touched.

8 Q And you found images carved in unallocated space  
9 in both the shuttle and the HP laptop?

10 A I believe there was three. I would have to  
11 confirm that.

12 Q Can you, please?

13 A Yes. The shuttle, yes; and the laptop also,  
14 yes.

15 Q Thank you. Defense counsel asked you about the  
16 NCMEC, so the National Center for Missing and Exploited  
17 Children.

18 A Yes.

19 Q And he asked you about submitting these images.  
20 That wasn't your role in this case, correct?

21 A No. I -- that would be the actual ICAC  
22 investigator in reference to that. So normally in a -- in a  
23 child pornography investigation, if we recover files, however  
24 many that is, we'll make sure that they're not duplicates.  
25 We'll provide a separate list for that then detective to



1 provide. And again, that's to base up and get these  
2 comparisons and digital fingerprints in case these files are  
3 recovered from later on other places. It's a database that  
4 stores this information.

5 Q Defense counsel asked you about the guest user  
6 account on the shuttle computer. Was that guest shuttle  
7 computer -- guest account on the shuttle computer ever logged  
8 on?

9 A I would have to check.

10 Q Can you, please?

11 A No, it was not logged into.

12 Q In your opinion, are you able based on your  
13 training and experience, are you able to form an opinion as to  
14 how these images -- and I'm showing you State's Exhibit 78 --  
15 how the images on the USB shuttle and HP, where they  
16 originated between these three devices and how or if they were  
17 transferred between them?

18 A Yes.

19 Q And what is your opinion?

20 A Well, it showed with -- with the USB and the  
21 linkage to be able to show as well as the created dates which  
22 are placed on these devices when those files are introduced  
23 into it, and it showed a correspondence, basically a path of  
24 the files were created on the laptop, the created dates  
25 accessed on the USB, and also showing reconnected to the

1 laptop went to the USB and then the created dates showing  
2 eventually coming to the shuttle, which was the desktop, and  
3 again, matching up that USB configuration and connection, so  
4 that's what it showed.

5 MS. ANTHONY: Court's indulgence. I'll pass the  
6 witness, Your Honor.

7 THE COURT: Recross?

8 RECROSS-EXAMINATION

9 BY MR. WESTBROOK:

10 Q You didn't find the search term "child" in  
11 Google, did you?

12 A I'm sorry?

13 Q You did not find the search term "child" in  
14 Google, did you?

15 A I -- I don't know specifically if Google; but I  
16 did search for a few terms in Internet history; and again,  
17 depending on whether using Internet Explorer, Google, Firefox,  
18 or the myriad of Web browsers, I did not.

19 Q So you never found any evidence of a search for  
20 the word "child"?

21 A No.

22 Q "Child pornography"?

23 A No.

24 Q "Prepubescent teens having sex"?

25 A I didn't search for that, so I don't know if it

1 was there or not.

2 Q You found the word "young"?

3 A Yes.

4 Q Okay. And then you found it entered into a site  
5 called FUQ.com, right?

6 A I don't know if that was site -- that specific  
7 site that that term was entered. I know a few of those. I  
8 believe there was eight that I listed that that term had been  
9 entered into.

10 Q Okay. Did you visit all eight of these sites to  
11 see what they were?

12 A No, I did not.

13 Q Did you visit any of the eight sites to see what  
14 they were?

15 A No, I did not.

16 Q Are you aware that they're all legal porn sites?

17 A Am I aware?

18 Q That they are all legal porn sites?

19 A I -- I don't know.

20 Q Do you know what happened when you put the word  
21 "young" into any of those sites?

22 A No.

23 Q Do you know anything about the porn business?

24 MS. ANTHONY: I would object, Your Honor. The porn  
25 business?

1 MR. WESTBROOK: I can narrow it.

2 THE COURT: I was going to say that's a little vague.

3 BY MR. WESTBROOK:

4 Q The porn business, it's a multi-billion dollar  
5 business, right?

6 A I -- I don't know how much they make; but, yeah,  
7 I imagine it's a lot.

8 Q In your training and experience you've had to  
9 look at pornography websites, correct?

10 A Yes.

11 Q Having to investigate them and see what they  
12 are?

13 A In relation to certain cases, yes, we would.

14 Q Okay.. Now you're obviously not making any  
15 allegations that these websites were in any way illegal, are  
16 you?

17 A No, I don't -- I don't know; but I'm not making  
18 that assumption or accusation, no.

19 Q And are you aware whether or not "young" or  
20 "teen" or "cheerleader" are popular search terms?

21 A Those are.

22 Q Are they very popular search terms?

23 A I -- I don't know their ranking; but I know they  
24 are hot as [inaudible].

25 Q Either Number 1 or Number 2 in the United States

1 of America, is that accurate?

2 A I'm sorry?

3 Q Either Number 1 or Number 2 in the United States  
4 of America?

5 A I don't know specifically.

6 Q You haven't researched any of that?

7 A No.

8 Q Okay.

9 MR. WESTBROOK: Court's indulgence.

10 BY MR. WESTBROOK:

11 Q Okay. It's still your theory that the files in  
12 the unallocated space were deleted?

13 A That's what I believe, yes.

14 Q They can be deleted by an automated program,  
15 they can be deleted by their being overwritten, and they can  
16 be deleted by a user, correct?

17 A Yes.

18 Q Okay. You don't know which of those processes  
19 was used?

20 A Specifically, no.

21 Q Okay. And you, in particular, don't know  
22 whether this man, Mr. Castaneda, himself manually deleted any  
23 file on that drive, do you?

24 A Again, I would have to put him directly as  
25 seeing him on the keyboard, no.

1 MR. WESTBROOK: Nothing further.  
2 MS. ANTHONY: Nothing further, Your Honor.  
3 THE COURT: May this witness be excused?  
4 MS. ANTHONY: Yes, Your Honor.  
5 MR. WESTBROOK: Thanks.  
6 THE COURT: Thank you. All right. Ladies and  
7 gentlemen, it's lunch time.  
8 MR. WESTBROOK: And, Your Honor, can I request that  
9 he remain under subpoena in case we need to call him tomorrow  
10 in our case in chief. I don't know if we will or not, but we  
11 can arrange that in housekeeping later.  
12 THE COURT: All right. Are you leaving town?  
13 THE WITNESS: I'm flying out to Hoover, Alabama.  
14 THE COURT: When?  
15 THE WITNESS: Tomorrow evening.  
16 THE COURT: Okay. Tomorrow evening at what time?  
17 THE WITNESS: I think the flight is about at 5:30.  
18 THE COURT: Which means you need to be at the airport  
19 by 2:30.  
20 MR. WESTBROOK: Your Honor, I don't want to  
21 inconvenience the witness. Maybe we can discuss it in  
22 housekeeping.  
23 THE COURT: Okay. Thank you. You don't happen to  
24 have any exhibits? 78? Ms. Anthony, would you check. He has  
25 something. All right. Okay.

1           So lunch time, was an hour enough time for you to get  
2 lunch yesterday? No, actually the day before. That was fine?  
3 An hour? Okay. All right. So that will be it. So one  
4 o'clock.

5           We'll be in recess until 1:00 and during this recess  
6 it is your duty not to converse amongst yourselves or with  
7 anyone else on any subject connected with the trial or to  
8 read, watch or listen to any report of or commentary on the  
9 trial or any person connected with this trial or by any medium  
10 of information, including without limitation newspapers,  
11 television, the Internet or radio, and you are not to form or  
12 express an opinion on any subject connected with this trial  
13 until it is finally submitted to you. Until 1:00.

14           (Jury panel recessed at 11:58 a.m.)

15           THE COURT: All right. Record will reflect we're  
16 outside the presence of the jury and before the witness leaves  
17 the courtroom and courthouse. I want to establish the  
18 parameters whereby his subpoena would be extended because it's  
19 not going to be extended for very long.

20           MR. WESTBROOK: I understand, Your Honor, and I think  
21 given the -- the time that we probably won't be able to close  
22 today, we'll close tomorrow morning. I know we can get to the  
23 other two witnesses because I assume that Landeau is not  
24 complicated, so we can get to the other two witnesses today.  
25 I assume that Shannon will take a little while.

1 MS. ANTHONY: Detective Tooley will. We're going to  
2 play the statement, which is an hour and a half long, Your  
3 Honor.

4 MR. WESTBROOK: Oh, well, I didn't know that. Okay.  
5 I have an objection to them playing the entire statement, by  
6 the way, which I can lodge in a minute, but --

7 MS. BALLOU: We don't start tomorrow until 1:00.

8 MR. WESTBROOK: We don't start until 1:00 tomorrow.  
9 And you have a flight at 2:30?

10 THE WITNESS: It's a -- it's a two-week -- just for  
11 your information, Your Honor, it's Hoover, Alabama, Secret  
12 Service Electronic School for two and a half weeks. It's been  
13 set up. I don't even know if I could even back out at the  
14 last moment.

15 THE COURT: All right. He needs to --

16 MR. WESTBROOK: Well, I understand, Your Honor.

17 THE COURT: So --

18 MR. WESTBROOK: Can I keep him on subpoena for the  
19 rest of the day? My request would be to keep him on subpoena  
20 as long as I need him because I know it's a planned vacation  
21 and everything.

22 THE COURT: It's not a vacation.

23 MR. WESTBROOK: I'm sorry. He's out of state.

24 THE COURT: Yeah, it is scheduled out-of-state  
25 travel, yes.



1 MR. WESTBROOK: And, you know, what my request would  
2 be -- I have no problem with him leaving -- my request would  
3 be that if it turns out that I actually didn't need him in the  
4 case in chief, then I would ask for a continuance until he  
5 gets back, but, you know, we can cross that bridge when we  
6 come to it.

7 THE COURT: Well, did you subpoena him?

8 MR. WESTBROOK: Did we add him to our subpoena?

9 MS. BALLOU: [Inaudible.]

10 MR. WESTBROOK: Normally in courtrooms that I  
11 practice in -- and again, I wasn't involved in the case from  
12 the beginning obviously -- when someone is under subpoena from  
13 the State we just assume that all the State's subpoenaed  
14 witnesses are also our subpoenaed witnesses. If that's not  
15 the way it works in this Court, I apologize. That's how it's  
16 always worked in my practice in the Eighth Judicial District  
17 Court. But, no, we did not specifically subpoena him.

18 THE COURT: All right. So if Ms. Anthony has your  
19 telephone number so she can call you if we need you today or  
20 until noon tomorrow, then we'll contact you. It's possible  
21 that we could start earlier tomorrow although --

22 MR. WESTBROOK: Hey, did you hear that? It settled.

23 THE COURT: Not the whole case. I haven't even  
24 gotten to their motions yet.

25 MS. ANTHONY: My vacation tomorrow is gone.

1 THE COURT: Yes, it sounds like it. All right. So  
2 what I was going to say was we may be able to start earlier.  
3 I was planning on 1:00, but we might be able to start earlier  
4 than that. I've got counsel coming in on the -- it's just one  
5 case, but it's, like, the mountain. It's going to take five  
6 weeks and so we've got motions in limine tomorrow, at least  
7 six that I've already done the written tentatives on.  
8 Sometimes that speeds things up because I have the written  
9 tentatives, just depends on the lawyers. So we might be able  
10 to start, say, at 11:00.

11 MR. WESTBROOK: Court preference.

12 THE COURT: All right. We'll play it by ear and see  
13 how you are, but this witness doesn't need to be concerned  
14 after noon. I don't want you to be stressing out that, Oh, my  
15 gosh. After -- if we don't call you before noon, don't worry  
16 about it.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: All right. We can sometimes take  
19 witnesses out of order as well.

20 MR. WESTBROOK: I understand, Your Honor, and I guess  
21 if push came to shove -- and again, my expectation of using  
22 him is low. I can't give you a percentage, but it's low at  
23 this point. But I also wouldn't be opposed to a phone call,  
24 if we could do that. I mean, I'm open to suggestions. I  
25 don't want to interrupt his trip and everything like that so.

1 THE COURT: All right. We'll cross that bridge when  
2 we come to it, and we'll be in recess until 1:00.

3 MR. WESTBROOK: Your Honor, when would you like to  
4 argue the motion?

5 THE COURT: I wanted to say never because we want  
6 lunch.

7 MR. WESTBROOK: I know.

8 THE COURT: And I thought I'd have -- staff has to go  
9 to lunch, so we'll have to do it when we come back and we'll  
10 do it before we bring the jury in.

11 MR. WESTBROOK: Okay. Great.

12 THE COURT: All right.

13 MS. BALLOU: Are we going to settle jury instructions  
14 on the record then too or are we going to wait till closer to  
15 time just to put it on the record?

16 THE COURT: We probably will because I've asked the  
17 jury to come back at 1:00, and I need staff to get their  
18 hour's lunch time break, and we can -- it depends kind of on  
19 how long the motion goes.

20 MR. WESTBROOK: I don't think it will be that long,  
21 Your Honor.

22 THE COURT: Well, I've heard that.

23 MR. WESTBROOK: I know.

24 THE COURT: All right. Thank you. We'll see you at  
25 1:00. We're off the record.

1 (Court recessed at 12:04 p.m. until 1:03 p.m.)

2 (Out of the presence of the jury panel.)

3 THE COURT: All right. We are back on the record in  
4 State of Nevada versus Anthony Castaneda. The Defendant's  
5 present with his counsel. The Deputies District Attorney  
6 prosecuting the case are present. The Clerk, the Court  
7 Recorder are present. Marshal is not present, nor is the jury  
8 or the alternates present.

9 Will Counsel so stipulate?

10 MR. WESTBROOK: We do, Judge.

11 THE COURT: Before we get to the motion, I want to  
12 bring something to Counsel's attention because I've been  
13 dealing with it now twice, but noticed it again. That is  
14 Juror No. 2, I believe it is, Mr. Stalling, he is sleeping.  
15 He has -- he keeps sleeping and I -- I keep stopping to try  
16 and -- but he's, you know, he's doing the full on -- the eyes  
17 closed completely, then the head bobbing, and --

18 MR. WESTBROOK: You know, I've seen him with his head  
19 down and his eyes closed. I haven't seen him actually  
20 sleeping.

21 THE COURT: That's why I stopped both --

22 MR. WESTBROOK: [Inaudible.]

23 THE COURT: -- both of the times that I've stopped  
24 and said we're going to stretch, it was because I started  
25 seeing that; but I saw it again during your cross and I'm very

1 concerned that he's not --

2 MR. WESTBROOK: Should we -- I mean, I -- I  
3 personally thought he was fine. I saw him putting his head  
4 down a bit, but then I also saw him looking and engaging and  
5 nodding his head, so I wouldn't be opposed to bringing him in  
6 and asking him some questions if you like, but I wouldn't  
7 dismiss him based on that.

8 MR. CHEN: Your Honor, we did see him either nodding  
9 off and/or with eyes closed seeming like it was difficult for  
10 him to have actually been paying attention to everything that  
11 we said or everything Mr. Westbrook said. So that would  
12 certainly be a State's concern in terms of both sides getting  
13 a fair jury, especially with two alternates and only one day  
14 probably of trial left to go.

15 THE COURT: Well, yeah, I was noticing the last time  
16 he was sleeping was through your cross, and also then when I  
17 went back to chambers my extern was saying -- you know,  
18 because I'm not looking at them constantly, I'm taking notes,  
19 and my extern indicated that she had observed him sleeping as  
20 well. So that's my concern.

21 MR. WESTBROOK: Well, Your Honor --

22 THE COURT: So we -- I think that we need to bring  
23 him in.

24 MR. WESTBROOK: We could do that. I had another  
25 question, though, also about a juror. I was going to wait. I

1 didn't know if we were doing this now or if we were doing it  
2 later. But my concern was actually with Juror No. -- is this  
3 -- is this Seat No. 6?

4 THE MARSHAL: It is. Middle one top.

5 MR. WESTBROOK: This right here?

6 THE COURT: Six.

7 MR. WESTBROOK: Six? Okay. If I've got the seat  
8 it's the lady who said that she -- she's Philippino and she  
9 has a problem with English during voir dire. I know I  
10 expressed some concern about that at the bench; and I get the  
11 distinct impression that she's so out of her depth as far as  
12 the language goes that she's not paying any attention and  
13 she's not listening. I saw her staring at the walls, staring  
14 -- staring down at her lap, folding her hands, looking  
15 extremely frustrated. That's the one that I noticed.

16 I also noticed, obviously, Juror No. 2 putting his  
17 head down, even closing his eyes. I didn't notice him  
18 startling awake or anything like that. I never thought he was  
19 sleeping; but then, I guess, I was doing cross-examination so  
20 I wasn't looking at him. I was trying to figure out what I  
21 had written on my paper in front of me.

22 So that's the one that I noticed, and I noticed it  
23 several times; and any time the talk gets remotely technical,  
24 I just think she shuts down. She completely shuts down.

25 THE COURT: Well, I'm -- I'm noticing that with a lot

1 of the jurors; but that's -- the concern of mine is when  
2 someone actually is falling asleep where they can't possibly  
3 be following what you're saying and the points you're making.

4 MR. WESTBROOK: Well, I wouldn't be opposed to  
5 bringing them both in and asking them a few questions.

6 THE COURT: Well, I'm not -- I'm not concerned about  
7 -- the other juror I have not seen sleeping at all, and I'm  
8 not going to start inquiring about, you know, are you  
9 understanding everything, are you enjoying this? No.

