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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	Docket No. CR16-5110RJB
Plaintiff,)	Tacoma, Washington
vs.)	March 13, 2017
DAVID TIPPENS,)	DAY 1
Defendant.)	

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE ROBERT J. BRYAN
SENIOR UNITED STATES DISTRICT COURT JUDGE

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1 Monday, March 13, 2017 - 9:30 a.m.

2 (Defendant present.)

3 THE CLERK: All rise. This United States District
4 Court, the Honorable Robert J. Bryan presiding, is now in
5 session.

6 THE COURT: Please be seated. Okay, this is Cause
7 No. 16-5110, and it comes on for trial this morning. Are the
8 parties ready?

9 MR. FIEMAN: Yes, Your Honor.

10 MR. HAMPTON: Yes, Your Honor.

11 THE COURT: I have, in preparation for this trial,
12 read, and this morning reread, your briefs and the
13 stipulations and also prior orders entered in this matter. I
14 have received your late-filed amended and supplemental exhibit
15 list and so forth. So I am pretty familiar with the record.

16 So let us proceed. Do you wish to make an opening
17 statement, Mr. Hampton?

18 MR. LEUPOLD: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. LEUPOLD: Counsel, may it please the Court: Your
21 Honor, 46-year-old David Wayne Tippens enjoyed depictions of
22 little-kid rape. And as a part of that enjoyment, Your Honor,
23 he needed to masturbate to depictions of that rape, little-kid
24 violence and sexualization, which is why he's charged with
25 knowingly transporting, receiving, and possessing child

1 pornography.

2 No day better illustrates the defendant's enjoyment of
3 this material than February 11, 2016. That was a Thursday
4 morning, Your Honor. The defendant was in his home located in
5 University Place, Washington. And that morning, shortly after
6 7:00 in the morning, he ushered his daughters out of the door
7 and on their way to school.

8 Now, ordinarily, Your Honor, the defendant would have
9 followed his daughters by then traveling to Joint Base Lewis
10 McChord and showing up for work as a uniformed senior
11 noncommissioned officer. But that morning he had a dental
12 appointment in the 8:00 hour, Your Honor. So the defendant
13 had a few extra minutes between when his daughters left the
14 house and when he needed to be at that dental appointment.
15 And in those few minutes alone, Your Honor, the defendant
16 decided to enjoy a video depiction of little-kid rape, and in
17 fact was in the midst of that enjoyment when at 7:45 a.m.
18 federal agents appeared at his door to execute a federal
19 search warrant.

20 When the defendant didn't respond to the knock and
21 announce, or repeated knocks and announcements, agents entered
22 that residence and encountered the defendant departing his
23 bedroom on his way to the front door.

24 After they secured him, the agents then continued on to
25 the defendant's bedroom. First the agents encountered the

1 bedroom door, which was soundproofed, Your Honor. Then they
2 entered his room, and they encountered a dimly lit den,
3 including a window covered with both blinds and a sheet. They
4 identified a recliner located a couple of feet away from the
5 entertainment center where the defendant could enjoy his
6 depictions of child rape. Agents further identified, adjacent
7 to the recliner, womens' underwear, an accessory the defendant
8 used while masturbating. They also identified a masturbation
9 device located at the foot of the entertainment center.

10 Then they saw a Dell laptop on the entertainment center,
11 which was connected to an external hard drive, and both of
12 those digital devices were connected to the 48-inch screen
13 television monitor.

14 And then agents observed what was playing on that
15 television screen that morning, 7:00 on a Thursday, which was,
16 Your Honor, Exhibit 18 marked for ID. It was a video, a
17 five-minute video running on a loop, which depicted a little
18 girl under the age of six, suffering digital rape of her
19 vagina and her anus.

20 Now, after the agents caught the defendant red handed in
21 the act enjoying his depictions of child rape, they spoke to
22 him. And the defendant discussed his enjoyment at length. In
23 that interview with law enforcement on the morning of
24 February 11, 2016, the defendant told agents, among other
25 things, that at 46 years of age, Your Honor, he'd been viewing

1 child pornography since his 20s, a period that spanned a
2 couple decades.

3 He admitted that he was sexually excited by child
4 pornography. He indicated that he used search terms, such as
5 "anal" and "pthc," an acronym standing for pre-teen hard core,
6 to search for these depictions of violence.

7 He also acknowledged using peer-to-peer software,
8 peer-to-peer software being a mechanism that allows individual
9 users to access one another's stored files, including child
10 pornography.

11 And in this instance, Your Honor, the defendant admitted
12 to using the eMule peer-to-peer software. He also
13 acknowledged collecting as much as 1 terabyte worth of files,
14 including child pornography, a terabyte being a digital
15 storage amount that can hold thousands of videos, Your Honor.

16 He further admitted to storing most of his child
17 pornography on the Dell laptop identified in his bedroom and
18 the attached external hard drive, also located on the
19 entertainment system in his bedroom.

20 Now specifically alluding to the events of February 11,
21 2016, the defendant acknowledged his bedroom was soundproof to
22 protect the other occupants of the home from his activities in
23 that room. He also agreed that he had waited for his
24 daughters to depart at approximately 7:00 that morning before
25 beginning his enjoyment.

1 He also agreed that he wore womens' underwear when he was
2 on the Internet, that he masturbated when viewing these
3 depictions of child rape and violence; that at the time agents
4 were attempting to gain access to his home and knocking and
5 announcing, that he was indeed in his bedroom without his
6 pants.

7 Finally, Your Honor, he did acknowledge that, in fact, the
8 video running on a loop on his television that morning had
9 been a video that he had neglected to remove from that
10 television before he responded to the agents' knocks.

11 Your Honor, following that conversation the agents seized
12 the Dell laptop from his home in University Place. They
13 seized the attached external hard drive, and they seized one
14 other external hard drive which was located on the floor of
15 the defendant's living room.

16 Agents initially identified thousands of suspected child
17 pornography, files, and depictions of violence.

18 Your Honor, in this case, the defendant is charged with
19 three counts. Beginning with Count 3, the defendant is
20 charged with knowingly transporting child pornography between
21 August of 2015 and October of 2015.

22 And in support of this charge, the evidence will show that
23 the defendant knowingly obtained and possessed the following
24 three files, which are in fact entitled consistent with the
25 violence that they depict, and that he knowingly possessed

1 those files on December 22nd of the year 2012, pursuant to the
2 forensic analysis, as well as January 25th of the year 2015.

3 And those dates are important, Your Honor, and the
4 evidence will show they are important because the defendant
5 moved from Hawaii to University Place, Washington on
6 September 29, 2015 and necessarily, knowingly transported
7 these three files across state lines.

8 The defendant is also charged with knowingly receiving
9 child pornography between October 2015 and February 2016. The
10 defendant is specifically charged with knowingly receiving,
11 pursuant the eMule peer-to-peer software as the forensic
12 analysis demonstrates, the following five files, which all
13 depict child rape and violence.

14 And the forensic analysis of the eMule software that was
15 retrieved from the defendant's device will in fact indicate
16 that the defendant received these files on December 15, 2015,
17 on or about December 31, 2015; files 3 and 4 on or about
18 January 2, 2016, and finally, January 30th, of the year 2016.

19 Finally, Your Honor, the evidence will show that the
20 remaining significant collection of child pornography that was
21 retrieved and seized from the defendant's digital devices
22 supports the last count, Count 2, in which the defendant is
23 charged with the knowing possession of child pornography.

24 Your Honor, in this case, the defendant told us through
25 his confession, and the digital devices are evidence of what

1 agents encountered and what the defendant was doing on
2 February 11, 2016, and that was enjoying these horrific
3 depictions of child rape, violence and exploitation. And he
4 was only able to engage in that enjoyment by knowingly
5 transporting, knowingly receiving, and knowingly possessing
6 child pornography.

7 And at the conclusion of the government's case, Your
8 Honor, the government will ask this Court to find the
9 defendant guilty of all three charged counts.

10 Thank you.

11 THE COURT: Do you wish to make an opening statement?

12 MR. FIEMAN: Rather than preview our case, I am going
13 to reserve.

14 THE COURT: You may call your first witness.

15 MR. LEUPOLD: The government calls Detective Shook to
16 the stand.

17 THE COURT: Raise your right hand and be sworn.

18 DOUGLAS SHOOK, called as a witness, duly sworn.

19 THE COURT: I ask you to speak into the mike.

20 THE WITNESS: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. LEUPOLD:

23 Q. Good morning, sir. Please state your name.

24 A. My name is Douglas Shook.

25 Q. How are you employed?

1 A. I am a Pierce County Sheriff's Department detective.

2 Q. Where do you currently conduct your duties and role and
3 responsibilities?

4 A. I am currently assigned to the special assaults unit with
5 the Pierce County Sheriff's Department. And I am based out of
6 the City-County building or the courthouse here in Tacoma.

7 Q. Can you broadly summarize your law enforcement experience?

8 A. In 2000 I started my employment with the Sheriff's
9 Department at the Pierce County jail.

10 In 2003 I transferred to the patrol division. During that
11 time I've worked in the different districts that we have.
12 I've worked as a school resource officer, an investigator in
13 the city of University Place, and drug court, alternatives to
14 confinement program supervisor.

15 And then for a year and a half I worked with the FBI on
16 the child exploitation task force, and I am currently a
17 detective with the special assaults unit.

18 Q. Can you now specifically summarize any training and
19 experience you have with respect to sexual exploitation or
20 child exploitation?

21 A. My experience is in helping other officers with cases and
22 warrant services. And I have gone through a child abduction
23 response training, and then Internet Crimes Against Children
24 training class. And then my experiences with the task force,
25 and then experiences as a school resource officer.

1 Q. On February 11, 2016, where were you assigned, sir?

2 A. I was assigned to the child exploitation task force for
3 the FBI.

4 Q. Can you briefly summarize your responsibilities in that
5 role?

6 A. As a task force officer, we would investigate cases of
7 child pornography, human trafficking, prostitution of minors,
8 anything that fell within that scope of exploitation of
9 minors. And I was one of -- it was myself, a Tacoma police
10 officer, two Lakewood officers, an FBI officer, and then two
11 WSP officers.

12 Q. Now, did you participate in the execution of a federal
13 search warrant in this case on February 11, 2016?

14 A. Yes, I did.

15 Q. When I say this case, specifically referring to a search
16 authorization for a residence in University Place where a
17 David Wayne Tippens resided?

18 A. Yes, sir, I did.

19 Q. Now that date did you ultimately encounter and speak with
20 David Wayne Tippens?

21 A. Yes, sir, I did.

22 Q. Could you please identify the location of the courtroom
23 where Mr. Tippens is seated?

24 A. He's the gentleman sitting at the table with attorney
25 Fieman in the gray shirt.

1 MR. LEUPOLD: Your Honor, let the record reflect that
2 the witness has identified the defendant.

3 BY MR. LEUPOLD:

4 Q. Sir, can you briefly describe the role you anticipated you
5 would play during the execution of the residential search
6 warrant on the morning of February 11, 2016?

7 A. I was the case officer. Part of my responsibility, or the
8 main part of my responsibility was for the contact or
9 interview of Mr. Tippens.

10 Q. What time did you assume your position at the back door of
11 the residence on February 11, 2016?

12 A. It was 7:45 in the morning.

13 Q. Can you briefly describe the sequence of events that
14 followed once you reached your assigned position?

15 A. I was posted at the northwest corner of the house on the
16 back side. The officers knocked and announced and then they
17 made entry -- or forced entry. And I remained at my post
18 until -- or to ensure nobody came out the back side or there
19 wasn't a threat on the back side. And then officers came
20 around and directed me -- or asked me to come inside. They
21 said there was something I needed to see.

22 Q. And then you ultimately entered the residence?

23 A. Yes, sir, I did.

24 Q. Was the address of the residence 8522 20th Street Court
25 West in University Place, Washington?

1 A. Yes, sir, it was.

2 Q. Now, you at some point did have an opportunity to enter
3 what you believe to be the defendant's bedroom? But before I
4 ask you about that I am going to ask you about the rest of the
5 house. Did you have an opportunity to view the home in its
6 entirety that morning?

7 A. I did not check inside closets, but yes, I did walk the
8 lower level, the main level, and the upper level briefly, yes.

9 Q. Sir, if you could, there's a binder located to your right.
10 If you could please open that binder and turn it to Exhibit 27
11 marked for ID, which should contain a number of photographs.

12 THE COURT: Let me ask you about your exhibit list
13 here. I have the second amended exhibit list. I assume that
14 supersedes the amended exhibit list and the original exhibit
15 list.

16 MR. HAMPTON: It does, Your Honor. The only
17 difference with respect to the second amended and the first
18 amended is we added one exhibit at the very end, Exhibit 42.

19 THE COURT: Okay. Well, I can throw away the first
20 two?

21 MR. HAMPTON: Yes, Your Honor.

22 BY MR. LEUPOLD:

23 Q. Sir, have you had an opportunity to review the photographs
24 that are contained in government Exhibit 27 marked for ID?

25 A. Yes, sir.

1 Q. What are they?

2 A. They are photographs of the interior of the residence.

3 Q. Did you also have an opportunity to view what appears to
4 be an image of the defendant, which should be the last
5 photograph in Exhibit 27, marked for ID?

6 A. In this booklet it's the next to the last, but yes, there
7 is a photograph in here.

8 Q. Let me ask you first about that photograph. Does that
9 photograph fairly and accurately depict the defendant as you
10 observed him on February 11, 2016?

11 A. Yes, sir.

12 Q. Now that you've also had an opportunity to review the
13 remaining images marked in Exhibit 27, do those also fairly
14 and accurately depict the state of the residence in University
15 Place as you encountered it on February 11, 2016?

16 A. Yes, sir.

17 MR. LEUPOLD: At this point the government moves to
18 admit Exhibit 27, marked for ID, into evidence.

19 MR. FIEMAN: I am sorry, Your Honor, I am just
20 catching up here. This is the photograph? No objection, Your
21 honor.

22 THE COURT: You are offering only 27?

23 MR. LEUPOLD: 27, which includes all the photographs
24 therein.

25 THE COURT: 27 may be admitted.

1 (Exhibit No. 27 admitted.)

2 THE COURT: I thought at first you mentioned
3 Exhibit 42.

4 MR. LEUPOLD: We just mentioned that was an addition
5 to the exhibit list, which is why we filed a superseding list.

6 BY MR. LEUPOLD:

7 Q. Now, sir, returning to your entry of the residence that
8 morning, did you have an opportunity to enter what you believe
9 to be the defendant's bedroom on February 11, 2016?

10 A. Yes, sir.

11 Q. Can you please describe how you entered that room and what
12 you observed?

13 A. As you go through the front door you take the hallway to
14 the left, it's up a short set of steps. You go down the
15 hallway to the left, it's at the end of the hallway. When you
16 walk into the bedroom, there's a wall on your right side, and
17 then the bed was in the middle of the room. There was a
18 recliner or a chair just to the left of that. And along the
19 wall that you entered on, there was like a desk and a TV, and
20 then there was other things in the room, some other small
21 furniture. And there was a bathroom off of that and a closet.

22 MR. LEUPOLD: Your Honor, now that we have admitted
23 Government No. 27, may I publish as needed?

24 THE COURT: Yes.

25 BY MR. LEUPOLD:

1 Q. So Detective Shook, if you could please view the monitor
2 to your left, I am showing you what is page 11 of Government
3 Exhibit 27. Can you please describe the area of the room that
4 is captured in this published exhibit?

5 A. This is the small table that was -- as you stand in the
6 doorway of the room, it would be to -- just off the left of
7 the chair. So the table, the chair and then -- sorry, the
8 bed, the chair, then this table. So this table was between
9 the chair and the window in the room, so on the eastern side.

10 Q. And the area the exhibit depicts is between the chair and
11 the table, correct?

12 A. Yes.

13 Q. I want to direct your attention to an area of the floor,
14 what appears to be an area beneath the table. Do you see that
15 area?

16 A. Yes, sir.

17 Q. What, if anything, remarkable did you observe in that area
18 that is depicted in the published government exhibit?

19 A. There were womens' underwear or small underwear, the food
20 and snacks. But just primarily based on what we were looking
21 at, it was womens' clothing.

22 Q. And they appeared to you to be adult womens' underwear?

23 A. They appeared smaller in size. I don't know the exact
24 size.

25 Q. I have now published on the screen the tenth photograph in

1 Exhibit 27. Can you please describe what is depicted in this
2 exhibit, sir?

3 A. It's a male masturbation tool.

4 Q. You mentioned and described your training and experience
5 in sexual exploitation cases. Have you previously had
6 occasion to come across male masturbation devices?

7 A. Yes, sir, I have.

8 Q. In fact, is the one depicted in this exhibit a fairly
9 typical device you encounter?

10 A. Yes.

11 Q. Did you determine whether or not this device was in fact
12 located in the defendant's bedroom that morning?

13 A. It was in front of the chair and off to the right of the
14 footing of the chair.

15 Q. Fairly close to the television; is that right?

16 A. Yes, it was between the chair and the TV, yes.

17 Q. Now, sir, when you walked into the room that morning, I
18 just asked you about the television. Was there in fact a
19 television in that room?

20 A. Yes, there was a large-screen TV.

21 Q. That was located within view of the recliner you've
22 testified about, correct?

23 A. Yes, it was on the table, so that the chair and the bed
24 were in view of it, or it was faced that way.

25 Q. Did you observe anything on that television screen that

1 morning when you entered the defendant's bedroom?

2 A. Yes, that was the thing that the officers had asked me to
3 come in and view. There was active child pornography playing
4 on the TV.

5 Q. If you could just briefly describe the active child
6 pornography that you observed that morning?

7 A. There was a minor female who was laying on her back and
8 her vagina was exposed to the camera. And there was an
9 apparent adult male hand that was touching the vagina of the
10 female.

11 Q. Based on your training and experience, what did you
12 determine was the approximate age of the visual depiction
13 depicted on the screen?

14 A. Between 3 and 5, possibly a little bit younger. But that
15 was the age range I was thinking.

16 Q. 3 and 5 years of age?

17 A. 3 and 5 years old, yes, sir.

18 Q. After you had an opportunity to view the defendant's
19 bedroom, did you then have an opportunity to speak with the
20 defendant?

21 A. Yes, sir.

22 Q. Can you please describe how that circumstance arose?

23 A. When we came out of the house I contacted Mr. Tippens and
24 asked if he'd be willing to complete an interview, and he said
25 he would.

1 Q. Did you in fact ultimately interview the defendant?

2 A. Yes, sir, we did.

3 Q. Were you joined by another law enforcement officer?

4 A. Yes, Tacoma police officer Nicole Faivre, who was also a
5 task force officer.

6 Q. Where did you ultimately interview the defendant?

7 A. In her jeep Cherokee at the foot of the hill on West Ridge
8 Avenue, just below the house.

9 Q. Approximately what time did you speak to him?

10 A. The interview started at 8:12, so just after 8:00.

11 Q. If you could, in the exhibit binder, turn to what's been
12 marked for identification as government Exhibit 26.

13 A. Okay.

14 Q. What is government Exhibit 26 marked for ID?

15 A. This is the transcript of my interview, or our interview.

16 MR. LEUPOLD: Your Honor, at this point the
17 government moves to admit Government No. Exhibit 26 into
18 evidence.

19 MR. FIEMAN: Your Honor, we have no objection.

20 THE COURT: 26 may be admitted.

21 (Exhibit No. 26 admitted.)

22 BY MR. LEUPOLD:

23 Q. Sir, you've had an opportunity to view the transcript of
24 the conversation?

25 A. Yes.

1 Q. It accurately reflects the conversation you had with the
2 defendant on the morning of February 11, 2016?

3 A. Yes, sir.

4 THE COURT: You have currently marked many parts of
5 that interview according to your witness list.

6 MR. FIEMAN: Your Honor, I had difficulty finding it
7 because the Exhibit 26 tab is right behind the exhibit, the
8 previous exhibit tag 23B, so it took me a moment to find it as
9 well.

10 THE COURT: Is your offer of 26 only, or 26 and its
11 sub-parts?

12 MR. LEUPOLD: We are only offering 26, Your Honor.
13 Does the Court have a copy, Your Honor?

14 THE COURT: Yes.

15 MR. LEUPOLD: May I proceed?

16 THE COURT: It's only a one-page thing here.

17 MR. LEUPOLD: That may be 26A, Your Honor. Is there
18 an exhibit right before it that's just marked 26?

19 THE COURT: Well, there are a whole bunch of 26
20 sub-parts. What I was looking at was one of the sub-parts. I
21 take it 26 is the whole interview?

22 MR. LEUPOLD: That's correct, Your Honor.

23 THE COURT: Okay, I have it.

24 MR. LEUPOLD: May I proceed?

25 THE COURT: Yes.

1 BY MR. LEUPOLD:

2 Q. So sir, you had an opportunity to speak with the
3 defendant. What generally were you attempting to discuss with
4 him that morning?

5 A. His knowledge and involvement of the viewing and access to
6 child pornography.

7 Q. And ultimately you discussed those topics at great length;
8 is that correct?

9 A. Yes, sir.

10 Q. If you could, sir, please turn to what's been Bates
11 stamped page 343 of Exhibit 26.

12 A. Okay.

13 Q. And I specifically direct your attention to a question
14 near the middle of the page of Bates stamp 343 of government
15 26, which starts a question from Officer Faivre, which
16 includes "And how old were you." Do you see that section of
17 the transcript?

18 A. Yes.

19 MR. LEUPOLD: It's Bates stamp 343 of 26. And I will
20 place that on the screen.

21 THE COURT: This is in evidence. I will read it when
22 we get to a break. We don't need to take court time to go
23 through it item by item. You can trust me to read it.

24 MR. LEUPOLD: At this point, Your Honor, I have no
25 further questions for the witness.

1 CROSS-EXAMINATION

2 BY MR. FIEMAN:

3 Q. Good morning, Detective Shook.

4 A. Good morning.

5 Q. Just a little bit by way of background, because my
6 concerns are primarily with some of the forensic issues. I
7 just want to clarify your role of involvement in terms of
8 those forensics. So first of all, if I understand you, you
9 had nothing to do with the creation or writing the NIT that
10 lead up to this investigation; is that correct?

