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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA PLAINTIFF
v. CASE NO. 5:21-CR-50014
JOSHUA JAMES DUGGAR DEFENDANT

JURY TRIAL
VOLUME 2 OF 8
BEFORE THE HONORABLE TIMOTHY L. BROOKS
DECEMBER 1, 2021
FAYETTEVILLE, ARKANSAS

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1 (Outside the Jury's Presence)

2 THE COURT: We're ready to bring the Jury up.
3 Were there any matters that counsel would like to take up
4 before that?

9:07AM 5 MR. ROBERTS: No, Your Honor.

6 MR. GELFAND: No, Your Honor. Thank you.

7 THE COURT: Thank you. Please have the Jury
8 brought up.

9 While we're waiting on the Jury to come up, I
9:09AM10 will remind counsel that the Rule was invoked, I think.
11 And I obviously don't know all of the witnesses so I will
12 need the assistance of counsel in policing the Rule. I
13 understand that some agreements have been made about
14 experts, but I'm going to leave it to ya'll to be sure
9:09AM15 that there's not a problem with that.

16 (Jury in at 9:06 a.m.)

17 THE COURT: Members of the Jury, good morning.
18 Thanks for coming back. I was a little bit concerned that
19 we had worked you so hard yesterday that people would say
9:12AM20 "I don't want to come back." So I appreciate all of your
21 work yesterday and I just feel horribly embarrassed that
22 we never took a lunch break or did anything to get ya'll
23 fed yesterday. But I'm glad that we got through all of
24 that. We would have had a real mess trying to do what we
9:12AM25 did last night this morning, because at the same time, we

9:13AM 1 would have had a secondary jury pool showing up and it
2 would have been real difficult to get all of that sorted
3 out. So I very much appreciate you all staying late and I
4 hope that I did not misput you too much.

9:13AM 5 We will begin this morning with the Court reading
6 to you what are known as the preliminary jury
7 instructions. "Preliminary" signifies that these are the
8 instructions given at the beginning of the trial. And as
9 I will explain, a more comprehensive set will be given at
9:13AM10 the end of the trial, but this is what is known as the
11 preliminary jury instructions, and then we will proceed to
12 hear the opening statements of counsel and then we will
13 receive testimony.

14 Ladies and Gentlemen, I will take a few moments
9:13AM15 now to give you some initial instructions about this case
16 and about your duties as jurors. At the end of the trial,
17 I will give you further instructions. I may also give you
18 instructions during the trial. Unless I specifically tell
19 you otherwise, all such instructions, both those I give
9:14AM20 you now and those I give you later, are equally binding on
21 you and must be followed.

22 This is a criminal case brought against Joshua
23 James Duggar by the United States government. Mr. Duggar
24 is charged with two counts in the indictment. Count One
9:14AM25 asserts that between on or about May 14, 2019, and on or

9:14AM 1 about May 16, 2019, Mr. Duggar knowingly received child
2 pornography over the internet. Count Two asserts that
3 between on or about May 14, 2019, and on or about May 16,
4 2019, Mr. Duggar knowingly possessed material that
9:15AM 5 contained images of child pornography.

6 You should understand that these charges are
7 simply accusations. They are not evidence of anything.
8 Mr. Duggar has pleaded not guilty and is presumed to be
9 innocent unless and until proved guilty beyond a
9:15AM10 reasonable doubt.

11 It will be your duty to decide from the evidence
12 whether Mr. Duggar is guilty or not guilty of the crimes
13 charged. From the evidence, you will decide what the
14 facts are. You are entitled to consider that evidence in
9:15AM15 the light of your own observations and experiences in the
16 affairs of life. You may use reason and common sense to
17 draw deductions or conclusions from facts which have been
18 established by the evidence. You will then apply those
19 facts to the law which I give you in these and in my other
9:16AM20 instructions and in that way you will reach your verdict.

21 You are the sole judges of the facts, but you
22 must follow my instructions, whether you agree with them
23 or not. You have taken an oath to do so. Do not allow
24 sympathy or prejudice to influence you. The law demands
9:16AM25 of you a just verdict, unaffected by anything except the

9:16AM 1 evidence, your common sense, and the law as I give it to
2 you. You should not take anything that I may say or do
3 during the trial as indicating what I think of the
4 evidence or what I think your verdict should be.

9:17AM 5 Finally, please remember that only Mr. Duggar and
6 not anyone else is on trial here, and that Mr. Duggar is
7 on trial only for the crimes charged and not anything
8 else.

9 As to the charge of receipt of child pornography,
9:17AM10 in order for Mr. Duggar to be found guilty on this charge,
11 the government must prove each of the following elements
12 beyond a reasonable doubt:

13 One, that between on or about May 14, 2019, and
14 on or about May 16, 2019, Mr. Duggar knowingly received
9:17AM15 visual images of child pornography.

16 Two, that Mr. Duggar knew the visual depictions
17 were of minors engaging in sexually explicit conduct.

18 And, three, that the visual depictions had been
19 transported by computer in interstate or foreign commerce.

9:18AM20 As to the charge of possession of child
21 pornography, in order for Mr. Duggar to be found guilty of
22 this charge, the government must prove each of the
23 following four elements beyond a reasonable doubt:

24 One, that between on or about May 14, 2019, and
9:18AM25 on or about May 16, 2019, Mr. Duggar knowingly possessed

9:18AM 1 visual images of child pornography.

2 Two, that Mr. Duggar knew the visual depictions
3 were of minors engaging in sexually explicit conduct.

4 Three, that Mr. Duggar knew that such items
9:19AM 5 contained child pornography which involved a prepubescent
6 minor, or a minor who had not attained the age of 12 years
7 of age.

8 And, four, that the visual depictions were
9 either, one, produced under -- I'm sorry -- produced using
9:19AM 10 materials that had been mailed, shipped, or transported
11 over the internet, or, two, mailed, shipped or transported
12 by computer in interstate or foreign commerce.

13 You should understand, however, that what I have
14 just given you is only a preliminary outline. At the end
9:19AM 15 of the trial, I will give you a final instruction on these
16 matters and if there is any difference between what I just
17 told you and what I tell you in the instructions I give
18 you at the end of the trial, it will be the instructions
19 given at the end of the trial that must govern you and
9:20AM 20 your verdict.

21 Now, I have mentioned the word "evidence".
22 Evidence includes the testimony of witnesses, the
23 documents and other things that may be received as
24 exhibits, and any facts that I may tell you along the way
9:20AM 25 have been stipulated. By stipulated, I mean formally

9:20AM 1 agreed to by the parties and any facts that the Court may
2 judicially notice; that is, facts which I tell you that
3 you may, but are not required to accept as true, even
4 without evidence.

9:20AM 5 However, certain things are not evidence and I
6 need to make sure you understand these things that are not
7 evidence and I will list those for you now. Number one,
8 the statements, arguments, questions and comments by
9 lawyers representing the parties in the case are not
9:21AM10 evidence.

11 Number two, any objections that may be made are
12 not evidence. Lawyers have a right to object when they
13 believe something is improper. You should not be
14 influenced by the objection. If I sustain an objection to
9:21AM15 a question, you must ignore the question and must not try
16 to guess what the answer might have been.

17 Number three, testimony that I strike from the
18 record or tell you to disregard is not evidence and must
19 not be considered.

9:21AM20 Number four, anything that you see or hear about
21 this case from outside the courtroom is not evidence
22 unless, for some reason, I specifically tell you otherwise
23 during the trial. Furthermore, a particular item of
24 evidence is sometimes received for a limited purpose only.
9:22AM25 That is, it can be used by you only for one particular

9:22AM 1 purpose and not for any other purpose. I will tell you
2 when such instances arise and I will instruct you on the
3 purposes for which that particular piece of evidence may
4 be used by you and the other reasons for which it may not
9:22AM 5 be considered by you.

6 Finally, some of you may have heard the terms
7 "direct evidence" as contrasted to "circumstantial
8 evidence." But I am instructing you that you should not
9 be concerned with those terms because the law makes no
9:22AM10 distinction between direct and circumstantial evidence.
11 You should give all evidence the weight and the value that
12 you believe it is entitled to receive.

13 Now, in deciding what the facts are, you may have
14 to decide what testimony you believe and what testimony
9:23AM15 you do not believe. You may believe all of what a witness
16 says, or only part of what a witness says, or you may not
17 believe anything that a witness says. In deciding what
18 testimony of any witness to believe, you should consider
19 the witness's intelligence, the opportunity the witness
9:23AM20 had to have seen or heard the things testified about, the
21 witness's memory, any motives that witness may have for
22 testifying a certain way, the manner of the witness while
23 testifying, whether that witness said something different
24 at an earlier time, the general reasonableness of the
9:24AM25 testimony, and the extent to which the testimony is

9:24AM 1 consistent with other evidence that you do believe.

2 At the end of the trial, you must make your
3 decision based on what you recall of the evidence. You
4 will not have a written transcript to consult or to refer
9:24AM 5 back to and it may not be practical for the court reporter
6 to read back testimony, so you must pay close attention to
7 the testimony as it is given during the course of the
8 trial. If you wish, however, you may certainly take notes
9 to help you remember what witnesses have said. And I see
9:25AM 10 that Ms. Craig has handed everyone a notepad and pencils.
11 And if you need more, let us know. But if you do take
12 notes, please keep them to yourself until such time as you
13 and your fellow jurors go to the jury room and have been
14 instructed to deliberate upon the case.

9:25AM 15 Another thing. Be careful not to let note-taking
16 distract you from listening to witness testimony. I have
17 observed over the course of years this phenomenon where
18 I'm trying to take notes, concentrating on not trying to
19 write sloppily, and I realize that I've missed the last
9:25AM 20 five or 10 seconds of what someone just said, so just be
21 aware of that phenomenon. When you leave at night, you
22 must leave your notes here and they will be secured and
23 they will not be read by anyone.