10 All I want to know is: Is Juror No. 2 sleeping?  
11 That's to me the key, that if the juror is sleeping, then, he  
12 can't have been paying attention. He wouldn't have heard. I  
13 mean --

14 MR. WESTBROOK: I understand, Your Honor, but my --  
15 my concern is not that she's -- whether she's enjoying  
16 herself. My concern is that she doesn't speak English well  
17 enough to follow these proceedings, that she speaks degalic  
18 [phonetic], that's my concern.

19 THE COURT: All right. No. I mean, I don't know how  
20 we -- we covered that on voir dire. It appeared to the Court  
21 that she was speaking enough English. Whether she or any of  
22 these jurors are following all of the technical jargon, that's  
23 a whole different thing; but I don't think there's a problem  
24 with -- with her English skills and I'm not going to start  
25 asking all the jurors whether they're following this trial.

1 But I do have a concern about a juror who is actually sleeping  
2 and I've seen that in the courtroom so.

3 MR. WESTBROOK: All right. Well then my official  
4 record is I would object.

5 THE COURT: To what?

6 MR. WESTBROOK: To -- to not calling in the witness  
7 [sic] I designated. I think she has a language issue. I  
8 think it violates my client's Sixth Amendment rights and his  
9 due process rights to not call her in and -- and have a brief  
10 evidentiary hearing regarding her understanding of the  
11 language -- not of the technical terms -- of -- of the English  
12 language, and that's it. That's my record.

13 THE COURT: And but -- but what basis do you have for  
14 that other than speculation? I mean, you had the opportunity  
15 to voir dire her. You asked her questions, so did the State,  
16 so did the Court. She answered them fully. You passed her  
17 for cause and now while we're three days into the trial you  
18 want to challenge her language based upon the fact that she  
19 appears bored at times?

20 MR. WESTBROOK: It's not that she appears bored, Your  
21 Honor. She appears confused and like she's given up trying to  
22 understand the words that are coming out of our mouths because  
23 she can't speak the language; but also there's -- there's no  
24 record of this obviously because it was up at the bench. But  
25 as everyone recalls, I was the one at the bench saying, I



1 don't think she speaks English well enough. I asked would the  
2 Court be inclined to dismiss her, and the Court did not  
3 dismiss her. I didn't make a cause challenge in front of the  
4 jury because I already knew it was a losing battle because of  
5 our bench conversation. But that's the record that -- I mean,  
6 that's just my record.

7 THE COURT: But you --

8 MR. WESTBROOK: I understand the Court's decision.

9 THE COURT: Okay. All right. I think, Bill, we  
10 should have Mr. Stalling --

11 THE MARSHAL: Yes, ma'am.

12 THE COURT: -- come in so we can talk to him about  
13 his --

14 (Juror No. 2 entered courtroom.)

15 THE MARSHAL: All right. Sir, if you would, please.  
16 Sir, if you would just go ahead and take your seat up there in  
17 your normal -- actually, because the speakers are bad, just  
18 sit right there for me.

19 JUROR NO. 2: Okay.

20 THE MARSHAL: Thank you very much.

21 THE COURT: That's good. Please be seated. Good  
22 afternoon, Mr. Stalling.

23 JUROR NO. 2: Good afternoon.

24 THE COURT: You're fine. You're fine there. All  
25 right. The reason I called you in is I had several occasions

1 now where I observed you sleeping. Did you stay up too late  
2 last night or --

3 JUROR NO. 2: I work over nights and once I leave  
4 here I immediately have to go to work -- and I was up for 13  
5 hours straight. And I work at -- I work in the freight team  
6 at Home Depot and I work from 7:00 until 2:00 in the morning  
7 and I get very little sleep. And then I got to come here for  
8 7:30 and get up and come here; and then when I leave here I  
9 got to go back to work. So I'm just -- I'm trying to stay  
10 active but it's -- it's -- it's putting a strain on me because  
11 I haven't gotten at least a full decent few hours of sleep.  
12 I've just been constantly working non-stop.

13 THE COURT: Right. And, you know, obviously, we have  
14 concern that, you know, if you fall asleep you can't hear  
15 what's happening. And so have you missed some of the  
16 testimony because you were sleeping?

17 JUROR NO. 2: I --

18 THE COURT: Have you found yourself, like, waking up?

19 JUROR NO. 2: I try to catch myself nodding and I --  
20 I get bits and pieces and, you know, write down information;  
21 but I'm trying to keep myself awake but it's really taking a  
22 toll on me because I'm -- I'm just -- I focus -- I have to go  
23 to work because I'm supervising a freight team at night and I  
24 got to make sure these guys get this stuff done before 6:00 in  
25 the morning before the whole store opens up.

1           And once I'm doing -- and I'm -- and I'm operating  
2 heavy machinery as well because I'm operating forklifts and  
3 OPs [phonetic] and I'm putting up pallets and I don't want to  
4 go to sleep and have something fall on my head and you won't  
5 see me anymore. So that's -- that's -- that's my -- I mean,  
6 that's my main thing.

7           THE COURT: All right.

8           JUROR NO. 2: So I'm -- I'm trying to stay awake, but  
9 it's taking a toll on me because I'm up --

10          THE COURT: Okay. So I wasn't imagining anything.  
11 You have been nodding off --

12          JUROR NO. 2: Yes, ma'am.

13          THE COURT: -- to sleep? Okay.

14          JUROR NO. 2: Yes, ma'am. I have been, yes.

15          THE COURT: Okay. And that's the reason because  
16 you're up all night working and --

17          JUROR NO. 2: Yes, ma'am.

18          THE COURT: -- and also doing physical labor it  
19 sounds like as well.

20          JUROR NO. 2: Yes, ma'am.

21          THE COURT: All right. Thank you. Would Counsel  
22 approach for a moment?

23                   (Off-record bench conference.)

24          THE COURT: All right. Mr. Stalling, so --

25          JUROR NO. 2: Yes, ma'am.

1 THE COURT: I know this sounds like a difficult or  
2 maybe a difficult question to ask because I'm trying to --  
3 trying to figure out how much you have missed from the  
4 testimony because you're falling asleep. And I know to say,  
5 Well, what -- what was it you didn't hear, would be a strange  
6 question. But do you feel when you -- when you're not awake  
7 that you're not then following what the testimony is?

8 JUROR NO. 2: I'm only -- I'm hearing the -- the  
9 computer aspect of it that's going on of all the -- what's --  
10 when it -- when it gets to the computer lingo, that's when I'm  
11 in because that's what -- that's what I do, and I'm listening  
12 to that and I'm actually writing down different parts of what  
13 I'm hearing when it comes to the computer aspect of it.

14 THE COURT: Okay.

15 JUROR NO. 2: But then --

16 THE COURT: But hasn't all -- hasn't -- all of the  
17 testimony today has been from the computer expert called and  
18 you were sleeping today, right?

19 JUROR NO. 2: Yes.

20 THE COURT: Okay. So have you --

21 JUROR NO. 2: I -- I -- listening and then it's --  
22 when it gets to -- when it -- I'm -- I'm shutting down because  
23 I -- it -- it's -- I'm not coherent because I'm focusing on  
24 getting rest for work and I'm, you know, worried about work  
25 and I'm not paying attention because I'm making sure -- I want

1 to make sure that when I get there that my -- my crew is -- is  
2 doing what they need to do for work.

3 And that's my biggest concern because I -- you know,  
4 when you're working at night you're -- you're constantly  
5 looking out for safety issues and making sure that nothing is  
6 -- and -- and that's my big thing. You don't want to fall  
7 asleep when you're driving a forklift, that's not good, and  
8 that's -- that's not -- and then I -- then I have to focus on  
9 coming back here and then it's square one again.

10 And so I'm not really -- I'm not paying attention  
11 because I'm -- I'm thinking about how am I going to get to  
12 work, how am I going to, you know, leave here, go home, get to  
13 work, stay up for another six, seven hours, and then come back  
14 here in the morning. So I -- I'm in a constant, you know,  
15 haze right now.

16 THE COURT: So -- so you're either nodding off to  
17 sleep because you're sleep deprived or you're not paying  
18 attention because you're thinking about what you're going to  
19 do at work, so when you wake up you -- you start worrying  
20 about, Oh, I got to go to work, so you're not listening?

21 JUROR NO. 2: I'm -- it's in -- different parts I'm  
22 listening and then my brain will tune out. It's, like, how --  
23 I got to do this tonight, I got to, you know, write down what  
24 we got to work on tonight and because I -- it's -- it's --  
25 it's 13 hours of just paying attention to this and then going

1 to that and it's just -- different intervals it's just --

2 THE COURT: Okay. How many times do you think you  
3 caught yourself waking up from having nodded off today?

4 JUROR NO. 2: That's a good question.

5 THE COURT: I know there was the time I suggested  
6 everybody stand up and stretch, that was the reason.

7 JUROR NO. 2: Yeah, that -- yeah, I was, like, yeah,  
8 I'm guilty on that one. That was probably me. More than -- I  
9 would say, I don't know, more than seven -- I guess I say  
10 seven because I -- I tried to switch to a position to where I  
11 could stay, like, my posture, if I stand up like -- stand up  
12 like this, will I stay awake if I do this, or if I lean like  
13 this will I -- and it -- it's just different positions the way  
14 [inaudible] just wasn't helping me.

15 THE COURT: Okay.

16 JUROR NO. 2: So I would try to move a certain way so  
17 I can at least try to stay focused; but it -- it's -- it was  
18 -- it's taken an extreme toll on me.

19 THE COURT: I understand.

20 JUROR NO. 2: And it's -- and I -- and I want to be  
21 attentive and I want to be focused and it's something that I  
22 want to, you know, do because I'm -- that's the reason why I'm  
23 here. But -- and -- and the other aspect I -- I -- I got, you  
24 know, I got my guys at night. I work with an eight-man crew  
25 and, you know, I have to ask one of the other guys to do the

1 forklift because I knew I was too tired to do it and my boss  
2 could see it in my eyes because I was -- he was talking to me  
3 and I was literally just -- I was like just a zombie, just  
4 like what: What did you just tell me? Your eyes -- your eyes  
5 are red.

6 THE COURT: So -- so you're having that same issue  
7 here. You're having trouble -- you normally would not have  
8 trouble if you were fully --

9 JUROR NO. 2: Yes. Yes, ma'am.

10 THE COURT: -- had rested, but you're having trouble?

11 JUROR NO. 2: I'm, you know -- you know, by the grace  
12 of God I'm glad I didn't fall asleep at the wheel because it  
13 would have been tragic because I'm trying to stay up and I'm  
14 -- got to go and change clothes, you know, take the 95 all the  
15 way to -- I'm sorry -- I work at West Charleston and I have to  
16 go over there and I'm clocking in. And I'm, like, okay, I got  
17 to -- got to get ready to do this and got to get ready to work  
18 because I've never been late. I've always been on time and --  
19 and I was kind of upset because I was, like, I'm running --  
20 I'm running late so I was [inaudible] and that [inaudible] and  
21 I was just like -- I have a perfect attendance and I don't  
22 want to blow that, so it's was just -- it's just --

23 THE COURT: All right. All right. Okay. But you  
24 think that you nodded off today at least seven times, maybe  
25 more?

1 JUROR NO. 2: Yes, ma'am.

2 THE COURT: All right. Thank you. Thank you. I  
3 appreciate it.

4 JUROR NO. 2: You're welcome.

5 (Juror No. 2 exited the courtroom.)

6 THE COURT: All right. The record will reflect that  
7 the juror, Mr. Stalling, has departed the courtroom. All  
8 right. The Court is inclined to replace him with an  
9 alternate. I mean, he's telling me he fell asleep seven  
10 times. I saw him fall asleep at least three times and we  
11 didn't even start, you know -- I mean, this happened  
12 frequently and I don't see how he could possibly be following  
13 this and he's telling us that even when he's awake he's having  
14 difficulty understanding even common language. I mean, yes,  
15 he says he -- he sometimes is awake during certain parts; but  
16 I -- I just can't see how he can -- he can be a juror and say  
17 that he -- he is giving the Defendant a fair trial or the  
18 State a fair trial.

19 MR. WESTBROOK: Well, I assume the State agrees?

20 MS. ANTHONY: Yes, Your Honor. I mean, I don't think  
21 that it would be fair to either side to leave Juror No. 2 on  
22 the jury. I mean, he said he was incoherent. He said he's  
23 having trouble, he's nodded off seven times. I mean, he's  
24 obviously not able to focus and even said he almost fell  
25 asleep at the wheel. I mean, he -- unfortunately he didn't



1 answer the questions when we asked: Is there anything that's  
2 going to prevent you from paying full attention to this case?  
3 And so we didn't have that information up front. And he can't  
4 pay attention, he can't -- he hasn't been and we obviously not  
5 only have today, his same pattern is going to continue and we  
6 also have tomorrow now because we aren't going to finish  
7 today. So he can't give a fair -- be fair to either side and  
8 the State would request that we have an alternate replacement.

9 MR. WESTBROOK: Well, here's -- here's my record on  
10 it. First, he'll be fine tomorrow. We're starting in the  
11 afternoon -- at one o'clock tomorrow or maybe a little bit  
12 earlier, but not much. Number two, I also heard him say that  
13 he was writing things down. He was engaged on all of the  
14 technical stuff and that he was taking notes.

15 He's the only person on this jury who is African  
16 American. He's the only person on this jury who has got any  
17 computer knowledge outside of playing Candy Crush -- thank you  
18 -- Candy Crush, that's it. And if he is off this jury then I  
19 think it's going to be at the detriment of my client and to  
20 his Sixth Amendment rights. This is the jury that we picked.

21 I think he's paying attention at least as well as  
22 anybody else on this jury and he has the capacity to  
23 understand things more than anyone else on this jury. I've  
24 got a real problem as I think I voiced quite clearly with the  
25 expert who just testified and his testimony. I'm not going to

1 be able to counter him with an expert, so at the very least I  
2 want somebody on that jury, someone who I picked, by the way.

3 I mean, you know, I didn't strike him for a reason.  
4 I want someone on that jury who knows a little bit about  
5 something who I think can understand the language that's going  
6 on here with computers. He's the only person. I think if we  
7 lose him then it -- it really does a blow to my client's Sixth  
8 Amendment rights. And not only that, but he needs to buck up.  
9 He's a juror in a criminal trial. I mean, I got three hours  
10 of sleep last night and I'm devastated for the record. I can  
11 hardly think straight. If I didn't have these guys handing me  
12 notes during my cross I would be lost.

13 THE COURT: Okay. But the difference is that you  
14 have not fallen asleep at counsel table. And to say, Well,  
15 it's okay if he only hears a little bit or he comes in and  
16 out, that's just crazy. I -- I, you know, and the fact that  
17 he's African American, I don't care if he was green with polka  
18 dots.

19 MR. WESTBROOK: Oh, I understand it's not the  
20 Court's --

21 THE COURT: He's sleeping.

22 MR. WESTBROOK: I understand that. I'm not trying to  
23 suggest anyone here is trying to kick him off because he's  
24 African American. That's ridiculous. What I'm saying is it's  
25 so rare unfortunately in our system for some reason to get

1 African American jurors. I can count on one hand the number  
2 of African American jurors I've had, not just on my panel --  
3 not in the box, but on my venires. It's ridiculous. For  
4 whatever reason we don't get them. I've got one. I think  
5 it's important to have vast representation of the community.  
6 Other than that, I think that it's actually one of the most  
7 diverse juries I've ever had.

8 THE COURT: And -- and I would agree that it's -- you  
9 want to have a diverse jury.

10 MR. WESTBROOK: Right.

11 THE COURT: You also want to have a jury where all of  
12 them are awake.

13 MR. WESTBROOK: I understand. And I -- I don't think  
14 that he's --

15 THE COURT: Okay.

16 MR. WESTBROOK: -- drifting more than anybody else.

17 THE COURT: Okay. So I'm going to -- I'm going to  
18 replace him with Alternate No. 1 and let him go home to rest  
19 so he doesn't kill himself on a forklift. All right.

20 Do we -- oh, we need to argue the motion then first.

21 MR. WESTBROOK: Okay.

22 THE COURT: Let's do that.

23 MR. WESTBROOK: Your Honor, frankly, I've got the  
24 motion in writing. I'm going to rely mostly on the first  
25 point as opposed to the second. I think the second is

1 self-explanatory. What the second comes down to I think is a  
2 jurisdictional issue and I think the timing of our discovery  
3 that the evidence that was being given was -- either that  
4 evidence was perjury or the evidence we heard in court was  
5 perjury, one of them has to be because they're opposite. I  
6 think the timing of it doesn't change the fact that we now  
7 know that bind over was based on at least partially perjured  
8 testimony, questionable testimony. I think it should be  
9 inadmissible, and I think that would rob this Court of  
10 jurisdiction because we didn't have a proper process under  
11 Goldsmith versus Sheriff down in Justice Court.

12 Now as to the first point, and I think this is the  
13 more important point for our purposes here in District Court  
14 today, we've got a situation where there is no question that a  
15 juror in this courtroom failed to tell the truth under direct  
16 questioning.