11 A. That is correct.

12 Q. All right, and you have not seen the NIT code yourself,
13 correct?

14 A. No, sir.

15 Q. And you have no knowledge of the Tor Browser vulnerability
16 that was involved in the searches leading to this case?

17 A. No, sir.

18 MR. LEUPOLD: The government objects to this line of
19 questioning as being beyond the scope of the government's
20 direct.

21 THE COURT: He's just clarifying his role in the
22 matter. The objection is overruled.

23 BY MR. FIEMAN:

24 Q. Now, you submitted, in preparation for the February 11th
25 search of Mr. Tippens's home, an application for a search

1 warrant, correct?

2 A. Yes.

3 Q. And you prepared a search warrant affidavit in connection
4 with that warrant application?

5 A. Yes, sir.

6 Q. And there were several pictures or videos that were
7 referenced in the search warrant application, correct?

8 MR. LEUPOLD: Objection, beyond the scope, Your
9 Honor.

10 MR. FIEMAN: Your Honor, I am trying to clarify what
11 was or was not found on the computer, and Detective Shook has
12 already testified of the pictures and videos that he did find.

13 THE COURT: I think he may answer.

14 BY MR. FIEMAN:

15 Q. Now, if you need to refer to your affidavit to refresh
16 your recollection, it is available as Defense Exhibit A-19.
17 But do you recall at this point that in photographs 31 to 34
18 you referenced certain pornographic videos that were viewed on
19 the Playpen site?

20 A. I believe so. I'd like to reference that just to be sure,
21 if I could.

22 Q. Please take your time. Exhibit A-19, paragraphs 31, 33
23 and 34.

24 A. Sorry, the references were for which pages or which
25 paragraphs?

1 Q. 31, 33, and 34. Have I directed you to the correct
2 exhibit?

3 A. Yes, sir.

4 Q. And just very quickly, there are several pictures
5 referenced there -- or videos that Mr. Tippens allegedly
6 accessed on the Playpen site; is that correct?

7 MR. LEUPOLD: The government renews its objection,
8 relevance and beyond the scope.

9 THE COURT: What's the relevance?

10 MR. FIEMAN: The forensics and what was turned up on
11 the computer and how it got there. If I could have one or
12 more question on this.

13 THE COURT: All right.

14 BY MR. FIEMAN:

15 Q. Detective Shook, to your knowledge were any of those
16 pictures or videos listed in the search warrant application
17 ever found or recovered from Mr. Tippens's hard drives?

18 MR. LEUPOLD: The government renews its objection,
19 Your Honor.

20 THE COURT: He may answer.

21 A. I do not know.

22 BY MR. FIEMAN:

23 Q. In preparation for this case, you actually compiled some
24 information regarding the various pictures that are listed in
25 Counts 1 and 3 in the indictment; is that correct?

1 MR. LEUPOLD: Objection, beyond the scope.

2 THE COURT: The objection is overruled.

3 BY MR. FIEMAN:

4 Q. Did you do any forensic analysis in connection with the
5 pictures that you compiled or listed for purposes of the
6 indictment.

7 MR. LEUPOLD: Same objection, Your Honor.

8 THE COURT: Overruled.

9 A. No, sir.

10 BY MR. FIEMAN:

11 Q. Did you do any forensic analysis, were you involved in any
12 of the forensic analysis of the hard drives or of the data
13 associated with the pictures that are listed in Counts 1 and 3
14 of the indictment?

15 A. No, sir.

16 Q. I do have a general question because it appears some of
17 your information was generated in connection with something
18 called an FTK case report; is that correct?

19 A. I do not understand what you are talking about.

20 Q. You had nothing to do with generating the FTK case report?

21 A. What does FTK stand for?

22 Q. I think you answered my question.

23 A. Sorry.

24 Q. Now, I do have a question: You did testify in the Grand
25 Jury, actually I guess for the original indictment and in

1 connection with the superseding, correct?

2 A. Yes, sir.

3 Q. And if you will note, there's a file -- do you have a copy
4 of the indictment?

5 A. I don't have one with me, no.

6 MR. FIEMAN: If I may approach, Your Honor. I am
7 referring to the superseding indictment.

8 BY MR. FIEMAN:

9 Q. Now, just based on your general experience working with
10 these type of cases, Detective Shook, you have worked on child
11 pornography cases previously, correct?

12 A. Yes, sir.

13 Q. And you are aware that commonly in connection with cases
14 like this there may be tens or hundreds of thousands of files
15 stored on the computer that is seized from the defendant and
16 main contain child pornography, correct?

17 A. Yes, sir, based on my experiences.

18 Q. And the computers, as you indicated, can contain an
19 enormous amount of information, correct?

20 A. Yes.

21 Q. For example, there was a reference to a terabyte of data.
22 How much is a terabyte of data?

23 MR. LEUPOLD: Objection, Your Honor, beyond the
24 scope, lack of foundation.

25 THE COURT: He may answer if he knows.

1 A. I don't know the specifics. I know it is a high volume of
2 numbers. I have an explanation that equates it to a number of
3 pages in a printed document. I know it's in excess of 500,000
4 pages.

5 BY MR. FIEMAN:

6 Q. That's one terabyte?

7 A. That's my understanding of it.

8 Q. You've also stated from your personal knowledge, that
9 ESI -- what is ESI?

10 A. Electronic service --

11 Q. Electronically stored information --

12 A. Yes.

13 Q. -- is extremely vulnerable to inadvertent or intentional
14 modification or destruction; do you recall making that
15 statement in your search warrant application?

16 MR. LEUPOLD: Objection, relevance.

17 THE COURT: The objection is overruled.

18 BY MR. FIEMAN:

19 Q. Let me repeat it for you, Detective Shook. Do you recall
20 stating previously, including in your search warrant
21 application, that electronically stored information is
22 extremely vulnerable to inadvertent or intentional
23 modification or destruction?

24 MR. LEUPOLD: Objection, improper impeachment.

25 THE COURT: The objection is overruled.

1 A. Yes, sir, I believe that statement was included.

2 BY MR. FIEMAN:

3 Q. And I assume you stand by it?

4 A. Yes.

5 Q. Just to follow up on that with a couple of questions, you
6 reference both vulnerable to inadvertent or intentional
7 modification. So inadvertent modification or destruction
8 might be when somebody has a computer that is a security
9 vulnerability or they mess up or somehow unintentionally
10 damage their data. Is that a fair general statement?

11 A. Yes, sir, someone who would have far more computer
12 knowledge than myself would be specifically knowledgeable
13 about that, but the understanding I have is that an unexpected
14 event, to include many things, could cause that.

15 Q. Okay. And data is extremely vulnerable to modification
16 and destruction also because of intentional actions, too, you
17 indicated, correct?

18 MR. LEUPOLD: Objection, Your Honor, improper
19 foundation. He's not qualified as an expert. Also on
20 relevance and beyond the scope.

21 THE COURT: He's asking him about what he knows. He
22 may answer.

23 BY MR. FIEMAN:

24 Q. You did make that statement, correct, that data is
25 extremely vulnerable to inadvertent or intentional

1 modification or destruction, correct?

2 A. Yes, sir, that's in there.

3 Q. And we talked about how that can happen inadvertently. I
4 am just asking about the second prong, intentionally. So
5 intentional modification or destruction, that might include
6 such things as viruses, malware, other hackers, things like
7 that?

8 A. Based on my experiences, yes, that would be examples of
9 that.

10 Q. And consistent with that, in your search warrant
11 application, if you look at paragraph 51, if you need to
12 refresh your recollection, you also said that the very act of
13 downloading or storing information can be intentional or
14 unintentional. Do you recall that?

15 MR. LEUPOLD: Objection, improper impeachment.
16 Counsel is continuing to ask about out-of-court statements
17 without laying the foundation of asking the witness what he
18 believes.

19 MR. FIEMAN: I am not impeaching, Your Honor. I am
20 covering ground that he covered earlier in terms of the search
21 and search warrant and simply extracting parts that I
22 understand the government does not want on the record, but are
23 relevant to my case.

24 THE COURT: The objection is overruled. I think you
25 can inquire.

1 MR. FIEMAN: Thank you, Your Honor.

2 A. Sorry, one more time. You stated paragraph 51?

3 BY MR. FIEMAN:

4 Q. Yes. In there, for example, you indicated that the
5 storing of information on a computer can be intentional. Do
6 you recall that?

7 A. Yes, sir.

8 Q. And that, just in general terms, that might be when you go
9 to a website, see a picture, click on it, save it to your
10 computer, do all those steps that go with downloading and
11 saving a file intentionally?

12 A. Yes, sir.

13 Q. And you also indicated that digital information can be
14 stored unintentionally?

15 A. Yes, sir; that's my understanding of it, yes.

16 Q. And it may also be stored unintentionally in many
17 different places on a computer; is that fair in general?

18 A. Based on the conversations and the training I have had,
19 yes, that is my understanding of it.

20 Q. And that's all I am asking, obviously, only what you know
21 or have learned.

22 A. Yes, sir.

23 Q. And that would include things like, for example, automatic
24 downloads to a cache file, or places like that, where the
25 computer itself does the initial saving and storing; is that

1 fair?

2 A. Yes, I believe so. You are approaching the edge of my
3 knowledge based on specifics as to where it might be stored
4 and those kinds of things; yes, sir.

5 Q. But my question, do you agree, was that within your
6 purview?

7 A. Yes.

8 Q. All right, so let me turn to the interview. You indicated
9 on direct when Mr. Leupold asked you in general what you are
10 asking Mr. Tippens about. Do you recall that initial question
11 about the interview he asked you?

12 A. Yes, sir.

13 Q. And I wrote this down. You -- your response was that you
14 were asking him about his knowledge of viewing and access to
15 pornography on the computer. Is that a fair statement of what
16 your interview was covering?

17 A. Yes, his knowledge of or his involvement in, to clarify
18 that.

19 Q. As the Court indicated, the transcript is in evidence, but
20 in terms of this knowledge I do want to follow up with some
21 questions. Please correct me if I am wrong and refer to the
22 transcript as you need. But is it correct that you -- neither
23 you nor Officer Faivre, who was with you, asked Mr. Tippens
24 about any of the pictures or videos listed in Counts 1 and 3?

25 A. That would be correct.

1 Q. And is it also fair to say that in the course of your
2 interview, neither you nor Officer Faivre asked about how any
3 particular pictures or videos were obtained or stored on the
4 computer?

5 A. Correct.

6 Q. Okay. And certainly at that point you did not ask
7 Mr. Tippens if he knew whether any of the depictions listed in
8 Count 3, whether he was aware that they were on his computer
9 before he moved to Washington?

10 MR. LEUPOLD: Objection, mischaracterization of
11 evidence. I believe the witness did testify about at least
12 one file he observed on the television screen on February 11,
13 2016 that was connected to the Dell computer.

14 MR. FIEMAN: Let me repeat the question because it
15 addresses what you just said.

16 BY MR. FIEMAN:

17 Q. And the question was: Did you ask him if he knew if any
18 of the pictures listed in Count 3 of the indictment were on
19 his computer before he moved to Washington, whether he was
20 aware of that?

21 A. No, sir.

22 Q. Okay. And in fact consistent with your focus on viewing
23 child pornography and accessing websites, there were certain
24 questions that did kind of restrict themselves to those areas,
25 and I want to refer first to Bates 334 to 35.

1 A. Yes, sir.

2 Q. And there -- I am sorry, it's sometimes a little unclear
3 to me whether it's you or Officer Faivre who is asking the
4 question, but at the bottom of 334 and continuing on to 335,
5 there's a question addressing -- "can you tell me about your
6 history of lookin' at minor depictions?"

7 MR. LEUPOLD: Objection, the exhibit speaks for
8 itself.

9 MR. FIEMAN: Your Honor, the interview, for the
10 government's purpose, has been introduced and it's very
11 important I clarify a few points of what was covered and more
12 important what was not covered.

13 THE COURT: The objection is overruled. I think you
14 can inquire about those things.

15 MR. FIEMAN: Thank you, Your Honor.

16 BY MR. FIEMAN:

17 Q. Do you recall either you or Officer Faivre asking about,
18 at 334, a question about his history of looking at minor
19 depictions?

20 A. Yes, sir, we did ask about that.

21 Q. Okay, and continuing on 335, the transcript, basically he
22 says he has a long history of going to websites and looking at
23 stuff, right, at child pornography?

24 A. Yes, sir.

25 Q. Because that's what we are referring to. Consistent with

1 336, there were some questions about what Mr. Tippens did in
2 addition -- possibly did in addition to possibly viewing the
3 pornography; do you recall that line of inquiry?

4 A. Yes.

5 Q. And there was an answer appearing at page 336: "I'm not
6 one of the ones that connects with people. I don't share it.
7 I don't, you know, do anything with it, other than, you know,
8 look at it." Do you remember Mr. Tippens telling you that?

9 A. Yes, sir.

10 Q. And similarly on page 334 (sic), he told you again, when
11 you were trying to see what he was actually doing with all
12 this stuff, he said "when I say that it's just been me lookin'
13 at pictures, that's all it's ever been." Do you recall --

14 MR. LEUPOLD: Objection, Your Honor, argumentative.

15 BY MR. FIEMAN:

16 Q. Do you recall him making that statement?

17 THE COURT: You may answer.

18 A. You referenced 334?

19 BY MR. FIEMAN:

20 Q. 344, third line down, he told you: "When I say that it's
21 just been me lookin' at pictures, that's all it's ever been."

22 A. Yes, sir.

23 Q. Now, significantly a little later, you, or your partner
24 Officer Faivre, asked him a little bit about how he located or
25 searched for the pictures he was viewing, on page 351. Do you

1 recall some questions about that?

2 A. Yes, sir.

3 Q. He says at one point, and I am quoting -- excuse me, the
4 question at one point: "What are some of the things that --
5 key words that you would put in?" Do you recall, I believe,
6 Officer Faivre asking him about how he would go about locating
7 sites to look at? It's about halfway down.

8 A. Yes, I see that.

9 Q. Just for clarification, is it fair to say when she's
10 referring to key words, it's like search terms, things you can
11 plug into a general search like Google or eMule?

12 A. Yes.

13 Q. The answer Mr. Tippens gave was "Anything that would find
14 me pictures"?

15 A. Yes.

16 Q. So kind of indiscriminate?

17 A. Yes, sir.

18 Q. Now at 362, he asked you -- I am sorry, I think it was
19 Officer Faivre asked about what -- where things that he viewed
20 might be found. And of course he said probably on his
21 computer maybe, right? At some point, he gave you some
22 information about his computer and how you were likely to see
23 stuff that he had looked at on there?

24 A. Yes, on his computer hard drive.

25 Q. He was actually fairly cooperative with all that, wasn't

1 he?

2 A. Yes.

3 Q. He didn't try to mislead you?

4 A. There was no indication from the statement that I
5 received.

6 Q. And in fact you read him his *Miranda* rights and did
7 everything properly. He was willing to sit down and basically
8 answer all your questions during the extended interview to
9 your satisfaction?

10 A. Yes, sir.

11 Q. So when asked about, I guess, where stuff might be stored,
12 he did reference that in the past he had some stuff on maybe
13 CDs, but I think most of that stuff was thrown away. Do you
14 remember him saying that?

15 A. That was his indication, yes, sir.

16 Q. Then finally on page 365, do you recall either you or
17 Officer Faivre asking specifically about eMule?

18 A. We asked if he had downloaded any software.

19 Q. He said most of it is, you know, a download, a file off of
20 eMule or whatever. Do you recall he says a lot of this stuff
21 that he was looking at came from eMule?

22 A. He stated -- yes, during the interview, and I would have
23 to look to see where he actually responded.

24 Q. 365, I think it's an answer that begins --

25 A. Yes, there is that statement there. And just one other

1 point, I believe we talked about the things he downloaded, and
2 eMule was one of the specified things and there was another
3 mention of other things. But in reference to your question,
4 that line there, he does reference the use of eMule.

5 Q. Could you just explain briefly to the Court in general
6 what eMule is?

7 A. It's a peer-to-peer file sharing.

8 Q. What do you mean by peer-to-peer?

9 MR. LEUPOLD: Objection, beyond the scope, lack of
10 foundation.

11 THE COURT: He may answer.

12 A. My understanding is it is a method of communicating or
13 shipping and transferring files or photos or videos, or
14 whatever files, over a more expeditious process. It
15 compresses and allows the transfer of those files.

16 Q. Okay, but I think that -- that's true, but it also acts as
17 kind of like a search engine, right; you can put in certain
18 terms and it will go out and look for files?

19 A. That's my understanding.

20 Q. He told you that, again, in response to your queries:

21 "Most of it is, you download a file off of eMule or whatever,
22 and it could have, you know, 1,000 pictures in it. You'll
23 never look at all of them." Do you remember him responding --

24 A. Yes.

25 MR. LEUPOLD: The government continues to object to

1 the extent that defense counsel is simply reading the
2 transcript into the record, which the government was not
3 entitled to cover.

4 THE COURT: This is cross-examination. It's a little
5 different. The objection overruled s.

6 BY MR. FIEMAN:

7 Q. So he did make that statement, correct?

8 A. Yes, with an "I guess" at the end.

9 Q. To whatever extent you are familiar with eMule based on
10 your training and experience, since you didn't contradict it,
11 does that seem accurate, eMule can download thousands of files
12 in response to a search?

13 A. Yes, that's based on my limited experiences; yes, it can
14 be used for that.

15 Q. Finally my last question, just following up on that, you
16 were also told by Mr. Tippens about these kinds of eMule
17 dumps, that the eMule files "get saved on there and then
18 eventually I go back through and look and, you know, delete
19 'em or keep 'em." Do you recall?

20 A. Yes.

21 Q. And again, is that basically consistent with your
22 knowledge of how eMule works? You get a mass of files that
23 are automatically downloaded by the program and then you can
24 go back and sort through them and keep what you want and get
25 rid of what you want?

1 A. The experiences I have had with interviewing people, they
2 have requested those files via eMule and then they have
3 received what they asked for. That's in my experiences.

4 Q. Okay.

5 A. And so they would have those files and then they could
6 view them or do whatever they wanted with them afterwards.

7 Q. So to your knowledge, you are aware of the specific file
8 names listed in the indictment; is that correct, Counts 1 and
9 3?

10 A. Yes, sir.

11 Q. Now, when you said you could request a specific file, it's
12 fair to say that there's no search that you are aware of that
13 includes those entire specific file names and any search term;
14 is that correct?

15 A. I am not aware of any search of that nature.

16 Q. Thank you.

17 MR. FIEMAN: No further questions.

18 MR. LEUPOLD: No further questions from the
19 government of this witness, Your Honor.

20 THE COURT: Okay. Thank you, Detective Shook. You
21 may be excused.

22 You may call your next witness.

23 MR. HAMPTON: The government calls Special Agent
24 Scott Sutehall.

25 THE COURT: If you'll step to the lectern and be

1 sworn.

2 SCOTT SUTEHALL, called as a witness, duly sworn.

3 THE COURT: Thank you, please be seated here. Let me
4 ask you to speak right into the mike.

5 DIRECT EXAMINATION

6 BY MR. HAMPTON:

7 Q. Special Agent Sutehall, good morning.

8 A. Good morning.

9 Q. Could you please describe how you are currently employed?

10 A. I am employed as a special agent with the Department of
11 Homeland Security.

12 Q. What are your current duties as a special agent with the
13 Homeland Security?

14 A. I am currently assigned to the child exploitation
15 investigations unit.

16 Q. Is there a particular investigative focus of that unit?

17 A. Yes, we investigate the exploitation of children,
18 primarily the possession, receipt, distribution, attempted
19 receipt of child pornography, production of child pornography.

20 Q. Special Agent, how long have you been involved in the
21 investigation of these types of child exploitation?

22 A. About four years.

23 Q. Have you had any particular training or experience in that
24 area of investigation?

25 A. I have.

1 Q. Could you summarize your training and experience in that
2 arena?

3 A. Yes, I have attended a variety of training courses,
4 conferences, including undercover chat programs, or undercover
5 chat investigations, and a variety of peer-to-peer file
6 sharing network investigations.

7 Q. I would like to talk specifically about peer-to-peer file
8 sharing. You said you have specific experience involving
9 those types of investigations?

10 A. I do.

11 Q. What is peer-to-peer file sharing for someone who's not
12 familiar?

13 A. Yes, so peer-to-peer file sharing is a way to essentially
14 share and obtain digital media files with other users. It
15 operates over what's called a peer-to-peer file sharing
16 network; there are various different peer-to-peer file sharing
17 networks available. And the way that it works, you go onto
18 the internet, download a specific software program that
19 operates over that specific file sharing network.

20 Q. How might using peer-to-peer file sharing to obtain files
21 differ from, say, going to Google and typing in a Google
22 search or something?

23 A. In order to use the file sharing network, you have to go
24 and download a specific software program, install that onto
25 your computer. And then you are using that specific software

1 program to connect with other users over that same file
2 sharing network.

3 Q. In the course of your experience investigating these types
4 of child exploitation offenses, have you been familiar with
5 the eMule peer-to-peer file sharing program?

6 A. I am.

7 Q. What is the eMule program?

8 A. EMule is a peer-to-peer file sharing software program that
9 operates over the -- what's called the edonkey2000 file
10 sharing network.

11 Q. And can anyone obtain the eMule program, or do you have to
12 pay for it, some other special --

13 A. No, it's a free software program; you can download it on
14 the net.

15 Q. How might one find the eMule file sharing program?

16 A. There are, I believe, a few different websites where you
17 can go to actually download the software to your computer.

18 Q. Special Agent, I would ask you -- there should be a
19 government's exhibit binder in front of you at the table. I
20 would ask you to flip to what's been marked for identification
21 as government's 35?

22 A. Okay.

23 Q. Could you flip through that and let me know when you've
24 had a chance to do that?

25 A. Okay, I have.

1 Q. Special Agent Sutehall, Exhibit 35 for identification
2 appears to be screen captures. Do you recognize those screen
3 captures?