24 During the trial, it may be necessary for me to
9:26AM 25 talk with the lawyers outside of your hearing either by

9:26AM 1 having bench conferences over here to the side of the
2 bench, or sometimes we may actually need to send you back
3 to the jury room where we can have a more fulsome
4 discussion here in court. The purpose of these

9:26AM 5 conferences outside of your hearing is to allow the
6 parties and the Court to decide how certain evidence is to
7 be treated under the Rules of Evidence and to avoid
8 confusion and error. We will, of course, do what we can
9 to keep the number and the length of these conferences to
9:26AM10 a minimum as we are all very concerned about the value of
11 your time and we will not try to waste any of your time.

12 To ensure fairness, you, as jurors, must obey the
13 following rules. And you will recall some of these rules
14 that I have already previewed for you during voir dire,
9:27AM15 but these are the formal instructions on some of those
16 rules.

17 First, do not talk or communicate among
18 yourselves about this case or about anyone involved with
19 it until the end of the case when you go to the jury room
9:27AM20 to decide on your verdict. And this is perhaps a little
21 counterintuitive. You've all been selected as jurors now.
22 You're going to be taking recesses and breaks. What's the
23 harm in talking about the case while you're on recess?
24 Well, here's the harm. The more you start talking about
9:27AM25 evidence before you have heard all of the evidence, you

9:28AM 1 start to solidify in your mind your thoughts and opinions.
2 And that's unfair, because only one party can go first.
3 Some other party has to go second. So do not talk with
4 your fellow jurors about the case until the end of the
9:28AM 5 trial when I have instructed you that it's time to
6 deliberate.

7 Second, do not talk with anyone else about this
8 case or about anyone involved with it until the trial has
9 ended and you have been discharged as jurors. Third, when
9:28AM 10 you are outside the courtroom, do not let anyone approach
11 you and tell you anything about the case or about anyone
12 involved with it. And if someone tries to talk with you
13 about the case during the trial, please report that as
14 soon as possible to a courtroom security officer. And if
9:29AM 15 you don't see one of those, then notify the court clerk
16 staff and they will report it to me.

17 Fourth, during the trial, you should not talk
18 with or speak to any of the parties, their lawyers, or any
19 witnesses involved in the case. You should not even have
9:29AM 20 a discussion with them that involves passing the time of
21 day, talking about the weather, or discussing the
22 Razorbacks. This is true because it is important not only
23 that you do justice in this case, but also that you give
24 the appearance of doing justice. Think about this. If a
9:29AM 25 person from one side of the lawsuit were to see you

9:29AM 1 talking to a person from the other side, even if it was
2 simply about the weather or the Razorbacks, an unwarranted
3 and unnecessary suspicion about your fairness might be
4 aroused because it wouldn't be obvious to them that you
9:30AM 5 were talking about the weather or the Razorbacks.

6 So if any lawyer, party, or witness does not
7 speak to you when they pass in the hall or for some reason
8 when they might have to ride the elevator up with you, if
9 they don't speak to you, if they look at their shoes and
9:30AM 10 don't look you in the eye, it's not because they are being
11 rude or disrespectful. It's because they know that they
12 are not supposed to speak to you, and they are just trying
13 to awkwardly figure out a way not to speak to you.

14 Fifth, it may be necessary for you to tell your
9:30AM 15 family, close friends, teachers, coworkers, or employer
16 about your participation in this trial. And you can
17 certainly explain to them the times that you're required
18 to be in court and you can also discuss with them the fact
19 that you can't talk to them about the case or tell them
9:31AM 20 anything that you know about the case or that they think
21 that they know about the case. And you can tell them that
22 they should not discuss the case in any manner whatsoever
23 in your presence. You must not communicate with anyone or
24 post any information about the parties, the witnesses, the
9:31AM 25 participants, the claims, the charges, the evidence, or

9:31AM 1 anything else related to this case. You must not tell
2 anyone anything about the Jury's deliberations when we get
3 to that point until after I accept your verdict or until I
4 give you specific permission to do so.

9:31AM 5 If you were to discuss the case with someone
6 other than your fellow jurors, and then only during
7 deliberations, it could create the perception that you
8 have already clearly decided the case or that you may be
9 influenced in your verdict by the opinions of others.

9:32AM 10 That simply would not be fair to the parties and it may
11 result in the verdict having to be thrown out and the case
12 having to be retried. During the trial, while you are in
13 the courthouse, and after you leave for the day, do not
14 provide any information to anyone by any means about this
9:32AM 15 case. Just to be clear, this means no face-to-face
16 conversations, no use of electronic messages or conveyance
17 of information by electronic device or media such as a
18 cell phone or a computer or any application that goes over
19 the internet or text messaging or Snapchats or blogs or
9:33AM 20 websites or social media applications like Facebook,
21 Instagram, YouTube, Twitter. There are many others, but
22 you get the idea. Bottom line, do not in any way
23 communicate to anyone any information about this case
24 until I have accepted your verdict.

9:33AM 25 Sixth, do not do any research about this case,

9:33AM 1 whether it be searches on the internet, whether it be
2 going to libraries, whether it be consulting newspapers or
3 in any other way. You are not to make any investigation
4 about this case on your own. And you must not visit or
9:33AM 5 view any place that may be discussed in the case, either
6 physically or on the internet by going to applications
7 where you can look up and see aerial views of locations.

8 Also, do not do any research about any
9 information pertaining to the case. And that includes
9:34AM 10 what the law is. That includes who the people are that
11 may be involved or participating in the case. It includes
12 looking up -- a prohibition on looking up anything about
13 the parties, the witnesses, the lawyers, or even the
14 Judge.

9:34AM 15 Seventh, do not read any news stories or articles
16 in print, whether old-fashioned hard print or
17 new-fashioned digital print on any type of electronic
18 device. Do not look at any news stories that may appear
19 in any form medium or type on the internet or that may
9:35AM 20 appear in any type of a blog or social media application.

21 You simply cannot read stories about this case in any
22 shape, form, or fashion or about anyone involved with it,
23 nor may you listen to any news stories on the radio, or
24 any news television reporting about the case or anyone
9:35AM 25 involved with it.

9:35AM 1 In fact, until the trial is over, I suggest that
2 you avoid reading any newspapers or consulting any medium
3 that has news feeds or streams at all and avoid listening
4 to any television or radio newscasts.

9:35AM 5 I do not know the extent to which there might be
6 any news reports about the case, but to the extent that
7 there are, you can understand how you might inadvertently
8 find yourself reading or listening to something before you
9 would have a chance to turn your eyes or to delete it or
9:36AM 10 what have you. So the better practice that I would
11 recommend is that you just not read news or watch news for
12 the balance of this trial.

13 Obviously, if you want, you can have your spouse
14 or a friend clip out any stories or electronically save
9:36AM 15 stories and set them aside for you until after the trial
16 is over. That said, let me assure you, you have the best
17 seat in the house. You will hear the testimony, you will
18 see the exhibits, and you're going to know a lot more than
19 any reporter is able to condense and put into a news item.

9:36AM 20 The parties have a right to have the case decided
21 only on evidence that they know about and that has been
22 introduced here in court. If you were to do some research
23 or some investigation or some experiment that we don't
24 know about, then your verdict could be influenced by
9:37AM 25 inaccurate, incomplete, or misleading information that has

9:37AM 1 not been tested by the trial process, which involves
2 humans coming to court, swearing out an oath, testifying,
3 and then subjecting their testimony to cross examination.
4 That is the only type of evidence that you may consider in
9:37AM 5 terms of witness testimony.

6 And with regard to exhibits, the exhibits can
7 only be received in evidence if they cross all of the
8 hurdles involved in getting through the Federal Rules of
9 Evidence, and that's not easy. So you can see and
9:38AM 10 hopefully understand why you should avoid any other
11 information sources and why you must avoid any other
12 information sources and only decide the case based on the
13 evidence received in this courtroom.

14 All of the parties are entitled to a fair trial
9:38AM 15 rendered by an impartial jury and you must conduct
16 yourself so as to maintain the integrity of the trial
17 process. If you decide a case based on any information
18 that was not presented in this courtroom, then you will
19 have denied the parties a fair trial in accordance with
9:38AM 20 the rules of this country and you will have done an
21 injustice. It is very important that you abide by these
22 rules. Remember, you have taken an oath to abide by these
23 rules and you must do so. In fact, failure to follow
24 these instructions could potentially result in the case
9:39AM 25 having to be retried and theoretically could result in you

9:39AM 1 being held in contempt.

2 Eighth, do not make up your mind during the trial
3 about what the verdict should be. You must keep an open
4 mind until you have gone to the jury room to decide the
9:39AM 5 case and you have been instructed to deliberate with your
6 fellow jurors and have discussed all of the evidence.

7 The trial will proceed as follows: First, the
8 government's attorney will make an opening statement.
9 Next, Mr. Duggar's attorney may make an opening statement.
9:39AM 10 Remember, an opening statement is not evidence, but rather
11 simply a summary of what the respective attorneys think
12 the evidence will be.

13 Next, the government will present its evidence
14 and counsel for Mr. Duggar may cross-examine. Following
9:40AM 15 the government's case, Mr. Duggar may, but does not have
16 to, present evidence, testify, or call witnesses. If
17 Mr. Duggar does call witnesses, then the government may
18 cross-examine them. After presentation of the evidence,
19 the attorneys will make their closing arguments to
9:40AM 20 summarize and interpret the evidence for you. Just as
21 with opening statements, the closing arguments are not
22 evidence.

23 Immediately before the closing arguments, I will
24 provide you with the final jury instructions on the case.
9:40AM 25 And after you have heard the closing summations, then you

9:40AM 1 will retire to deliberate your verdict.