17 THE COURT: You mean a witness.

18 MR. WESTBROOK: A witness, I'm sorry. Thank you.  
19 Again, three hours of sleep, I apologize. A witness sat up  
20 there and she -- she said things to us that we know have to be  
21 false because they -- they directly contradict other sworn  
22 testimony, and they directly contradict an interview she gave  
23 with the police. There's two occasions, and again, there's  
24 probably other things that she wasn't truthful about; but I'm  
25 not talking about things that are arguably untruthful. That's

1 what juries are for: The arguably untruthful, and I get that.

2           What I'm talking about is the things that we all know  
3 that she had to have lied about. She sat up there under oath  
4 answering my direct question: Were you truthful when you  
5 talked to Detective Tooley? She said, Yes. Then I brought up  
6 her statement, pointed out that it directly contradicted her  
7 testimony in court that day, and then she said that she was  
8 lying to Detective Tooley.

9           THE COURT: My recollection was she said that her  
10 answer to the one question at preliminary hearing, which was:  
11 Did you immediately recognize the thumb drive -- I'm  
12 paraphrasing, of course -- as Mr. Castaneda's? She said, No.  
13 And that was -- then you said, Well, were you lying then? She  
14 said, Yes. So that's the only -- to my way of thinking as far  
15 as having heard everything, it appears to me the only thing  
16 that she admitted that she lied about was that one statement.

17           MR. WESTBROOK: There's a second thing, Your Honor.

18           THE COURT: Okay. Now -- now, the thing is that I,  
19 you know, I read the transcript of the preliminary hearing  
20 transcript. So, of course, that testimony before the justice  
21 of the peace that heard the prelim for the bind over would  
22 have been favorable to your client. In other words, it would  
23 not have been adverse to him because the testimony that, Well,  
24 yes, I knew it was his, connected it to him is what is  
25 damaging. Here, you know, at the prelim she said, No. Even

1 though we know that the affidavit of arrest, which was done in  
2 this case and is, you know, on file and was done after the  
3 search warrant was executed, says that she had immediately  
4 recognized it as Mr. Castaneda's. So that's consistent.

5         Would it have made any difference to the magistrate?  
6 No, because there was -- it wasn't unfavorable to Mr.  
7 Castaneda and there was lots of evidence certainly sufficient  
8 to meet the bind over standard. So I -- I don't see that even  
9 if it's true that she lied, as she said, that she lied at the  
10 preliminary hearing intentionally, that it would have made any  
11 difference.

12         And the cases talk about at trial if it -- if it's  
13 shown that there was perjury at trial and that it was --  
14 perjury has to be -- of course, in order for it to be perjury  
15 it must be material, right? But we don't have that. We have  
16 a situation where you've impeached her with her preliminary  
17 hearing transcript, right? And you're going to make hay till,  
18 you know, the sun comes up with that and that's what, just  
19 like you said, that's what juries are for. And I do not see  
20 that it -- there's any basis for dismissing the charge.

21         MR. WESTBROOK: I have three quick responses.

22         THE COURT: Okay.

23         MR. WESTBROOK: Number one, that wasn't -- number  
24 one, regarding her confession of perjury at the preliminary  
25 hearing, I don't think she -- I don't think that's when she

1 was perjuring herself. I think she was perjuring herself  
2 here --

3 THE COURT: Well, that's --

4 MR. WESTBROOK: -- because this is a brand new story  
5 that she's never told before; but that's neither here nor  
6 there. She admitted to that.

7 THE COURT: Okay. Well --

8 MR. WESTBROOK: So we'll go with that.

9 THE COURT: All right. But that's not true either.  
10 That's why I'm saying I read -- because I wanted to understand  
11 the full -- all -- the totality of the circumstances. It's  
12 clear to me that if there was a lie, it happened at the  
13 preliminary hearing because the affidavit of arrest, which was  
14 clearly before the preliminary hearing, indicates that she  
15 told the detectives that she immediately recognized the thumb  
16 drive as Mr. Castaneda's. So that was -- that was before.

17 MR. WESTBROOK: I'm sorry. Did it say "immediately  
18 recognized," because I don't recall it saying that. But --

19 THE COURT: I can't --

20 MR. WESTBROOK: -- but regardless, I understand that  
21 you don't agree with me. That's fine. Hopefully by the end  
22 of my closing you will agree with me, but that will be -- that  
23 will mean that the jury does too and then I'll win, that will  
24 be great.

25 Number two, though, there was a second perjury that

1 happened that is unquestionably a perjury here, and let me  
2 explain what that is. I asked her the question: Were you  
3 honest -- I might have said 100 percent honest -- were you  
4 honest when you gave your interview to Detective Tooley? She  
5 answered, Yes, to that question. That was the testimony here  
6 in this courtroom.

7           Then I showed her that her statement to Detective  
8 Tooley was different than her entire story. Her very detailed  
9 story that she told on the stand in this courtroom was the  
10 exact opposite of what she told Tooley. Nothing about waking  
11 the boyfriend or the boyfriend waking her, none of that  
12 happening, okay?

13           Then she said that she lied when she spoke to  
14 Detective Tooley, which means that she lied when I asked her  
15 directly if she was honest with Detective Tooley. That means  
16 she has perjured herself in this courtroom. It's material.

17           THE COURT: Okay. Well, I -- I disagree with your  
18 assessment of that that, yes, that there are things that are  
19 slightly different, that there isn't as much detail; but to  
20 say that that because she didn't explain initially that, Oh,  
21 it was my boyfriend who woke me on the couch -- well, which is  
22 the same story, you know, that she told at preliminary hearing  
23 -- that that somehow makes her a perjurer is just a huge leap.

24           I mean, just because when a witness initially makes  
25 contact with the police, they leave out additional details, I



1 mean, that's what -- we love that as lawyers, of course,  
2 because that's what we're going to cross-examine them about.  
3 Didn't you think it was really important, you know, officer,  
4 to --

5 MR. WESTBROOK: You took complete notes, didn't you?

6 THE COURT: Yes. You know, but that's again --  
7 that's for you to make hay with.

8 MR. WESTBROOK: I actually -- I agree with you, Your  
9 Honor, if what she had done is add details. It's not what she  
10 did. She had one story and then she replaced it with a  
11 completely different story that was the opposite.

12 THE COURT: All right. Well, I heard both of them  
13 because I was here while you were crossing her.

14 MR. WESTBROOK: Did you -- I'm sorry. Did Your Honor  
15 have a chance to look at Defense Proposed Exhibit A, which I'd  
16 like entered as a Court exhibit, I guess? It's the only one  
17 that I had. It's actually the statement that she gave and it  
18 can't go to the jury because it's got other stuff that we've  
19 -- we've exorcized from these proceedings, but --

20 MS. ANTHONY: Isn't it an attachment to your motion?  
21 That's an exhibit, right?

22 MR. WESTBROOK: Yeah, yeah. I'm sorry. You know  
23 what? I never filed an actual motion, Judge. Should I do  
24 that or has that already been done?

25 THE COURT: Yeah. I didn't file it.

1 MR. WESTBROOK: Way to go, Dave.

2 THE CLERK: Yeah, you need to file the motion and  
3 have the attachment as exhibits.

4 MR. WESTBROOK: Right, right, right. I've got them  
5 right here. The one attachment I didn't have the copy was the  
6 one that is -- is up here with your staff.

7 THE COURT: Okay. I think I left my copy in my  
8 chambers. Okay.

9 MR. CHEN: Your Honor, may I also approach the Clerk  
10 to have something else marked for our trial?

11 THE COURT: Sure.

12 MR. WESTBROOK: Your Honor, I apologize. I have the  
13 entire stack on my desk. I'll take care of it. I'll -- in  
14 the court before -- obviously before the trial is over,  
15 certainly. But if I could just borrow that exhibit for a  
16 second?

17 THE COURT: Exhibit A, proposed?

18 MR. WESTBROOK: Yeah. That would be --

19 THE COURT: I'm not seeing anything about -- I'm not  
20 following what you're looking at there.

21 MR. WESTBROOK: Okay. Okay. On page 2 of this  
22 exhibit she tells the officer: "Couldn't wait to hurry up and  
23 find my place, which I did, and I moved on February 3rd. In  
24 my move I wound up" -- I -- "wound up with his flash drive in  
25 the midst of my stuff."

1 THE COURT: Yeah.

2 MR. WESTBROOK: "Didn't realize it until Saturday,"  
3 which would be the 6th of February, 2010. "I actually figured  
4 I had it and I was going to use it."

5 THE COURT: All right.

6 MR. WESTBROOK: That's her saying that she discovered  
7 it in her stuff and she had it in her possession. Up here she  
8 had an entirely different story. These two stories couldn't  
9 possibly co-exist where her boyfriend found it. He had it.  
10 She had no idea where it came from. Not from her tote. She  
11 has no idea where it came from and he showed it to her and  
12 brought it to her attention because he was going to use it for  
13 his purposes. It's the opposite story.

14 THE COURT: All right. So you can characterize it  
15 like that; but, no, I don't think that that's different.  
16 That's like when I talk about I have this or that, and, I  
17 mean, you know, I'm married and have been married for, you  
18 know, 34 years and -- and so, yeah, I talk about -- and that  
19 as I see it is what happened here. She's saying, Yeah, I, it  
20 was in my stuff. It was. It was in her tote. That that she  
21 is not the exact one who discovered it, she explained that  
22 somewhere later. But do I think that this is a completely  
23 different story? No.

24 MR. WESTBROOK: Okay.

25 THE COURT: I don't. Just do not.

1 MR. WESTBROOK: And hopefully nothing will come of  
2 this. All right.

3 THE COURT: All right.

4 MR. WESTBROOK: Thank you, Your Honor.

5 THE COURT: So would the State like to be heard?

6 MS. ANTHONY: No, Your Honor. I think that the -- I  
7 mean, just essentially my version of hearing and listening to  
8 Tami is the same as the Court has explained. And to further  
9 support Tami, our next witness is Michael and he's going to  
10 explain how the USB drive -- and it will further support her,  
11 so it's not -- I don't agree with Mr. Westbrook's version of  
12 how he believes that he impeached her.

13 You know, unfortunately, she said, I lied. If she  
14 had been mistaken it would have -- we wouldn't have really  
15 have been here and, you know, I do believe it was a mistake  
16 and she, you know, just didn't explain it and said, I lied,  
17 and that was her words. Unfortunately I just believe she was  
18 mistaken.

19 And to support that, she did tell Detective Tooley  
20 prior to the preliminary hearing at the preliminary hearing,  
21 it's even in there as well, and the semantics regarding "I"  
22 and "we," it really -- I think that she elaborated on the  
23 stand. I don't think she gave a different version.

24 MR. WESTBROOK: And, Your Honor, I'm sorry. I wasn't  
25 saying the forest for the trees. Ms. Ballou reminded me, my

1 allegation of perjury is that she said she was being truthful,  
2 and then she said on that stand in this courtroom that she  
3 lied when she said she was telling a true story to the  
4 officers. So she admitted that she lied at this proceeding.  
5 She admitted the perjury. They are two different stories.  
6 She admitted the perjury. She admitted to her own dishonesty.  
7 That's the key here. It's not whether we think that maybe she  
8 just was fudging a little bit or she was confused. It's that  
9 she thinks she lied. She admitted it. That's the problem.

10 THE COURT: All right. Well, I -- I disagree with  
11 that characterization and I think, you know, sometimes of  
12 course on cross-examination you can lead, and some witnesses  
13 are more lead than others to admit -- to agree with counsel on  
14 some things, and that's how I saw it, and it's just not -- I  
15 do not see that there was any evidence of perjury here. It's  
16 just I don't see it.

17 So the motion is denied, and we'll let the jury then  
18 decide whether they believe her or what weight, if any, to  
19 give to her testimony.

20 MR. WESTBROOK: Thank you, Your Honor. And I will  
21 posthumously file my motion as soon as I get back to my desk.

22 THE COURT: Posthumously?

23 MR. WESTBROOK: The motion's posthumously filed.

24 THE COURT: All right. Yes, well, we'll have that --  
25 your actual written motion, we'll get filed for the record so

1 it's part of the record.

2 MR. WESTBROOK: Thank you, Your Honor.

3 THE COURT: And since it's now quarter to 2:00, let  
4 us bring the jury back in and continue and then we'll --

5 MR. WESTBROOK: Your Honor, as a housekeeping matter,  
6 are you okay with me having my jacket off in court?

7 THE COURT: Are you too warm today?

8 MR. WESTBROOK: I haven't worn a suit in four years  
9 and I forgot it was a winter suit and I'm dying. It's wool.

10 THE COURT: Yes, but I -- I'll -- would you ask that  
11 in front of the jury so they do not --

12 MR. WESTBROOK: That's a great idea. Thank you.  
13 That's actually perfect. Thank you.

14 THE MARSHAL: Your Honor, are you ready?

15 THE COURT: Yes.

16 MS. ANTHONY: But you can only say it in five words,  
17 Mr. Westbrook?

18 MR. WESTBROOK: That's right.

19 MS. ANTHONY: Five words.

20 THE COURT: Mr. Westbrook, do you want to file  
21 electronically the motion?

22 MR. WESTBROOK: Oh, yeah. Let's do that.

23 MS. BALLOU: Well, you can't because you don't have  
24 it -- okay.

25 MR. WESTBROOK: Oh, I do need that exhibit, but I'll

1 get a copy of it at your leisure.

2 THE MARSHAL: Your Honor, one juror went to the  
3 restroom and she'll be back in a couple minutes.

4 MS. BALLOU: Can I do that then too?

5 (Court recessed at 1:43 p.m. until 1:48 p.m.)

6 (In the presence of the jury panel.)

7 THE COURT: Thank you. Ms. Mahalik, would you please  
8 take Seat No. 2. You're going to join the regular jury.  
9 Thank you.

10 And everyone can be seated except Ms. Mahalik who  
11 needs to be sworn.

12 (The Clerk administered the oath to Juror No. 2.)

13 THE COURT: All right. Ladies and gentlemen, welcome  
14 back from lunch. And the record will reflect that the  
15 Defendant is present with his counsel, the Deputies District  
16 Attorney prosecuting the case are present, as are all officers  
17 of the Court, all 12 members of the jury, which Juror No. 2  
18 has been -- Seat No. 2 has been replaced with our first  
19 alternate. We have one remaining alternate who is also  
20 present.

21 And will Counsel so stipulate?

22 MR. WESTBROOK: We do, Your Honor.

23 MS. ANTHONY: Yes, Your Honor.

24 MR. WESTBROOK: Your Honor, before we begin, would it  
25 be all right with the Court if I proceed occasionally without

1 my jacket?

2 THE COURT: Yes. You have it looks like a heavy suit  
3 on?

4 MR. WESTBROOK: I erred in the choice of my outfit  
5 today and I'm apparently wearing wool. I didn't even know I  
6 had this.

7 THE COURT: Anyone else made a bad wardrobe choice  
8 you may also -- not you, Mr. Marshal.

9 MR. WESTBROOK: I didn't want to do a Janet Jackson  
10 and have a wardrobe malfunction. Thank you, Your Honor.

11 THE COURT: Thank you. State?

12 MR. CHEN: Your Honor, the State would like to call  
13 Michael Landeau to the stand, please.

14 MICHAEL LANDEAU, STATE'S WITNESS, SWORN

15 THE CLERK: Please be seated. If you would please  
16 state your first and last name for the record and please spell  
17 it.

18 THE WITNESS: Michael Robert Landeau, M-I-C-H-A-E-L;  
19 Robert, R-O-B-E-R-T; Landeau, L-A-N-D-E-A-U.

20 THE COURT: Thank you. Please proceed.

21 MR. CHEN: Thank you.

22 DIRECT EXAMINATION

23 BY MR. CHEN:

24 Q Sir, do you know an individual named Tami Hines?

25 A I do.



1 Q How do you know Tami Hines?

2 A I went out with her for about a year, year and a  
3 half.

4 Q Do you remember when it was that you dated Ms.  
5 Hines?

6 A It had to -- I moved out of my sister's house  
7 around 2000 -- beginning of 2009 or ended in 2009, beginning  
8 in 2010.

9 Q Okay. And so is it safe to say that you did not  
10 know Ms. Hines, say, in 2007?

11 A Yes, it is.

12 Q Are you also familiar with an individual named  
13 Anthony or Tony Castaneda?

14 A I am.

15 Q Do you see that individual in court today?

16 A I do.

17 Q Could you please point to that individual and  
18 describe an article of clothing?

19 A Sitting right there.

20 Q You said "right there."

21 A No, sitting right there.

22 Q Could you describe what the person is wearing?

23 A Plaid blue shirt, gold-framed glasses.

24 MR. CHEN: Judge, would the record please reflect the  
25 identification of the Defendant?

1 THE COURT: It will.

2 BY MR. CHEN:

3 Q Mr. Landeau, how is it you know the Defendant,  
4 Mr. Castaneda?

5 A He's a former friend of Tami's and Tami had  
6 known him the whole time I was going out with Tami. And then  
7 Tami and I became homeless and Tony allowed us to stay at his  
8 house; and while we were staying at his house is how I  
9 physically got to know him. Tami's daughters have known Tony  
10 a long time.