4 A. I do, I recognize those. I captured those screen shots.

5 Q. Could you summarize briefly what those screen captures are
6 of?

7 A. Yes. The first several pages are a capture of the website
8 SourceForge.net. It's one of the websites that you can go to
9 to download the eMule software program. I went to SourceForge
10 and I actually searched for eMule on SourceForge. What came
11 up was a description of the eMule software program. And you
12 can see on that first page there's a download button.

13 So using a government computer, I clicked the download
14 button, downloaded the software to my computer and went
15 through the download and then the setup and installation
16 process. So I captured screen shots of that whole process.

17 Q. Special Agent, do those screen captures fairly and
18 accurately reflect the information that you saw as you went
19 through this downloaded installation process?

20 A. Yes.

21 Q. I simply ask -- we are not offering this as an exhibit for
22 admission into evidence, but simply publish as a testimonial
23 aid to guide the Special Agent's testimony as he talks about
24 that process.

25 MR. FIEMAN: I have no objection either way.

1 THE COURT: It may be admitted, not as a full
2 exhibit, but as a demonstrative exhibit.

3 MR. HAMPTON: Your Honor, may I publish the exhibit?

4 THE COURT: Yes.

5 (Exhibit No. 35 - demonstrative.)

6 BY MR. HAMPTON:

7 Q. Special Agent, do you see there on the screen Exhibit 35
8 in front of you?

9 A. I do.

10 Q. Could you describe what is seen in this first page of
11 Exhibit 35?

12 A. So like I mentioned, on that first page is the website
13 SourceForge.net. And that was a screen shot after I had
14 searched for eMule. So that's what comes up on the
15 SourceForge website that allows you to download the eMule
16 software program to your computer.

17 Q. Is there any identification on that as to what version of
18 eMule is being downloaded?

19 A. Yes. It's hard to see on the screen here, but it was
20 version 0.50a.

21 Q. Flipping to page 2 of this exhibit, what happened after
22 you clicked on the download button?

23 A. It started the download process, sort of download setup
24 process.

25 Q. What happened after that download process completed?

1 A. I followed the steps that appeared on the screen.

2 Q. What do we see in the second page of Exhibit 35?

3 A. It says the eMule setup; it says "welcome to the eMule
4 v0.50a setup wizard." It says "this wizard will guide you
5 through the installation of eMule v0.50a," and some other
6 instructions. And I clicked next.

7 Q. What happens after you click next?

8 A. It continues on through the setup process.

9 Q. Showing you 35-003, is that the next step?

10 A. Yes, that's the next step, a licensing agreement. I read
11 the agreement briefly and then clicked "I agree" to move
12 forward in the process.

13 Q. Showing you 35-005, what do we see in that?

14 A. That is -- it says eMule is completing the setup wizard,
15 essentially.

16 Q. That presents a series of options, one of which there's a
17 check box; do you see that?

18 A. I do.

19 Q. There's a check box that has been checked; is that
20 correct?

21 A. Yes.

22 Q. Who checked that check box?

23 A. I believe that check box was checked by default.

24 Q. What is the text next to it?

25 A. It says "create desktop shortcut."

1 Q. Did you have an understanding of what that option would
2 involve?

3 A. I think that's a default option. What that means, as soon
4 as it's installed on the computer there's a desktop shortcut
5 on the computer that you will see basically the eMule icon.
6 So it allows you to access the eMule program quickly without
7 going into the program files and menus.

8 Q. Showing you 35-006, which appears to be a screen shot of
9 the desktop, what do we see in that screen shot?

10 A. That's a screen shot that I captured just after that
11 installation process completed and you can see the eMule
12 shortcut on the desktop screen.

13 Q. After you completed this initial installation, did you
14 click on that shortcut?

15 A. I did.

16 Q. What happened when you did that?

17 A. Then it opened up a -- basically a setup wizard to set up
18 the program.

19 Q. Seeing on the screen 35-007, does that show this setup
20 wizard that you just described?

21 A. Yes.

22 Q. What's the process for going through that setup wizard?

23 A. It asks several options about where you'd like the program
24 to be installed, and some different configuration options.

25 Q. Did you move through those options?

1 A. I did. I believe that page is the last page after I had
2 moved through the setup process.

3 Q. I am now showing you 35-008. What do we see in 35-008?

4 A. This is the software program after I had installed it on
5 my computer. It shows you the program and along the top you
6 can see there are several tabs that allow you to navigate
7 throughout the software.

8 Q. Special Agent, those tabs, do those have labels?

9 A. They do.

10 Q. Are they up at the top of the screen?

11 A. Correct.

12 Q. Could you describe some of the labels that you see along
13 the top of the screen?

14 A. Sure. I will read them from left to right. The first tab
15 is "Connect." The second tab is "Kad." And then "Servers,"
16 "Transfers," "Search," "Shared files," "Messages," "IRC,"
17 "Statistics." And then there are a few other tabs called --
18 one's "options" and "tools," and then a "help" tab as well.

19 Q. I would like to highlight just a few of those tabs and
20 what the user would see when accessing those. So I will
21 advance here to 35-009. What do we see on 35-009?

22 A. This is the screen that you see when you click on the
23 "transfers" tab.

24 Q. And what's the significance of the transfers tab?

25 A. The transfers tab indicates files that you are currently

1 downloading and also uploading to the network.

2 Q. Now in this instance I don't see any files being
3 downloaded or uploaded.

4 A. Correct.

5 Q. Why are there no files?

6 A. We downloaded the software program to show the
7 installation process and to also show what the screens look
8 like, but we did not fully configure the program to the
9 government computer.

10 Q. I am advancing to 35-010.

11 A. This is a screen shot of the search tab within the eMule
12 program.

13 Q. What does the search tab allow someone to do?

14 A. It allows someone to search for digital media files over
15 the edonkey2000 file sharing network.

16 Q. How does one mechanically do that search, put in key
17 words?

18 A. Exactly. There's a little box there that says "name,"
19 and you actually put your cursor into that box and type a
20 search term into that box, for whatever type of file you are
21 searching for.

22 Q. Moving to 35-011, is this another tab within the eMule
23 program?

24 A. This is.

25 Q. What tab is this?

1 A. This is the "shared files" tab.

2 Q. What does the shared files tab show?

3 A. It indicates which files you currently are sharing or
4 making available to other users over the file sharing network.

5 Q. Does that file also contain files that have previously
6 been downloaded via eMule?

7 A. It can.

8 Q. Just to clarify when you say "you," you are referring to a
9 user of eMule?

10 A. Correct.

11 Q. Special Agent, flipping now to 35-012, what is shown
12 there?

13 A. So this is back to the search tab, and what I did, to show
14 an example that you can just type in whatever you are
15 searching for, I typed in the term "pthc" into that search
16 term box.

17 Q. Given your experience investigating these types of child
18 exploitation offenses, is there any significance to that term?

19 A. Yes.

20 Q. What is that?

21 A. Pthc is a widely used shortcut for pre-teen hard core.
22 It's probably the most widely used search term to find and
23 obtain child pornography files.

24 Q. Finally, showing you 35-013, that appears to be the same
25 search box but with a different term?

1 A. Correct, I just typed in another search term, another
2 known widely used search term just, again, to show how you
3 would go about searching for these types of files.

4 Q. What was that search term?

5 A. "Pedo," p-e-d-o.

6 Q. Ordinarily, I believe you testified that you did not fully
7 complete the installation or complete the configurations so
8 you could actually download or share files; is that correct?

9 A. Correct.

10 Q. Had that been done ordinarily, what happens when you enter
11 a search term?

12 A. You enter the search term and then you will have most
13 likely multiple search results of the file, different files
14 that match that search term. You can then click on the search
15 results and hit the download button, which is in the lower
16 left, and that will start the download process.

17 Q. Special Agent, in the course of your investigative work on
18 these types of cases, child exploitation cases, have you had
19 investigations that involve users of the eMule file sharing
20 program?

21 A. Many, correct.

22 Q. And in your experience, is the eMule network used
23 regularly for those seeking out child pornography?

24 A. It is.

25 MR. HAMPTON: Just one moment Your Honor.

1 (Pause.)

2 MR. HAMPTON: That's all the government has at this
3 time.

4 THE COURT: It's about time we take a break. We'll
5 take ten.

6 (Morning recess.)

7 THE CLERK: All rise, Court is again in session.

8 THE COURT: Please be seated.

9 MR. FIEMAN: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FIEMAN:

12 Q. Agent Sutehall, good morning. My name is Colin Fieman. I
13 am with the Federal Public Defender's Office, and I represent
14 Mr. Tippens.

15 A. Good morning.

16 Q. If at any point a question is confusing or unclear, please
17 just let me know. I am not an expert in eMule, so I need to
18 learn a little as we go.

19 A. Okay.

20 Q. Let's start with your description of eMule as a
21 peer-to-peer file sharing program. If I understand that
22 correctly, it means that just anybody who's on the eMule
23 network can share files; those are the peers?

24 A. Correct.

25 Q. Again, correct me if I am wrong, each file that's --

1 that's available on this network and is what is called hashed;
2 is that correct?

3 A. I believe so. I am also not an eMule expert as well. I
4 operate proactive undercover investigations using a law
5 enforcement version of eMule, so I am familiar with the eMule
6 network. But when it comes to the highly technical parts of
7 it --

8 Q. Okay, well I understood from the government's introduction
9 on direct you were here to give expert testimony on eMule. So
10 if anything I ask is outside your area of expertise, such as
11 it is, please let me know.

12 A. I will.

13 Q. And just assume that every question that I ask you is
14 based on "to your knowledge" then, okay, to the extent of your
15 knowledge?

16 A. Right, okay.

17 Q. So then to your knowledge, is each file available on the
18 network hashed?

19 A. Correct.

20 Q. And can you explain what hashing is?

21 A. It's a way to identify files uniquely.

22 Q. And it's kind of like almost -- this is a bad analogy, but
23 maybe like a DNA string for a particular file that is unique?

24 A. Based on my knowledge, that's correct.

25 Q. It often refers to a hash value; is that correct?

1 A. That's correct.

2 Q. It's not at all the same as a file?

3 A. That's correct.

4 Q. You can have two different files with the exact same name
5 and they will have entirely different content possibly,
6 correct?

7 A. With the same hash value?

8 Q. No, with the same name. You can name a file --

9 A. Yes.

10 Q. So you can have two files named *Star Wars 1*, and one might
11 have *Star Wars 1* and one might have *Rio Bravo*?

12 A. Correct.

13 Q. So if those two each have the same hash value, at least
14 statistically, they should have the same content?

15 A. Exactly.

16 Q. Now these eMule networks, there are millions of people on
17 this network, there's a lot of people using it?

18 A. I am not exactly sure how many.

19 Q. It's big?

20 A. It's one of the larger peer-to-peer file sharing networks.

21 Q. Now you testified on direct a little bit about search
22 terms; do you recall that?

23 A. I do.

24 Q. Although I understand what eMule is searching is different
25 from what, say, Google is searching, you can use search terms

1 of the same kind in each program?

2 A. Correct.

3 Q. You can use broad search terms to get all sorts of content
4 on Google, you can use broad terms to get all sorts of content
5 on eMule?

6 A. Correct.

7 Q. So just to play that out, let's say you entered eMule
8 search term for "science fiction," you would get possibly
9 thousands and thousands of files in response, correct?

10 A. I am not sure.

11 Q. What about if you put in the term -- search the term "*Star*
12 *Wars?*"

13 A. I imagine there would be multiple options.

14 Q. You might get the first movie in the series or the 7th
15 movie in the series, correct?

16 A. I imagine that's correct.

17 Q. You might also get files that have the *Star Wars* movie in
18 them and other files that have that name but have *Rio Bravo* in
19 them?

20 A. I guess that's possible.

21 Q. Because the eMule is searching by file name, correct?

22 A. Correct, I believe so.

23 Q. And you testified that file name and content are not
24 necessarily related?

25 A. Correct.

1 Q. You might also get files that contain, for example,
2 viruses or any other content that could be attached to any
3 other file that's distributed on the network?

4 A. I am not sure about viruses, I am not sure about that.

5 Q. That's outside of your expertise?

6 A. Correct.

7 Q. Okay. Well, are you aware that eMule uses something
8 called partial or multiple source protocols?

9 A. I am.

10 Q. Could you explain what a partial or multiple source
11 protocol is?

12 A. I believe that means that when operating the civilian
13 version of eMule, that anyone can download when you type in a
14 search term and you are given a number of options to then
15 download. When you download it, you can be downloading that
16 from multiple people. Essentially if you go ahead and
17 download a file, you may be downloading that from multiple,
18 what's called peers, that possess either part of or the whole
19 file.

20 Q. When you say download, it's the program that's downloading
21 it?

22 A. Correct.

23 Q. The program is downloading it, and the program is, if I
24 understand correctly, assembled files from a wide variety of
25 sources out there?

1 A. Correct.

2 Q. And that's like a jigsaw puzzle, it gets one piece of the
3 file from one place, and one piece of the file from some place
4 else, and then the eMule program itself automatically starts
5 to assemble those pieces?

6 A. Based on my knowledge, that's correct.

7 Q. Is it fair to say that the way that eMule typically
8 functions is the user, the person who's actually at the
9 computer, cannot view the contents of any particular file
10 until eMule has downloaded and assembled all those parts?

11 A. I am unsure of that.

12 Q. Does that sound incorrect to you?

13 A. It sounds correct, but I am not 100 percent positive.

14 Q. Okay. And again, that downloading and assembling, that's
15 part of what eMule does; it's kind of its function to
16 automatically locate those files, assemble, and then download
17 them?

18 A. Correct.

19 Q. Are you familiar with something in connection with eMule
20 called a known.met directory?

21 A. I have heard that term. We have computer forensic
22 examiners that deal with the forensics on it. I don't know
23 exactly what that refers to.

24 Q. Okay. We have another witness Mr. Powers, do you know
25 Mr. Powers coming?

1 A. I believe I met him earlier this morning.

2 Q. I will reserve my questions for him.

3 Do you know what the eMule incoming directory is?

4 A. I believe that's where files that you have downloaded
5 will --

6 Q. Can we say the program has downloaded?

7 A. Exactly. So files that the eMule program has downloaded,
8 where they sit after they have been downloaded.

9 Q. Is it fair to say that's what you refer to as some default
10 settings; is that the default directory, typically?

11 A. I believe so.

12 Q. Just to be very clear on this process, the user, the
13 person that has the computer, may type in search terms into
14 eMule and it could cover thousands of files, correct,
15 potential files?

16 A. Correct.

17 Q. And then eMule automatically starts searching for bits and
18 pieces of any file that has a name that includes or somehow is
19 responsive to the search terms, correct?

20 A. I believe that's correct.

21 Q. And then those are automatically downloaded and assembled
22 by eMule, and I think we are at the point now, the default
23 storage for that is the incoming directory?

24 A. I believe so.

25 Q. At that point when the eMule has automatically downloaded

1 the files and assembled them and placed them in the incoming
2 directory, at that point, if I understand correctly, the user
3 can then go ahead and look at what's in there and determine
4 whether these files are what he wanted or not?

5 A. I believe that's correct.

6 Q. So all of that process, that user interaction of viewing
7 the files and seeing whether it's *Star Wars* or *Singing in the*
8 *Rain* that came in, that happens after this search and download
9 process is initially completed?

10 A. I believe so.

11 Q. Agent Sutehall, are you familiar with any of the forensic
12 reports or files that are at issue in this case; did you have
13 any connection with any of that information?

14 A. No.

15 Q. Can I have one moment?

16 A. Yes.

17 MR. FIEMAN: No further questions, Your Honor.

18 MR. HAMPTON: Your Honor, if I may have just one
19 moment.

20 (Pause.)

21 MR. HAMPTON: Nothing further, Your Honor.

22 EXAMINATION

23 BY THE COURT:

24 Q. Let me ask you a question that's pretty basic, but I think
25 these terms sometimes are -- we don't always mean the same

1 thing when we use them. Download, what do you mean by the
2 term download?

3 A. Download means that you are downloading a file from the
4 internet, or in this case from another user that's using the
5 eMule software over the file sharing network. So basically
6 you are going to download that from the internet essentially,
7 onto your local computer, onto your desktop or laptop
8 computer.

9 Q. All right, and if you then use the file that's on your
10 computer, is that an additional download?

11 A. No, at that point you are just opening it. So the file
12 has been downloaded to your computer into like a folder on
13 your computer. When you then double click on the file you are
14 essentially just opening the file, yeah.

15 Q. All right. What if you save that?

16 A. So when it's downloaded, the file has been saved already.
17 It's essentially been saved on your computer. You could then
18 go save it or copy it to another location onto the computer.

19 Q. Okay. And tell me, if that's download, what's upload?

20 A. Upload is essentially -- you are essentially sharing a
21 file with someone. You are uploading the file to the
22 internet. So you could -- for instance, there's several cloud
23 services where you can store your files these days, like
24 Google Drive or Drop Box. Let's say you have files on your
25 computer you want to save to the internet, you can upload

1 those files to the internet.

2 In terms of eMule, when you have files that you are
3 actively sharing with other users, and someone downloaded that
4 file from you, you've uploaded that file to that user.

5 So you can either upload files to the internet. Or in
6 terms of the file sharing network, you can upload files to
7 other users who are attempting to download the file from you.

8 THE COURT: Okay. Close enough. I think I
9 understand that. Any other questions?

10 MR. FIEMAN: I have a couple clarifications if I may,
11 Your Honor.

12 THE COURT: Go ahead.

13 CROSS-EXAMINATION

14 BY MR. FIEMAN:

15 Q. Just so we are clear in terms of the phraseology as the
16 Judge requested, with eMule when you say you're downloading,
17 you clarified that the initial download, the initial receipt
18 onto the computer, is done by the eMule program, correct?

19 A. Correct, after the user has, like we spoke about before,
20 searched for the file, they were presented with a list of
21 files that matched their search terms, then they hit the
22 download button. Once they initiate the download, the eMule
23 program downloads the files.

24 Q. Again, so you can get in response to your search terms,
25 masses of files?

1 A. Correct.

2 Q. That one way or another relate to your search?

3 A. Correct.

4 Q. And you cannot see what's in those files until eMule has
5 both downloaded and assembled the files on your computer,
6 correct?

7 A. I am not 100 percent certain, but I believe that's
8 correct.

9 Q. Then at that point, the user, once it's been received and
10 saved on the computer, the user can then actually see for the
11 first time what's in the file, open it, view it, save it in a
12 separate directory, do what they want with it at that point?

13 A. I believe that's correct.

14 MR. FIEMAN: Thank you, Your Honor.

15 MR. HAMPTON: Just a couple questions, Your Honor.

16 THE COURT: Sure.

17 REDIRECT EXAMINATION

18 BY MR. HAMPTON:

19 Q. Special Agent, although eMule does the sort of mechanical
20 download, that doesn't happen unless the user affirmatively
21 chooses to download a particular file?

22 A. Correct.

23 THE COURT: Thank you, you may be excused.

24 MR. HAMPTON: Your Honor, the government calls John
25 Powers.

1 THE COURT: Raise your hand to be sworn.

2 JOHN POWERS, called as a witness, duly sworn.

3 THE COURT: Please be seated.

4 MR. HAMPTON: Your Honor, I have just handed copies
5 to defense counsel, the Court and for the witness, and I have
6 a copy here with me, a binder containing sensitive materials
7 and contraband. And in the course of Mr. Powers's testimony,
8 one of our later witnesses, we will be referring to some of
9 these materials. And just to ensure it's absolutely
10 safeguarded, our plan would be, when we are at breaks or at
11 lunch, collect the copies and then hand them back so they are
12 maintained in a secure spot.

13 I will specifically reference them when we are referring
14 to that material.

15 DIRECT EXAMINATION

16 BY MR. HAMPTON:

17 Q. Mr. Powers, how are you currently employed, sir?

18 A. I am currently employed as a forensic examiner for the
19 FBI.

20 Q. How long have you been a forensic examiner with the FBI?

21 A. Slightly over five years.

22 Q. Prior to becoming a forensic examiner with the FBI, did
23 you have any experience as it relates to computer forensic
24 analysis?

25 A. Yes, for four years I worked as a forensic volunteer at

1 the Lafayette Police Department in Indiana.

2 Q. In the course of your time as a forensic examiner in
3 Lafayette, Indiana, and also at the FBI, approximately how
4 many cases have you worked on that involved the examination of
5 digital evidence?

6 A. Something north of 90.

7 Q. Have you worked specifically on the examination of digital
8 evidence in the context of child pornography cases?

9 A. I have.

10 Q. Now Mr. Powers, what was your -- did you have any role in
11 the investigation of Mr. David W. Tippens?

12 A. My first involvement came during a search warrant served
13 at Mr. Tippens's residence in University Place. I
14 subsequently examined the digital evidence that was seized
15 from that location.

16 Q. Do you recall the date of that search warrant?

17 A. I want to say it was February 11th of last year.

18 Q. Were you present for the execution of that search warrant?

19 A. I was.

20 Q. What was your role as part of that search warrant?

21 A. I was present in order to handle and safeguard and
22 preserve any digital evidence that was come across.

23 Q. At some point during the execution of that search warrant,
24 did you enter the home, the residence of Mr. Tippens?

25 A. I did.

1 Q. Did you go to any particular location inside Mr. Tippens's
2 home?

3 A. I was first asked to go into the master bedroom.

4 MR. HAMPTON: Your Honor, if I may publish admitted
5 exhibits, admitted Exhibit 27, if I may publish that.

6 BY MR. HAMPTON:

7 Q. Mr. Powers, I will refer you to Exhibit 27, the first
8 page. Do you recognize what is shown there on your monitor?

9 A. That is the master bedroom of Mr. Tippens's home.

10 Q. Is that the room you entered on the morning of
11 February 11, 2016?

12 A. Yes, sir.

13 Q. When you entered that room, did you see a television?

14 A. I did.

15 Q. How would you describe it?

16 A. A large flat-screen TV.

17 Q. Is that shown in this Exhibit 27?

18 A. It is kind of an edge on view of it, it's on the left-hand
19 side of the photo.

20 Q. Mr. Powers, upon entering the room and seeing that
21 television, did you go over to that television to inspect it
22 further?