2 At this time, the Court will receive the opening
3 statement of the government.

4 MR. ROBERTS: Thank you, Your Honor.

9:40AM 5 Ladies and Gentlemen, throughout this trial you
6 are going to see images of minors. Not actors. Not
7 actors. Children. Some as young as seven years of age.
8 These children are being sexually abused. They are being
9 sexually violated. They are being sexually exploited.

9:41AM 10 Throughout this trial, you are going to hear file names,
11 video file names, such as "playtoysweetie," "Daisy's
12 Destruction," "14-year-old girl suck" -- and pardon my
13 language -- "fuck." But as you will see throughout this
14 trial, these are the very images and files that this

9:41AM 15 defendant, Joshua James Duggar, was downloading on his
16 work computer, his HP computer on May 14th, 15th, and 16th
17 of 2019. And it's this act of downloading, receiving from
18 the internet, and this act of possession of these child
19 pornography images as he viewed them on that HP computer,

9:42AM 20 that we will ask you to hold him accountable for at the
21 close of this trial and find him guilty.

22 You will see that this investigation started on
23 May 14th, 2019. There was a Little Rock detective. That
24 detective's name is Amber Kalmer. She will come in here
9:42AM 25 and testify that on that day, she was conducting online

9:42AM 1 investigations into the trafficking, the trading of child
2 pornography over what's called the BitTorrent peer-to-peer
3 network. Now, BitTorrent is a version. It's a type of
4 peer-to-peer network. But a peer-to-peer network is
9:42AM 5 essentially a free program that an individual downloads to
6 his device. That program connects him to all the other
7 individuals who have that same program downloading, allows
8 them to trade files. Detective Kalmer will tell you that
9 this is one of the most common ways known to law
9:43AM 10 enforcement to trade images of child pornography.

11 On that day, May 14th, her law enforcement
12 computer -- the peer-to-peer network is so known to trade
13 images of child pornography, they have actually developed
14 law enforcement programs to detect known images of child
9:43AM 15 pornography being sent across this network. On that day,
16 on May 14th, her law enforcement program was doing just
17 that. It detected and made a direct connection with a
18 user in Northwest Arkansas. She's out of Little Rock. On
19 a one-to-one connection, she downloaded a movie file,
9:44AM 20 mov_0216. You will see this movie file. It's
21 approximately two to three minutes long. It depicts two
22 seven to nine-year-old females nude, one of which is
23 vaginally penetrated by an adult male.

24 The following day, May 15th, 2019, her law
9:44AM 25 enforcement computer again connects to the same user in

9:44AM 1 Northwest Arkansas. Downloads a file, marissa.zip. This
2 one contains 65 still images depicting a seven to
3 eight-year-old girl. You will see these images. They
4 start out with her posing nude. Proceed to her exposing
9:44AM 5 her vagina and anus to the camera. Show graphic pictures
6 of violence. And culminates with her being put in a cage,
7 a dog kennel, precisely.

8 Now, Detective Kalmer, being out of Little Rock,
9 after she made these downloads, she reached out to
9:45AM 10 Homeland Security Special Agent Jerry Faulkner. Now,
11 Special Agent Faulkner will testify that he's kind of the
12 senior investigator on the Northwest Arkansas Internet
13 Crimes Against Children Task Force. This task force made
14 up of federal and state investigators have one job, to
9:45AM 15 investigate online child exploitation cases.

16 Approximately the middle of June 2019, Detective Kalmer
17 reaches out to him, see if he will adopt the case. He
18 agrees. Early July 2019, he accepts the case, gets the
19 images and the information.

9:45AM 20 By the end of July, he has determined that the
21 internet service provider, OzarksGo, was the internet
22 service for this user in Northwest Arkansas that Detective
23 Kalmer made the downloads from. So he issues a federal
24 summons, a federal process to OzarksGo to find that
9:46AM 25 customer, find that user from Northwest Arkansas. In

9:46AM 1 approximately early October of 2019, they hadn't got back
2 to him, so he calls them and they return the information.
3 Joshua James Duggar of Wholesale Motorcars.

4 Now, Wholesale Motorcars is a car dealership
9:46AM 5 that's located along Highway 412. It's actually outside
6 of Tontitown as you're headed to Siloam Springs. Smaller
7 car dealership, 30 to 40 used cars. It's kind of in a
8 field, has a gravel area leading up to kind of a
9 shed-style office. Special Agent Faulkner obtains a
9:46AM10 search warrant for Wholesale Motorcars.

11 On November 8th, 2019, they execute the search
12 warrant. Special Agent Faulkner, along with Special Agent
13 Howard Aycock, arrive on the scene, a few other special
14 agents with them and some computer forensic examiners.

9:47AM15 When they do, they get out of their vehicles and they
16 approach Mr. Duggar. He's standing out in front of this
17 shed-style office. He's standing next to one of his
18 employees, Randall Berry. Next to Randall Berry is
19 another individual named Chris Harrell. He's a customer.

9:47AM20 They walk up to Mr. Duggar directly and say, "We have a
21 federal search warrant allowing for the seizure of digital
22 contraband." Mr. Duggar produces an iPhone out of his
23 pocket. The agent seizes it.

24 The agent tells Mr. Duggar, "You are all free to
9:47AM25 leave. You are not under arrest." Mr. Duggar responds,

9:47AM 1 "My wife is pregnant, I might leave the premises." They
2 say, "That's fine." Now, the agents go about securing the
3 scene and starting the search process. After about 10 or
4 15 minutes, they see that Mr. Duggar is still on the
9:48AM 5 premises, so they re-approach him. They tell him, "If you
6 would like to discuss the nature of this investigation,
7 what brought us here to the car lot, we can do that now."
8 And he agrees. Now, this interview is conducted in a law
9 enforcement truck that's on the premises there. You will
9:48AM10 see that Special Agent Aycock is sitting in the back seat,
11 driver's side of the truck. Special Agent Faulkner gets
12 in the driver's seat. Mr. Duggar walks to the passenger
13 side, gets in, sits down.

14 Now, as soon as they are in there, Special Agent
9:48AM15 Aycock starts requesting permission, "Can we record this
16 interview?" Mr. Duggar agrees. And at that very moment,
17 he turns to them, actually pivots in his seat to the
18 agents and looks at them and says, "So what, guys, is
19 someone downloading child pornography?" Now, Special
9:48AM20 Agent Faulkner will testify that at this stage in the
21 investigation, they have not told Mr. Duggar why they are
22 there. From that point on, they stop him. They said,
23 "Hey, let us record it." They then go through his Miranda
24 rights. He signs off on a form, asked the agents to alter
9:49AM25 some language on there, which you will see. It's

9:49AM 1 scratched out. Then they proceed. Now, this is about an
2 hour long interview. Some of it is relevant for this
3 trial; some of it is not. But you will see that initially
4 they get his biographical information, his name, his date
9:49AM 5 of birth, March 3, 1988, where does he work. He owns
6 Wholesale Motorcars. They then proceed to ask him which
7 devices are yours that we're going to locate on this
8 premises. He identifies his Apple iPhone, a laptop, a
9 MacBook laptop that's located in an RV that's there on the
9:49AM10 premises. And then he identifies the HP computer, says
11 he's owned it for two and a half, three years. That's in
12 the main business, the desktop, of the shed-style office.

13 Next, they start asking him, "Well, let's talk
14 about peer-to-peer networks." He says that peer-to-peer
9:50AM15 networks are on all three of his devices. Then he brings
16 up TOR browser. Now, you're going to hear from Agent
17 Aycock, or Agent Faulkner, this confused him. He thought
18 the defendant was confused at this point, because TOR
19 browser is a means to access the Dark Web. It is not
9:50AM20 BitTorrent. Those are two separate. Agent Faulkner will
21 tell you at this stage in the investigation they did not
22 know TOR browser was involved. You will hear on the audio
23 that Agent Faulkner actually tries to correct the
24 defendant saying, "Look, are you confusing TOR with TOR
9:50AM25 browser?" And they just can't get it resolved. At some

9:50AM 1 point, you will hear Agent Faulkner say, "Okay, let's
2 accept your definition and go." After that he asked him
3 directly, "How is your use per device? Is it mainly
4 personal or is it mainly work?" And he says it's split
9:51AM 5 down the middle with respect to all three devices,
6 personal and work.

7 Next, they start telling him the investigation,
8 the details, the downloading of this child pornography
9 from the car lot that was traced to the car lot. And at
9:51AM 10 the end of that conversation, you will hear the defendant
11 say, "I'm not denying guilt, I just don't want to say if
12 I'm guilty or not."

13 Shortly after that, the interview ends.
14 Mr. Duggar leaves the car lot. After the interview and
9:51AM 15 during the investigation, law enforcement, they actually
16 get all the employee pay records for 2019 from Wholesale
17 Motorcars. You will see these. Those pay records will
18 indicate that from January until end of April, there's an
19 individual named Matthew Waller who worked and was paid by
9:52AM 20 Mr. Duggar. From the end of April until almost all the
21 way to the end of May, there is no one paid by Mr. Duggar.
22 Starting at the end of May, you will see paychecks to an
23 individual named Randall Berry. Now, you will be hearing
24 from Mr. Waller, who will tell you during his time there,
9:52AM 25 from January through April, he only saw two people using

9:52AM 1 that HP computer, himself and Josh Duggar.

2 You will also hear from Mr. Berry. Now,
3 Mr. Berry is about a 65-year-old man. He's from Oklahoma.
4 He'll come in here, and no disrespect to Mr. Berry, but he
9:52AM 5 will tell you that he's, for the most part, illiterate.

6 He has problems reading and writing. He will tell you
7 that he is computer illiterate. That the only time he
8 ever used that HP computer, he was pushing a button to
9 play games. He will tell you that the only other person
9:53AM 10 he saw using that computer is Joshua Duggar.

11 Now, the HP computer, the Apple iPhone and that
12 laptop that Mr. Duggar identified as his was all taken
13 back to Homeland Security Investigations here in
14 Fayetteville for a forensic analysis and a basic forensic
9:53AM 15 analysis was done. However, it was all shipped to
16 Washington, D.C., the High Technology Investigative Unit
17 for the Department of Justice for further forensics.