11 Q All right. Now you mentioned that you stayed at  
12 the Defendant's residence. Was that at 2205 Beverly Way?

13 A It was.

14 Q And that's in Clark County, Nevada?

15 A Absolutely, yeah.

16 Q Now you said that you and Tami lived there. Who  
17 else lived with you guys or lived with the Defendant?

18 A Tami's four daughters and Tami and I.

19 Q All right. And the only reason that you knew  
20 the Defendant was through Tami; is that correct?

21 A Absolutely, yeah.

22 Q When you lived in the residence, Mr. Castaneda's  
23 residence, did you interact with him at all?

24 A A little bit here and there as a roommate  
25 situation, you know, Hi, How's it going; and walk back and

1 forth, you know. I mean, we didn't, you know, hang out  
2 together.

3 Q All right. Now when you were living with Mr.  
4 Castaneda was your plan to live there for a long time?

5 A No.

6 Q All right. What was your plan when you lived  
7 with the Defendant?

8 A Well, I'm currently disabled with rheumatoid  
9 arthritis and heart disease, and I knew at the time I was  
10 going to get a settlement from Disability because I filed  
11 years prior. And when we moved into Tony's house the  
12 agreement was whenever we get our check we'll pay you; we paid  
13 him off of my monthly check, but the back rears were coming  
14 in. So our plan was to just stay there long enough to get the  
15 check.

16 Q Did you eventually receive that check from  
17 Disability?

18 A I did, and I went out that day and bought a  
19 truck and moved out.

20 Q Okay. Can you describe how it was when you  
21 moved out of that residence?

22 A At the time it was heated argument. Tony was  
23 worried we wouldn't pay our debts on the way out, and I made  
24 Tami go in and pay him. So, I mean -- I mean, he didn't have  
25 anything to disagree with me about; but I didn't know Tami's

1 history with him much at all.

2 Q So do you have any personal problems with the  
3 Defendant while you --

4 A Not at all, no. Not personally, no.

5 Q Now you mentioned that you moved out of the  
6 residence. How did you move your belongings out of the  
7 Defendant's home?

8 A Well, the way we moved in was garbage bags and  
9 toters, okay?

10 Q Can you describe what toters are?

11 A Yeah, plastic bins that you carry stuff in and  
12 out with, you know, storage stuff you might see in somebody's  
13 garage or what have you. No boxes formally labeled. We  
14 chucked everything in the truck I had just bought and moved  
15 out.

16 Q Okay. And do you remember when it was that you  
17 moved out of the residence?

18 A I can't pinpoint it for the date, no. The only  
19 thing I can go back on is my cellphone. I bought it when I  
20 got my settlement and we didn't move out more than a week past  
21 my ownership of this cellphone.

22 Q Okay. And if I were to say February, 2010, does  
23 that sound like the right time frame?

24 A That's it, yeah, yeah.

25 Q Okay. So you moved out in early February or so?

1           A     Yeah, yeah.

2           Q     Where did you move to afterwards?

3           A     Afterwards we moved -- Tami and I rented a  
4 condominium together because I had the back rears from my  
5 settlement, so I ended up paying four months in advance there  
6 so we could find a job. It was off of Flamingo and Jones. I  
7 don't remember the apartment complex.

8           Q     And that's fine. When you moved to that  
9 condominium were you still living with Tami and her four  
10 daughters?

11          A     Yeah.

12          Q     All right.

13          A     Well, actually no. Two of the daughters had  
14 moved out at Tony's house when they turned 18.

15          Q     Okay.

16          A     So two of the daughters came with us. The other  
17 two -- one went to boyfriend, the other went to grandma's, I  
18 think, something like that.

19          Q     Okay. But you still lived with Tami, correct?

20          A     Yeah.

21          Q     Did you move the garbage bags and totes into the  
22 condo as well?

23          A     Yeah, yeah. We all piled up there like an Army  
24 train loading in, you know.

25          Q     Now at some point as you were going through your

1 belongings did you come across a flash stick or USB drive?

2 A I did. I did.

3 Q And do you remember when it was that you came  
4 across that?

5 A I don't remember a specific date. It had to be  
6 when we first moved into that apartment, within a two-,  
7 three-week period.

8 Q Okay.

9 A I was just going through rummage, like the  
10 kitchen drawers and stuff. You know, you have a parts drawer  
11 and a -- a things drawer and stuff like that.

12 Q Sure.

13 A Everything ended up in this one bin. So I  
14 started rifling through it, USB cords, whatever, mouses for my  
15 computer, and I noticed the flash drive.

16 Q Do you know what a flash drive is?

17 A I do.

18 Q Do you know how to use a flash drive as well?

19 A Yes.

20 Q Okay. Were you planning on using that drive  
21 when you found it?

22 A When I found it I thought, Oh, boy, flash drive.  
23 The younger gal, Tami's daughter, Bethany, uses flash drives  
24 all the time for school for Powerpoint and stuff. I thought,  
25 well, if -- you know, if it's nothing Tony needs then we're

1 just going to keep it because we left in such a fight. We had  
2 no intention of stealing it. It was just in our stuff.

3 Q Okay. So essentially you -- if I'm hearing you  
4 correctly, you were basically saying that you didn't feel like  
5 you wanted to talk to the Defendant again so you were going to  
6 use --

7 A Right. It was just not a good situation for the  
8 both of us just because of the way we moved out. There was a  
9 huge fight.

10 Q Okay. Had you seen that USB drive before?

11 A I seen it the whole time I lived with Tony. It  
12 was on his bar, on his table and chairs, out by the swimming  
13 pool, kids would come over and play with it, kids playing with  
14 keys, you know, just walking around the house playing. I  
15 mean, on and off I seen it. That's how I recognized it when  
16 it was in our stuff is because I'd seen it before, you know.

17 Q Okay. But you had never actually used it  
18 before, had you?

19 A No.

20 Q And by "use," I mean put it into a computer?

21 A No, no.

22 Q When you did discover it among your belongings,  
23 at that point did you put it into a computer?

24 A I did. I put it in my computer.

25 Q Okay. And did you look through the files there?

1           A     All that came up was his birth certificates and  
2 everything else, his Army records and, you know, decorated.  
3 Then there was all kinds of folders and one of them had girls  
4 in it, it was under age girls, and I --

5           Q     And we'll get to that; but did you, in fact, see  
6 those images?

7           A     Yeah.

8           Q     And when you see "those images," what did you --  
9 did you tell Tami?

10          A     I said, Tami, come over here and look at this.  
11 She was watching TV, laying on the couch. She was actually  
12 asleep but I didn't know it, but I woke her up and I said, You  
13 got to look at this, worried that our daughters were on it --  
14 or her daughters.

15          Q     Okay. And so at that point did you and Tami  
16 look through the USB drive?

17          A     Real fast, just to make sure her kids weren't on  
18 it.

19          Q     And did you find her kids on it?

20          A     No.

21          Q     All right. But you did say that you saw  
22 pictures which were of what appeared to be under-age girls,  
23 correct?

24          A     Yes.

25          Q     That evening did you call the police?



1           A     The very next day.

2           Q     Okay. And when you were looking at this flash  
3 drive, what time of day was it?

4           A     It must have been about 8:30, nine o'clock at  
5 night.

6           Q     Are you sure about that or you just know --

7           A     I don't really know. I know it was dark  
8 outside. It was -- it was evening time between 6:00 and  
9 10:00.

10          Q     The very next day you said that you did -- or  
11 you and Tami or one of you did contact law enforcement, right?

12          A     Yeah, Tami contacted law enforcement and I went  
13 with her.

14          Q     Did you know that individual at all --

15          A     No.

16          Q     -- who she contacted?

17          A     No.

18          Q     All right. Now you said you went with her. How  
19 did you go with her?

20          A     In the car. And she got out of the car and went  
21 into another car and handed the flash drive over.

22          Q     Okay. Did you speak with any officers or  
23 detectives on that day?

24          A     No.

25          Q     You basically remained in the car?

1 A Yes.

2 Q Were you driving the truck that you had  
3 described earlier?

4 A Yeah.

5 Q Now I'm just going to show you State's Exhibit  
6 16. Do you recognize this?

7 A Yeah, I do.

8 Q And what is that?

9 A That's a flash drive, thumb drive.

10 Q Do you recognize this specific one?

11 A Yeah, I do. The Imation. It's a 8-gigabyte  
12 flash drive, so it's -- in that day it was kind of expensive,  
13 that's what -- what turned my head about it for a flash drive,  
14 you know.

15 Q Okay.

16 A Usually the kids will bring a gig to school and  
17 stuff; and I noticed that was an 8 gig.

18 Q Is this the flash drive that you found?

19 A Yeah.

20 Q And is this the flash drive that you and Tami  
21 took the very next day to law enforcement?

22 A Yeah.

23 Q Now do you recall specifically going through the  
24 files on the USB stick?

25 A You know, I didn't go through the whole thing,

1 just the one folder with the under-age girls in it.

2 Q Do you remember what the folder name was there?

3 A Girls, I believe.

4 Q And I'm showing you at this point 75. Do you

5 recognize what's depicted here?

6 A Yeah. The girlpics is the one that I remember.

7 Q And that's the photo that you were mainly

8 concerned with?

9 A Yeah.

10 Q Okay. Is that where you saw the images of the

11 child pornography?

12 A The under-age girls, yeah, yeah.

13 Q And were they all -- all of the under-age

14 individuals, were they all female or were there pictures --

15 A You know, we went through them like

16 dat-dat-dat-dat-dat-dat to make sure the daughters weren't

17 there.

18 Q So you went through very quickly?

19 A Yeah, yeah. I didn't sit there and study them.

20 Q I'm showing you State's Exhibit 28. Do you

21 recognize this as well?

22 A Yes, I do.

23 Q And was this on the flash drive?

24 A Yes, it was.

25 Q As well as 17, do you recall seeing this?

1 A I do.

2 Q Okay. And was this also on the flash drive?

3 A It was.

4 Q Do you remember if State's Exhibits 28 and 17,  
5 the last two that I've just shown you, were they in the  
6 girlpics folder or were they in a different designation  
7 [inaudible]?

8 A It seemed to me they were just thrown on the  
9 file without a folder, okay.

10 Q Do you recall that?

11 A I -- I don't know; but I seen it. I don't know  
12 what folder they were in.

13 Q Do you know if they were in the girlpics folder  
14 or not to your recollection?

15 A To my recollection, no.

16 Q Okay. Now when you lived with the Defendant,  
17 did you notice a number of computers and laptops within his  
18 residence?

19 A Yeah, there was three or four of them at least  
20 that I knew of.

21 Q And I'm showing you Exhibit No. 37. Do you  
22 recognize this particular set up?

23 A That would be Tony's work station.

24 Q Did you use this computer?

25 A Never.

1 Q And I'm also showing you State's 51. Do you  
2 recognize this laptop at all?

3 A I do recognize the laptop, yeah.

4 Q Were you ever using this one?

5 A Never used it. We used our own laptop while we  
6 were there.

7 Q And you mentioned, in fact, you had a computer,  
8 correct?

9 A Yeah, yeah.

10 Q And that's the one which you used to first look  
11 at the USB drive?

12 A Yes.

13 Q And what type of laptop is that?

14 A That's an old Systemax. It's a 1991.

15 MR. CHEN: Court's indulgence.

16 BY MR. CHEN:

17 Q And just so we're clear because I may have  
18 misstate -- misspoken.

19 A Okay.

20 Q But you mentioned that you got the Disability  
21 check and then moved out, and that was in February of 2010,  
22 correct?

23 A Correct. I could look at my phone and tell you  
24 the exact date.

25 Q I think for these purposes we're okay for now.

1 A Okay.

2 MR. CHEN: Thank you. I'll pass the witness at this  
3 time. Thank you, Your Honor.

4 THE COURT: Cross?

5 MR. WESTBROOK: Thank you.

6 CROSS-EXAMINATION

7 BY MR. WESTBROOK:

8 Q Good afternoon.

9 A Good afternoon.

10 Q You mentioned that you were on Disability at the  
11 time?

12 A Correct.

13 Q You were waiting for a big Disability check?

14 A Correct.

15 Q Was Tami also receiving money from you or  
16 support from your Disability?

17 A Well, I took care of her and the kids, sure.

18 Q So you were paying her rent?

19 A Yeah. Well, she was my girlfriend.

20 Q She relied on you for money then?

21 A Yeah. I was the only dad the kids had so.

22 Q Okay. You weren't their biological father?

23 A No.

24 Q You just were taking care of them?

25 A Right.

1           Q     You -- have you ever given a statement to  
2 police?  
3           A     Have I ever given a statement? No, not that I  
4 recollect.  
5           Q     They didn't ask you any questions about why you  
6 had the thumb stick?  
7           A     No.  
8           Q     Was that because Tami told the police that she's  
9 the one who found the thumb stick?  
10          MR. CHEN: Objection, Your Honor. Calls for --  
11          THE WITNESS: I don't understand the question.  
12          THE COURT: Okay. Sustained.  
13          MR. WESTBROOK: All right.  
14 BY MR. WESTBROOK:  
15          Q     They never came to you and asked you any details  
16 about you finding the thumb stick, right?  
17          A     No.  
18          Q     Okay. You said you noticed it was an 8  
19 gigabyte?  
20          A     Yeah, yeah.  
21          Q     From the looks of it, from the outside of it?  
22          A     Yeah, it's an 8 gigabyte.  
23          Q     So you can tell by looking at it that's an 8  
24 gigabyte?  
25          A     Well, you can tell at the time; it said 8-gig on

1 the side.

2 Q Okay. That one in the picture doesn't say  
3 8-gig, does it?

4 A It doesn't on the front.

5 Q Okay. You can't tell from that picture that's  
6 an 8 gigabyte can you?

7 A I can tell that's the one that he had by the  
8 wear marks.

9 Q Okay. And the one that you had that night,  
10 correct?

11 A Same one.

12 Q Okay. You said you put it into your laptop to  
13 view the pictures, right?

14 A Correct.

15 Q Was it your personal laptop?

16 A Yes.

17 Q Do you know if it was ever in Tami's personal  
18 laptop?

19 A Tami never owned a personal laptop.

20 Q Oh, what was her computer then? I'm sorry?

21 A Her computer? I didn't know she had a computer.

22 Q I'm sorry. I thought you just testified that  
23 you both had computers. Is that --

24 A No, I said I owned two of them.

25 Q Oh, you owned two computers?



1           A     Yeah, I owned a Dell that I used to use -- that  
2 I bought from my sister that was even in the shop when I lived  
3 with Tony. So the only computer I had to do anything with was  
4 my old Systemax.

5           Q     Okay. You owned a Dell. Did the Dell get left  
6 at Tony's house?

7           A     No.

8           Q     It never did?

9           A     No. Mine's a brand new one.

10          Q     Okay.

11          A     His was old.

12          Q     Now the old one you're talking about, could you  
13 tell me again the name of that one?

14          A     Systemax.

15          Q     Systemax. Does that still exist?

16          A     I think in the automotive world it does because  
17 that's the kind of computer it's designed for is for  
18 automotives, you know, diagnostic work.

19          Q     Okay. Does your particular computer -- is it  
20 still in your possession?

21          A     Yeah.

22          Q     Has anyone ever asked to look at it?

23          A     No.

24          Q     I mean police. I don't mean some guy on the  
25 street.

1 A Well, no, no, nobody's ever looked at it.

2 Q Nobody ever looked at it?

3 A No.

4 Q Since 2008 have you ever updated the software?

5 Let me be more specific and a better question. Have you ever  
6 updated the operating system?

7 A On my computer?

8 Q Yeah. On your old -- on your old --

9 A On the old Systemax? Yeah, yeah, I've had to  
10 replace it a couple times.

11 Q Okay. Had you ever changed the hard drive out?

12 A No.

13 Q You haven't. Okay.

14 MR. WESTBROOK: All right. Nothing further. Thank  
15 you.

16 THE COURT: Redirect?

17 MR. CHEN: Yes, please.

18 REDIRECT EXAMINATION

19 BY MR. CHEN:

20 Q Just a couple questions I do need to ask you  
21 based on those questions, Mr. Landeau. The child pornography  
22 that you saw on the USB flash stick, were you responsible for  
23 downloading that?

24 A No.

25 Q Did you put that on the flash drive?

1 A Absolutely not.

2 Q Does your computer contain any?

3 A None.

4 Q And furthermore, just some questions about your  
5 relationship with Tami. You mentioned that it lasted  
6 throughout 2010 possibly, correct?

7 A Yeah, yeah.

8 Q And then did you guys subsequently break up?

9 A Yes, we did.

10 Q And after that did you have much communication  
11 with her at all?

12 A Didn't talk to her at all.

13 MR. CHEN: Pass the witness. Thank you.

14 RECROSS-EXAMINATION

15 BY MR. WESTBROOK:

16 Q I'm sorry. Are you saying that you haven't  
17 talked to her at all before this hearing today?

18 A Today? She called me about two weeks ago and  
19 left a message that the District Attorney was looking for me,  
20 and all of a sudden I got a call. I'm not hard to find. I  
21 wasn't running from anybody by any means, so I was shocked.  
22 She said, Well, they've been looking for you, can I give them  
23 the information? I said, Absolutely. And that's all that we  
24 said together.