23 A. I went over in that direction and did get a clear view of
24 the television, yes.

25 Q. At the time you did that, did you see whether there was

1 anything connected to that television?

2 A. Initially I didn't look specifically at that, but I did
3 subsequently determine that a laptop computer was connected to
4 it.

5 Q. Is that laptop computer also shown in Exhibit 27?

6 A. It's kind of -- the location was right in front of the
7 television, not the best picture, and my eyesight is going.

8 Q. Are you able to make it out on that picture? If so, you
9 can actually circle it.

10 A. Right in that area, here (indicating).

11 Q. Mr. Powers, at the time you entered the room, was there
12 anything displayed on that television?

13 A. There was.

14 Q. What was displayed on that television?

15 A. The television was playing a video that appeared to be
16 child pornography.

17 Q. Did you have occasion to examine -- did you have occasion
18 to watch what was playing on that television?

19 A. Yes.

20 Q. And was there anything significant about what was
21 happening, what was playing on the television?

22 A. Again, it appeared to be a child pornography video that
23 was playing on endless loop. So it would finish and restart,
24 finish and restart.

25 Q. Based on what did you conclude that it was playing on some

1 sort of endless loop?

2 A. First of all was the fact that it would constantly restart
3 after it got finished. Then when I started dealing directly
4 with the computer, the media player has an option to have
5 something continuously play, and that option was what was
6 selected.

7 Q. Mr. Powers, I will ask you if you could refer to the
8 sensitive binder, which is the smaller binder I handed you
9 earlier, and ask you if you could take a look at Exhibit 24.

10 Let me know when you've had a chance to look through
11 Exhibit 24.

12 A. Okay, I have looked at it.

13 Q. Exhibit 24 appears to be a series of four photos; is that
14 correct?

15 A. It is.

16 Q. Do you recognize those photos?

17 A. I do. These are photos I took at the search scene.

18 Q. And what do those photos generally -- what are they photos
19 of?

20 A. The large-screen TV as it was playing the video when I
21 entered.

22 Q. That's the first photo. Is that also the second photo?

23 A. Yes.

24 Q. What about the third and fourth photos?

25 A. The third photograph is a close-up of the upper left-hand

1 corner of the screen showing the name of the video and the
2 name of the video player.

3 Q. And then finally the fourth photo?

4 A. The fourth photo is showing the large-screen TV, along
5 with the screen of the laptop after the video had been
6 minimized.

7 Q. Mr. Powers, at the time -- looking at these photos, do
8 they fairly and accurately depict the events and items that
9 are pictured in those photos?

10 A. Yes, sir, they do.

11 MR. HAMPTON: Your Honor, at this time the government
12 would move to admit Exhibit 24.

13 MR. FIEMAN: No objection.

14 THE COURT: 24 may be admitted.

15 (Exhibit No. 24 admitted.)

16 BY MR. HAMPTON:

17 Q. Referring specifically to 24-003 in your binder, I believe
18 you said that that depicted the file name of the video playing
19 on this large-screen television?

20 A. Correct.

21 Q. What was that file name?

22 A. The file name is 2015-03-0.avi.

23 Q. Were you able to determine where that video was located,
24 the source from which it was playing?

25 A. It was coming from a folder named "videos" on the laptop

1 computer.

2 Q. Is that the laptop that was connected to the large-screen
3 TV?

4 A. Yes.

5 Q. Now, moving to 24-004, you testified a moment ago there
6 was a videos directory on the Dell laptop that you saw; is
7 that correct?

8 A. That's correct.

9 Q. And does this depict a photograph that you took showing
10 that directory?

11 A. It does.

12 Q. Now, it appears that the directory is also visible on the
13 large-screen television?

14 A. Correct.

15 Q. How did you obtain that directory to project on the
16 television?

17 A. The television was taking the video output of the laptop,
18 so I didn't have to do anything to get it on the television,
19 it was already set up to do that when I entered.

20 Q. Did you do anything to the video that was playing -- the
21 video of child pornography that was playing when you entered
22 Mr. Tippens's room in order to make that videos directory
23 visible?

24 A. I eventually had to minimize the video, yes.

25 Q. How did you minimize the video mechanically?

1 A. I can't remember specifically if I shut it down or if I
2 just hit the minimize button.

3 Q. Did you have to interact with that Dell computer?

4 A. I did.

5 Q. Mr. Powers, what was significant about that videos
6 directory that caused you to think that it was a good idea to
7 take a photo of it?

8 A. Well, for one thing, if you looked at the icon that's two
9 over and two down, that is displaying the file name of the
10 video that was playing when I entered.

11 Q. Is that the one that begins with 2015-03?

12 A. Yes.

13 Q. In this videos directory there appear to be a series of
14 small images that are sitting on top of text; do you see
15 those?

16 A. Yes, sir.

17 Q. What are those small images?

18 A. They are commonly referred to as thumbnails.

19 Q. What is a thumbnail?

20 A. A thumbnail is basically a smaller picture of a bigger
21 picture. It's a way for the computer to easily show a user
22 the content of a graphic or video file.

23 Q. What are those text names below each of those thumbnails?

24 A. Those are the file names of files on the directory.

25 Q. When you examined those file names and thumbnails, what,

1 if anything, did you see of significance?

2 A. A large number of them are consistent with child
3 pornography.

4 Q. When you say that, why do you say they are consistent with
5 child pornography?

6 A. Either they had names that confirm -- that indicated
7 sexual interest with children, or they were pictures of small
8 children in various states of undress, or things of that
9 nature.

10 Q. Are you able to read any of the file names that were
11 contained, that are shown in 24-004?

12 A. Yes.

13 Q. Could you identify a couple examples that you believe are
14 consistent with child pornography?

15 A. One of them, four over and two down, the name is 11yo, and
16 in child pornography content, that usually refers to "year
17 old." So it would be saying "11-year old Latina girl, anal
18 fuck and cream pie."

19 Q. Mr. Powers, were you able to determine approximately how
20 many different videos were located -- or different files were
21 located within that videos folder?

22 A. I was, and the number is escaping me.

23 Q. Would it assist you to -- do you believe that looking at
24 your report from the date of that search might assist you in
25 remembering what that number was?

1 A. It probably would.

2 Q. Probably would or you think it would?

3 A. I am pretty confident it would.

4 Q. Mr. Powers, if you can let me know after you've had a
5 chance to review that report.

6 A. Yes, sir.

7 Q. Does that refresh your recollection as to approximately
8 how many videos you identified -- approximately how many files
9 you identified in that videos directory?

10 A. There were 70.

11 Q. You can put that sensitive binder to the side for a
12 moment.

13 Mr. Powers, I would like to turn next to your work as the
14 forensic analyst in this case, okay?

15 A. All right.

16 Q. Just for those who have never done a forensic analysis,
17 could you describe in general what is your process for
18 examining digital devices for forensic evidence?

19 A. So the general big picture process is the evidence comes
20 in, it's physically inspected. Copies are then made of the
21 data on the evidence. At that point, we put the originals
22 away and work from the copies. Then we process it with
23 forensic software for whatever it is that is appropriate for
24 the case. Then an exam is done to look for relevant data.

25 After all that is completed, the copies are verified that

1 they haven't changed during the exam and reports are written.

2 Q. Did you follow that general procedure in your forensic
3 examination in this case?

4 A. I did.

5 Q. I would like to highlight your work on a few specific
6 devices that were involved in this case.

7 First I will refer you to Exhibit 28. Let me know -- it's
8 in the large government exhibit binder.

9 A. 28.

10 Q. Let me know when you've had a chance to look at that.

11 Now, Mr. Powers, that appears to be a three-page exhibit
12 containing photos. Do you recognize those photos?

13 A. I do, these are photographs I took of one of the evidence
14 items.

15 Q. What evidence item is that?

16 A. It's an external hard drive.

17 Q. Did that evidence item have any particular identifier
18 associated with it?

19 A. So there are two identifiers associated with it. One of
20 those identifiers is 1B2; that is it's evidence number which
21 the evidence control folks track the physical evidence with.

22 There's also a Q number, which is what I refer to in my
23 reports. And that Q number is QSE2.

24 Q. Mr. Powers, was that external hard drive seized from the
25 home of Mr. Tippens?

1 A. It was.

2 Q. I would now ask if you could take a look at Exhibit 29.
3 That appears to be another three-page exhibit of photographs.
4 Do you recognize those photographs?

5 A. I do. These are photographs I took from another item in
6 this case.

7 Q. How is that evidence item identified?

8 A. Its evidence number is 1B14 and its lab number is QSE14.

9 Q. What is that evidence item?

10 A. Another external hard drive.

11 Q. Do you know what particular brand it is?

12 A. Western Digital.

13 Q. Mr. Powers, at the time of the search of Mr. Tippens's
14 home, did you see that particular Western Digital hard drive?

15 A. I did.

16 Q. Where was it?

17 A. It was next to the laptop computer.

18 Q. And is that the laptop computer that was connected to
19 Mr. Tippens's television?

20 A. Yes, that's correct.

21 Q. I will ask you now to refer to Exhibit 30. Do you
22 recognize the photographs that are contained in Exhibit 30?

23 A. Those are another three photographs that I took of another
24 evidence item in this case.

25 Q. And what is that evidence item?

1 A. A Dell laptop computer.

2 Q. Does it have a particular identifier as those other two
3 evidence items did?

4 A. The evidence number is 1B15, and the lab number is QSE15.

5 Q. Mr. Powers, during the search of Mr. Tippens's home when
6 you were in his bedroom, did you see that Dell laptop
7 anywhere?

8 A. I did.

9 Q. Where did you see it?

10 A. On the stand in front of the television.

11 MR. HAMPTON: Your Honor, at this time the government
12 moves to admit Exhibits 28, 29, and 30.

13 MR. FIEMAN: No objection, Your honor.

14 THE COURT: They may be admitted.

15 (Exhibit Nos. 28, 29, and 30 admitted.)

16 MR. HAMPTON: Your Honor, also at this time the
17 government would move to admit what's been marked for
18 identification as Government's Exhibit 37, which is a
19 stipulation regarding certain devices.

20 MR. FIEMAN: No objection, Your honor.

21 MR. HAMPTON: I would ask to read that stipulation
22 into the record, Your Honor.

23 THE COURT: You said something?

24 MR. HAMPTON: I would ask to read that stipulation
25 into the record.

1 THE COURT: You have no objection to 37?

2 MR. FIEMAN: No, to admission or reading.

3 THE COURT: 37 may be admitted. That's one of your
4 stipulations that were filed?

5 (Exhibit No. 37 admitted.)

6 MR. HAMPTON: That's correct, Your Honor. I am happy
7 to read it in the record.

8 THE COURT: Your request to read it is denied. I
9 have read it.

10 MR. HAMPTON: Okay.

11 BY MR. HAMPTON:

12 Q. Mr. Powers, as part of your examination of these three
13 devices, 1B2, 1B14, and 1B15, did you identify any files of
14 suspected child pornography?

15 A. I did.

16 Q. Mr. Powers, I am handing you -- I just handed you a
17 disk -- computer disk. Do you recognize that disk?

18 A. I do.

19 Q. How do you recognize it?

20 A. It is a disk I made and signed.

21 Q. That disk is marked as Exhibits 1 through 23?

22 A. Correct.

23 Q. What are the contents of that disk?

24 A. The contents were some files that were extracted from the
25 various devices that we have just discussed.

1 Q. And are those 23 files of suspected child pornography that
2 you extracted from one of those three devices, 1B14, 1B2, or
3 1B15?

4 A. Correct.

5 MR. HAMPTON: Your Honor, at this time the government
6 moves to admit the disk containing Exhibits 1 through 23.

7 MR. FIEMAN: Assuming they correspond to the
8 stipulation -- the depictions in our stipulation, I have no
9 objection.

10 THE COURT: It may be admitted.

11 (Exhibit Nos. 1 through 23 admitted.)

12 MR. HAMPTON: The government would also move to admit
13 what's been marked as Government Exhibit 36, which is a
14 stipulation regarding these visual depictions, which has
15 already been filed in this case.

16 MR. FIEMAN: I obviously have no objection, Your
17 honor.

18 THE COURT: Just a minute, let me get my notes.

19 This is 36?

20 MR. HAMPTON: It is, Your Honor, 36.

21 THE COURT: Yes, 36 may be admitted.

22 (Exhibit No. 36 admitted.)

23 MR. HAMPTON: Mr. Powers, I am going to come collect
24 that disk so we can return it to the binder.

25 BY MR. HAMPTON:

1 Q. Mr. Powers, I will ask you now to return to the large
2 binder, and if you could flip to Exhibit 1A as in apple, what
3 does that exhibit contain?

4 A. This exhibit contains some information about one of the
5 files that was extracted, that we were just discussing. It
6 contains the name, the path, which is the location where it
7 was found on the device, and has space for the created and
8 modified dates.

9 Q. Is the file in reference Exhibit 1?

10 A. Yes.

11 Q. You noted that this exhibit shows the file path; is that
12 correct?

13 A. Yes.

14 Q. Based on the file path contained in that Exhibit 1A, are
15 you able to determine on which device Exhibit 1 was found?

16 A. Yes, this was found on the first external hard drive, 1B2.

17 Q. There is no date information shown in Exhibit 1A; is that
18 right?

19 A. That's correct.

20 Q. Why is there no date information?

21 A. This particular file no longer is listed in the file
22 system. It physically exists on the disk. Forensic software
23 was able to find it and do what's called carving it. So it
24 found where it physically was, but all the information
25 surrounding it that would normally be presented in a file

1 system is no longer there.

2 Q. Is that also true of the original file name?

3 A. Correct. The file name that is being shown here is one
4 that was assigned to it by the forensic software. We don't
5 know what the original file name was.

6 Q. Mr. Powers, I will now refer you to Exhibit 2A. Can you
7 again describe what is shown in Exhibit 2A?

8 A. Same thing, except this is in relationship to Exhibit 2,
9 that file. We have the name assigned by the software, the
10 path where it's physically located on 1B2. And there's again
11 space for dates that we don't know.

12 THE COURT: Wait a minute, you are referring to your
13 number. Let's be sure we are talking about exhibit numbers.
14 1B2, I believe, is 29; is that right?

15 MR. HAMPTON: Well, Your Honor, 29 is actually --
16 it's actually 28, but a photo of 1B2. 1B2 has not been
17 formally admitted, just a photograph.

18 MR. FIEMAN: I am confused. What is 2B; what's the
19 source?

20 MR. HAMPTON: 2B is -- 2A or 2B?

21 MR. FIEMAN: Any of these. You said these are not --
22 Your Honor, I need some foundation.

23 THE COURT: When we looked at 28, 29, and 30, it had
24 the 1B, whatever was the first photograph in each of those
25 exhibits. But when you refer to them by something other than

1 the exhibit number, I have got to be sure I have got the right
2 connection between the photograph of the FBI number and the
3 exhibit number. Are you with me? Probably not.

4 MR. HAMPTON: I am, and I will try to make sure that
5 I refer to both the evidence number and the admitted number
6 with the photo of that.

7 THE COURT: I see looking back, 30 is 1B15; 29 is
8 1B14; and 28 is 1B2. Okay, go ahead.

9 BY MR. HAMPTON:

10 Q. Mr. Powers, how was the information shown in Exhibit 2A
11 obtained?

12 A. So, the hard drive that was shown in Exhibit 28, which is
13 also called 1B2, that first external hard drive was processed
14 with forensic software. That forensic software found various
15 images that had been deleted from the hard drive. So they are
16 no longer something you can click on if you plug it in and
17 look at it, but it physically remained on the drive. The
18 forensic software was able to recover these.

19 This particular one was taken as an exhibit and pulled out
20 and placed on the disk that we just had. And this
21 information, and the current exhibit we are looking at, 2A, is
22 data about that file.

23 Q. And by that file, you mean Exhibit 2?

24 A. Correct.

25 Q. Does the same process apply for Exhibit 1A?

1 A. That is also correct.

2 Q. Except that that refers to forensic data concerning

3 Exhibit 1?

4 A. Right.

5 Q. Mr. Powers, the exhibits that are marked 3A through 23A,

6 do those reflect the same forensic information as it relates

7 to Exhibits 3 through 23?

8 A. Correct. In all these cases there is a name of the file,

9 the path, and we have times associated with these.

10 Q. Was this information obtained from a forensic analysis of

11 the particular device on which a given file was found? So for

12 example, the information in 3A was obtained from a forensic

13 analysis of the device that contained Exhibit 3?

14 A. That's correct.

15 Q. And the same is true for Exhibit 4A based on a forensic

16 analysis of the device containing Exhibit 4?

17 A. Correct.

18 Q. And that's true all the way through from -- it's true for

19 1A through 23A?

20 A. That is correct.

21 MR. HAMPTON: Your Honor, the government would move

22 to admit Exhibits 1A, 2A, 3A, all the way through 23A.

23 MR. FIEMAN: Your Honor, I won't object at this point

24 subject to one reservation. These are not the actual FTK

25 reports. The information on here, I understand, is just an

1 extract.

2 So I believe that they are correct. If I note any
3 inconsistencies over the lunch hour, I will bring them to the
4 Court's attention. So subject to that reservation.

5 THE COURT: It appears to me you are talking about
6 the exhibits numbered A only?

7 MR. HAMPTON: That's correct, Your Honor, 1A through
8 23A.

9 THE COURT: All right, those exhibits may be
10 admitted, subject to after-the-fact correction if you find
11 any.

12 (Exhibit Nos. 1A through 23A admitted.)

13 MR. FIEMAN: Thank you, Your Honor.

14 MR. HAMPTON: Your Honor, if I may publish these as I
15 take Mr. Powers through some information.

16 THE COURT: Yes.

17 BY MR. HAMPTON:

18 Q. Now Mr. Powers, I am referring you now to what's been
19 admitted as Government's Exhibit 3A. This, I believe you
20 testified, is forensic information related to Exhibit 3?

21 A. Correct.

22 Q. Based on this information, are you able to determine from
23 which device Exhibit 3 was obtained?

24 A. Yes.

25 Q. How are you able to make that determination?

1 A. The path contains the reference to the piece of evidence
2 that it was taken from. So in this case, it's the hard drive
3 that in the photos are displayed in Exhibit 29, and which the
4 Bureau has numbered 1B14. So it's that second hard drive.
5 And this was found on that drive.

6 Q. Now Mr. Powers, the bottom of this exhibit has two
7 different date fields. Do you see those?

8 A. I do.

9 Q. What are those two date fields?

10 A. The created and modified time stamps.

11 Q. Generally what is a created time stamp; what does that
12 refer to?

13 A. The created time stamp refers to when a file was placed on
14 a given file system. And the modified time is basically when
15 it was changed.

16 Q. How are those times determined; what's the mechanism for
17 setting a given date and time?

18 A. It's going to be based on the time clock of whatever
19 computer is interacting with the files.

20 Q. So for example, if you save a file on your desktop
21 computer, how is the date created or the last modified time
22 stamp established?

23 A. So your desktop computer will look at its own internal
24 clock and say okay, this is the time. In this particular
25 instance, this device is an external hard drive. It does not

1 have its own clock. So it will use the clock of the computer
2 to which it was connected when the file was being created or
3 modified.

4 Q. Now, if I have, say, a laptop computer and an external
5 hard drive --

6 A. Uh-huh.

7 Q. -- and I have a file, we'll call it file X on my laptop
8 computer. If I move that file from my laptop, file X, to my
9 external hard drive, what, if any, effect would there be on
10 the date information on file X when it goes to that external
11 hard drive?

12 A. So in this case, if we move file X at noon today, the
13 created time on the hard drive -- on the external hard drive
14 will be noon today.

15 Assuming that all you do is move it and you don't change
16 it, the modified time will remain what it was.

17 Q. And is there a difference in what your answer would be if
18 I copied and pasted that file from my laptop to my external
19 hard drive versus actually clicking and dragging it?

20 A. No, in this case, either way you are moving a file that's
21 physically appearing on a device where it did not exist
22 before. So it's still going to be the same answer. The
23 created time will still be noon today, if that's when we move
24 it.

25 Q. Why doesn't the last modified time change?

1 A. Because the system doesn't consider simply moving a file
2 to be a modification.

3 Q. Would something like altering a file name change any of
4 that date information?

5 A. That starts getting fuzzy. If you were to go inside and,
6 say, rewrite a paragraph, and you are editing a document and
7 you now save your new edit, that will definitely change the
8 modify. I am a little unclear as to whether a file name would
9 trigger it or not. Possibly.

10 THE COURT: It's about time we broke. We are looking
11 here at 3A?

12 MR. HAMPTON: We are.

13 THE COURT: It says date created: 12-22-12. That's
14 the date it appeared on this device?

15 THE WITNESS: Correct, sir.

16 THE COURT: And the date modified is 12-5-12?

17 THE WITNESS: Yes, sir.

18 THE COURT: How could it be modified before it
19 arrived?

20 THE WITNESS: Because it was originally created some
21 place else. So it was originally created on some other device
22 somewhere on 12-5-12. Then here we have a few weeks later,
23 it's appearing on this new device. So if I take a picture of
24 you with my phone, the created and modified date originally
25 would be right now.

1 If three weeks from now I email it to you and you put it
2 on your desktop, you've now put that picture on your desktop
3 in three weeks. But we haven't changed it, so the modified
4 time will stay right now because we have not modified it. But
5 it will be created on your computer in three weeks.

6 THE COURT: So this does not indicate that the owner
7 or user of the device modified it in any way?

8 THE WITNESS: We have no information based on this
9 information. We just know that on that date somebody
10 somewhere modified it or possibly created it for the first
11 time.

12 THE COURT: Okay, 1:30.

13 (Luncheon recess.)

14 THE CLERK: All rise. Court is again in session.

15 THE COURT: Please be seated. Okay, I have read
16 Exhibit 26, counsel. You may continue.

17 BY MR. HAMPTON:

18 Q. Mr. Powers, I have put back on the screen, Exhibit 3A,
19 which I believe we were in the middle of discussing before we
20 took our lunch break. Do you see that on the screen?

21 A. I do.

22 Q. I refer you specifically to the time stamps that we were
23 talking about, the created date and the last modified.

24 A. Uh-huh.

25 Q. In addition to the date for each of those, is there also

1 time information?