18 Now, the director of this entire unit in
19 Washington, D.C., is an individual named Director James
9:53AM 20 Fottrell. Now, Director Fottrell will testify in this
21 trial. He will tell you that he conducted an examination
22 of that HP computer. He will tell you that that
23 examination revealed that the HP computer was password
24 protected, "JoshuaJJD." He will tell you that he located
9:54AM 25 a program called Covenant Eyes on that computer with a

9:54AM 1 user name "Joshua Duggar." You will learn that Covenant
2 Eyes is an internet pornography accountability program.

3 He will also tell you that on May 13th, a Linux
4 partition was created on that device. Now, a partition is
9:54AM 5 simply a program you download that separates a device, any
6 computer into two separate systems. What happens on one
7 side is not detected or does not influence the other side.

8 He will tell you on that Linux partition side, he did not
9 find Covenant Eyes. He will tell you that on that Linux

9:54AM 10 partition side, he found TOR browser. He found separately
11 uTorrent, which is a BitTorrent client. He will tell you
12 that he examined system files indicating that child
13 pornography was being downloaded and viewed from TOR
14 browser, but also the BitTorrent uTorrent client.

9:55AM 15 He will testify in this court that he conducted a
16 forensic examination of all three devices. And a summary
17 of those three devices is as follows:

18 On May 13th, 2019, at 1:43 p.m., the Linux
19 partition was downloaded on that HP computer. 2:03,
9:55AM 20 approximately 20 minutes later, the TOR browser is
21 downloaded and installed on that computer. Approximately
22 3:06 p.m., Mr. Duggar's iPhone is utilized to take a
23 picture of a car on the lot itself.

24 The following day, May 14th, 2019, 4:14 p.m.,
9:55AM 25 Mr. Duggar's iPhone is used to take a picture of a vehicle

9:55AM 1 on the car lot. At 4:20 p.m., Mr. Duggar's iPhone is used
2 to take a picture of the HP computer itself documenting
3 mechanic, might have been a carburetor or something like
4 that. You'll see the picture. 4:49 p.m., Mr. Duggar's
9:56AM 5 iPhone is used to send an iMessage, "Got stuck here, still
6 not free yet, I'm going to aim for tomorrow just after
7 lunch." 5:11 p.m., webcam-collection-prevs is downloaded
8 from the TOR browser. You will see all these files are
9 consistent with child sexual abuse material.

9:56AM 10 Approximately 20 minutes later, mov_0214 is
11 downloaded. 5:38, mov_0216.mp4 is downloaded from the
12 BitTorrent network. 5:42 p.m., the Little Rock officer,
13 Detective Amber Kalmer, downloads that mov_0216, four
14 minutes after it was downloaded to the HP computer.
9:57AM 15 5:48 p.m., "I have your Versa down here" -- a minute later
16 -- "at my car lot," the messages are sent. 6:04 p.m.,
17 Mr. Duggar's iPhone is utilized to take a picture of a
18 vehicle on the car lot.

19 May 15th, 2019, a message is sent, "I'm at my car
9:57AM 20 lot now." 11:15 in the morning. 20 minutes later,
21 14-year-old girl is downloaded. 11:37, test.avi.
22 11:41 -- excuse my language -- PussyPounded is downloaded.
23 5:08 p.m., "I'm here at the car lot. Will be here around
24 6:00 or so." 14 minutes later, playtoysweetie is
9:57AM 25 downloaded from the BitTorrent network. 5:25, 5:30,

9:58AM 1 Daisy's Destruction is downloaded twice from the
2 BitTorrent network. 5:32, asi se mama linda is downloaded
3 from the BitTorrent network. 5:41, the marissa.zip
4 Torrent files are downloaded from the BitTorrent network.
9:58AM 5 At 5:58, a message is sent, "Still have customers here."
6 At the same time, Director Fottrell will testify that that
7 HP computer is being utilized to open and view the
8 contents of marissa.zip. 6:51 p.m., Mr. Duggar's iPhone
9 again is utilized to take a picture. In this case, it's
9:58AM10 two Post-it notes, sticky notes, on the very desk that
11 holds the HP computer.

12 The following day, May 16th, 2019. 11:21 a.m.,
13 pedomom is downloaded from the BitTorrent network.
14 11:35 p.m., Mr. Duggar's iPhone is utilized to take a
9:59AM15 picture. This time it's a separate sticky note on the
16 same desk that holds the HP computer.

17 Now, Director Fottrell will also tell you that
18 that Linux partition, it had its own password, Intel 1988.
19 He will tell you when conducting the forensic examination
9:59AM20 of Mr. Duggar's devices, he found his Apple note section.
21 And inside that Apple note section, he lists his passwords
22 to various online accounts including his bank account;
23 Intel 1988. Director Fottrell will tell you that he found
24 BitTorrent peer-to-peer program on the defendant's laptop
9:59AM25 computer. And on his iPhone, he found the TOR browser.

10:00AM 1 In fact, it was used the very day law enforcement executed
2 the search warrant and interviewed Mr. Duggar.

3 Next, you are going to be hearing from a Covenant
4 Eyes' representative. He will tell you that that Covenant

10:00AM 5 Eyes user name is Joshua Duggar, registered to a Joshua
6 and Anna Duggar, the defendant's wife. He will tell you

7 that Covenant Eyes is a program for internet
8 accountability to live a porn-free life. The way it works

9 is that once you subscribe to the service and download it
10:00AM 10 to a device, it monitors your internet, and every so

11 often, it sends kind of a report via e-mail to your
12 accountability partner. This Covenant Eyes'

13 representative will tell you that Mr. Duggar's
14 accountability partner is Anna Duggar, his wife.

10:00AM 15 Importantly, he will tell you that their service does not
16 work with Linux-based operating systems, so what's done on

17 that Linux partition side is not recorded by Covenant Eyes
18 nor reported to Ms. Duggar.

19 Next, you're going to hear from an individual
10:01AM 20 named Clint Branum. Clint Branum is an individual of

21 Northwest Arkansas that's known Mr. Duggar in a personal
22 association for a long time. He will tell you that he has

23 had direct conversations with Mr. Duggar about how to
24 bypass internet filtration security such as Covenant Eyes

10:01AM 25 by downloading a partition.

10:01AM 1 Next, you're going to hear from an individual
2 named Jim Holt. Jim Holt will testify that he's known
3 Josh Duggar his entire life. Duggar used to date his
4 daughter. He views him as a son. Several years back, he
10:01AM 5 was part of a conversation where Mr. Duggar asked
6 specifically how to download a Linux partition.

7 Ladies and Gentlemen, that's a summary of the
8 case before you. Our case is based on fact, it's based on
9 evidence, and it's based on common sense. At the end of
10:02AM 10 this trial, we will ask you to hold him accountable for
11 his actions, accountable for downloading, receiving these
12 images of child sexual abuse, accountable for viewing and
13 possessing these images depicting minors engaged in
14 sexually explicit conduct. We'll ask you to find him
10:02AM 15 guilty based on that evidence. Thank you.

16 THE COURT: Thank you, Mr. Roberts.

17 Mr. Gelfand, you may deliver the defense opening
18 statement when you're ready.

19 MR. GELFAND: Thank you, Your Honor. May I
10:02AM 20 proceed, Your Honor?

21 THE COURT: You may.

22 MR. GELFAND: Good morning, Ladies and Gentlemen.
23 If you like a good mystery, then this is the case for you,
24 because over the course of this trial, over the course of
10:03AM 25 the next several days, you're going to be sitting in this

10:03AM 1 jury box asking yourself two overriding critical
2 questions. First, why is the government saying this had
3 to be Josh Duggar, this was Josh Duggar, when the actual
4 computer forensic trail that we will walk you through over
10:03AM 5 the course of this case presents more questions than
6 answers and clearly does not establish beyond a reasonable
7 doubt that it was Josh Duggar. And, second, why did the
8 government bury their heads in the sand for their 30-month
9 investigation failing to investigate suspects with
10:04AM 10 opportunity and access that we're going to talk about in
11 this courtroom over the course of this trial.

12 I want to be clear at the outset. Members of the
13 Jury, over the course of this trial, you're going to see
14 some disturbing images. That's not what this trial is
10:04AM 15 about. What this trial is about, Members of the Jury,
16 this is a classic, old-fashioned "whodunit." That's what
17 we're here for. That's what I want you to be focused on
18 throughout the course of this trial.

19 So let's talk about the timeline. May of 2019,
10:04AM 20 Detective Amber Kalmer is in Little Rock, Arkansas.
21 May 14th and May 15th, she downloads two files, she
22 claims. Those files, the prosecutor explained to you.
23 Ms. Kalmer is going to admit to you that all she has at
24 that point, using software that they have, law enforcement
10:05AM 25 only software called Torrential Downpour, it isolates

10:05AM 1 something called an IP address. It's a term you may have
2 heard before. An IP address alone is just a series of
3 numbers, but it's very easy to link an IP address to a
4 specific location. Ms. Kalmer will admit to you that the
10:05AM 5 IP address that she identifies does not tell you what
6 device or devices were connected to it. You're going to
7 learn that 10 devices at a Wi-Fi at a Starbucks, for
8 example, will all link to the same or identify the same IP
9 address. And she's also going to tell you that what you
10:05AM 10 need to do to isolate that IP address is you need to go to
11 something called the internet service provider, the ISP.
12 Simple English, the cable company, AT&T. In this case,
13 OzarksGo. You ask for it.