25 Q How many times have you talked about this case?

1           A     None. Didn't even mention it that day. She  
2 just said you guys were looking for us.

3           Q     Never talked about it?

4           A     No.

5           MR. WESTBROOK: Okay. Thank you.

6           MR. CHEN: Nothing further, Your Honor.

7           THE COURT: May this witness be excused?

8           MR. CHEN: Yes, Your Honor.

9           THE COURT: Thank you very much for your testimony.

10          THE WITNESS: No problem.

11          MR. CHEN: The State would call Detective Shannon  
12 Tooley, please.

13                 SHANNON TOOLEY, STATE'S WITNESS, SWORN

14          THE CLERK: Please be seated. If you would please  
15 state your first and last name for the record and please spell  
16 it.

17          THE WITNESS: Shannon Tooley, S-H-A-N-N-O-N,  
18 T-O-O-L-E-Y.

19          THE COURT: You may proceed.

20                         DIRECT EXAMINATION

21          BY MR. CHEN:

22                 Q     Ma'am, how are you employed?

23                 A     I'm employed with the Las Vegas Metropolitan  
24 Police Department.

25                 Q     In what capacity are you employed there?

1           A     I'm a detective assigned to the Internet Crimes  
2 Against Children detail.

3           Q     What type of crimes does that particular detail  
4 [inaudible]?

5           A     We investigate crimes involving children being  
6 lured over the Internet for sexual purposes and child  
7 pornography.

8           Q     Okay. How long have you been in that particular  
9 unit?

10          A     Approximately five years, little over five  
11 years.

12          Q     Is that unit sometimes commonly referred to as  
13 ICAC or ICAC, I guess?

14          A     Yes, it is.

15          Q     Okay. Now I'd like to ask you: Were you ever  
16 involved with the investigation of an individual named Anthony  
17 Castaneda?

18          A     Yes.

19          Q     Do you see Mr Castaneda in court today?

20          A     Yes, I do.

21          Q     Can you please point to that individual and  
22 describe an article of clothing that person is wearing?

23          A     He is the gentleman right over there wearing the  
24 plaid shirt, it's blue and white; has glasses on.

25          Q     Okay. Now in terms of your --

1 THE COURT: The record will reflect the  
2 identification.

3 MR. CHEN: I'm sorry. Thank you, Your Honor.

4 BY MR. CHEN:

5 Q In terms of your position as a detective on the  
6 ICAC unit, are you an expert in computers by any means?

7 A No, I'm not.

8 Q So you do investigations, but you don't do  
9 forensic analysis of computers, hard drives, et cetera?

10 A That is correct.

11 Q You have other people, I assume, you rely on to  
12 help you with that?

13 A Yes, we do.

14 Q Okay. Now how is it that you came to start an  
15 investigation of the Defendant?

16 A I received a phone call regarding Tami Hines who  
17 wanted to report that she had located a thumb drive with child  
18 pornography located on it.

19 Q Do you remember who you received that phone call  
20 from?

21 A I can't remember who called. I don't know if it  
22 came through our sexual assault detail or directly from  
23 somebody who transferred me to her. I do not recall exactly.

24 Q I see. So no one called your cell phone, for  
25 instance, and had you go —

1           A     No. It was my general desk number.  
2           Q     Okay. And based upon your position on the ICAC  
3 unit, you were responding to a certain location?  
4           A     Yes.  
5           Q     Who did you go to meet after you received that  
6 call?  
7           A     I went to go meet Tami Hines.  
8           Q     And did you talk with Ms. Hines?  
9           A     Yes, I did.  
10          Q     Did you conduct an interview with Ms. Hines?  
11          A     Yes, I did.  
12          Q     And where did that interview take place?  
13          A     It was in my vehicle in a parking lot. I  
14 believe it's 630 Belrose.  
15          Q     Did Ms. Hines have something that she wished to  
16 give you?  
17          A     Yes, she provided me with a thumb drive, Imation  
18 thumb drive. It was silver, red, and black.  
19          Q     All right. Did you have a conversation about  
20 that thumb drive?  
21          A     Yes, I did.  
22          Q     And based upon your conversation, who did you  
23 believe that that thumb drive belonged to?  
24          A     Per Tami Hines, she said the thumb drive  
25 belonged to Anthony Castaneda.

1 Q And did -- based upon that did you begin an  
2 investigation of that particular thumb drive as well as the  
3 Defendant, Anthony Castaneda?

4 A Yes.

5 Q All right. Now when you immediately took  
6 possession of that flash drive or thumb drive, did you  
7 actually stick it into your computer and look at it at all?

8 A No.

9 Q Okay. What did you do with that flash drive?

10 A I secured it at our office, which is a secured  
11 location, inside a cabinet with a lock on it. Later I  
12 obtained a search warrant, which was on February 18th, for the  
13 thumb drive.

14 Q And just so we're clear, do you remember when it  
15 was that you met with Ms. Hines?

16 A It was February 8th of 2010.

17 Q February 8, 2010. And, in general, could you  
18 describe Ms. Hines' demeanor on the day that you met her?

19 A She seemed a little out of sorts because she had  
20 viewed some child pornography -- pornographic images on the  
21 thumb drive, she was concerned about it.

22 Q And -- and that's why she got into contact with  
23 you eventually, correct?

24 A Yes.

25 Q Now you mentioned you did obtain a search



1 warrant to look at the flash drive. Did you -- were you able  
2 to obtain a search warrant?

3 A Yes.

4 Q After you obtained a search warrant, did you  
5 personally go in and look at the flash drive at that time?

6 A No.

7 Q Okay. What did you, in fact, have done with  
8 that flash drive?

9 A I provided the flash drive to Detective Vincente  
10 Ramirez, who is a forensic examiner on our department, as well  
11 as a copy of the search warrant.

12 Q And did he, in fact, execute the search warrant  
13 on the flash drive?

14 A Yes, he did.

15 Q I'm going to show you State's Exhibit 16. And  
16 do you recognize this image?

17 A Yes, I do.

18 Q And what is this?

19 A It is the Imitation thumb drive that -- the  
20 Imitation thumb drive that Tami Hines provided to me.

21 Q Okay. And that you later secured and provided  
22 to Detective Ramirez?

23 A Yes.

24 Q And I also want to be specific. Are you  
25 familiar with what an event number is?

1 A Yes, I am.

2 Q What exactly is an event number?

3 A It is how our department assigns cases.

4 Q Okay.

5 A Each call that comes in, not just case, but each  
6 report that calls in -- comes in.

7 Q And is each number specific to that event?

8 A Yes, it is.

9 Q Did -- when you started the investigation of the  
10 Defendant, was an event number assigned to it?

11 A Yes, it was.

12 Q Okay. And would that event number basically be  
13 connected to all the evidence that was involved with your  
14 investigation?

15 A Yes.

16 Q Would that include this flash drive?

17 A Yes, it would.

18 Q And did this flash drive, the impounding of it,  
19 was it assigned a case -- an event number?

20 A It was [inaudible] the case was originated  
21 under.

22 Q What event number was that?

23 A That was 100208-1406.

24 Q Okay. And again, in 15 that's also depicted as  
25 the event number on the top right-hand corner, correct?

1 A Yes, it is.

2 Q All right. Did Detective Ramirez create a  
3 report based upon his examination of the flash drive?

4 A Yes, he did.

5 Q And would that report have gone to you as the  
6 lead investigator on the case?

7 A Yes, it would have.

8 Q Did you review that report?

9 A Yes, I did.

10 Q Did you come to learn that there were images of  
11 child pornography on that flash drive?

12 A Yes, I did.

13 Q Certainly given the type of detective you are,  
14 I'm sure that was concerning to you then, correct?

15 A Yes.

16 Q And would that mean that you would continue your  
17 investigation then?

18 A Yes.

19 Q What -- upon learning of what the images were on  
20 this flash drive, what were the next steps that you took as  
21 the lead detective in this case?

22 A I verified Mr. Castaneda's address; if he did,  
23 in fact, live at the address that Tami provided to me. I did  
24 administer subpoenas on NV Energy as well as Cox, which both  
25 came back to him as being the account holder. I drove by the

1 residence. I observed a Areostar van parked in the driveway.  
2 The van had out-of-state plates, but they were registered to  
3 an Anthony Castaneda.

4 Q During your -- and which residence was that  
5 actually?

6 A 2205 Beverly Way, Las Vegas, Nevada, 89104.

7 Q Is that also in Clark County?

8 A Yes, it is.

9 Q All right. And in the process of you  
10 investigating just the residence itself, did you learn of any  
11 other person who was registered at that particular address or  
12 who lived at that address?

13 A At that time, no.

14 Q All right. Based upon the information that you  
15 had about that particular residence, what did you do?

16 A I obtained a search warrant for the residence.

17 Q Okay. And what was the purpose of obtaining the  
18 search warrant?

19 A To find additional evidence of child  
20 pornography.

21 Q Or at least potential evidence, I suppose,  
22 right?

23 A Yes.

24 Q Okay. Did you, in fact, obtain a search warrant  
25 to search 2205 Beverly Way?

1 A Yes, I did.

2 Q And was that search warrant executed on April 7,  
3 2010?

4 A Yes, it was.

5 Q Prior to executing the search warrant, did you  
6 make a phone call at all to the Defendant to let them know --  
7 let him know that you were on your way there?

8 A No, we did not.

9 Q Okay. So essentially you or other members --  
10 and other members of Las Vegas Metropolitan Police Department  
11 simply show up at the residence with the warrant; is that a  
12 fair statement?

13 A Yes.

14 Q All right. And on April 7, 2010, is that what  
15 happened?

16 A Yes.

17 Q Do you remember what time the search warrant was  
18 executed?

19 A It would have been approximately around 0900  
20 hours, 9:00 a.m.

21 Q 0900, 9:00 a.m. or so? All right. Did you, in  
22 fact, go with the others to execute that warrant?

23 A Yes, I did.

24 Q All right. And did you find anyone home at the  
25 2205 Beverly Way address?

1 A Yes, we did.

2 Q Who was home?

3 A Anthony Castaneda and his son, Craig Castaneda.

4 Q Okay. Did you provide a copy of the search  
5 warrant to the Defendant?

6 A Yes, I did.

7 Q Okay. And did individuals from the forensic  
8 portion of Metro start to examine different pieces of hardware  
9 within the residence?

10 A Yes, they did.

11 Q Did you have any involvement with examining or  
12 previewing any hardware within the residence?

13 A No, I did not.

14 Q And what's the reason that you weren't  
15 specifically involved with that?

16 A Because I'm not forensically trained.

17 Q Okay. You don't know how to use the programs or  
18 the equipment they have, I assume?

19 A I've been trained on how to use Basic EnCase --

20 Q Okay.

21 A -- which is a software program that they use for  
22 forensics; however, I have not practiced it or used it so I do  
23 not do the exams.

24 Q Okay. So when you were present at the residence  
25 on April 7, 2010, what was your primary role investigating

1 that residence?

2 A Interviewing Anthony Castaneda.

3 Q Okay. And were you, in fact, able to speak with  
4 Mr. Castaneda?

5 A Yes, I did.

6 Q And where did that conversation take place?

7 A It took place in my vehicle outside of his  
8 residence.

9 Q Did you inform Mr. Castaneda that he was under  
10 arrest or anything?

11 A No. As a matter of fact, I told him he was not  
12 under arrest, that he didn't have to answer any questions that  
13 I asked, and he was free to leave at any time.

14 Q Okay. In addition to that, did you also read  
15 him Miranda rights as well?

16 A Yes, I did.

17 Q And what exactly are Miranda rights?

18 A It's -- it allows a person to understand that  
19 they do not have to answer any questions if they're going to  
20 be under arrest or if a person feels like they're under  
21 arrest. And the reason why I read those is because we just  
22 search warranted their house, and a reasonable person may feel  
23 that they're under arrest at the time; so they need to be  
24 informed if they tell us something that it could be used  
25 against them at a later date.

1           Q     Okay. So you both informed him that he wasn't  
2 under arrest because the Defendant wasn't under arrest at that  
3 time, right?

4           A     Correct.

5           Q     And then you also just informed him of his  
6 rights just to be safe?

7           A     Yes.

8           Q     Okay. Did he understand his rights?

9           A     He said he did. He said, Yes, I do, when I  
10 asked him.

11          Q     And then did you continue to talk about why you  
12 were there?

13          A     Yes.

14          Q     Was that conversation, was it recorded as well,  
15 Detective?

16          A     Yes, it was.

17          MR. CHEN: Judge, may I approach the Clerk and then  
18 the witness, please?

19          THE COURT: Yes.

20          MR. WESTBROOK: And, Your Honor, we would have a  
21 record to make before this is played if it is played.

22          THE COURT: All right.

23          MR. WESTBROOK: We can just talk about it at the  
24 bench and then we can do it at the break.

25          THE COURT: Okay. Approach.



1 (Off-record bench conference.)

2 MR. CHEN: Your Honor, may I continue with  
3 approaching the witness?

4 THE COURT: Yes.

5 BY MR. CHEN:

6 Q Detective Tooley, I'm showing you what's been  
7 marked as State's Proposed Exhibit 79. Do you recognize this?

8 A Yes.

9 Q And what is your understanding of what this CD  
10 is?

11 A It's an audio recording of the interview.

12 Q And you've listened to it before?

13 A Yes, I have.

14 Q And does it fairly and accurately depict the  
15 interview that you had with the Defendant on April 7, 2010?

16 A Yes, it does.

17 MR. CHEN: Judge, I move for admission of State's  
18 Proposed Exhibit 79.

19 MR. WESTBROOK: Submit with our objection.

20 THE COURT: All right. The objection is overruled.  
21 It will be admitted.

22 (State's Exhibit 79 admitted.)

23 BY MR. CHEN:

24 Q Now is it fair to say that in the course of your  
25 interview it was rather lengthy?

1 A Yes, it was.

2 Q Were there -- I assume you talked about a number  
3 of topics throughout your interview, correct?

4 A Yes.

5 Q And is it fair to say that sometimes a lot of  
6 things -- versions of things changed and there were a lot of  
7 explanations given that you might not necessarily be able to  
8 remember off the top of your head right now?

9 A That is correct.

10 MR. CHEN: So, Your Honor, at this point I would ask  
11 to publish State's Exhibit 79. And I also do have written  
12 transcribed versions for the Court as well as the jury to  
13 follow along with. They will not be entered as exhibits;  
14 however, for the purpose of listening to the audio I think  
15 they may be helpful.

16 THE COURT: All right.

17 MR. CHEN: So I would ask to distribute those as  
18 well.

19 THE COURT: All right. That will be granted.  
20 They'll be distributed, then we'll take them back after the  
21 disk is played. Marshal, if you will assist with  
22 distributing.

23 MR. WESTBROOK: Your Honor, since this is  
24 approximately 90 minutes, do we want to ask if anyone wants a  
25 bathroom break before or do we want to stop in the middle?

1 THE COURT: Thank you, Mr. Westbrook. How are we  
2 doing? We're good? Everybody good? All right. Counsel,  
3 everybody fine.

4 MR. CHEN: Your Honor, could I approach the Court as  
5 well to provide a copy for the Court to follow along?

6 THE COURT: Yes, thank you.

7 MR. CHEN: May I approach the witness for the same?

8 THE COURT: Yes.

9 (Pause in proceedings.)

10 MR. CHEN: Your Honor, for the record it does appear  
11 that all the members of the jury as well as the Court have a  
12 copy of the transcript?

13 THE COURT: It so appears. Does everyone on the jury  
14 and the alternate have copies? All right. They do, and so --

15 MR. CHEN: If I could proceed?

16 THE COURT: Yes, please. And while we're playing  
17 this I would like there to be silence otherwise in the  
18 courtroom because sometimes our audio is more difficult to  
19 hear. Okay. Proceed.

20 (Exhibit No. 79 played, not transcribed.)

21 MR. CHEN: Your Honor, if I could have assistance in  
22 collecting?

23 THE COURT: Yes, the marshal will assist you.

24 (Pause in proceedings.)

25 THE COURT: How's my jury doing? Need, like, a

1 10-minute break? Yes. Okay. All right. Gosh, I was  
2 starting to think you were camels. Okay. Ladies and  
3 gentlemen, we're going to take a 10-minute recess.

4           During this recess it is your duty not to converse  
5 amongst yourselves or with anyone else on any subject  
6 connected with the trial or to read, watch or listen to any  
7 report of or commentary on the trial by any person connected  
8 with this trial by any medium of, information including  
9 without limitation newspapers, television, the Internet or  
10 radio, and you are not to form or express an opinion on any  
11 subject connected with this case until it is finally submitted  
12 to you.

13           I've got about 4 minutes to 4:00.

14                       (Jury recessed at 3:56 p.m.)

15           THE COURT: All right. The record will reflect we  
16 are outside the presence of the jury. Are there any matters  
17 outside the presence?

18           MR. WESTBROOK: There are, Your Honor. I have an  
19 objection and a motion [inaudible]. First of all, I'd like to  
20 explain my objection I made at the bench. I objected, first  
21 of all, for -- to the entire recording being played to the  
22 jury. This is not a confession. There was no confession in  
23 that entire recording.

24                       What it was was taking my client and dragging him  
25 through the mud over his legal porn interests, legal porn,

1 searching for adults and teens; mischaracterizing the word  
2 "adult" as if it were adult versus child as opposed to how my  
3 client was clearly using it, which is adult as in adult  
4 bookstore, and not adult as in I'm separating my adults and my  
5 children pictures. I think the jury was left with the  
6 impression that my client is a sex fiend because he has  
7 Internet porn and because he likes a certain type of Internet  
8 porn.