2 A. There is.

3 Q. Now, in that exhibit, as in the rest of 4A through 23A,
4 with that time information, there is an abbreviation UTC?

5 A. Correct.

6 Q. What does UTC refer to?

7 A. It's a universal time. It's basically Greenwich time.
8 It's just a spot they picked to say this is the official time.

9 Q. How does Greenwich time differ from, say, Seattle time?

10 A. So, moving west you are behind UTC, so we are eight hours
11 behind Greenwich, England, so we are eight hours behind UTC.

12 Q. Does that ever change with daylight savings time?

13 A. Right. So daylight savings time will shift that one hour.
14 Well, daylight savings time will shift the Seattle time one
15 hour; UTC just stays what it is.

16 Q. So is it true that Seattle time is always eight hours or
17 what's -- which way does it shift it when it's daylight
18 savings?

19 THE COURT: What do we care about Seattle time?

20 MR. HAMPTON: Your Honor, simply to make sure the
21 record is clear that these times are uniform.

22 THE COURT: I am just pulling your leg a little bit.
23 I think we know that Seattle time and Tacoma time are the
24 same.

25 Okay, go ahead.

1 BY MR. HAMPTON:

2 Q. Tacoma time. We'll be more precise.

3 A. We'll use Tacoma time from now on.

4 Q. Tacoma time is -- what's the difference, normally eight
5 hours behind UTC?

6 A. Correct.

7 Q. During daylight savings time?

8 A. Well, we just sprung forward a couple days ago, so most of
9 my time devices are now an hour ahead of where they were,
10 except for the couple that I haven't changed yet. So now we
11 are only seven hours behind UTC.

12 Q. How does Hawaii time compare to Tacoma time?

13 A. So they are a few more hours back.

14 Q. Do you know how many hours behind?

15 A. I want to say two, but it could be three.

16 Q. So two to three hours?

17 A. Yes.

18 Q. Mr. Powers, I am now showing you what has previously been
19 admitted as Exhibit 30. This is 30-002. Now, this is the
20 Dell laptop that has been labeled 1B15 or QSE15; is that
21 correct?

22 A. Yes.

23 Q. Where was that Dell laptop found?

24 A. It was in the master bedroom of Mr. Tippens's home in
25 front of the big screen TV.

1 Q. As part of your forensic analysis, did you examine this
2 Dell laptop?

3 A. I did.

4 Q. Based on that analysis, were you able to determine what
5 type of operating system was running on this laptop?

6 A. It was Windows 7.

7 Q. Were you able to determine when that operating system was
8 first installed?

9 A. It was April, I want to say, 2nd of 2012.

10 Q. Based on your analysis, did you identify any instance
11 where the operating system was re-installed at a later time?

12 A. I did not notice any such indication.

13 Q. During your examination of the Dell laptop, were you able
14 to identify active user accounts associated with that
15 operating system?

16 A. I was.

17 Q. How many active user accounts did you identify?

18 A. I would only identify one that I would classify as active.

19 Q. I will back up. What -- when I say active user account,
20 what would you understand that to mean?

21 A. So the computer will automatically create certain accounts
22 for some purposes, so there were a total of four accounts on
23 this machine. One is a built-in account called administrator.
24 One is a built-in account called guest. There's another
25 service account used for administrative purposes, I guess you

1 could describe it. Then there was an actual user account, and
2 that's what I would consider to be the only active account on
3 this machine.

4 Q. Did that user account have a name?

5 A. The name was "Bubba."

6 Q. Does Windows maintain any sort of record of log-in
7 attempts for a given user account?

8 A. It does.

9 Q. Were there those records for the Bubba user account?

10 A. There were.

11 Q. What, if anything, did those records show in relation to
12 how many times the Bubba user was logged into that laptop?

13 A. The log-in account -- the log-in number for Bubba was over
14 1800. I think it was around 1849 or 1830 something like that.

15 Q. But over 1800?

16 A. Yes.

17 Q. Mr. Powers, you may recall earlier that we talked about
18 the internal clock for a computer.

19 A. Yes.

20 Q. Does the Dell laptop have one of those internal clocks?

21 A. It does.

22 Q. In the course of your examination, did you examine that
23 internal clock?

24 A. I did.

25 Q. What, if anything, were you able to determine about the

1 accuracy of the internal clock at the time of the search --

2 A. Well, at the time I examined the --

3 Q. -- or your examination?

4 A. Yes, same thing. How I actually examined the internal
5 clock, I compared it to the U.S. Naval Observatory time, and
6 it was 16 seconds off.

7 Q. Does the Windows operating system maintain any logs with
8 any changes or adjustments to that internal clock?

9 A. It does.

10 Q. Did you have occasion to review those logs?

11 A. I did.

12 Q. Did those logs refresh any changes or adjustments to that
13 internal clock?

14 A. It did seem to undergo periodic adjustments, yes.

15 Q. In your experience, is that uncommon?

16 A. No.

17 Q. Why not?

18 A. Most computers, most modern computers, let's say, do
19 automatically sync themselves to some kind of time source
20 because no clocks are perfect and the computers will drift off
21 if you don't sync them. So there's a setting in there that
22 lets you do automatically.

23 Q. Based on your review of these records, what sorts of
24 changes did you see were made to that internal clock? Can you
25 summarize?

1 A. Roughly, once a week, it was usually about a six-second
2 adjustment. It wasn't every week exactly on the dot. It
3 wasn't always exactly six seconds, but roughly once a week it
4 was roughly six seconds off and got adjusted.

5 Q. In your experience, is that consistent with normal
6 operation of a computer?

7 A. Yes.

8 Q. Was there anything in those records that to you would have
9 suggested that time had been tampered with or was somehow
10 otherwise inaccurate?

11 A. There was no indication of a non-system event changing the
12 time.

13 Q. Are you familiar with the Google Chrome browser?

14 A. Yes.

15 Q. What is that generally?

16 A. It's basically a piece of software that lets you go and
17 surf the web; it let's you go to websites and see the
18 information there.

19 Q. In your examination of the Dell laptop taken from
20 Mr. Tippens, did you find any evidence of the installation of
21 the Google Chrome web browser?

22 A. I did.

23 Q. Was that web browser installed on this Dell laptop?

24 A. It was.

25 Q. Was there any information related to user log-in accounts

1 associated with this Google Chrome web browser?

2 A. This web browser had information for, I think, roughly
3 five accounts that it had stored.

4 Q. And why would the web browser have that kind of
5 information?

6 A. User convenience. So you can automatically go log into an
7 account if you so desire or auto fill or just basically make
8 life easier on the user to interact with sites they go to
9 frequently.

10 Q. Is it common then for these log-ins to be associated with
11 particular websites?

12 A. Yes.

13 Q. Did you have occasion to review any of that stored log-in
14 information?

15 A. I did.

16 Q. What, if anything, did you identify in that log-in
17 information that you believed appeared to relate to David
18 Tippens?

19 A. There was a log-in for David Tippens's Yahoo account, and
20 there was another log-in for a David W. Tippens.

21 Q. Mr. Powers, I will ask you, in the large binder in front
22 of you, if you can take a look at Exhibits 31, 32 and 33.
23 Just let me know when you've had a chance to look at those.
24 Have you had a chance to look at those?

25 A. I have.

1 Q. Do you recognize 31 through 33?

2 A. I do.

3 Q. These exhibits appear to be screen captures from a
4 computer; is that correct?

5 A. It is.

6 Q. Who created these screen captures?

7 A. I did.

8 Q. How did you create those?

9 A. I used what's called a virtual machine. It is basically a
10 simulation of a computer. This allowed me to take those
11 copies of the original evidence I had made and put them into a
12 simulated computer so that the simulated computer could act as
13 though I was using the original computer, but I wouldn't
14 actually have to in any way tamper with the actual computer.

15 Q. When you refer to the original computer, what do you mean
16 as the original computer in this instance?

17 A. In this instance, we are talking about the Dell laptop --
18 was that Exhibit 30?

19 Q. Photographed in Exhibit 30?

20 A. Photographed in Exhibit 30, the FBI identified has
21 designated 1B15. Also, for purposes of this particular
22 virtual machine, it also had collected the copy of the image
23 from that external hard drive in exhibit -- pictured in
24 Exhibit 29 that the FBI has called 1B14.

25 Q. Mr. Powers, in preparing Exhibits 31 through 33, did you

1 believe those screen captures fairly and accurately depict
2 information that would have been displayed to the user of the
3 Dell laptop if they had been using that Dell laptop directly?
4 A. Pretty substantially. The difference is the Dell laptop
5 has a different screen than the screen I was using, so there
6 will be some differences just due to the fact that the screens
7 are different, but the actual data and information is
8 substantially what you would experience were you using that
9 Dell laptop.

10 MR. HAMPTON: Your Honor, the government moves to
11 admit Exhibits 31, 32 and 33.

12 MR. FIEMAN: No objection.

13 THE COURT: They may be admitted.

14 (Exhibit Nos. 31, 32, and 33 admitted.)

15 MR. HAMPTON: Your Honor, I would also ask that for
16 the next piece of testimony, if I could publish those exhibits
17 with Mr. Powers.

18 THE COURT: Yes.

19 BY MR. HAMPTON:

20 Q. Mr. Powers, I am now showing you Exhibit 31. Exhibit 31
21 is there on the screen. This is the first page of that
22 exhibit. What do we see in 31, the first page?

23 A. This is the representation of the desktop after the Bubba
24 account has logged in.

25 Q. Now, in the course of Mr. Tippens's interview and his

1 confession with the agents, he mentioned the program eMule and
2 the use of the program eMule. Were you able to identify any
3 evidence of the presence of that program on this Dell laptop?

4 A. Yes.

5 Q. Is any such evidence shown in this Exhibit 31?

6 A. Yes. The very first -- the second icon in the first
7 column is a shortcut to the eMule program.

8 Q. What is the purpose of that shortcut?

9 A. So the actual program is stored somewhere else; the
10 shortcut just makes it easy for you to double click on it and
11 immediately launch it.

12 Q. Mr. Powers, you testified earlier that when you entered
13 Mr. Tippens's bedroom, there was a video playing on an
14 infinite loop. Do you recall that?

15 A. I do.

16 Q. Was that video being played with any sort of specialized
17 media program?

18 A. It was being played with the VLC Media Player.

19 Q. What is that?

20 A. It's a program like Quick Start or Windows Media Player
21 that's purpose is to basically play videos or sound, MP3s;
22 it's just a way to have the computer play some kind of media.

23 Q. In the course of your investigation or examination, did
24 you identify any evidence of the installation of the VLC Media
25 Player on this Dell laptop?

1 A. I did.

2 Q. Can any such evidence be seen in this Exhibit 31?

3 A. Yes, it's the fourth icon in the first column.

4 Q. I am showing you now 31-002. What do we see on the screen
5 in this instance?

6 A. This is what happens when you click on the start button in
7 the Bubba profile.

8 Q. You testified that you identified a single active user
9 account when you examined the Dell laptop?

10 A. Correct.

11 Q. Is that -- is what's seen there the computer with that
12 account logged in?

13 A. Yes.

14 Q. When you started this Dell laptop in a virtual
15 environment, did the Bubba account log in automatically or did
16 you have to enter a password or some other process?

17 A. No, this was the only account that came up and it came up
18 straight here.

19 Q. So it did log in automatically?

20 A. Yes.

21 THE COURT: Let me ask you -- you got ahead of me.
22 You clicked on one of these icons shown in Exhibit 31 to get
23 to 31-002?

24 A. Actually, the one you click on to get to the one in 31-002
25 is visible in 31-002. It's the round one at the very bottom

1 left. It's the start button. I don't think it's actually
2 visible in 31.

3 THE COURT: What is that button?

4 A. It's called the start button. It lets you get to other
5 parts of your computer. It's kind of a quick way to get to
6 all of the programs or certain frequently used things. You
7 can also use that to log off; that's a way to get to the shut
8 down buttons.

9 BY MR. HAMPTON:

10 Q. Mr. Powers, I am now showing you 33. How did you create
11 Exhibit 33?

12 A. For Exhibit 33, I doubled clicked on the VLC icon on the
13 first screen. That launched the VLC Media Player, which is
14 what we see here. Once that was launched, I went to the media
15 menu item and when that gave me the menu, you go down about
16 halfway and it says open recent media, and then that kind of
17 larger rectangle kind of in the middle and to the right has a
18 list of the most recently played files.

19 Q. Is that what's commonly referred to as a jump list?

20 A. Yes.

21 Q. What is the purpose of that sort of a list?

22 A. It makes it easy for you to get back to stuff you've
23 recently done. The programmers assume that the stuff you've
24 done -- that you've been working with or playing most recently
25 is the stuff you are going to most likely want in the future

1 so they make it's easier to get to it.

2 Q. So the files that are shown in that recently played list,
3 those are files that have recently been used using the VLC
4 Media Player?

5 A. Correct.

6 Q. In that list, do you see a file name associated with the
7 videos that you saw playing on Mr. Tippens's computer or on
8 his TV when you entered the bedroom on the day of the search?

9 A. I do.

10 Q. Where is that?

11 A. It's the very first one on the list.

12 Q. And again, that file name is?

13 A. The file name is 2015-03-0.avi.

14 Q. In addition to that file, there are a number of other
15 files that appear to be media files that were recently played.
16 Do you see those?

17 A. Yes.

18 Q. Are any of the file names suggestive of child pornography?

19 A. Yes.

20 Q. Could you highlight a couple examples?

21 A. For instance, No. 5, the file name there is
22 vicky,kristin.BBJ. -- I'm sorry, this is the folder it's in.
23 The file name itself is pthc -- which in the context of child
24 pornography usually stands for pre-teens hard core --
25 suckdick-30.avi. Another example would be No. 7, we've got

1 (Pthc)illegalvickychildlover.mpg.

2 Q. Mr. Powers, looking at this list, it appears that the
3 first file is located on the C drive?

4 A. That is correct.

5 Q. And what is the C drive?

6 A. The C drive is the drive in the Dell laptop that contains
7 the operating system.

8 Q. The remainder of the files appear to be on a different
9 drive; is that accurate?

10 A. It is.

11 Q. What is that drive?

12 A. Here it's referred to as the G drive. That was determined
13 to be the Dell -- excuse me, the Western Digital external hard
14 drive that we have called 1B14, that I believe is Exhibit 29.

15 Q. From the photograph, Exhibit 29?

16 A. Yes.

17 Q. Mr. Powers, I have now placed on the screen Exhibit 32. I
18 will ask you if you can explain how Exhibit 32 was prepared.

19 A. Exhibit 32 was created by launching the eMule program from
20 the icon on the desktop that we saw in the first screen shot.

21 Q. And what do we see in this first page of Exhibit 32?

22 A. This first page is showing the eMule program and its menu
23 bar, and it's got the server's button highlighted.

24 Q. Is this the screen that appears when you first start up
25 the eMule program?

1 A. Yes.

2 Q. Is there a version number for this particular installation
3 of eMule identified?

4 A. Yes, version 0.50a.

5 Q. I am now showing you 32-002. What is displayed in this
6 screen shot or screen capture?

7 A. This particular screen capture is showing the current
8 directories for the incoming and temporary files.

9 Q. Now, based on your understanding of the operation of
10 eMule, what is the incoming files?

11 A. The incoming folder is where files that have been
12 downloaded are placed once the program is done downloading
13 them.

14 Q. Now, in this picture, we see something that appears to be
15 the location for where those files are to be stored; is that
16 accurate?

17 A. Yes.

18 Q. Based on your examination of the Dell laptop, were you
19 able to find a folder on the hard drive corresponding to this
20 particular file path?

21 A. I was.

22 Q. Did that folder contain any image or video files?

23 A. It did.

24 Q. Approximately how many image or video files did it
25 contain?

1 A. Roughly 230.

2 Q. In addition to the reference to the incoming folder, there
3 also appears to be something referencing the temporary files.

4 Do you see that?

5 A. Yes.

6 Q. Similarly, there appears to be a path specification for
7 that temporary folder?

8 A. Correct.

9 Q. Are you familiar with the purpose of the temporary files?

10 A. This is where eMule stores the pieces of the files that
11 it's downloading until it gets them off.

12 Q. In your examination of the Dell laptop, were you able to
13 find a folder corresponding to this temporary files on the
14 hard drive?

15 A. I was.

16 Q. Did that folder contain image and video files?

17 A. It contained files. They were not directly usable as a
18 video or image to a normal user.

19 Q. Approximately how many files?

20 A. 130.

21 Q. I am now showing you 32-003. I will ask you, what do we
22 see in this screen capture?

23 A. This is the security part of the options menu of eMule.

24 MR. HAMPTON: Your Honor, just one moment.

25 BY MR. HAMPTON:

1 Q. Mr. Powers, I am now showing you 32-004. This appears to
2 be another screen capture of a settings menu for eMule; is
3 that right?

4 A. Of the options, yes; this is the general section.

5 Q. In this is a check box that appears to relate to how eMule
6 will start up. Do you see that, toward the bottom?

7 A. Yes.

8 Q. What's the purpose of that check box?

9 A. With many applications, sometimes a user will want it to
10 automatically start when they start the computer up because
11 they use it all the time, and sometimes they don't want it to.
12 So this gives you the option of having it turn on
13 automatically or not as soon as you start Windows.

14 Q. So in this instance, the box is unchecked. What would the
15 effect of having that box unchecked have been?

16 A. So because this is unchecked, this program is set to not
17 automatically start. So if you wanted to start it, you would
18 have to do it yourself because it's not going to automatically
19 start up just because you boot it.

20 Q. Now, showing you 32-005, what do we see in this screen
21 capture?

22 A. This is showing some other options. It's showing us what
23 the default video player is.

24 Q. What was the default video player?

25 A. VLC.

1 Q. Is that the same video player that we saw in Exhibit 33?

2 A. It is.

3 Q. The same video player that was playing the video on
4 Mr. Tippens's TV at the time of the search?

5 A. Correct.

6 Q. I am now showing you 32-006. We appear to have left the
7 settings or options. What do we see in this screen capture?

8 A. In this screen capture, we have the incoming files. These
9 are the files that have been downloaded.

10 Q. Among these files, did you identify any file names that
11 appear to be suggestive or indicative of child pornography?

12 A. I did.

13 Q. Would you cite a couple of examples that are displayed
14 here on the screen?

15 A. The second one down is -- and you'll have to pardon my
16 pronunciation, this is literally Greek: 12YEidothea first
17 pussy & anal fuck[20, and we can't see the rest of it.

18 The fourth one down is 11Yr -- stands for year --
19 11YrChild Prostitute.avi.

20 A few up from the bottom, we have one named 2014-05 7yo --
21 means 7 year old -- girl fingered deep in both holes.mp4.

22 Q. Now showing you 32-007, which appears to be another tab
23 within the eMule program, what does this tab correspond to?

24 A. This is the transfers menu, and here we have downloads.

25 Q. So what are these -- what do the file names that appear in

1 this screen capture represent?

2 A. These are the files that are in the process of trying to
3 pull in.

4 Q. I am sorry, I didn't hear you. Trying to --

5 A. Trying to download and they are not completed. I may have
6 misspoken whether these were downloaded or not. There's some
7 of these file names that appear on both lists, and I recognize
8 some of these have bearings that were found on other places on
9 the computer. So I apologize if I --

10 Q. Should I go back to 32-007 to make sure we are clear?

11 Okay, so let's just clarify what your clarification was.

12 A. I just noticed that some of these file names were things
13 that were found completely downloaded on the computer.

14 Q. So this may include things that were actually completed
15 but also includes things that are in process?

16 A. Yes.

17 Q. Mr. Powers, I am showing now on the left and on the right
18 32-008, 32-009. Do you see those?

19 A. I do.

20 Q. What is shown in these screen captures?

21 A. This is the eMule search function. EMule keeps track of
22 the last 30 searches that the user has done, and these two
23 screen captures are showing the last 30 eMule searches that
24 were done on the Dell laptop.

25 Q. So what does that mean that those search terms or those

1 key word searches appear in those lists?

2 A. It means somebody typed those into the eMule search
3 function and looked for files with those terms.

4 Q. Mr. Powers, during his confession with agents, Mr. Tippens
5 noted that he had used the search terms "anal" and "pthc" on
6 prior occasions. Do you see either of those search terms in
7 the list of recent eMule searches?

8 A. I see both.

9 Q. In reviewing those searches and the search history, are
10 there other key words that are indicative of searches
11 involving child pornography?

12 A. There are.

13 Q. Can you highlight some of those?

14 A. So kind of midway down the list on the left, we have the
15 term "pedo," which is often found in child pornography
16 contexts. Above that we have 11, 12, 13, with Y's; it usually
17 refers to an age. We already discussed pthc.

18 Q. You also see the term "man space girl"?

19 A. Yes. I just turned to that page. We have got that. We
20 discussed pedo. We have preteen. Pthc again.

21 Q. Mr. Powers, I am now showing you again on the sexually
22 explicit screen on the left is 32-006 and 32-008 on the right.
23 You testified a moment ago that 32-006 reflects the incoming
24 folder; is that right?

25 A. Correct.

1 Q. And those are files that have been downloaded using eMule?

2 A. Correct.

3 Q. In examining that list of files, do you see any file names
4 that appear consistent with any of the search terms shown in
5 32-008 on the right-hand side?

6 A. We do, that Greek word Eidothea --

7 Q. Can you spell that for the record?

8 A. Sure, I will make a run at it. Using English characters,
9 it's E-i-d-o-t-h-e-a, and then there's some instances where
10 it's actually spelled with Greek, and I am not going to
11 embarrass myself by misremembering my Greek unless you want me
12 to make a run at it.

13 Q. No.

14 A. I think it's E-i-lower case delta-o-theta-epsilon-alpha --
15 alpha-epsilon-a.

16 Q. Well, I am not a Greek scholar either, so let's just -- in
17 addition to that particular, what apparently is a Greek word,
18 are there any other search terms that appear to correspond
19 with file names found in this incoming folder?

20 A. There were. I know anal showed up somewhere. So we also
21 have a search term for prostitute, and that shows up in the
22 pictured incoming files. The fourth one down, child
23 prostitute, prostitute corresponds. We have a series of files
24 called 11.3gp, 12.3gp, 13.3gp. And "gp" is a search term.