14 You are going to learn that she waits an entire
10:06AM 15 month before sending this case to Homeland Security
16 Investigations to Special Agent Faulkner in Northwest
17 Arkansas. You're going to see over the course of this
18 trial that between June 2019 and October 2019, federal
19 agents do virtually nothing in this case. Halloween 2019,
10:06AM 20 October 31st, HSI obtains a federal search warrant for a
21 house after telling a Judge, "Based on the IP address, we
22 believe that whatever device did this is in the house."
23 They show up at the house in full force. They realize
24 though -- bear in mind, at this time, they have no clue
10:06AM 25 what device or devices were used. They have no clue

10:06AM 1 whether there's any alleged child pornography or child
2 pornography on these devices. They show up at the house.
3 They realize very quickly, well, this is not Joshua
4 Duggar's house, this is not the reality T.V. star we're
10:07AM 5 excited to investigate, so they choose not to search the
6 house.

7 A few days later, they send an undercover agent
8 into Wholesale Motorcars. The undercover agent pretends
9 to be a customer. The undercover agent meets with Josh
10:07AM 10 Duggar and Randall Berry. The undercover agent is there
11 for fairly obvious reasons; what devices does Joshua
12 Duggar use? And the undercover agent documents -- bear in
13 mind, this is a few days before the search warrant at the
14 car lot -- that Josh Duggar uses a MacBook Pro laptop
10:07AM 15 computer and an iPhone. No mention at all of Joshua
16 Duggar on this HP computer, which we will talk about in a
17 few minutes.

18 November 8th of 2019, federal agents storm into
19 Wholesale Motorcars to execute the search warrant. You're
10:08AM 20 going to learn over the course of this trial critically
21 that they seized nine devices. Let's talk about those for
22 a second, because details matter in federal criminal
23 cases, and we're going to be talking a lot over the course
24 of this trial about the details. You're going to see that
10:08AM 25 Josh has two personal devices, both of which are Apple

10:08AM 1 products. You may remember commercials, "I'm a Mac, I'm
2 an Apple, I'm a PC." The fights between them are actually
3 pretty entertaining. Josh is a Mac guy. You are going to
4 see testimony over the course of this trial that the
10:08AM 5 laptop, the MacBook Pro, it's an Apple product. The
6 iPhone, an Apple product. These were devices that Josh
7 used personally. You are going to hear that the MacBook
8 Pro laptop, based on computer forensics, was Josh Duggar's
9 personal computer from November of 2014 to November of
10:09AM 10 2019, the day that the feds took it from him. This was
11 his regularly used laptop that he used on a virtual daily
12 basis, probably literally a daily basis based on the
13 computer forensics.

14 You are going to see over the course of this
10:09AM 15 trial that the government spent hours -- days, months,
16 years -- looking at those devices. The two devices their
17 undercover agent said, "These are the devices Josh used,
18 let's try to find even a forensic trace, an artifact, of
19 child pornography on these devices." Because you are
10:09AM 20 going to learn that computer forensics in this trial, even
21 if an image of anything -- a basketball, child
22 pornography -- if it's deleted, computer forensic experts
23 can still find artifacts that it exists on the device.
24 There's no such thing as deleting it forever.

10:10AM 25 You are going to hear important testimony over

10:10AM 1 the course of this trial that there was not a trace of
2 child pornography on any of Josh Duggar's personal
3 devices, because it was never there, it was never
4 downloaded, it was never opened, it was never even viewed
10:10AM 5 on the screen. Because computer forensic experts are
6 going to tell you that if it was, they would have
7 identified it and they would be putting it right in front
8 of you as if it's a giant billboard.

9 You are going to hear that the business computer
10:10AM 10 was a PC, was a desktop computer. You are going to hear
11 the term. It's called an All-in-One. In other words,
12 it's not like the old school tower with the separate
13 monitor, but it's a big desktop computer that literally
14 plugs into the wall. It was seized from the office,
10:10AM 15 meaning the fairly small shed-like office -- that's a fair
16 description -- at Wholesale Motorcars. You are going to
17 see pictures of that office. We are going to show you
18 them if the government doesn't. There's windows all
19 around. It's a fish bowl. And this computer, the HP
10:11AM 20 computer, the desktop, like all desktops, was literally
21 plugged into the wall.

22 Members of the Jury, over the course of this
23 trial, you're going to learn that in computer crimes cases
24 such as this, computer forensics is as close to DNA as you
10:11AM 25 get. It's a science. It's based on facts. There's a

10:11AM 1 trail of evidence and it's not about guesswork. Members
2 of the Jury, you are going to hear important testimony
3 from a woman named Michele Bush. She is a computer
4 forensics expert based in Arizona who works nationally and
10:11AM 5 has for the past decade, plus or minus. She's going to
6 tell you that she, on a near daily basis, works on these
7 cases. She doesn't work for the government. She works on
8 these cases. What she's going to tell you is that she did
9 what the government did not do in this case. And she's
10:12AM 10 going to walk you through this critical testimony and this
11 evidence in the course of this trial, that she followed
12 the computer forensic trail and found important evidence
13 that either the government never looked for or the
14 government ignored. But this is the trial of Josh Duggar
10:12AM 15 and this is where it's going to come out. So let me
16 preview that for you.

17 Number one, she's going to tell you what I just
18 did. She's going to tell you that she independently
19 looked at the images, meaning the exact equivalent --
10:12AM 20 we'll talk about that in a second -- but basically the
21 MacBook Pro that the government seized and provided her a
22 forensic copy of. And she looked at the HP computer under
23 certain parameters that is necessary under federal law.
24 And she looked at the iPhone. She also looked at a number
10:13AM 25 of other devices over here. She's going to tell you

10:13AM 1 plainly and simply, there never was a trace of child
2 pornography, even alleged child pornography, on any of
3 Josh Duggar's personal devices. So she's going to take
4 you where the investigators, to some extent, are taking
10:13AM 5 you in this case, to this HP computer. But she's going to
6 tell you something very important, that the trail of
7 evidence in this case actually begins on May 13th, 2019,
8 when a Linux partition was installed.

9 Let me break this down, because this is really
10:13AM 10 important for this trial. A Linux partition was installed
11 on the desktop, the computer, the work computer that was
12 plugged in. You are going to hear testimony, by the way,
13 that a number of people used this work computer. You're
14 going to hear testimony that this work computer had
10:14AM 15 software called Frazer on it. Frazer is essentially the
16 fuel that makes the used car lot, Wholesale Motorcars,
17 run. It's the only software that inventories. It's the
18 software that anyone selling a car at this business had to
19 use. You are going to hear testimony that others had
10:14AM 20 access to it and used it. This was the business computer.
21 It literally has a decal for credit card payments on it.
22 It has a decal for Wholesale Motorcars on it. You will
23 see it in evidence.

24 But here's what's important here. The HP
10:14AM 25 computer had kind of a Windows side, what may be more

10:14AM 1 familiar to most of us. But where the government would
2 say the bad stuff happened, the focus of this trial, that
3 all happens on this Linux side. You're going to hear that
4 Linux is this unusual, complicated interface. It's not
10:14AM 5 common. It's not totally unheard of. But it's not as
6 common as, say, a Mac operating system for Windows that
7 are a lot more ubiquitous. What you are going to hear is
8 that during the installation -- and this is critical --
9 somebody physically plugged in a thumb drive. If you're
10:15AM 10 not familiar with it, sometimes people refer to thumb
11 drives as USB drives. Sometimes they are on little
12 keychains, flash drives. They're all saying the same
13 thing. Somebody physically plugged in a drive that
14 stores, a small drive that stores files into the "F" port
10:15AM 15 or the "F" drive on the desktop computer. Simple English,
16 someone took a thumb drive and plugged it into the
17 desktop, wherever the desktop was, presumably in the
18 office where it was plugged in at Wholesale Motorcars.

19 You are going to hear important evidence that
10:15AM 20 between 12:53 p.m. and 12:56 p.m. on the day that the
21 Linux partition was installed, while the Linux partition
22 was installed, somebody opened three files from that thumb
23 drive. One is called "jeremy_model-mesh pics.docx." One
24 is called "UK Cardiff final-background lighter.pptx." One
10:16AM 25 is called "Quiz 1.docx." Two Microsoft Word documents,

10:16AM 1 one PowerPoint document, opened computer forensically.
2 DNA, in essence, 12:53 to 12:56 p.m., during the
3 installation of the Linux partition. You're going to
4 learn that the reason this is so important is because
10:16AM 5 someone physically had to be there to plug this thumb
6 drive in.

7 And here's what's so important that you're going
8 to learn over the course of this trial from Ms. Bush.
9 First of all, the government seized five thumb drives and
10:16AM 10 SD cards, essentially portable devices, over the course of
11 this case. We're going to introduce those into evidence
12 if they don't. They are important, because what they are
13 going to show you is that those thumb drives, the ones
14 that were actually at Wholesale Motorcars on the day that
10:17AM 15 the feds executed the search warrant, those were not any
16 of the thumb drives, meaning the thumb drive that was used
17 was not any one of those thumb drives that was plugged
18 into this computer when Linux was being installed. But
19 realize something more important. That may sound easy.
10:17AM 20 Okay. Where did the thumb drive go? It's a thumb drive.
21 Here's what's more important. Thumb drives, you can't
22 create a Microsoft Word document, as you are going to
23 learn, or a PowerPoint, on a thumb drive. That just
24 stores the documents. So computer forensic trail.
10:17AM 25 Where's the device that those files were created on, were

10:17AM 1 saved on, were opened? You can't possibly tell me that
2 that's not an important clue, so to speak, to follow for
3 who was there. You're going to learn from Michele Bush
4 that those three files, those two Microsoft Word documents
10:18AM 5 and that PowerPoint document, were not in any way
6 connected to any of Josh's devices ever. They were not
7 created on those devices. They were not saved on those
8 devices. They were not opened on those devices even from
9 a computer forensic artifact standpoint by documenting
10:18AM 10 that they were opened from a thumb drive, for example,
11 being plugged in.