9 Not only that, but this whole issue about mentioning  
10 that there were 56 child porn pictures I thought had been  
11 decided. In fact, my recollection of our conversation was  
12 that the State withdrew their effort to try to get witnesses  
13 to speak about 56 pictures. They gave up on the issue at the  
14 bench and that was the ruling. They wanted to ask their  
15 technical experts about the presence of 56 pictures of which  
16 only 15 have been charged. I said it would be misleading.  
17 They were uncharged. It would be uncharged bad acts. We  
18 started the case by objecting to it. There was no Petrocelli  
19 hearing and I thought we had our ruling; and then what  
20 happened is we got to hear her accuse him of having 56  
21 pictures a bunch of times.

22 And here's the problem with that. My client is a  
23 network administrator. He knows computers. And when he hears  
24 56 pictures, what he thinks is 56 image files. We're talking  
25 about a Hewlett Packard old laptop from 2006 or 2007, I think

1 was the date that that laptop was from, maybe even before  
2 that, smaller hard drives, hardly any RAM. I know how bad  
3 they are because I had one in the Public Defender's Office,  
4 okay? They're awful and they're almost unusable. The idea  
5 that he would miss, in his opinion, 56 images, that just seems  
6 like a large amount because of the technical limitations of  
7 file sizes.

8 For example, he talked about his thumb drives and how  
9 he only has one or two gigabyte thumb drives, and he thought  
10 it would be impossible for him to put his entire porn  
11 directory onto a thumb drive because he has a lot of porn, in  
12 fact, he said 10 or 15 gigabytes of porn. He doesn't have a  
13 thumb drive nearly that large.

14 Here's the problem. I can't explain that to the  
15 jury; I can't explain any of that to the jury. But what they  
16 will have heard is the following: Her saying 56 pictures to  
17 him, and him going, 56? It couldn't -- it couldn't have been  
18 that many, which sounds like an admission that he's surprised  
19 at the number. 56? I only have 15. Well, we all know that  
20 there were several -- I'm sorry, several -- there are  
21 potentially hundreds of pictures that ended up on his hard  
22 drive that may or may not have been child pornography and that  
23 56 were flagged as possible child pornography, okay?

24 So it would be false to -- to label him as a guy with  
25 his hand caught in the cookie jar. Oh, 56? That's -- that's

1 such a large number; I only had 15. That would be completely  
2 false because if we accept the State's proposition that he  
3 knew he had child pornography on his computer, that's what  
4 they're trying to prove here, then he would have known that he  
5 had hundreds and hundreds of pictures so he wouldn't have been  
6 surprised at the number just being 56. In fact, it would have  
7 been the other way. 56? I thought I had 400. Okay. The  
8 impression the jury will get from having that read in the  
9 record, and I objected to it before the recording was entered  
10 into evidence, specifically the 56 part, I asked that that be  
11 redacted.

12 I objected in whole to its entirety; but I  
13 specifically objected to that part under due process and Sixth  
14 Amendment grounds because we have prior stipulations in place,  
15 which I think are now being violated, and because this is  
16 inherently misleading and I think it was against the Court's  
17 earlier rulings. Okay.

18 Now they're going to get the impression that when he  
19 heard the number 56, that he was surprised because it should  
20 have been a smaller number, more like 15, which is what was  
21 charged; that is in no way reflective of the facts. Even if  
22 you accept the State's entire theory of the case, which is  
23 that my client knowingly and willfully downloaded child  
24 pornography, million reasons why no one should accept that,  
25 but even if you accept that, that particular argument that

1 when he heard 56 he was surprised because it was such a big  
2 number as opposed to 15 doesn't fit with anyone's theory of  
3 the case or any facts anywhere, they're now mislead. I  
4 believe they've been prejudiced. I don't think we can bounce  
5 back from this. I'm requesting a mistrial at this point.

6 THE COURT: All right. I'm interested that that's  
7 how you interpreted or heard it because, yeah, I didn't hear  
8 it that way to me at all. To me I was -- it seemed like he  
9 was saying, What? 56? That's, you know, because he said that  
10 repeatedly, Well, I would have seen something like that; and  
11 he kept denying it, and the fact that there are only 15  
12 charged makes it look like the investigator was mistaken and  
13 then there was -- so I guess I -- I didn't hear it that way.  
14 I thought it seemed pretty favorable to your client, all in  
15 all. You know, he stuck to his story throughout; repeatedly  
16 denying that he could not fathom how something like this would  
17 happen, et cetera. So I don't know, but State's position?

18 MR. CHEN: Certainly, Your Honor, it's up to the jury  
19 to determine how they wish to view the audio, and I'm sure Mr.  
20 Westbrook is going to argue in closing arguments where I think  
21 it's appropriate that the statement given by the Defendant  
22 isn't -- shouldn't be given the value that obviously the  
23 State's going to put on that statement. I don't know what  
24 proposition or what case law he would cite to say that a  
25 Defendant has to give a full confession in order for a jury to



1 hear that. I've never heard of such a thing. It is the  
2 Defendant's own statement. It was certainly relevant in terms  
3 of them talking about things that are on the drive and  
4 whatnot.

5 And in terms of specifically the 56 images, Judge, as  
6 you know, there's no stipulation or order signed in this case  
7 that has to do with 56 images. But on the record on multiple  
8 previous occasions before Mr. Westbrook ever got on this case  
9 it was agreed upon that we had an audio. We redacted any  
10 mention of bestiality. We've redacted one other sentence that  
11 had to do with -- about going to jail, and that was the agreed  
12 upon redaction.

13 Now there is certainly a difference, and I think the  
14 Court brought it up the other day, between an interview in  
15 which a detective uses falsehoods or other things to confront  
16 a defendant versus people who are investigating the computer  
17 hardware and specifically saying that they bookmarked other  
18 images of child pornography. That's where the State agreed  
19 that we were not going to talk about the 56 images. But we've  
20 always had the contention that the audio was settled, agreed  
21 to by the State as well as the Defense, and that would  
22 certainly be our position today, Judge, that nothing has  
23 changed and we have never agreed or stipulated to anything  
24 that Mr. Westbrook has alluded to on the record just a moment  
25 ago.

1 THE COURT: All right. Thank you. The motion for  
2 mistrial is denied. Appreciate you making the record. Any  
3 other matters?

4 MR. CHEN: Scheduling matter, Judge, just I don't  
5 know if you want it on the record or off the record.

6 MR. WESTBROOK: Before we do that I have one more  
7 thing on that. I believe that the Court's ruling and our  
8 ultimate agreements regarding the 56 number superceded our  
9 prior agreements. That's all.

10 THE COURT: All right. Shall we go off the record to  
11 talk about scheduling?

12 MR. WESTBROOK: Yeah.

13 THE COURT: Off the record.

14 (Court recessed at 4:04 p.m. until 4:14 p.m.)

15 (In the presence of the jury panel.)

16 THE COURT: Thank you. We are missing Mr.  
17 Castaneda.

18 MR. WESTBROOK: I guess he's in the back.

19 THE COURT: All right. Now the record will reflect  
20 the presence of the Defendant with his counsel, the Deputies  
21 District Attorney prosecuting the case, all 12 members of the  
22 jury as well as the alternate, and all officers of the Court.

23 Will Counsel so stipulate?

24 MS. ANTHONY: Yes, Your Honor.

25 MR. WESTBROOK: Yes.

1 THE COURT: All right. You may proceed.

2 DIRECT EXAMINATION, continued

3 BY MR. CHEN:

4 Q Now first, Detective Tooley, in the interview we  
5 heard a name Tami Green, do you recall? Did you learn if Tami  
6 Green also has a different last name as well?

7 A Tami Hines.

8 Q So Tami Hines and Tami Green are the same  
9 person?

10 A Yes.

11 Q All right. And based upon your conversation,  
12 would you say it's accurate that the Defendant had a better  
13 grasp or knew much more about computers and their workings  
14 than you do, for instance?

15 A Definitely.

16 Q Now I'd like to talk a little bit about the  
17 execution of that search warrant. You mentioned that there  
18 were other forensic examiners with you that day, correct?

19 A Yes.

20 Q Were those forensic Detective Ramirez, Detective  
21 Ehlers?

22 A Yes, there was additional ones as well.

23 Q All right. And all of those would have been  
24 previewing the computers inside of the residence?

25 A Correct.

1           Q     And if an item in the residence did not have any  
2 suspected child pornography, would you have impounded that  
3 evidence?

4           A     No.

5           Q     So you only took the pieces of evidence in which  
6 you believed there was child porn on them?

7           A     Correct.

8           Q     One of those items would have been an HP laptop,  
9 correct?

10          A     Yes.

11          Q     And I'm showing State's Exhibit 51. Would this  
12 have been that laptop?

13          A     Yes.

14          Q     All right. As well as item -- a shuttle desktop  
15 hard drive as well?

16          A     Yes.

17          Q     And I'm showing 37.

18          A     Yes.

19          Q     This would have been the set-up of that  
20 computer?

21          A     Yes.

22          Q     Okay. Now, Detective, I know that you mentioned  
23 that you're not the computer person necessarily and you do get  
24 the reports; but do you ever look with the other detectives on  
25 the items that you seized, such as the USB drive, the shuttle

1 or the HP laptop, did you ever examine them, or did they ever  
2 show you anything as they were looking at them, anything like  
3 that?

4 A I don't believe so, no.

5 Q And you never plugged them into your own  
6 computer or anything?

7 A No, but are you referring to we're at the search  
8 warrant? Detective Ramirez did show myself and Mr. Castaneda  
9 some images.

10 Q Okay. And was there any other point where you  
11 looked at file structures of where items were?

12 A No, I did not look at the file structures.

13 MR. CHEN: Okay. If I could approach the witness,  
14 please?

15 THE COURT: Yes.

16 THE WITNESS: I'm sorry. When you say "look at the  
17 file structures," other than what's in the report where they  
18 show the file path.

19 BY MR. CHEN:

20 Q Okay.

21 A But I didn't look, like, at the tree.

22 Q Exactly.

23 A Okay.

24 Q You did not look at that yourself?

25 A Correct.

1 Q That would have been the forensic [inaudible]?

2 A Correct.

3 Q I'm showing you State's Exhibit what's already  
4 been admitted as 17, 28, as well as 1 through 15, which I'm  
5 going to ask you to keep down here and just thumb through  
6 them, but please do not expose them to the rest of the  
7 courtroom. And do you recognize, first of all, State's  
8 Exhibits 1 through 15?

9 A Yes, I do.

10 Q And what are those images of?

11 A The images? Are you talking about the  
12 certificates and the DL's or the actual images?

13 Q One through 15, everything in the folder.

14 A One through 15 are the images of child  
15 pornography.

16 Q Okay. And were these the images of child  
17 pornography that came from the laptop, the shuttle, and the --  
18 or the USB stick?

19 A Yes.

20 Q Now these images in State's 1 through 15, as a  
21 detective in the ICAC unit, you've seen these images before,  
22 right?

23 A Yes, I have.

24 Q In fact, they're throughout the Internet, I  
25 guess, in terms of places where you could get child

1 pornography, these images have been identified prior; is that  
2 correct?

3 A Yes, they have.

4 Q There's no indication, for instance, the  
5 Defendant in this case took those pictures?

6 A No, not at all.

7 Q Okay. They're just ones that could be  
8 downloaded?

9 A Correct.

10 Q And with regards to State's 17, as well as  
11 State's 28, were these also found on those items?

12 A Yes.

13 Q The shuttle and laptop and the USB stick?

14 A Yes.

15 Q And when you were interviewing the Defendant,  
16 was it these items, for instance, of personal information that  
17 you were referring to when you said, We found your personal  
18 items on the -- on the --

19 A Yes.

20 Q -- USB stick? Okay. Now you mentioned a moment  
21 ago from your conversation you believed the Defendant did know  
22 more about computers and how they worked more than you, and  
23 it's fair to say that much of your conversation had to do with  
24 where those images could have come from; is that a fair  
25 characterization of your conversation?

1           A     Yes.

2           Q     All right. Now certainly there was a recorded  
3 part of your interview; but were there ever any times where  
4 basically, I should say, your recorder wasn't on every moment  
5 with you that day, was it?

6           A     No. There was a moment after I felt -- I  
7 believed the interview to be concluded, and after we had  
8 stopped I was chatting with him a bit and he had made a  
9 mention of -- I made a comment, Well, you had said you had  
10 never downloaded child pornography, and he said, I never said  
11 never.

12          Q     In fact, in one part of the interview I believe  
13 you identify yourself again on the audio. Is that the portion  
14 that you're talking about?

15          A     Yes.

16          Q     And then the interview continued, right?

17          A     Correct.

18          Q     And my question actually earlier was, for  
19 instance, when you showed up at 2205 Beverly Way, you didn't  
20 have a recording device on you that was, like, recording at  
21 the time, did you?

22          A     No. The recorder is actually in my vehicle.

23          Q     Okay. And you didn't -- you only recorded, for  
24 instance, the -- the parts that we heard earlier?

25          A     Correct.



1           Q     So at any point through your recorded interview  
2 did the Defendant ever explain that maybe a virus had possibly  
3 caused this?

4           A     No.

5           Q     After you finished the interview, at any point  
6 did the Defendant at that point say it could have been a virus  
7 that had infected his computer and that's the reason the child  
8 pornography was found on it?

9           A     No.

10          Q     Now you mentioned also that Detective Ramirez  
11 was inside the home previewing images, right?

12          A     Correct.

13          Q     And at some point you and the Defendant actually  
14 entered the home as Detective Ramirez was previewing images?

15          A     Correct.

16          Q     All right. Now when you were interviewing the  
17 Defendant oftentimes there were questions related to when the  
18 files got there or he'd have to see them in order to give a  
19 better explanation of them; do you remember that part of the  
20 interview?

21          A     Yes.

22          Q     That happened a couple times throughout the  
23 interview, right?

24          A     Yes, it did.

25          Q     Okay. Now when you guys went -- when you -- you

1 and the Defendant went into the residence and Detective  
2 Ramirez did, in fact, show the Defendant an image of child  
3 pornography that was found on the Defendant's computer, right?

4 A Yes, he did.

5 Q At any point after the Defendant was finally  
6 able to see the image -- or one of the images that you had  
7 been referring to, did the Defendant ever give an explanation  
8 at that point as to how the child pornography got onto his  
9 computer?

10 A No. The only comment he made was, Yeah, those  
11 are kids, I'm sorry.

12 Q What was his demeanor in saying that?

13 A Very casual.

14 MR. CHEN: Your Honor, at this point I pass the  
15 witness.

16 THE COURT: Cross.

17 MR. WESTBROOK: Hand [inaudible] that folder, please.  
18 Thanks.

19 CROSS-EXAMINATION

20 BY MR. WESTBROOK:

21 Q These are awful; aren't they?

22 MR. WESTBROOK: May I approach? I'm sorry. I  
23 started approaching. May I approach?

24 THE COURT: Yes.

25 BY MR. WESTBROOK:

1 Q These are awful, aren't they?  
2 A They're child porn images, so, yes.  
3 Q I mean, they're horrifying to look at; aren't  
4 they?  
5 A Yes, they are.  
6 Q When you look at them your heart goes out;  
7 doesn't it?  
8 A Yes, it does.  
9 Q When you look at them all you can think is, I'm  
10 sorry, right? I'm sorry. I'm going to open up this folder.  
11 Look at that picture. Is there anything about that picture  
12 that doesn't make you sorry?  
13 A I wouldn't say the word "sorry." I would say  
14 the word "sad."  
15 Q Sad, sorry, sorrowful. Is sorrowful a synonym  
16 for sad? Is sorrowful --  
17 A I'm sorry?  
18 Q Is sorrowful a synonym for sad?  
19 A Yes.  
20 Q Is sorrowful the root of sorry?  
21 A Yes.  
22 Q I'm sorry was an expression of sorrow and  
23 disgust, wasn't it?  
24 A I can't answer that question.  
25 MR. CHEN: Your Honor, I think at this point he's

1 asking the witness to speculate.

2 THE COURT: Sustained.

3 MR. WESTBROOK: I wasn't asking you to speculate.

4 I'll withdraw. I'm sorry.

5 MR. CHEN: Your Honor, I would object and move to  
6 strike the comment on the record as well.

7 THE COURT: That's granted. The jury is ordered to  
8 disregard the comment and the question was inappropriate  
9 because it called for speculation. Proceed.

10 BY MR. WESTBROOK:

11 Q Why did you turn off your recorder?

12 A I thought the interview was finished.

13 Q You're in charge of the interview, how could you  
14 think the interview was finished?

15 A Because it seemed like it was finished.

16 Q But then you kept talking to him afterwards,  
17 right?

18 A We did, yeah, we were talking.

19 Q Well, you're talking to a suspect, you're always  
20 interviewing, aren't you?

21 A Not -- no, actually, no.

22 Q You just were having a neighborly chat?

23 A Sometimes, yes.

24 Q Okay. When you have a neighborly chat, though,  
25 as a police officer you're not having a neighborly chat, you

1 were trying to get more information, aren't you?

2 A I disagree with that.

3 Q You were just being neighborly?

4 A I'm saying that we don't always talk to a  
5 suspect as a suspect.

6 Q Okay. In this case in this situation when you  
7 were talking to him off the record, you weren't being  
8 neighborly, you were continuing your interrogation; weren't  
9 you?