25 Q. That's fine. Based on your analysis of eMule, does eMule

1 maintain any records concerning information about files that
2 were downloaded using that peer-to-peer software?

3 A. It does.

4 Q. Where does it store that record information?

5 A. A file called the known.met.

6 Q. That's known.met?

7 A. Yes.

8 Q. In your review of this Dell laptop, did you identify a
9 known.met folder associated with this eMule program?

10 A. That file, yes.

11 Q. Does that file contain records for files that have been
12 downloaded with eMule?

13 A. Yes, in this case, somewhat more than 1800.

14 Q. So there were more than 1800 records of downloaded files?

15 A. Correct.

16 Q. What kind of information does the known.met file maintain?

17 A. It will retain the file name, the date it was last
18 downloaded. It will have an md4 hash and size. It has some
19 other fields as well, but those in particular.

20 Q. And the last downloaded time, what exactly does that mean?

21 A. It might download the same file many times, but it will
22 only keep track of the last time you did, and that's written
23 to a field called last written.

24 Q. So does that reflect when -- based on your understanding,
25 does that reflect when a download is complete?

1 A. I believe that to be correct.

2 Q. Among those 1800 records, did you find file names that you
3 believe were indicative of child pornography?

4 A. I did.

5 Q. How would you characterize the volume of file names that
6 you found to be indicate of child pornography?

7 A. A very substantial portion.

8 Q. Of that 1800?

9 A. Yes.

10 Q. I am now showing you what has been previously admitted as
11 Exhibit 18A. Is that on the screen in front of you?

12 A. It is.

13 Q. This corresponds to a certain forensic information related
14 to Exhibit 18?

15 A. Yes.

16 Q. The file in Exhibit 18, do you recognize that file?

17 A. Yes. That was the file that was playing when we made
18 entry into the house.

19 Q. You testified earlier that you found that file in the
20 videos folder on the Dell laptop, or in a videos folder on the
21 Dell laptop?

22 A. Correct.

23 Q. Is that the folder that is specified in the file path here
24 in 18A?

25 A. Yes.

1 Q. During your examination and your review of the known.met
2 file, did you identify any download records that appear to
3 correspond to Exhibit 18?

4 A. I did.

5 Q. What made you believe that there could be a record made of
6 the download of Exhibit 18?

7 A. Well, we were -- I am not quite sure what you are driving
8 at.

9 Q. Was there a record in the known.met file that had the same
10 file name as the file name in Exhibit 18?

11 A. Yes.

12 Q. Now, you mentioned that one of the things the known.met
13 file retains for a given download is a hash?

14 A. Correct.

15 Q. What is a file hash in layman's terms?

16 A. The simplest layman's term is you can think of it as a
17 fingerprint that will uniquely identify the file.

18 Q. When calculating the hash for a given file, what can cause
19 the hash to differ?

20 A. Any change whatsoever to the file itself will change the
21 hash. So if you have a text document and you add or remove a
22 period, it will change it. If you have a picture or any other
23 file and you go to the properties and you add the author and
24 the meta data, that will change the hash. If you make
25 something bigger or smaller, it will change the hash. Any

1 change to the file will change the hash.

2 Q. Were you able to calculate the hash, in particular the md4
3 hash for Exhibit 18?

4 A. Yes.

5 Q. Were you able to compare that to the hash value reported
6 in known.met for that same file name?

7 A. I was.

8 Q. Was there a match?

9 A. I do not believe there was a match for this one.

10 Q. Was there any obvious reason, based on the known.met file
11 and what you could observe about Exhibit 18, that might
12 explain why there was no match?

13 A. I believe the sizes were different. I believe the one
14 found on the computer was smaller than that listed in the
15 known.met.

16 Q. So a difference in file size would certainly explain why
17 hashes would not match?

18 A. Yes.

19 Q. Turning your attention to the last modified date for
20 Exhibit 18, do you see that in Exhibit 18A?

21 A. I do.

22 Q. What is the last modified date and time?

23 A. October 21st of 2015, 2:18:20 UTC.

24 Q. According to the known -- that last modified -- strike
25 that.

1 According to the known.met file, what was the last written
2 time for the file that appears to correspond to Exhibit 18?

3 A. There's one that was off. It might have been this one
4 that was an hour off. If I could possibly review some notes
5 real fast.

6 Q. Actually, I have an exhibit that I can show you.

7 A. That will work better.

8 Q. I am showing you what's been marked for identification as
9 Government's Exhibit 42. I am going to use my fingers to make
10 it a little bigger. Do you see this file?

11 A. I do.

12 Q. Do you recognize this?

13 A. This is the 201503.avi file we have been discussing.

14 Q. Do you recognize this exhibit?

15 A. Yes.

16 Q. What is this exhibit?

17 A. This is a printout of the data contained in the known.met
18 file.

19 Q. Do you see the file we've been talking about, the file
20 name that corresponds to Exhibit 18?

21 A. Yes, on line 749 towards the bottom of the screen.

22 Q. Are you able now to recall -- does that refresh your
23 recollection as to the last right time associated with
24 Exhibit 18?

25 A. Yes. This is the one that's one hour off.

1 Q. So just to summarize, how does the last right time for the
2 file in the known.met record compare to the last modified time
3 for Exhibit 18?

4 A. The last modified time is one hour later than the last
5 right time. The minutes and seconds are the same, but the
6 hour is one off.

7 Q. Now, showing you Exhibit 19A, what is shown in Exhibit
8 19A?

9 A. This is the data corresponding to the file
10 2015-016sucks.mp4.

11 Q. When was Exhibit 19 created?

12 A. It was created on December 15, 2015.

13 Q. When was it last modified?

14 A. It was last modified that same day about roughly 13 hours
15 later.

16 Q. So just to refresh, the created date means the time when
17 that file first appeared on the file system; is that accurate?

18 A. That is correct.

19 Q. Where was Exhibit 19 found?

20 A. It was found on the Dell laptop.

21 Q. Was it found on any particular folder location?

22 A. It was found in the eMule incoming folder.

23 Q. And what is the eMule incoming folder again?

24 A. This is the folder where files that are being downloaded
25 are placed once the download is complete.

1 THE COURT: Just a second. There are two dates here
2 under the date created and date modified. Is the top one the
3 date created?

4 A. Yes, Your Honor.

5 Q. And the bottom is the date modified?

6 A. Yes, Your Honor.

7 THE COURT: All right.

8 BY MR. HAMPTON:

9 Q. Now showing you 20A, where was it found?

10 A. It was located in the eMule incoming folder on the Dell
11 laptop.

12 Q. Is that the same folder where Exhibit 19 was found?

13 A. It is.

14 Q. What is the file creation time for Exhibit 20?

15 A. The file creation is December 31, 2015, at 14:47:34.

16 Q. How about the last time that file was modified?

17 A. January 2, 2016, at 20:42:43.

18 Q. Now, showing you Exhibit 21A, where was Exhibit 21
19 located?

20 A. It was located in the eMule incoming folder on the Dell
21 laptop.

22 Q. That's the same folder that Exhibits 19 and 20 were found
23 in?

24 A. Correct.

25 Q. When was that file created on the file system?

1 A. That one was created January 2, 2016, at 18:07:54.

2 Q. When was that file last modified?

3 A. Last modified on January 18, 2016, 23:47:36.

4 Q. How does that compare to the creation time?

5 A. It was modified a couple weeks after creation time.

6 Q. Now showing you 22A, where was Exhibit 22 recovered?

7 A. It was recovered from the eMule incoming folder on the
8 Dell laptop.

9 Q. And when did that file get created on the file system?

10 A. It was created on January 2, 2016, at 18:08:45.

11 Q. When was Exhibit 22 last modified?

12 A. January 2, 2016, at 19:45:50.

13 Q. Finally, 23A. Where was Exhibit 23 found?

14 A. It was found in the incoming eMule folder on the Dell
15 laptop.

16 Q. When was that file created on the file system?

17 A. It was created on January 30, 2016, at 17:16:51.

18 Q. When was that file last modified?

19 A. January 30, 2016, at 17:19:56.

20 Q. So Mr. Powers, each of Exhibits 19 through 23 was found in
21 eMule's completed downloads folder; is that a correct
22 statement?

23 A. It is.

24 Q. In reviewing the known.met file, did you identify records
25 of downloaded files that appear to correspond to Exhibits 19

1 through 23?

2 A. I did.

3 Q. In those records, do the file names match the file name
4 for Exhibits 19 through 23?

5 A. They do.

6 Q. Did you calculate the md4 hash values for Exhibits 19
7 through 23?

8 A. Yes.

9 Q. Did you compare those hash values to the associated
10 records for the same file names in the known.met file?

11 A. I did.

12 Q. Did any of those hash comparisons result in an identical
13 match?

14 A. Three of them did.

15 Q. For which exhibits was there an identical match?

16 A. I would have to look at names. So Exhibit 22 matches,
17 Exhibit 21 matched, and I think it was Exhibit 19 matched.

18 Q. Would it help if you could review your forensic report to
19 confirm?

20 A. Yes.

21 Q. Mr. Powers, I have just handed you for identification
22 purposes a forensic report that you drafted in this case,
23 which was Bates-stamped Tippens with the last three digits of
24 895 through 901. Let me know when you've had a chance to look
25 at that.

1 Did that help you assist in what was the third exhibit
2 that had an exact hash match?

3 A. Yes. It was Exhibit 19, 6sucks.mp4; it was Exhibit 21,
4 monfilm2.mp4; and Exhibit 22, 2014-02-TLZ_s -- and there's
5 actually foreign characters here -- AfA1/4per 6yo.mp4.

6 Q. What is the significance of the fact that these hashes
7 were identical?

8 A. The fact that these hashes are identical means that we
9 know that the content of these exhibits is identical to the
10 content that eMule says it downloaded.

11 Q. I am referring to Exhibit 21, which is entitled -- that
12 has the words "Mon film" in the title of the file name.

13 A. Yes.

14 Q. Did you find any other copies of that file during your
15 forensic examination in this case?

16 A. I believe they were also copied on the Western Digital
17 hard drive, QSE14, which is Exhibit 29.

18 Q. Which photos are in Exhibit 29?

19 A. Yes.

20 Q. Did you do a hash comparison to Exhibit 21 and the same
21 file you found on that Western Digital hard drive?

22 A. I did.

23 Q. What was the result of that comparison?

24 A. I believe it was the same, although I wouldn't mind
25 reviewing that real fast before I commit to that.

1 Q. Would it help looking at your record to assist in your
2 recollection?

3 A. Yes, please.

4 Q. Sure. Take a look and let me know when you are done.

5 A. Yes.

6 Q. Did that assist in what you recall?

7 A. It was the identical hash.

8 Q. Now, three of those exhibits were identical hash matches?

9 A. Correct.

10 Q. In at least two of them, there was not a hash match?

11 A. Correct.

12 Q. You testified earlier that even the slightest change to a
13 file's contents can alter its hash; is that accurate?

14 A. That is accurate.

15 Q. Based on your review of the known.met record for -- I am
16 sorry, the two files that did not have an exact hash match,
17 were those Exhibits 20 and 23?

18 A. Yes.

19 Q. I am sorry, I couldn't hear you.

20 A. Yes.

21 Q. Was there anything in your review of the known.met record
22 for the file names that correspond to Exhibits 20 through 23
23 that could explain why those hashes did not match?

24 A. In those cases, the files that were physically found on
25 the computer had a smaller size than that which was listed in

1 the known.met record.

2 Q. And that smaller size could account for why the hash
3 values would be different?

4 A. It would guarantee that the hash values would be
5 different.

6 Q. For Exhibits 19 through 23, did you compare their last
7 modified time to the last right time recorded for those
8 specific file names in the known.met file?

9 A. I did.

10 Q. What, if anything, did you learn based on that comparison?

11 A. They were the same.

12 Q. So based on the date information available to you, is a
13 reasonable conclusion that those files were modified for the
14 last time at the same time their download was completed?

15 A. Yes.

16 Q. Does that suggest to you that these five files, Exhibits
17 19 through 23, are in fact the files that are reported by the
18 known.met files having been downloaded by eMule?

19 A. That is a strong correlation, yes.

20 Q. Mr. Powers, I have now put up on the screen, on the
21 left-hand side is Exhibit 20A, the right hand side
22 Exhibit 32-008.

23 On the right-hand side, that 32-008, that reflects some of
24 the search terms that were entered by someone using eMule on
25 Mr. Tippens's computer, correct?

1 A. Correct.

2 Q. Anything about the recent list of searches that appear
3 similar to the information for Exhibit 20 that's reflected in
4 Exhibit 20A?

5 A. This word Eidothea.

6 Q. And what is that similarity?

7 A. That's -- Eidothea is in both of them. We also have
8 another reference to pthc here as well.

9 Q. In the course of your forensic examination, did you find
10 any other files on Mr. Tippens's devices that appear to relate
11 to that search term "Eidothea"?

12 A. Yes, there were two other files with the Greek characters
13 in them that were found on the Western Digital hard drive 1B14
14 that was pictured in Exhibit 29.

15 Q. Mr. Powers, turning now to what are called shellbags, are
16 you familiar with shellbags?

17 A. I am.

18 Q. What are they, in layman's terms?

19 A. Basically, they are what the operating system is using to
20 help keep track of what you as the user are doing when you are
21 changing folders. So if you make a folder bigger or you say I
22 want to look at a list or I want to look at thumbnails or
23 otherwise interact with a folder, the shellbag is where the
24 operating system keeps track of that.

25 Q. So let's say I have a folder titled X, and inside that is

1 a sub folder 1 and inside that is a sub folder 2. So if I
2 navigate through them, click on X, then open up 1 and then I
3 open up 2, would there be shellbags that would be generated?

4 A. Yes.

5 Q. Would there be a shellbag for each of those folders that I
6 opened on my computer?

7 A. There would.

8 Q. Are shellbags then reflective of some sort of user
9 interaction with a computer or some sort of a log made in the
10 system process that creates them?

11 A. They are only associated with user interactions.

12 Q. So is it correct that a shellbag would only exist if the
13 user of the computer, or a user of a computer has somehow
14 accessed a given folder?

15 A. Correct. A shellbag is only going to exist if a user has
16 interacted with the folder. It will not exist if the only
17 interactions were some kind of system action.

18 Q. Mr. Powers, in the course of your analysis of the Dell
19 laptop and also the external Western Digital hard drive, did
20 you identify any shellbags associated with that Dell laptop?

21 A. I did.

22 Q. Showing you now, if you could look into your binder at
23 Exhibit 40, do you recognize Exhibit 40?

24 A. I do.

25 Q. What is Exhibit 40, in summary?

1 A. In summary, it's a printout of shellbags associated with
2 the Dell laptop, and by associated I mean that's where the
3 shellbags were located. Some of them are referencing other
4 things, but they are located on the Dell laptop.

5 Q. So if you'll turn first to page -- so based on those
6 shellbags, does that identify folders that existed, at least
7 at one time, on Mr. Tippens's computer?

8 A. Or an attached device, yes.

9 Q. But those are folders that existed at some point in time?
10 Whether they exist now, we don't necessarily know?

11 A. Correct.

12 Q. So referring you to Exhibit page 40-003, row 65, what is
13 the folder name that is associated with that shellbag?

14 A. The folder name is "baby_fuck."

15 Q. Now, 40-006, row 113, what is the folder name associated
16 with that shellbag?

17 A. The folder name is "CP Link List for Tor Browser."

18 Q. Same page, row 118, what's the folder name associated with
19 that shellbag?

20 A. "Exif Tag Remover (Portable) for CP Production."

21 Q. Same page, 40 -006, the row was 118. Now 40-008,
22 specifically row 149, what's the folder name associated with
23 that shellbag?

24 A. "PlayPen CP forum."

25 Q. Now page 060 of that same exhibit, 40-060, row 1000,

1 what's the folder associated with that shellbag?

2 A. "Two 13yo Girls have Sex."

3 Q. And just a couple more, Mr. Powers. 40-071, specifically
4 row 1247, what's the folder name associated with that
5 shellbag?

6 A. "Toddler and preschooler fucking."

7 Q. Finally, 40-174, specifically row 3333, what's the folder
8 name associated with that shellbag?

9 A. "11yo Kele & 12yo Camila (Brazilian prostitutes)."

10 Q. I will ask you to pick up the sensitive binder that's the
11 smaller binder. Flip to Exhibit 25 in that binder, please.
12 Have you taken a look at Exhibit 25?

13 A. I have.

14 Q. There appears to be a three-page exhibit also reflecting
15 screen captures from the computer; is that accurate?

16 A. It is.

17 Q. How were these screen captures created, Mr. Powers?

18 A. From the virtual machine, we navigated to the folder in
19 question and took the screen capture that you see here.

20 Q. So was this process the same or largely the same that you
21 used to generate what has previously been admitted as Exhibits
22 30, 31 and 32?

23 A. It is.

24 Q. And based on your review of these, do you believe they are
25 fair and accurate representations of how information displayed

1 on Mr. Tippens's computer would have appeared to the user of
2 that computer?

3 A. Yes.

4 Q. Is that subject to the same qualification just in terms of
5 screen size?

6 A. Correct.

7 MR. HAMPTON: Your Honor, at this point the
8 government would offer Exhibit 25.

9 MR. FIEMAN: Which is the sensitive --

10 MR. HAMPTON: In the sensitive binder, yes.

11 MR. FIEMAN: That's fine.

12 THE COURT: It may be admitted.

13 (Exhibit No. 25 admitted.)

14 BY MR. HAMPTON:

15 Q. Mr. Powers, I will start with 25, the first page of 25.

16 What do we see in that page?

17 A. These are files that were contained in the My Videos
18 folder. We have thumbnails above the file names.

19 Q. Where was this My Videos folder located?

20 A. It was in the Bubba user profile on the Dell laptop.

21 Q. And that is evidence item 1B15?

22 A. Correct.

23 Q. Which is also shown in Exhibit 30 as a photo; is that
24 correct?

25 A. Yes.

1 Q. Is there any indication of how many items were in that
2 folder?

3 A. 84.

4 Q. How do you know that?

5 A. The item count is in the bottom left corner.

6 Q. Is it circled in this exhibit?

7 A. It is. So I guess to be clear, all the red circling was
8 not present in the actual screenshot that was done
9 subsequently.

10 Q. Thank you for clarifying. Mr. Powers, several of these
11 files have red circles around them to highlight them. Do you
12 see those?

13 A. I do.

14 Q. What are the names of the files associated with those
15 circles?

16 A. So the first one is: "!New(G)2010 5yo Devochka" -- and I
17 am going to spell this word, D-e-v-o-c-h-k-a -- "Fuck(Very
18 good)(1)."

19 Q. What kind of file is that?

20 A. Well, based on the thumbnail and the file name, it would
21 be consistent with child pornography. Also, the type of the
22 file would be a video, if that's what you were asking.

23 Q. So it would be a video file as well?

24 A. Yes.

25 Q. And what about the other circled items?

1 A. All the circled items are videos. Do you want the file
2 names of all of them?

3 Q. Sure. What's the file name of the circled item in the
4 lower left of the three rows?

5 A. Lower left is "6yo penetration dad."

6 Q. And then there are two other circled files on the
7 right-hand side. The one at the top, what is the file name
8 for that?

9 A. "(Pthc) 15yo Girl Abused While Sleeping." And the last
10 one is "4yo Latin girls learning."

11 Q. Mr. Powers, these thumbnails that were present above these
12 file names, is that something that is standard for any
13 computer?

14 A. Depending on your folder view, yes.

15 Q. Were you able to determine how the folder view was set on
16 Mr. Tippens's computer at the time there was a search?

17 A. That's what we are looking at right here.

18 Q. So these thumbnails would have been present whenever you
19 are looking at images or videos on the Dell laptop?

20 A. Correct.

21 Q. You can put the sensitive binder to the side for now.

22 Mr. Powers, I would like to now talk a little bit about
23 your analysis of some of the other devices.

24 THE COURT: It's about time for a break before you
25 start that. Let's take ten.

1 (Afternoon recess.)

2 THE CLERK: All rise. Court is again in session.

3 THE COURT: Please be seated.

4 BY MR. HAMPTON:

5 Q. Now, Mr. Powers, as I said, I am going to move on to your
6 analysis of some of the other devices, the two other devices
7 in this case.

8 First, I am quickly showing you 28-002, which has
9 previously been admitted. What do we see in 28-002?

10 A. This is an external hard drive.

11 Q. Do you know the brand?

12 A. Western Digital.

13 Q. In the course of your forensic examination, did you
14 identify any images or videos of suspected child pornography?

15 A. We did.

16 Q. Did those reflect Exhibits 1 and 2, which were extracted
17 from this device?

18 A. Yes.

19 Q. Which for the record, what is the evidence item for what
20 is shown in Exhibit 28-002?

21 A. So this is Evidence No. 1B2, lab number QSE2.

22 Q. Mr. Powers, I am now showing you Exhibit 29-002, which has
23 previously been admitted. What do we see there?

24 A. This is a Western Digital external hard drive. The FBI
25 evidence number is 1B14. The lab number is QSE14.

1 Q. I believe you testified earlier, but just to be sure, did
2 you see this particular device when you entered Mr. Tippens's
3 bedroom?

4 A. I did.

5 Q. Was this device connected to anything at the time you
6 entered his bedroom on the day of the search?

7 A. It was connected to the Dell laptop pictured in
8 Exhibit 30, evidence No. 1B15.

9 Q. Now, Mr. Powers, I will ask you if you could take a look
10 at the large binder that's in front of you, the government
11 exhibits. Take a look at Exhibits 34 and 34A as in apple.

12 Mr. Powers, what is Exhibit 34?

13 A. Exhibit 34 is a printout of a .pdf file that was located
14 on the Western Digital QSE14 that was photographed in
15 Exhibit 29.

16 Q. What is Exhibit 34A?

17 A. 34A is a screen shot using the virtual machine techniques
18 we've been discussing earlier showing the contents of the root
19 of that same external hard drive.