12 Members of the Jury, this is the equivalent of
13 the trail of blood from a murder scene. It's a computer
14 forensic trail you follow. They didn't follow it. We're
10:18AM 15 not here to tell you where this evidence leads. We're not
16 the United States government. We don't have an Army of
17 investigators. But we are here to show you over the
18 course of this trial from that witness stand and from this
19 computer forensic expert, Michele Bush, that it does not
10:19AM 20 lead to Josh Duggar. And that's the ball game, Members of
21 the Jury. That's what brings us here.

22 Number four, Michele Bush is going to tell you
23 that the Linux partition, this place where, for lack of a
24 better way of putting it, where the bad stuff happens,
10:19AM 25 that has a single user account. It's called Dell,

10:19AM 1 D-E-L-L, underscore one, O-N-E. One is spelled out. This
2 is a default user name, or you're going to hear that it's
3 likely a default user name. In other words, no one says,
4 "I'm want to be called Dell_One." You're going to learn
10:19AM 5 over the course of this trial that this likely means that
6 whoever installed Linux began with a Dell. Dell is a
7 large computer PC manufacturer. Huge online operation.
8 It's like HP or Mac or Apple.

9 The prosecution, Members of the Jury, has no clue
10 who the Dell user is because they didn't look. But,
11 again, what we're going to show you over the course of
12 this trial is there is no evidence on earth, because it
13 doesn't exist, that Josh Duggar was a Dell user. He was
14 the Mac guy. Even the one PC for work was an HP. There's
10:20AM 15 no Dell anywhere to be found, or even evidence of a Dell,
16 anywhere to be found in this trial.

17 Number five, she's going to tell you about
18 command codes. I'm sure you're excited to learn more
19 computer forensics over the course of this trial, but this
10:20AM 20 is really important and I want to break this down for you
21 so you'll understand what to listen for. She's going to
22 tell you that whoever installed Linux, Ms. Bush is going
23 to tell you, had to type in complicated command codes.
24 This is the equivalent of a foreign language. You either
10:20AM 25 know how to do it or you don't. You either have the

10:20AM 1 command codes or you don't. The reason why is because
2 she's going to tell you that from a forensic standpoint,
3 no installer was located. Installer means you can just
4 basically double-click on something and essentially it
10:21AM 5 preloads the command codes. She's going to tell you that
6 whoever did this had to manually type in complicated
7 command codes.

8 So what are you going to learn about Josh Duggar
9 over the course of this trial? Josh is a great guy. He's
10:21AM 10 a father of seven. He's got a very close and large
11 family. But you're going to learn that when it comes to
12 formal education, computer sophistication, he was
13 homeschooled by his parents, Jim Bob Duggar and Michelle.
14 At 16 years old, he earned his GED and never received any
10:21AM 15 additional formal education. He's done well for himself.
16 He opened a used car lot. He sold cars. But, Members of
17 the Jury, here's the important thing. There's no evidence
18 on earth that Josh knew what these command codes were,
19 because he didn't. That's important, because, remember,
10:21AM 20 we are trying to follow the computer forensic trail. And
21 that's what we're going to do over the course of this
22 trial.

23 Number six, Michele Bush is going to tell you
24 about the TOR browser and the BitTorrent network. As the
10:22AM 25 prosecutor explained, they sound similar, TOR, but they

10:22AM 1 are totally different. You are going to learn that like
2 millions of Americans, Josh used the TOR browser. Here's
3 the kicker, though. He used it since 2017. When we
4 actually talk details of the computer forensics, you are
10:22AM 5 going to learn that the TOR browser was installed on
6 Josh's personal MacBook since December of 2017. Remember,
7 it was never used to download, view, or access child
8 pornography. Because had it been used to do that on his
9 personal device, there would be evidence, what computer
10:22AM 10 forensic experts call artifacts, even if the images
11 themselves are not on the device anymore. And there's
12 not.

13 You are going to learn that investigators like to
14 say "Dark Web." You are going to learn that the TOR
10:23AM 15 browser is put out by something called the TOR Project.
16 It's a Massachusetts nonprofit organization. Millions of
17 users use it. It provides enhanced privacy and enhanced
18 security, in contrast to other web browsers like Safari or
19 Firefox or others that you may be more familiar with.
10:23AM 20 It's precisely the kind of protection and privacy and
21 security that when you have media and paparazzi chasing
22 you every time you go to Starbucks or dinner with your
23 family, you benefit from, you use.

24 BitTorrent. Let's talk details. Details matter.
10:23AM 25 Josh's personal devices, his MacBook to be precise, had

10:24AM 1 two BitTorrent peer-to-peer applications. BitTorrent --
2 you might remember Napster music, file sharing. There's
3 nothing intrinsically wrong or illegal or anything about
4 BitTorrent or the TOR browser. These can be used for
10:24AM 5 things that are illegal. But, forgive the analogy, it's a
6 little like a knife. It's not illegal unless or until you
7 stab someone with it.

8 Here's what's interesting that you are going to
9 see over the course of this trial. Josh used two software
10:24AM 10 applications to access the BitTorrent network in 2017 from
11 his MacBook, his laptop. He used an application called
12 Transmission -- that's the name of the software -- and an
13 application called qBittorrent, both to download
14 commercial movies. One literally a Chevy Chase movie, and
10:24AM 15 one literally a kid's movie involving planes and
16 firetrucks or whatever it was. You'll actually see the
17 name of these movies in evidence. Here's the point,
18 though. The Linux partition where BitTorrent was
19 apparently used to access alleged child pornography had
10:25AM 20 Transmission preinstalled on it. What this means in
21 English is, it's like Safari on your iPhone. You
22 literally just use it. If you want to access it, you
23 double-click on it. You don't have to do anything
24 complicated to install software. But whoever went onto
10:25AM 25 that partition chose not to use the Transmission software

10:25AM 1 that Josh already knew how to use since 2017. Instead --
2 listen to what actually happened, Michele Bush is going to
3 explain this to you -- somebody downloaded something
4 called uTorrent, which is a Windows-based BitTorrent
10:25AM 5 application, bypassing the double-clicking on what's
6 already there. There's literally an icon. You just click
7 on it. To download and install uTorrent on this Linux
8 partition, there was yet another layer of command codes
9 that had to be input. And Michele Bush is going to walk
10:26AM10 you through it.

11 The point is, this was complicated. And there's
12 no evidence on earth, and I mean no disrespect to Josh,
13 who I have tremendous respect for. He is not a computer
14 genius. He is not the IT tech support you call from the
10:26AM15 Geek Squad at Best Buy or whatever you may use. He's got
16 a GED and he owns a car lot. No disrespect at all. But
17 it matters when we look at the sophistication that was
18 necessary to pull this off.

19 The videos, the alleged child pornography videos,
10:26AM20 the investigators, you're going to hear over the course of
21 this trial, they like the shock and awe of them; the
22 names, the description. They are awful. They are
23 terrible. I'm going to encourage you to look at them from
24 a different direction, computer forensic trail. How were
10:27AM25 they played on the HP computer? You're going to learn

10:27AM 1 that they were played through something called a VLC
2 player. That's unremarkable. A VLC player is one of the
3 most common, if not the most common, free downloadable
4 players that's ubiquitous throughout the country. But
10:27AM 5 they weren't just double-clicked on to play locally the
6 way that somebody with regular and consistent access to
7 the device would. They were streamed through the internet
8 like Netflix. What this means, Michele Bush will explain
9 to you, is that that's consistent with a remote user.
10:27AM 10 She's not going to tell you that that necessarily
11 happened. There's no way of knowing. But the government
12 has to rule out that possibility. And what Michele Bush
13 is going to tell you -- and she's going to explain this a
14 lot more than I am in opening statement -- is that
10:28AM 15 something called UPnP, Universal Plug and Play, was
16 enabled on the router, the Wi-Fi box, at the car lot at
17 the time leaving the network entirely vulnerable.
18 Lastly, she's going to tell you that at the end
19 of the day, less than one minute after the last alleged
10:28AM 20 child pornography file was streamed through the internet,
21 instead of just double-clicked on, all of these files
22 were deleted essentially permanently from the user
23 standpoint, not from a computer forensic standpoint. They
24 weren't accessible.
10:28AM 25 Now, Members of the Jury, the computer forensic

10:28AM 1 trail, the DNA, if you will, it leaves more questions than
2 answers, but it points to someone other than Josh. And at
3 a minimum, we're not here to prove to you anything. We
4 are the defense in a criminal case. We don't have an Army
10:29AM 5 of investigators. It raises serious reasonable doubts.
6 And that's the ball game.

7 So I want to talk for just a few minutes about
8 the investigation. You're going to learn over the course
9 of this trial that investigators chose to forensically
10:29AM 10 image Josh's devices and the Wholesale Motorcar device,
11 but no one else's devices that they had literally in their
12 hands. You are going to hear that on November 8th, 2019,
13 there's three forensic techs working for HSI for one
14 purpose, to image devices. They had Randall Berry's phone
10:29AM 15 in their possession. They chose not to image it.

16 Remember that name. We'll get back to it in a second.

17 You're going to hear that in December of 2019,
18 they chose not to image William Mize's phone, even though
19 he fully consented for them to search it literally by
10:29AM 20 signing a form. Remember that name. The point is, they
21 failed to preserve important evidence and we're going to
22 talk about that.

23 Randall Berry, you are going to hear that he
24 talked to the feds twice. First, November 8th of 2019,
10:30AM 25 the day they executed the search warrant. He confidently,

10:30AM 1 on a recording, by the way, told them, "I didn't even
2 start working at this car lot until June of 2019." The
3 agents investigating said, "Great, couldn't have been you,
4 weren't there." The pay records clearly revealed that he
10:30AM 5 was there in May of 2019 at the earliest. Agents go back
6 to him. And he says, "All right, May 20th, that's the
7 date," on a recording, by the way. Members of the Jury,
8 you are going to see in evidence a picture time-stamped of
9 Randall Berry at the car lot on May 16th of 2019, squarely
10:30AM 10 within the window of time that matters.