10 A No, I don't recall the conversation completely.  
11 I just recall the part that I stated earlier.

12 MR. WESTBROOK: Okay. Court's indulgence.

13 BY MR. WESTBROOK:

14 Q You're not sure exactly what you said, right?

15 A Other than I reiterated part of the  
16 conversation, and the part that I told you earlier about that  
17 when I said, You never said that you downloaded child porn. I  
18 can tell you what we typically talked about. Like if I'm  
19 getting ready to get out of the car --

20 Q No, I just want to know about this case.

21 A Okay.

22 Q You didn't -- you don't remember verbatim what  
23 you said, right?

24 A No, I do not.

25 Q Okay. And you don't remember verbatim what he

1 said, right?

2 A No, I do not. Not all parts of the  
3 conversation, no.

4 MR. WESTBROOK: Okay. May I approach?

5 THE COURT: Yes.

6 BY MR. WESTBROOK:

7 Q Will it refresh your recollection -- and again,  
8 I know this is not verbatim -- as to what you wrote in your  
9 report if I gave you a copy of your report to read?

10 A If you point out the part that you're referring  
11 to.

12 Q Right here, this paragraph.

13 A Yes. As I said before, I do not recall all  
14 parts of the conversation, just part of it. That one stuck  
15 out in my mind, obviously, and I reiterated when I talked  
16 about on the interview -- when we started the interview back  
17 up.

18 Q Okay. So in your report you wrote anything --  
19 this is your report, correct?

20 A Yes, it is.

21 Q I said something to the effect of, Anthony, you  
22 said you've never downloaded and/or visited a child  
23 pornography site? And Anthony replied, I never said I didn't  
24 download from a child-porn site, and then you wrote, Not  
25 verbatim?

1           A     Correct.

2           Q     Okay. During that long interview, did you ever  
3 ask him specifically: Did you download from a child-porn  
4 site?

5           A     I do not recall if I specifically asked it that  
6 way.

7           Q     Okay. Also during this time that wasn't  
8 recorded, there was further conversation, was there not, about  
9 how this could have possibly have happened without his  
10 knowledge?

11          A     I don't recall.

12          Q     You don't recall. Okay. Well, on the record,  
13 the part that we actually have a recording of you spoke in  
14 great detail about how this could have possibly happened  
15 without his knowledge, right?

16          A     Yes.

17          Q     And as a network engineer he tried to give you  
18 every possible scenario where it could have happened; didn't  
19 he?

20          A     He gave possibilities, yes.

21          Q     Okay. That seemed pretty clear that he believed  
22 you when you said that there was child pornography on his  
23 computer, right?

24          A     Yes.

25          Q     You said it several different times?

1 A Yes.

2 Q And you knew and mentioned to him that there was  
3 lots and lots of adult pictures, pictures of adults that are  
4 pornography on his computer, right?

5 A I said that I didn't know how much adult  
6 pornography was on his computer.

7 Q But he had told you there was a lot, right?

8 A Yes, he did.

9 Q Okay. How long have you been doing this? I --  
10 I missed that when you were talking --

11 A Assigned to the Internet Crimes Against  
12 Children? A little over five years.

13 Q Five years. I'm sure that you've run into  
14 people who've downloaded adult pornography before?

15 A Yes, of course.

16 Q Okay. And -- and I apologize for the  
17 terminology here. I keep saying adult pornography because  
18 this is a trial about child pornography, so when I say it I'm  
19 differentiating between adult and child. But in the real  
20 world, generally speaking, if someone says this is an adult  
21 website, do they mean this is a website that includes adults  
22 or do they mean it's a website for adults?

23 A I would believe that they would assume that it's  
24 an adult pornography website.

25 Q Right. And adult bookstore is a bookstore for



1 adults?

2 A That has adult pornography in it.

3 Q Right. A child bookstore is not a bookstore  
4 that has child pornography in it; it's a bookstore that has  
5 books for children, right?

6 A I would hope so.

7 Q Okay. I just didn't want to be confusing with  
8 the terminology. So he admitted to you that he had lots and  
9 lots of, you know, regular pornography, not illegal  
10 pornography on his server; and as somebody who's exploring  
11 these kind of cases, you -- you know that the fear of anybody  
12 who downloads regular pornography is: What if I got a picture  
13 that shouldn't be there, right?

14 A Some people, maybe. I don't know.

15 Q Okay. If people like teen pornography, women  
16 who look young as opposed to, I guess, women who look old,  
17 wouldn't that be a fear: What if I get a picture I'm not  
18 supposed to have?

19 A And when you say "teen" and "women," you know,  
20 are you talking about women who are over the age of 18 that  
21 look like they may be a little bit younger?

22 Q Yes. I'm talking about -- are you familiar with  
23 the magazine Barely Legal?

24 A Yes.

25 Q Right. Also are you familiar with in

1 pornography terms on the Internet the concept of teen  
2 pornography?

3 A There's two concepts of teen pornography on the  
4 Internet.

5 Q The one I'm talking about is the legal one.

6 A Okay.

7 Q Okay. The one that's marketed and makes  
8 billions of dollars a year, that's the one I'm talking about.  
9 You're familiar with that, correct?

10 A Yes.

11 Q Okay. "Teen" is a word that is used in search  
12 engines to describe a certain type of pornography, right?

13 A Yes.

14 Q And the type of pornography is women who are of  
15 legal age who look young, right?

16 A Yes.

17 Q And they -- it's a fantasy thing; isn't it?

18 A I assume.

19 Q They're wearing cheerleader outfits sometimes?

20 A Correct.

21 Q Right? They're wearing Catholic schoolgirl  
22 outfits sometimes, right?

23 A Yes.

24 Q And you've seen these images?

25 A Yes.

1           Q     Okay. If you showed up at somebody's house,  
2 being from the Metropolitan Police Department and having your  
3 job title, and they know they've downloaded teen-style  
4 pornography that obviously the fear is: What if I've got a  
5 picture I'm not supposed to have, right?

6           A     I can't speculate to what they believe.

7           Q     Okay. But you believe that, you believe that's  
8 a fear in their head; don't you?

9           A     No. It depends on your -- I can't -- I can't  
10 say because I don't have all of the facts in front of me in  
11 reference to a particular case involving that.

12          Q     Okay. In this case, you were trying to give him  
13 options or maybe help him give you options to decide how this  
14 could have possibly happened without his knowledge, right?

15          A     Yes.

16          Q     And one of the tools that you used to try to get  
17 him to talk was the content of legal pornography on his  
18 computer, right?

19          A     Correct.

20          Q     You got him talking about the legal pornography  
21 on his computer, right?

22          A     Uh-huh.

23          Q     One of the reasons you did that was to make him  
24 doubt whether or not he might have gotten a file that was  
25 illegal, right?

1           A     Not to make him doubt, no.

2           Q     No. Because when you go in a situation like  
3 this you believe 100 percent the person you're talking to is  
4 guilty, right?

5           A     No, I do not.

6           Q     You don't?

7           A     Several times we go to a search warrant I have  
8 no idea who the suspect is. This one I just happened to have  
9 a lead indicating that he may be the person, but I do not know  
10 anything until the entire investigation is complete.

11          Q     So you consider yourself tabula rasa when you go  
12 into a situation?

13          A     I don't think I understand what you're saying.

14          Q     Tabula rasa, it means blank slate or clean  
15 slate; is that how you consider yourself?

16          A     I wouldn't say a blank slate, no. Everybody has  
17 certain biases when they do anything.

18          Q     Okay. And your bias is when you're interviewing  
19 a suspect you think he's guilty?

20          A     No, that is not correct.

21          Q     I'm going to move on from that for a second  
22 because I think that will start about an hour-long  
23 conversation.

24          A     Okay. Maybe I can clear that up for you.

25          Q     But, no, maybe later. Maybe later.

1 A Okay.

2 Q But let's put a pin in it and we'll come back to  
3 it. I'm putting an actual pin in it right here. I want to  
4 talk to you about the lead. You just mentioned that here you  
5 were acting based on a lead. What do you know about the  
6 person that gave you the lead?

7 A Not a lot.

8 Q Okay. You know her name, right?

9 A Yes, of course.

10 Q Tami. Did you know her name was Tami Green?

11 A No.

12 Q Okay. Did you know her boyfriend?

13 A No.

14 Q She never mentioned her boyfriend to you?

15 A No, she did not.

16 Q She told you that she found this thumb drive and  
17 that she looked at it and it had some really bad pictures on  
18 it and so that's why you were called; is that right?

19 A Yes.

20 Q Is there anything more you know than that?

21 A No.

22 Q Did you do any investigation [inaudible]  
23 whatsoever?

24 A Yes.

25 Q What was your investigation?

1           A     I checked our records and didn't find any  
2 reports that were existing with her name.  
3           Q     Okay. That's it?  
4           A     And I believe I -- obviously, I probably scoped  
5 her and DMV'd.  
6           Q     Okay. You did an initial interview with her.  
7 Did you ever interview her boyfriend?  
8           A     I didn't know about her boyfriend.  
9           Q     Because she didn't tell you?  
10          A     Correct.  
11          Q     Okay. You knew that she had a computer that  
12 this thumb drive was inserted into, right?  
13          A     Yes.  
14          Q     And she said it was her computer, right?  
15          A     I don't know if she said her computer or a  
16 computer; I don't recall.  
17          Q     Okay. Did anyone take a look at this computer?  
18          A     No.  
19          Q     So there's a computer out there that this thumb  
20 drive was in that no one's taken a look at?  
21          A     Correct.  
22          Q     At least one computer that you know of?  
23          A     Correct.  
24          Q     Okay. You heard the phrase "consider the  
25 source?"

1 A Yes.

2 Q Did she ever tell you that she had a personal  
3 grudge against Mr. Castaneda?

4 A No, she did not.

5 Q She ever tell you she had been evicted by Mr.  
6 Castaneda?

7 A No, she did not.

8 Q Did she ever tell you that she went to a lawyer  
9 about fighting the eviction against Mr. Castaneda?

10 A No.

11 Q Okay. If you had heard any of those things from  
12 her, would you have investigated further into her possible  
13 motives for fabricating evidence against Mr. Castaneda?

14 A Yes.

15 Q Okay. But you weren't told?

16 A Correct.

17 Q So you couldn't go into it?

18 A Correct.

19 MR. WESTBROOK: All right. Your Honor, may we  
20 approach?

21 THE COURT: Yes.

22 (Off-record bench conference.)

23 BY MR. WESTBROOK:

24 Q Is it fair to say that you were the lead  
25 detective on this case?

1 A Yes.

2 Q And I know you're not the technical specs  
3 person, right?

4 A No, sir.

5 Q But you give them their marching orders,  
6 correct?

7 A No. I simply put in a request for somebody to  
8 the forensics.

9 Q Maybe I was -- I was misstating your authority.  
10 You put in a request. I give people marching orders, but no  
11 one ever does anything. You put in a request and they fulfill  
12 your request?

13 A Yes.

14 Q Okay. That's how the chain of command works in  
15 this particular scenario?

16 A Yes.

17 Q Okay. Is that how it always works? There's  
18 always a lead detective, and then you order forensics and the  
19 forensics reply and gives you the reports for you to review,  
20 is that the normal course of things?

21 A Yes.

22 Q Okay. In this case did you review any reports  
23 regarding the thumb drive and -- and what was on it?

24 A I reviewed the report that Detective Ramirez  
25 provided to me.



1 Q Okay. On that report --

2 MR. WESTBROOK: Court's indulgence. Is that a  
3 State's exhibit now or is it not? Got it? Do you have the  
4 report?

5 BY MR. WESTBROOK:

6 Q Did you and Detective Ramirez go over the report  
7 in great detail or did you scan it? What was the extent of  
8 your review of it?

9 A Honestly, I do not recall.

10 Q Okay.

11 A I was given the report. I reviewed the contents  
12 of it.

13 Q Okay. Do you know enough about computers -- and  
14 I think -- I think you do. I think you might. Let me direct  
15 the question like this. Do you know enough about the  
16 technical aspects of this job to know what a modified date is?

17 A I get confused between the modified, creation  
18 and access dates, so I can't answer your question.

19 Q I sympathize. I think everybody in here  
20 probably sympathizes. If I said that a modified date was a  
21 date that a file is written to a device, does that sound  
22 right, or you do not know?

23 A I -- I can't answer the question.

24 Q Okay. So when you went over there with  
25 Detective Ramirez, you weren't looking specifically at any of

1 the modified dates, were you?

2 A I don't believe so. I probably -- what I'm  
3 saying is I can't say for sure; but I probably did discuss  
4 with him, like, is it possible for somebody to move these,  
5 like, just now put them on there, or is this something that  
6 was on here for, you know, prior to -- like, past year, past  
7 two years. I don't remember the exact dates; but I would not  
8 be able to come to that information on my own.

9 Q Okay. In going through it --

10 MR. WESTBROOK: May I approach the witness?

11 THE COURT: Yes.

12 BY MR. WESTBROOK:

13 Q Ignore my scribbling on this, but is -- is this  
14 similar to the report that you looked at with Detective  
15 Ramirez?

16 A Yes. I'm sorry. The one I saw had the actual  
17 images.

18 Q Right. And that one does not?

19 A Correct, yes. That would be -- that would be  
20 something similar, yes.

21 Q Okay.

22 A This is the report.

23 Q Number three on that list, if I could direct  
24 your attention. That's the one that I've written all over,  
25 obviously. It says, Last access: 2/7/2010. When did you talk

1 -- or I'm sorry. When did you take possession of the thumb  
2 drive? Was that 2/8/2010?

3 A That was 2/8/2010.

4 Q Okay. So last access: 2/7/2010. And then it  
5 says, Last written -- and I told you what modified -- I  
6 apologize. That one says, Last written: 2/7/2010. Do you  
7 know what written means?

8 A You would have to ask a forensic person.

9 Q Okay. You would agree, though, that this thumb  
10 drive and this particular file, which is euro001.jpg was last  
11 written the day before you took possession of it, right?

12 A Since I can't answer the question of exactly  
13 what last written means, I can't answer your question.

14 Q Oh, no.

15 A I can say what's written on here, what the  
16 report read. The report reads, Last access: 2/7/10. Last  
17 written: 2/7/10. That means nothing to me because I'm not a  
18 forensic examiner.

19 Q Okay. There you go. And that's actually all I  
20 wanted to -- fortunately we had lots and lots of testimony,  
21 which I'm sure everyone paid careful attention to, regarding  
22 what last written means. You do know that the thumb drive was  
23 in the possession of Tami Green/Hines on that day, right?

24 A Yes. Perfect statement, yes.

25 Q If your investigator or forensic examiner came

1 and told you that last written means that this is the date  
2 that the file was put on the thumb drive and on that date it  
3 was in the possession of somebody other than Mr. Castaneda,  
4 that would be important evidence; wouldn't it?

5 MR. CHEN: Judge, I'm going to object to that again.  
6 That's actually mischaracterizing exactly what the forensic  
7 examiner testified that "last written" specifically means.

8 MR. WESTBROOK: I don't think it does. I don't think  
9 we're clear.

10 THE COURT: Well, the jury will -- it's your memory,  
11 your notes as to what the testimony was. And, I'm sorry.  
12 What was your question?

13 MR. WESTBROOK: Well, my question was, because I --  
14 I'm going into her investigation and I -- I apologize.

15 BY MR. WESTBROOK:

16 Q I know it sounds like I'm trying to quiz you on  
17 your specific knowledge of computers. I'm not. If in your  
18 investigation you had an allegation like in this case that  
19 here's the thumb drive, it's got child pornography on it and  
20 it belongs to that guy over there, okay? And you found out  
21 that the person who gave you the disk had actually placed an  
22 image on the drive the day before they gave it to you when it  
23 was in their sole possession, that would be important  
24 information for you; wouldn't it?

25 A If I [inaudible] the report, yes.

1           Q     Okay. That's all I wanted to find out. So you  
2 definitely would have investigated that if you had noticed it,  
3 or it had been brought to your attention?

4           A     Of course.

5           Q     In this case, though, it wasn't?

6           A     That wasn't; but I don't know what that means.

7           Q     I understand. I understand. Are you familiar  
8 -- well, let me go back a little bit. In your -- in your  
9 training, maybe even starting as early as the police academy.  
10 I assume you went to the police academy, right?

11          A     Yes, sir.

12          Q     Okay. It's nothing like the movies, is it?

13          A     Unfortunately, no. Fortunately for everyone  
14 else, no.

15          Q     Do they train you in interview techniques?

16          A     Not in the academy, no.

17          Q     Okay. Where did you get your interview  
18 training?

19          A     I went to different classes for it.

20          Q     Like, can you describe some of the classes?

21          A     The Stincelli class, the Reid class, Interview  
22 and Interrogation Techniques.

23          Q     The Reid class, at the Reid class you learn  
24 something call Reid techniques, right?

25          A     Yes.

1           Q     And, in fact, when you go out into the field and  
2 do an interview like the one that you did in this case with a  
3 possible suspect, you actually utilize Reid techniques; don't  
4 you?

5           A     I actually haven't used -- I used to use  
6 Stincelli techniques, Reid I didn't really follow that much;  
7 and neither one of those, probably a grouping of both, but not  
8 a set follow-through of the questions they usually recommend  
9 to use.