20 Q. Does that also show the .pdf file you just mentioned?

21 A. It does.

22 Q. There's a second page to 34A; is that correct?

23 A. Yes.

24 Q. What does the second page show?

25 A. Showing the properties of that .pdf file, the .pdf file

1 called "Approvalform.pdf," approval form one word.

2 MR. HAMPTON: The government would offer 34 and 34A.

3 MR. FIEMAN: No objection.

4 THE COURT: 34 and 34A may be admitted.

5 (Exhibit Nos. 34 and 34A admitted.)

6 MR. HAMPTON: If I may publish those.

7 BY MR. HAMPTON:

8 Q. Showing you now Exhibit 34, you said this is a printout of
9 a .pdf file. Where did you say this .pdf file was located?

10 A. The root of the Western Digital hard drive.

11 Q. When you say root, what do you mean?

12 A. The very top folder. If you don't drill down into the
13 file system any farther, the one that you are first presented
14 with.

15 Q. So, for example, if I just go to a drive that's on my list
16 of drives on my computer, let's the E drive, and I double
17 click on the E drive, the very first set of files I see, that
18 would be the location, that would be the root location?

19 A. Yes.

20 Q. Mr. Powers, do you see that there's an apparent addressee
21 for this form located on this Western Digital hard drive?

22 A. I do.

23 Q. Who is the apparent addressee?

24 A. Sergeant First Class David Wayne Tippens.

25 Q. Does that document have a date?

1 A. It does.

2 Q. What is that date?

3 A. January 29, 2012.

4 Q. Showing you 34A, and that's the first page of Exhibit 34A
5 which was just admitted, what do we see in Exhibit 34A on this
6 first page?

7 A. We see three items that are at this level in the file
8 structure: the date modified, the kind of object it is and
9 the size.

10 Q. Is the item, the .pdf file we just saw in Exhibit 34, is
11 there a record of that particular file shown here?

12 A. It is. It's the icon in the middle, it's the middle item.
13 It has -- again "approvalform.pdf" is the name. Modify date
14 is 1-29-2012, 9:02:00 a.m. Type is .pdf, and its size is 1305
15 kilobytes.

16 Q. I am now showing you the second page of Exhibit 34A. How
17 did you create -- did you create what is shown in Exhibit 34A?

18 A. I did create that and I created this as well.

19 Q. How did you create this?

20 A. So starting with the last string we saw, I right clicked
21 on the approvalform.pdf, and selected "properties" from the
22 menu that you have there, that brought up this current window.

23 Q. Now, this shows additional date information. Does this
24 show a created date in addition to the last modified date?

25 A. It does.

1 Q. What is that created date?

2 A. The created date is Monday, April 2, 2012, at 9:37:11 p.m.

3 Q. The times here, are they listed in local time here in
4 Tacoma or UTC or some other time zone?

5 A. They are being listed in the local time.

6 Q. That would be Tacoma?

7 A. Yes.

8 Q. Is there a reason for that?

9 A. It just makes life easier on the user to show times in the
10 location he or she is at.

11 Q. Do the settings of your forensic software, though,
12 determine which time zone would have been used for this
13 particular instance?

14 A. In this particular instance, it would still be the
15 settings from Mr. Tippens's computer because this is a virtual
16 machine pretending it's Mr. Tippens's computer.

17 MR. HAMPTON: Your Honor, the government would now
18 offer for admission Exhibit 38, which is another stipulation
19 of the parties relating to Mr. Tippens's relocation.

20 MR. FIEMAN: No objection, Your honor.

21 THE COURT: 38 may be admitted.

22 (Exhibit No. 38 admitted.)

23 BY MR. HAMPTON:

24 Q. Mr. Powers, in your examination of the Dell laptop, were
25 you able to determine whether it had been connected to the

1 Western Digital hard drive that has been identified as 1B14 on
2 any prior occasion?

3 A. Yes.

4 Q. And by prior occasion, I mean prior to the date of the
5 search on February 11th of last year.

6 A. Yes.

7 Q. What, if anything, were you able to determine whether it
8 had been connected on a prior occasion?

9 A. It appeared that it had been connected at least as early
10 as November of 2012.

11 Q. Mr. Powers, I will ask you if you will quickly take a look
12 at Exhibits 3A through 17A, previously admitted. Just let me
13 know when you've had a chance to do that.

14 Based on your review of the exhibits, are you able to
15 determine on which device Exhibits 3 through 17 were located?

16 A. These were all located on the Western Digital hard drive
17 pictured in Exhibit 29, referred to as 1B14 or QSE14.

18 Q. Mr. Powers, showing you now Exhibit 3A, which corresponds
19 to Exhibit 3, you testified just a moment ago that Exhibit 3
20 was found on this Western Digital hard drive exhibit, evidence
21 item 1B14?

22 A. Correct.

23 Q. What is the file name of that exhibit?

24 A. "(~Pthc center~)(opva)(2012)kids suck-Julie sleep,
25 MOV00598.avi."

1 Q. What kind of file is Exhibit 3?

2 A. It's a video file.

3 Q. Based on your forensic examination, are you able to
4 determine when that file was created and placed on this
5 Western Digital hard drive QSE14?

6 A. December of 2012. By created, you mean placed, created on
7 the file system, correct?

8 Q. I do.

9 A. Okay.

10 Q. Now, what's the last modified date for that file?

11 A. It is December 5, 2012.

12 Q. I think you covered this earlier, but if you could remind
13 everyone, how is it that the date created could be later than
14 the date modified?

15 A. The date created refers specifically to when it was
16 created on or placed on a given file system.

17 The modified time was the last time it was changed. So if
18 it was created in one location -- the first time a file comes
19 into existence, the creation date and modified date will be
20 the same.

21 If the file was never modified at that point, the modified
22 date will never change even as it is placed in different
23 locations.

24 So this means that it was created somewhere, possibly on
25 the 5th of December or possibly earlier, and subsequently

1 placed on this drive on the 22nd of December.

2 Q. So based on that information, is it reasonable to conclude
3 that Exhibit 3 was present on that hard drive at least as
4 early as December of 2012?

5 A. Yes.

6 Q. Showing you 5A, what's the file name of 5?

7 A. "Babyj-Tied-Anal-Force.Avi. "

8 Q. And Exhibit 5 was also recovered from this same hard drive
9 QSE14; is that correct?

10 A. Yes.

11 Q. What does the date information show about when that file
12 was created on that hard drive?

13 A. This file was placed on this hard drive on January 25th of
14 2015.

15 Q. So again, based on that date information, would it be
16 reasonable to conclude that Exhibit 5 was present on that hard
17 drive at least as early as January of 2015?

18 A. Yes.

19 Q. Now showing you Exhibit 6A, which relates to Exhibit 6,
20 what is the file name for Exhibit 6?

21 A. "Child anal fuck bondage blowjob fuck cum 0001U.jpg."

22 Q. As with the two earlier exhibits, this was also recovered
23 from evidence item 1B14 or QSE14?

24 A. Correct.

25 Q. What does the date information show about when this

1 exhibit was created?

2 A. It was placed on this particular drive on January 25th of
3 2015.

4 Q. Would it be reasonable to conclude, then, that Exhibit 6
5 was present on evidence item 1B14 at least as early as January
6 of 2015?

7 A. Yes.

8 Q. You can put the big binder to the side, and I will ask you
9 to pick up the sensitive binder again, which is the smaller of
10 the two binders.

11 Can you flip to Exhibit 25, which was previously admitted?
12 If you can look at page 2 of Exhibit 25, what is shown on that
13 page?

14 A. This is a screen shot of a folder on the external Western
15 Digital hard drive pictured in Exhibit 29, referred to as
16 QSE14 or 1B14. It is showing the contents of a folder called
17 RAR files, which itself was within a folder called "more
18 stuff."

19 Q. Are you able to determine how many items this folder
20 contains?

21 A. 1,667.

22 Q. How are you able to determine that?

23 A. The numbers in the lower left-hand corner.

24 Q. And there are several files that have been circled --

25 A. Correct.

1 Q. -- in this picture. Is there anything of significance
2 about those file or folder names?

3 A. These folder names are all consistent with child
4 pornography.

5 Q. Could you read those file names or folder names?

6 A. The first one is -- it's got a couple sets of brackets --
7 "(pthc) 11yo old Lexie-68 pics."

8 Q. That's in the first row of files?

9 A. First row, third one in.

10 And then we have, on the second row, second one in "(Pthc)
11 Girls 11yo & 12yo Daughter Naked, Uk Private."

12 Then the next one is "(Pthc) hussyfan large child porn
13 collection."

14 Q. Now, if you would flip to the final page of 25, 25-003,
15 what is shown in this -- on this page?

16 A. It is the contents of a folder. It has a very long name,
17 "1yo 2yo 3yo 4yo 5yo 6yo 7yo 8yo 9yo 10yo 2008," and there are
18 28 items in this folder.

19 Q. Where was this folder located?

20 A. This was also located on the same drive we've been
21 discussing, the external Western Digital hard drive pictured
22 in Exhibit 29. It is in a folder within the "more stuff"
23 folder within the RAR files, and then I already read the
24 folder name.

25 Q. So it's a sub directory of what is actually shown on the

1 preceding page 25-002?

2 A. That's correct.

3 Q. Here, too, in 25-003, there are a few files that have been
4 circled?

5 A. Correct.

6 Q. Could you read those file names?

7 A. In the first row fully visible, second one in, the file
8 name is "20050601083743r."

9 Then the fourth one in the same row, "baby child H7X1683."

10 Bottom row, first file, "d114519_1274_vrgcy."

11 Q. Mr. Powers, as with some of the earlier screen shots that
12 were shown involving Mr. Tippens's devices, are there
13 thumbnails above those file names?

14 A. There are.

15 Q. Do those thumbnails appear indicative of young children
16 being sexually exploited?

17 A. Yes.

18 Q. If I may have one moment.

19 MR. HAMPTON: Your Honor, nothing further at this
20 time.

21 CROSS-EXAMINATION

22 BY MR. FIEMAN:

23 Q. Good afternoon, Agent Powers. I introduced myself
24 briefly, but for the record, I am Colin Fieman. I represent
25 Mr. Tippens.

1 If anything I ask is unclear, as it may well be, I am not
2 a computer expert, please just ask me to repeat or clarify,
3 okay?

4 A. Okay.

5 Q. Now, we've heard a lot about a lot of exhibits, and I am
6 going to really be focussing on two areas: some general
7 principles and issues about forensics.

8 A. Okay.

9 Q. I also want to focus on the files listed in Count 1 of the
10 indictment related to receipt, and Count 3 of the indictment
11 related to transportation, okay?

12 A. Okay.

13 Q. Just for the record, so we are clear as we go along, is it
14 correct that the Count 1 exhibits are in evidence as
15 Government Exhibits 19 through 23?

16 A. Do you mind if I review the --

17 Q. No, not at all. In fact, there's a government exhibit
18 list which is itself an exhibit, 36, so I could help you
19 cross-reference that, if it's easier. Go ahead and check 19
20 through 23 in the binder there.

21 A. Okay. What was I comparing them to in the indictment?

22 Q. Yes. Do those Exhibits 19 through 23 correspond to the
23 files listed in Count 1 of the superseding indictment?

24 A. Yes.

25 Q. All right. Thank you for confirming that.

1 Now, in relation to Count 3, is it correct that Government
2 Exhibits 3, 5 and 6 correspond to the files or depictions
3 listed in Count 3 of the superseding indictment?

4 A. 3 is there. 5 is there. Yes, it is.

5 Q. So between those two sets of exhibits, we have covered
6 what's listed in Counts 1 and 3 in terms of the listed
7 depictions; is that correct?

8 A. It is.

9 Q. So, let's start with -- just to clear away some of the
10 weeds, you were asked early on about a video that was playing
11 on the television at Mr. Tippens's home at the time that his
12 residence was searched in February of last year. Do you
13 recall that?

14 A. Yes.

15 Q. And that corresponded to Government's Exhibit 18; is that
16 correct?

17 A. Correct.

18 Q. Just to make clear, that exhibit is not part of Count 1 or
19 3, correct?

20 A. I believe that's correct. I will double-check it real
21 fast. That is correct.

22 Q. Now, you also referenced, in connection with the search,
23 that there was also a video library that I guess was visible
24 or that you saw at the time that you were present at the
25 search. Do you recall that?

1 A. Yes.

2 Q. And where exactly was that video library located, the
3 video library files?

4 A. On the Dell laptop.

5 Q. Just again to clarify, none of the files that you saw in
6 that particular video library correspond to the depictions
7 listed in Count 1 or 3, correct?

8 A. I believe that is correct.

9 Q. Now, help me with some terms, okay, because we've talked
10 about various date-related information or data including file
11 date created, file modified dates, correct?

12 A. Correct.

13 Q. Is it true that these are broadly called time stamps?

14 A. Yes.

15 Q. Now, that would include -- I am going to list four
16 examples. As I indicated, the file created date, you
17 indicated that it is indicative of when a file first appeared
18 on the storage device, in this case, the hard drive?

19 A. I'm not nit picking to say file system, but broadly
20 speaking, you are generally correct.

21 Q. I appreciate that very much. Same for the modification or
22 last modified date, that also is a time stamp; is that
23 correct?

24 A. It is a time stamp, yes.

25 Q. The last access date is also a time stamp?

1 A. Yes.

2 Q. Last written date, also a time stamp?

3 A. Yes.

4 Q. Now, you had testified on direct that these are times
5 associated with a file, correct?

6 A. Correct.

7 Q. You also testified that assuming you do not change the
8 time stamp, it will remain the same, or words to that effect?

9 A. I am not trying to be difficult. Can we narrow down this
10 question a little bit?

11 Q. Well, let's put it this way. If the time stamp -- let's
12 back up. The time stamp is something that's generated by the
13 computer itself, correct, in most cases?

14 A. Yes.

15 Q. So assuming that you have -- you have to assume that
16 nobody has gone in and changed the time stamp or that there's
17 been some sort of function that will alter the time data -- in
18 order to conclude that information about times is correct, you
19 have to make that assumption?

20 A. Yes.

21 Q. Am I correct that when we are talking about the time
22 stamp, this is sort of data about data?

23 A. It is.

24 Q. So the data that it is referencing or associated with is
25 the file which may contain a picture or a video, and the data

1 about that data is the time that is associated with activities
2 related to that file, fair?

3 A. Fair.

4 Q. You can make it more accurate, if you like.

5 A. Times get really messy really fast.

6 Q. Well, that's an interesting point, and I am actually going
7 to explore that a little bit with you as we go along.

8 Now, you also referenced something called the system time?

9 A. Yes.

10 Q. Is it fair to say that the system time is basically the
11 internal clock of the computer?

12 A. It is.

13 Q. The time stamps on the file are added by the computer
14 itself, correct?

15 A. Yes.

16 Q. If everything is going correctly, then the time stamps and
17 the system time should all relate to each other?

18 A. Correct.

19 Q. And you had testified that the system time may be
20 different from actual time, but we don't need to go into that,
21 okay.

22 So when we say all of this is data about data, this is
23 information, the time information and its relationship to
24 particular files; this is all something that you are
25 extracting or finding during the course of your analysis from

1 the hard drives themselves, the hard drives in this case?

2 A. Yes.

3 Q. It's all internal data?

4 A. Correct.

5 Q. It's not like the way you used to have it in the courts
6 because it's different now, but it used to be, for example,
7 when you took a pleading to court you'd hand it to the clerk,
8 somebody -- a witness would stamp it, and if you wanted to
9 know if that time was accurate, you could always go and ask
10 the clerk, right? That would be an old-fashioned example of a
11 time stamp?

12 A. That would.

13 Q. But in this case, you are relying entirely on the
14 information that is contained in the hard drive and the
15 forensic data that you are analyzing?

16 A. Correct.

17 Q. You don't have any independent information about the times
18 associated with these files? I mean, you weren't given any
19 information about Mr. Tippens's talking about these files or
20 any outside information related to the times that you are
21 aware of?

22 A. Depends a little bit on how you are defining terms. For
23 instance, the .pdf file that we talked about did have a date
24 within it that had nothing to do with the computer.

25 Q. All right. That's fair. So for example, you may have a

1 file, say, of a letter, a .pdf file of a letter, and you can
2 see the date written on the letter and that might give you
3 some information, right?

4 A. Correct.

5 Q. But I am only talking about time stamps. So far, am I
6 summarizing time stamps correctly?

7 A. (Witness nods head.)

8 Q. Is it fair to say that time stamps don't tell you how a
9 file got on a computer?

10 A. Not in and of themselves, no.

11 Q. Again, I am talking in and of themselves. A time stamp
12 does not tell you whether a file was intentionally saved or
13 downloaded and saved as a result of some automatic function?

14 A. Not in and of itself, no.

15 Q. A time stamp does not tell you whether, for example, one
16 particular person saved the file on the computer or whether
17 it's the result of a remote activity, a hack, third parties or
18 something like that?

19 A. Not in and of itself, no.

20 Q. In connection with some of the files, not the ones related
21 to exhibits -- excuse me, Counts 1 and 3, but for example in
22 connection with Exhibits 1 and 1A, which are separate from the
23 Count 1 and 3 exhibits, is it correct that there was some
24 missing or deleted data with those files?

25 A. The files themselves had been deleted.

1 Q. For example, you don't have a creation date at all for
2 those files?

3 A. That's correct.

4 Q. For example, the same, I guess, with 2A, again, creation
5 date. So there is missing data associated with some of the
6 files on this computer?

7 A. That is correct.

8 Q. Now, this internal file time stamp data, it's not written
9 in stone literally or figuratively, is it?

10 A. That's probably fair to say.

11 Q. Okay. In fact, there are -- just generally speaking,
12 there are free programs or utilities that can change time
13 stamps, correct?

14 A. There are.

15 Q. For example, there is a program called bulk file changer
16 that can automatically add or subtract time from time stamps.
17 Are you familiar with that?

18 A. I am not familiar with that particular program.

19 Q. And those -- that time stamp data, if for example the time
20 stamp data is changed for any reason, that's not necessarily
21 going to change the internal clock on the computer, correct?

22 A. Correct.

23 Q. The time stamp data exists independently, right?

24 A. It is independent in terms of it will not backwardly
25 affect the clock. Obviously, the clock is where it came from

1 to begin with. So it's not independent in that direction.

2 But as you stated, if you had some utility change the time
3 stamp, it would not alter the clock.

4 Q. So it's fair to say you can change the time stamp data and
5 not necessarily change the internal clock?

6 A. Yes.

7 Q. Are you familiar with a program called time stop?

8 A. I have heard of it. I have not personally dealt with it.

9 Q. In fact, isn't that a program that is designed both to
10 alter or change time stamps and evade forensic analysis?

11 A. Because I am not personally familiar with it, I don't want
12 to testify as to what it can or can't do, but I will say I
13 have heard of it in such contexts.

14 Q. Now, if I understood the course of your direct testimony
15 correctly, you fair enough confined yourself to the forensic
16 information that you were able to extract from the hard
17 drives, correct?

18 A. Correct.

19 Q. So to your knowledge, there is no independent evidence of
20 when particular files were downloaded or saved on the
21 computer?

22 A. I personally did not deal with any evidence, other than
23 personally being present at the search site, outside of the
24 devices themselves.

25 Q. Okay. So for example, focussing on the Count 1 and Count

1 3 files, there's been no evidence, for example, that they were
2 attached to emails or showing that they got on the computer
3 via some type of correspondence, to your knowledge?

4 A. I do not have such knowledge.

5 Q. Okay. And you -- there's no independent evidence of
6 someone saying -- who saw Mr. Tippens looking at the pictures
7 listed in Count 1 and Count 3, to your knowledge?

8 A. I do not have such knowledge, no.

9 Q. So again, these time stamps and the information you have
10 about these files, the data you have about the data, again,
11 that is all based on the internal integrity and accuracy of
12 the hard drives?

13 A. With the caveat of the stuff I observed at the search
14 site, yes.

15 Q. I think we established that you did not observe any of the
16 files associated with Count 1 or 3 during the search; is that
17 correct?

18 A. I believe that's correct -- I am sorry, if that was the
19 only files you were referring to, I apologies.

20 Q. No, I wasn't clear. I just wanted to clarify. Thank you.

21 I want to focus and turn our attention to some of the
22 eMule-related activity, Mr. Powers. In the course of
23 preparing for your testimony, your forensic analysis, did you
24 look at all the relevant forensic reports that have been
25 generated in this case?

1 A. I looked at a report from the Technical Analysis Unit and,
2 of course, my own.

3 Q. Did you look at a report generated by Mr. DeBorja showing
4 Chrome browser activity and all that stuff?

5 A. I did.

6 Q. So you are familiar with that information?

7 A. Yes.

8 Q. Now, is it correct that in regard to the eMule, eMule has
9 various sort of default directories that are associated with
10 it; is that correct?

11 A. That is correct.

12 Q. When we say default, those are directories that kind of
13 are automatically set up or operated by the program itself?

14 A. That is correct.

15 Q. Is it correct that the eMule shared directories were set
16 to nobody on the hard drives that you examined?

17 A. I believe that is correct, yes.

18 Q. And basically what that means is, there's not going to be
19 any sharing out of those hard drives of any pictures; is that
20 correct?

21 A. Via eMule, that is correct.

22 Q. Via eMule. Is it also correct -- excuse me -- in terms of
23 browser activity, there are really two browsers I think that
24 you and your colleagues focused on. One was a Chrome internet
25 browser; is that correct?

1 A. It is.

2 Q. And the Chrome internet browser, it's a standard search
3 engine type program for the regular internet; is that fair?

4 A. It is.

5 Q. Is it correct that all of the search activity that was
6 noted for the Chrome browser occurred sometime after
7 February 28, 2015?

8 A. I do not recall the date for the search from Chrome.

9 Q. Let me see if I can refresh your recollection.

10 A. Sure.

11 Q. Can you look in the defense exhibit binder, which should
12 be near you?

13 A. One or two?

14 Q. It should be in Binder 2 and it should be marked as
15 Defense Exhibit A-16.

16 A. Okay, I am at A-16.

17 Q. Now, if you'd turn within that exhibit to what's been
18 marked as Bates 923, and it will continue on to 924, you will
19 see that there are various bookmarks and, I guess, activity
20 associated with the Chrome browser such as bookmarks, history
21 and log-ins, and there's a column of dates indicating when the
22 activity occurred?