11 William Mize, he told agents, "I'm just a
12 homeless guy with no computer sophistication." They said,
13 "Great, we don't need to hear anymore, thanks for your
14 time." You're going to learn over the course of this
10:31AM 15 trial he bought eight cars, approximately five to eight
16 cars, from Wholesale Motorcars, that he was regularly at
17 the car lot, that he worked there on occasion to make
18 extra cash. And you are going to hear from a witness who
19 is going to testify from that witness stand that he
10:31AM 20 personally observed Mr. Berry sitting in a van regularly
21 outside a McDonald's accessing the McDonald's Wi-Fi. It
22 was so remarkable to this witness that they literally gave
23 him a nickname, "McLoiterer." You can't make this up.

24 Caleb Williams. You're going to see evidence
10:31AM 25 that he sold a car as a salesperson at the lot in March of

10:31AM 1 2019, that he regularly printed shipping labels from the
2 HP computer at the center of this case for his own eBay
3 business that had nothing to do with Josh and nothing to
4 do with Wholesale Motorcars. You are going to hear that

10:32AM 5 he's so tech savvy that he runs his own e-commerce
6 business where he accepts Bitcoin, in addition to other
7 forms of payment. Investigators first interviewed him 30
8 months into this investigation several weeks ago. To this
9 day, they have never looked at his devices. He sends a
10:32AM 10 text message we're going to introduce into evidence in
11 this case to Josh on May 7th of 2019, just before this
12 time period that matters. And he says he's available to,
13 quote, "Watch the lot," end quote, in the upcoming week.

14 Members of the Jury, there's so much more to this
10:32AM 15 case than the prosecution wants you to believe. All I'm
16 asking you at this point is to keep an open mind, because
17 we are going to investigate this case together because
18 they didn't. We're going to ask important questions that
19 they chose not to ask. We're going to bring out
10:32AM 20 reasonable doubts that exist.

21 Thank you for your time. Thank you for your
22 attention. There's nobody who appreciates it more than
23 Josh. Thank you.

24 THE COURT: Thank you, Mr. Gelfand.

10:33AM 25 So I explained to you yesterday that we would be

10:33AM 1 taking a morning and an afternoon recess. And it's about
2 10:30. Now is the most logical time for us to take our
3 morning recess. When you come back from the recess, we
4 will start hearing testimony from witnesses.

10:33AM 5 Let me remind you of the recess instruction. You
6 have heard some of these rules in the instructions I gave
7 a few moments ago, but this is also the instruction that I
8 gave you last night and I just want to hit some of the
9 highlights of it as we take this first recess.

10:33AM 10 Remember that what you just heard is not
11 evidence. It's just the lawyers' summary of what they
12 expect the evidence will show. You are not to discuss the
13 case. You're not to discuss what you just heard in
14 opening statements among yourselves or with anyone else
10:34AM 15 while we're on this recess. And you're not to conduct any
16 research. You're not to conduct any searches for news or
17 anything like that. This is very important and I just
18 reemphasize it once again here. And I will likely be
19 doing so before every recess.

10:34AM 20 So we're going to be in recess for about 15
21 minutes. And we will have the court security officer
22 bring you back up right around 10 minutes before 11:00.

23 We're in recess.

24 (Recess taken from 10:34 a.m to 10:54 a.m.)

10:34AM 25 (Outside the presence of the Jury)

10:54AM 1 THE COURT: Please have the Jury brought up.
2 While we're bringing the Jury up, I wanted to put on the
3 record that over the break, the Court was alerted about a
4 minor medical issue that one of our jurors, Juror
10:55AM 5 Number 38, had happen this morning. And after conferring
6 with counsel for each side, it was agreed that we would
7 release Mr. Juror Number 38. He was an alternate juror
8 and we still have three alternates left, so I think we're
9 in really good shape, but I just wanted to put that on the
10:55AM 10 record that he was released by agreement.

11 (Jury in at 10:57 a.m.)

12 THE COURT: Members of the Jury, one of your
13 colleagues, Juror Number 38, had a minor medical issue
14 arise and the Court has excused him and I didn't know if
10:58AM 15 you were aware of that or not. But in case you were
16 wondering why there's an empty seat on the second row, I
17 thought I should tell you.

18 We are ready for what we call the evidentiary
19 portion of our trial. The government may call its first
10:59AM 20 witness.

21 MS. MARSHALL: Your Honor, the government would
22 call Detective Amber Kalmer.

23 THE COURT: Detective, if you would please come
24 inside the rail. And if you would pause about right there
10:59AM 25 and raise your right hand.

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(Witness Sworn)

THE COURT: Ma'am, if you would please have a seat in our witness box. While you're getting yourself situated, a few things. Number one, you may remove your mask while testifying, although you're not required to do so. And while testifying, please try to position the microphone so that you can speak directly into it so that we can hear your testimony.

THE WITNESS: Yes, sir.

THE COURT: You may inquire.

MS. MARSHALL: Thank you, Your Honor.

AMBER KALMER, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MARSHALL:

Q. Will you please introduce yourself to the Jury and spell your last name for the court reporter?

A. Detective Amber Kalmer. Last name, K-A-L-M-E-R.

Q. And where are you employed?

A. Little Rock Police Department.

Q. And how long have you been employed there?

A. About 13 years.

Q. What did you start off doing there at Little Rock Police Department?

A. I worked patrol for about six years and then went to

11:00AM 1 undercover narcotics for two years. And then ever since,
2 I've been on vice, and I do Internet Crimes Against
3 Children and human trafficking.

4 Q. Are you part of some sort of task force for that?

11:00AM 5 A. Yes. I'm on the FBI task force and the ICAC Arkansas
6 task force.

7 Q. What is the ICAC Arkansas task force?

8 A. The Internet Crimes Against Children task force,
9 which gives us our NCMEC cyber tips.

11:00AM 10 Q. Explain to the Jury a little bit about what the ICAC
11 task force investigates and does.

12 A. Yes. We do investigations for cyber tips from the
13 National Center for Missing & Exploited Children, which
14 are based off of users sharing content on different

11:01AM 15 platforms, such as Google and Yahoo. Once they share
16 child pornography, it alerts and they give us those cyber
17 tips to work. And we also do peer-to-peer and then online
18 enticement investigations.

19 Q. So as part of being a task force officer with the
11:01AM 20 ICAC, do you investigate these types of cases?

21 A. Yes, ma'am.

22 Q. What sort of training have you had as part of the
23 ICAC?

24 A. I've had numerous training. Went to multiple classes
11:01AM 25 for peer-to-peer training as well as numerous ICAC and

11:01AM 1 human trafficking courses and certifications.

2 Q. Did you most recently get a certification for
3 forensic examination of devices?

4 A. Yes.

11:01AM 5 Q. Tell the Jury a little bit about that.

6 A. I went through 200 hours of training to become a
7 forensic computer examiner, as well as cell phones.

8 Q. You talked to the Jury a little bit about
9 peer-to-peer cases. You said that was part of what you

11:02AM 10 investigated, part of the caseload that you had as a task
11 force officer, is that right?

12 A. That is correct.

13 Q. Explain to the Jury a little bit about what a
14 peer-to-peer investigation, what that means.

11:02AM 15 A. Peer-to-peer is a software such as BitTorrent, eMule,
16 or Freenet. It's publicly available. Once you install it
17 and download it, it allows your computer to share files
18 such as files, videos, and images to other computers
19 utilizing the same software.

11:02AM 20 Q. So those programs that you mentioned -- Freenet,
21 BitTorrent, eMule -- those are free programs that anyone
22 is able to download, is that correct?

23 A. That is correct.

24 Q. Why, as law enforcement, then would you be interested
11:02AM 25 in doing those sorts of investigations?

11:02AM 1 A. Peer-to-peer is one of the most common investigations
2 to share child pornography amongst users.

3 Q. One of the most common ways to do that?

4 A. Yes, ma'am.

11:03AM 5 Q. In your training and experience, that's what you have
6 seen?

7 A. That is correct.

8 Q. So you said it's a publicly available program. So
9 how, as law enforcement, do you go about investigating
11:03AM 10 peer-to-peer program, or peer-to-peer investigations?

11 A. Once we went through training, we are given a law
12 enforcement software that does the same thing for
13 BitTorrent, eMule, and Freenet. And then we run that
14 software looking for people sharing child pornography.

11:03AM 15 Q. So law enforcement has its own software that's been
16 developed to help investigate these cases?

17 A. That is correct.

18 Q. What is different about a law enforcement software
19 program than a typical user's program who has downloaded
11:03AM 20 BitTorrent?

21 A. The law enforcement version does not share the child
22 pornography images or videos or files. A lot of the
23 peer-to-peer programs do what they call a tit-for-tat, so
24 they want you to share content in order to download it
11:04AM 25 from other users.

11:04AM 1 Q. So as part of the law enforcement program, law
2 enforcement is not sharing child pornography, they are
3 just receiving child pornography, is that correct?

4 A. Yes, ma'am.

11:04AM 5 Q. Can you explain to the Jury about how a typical
6 peer-to-peer investigation on BitTorrent would work for
7 you?

8 A. Yes. I would run the program on my law enforcement
9 computer and it would reach out to users who are sharing
11:04AM 10 known files that contain child pornography. Once I reach
11 out to computers and make connections, it then gathers
12 information in regards to their IP address, geolocation,
13 and then the hash value of the file I'm attempting to
14 download. Once the connection is made and completed, I
11:04AM 15 then look at the geolocation of where that IP is at and
16 then send legal service off of that IP to see where it
17 comes back to.

18 Q. I want to break down some of the things that you
19 said. So you said that it's reaching out and searching
11:05AM 20 for known images of child pornography. What does that
21 mean when you say a "known image of child pornography"?