10          Q     So is it more like you -- you take the things  
11 you learn like Reid techniques and other things and  
12 incorporate them and create your own style out of it?

13          A     Sometimes, yes. It honestly depends on what  
14 investigation I'm doing.

15          Q     Sure. Let's just focus on this case, all right?  
16 One of the Reid techniques is direct confrontation, right?

17          A     Yes. Once again, I focused mostly on Stincelli,  
18 which is similar to Reid --

19          Q     Okay.

20          A     -- so I'm not going to be able to recall exactly  
21 what the Reid techniques were.

22          Q     I understand. I'm not trying to quiz you.

23          A     Okay.

24          Q     Direct confrontation is a part of both of them,  
25 isn't it?

1           A     Yes.

2           Q     Okay. And by direct confrontation that means  
3 that you tell the suspect in no uncertain terms, We know what  
4 you did, we have the evidence against you, right?

5           A     At some point in the interview, yes.

6           Q     Okay. At this interview it was pretty close to  
7 the front; wasn't it?

8           A     I believe so, yes.

9           Q     Okay. Then as a second step you tried to shift  
10 the blame away from the suspect to some other person or some  
11 set of circumstances, right?

12          A     Yes, of course.

13          Q     Okay. It wasn't -- I'm sure it wasn't you  
14 because you're obviously a good person, it must have been some  
15 bad person or circumstance; is that a summary of how it goes?

16          A     Or as this conversation went, something on the  
17 computer.

18          Q     Something on the computer must have happened  
19 without your knowledge?

20          A     Correct.

21          Q     Okay. Now it's true, though, that if something  
22 happens without your knowledge then you're not responsible for  
23 it, right?

24          A     No.

25          Q     You don't believe that's true?

1           A     No.

2           Q     Okay. So you think that if, you know, you went  
3 home today and you had a virus on your computer and it  
4 downloaded some child pornography that you've committed the  
5 act of --

6           A     I would be in possession of it; but it's up to  
7 me to know what's on my computer and to keep my virus up  
8 running.

9           Q     So then you should be found guilty in a trial  
10 according to you?

11          A     Not necessarily, no. There's circumstances --

12          MR. CHEN: Objection, Your Honor. [Inaudible] legal  
13 conclusion that he's asking her to speculate on.

14          THE COURT: Sustained.

15          MR. WESTBROOK: Your Honor, I'm not asking to  
16 speculate on legal conclusion. I'm asking her what she  
17 believes in this case to get her mindset for when she was  
18 interrogating my client.

19          MR. CHEN: In that case then I would object as to  
20 irrelevant.

21          MR. WESTBROOK: Okay.

22          THE COURT: I want you to stay away from things that  
23 -- the jury is going to be instructed on what will be required  
24 for this particular alleged crime. You're going to get the  
25 law at the end of the case, so I don't want you to ask this



1 witness what the law is, and that's what you're getting to.

2 MR. WESTBROOK: Right.

3 BY MR. WESTBROOK:

4 Q And I don't want to make that mistake because  
5 obviously you're not a lawyer or a judge, right?

6 A Correct.

7 Q And we don't want to confuse anybody about what  
8 the law is because they'll be instructed, right? Okay. What  
9 I'm asking you is: If you think someone has child pornography  
10 on their computer, in your mind they've committed a crime?

11 A No.

12 Q The answer is no. Okay. Then why did you say  
13 just a second ago that if they didn't know it was on their  
14 computer then you think that they're guilty of it?

15 A Because you didn't let me finish the question.

16 MR. CHEN: Judge, I'm going to object again because  
17 [inaudible].

18 BY MR. WESTBROOK:

19 Q Okay.

20 A Finish the answer, rather.

21 THE COURT: Sustained.

22 MR. CHEN: Motion to strike.

23 THE COURT: Yes.

24 MR. WESTBROOK: Thank you.

25 THE COURT: The jury is to --

1 MR. WESTBROOK: Okay.

2 THE COURT: -- disregard the question.

3 BY MR. WESTBROOK:

4 Q So when you go to an interrogation --

5 THE COURT: Wait.

6 MR. WESTBROOK: Oh, I'm sorry.

7 THE COURT: Don't talk over.

8 MR. WESTBROOK: Sorry, Judge.

9 THE COURT: Now, go.

10 BY MR. WESTBROOK:

11 Q Okay. When you go into interrogation, you go in  
12 with some evidence, right?

13 A Sometimes.

14 Q Sometimes you go in with zero evidence?

15 A What are you defining as evidence? Physical  
16 evidence?

17 Q Well, in this case --

18 A A statement or --

19 Q You always have some suspicion, obviously. You  
20 don't stop people on the street and randomly interview them  
21 and see if they're [inaudible] crimes?

22 A No.

23 Q Of course. You always have something to go on  
24 when you talk to somebody, even if it's a mere allegation,  
25 right?

1           A     Yes.

2           Q     Okay. In this case you had some physical  
3 evidence, right?

4           A     Correct.

5           Q     You had a thumb drive and it had unmistakable  
6 images of child pornography -- completely unmistakable images  
7 of child pornography on it, right?

8           A     Yes.

9           Q     Okay. And you also had somebody telling you  
10 that it belonged to Mr. Castaneda, right?

11          A     Yes.

12          Q     When you talked to him in your mind he was  
13 probably guilty, right?

14          A     No. I don't know that. I can't -- once again I  
15 cannot make that assessment until the investigation is  
16 completed.

17          Q     Okay. I'll continue with the techniques you  
18 used in your investigation. All right. So direct  
19 confrontation, that's something that's done in both of the  
20 techniques you've studied, Reid technique and the other one?  
21 You try to shift the blame away from the suspect to some other  
22 person or set of circumstances; why do you do that?

23          A     So the person feels comfortable talking.

24          Q     Okay. Why do you want them to feel comfortable?

25          A     Because you want to be able to get to the truth

1 of something.

2 Q The truth of something or the thing that you are  
3 expecting to hear?

4 A No. The truth. It doesn't benefit me to get  
5 something that I want to hear.

6 Q Okay. So you're trying to get to the truth?

7 A Correct.

8 Q All right. You want to try to discourage the  
9 suspect from denying his guilt, that's step three of the Reid  
10 techniques?

11 A I don't do that that I'm aware of.

12 Q Okay. So you learned that technique and as part  
13 of your training; but you don't try to discourage the suspect  
14 from denying his guilt?

15 A Once again, I don't recall that aspect of the  
16 training because I didn't practice that particular model.

17 Q All right. And you're saying you didn't try to  
18 discourage Mr. Castaneda from denying his guilt in this case?

19 A Can you give me an example? I think I'm not  
20 following you.

21 Q Okay. I'll give you an example. How many times  
22 do you think during your roughly 90-minute interview that Mr.  
23 Castaneda says that he did not download child porn, that he  
24 didn't have child porn, that he didn't know about any child  
25 pornography, that he would never intentionally download child

1 pornography, that he has no idea what you're talking about  
2 with the images; I mean, how many denials of guilt do you  
3 think you got during that interview?

4 A There are several.

5 Q Several. Can you give me a closer number? Is  
6 it more than ten?

7 A I don't know. I said several. That's all I can  
8 say without reviewing the statement page by page.

9 Q Okay. So over and over again he's telling you  
10 that he didn't do this and he's not guilty, but you're not  
11 accepting that as an answer, are you?

12 A Not at that time, no.

13 Q Because one of the techniques you use is try to  
14 discourage the suspect in denying his guilt, right? That's  
15 one of your techniques, right?

16 A I think I understand what your -- what your  
17 point is.

18 Q Okay. You -- you wouldn't let him just get away  
19 with saying, It's not mine, I didn't do it; you wanted to keep  
20 going?

21 A Correct.

22 Q Is that fair to say?

23 A Correct.

24 Q Okay. And the reason that the Reid technique  
25 says to do that, if you can recall your training --

1 MR. CHEN: Your Honor, I'm going to object at this  
2 point because I think she's already mentioned she doesn't use  
3 the Reid technique, therefore, why are we discussing it since  
4 it's irrelevant?

5 THE COURT: Sustained. I mean --

6 MR. WESTBROOK: Your Honor, if I may, that's not what  
7 she said.

8 THE COURT: -- why don't you just talk to her about  
9 in her training instead of focusing -- she keeps telling you  
10 she doesn't really use the Reid technique, so maybe you  
11 could --

12 MR. WESTBROOK: If I may, Your Honor? She said that  
13 she incorporates all the training she's received and that she  
14 was trained in the Reid techniques.

15 THE COURT: Yes, but she says she doesn't use the  
16 Reid technique, can't remember much about what it is, so  
17 instead of focusing on that so much, why don't you just talk  
18 about the technique, whatever it is?

19 MR. WESTBROOK: Okay.

20 BY MR. WESTBROOK:

21 Q In your training one of the techniques you  
22 learned is that it's important to re-enforce your own  
23 sincerity, right?

24 A Yes.

25 Q Okay. You want to develop trust with the person

1 you're talking to?

2 A Yes.

3 Q You want them to think she's a great gal, she  
4 won't steer me wrong; if I just come clean, you know,  
5 everything will be fine, right?

6 A I don't tell somebody everything's going to be  
7 fine. I would not tell somebody that without knowing that for  
8 sure myself.

9 Q Okay. But you do say things, like, You can tell  
10 me the truth now, you know, later on I don't want to come back  
11 here and go, well, that guy lied to me?

12 A Of course.

13 Q Right? Okay. Isn't that not an indication that  
14 if you tell me the truth things will go easier for you?

15 A There's many interpretations of that statement.

16 Q One of the interpretations by design is that you  
17 want them to trust you and feel like they can tell you things  
18 and if they do all their problems will go away, right? That's  
19 by design; isn't it?

20 A I wouldn't say by design, no.

21 Q Okay. You did study the Reid techniques, right?

22 A As I stated before, it's been years and I don't  
23 practice that particular model.

24 Q All right. Could you spell the name of the  
25 other technique that you said you normally employ?

1           A     Normally in place that I used to employ,  
2 Stincelli.  
3           Q     Stincelli. Can you spell that for me?  
4           A     I believe it's S-T-I-N-C-E-L-L-I, Carl  
5 Stincelli. These were techniques that I used primarily when I  
6 was conducting sexual assault juvenile investigations.  
7           Q     Okay.  
8           A     ICAC investigations are different.  
9           Q     So you had your direct confrontation, you  
10 certainly did in this case many times, right?  
11          A     If you're considering those direct  
12 confrontations, then yes. I don't consider that a direct  
13 confrontation.  
14          Q     Okay. Well, you said --  
15          A     I can give you an example of what I consider  
16 direct.  
17          Q     Yeah, please give me an example while I'm  
18 looking through --  
19          A     During the course of an interview, like I said,  
20 when I used this particular model of techniques, I would go  
21 in, I would talk with the suspect, see what their point of  
22 view was, tell them what [inaudible], then I would break, come  
23 back and confront the suspect. That's what I consider a  
24 direct confrontation.  
25          Q     Was there an interview before this interview?



1           A     No. I'm talking about I could give you an  
2 example as doing a sexual assault juvenile interrogation.

3           Q     Okay. All right.

4           A     I don't do my interrogations like this on this  
5 particular style of case.

6           Q     All right. There was, though, a break and then  
7 you come back?

8           A     That was not intentional.

9           Q     You just happened to follow the same pattern  
10 that you normally use?

11          A     There was no direct confrontation on that one  
12 either.

13          Q     Okay. I guess we might have different  
14 definitions of what a direct confrontation is. You said that  
15 he downloaded child porn, in no uncertain terms, you accused  
16 him of that; is that not a direct confrontation?

17          A     It's a statement. I'm not -- like I said, it  
18 depends on your interpretation and my interpretation. That's  
19 your interpretation. I did say that, yes.

20          Q     Okay. Is it also one of your techniques when  
21 you're in an interview to stretch the truth a little bit?

22          A     We're allowed to stretch the truth, yes.

23          Q     Yes. And, in fact, in this interview you  
24 stretched the truth a little bit?

25          A     Can you give me an example?

1 Q Sure.

2 MR. CHEN: Your Honor, prior to him doing that, I'm  
3 actually going to ask to approach, if we could.

4 MR. WESTBROOK: Sure.

5 THE COURT: Okay.

6 (Off-record bench conference.)

7 BY MR. WESTBROOK:

8 Q All right. This -- this might be an example;  
9 but please explain it if I'm wrong about this. Do you happen  
10 to have the transcript of the interview in front of you?

11 A Yes.

12 Q Okay. Could you turn to page 108?

13 MR. WESTBROOK: And this is -- it's all right for me  
14 to stay back here and refer to pages; is that right?

15 THE COURT: Yes.

16 BY MR. WESTBROOK:

17 Q If you go to page 108, you're -- you're telling  
18 Mr. Castaneda, You've got it on your computers and you saved  
19 it on the thumb drives, plural, And not just the thumb drive  
20 that I have, but a thumb drive that's in there too, okay?

21 A Uh-huh.

22 Q You had not recovered any other thumb drives at  
23 all from the house, right?

24 A No.

25 Q And there wasn't another thumb drive that had

1 pornography of any --

2 A Not that I'm aware of. When we're doing the  
3 interview we -- members of our team will let us know if they  
4 found child porn, and where I got the second thumb drive --  
5 maybe somebody had said another drive or something. Either it  
6 got typed wrong to me or I misinterpreted it wrong so --

7 Q Okay.

8 A -- because I was looking at that too, and I  
9 don't remember -- obviously there wasn't another thumb drive  
10 impounded, therefore, there wasn't porn on it so.

11 Q So at this point you might have thought there  
12 was another thumb drive; is that right?

13 A Yes.

14 Q Okay. There wasn't, though, any other thumb  
15 drive?

16 A No, no, just the -- the original one.

17 Q Okay. But under your -- under your techniques  
18 -- I mean, it's okay to stretch the truth a little bit, right?

19 A Yes.

20 Q It's not okay on the stand, obviously?

21 A No, I'm under oath. I can't lie.

22 Q It's a totally different scenario, right?

23 A Correct.

24 Q But when you're out interviewing in the field,  
25 sometimes you want to try to convince the person that you're

1 interviewing that it would be best to confess anything wrong  
2 that they did?

3 A Yes.

4 Q Right? And you can use -- you guys call  
5 subterfuge?

6 A Yes.

7 Q Subterfuge in order to convince them to do that.  
8 Okay.

9 MR. WESTBROOK: I know it's five o'clock, Your Honor.  
10 You want me to ask one more?

11 THE COURT: No. That's okay. I just wanted you to  
12 go till 5:00 since we're running short on time here. We're  
13 going to have to have this witness come back as it is. All  
14 right.

15 Ladies and gentlemen, we're going to take our evening  
16 recess. Tomorrow we're going to have a little change of pace.  
17 We've got to change courtrooms because there will be another  
18 judge in this courtroom, so we're going to move down the hall  
19 to my civil courtroom, which is a little bit smaller, but  
20 still very nice courtroom. And we're going to start at 11:00  
21 as soon as I finish my civil calendar and I'm hopeful that it  
22 will be done by then, and so we need you here at about 10  
23 minutes to 11:00 tomorrow. And it's courtroom 3B, and the  
24 marshal will explain that.

25 THE MARSHAL: It's the courtroom 3B.

1 THE COURT: It's just down the hall a little further.  
2 All right. So I'm going to read you the admonition. Ladies  
3 and gentlemen, we are going to take an overnight recess.  
4 During this recess it is your duty not to converse amongst  
5 yourselves or with anyone else on any subject connected with  
6 the trial or to read, watch or listen to any report of or  
7 commentary on the trial by any person connected with the trial  
8 or by any medium of information, including without limitation  
9 newspapers, television, the Internet or radio, and you are not  
10 to form or express an opinion on any subject connected with  
11 this trial until it is finally submitted to you. Thank you.

12 (Jury panel adjourned at 5:02 p.m.)

13 THE COURT: All right. The record will reflect we're  
14 outside the presence of the jury. We're free to let this  
15 witness go and then return at 11:00 tomorrow.

16 MR. WESTBROOK: That's -- that's fine, Judge.

17 THE COURT: Okay.

18 THE WITNESS: Courtroom 3B.

19 THE COURT: 3B.

20 THE WITNESS: Thank you very much.

21 THE COURT: Good evening.

22 THE WITNESS: You too.

23 THE COURT: Anything else outside the presence?

24 MR. CHEN: Not from the State, Your Honor.

25 MR. WESTBROOK: Do we want to put the jury

1 instructions on?

2 THE COURT: No. I mean we want to.

3 MR. WESTBROOK: We have to at some point. I just  
4 want to --

5 THE COURT: I try to adhere to the no overtime. As  
6 it is my staff still has to wind some stuff up, but I try and  
7 not work them past.

8 MR. WESTBROOK: Overtime.

9 MS. BALLOU: Do we need to be here earlier than 11:00  
10 tomorrow then to do that or --

11 THE COURT: If I get done earlier with my calendar,  
12 which we're starting at 9:00, and maybe, you know, good things  
13 could happen. It could be over by 10:00, and if that's the  
14 case, could you be, like, near your phones where I could say,  
15 okay, let's come over? Let's go off the record.

16 (Court recessed for the evening at 5:04 p.m.)  
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ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON  
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT

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vi.

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