23 A. Yes.

24 Q. Is it fair to say, if you look at -- I think the earliest
25 date listed here is December 7th of 2015 on page 924, but

1 please correct me if I am wrong.

2 A. November 10, 2015?

3 Q. Yes.

4 A. That is the earliest date listed here.

5 Q. Okay. And it's fair to say that date comes after
6 September 28th of 2015?

7 A. I believe that is very fair.

8 Q. And then there's also -- in the same report, there is
9 information about browser activity related to the Tor network.
10 That, I believe, appears on the next page, Bates 925. Do you
11 see that?

12 A. I do.

13 Q. Is it correct here that all the activity noted in relation
14 to the Tor network is sometime after September 28th of 2015?

15 A. All the activity listed in this report is after that date.
16 I should say all the activity listed in the section of this
17 report.

18 Q. Well, do you know of any other activity?

19 A. No, I just wanted to be clear that I was just looking at
20 this section.

21 Q. Because I am trying to find where these things are
22 referenced. If you know of another area where I am missing
23 something, please let me know. I am not trying to cherry pick
24 this.

25 Now, continuing with eMule, there was some discussion

1 during your direct examination about the known.met directory.

2 Do you recall that?

3 A. It's a file, but yes.

4 Q. Known.met file. Can you just describe again what
5 known.met files are?

6 A. It's just a file where eMule is recording information
7 about files it has downloaded. It's a log, basically,

8 Q. Again, this is something that's generated by the eMule
9 program?

10 A. Correct.

11 Q. It's automatically listing files associated with email
12 searches or things of that nature?

13 A. It's specific to the downloads.

14 Q. Okay. That particular known.met information, is it fair
15 to say, it just tells you that the download or something is
16 associated with email activity and may be somewhere on the
17 computer?

18 A. Correct. It's a specific record of activity taken by the
19 eMule program on that particular computer.

20 Q. Now, the known.met records, they do not tell you whether a
21 particular file was opened by a user?

22 A. That is correct.

23 Q. It does not tell you whether any particular file was
24 viewed by the user?

25 A. That's correct.

1 Q. It does not tell you if the user, after opening and
2 viewing a file, decided to save the file?

3 A. That is correct.

4 Q. Now, all the things I just kind of suggested, data that
5 maybe shows opening, viewing or saving, does that type of
6 activity fall under the general rubric of user interactions?

7 A. Opening is a saving, yes.

8 Q. When we are talking about user interactions in broad
9 terms, is it fair to say that there are certain things that a
10 computer may do on its own or automatically, correct?

11 A. Sure.

12 Q. And there are other things which require actual human
13 action or interaction with the data for them to happen?

14 A. Yes.

15 Q. So there may be all sorts of data that is recorded in
16 relation to a file, but it's automatically done by the
17 computer as part of a computer function or program; that's one
18 type of data, correct?

19 A. Sure.

20 Q. And then there's this whole other category of data which
21 is, you look for evidence of -- well, this is not an automatic
22 function or automatic change; this is something where a human
23 being has to actually take manual steps or intentional steps
24 to do something?

25 A. Yes.

1 Q. Now, you also mentioned that in connection to the eMule,
2 in addition to the known.met, there's a folder or a directory
3 called the eMule incoming?

4 A. Yes.

5 Q. And if I recall what you noted in one of your reports, you
6 said that, "per the current configuration" -- correct me if I
7 have this wrong. "Per the current configuration, this
8 location is where downloaded files are placed after the
9 download is completed"?

10 A. That's correct.

11 Q. And the download -- the placement again to the incoming,
12 the incoming is a default directory; is that correct?

13 A. It is.

14 Q. And again, when I say default directory, that's something
15 that's automatically set up or run by the eMule program as one
16 of its standard settings?

17 A. I would say it would be slightly more accurate to say that
18 when you first install it, if you don't do anything to change
19 it, that's where it sets it up to be.

20 Q. Okay, that's fine. So the fact that there's an incoming
21 directory doesn't really tell you about any user interaction,
22 except that somebody downloaded eMule and then eMule defaulted
23 and automatically set up an incoming directory?

24 A. Correct.

25 Q. When you say this is a location where downloaded files are

1 placed after a download is completed, that's where eMule
2 stores the files when a download is complete, correct?

3 A. Correct.

4 Q. Unless of course there's a user interaction to change that
5 setting, right?

6 A. Right.

7 Q. Which we didn't see in this case?

8 A. The incoming was as it would have defaulted to on
9 installation.

10 Q. Okay. So again, when it comes to the incoming directory,
11 just the information that's contained there, again, you cannot
12 tell, for example, whether somebody opened a file or viewed a
13 file just from the fact that it's in the incoming directory?

14 A. The mere fact that a file is in that directory does not in
15 and of itself mean that it was subsequently opened.

16 Q. And the mere fact that it is in that incoming directory
17 does not tell you that there was any human interaction in
18 relation to that file while it's sitting in the incoming
19 directory; is that fair?

20 A. Yes.

21 Q. You did look at other various directories that were
22 associated with eMule; is that true?

23 A. I did.

24 Q. You looked at one directory called "stored searches"?

25 A. Yes.

1 Q. And there was no data in there?

2 A. That is not correct.

3 Q. Could you look at Bates 1075? I think that's one we added
4 to binder two. If you give me a moment, Mr. Powers, I will
5 direct you.

6 A. Certainly.

7 Q. I am sorry, A-15 in that same binder.

8 A. A-15.

9 Q. If you would turn to Bates 1075.

10 A. Yes.

11 Q. And there is a section that is captioned "eMule"?

12 A. Correct.

13 Q. And you know what, I think I may have taken a shortcut.
14 Let me be more precise. You have three directories listed
15 there?

16 A. Actually, they are files.

17 Q. Thank you. The first is a stored searches.net file
18 associated with eMule?

19 A. Yes, that's correct.

20 Q. And there is no data in there?

21 A. That is correct.

22 Q. So I used an inappropriate layman's term saying "stored
23 search"?

24 A. You did.

25 Q. But the information on Bates 1075, that is correct, no

1 data?

2 A. In that folder, correct. Excuse me, in that file,

3 correct.

4 Q. You also indicated that the eMule was not set up for file
5 sharing, it was set to nobody. So in regard to the shared
6 direct.net file, would that relate to shared files?

7 A. It would.

8 Q. And again, not surprising there was no useful data in
9 there?

10 A. Correct.

11 Q. And then there's also another file directory associated
12 with sharing files, I guess, since it's the shared files.net
13 file, and no useful data there either; is that correct?

14 A. That is correct.

15 Q. So it seems that, if I understand your forensic analysis
16 correctly, when it comes to the files listed in Counts 1 and
17 3, all right, your analysis is revolving around known.met
18 files and the incoming files, in terms of locating anything
19 that's related to eMule?

20 A. And the shellbags.

21 Q. We will get to the shellbags. So we've got the known.met,
22 the incoming and the shellbags as sort of the primary universe
23 of data information that you are relying upon for the Count 1
24 and Count 3 files; is that fair?

25 A. Yes.

1 Q. We talked about incoming files. Is there something else
2 called temp folders that are associated with eMule?

3 A. That's correct.

4 Q. Is that like the incoming files where fragments of the
5 eMule files are stored on the computer unless and until they
6 are assembled into a complete file?

7 A. Yes. If I may, I misspoke on your earlier question. We
8 also have the AC search strings file, which is a source of
9 information.

10 Q. Just to clarify, what is the AC search string?

11 A. That is storing the last 30 searches that eMule has done.

12 Q. That's fine. But in terms of data about the Count 1 and
13 Count 3 files, if you were going to locate those files, you
14 are primarily looking initially at the known.met and incoming
15 files in this case, correct?

16 A. I am not sure if the timeline you are envisioning
17 necessarily makes sense for your question. How do I say this
18 better?

19 I started examining the defendant's equipment based on the
20 warrant and information that was given from the confession, so
21 I didn't necessarily say well, by golly, I am going to do this
22 indictment stuff.

23 Q. No, I wasn't suggesting that. I am trying to focus on
24 sort of the areas of data that relate to my Count 1 and Count
25 3 files.

1 So I will withdraw that and clarify. We've established
2 that you found information related to those files in known.met
3 and incoming, correct?

4 A. Yes.

5 Q. And then there's also temporary -- temp files?

6 A. Yes.

7 Q. And those temp files are also -- I think, as I believe,
8 they are where the eMule program stores fragments of files
9 until they are assembled; is that correct?

10 A. That's correct.

11 Q. So the eMule program is actually doing a lot to locate and
12 store and assemble files before a user has an opportunity to
13 open and view the file; is that fair?

14 A. Sure.

15 Q. Is it correct -- and I will direct you to your notes if
16 you don't remember this offhand, but the eMule incoming and
17 temp folders were created on October 11, 2015?

18 A. I would need to refer to my notes to confirm that.

19 Q. I am not sure if this is your notes or another forensic
20 note, but if you look at A-27 which is the defense second
21 folder, if you go to page 13, also Bates stamped as 1687, I
22 think you will find the information. It's right at the top of
23 the page.

24 A. Which page was that?

25 Q. Bates stamp 1687.

1 A. That time stamp, as listed in these notes, is October 11,
2 2015.

3 Q. Okay. And again, that was after September 28, 2015, just
4 to state the obvious?

5 A. Sure.

6 Q. Now, I want to focus -- you wanted to touch on some of the
7 search terms, and I am going to get there now.

8 One of the eMule search terms that is noted in the
9 forensic report is ptch (sic), correct?

10 A. Yes.

11 MR. HAMPTON: Objection, just to clarify, it's pthc.

12 BY MR. FIEMAN:

13 Q. Well, there's both, isn't there, pthc and ptch?

14 A. I would have to --

15 Q. For example, on Bates 900, I believe is your report --

16 THE COURT: I don't know what document you are
17 talking about.

18 MR. FIEMAN: Exhibit A-13, Your Honor.

19 THE COURT: What's the question?

20 BY MR. FIEMAN:

21 Q. You can see there's some files associated with the term
22 pthc that are referenced?

23 A. Pthc, yes.

24 Q. And you had testified that this is a very common search
25 term for -- typically associated with pre-teen hard core,

1 correct?

2 A. Correct.

3 Q. So is it fair to say this is sort of like a genre of
4 pornography?

5 A. I suppose that would be fair to say.

6 Q. In fact, there were all sorts of files on the hard drives
7 that were associated both with ptch and variations like pthc;
8 is that correct?

9 A. Again, definitely pthc, but I don't specifically remember
10 the ptch. I am not saying it wasn't. I just don't recall
11 that combination.

12 Q. Can you take a look at Exhibit A-21 in our exhibit list --

13 A. Sure.

14 Q. -- which is a series of printouts that we had to kind of
15 fold because they were very long in discovery. If you look at
16 778-2 of Exhibit A-21.

17 A. Say that again, please.

18 Q. Exhibit A-21, Bates 778-2. This is one of the lists of
19 various files that were found on the hard drive; is that fair
20 to say?

21 A. I am certainly recognizing some file names --

22 Q. I don't expect you to remember all of them. Is it fair to
23 say that there are many files that were found on the hard that
24 have some similarities or very similar name but slight
25 variations?

1 A. To what I am looking at here?

2 Q. Or just in terms of your independent knowledge of your
3 forensic analysis?

4 A. Sure.

5 Q. So for example, in 778-2, there are about a dozen
6 different files on that one page that have variations of pthc;
7 is that correct? Pth center, 5 year pth center. I am
8 looking, for example, at 110 and 119 on that list.

9 A. Yes.

10 Q. Is that correct?

11 A. I see those file names, yes.

12 MR. HAMPTON: Just so the record is clear, it says
13 pthc center. That is not pth center.

14 BY MR. FIEMAN:

15 Q. Just as another example on 778-6, there's another list of
16 file names. If you look at the one starting at 367.

17 A. Okay.

18 Q. And there are just a bunch more files just on this one
19 page which have both phtc and ptch -- actually, these are all
20 ptch files in various variations, correct?

21 A. There are a couple different variations. There are also
22 phtc.

23 Q. Correct?

24 A. And pthc.

25 Q. Well, my point is a simple one. I am not really concerned

1 with those particular files, but is it fair to say that
2 there's lots and lots of pornography files on this computer?

3 A. I feel that's a fair statement.

4 Q. It's also fair to say that a lot of these files have some
5 similarities in the names or variations on ptch as part of
6 their file name?

7 A. Sure.

8 Q. Now, in the course -- I understand that there's a lot of
9 files and data to work through. So in order to try and make
10 this manageable, you focused on five ptch files that were
11 located in the eMule known.met; is that correct?

12 MR. HAMPTON: Just to clarify, they are pthc, not
13 ptch.

14 BY MR. FIEMAN:

15 Q. Were there both ptch and pthc?

16 A. I only specifically remember pthc.

17 Q. And that's the one that is consistent with preteen --

18 A. Hard core.

19 Q. And you said that that's kind of like the genre of
20 pornography?

21 A. I agreed with the statement.

22 Q. Okay. Is it correct that in terms of the eMule records,
23 you focused on five files that contained in their file names,
24 some variation of ptch?

25 MR. HAMPTON: I just want to object. I think that

1 mischaracterizes. I don't think all of them had pthc,
2 although several of the file names did have the phrase "pthc."

3 MR. FIEMAN: I've moved on. I am asking him about
4 the five files he focused on.

5 MR. HAMPTON: I don't believe all five files had
6 that.

7 MR. FIEMAN: Your Honor, I am not referring to the
8 files. I'm referring to the five files he looked at in terms
9 of the known.met directory.

10 THE COURT: Clarify the question.

11 BY MR. FIEMAN:

12 Q. In terms of the eMule known.met records -- let me repeat
13 my question.

14 A. Okay.

15 Q. You focused, in terms of looking at files in the known.met
16 records, on five files that had some variation of ptch or pthc
17 in them?

18 A. I would at this point want to go back and look at the file
19 names, just because it's getting confusing and I want to make
20 sure that we are on the same page.

21 Q. So could you go to Exhibit A-15?

22 A. I am on A-15.

23 Q. Would you go to 1076?

24 A. I am on page 1076.

25 Q. Near the top, you noted that there are five records or

1 files that contain the term pthc 2016 in the known.met files.

2 A. So here we have a list of files that have that search
3 term, yes.

4 Q. So you narrowed it a little bit from -- well, here you
5 have it both -- just as pthc. I may be a little bit dyslexic;
6 that may be the problem.

7 Pthc 2016 was one way that you narrowed down your review
8 of the known.met files; is that correct?

9 A. I would say that it would be more accurate that as I was
10 looking at the known.met records and I was looking at the
11 search terms, I selected these as examples where there was
12 correlation between the two.

13 Q. Okay, that makes sense. All right. Now, just so we are
14 tracking, of those five ptch 2016 files --

15 A. Pthc?

16 Q. Thanks. Yes, pthc, listed on Bates 1076, one of them
17 corresponds to a file listed in the indictment; is that
18 correct?

19 A. That is correct.

20 Q. And that would be the file noted as: Pth2016 18_3.avi; is
21 that correct?

22 A. Almost. Pthc2016 18_3.avi.

23 Q. And that corresponds to Government Exhibit 23 and Count 1,
24 listed as No. 5; is that correct?

25 A. It sounds familiar, but I am double-checking. That is

1 Government Exhibit 23, and it is in Count 1.

2 Q. Did you actually look at all the files in the known.met
3 directory that have ptch or a variation?

4 A. No.

5 Q. So it's fair to say that while they have -- all those pthc
6 files had a suggestive -- some suggestive aspect to their file
7 name, you do not know personally what the content of a lot of
8 those -- the actual content of files is?

9 A. I have not viewed most of those files.

10 Q. So it's fair to say, just as a general matter, you don't
11 know what's in any of those files until you open them and look
12 at them?

13 A. I would either need to open them and look at them, or they
14 would need to have a hash match to something that I have
15 already opened and looked at.

16 Q. So we are keeping our context clear, is it fair to say
17 that all of the files listed in Count 3 of the superseding
18 indictment, which corresponds to Government Exhibits 19 to
19 23 --

20 MR. HAMPTON: Just to clarify, did you say Count 3?

21 BY MR. FIEMAN:

22 Q. I am sorry, Count 1. Thank you, Matt.

23 Government's Exhibits 19 through 23, they all are from the
24 incoming eMule directory?

25 A. I believe that is correct. Do you mind if I look at my

1 report real fast?

2 Q. You should take all the time you need, barring the Court
3 asking you to move on.

4 A. Yes, they were in the incoming folder.

5 Q. So that's where they were located. So now --

6 A. Well, just to clarify, they were located there, and at
7 least in one case and in possibly multiple cases, there were
8 also -- other copies were in other locations, but they would
9 be found at that location.

10 Q. Well, actually I want to focus very much on that, because
11 we are going to go next to this issue of user interactions,
12 okay?

13 A. Sure.

14 Q. Let's start then with where we agree, that the files
15 associated with Count 1, those were certainly in the incoming
16 directory?

17 A. Yes.

18 Q. Now -- and we established that the incoming directory is
19 kind of a default directory, correct?

20 A. Yes.

21 Q. So now, I want to go through this in terms of the five
22 files associated with Count 1, receipt, and any additional
23 information or user interactions that are noted in your
24 report, okay?

25 A. Okay.

1 Q. So I am going to start -- it's not quite in order because
2 your reports did not actually have user interaction
3 information for all the files, so I am just going to take them
4 as they came to me in your report.

5 A. Okay.

6 Q. So I am going to start with Government's Exhibit 23.

7 A. Okay. We are at Government's Exhibit 23.

8 Q. You will note that Government's Exhibit 23, that filename
9 is pthc2016 18_3.avi, correct?

10 A. Yes.

11 Q. And for the file path name noted in 23, Government Exhibit
12 23A, it confirms that this was found in the eMule incoming
13 file, correct?

14 A. Correct.

15 THE COURT: Just to clarify something, I have got a
16 23A. I don't have a separate 23.

17 MR. FIEMAN: Your Honor, that's because 23 is
18 actually the depiction that was stored on the file itself.
19 That's in the government sensitive file directory.

20 MR. HAMPTON: Exhibits 1 through 23, the actual files
21 themselves, are on a disk that was previously admitted.

22 THE COURT: All right.

23 MR. FIEMAN: Then, Your Honor, the B files are the
24 data about the file associated with it.

25 MR. HAMPTON: Those are the A files.

1 THE COURT: All right.

2 BY MR. FIEMAN:

3 Q. So focussing on 23A and the pthc 2016 file --

4 A. Yes.

5 Q. -- that corresponds to Government's Exhibit 23, the file
6 path name notes that it was found in that default incoming
7 directory, correct?

8 A. Yes.

9 Q. And that's it, right?

10 A. What do you mean by "that's it?"

11 Q. Is there anything else in your reports indicating -- any
12 other information or any other type of user interaction with
13 that particular file?

14 A. I would have to double-check the jump list from the TLC
15 Media Player to say that.

16 Q. Well, I have all your reports in evidence, and you are
17 welcome to peruse them and let us know. But to your
18 knowledge, is there any other activity or information related
19 to that file that you are aware of at this time?

20 A. Beyond the path and its existence and the data in the
21 known.met file?

22 Q. In terms of user interactions.

23 A. We also have the data from the shellbags.

24 Q. We'll get to the shellbags.

25 A. That's good. I am just saying that shellbags do exist and

1 they are relevant to --

2 Q. They are, and as we will get to in your forensic analysis,
3 there is no shellbag information related to this file either;
4 is that correct?

5 A. That's not correct. The shellbags don't exist for
6 individual files; they exist for the folders in which they
7 reside.

8 Q. Those were, for example, in Government's Exhibits 22.
9 We'll get to that. I am going to ask you to show me where you
10 have a user interaction with this specific file, okay?
11 Because I am talking about this specific file.

12 A. So this specific file, I do not off the top of my head
13 recall a specific user interaction.

14 Q. And that's what I was asking you. I am, in every
15 instance, focused entirely on the specific file containing the
16 picture or video that I am referencing and relating to the
17 specific videos and files listed in the indictment?

18 A. Okay.

19 Q. So with that in mind, to the best of your recollection --
20 and you are free to review further your reports -- is it fair
21 to say that your forensic reports, and those of everybody else
22 involved, to your knowledge, do not indicate any user
23 interactions with this specific file?

24 A. Let me peruse something. I am going to take you up on
25 your invitation, and I will be right back with you.

1 Q. I am on 23. And is that clear that we are discussing 23
2 at this point, Mr. Powers?

3 A. Yes.

4 Q. Okay. Did you have an opportunity?

5 A. I did.

6 Q. And?

7 A. I cannot think of any artifacts that are listed, that in
8 and of themselves, directly would prove, just by themselves,
9 user interactions.

10 THE COURT: It's about quitting time. I guess
11 somebody had to download it onto where you found it though,
12 right?

13 THE WITNESS: I would agree.

14 THE COURT: Okay. All right. We'll reconvene at
15 9:30. Let me ask you how we are doing on time now that we've
16 had a day of slowing through here. What's your guess as to
17 how long we'll be in trial?

18 MR. FIEMAN: I probably have an hour with Mr. Powers.

19 THE COURT: Don't tell me that. Tell me how long you
20 think we'll be in the trial. I am asking both counsel.

21 MR. FIEMAN: I think we'll finish tomorrow or closing
22 argument Wednesday at the latest, Your Honor.

23 MR. HAMPTON: That seems right, Your Honor. The
24 government would expect to wrap its case-in-chief tomorrow
25 probably before lunch, depending on the defense case and any

1 rebuttal. I think it's reasonable we finish Tuesday or
2 Wednesday.

3 THE COURT: That's what I wanted to know.

4 We are off the record here, Teri.

5 (Off the record discussion.)

6 (The Court recessed to Tuesday, March 14, 2017, at the
7 hour of 9:30 a.m.)

8 * * * * *

9 C E R T I F I C A T E

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/S/ Teri Hendrix

March 20, 2017

Teri Hendrix, Court Reporter

Date