22 A. A known image of child pornography is something that
23 has -- it's a -- the person has been identified in that
24 image and it is known to the National Center for Missing &
11:05AM 25 Exploited Children and law enforcement.

11:05AM 1 Q. You also talked about a hash value. How are hash
2 values associated with known images of child pornography?

3 A. Each image and video of child pornography is given a
4 hash value and that's how it's traced. It's somewhat --
11:05AM 5 some people compare it to like a thumbprint. So you are
6 able to follow it whenever it's shared on a platform.

7 Q. So each individual image of child pornography or
8 video has its own unique hash value, is that right?

9 A. That is correct.

11:05AM 10 Q. So you said that it searches for known images and it
11 connects and it downloads. Explain to the Jury a little
12 bit about that.

13 A. The computer software will ask -- it will find the
14 peers who have a file which contains child pornography.
11:06AM 15 That computer will acknowledge, yes, I do have that image
16 or video, and then it will allow my computer to start
17 downloading the process of that.

18 Q. When your computer downloads that process, if there
19 is a complete or a partial download, are you then able to
11:06AM 20 view that child pornography that you received from that
21 other user?

22 A. I am.

23 Q. Were you using your law enforcement computer for the
24 BitTorrent network on May the 14th, 2019?

11:06AM 25 A. Yes, ma'am.

11:06AM 1 Q. Can you tell us if anything significant pertaining to
2 this case happened on that date?

3 A. I made connection with an IP that geolocated back to
4 Springdale, Arkansas, and began downloading.

11:06AM 5 Q. What is the program called that you use, your law
6 enforcement program?

7 A. It's BitTorrent. We have Torrential Downpour, I
8 believe.

9 Q. As part of that program, if you make a connection
11:07AM 10 with another user, does it generate a log?

11 A. Yes.

12 Q. What sort of things are on that log?

13 A. On the log, it will say the connection time that I
14 made with the peer, as well as that peer's IP address and
11:07AM 15 port number. And then it will verify the hash value of
16 the file that I'm attempting to download.

17 Q. You stated that there was a connection that was made
18 on May the 14th, 2019, between your computer and an IP
19 address geolocating to the Northwest Arkansas area, is
11:07AM 20 that correct?

21 A. That is correct.

22 Q. When it made that connection, did your program
23 generate a log?

24 A. Yes.

11:07AM 25 Q. I want to turn your attention, if you will please

11:07AM 1 open your notebook to Government's Exhibit 1. Can you
2 please tell me what Government's Exhibit 1 is?

3 A. This was a log from one of the connections on
4 May 14th.

11:08AM 5 Q. May 14th of what year?

6 A. 2019.

7 Q. Is this the log of the connection that you made with
8 the IP address geolocating back to the Northwest Arkansas
9 area on that date?

11:08AM 10 A. Yes, ma'am.

11 Q. Can you please tell me what the IP address was for
12 that?

13 A. 167.224.196.113.

14 Q. Is this a true and accurate copy of the log that was
11:08AM 15 generated from your connection with that IP address on May
16 the 14th, 2019?

17 A. Yes, ma'am, minus the highlights.

18 Q. The highlights have been added. But other than that,
19 it is true and accurate?

11:09AM 20 A. Yes, ma'am.

21 MS. MARSHALL: Your Honor, the government would
22 move to introduce Government's Exhibit 1 into evidence.

23 MR. GELFAND: No objection.

24 THE COURT: Government's 1 is received.

11:09AM 25 (Government's Exhibit 1 Received)

11:09AM 1 MS. MARSHALL: Your Honor, may I publish
2 Government's Exhibit 1 to the Jury?

3 THE COURT: You may.

4 Q. (BY MS. MARSHALL.) Detective Kalmer, I want to turn
11:09AM 5 your attention -- as you stated, there are a couple of
6 things that are highlighted in this log. The first line
7 that is highlighted, can you please read what that states?

8 A. "Started download thread at local time, Tuesday,
9 May 14th, 2019, at 5:41:48 p.m."

11:09AM 10 Q. What does that mean?

11 A. That was the time that it began connecting with the
12 other computer.

13 Q. The time that your computer started connecting with
14 the other computer?

11:09AM 15 A. Yes, ma'am.

16 Q. The second line that's highlighted, can you please
17 tell the Jury what that highlighted portion that starts
18 with "9C3" reads?

19 A. Yes. That's the hash value for that specific movie
11:10AM 20 file that is known, a known image or video of child
21 pornography.

22 Q. And the hash value again is what?

23 A. It's a way to follow what's being shared. It's a
24 thumbprint.

11:10AM 25 Q. The third line that is highlighted in this exhibit,

11:10AM 1 the 167.224.196.113, what is that?

2 A. That is the IP address I was connected to and made
3 the download from.

4 Q. That's the other user?

11:10AM 5 A. Yes, ma'am.

6 Q. Then the line below that, the mov_0216, what is that?

7 A. That is the file that belongs to the hash value above
8 that was downloaded.

9 Q. That is the name of the file?

11:11AM 10 A. Yes, ma'am.

11 Q. And then the last line that's highlighted, the date
12 is 2019-05-14. What is that?

13 A. That's when the downloaded file was completed.

14 Q. What does that mean?

11:11AM 15 A. That it was able to complete the entire file of the
16 mov_0216.

17 Q. I'm going to turn your attention to May 15th, 2019.
18 Was your law enforcement computer running with the
19 BitTorrent network on May the 15th, 2019?

11:11AM 20 A. Yes, ma'am.

21 Q. Can you tell the Court and the Jury if anything
22 significant pertaining to this case happened on that date?

23 A. I was -- my computer made contact with the same IP
24 address.

11:11AM 25 Q. I'm going to ask you to turn to Government's Exhibit

11:11AM 1 2 in your binder. Do you recognize Government's Exhibit
2 2?

3 A. Yes, ma'am.

4 Q. What is Government's Exhibit 2?

11:12AM 5 A. It's a log for the download for that day.

6 Q. And what date was that?

7 A. May 15th, 2019.

8 Q. Is this the same sort of log from May the 14th, 2019?

9 A. Yes, ma'am.

11:12AM 10 Q. Is this log also generated from your computer
11 program?

12 A. Yes, ma'am.

13 Q. So this is a log that you would get if a connection
14 was made with another user?

11:12AM 15 A. Yes, ma'am.

16 Q. Is this a true and accurate copy minus the highlights
17 that have been added of the log from your connection on
18 May the 15th, 2019?

19 A. Yes, ma'am.

11:12AM 20 MS. MARSHALL: Your Honor, I would move to
21 introduce Government's Exhibit 2 into evidence.

22 MR. GELFAND: No objection.

23 THE COURT: Government's Exhibit 2 is received.

24 (Government's Exhibit 2 Received)

11:12AM 25 MS. MARSHALL: Permission to publish to the Jury,

11:12AM 1 Your Honor.

2 THE COURT: You may.

3 Q. (BY MS. MARSHALL.) Let's walk through this log with
4 the Jury. So the first line that is highlighted, what is
11:12AM 5 the date of that?

6 A. May 15th, 2019.

7 Q. And what does it read?

8 A. "Started download thread at local time, Wednesday,
9 May 15th, 2019, at 6:00 p.m."

11:13AM 10 Q. So, again, what does that mean?

11 A. That's when the computers started making contact with
12 one another.

13 Q. The second line that is highlighted, "Torrent info
14 hash." What is that?

11:13AM 15 A. That, again, is just the way to follow the file with
16 the thumbprint.

17 Q. That's the hash value of that file?

18 A. Yes, ma'am.

19 Q. The third line that is highlighted that starts with
11:13AM 20 an "I" with a little symbol above it and it ends with
21 "Torrent 3.5.5." What does that mean?

22 A. That is the version of BitTorrent that the peer that
23 I'm connected to is using.

24 Q. There might be different versions, but that's the
11:13AM 25 version that that user has?

11:13AM 1 A. Yes, ma'am.

2 Q. The next line that's highlighted, what is that?

3 A. That, again, is the IP that my law enforcement
4 computer is connected to.

11:14AM 5 Q. And what is that IP address?

6 A. 167.224.196.113.

7 Q. Is that the same IP address from your log from May
8 the 14th, 2019?

9 A. Yes, ma'am.

11:14AM 10 Q. The next line that's highlighted, "marissa.zip."
11 What is that?

12 A. That is the file that I'm attempting to download.

13 Q. Is that the name of the file?

14 A. Yes, ma'am.

11:14AM 15 Q. And that's the file associated with the hash value
16 that's highlighted above, is that right?

17 A. Yes, ma'am.

18 Q. Two lines down, now, that part is not highlighted.

19 But two lines down where it says, "Completed session with
11:14AM 20 remote client; 13 pieces were downloaded and written."

21 What does that mean?

22 A. That my computer was able to download and complete
23 those 13 pieces.

24 Q. Pieces. What does "pieces" mean with this program?

11:14AM 25 A. Each image and video are made up of different amount

11:15AM 1 of pieces that you are able to view those, so I was able
2 to make a partial download of 13 pieces.

3 Q. Does "pieces" necessarily correlate with pictures, or
4 could there be a different number of pieces for a
11:15AM 5 different number of pictures?

6 A. Yes, different number. Just because there was 13
7 downloaded doesn't mean that that only meant 13 images.
8 It was just 13 pieces that make up images within that
9 file.

11:15AM 10 Q. Then the last line that's highlighted, what is the
11 date on that line?

12 A. May 16th, 2019.

13 Q. And what does that line read?

14 A. "The download was incomplete."

11:15AM 15 Q. What does that mean?

16 A. That it wasn't able to get the rest of the pieces to
17 make up the entire file.

18 Q. Does that mean that you weren't able to view anything
19 from that connection?

11:15AM 20 A. No, I was still -- I had a partial download. I was
21 still able to view what was downloaded.

22 Q. Now, just to be clear, the law enforcement computer
23 that you have and then the user that you connect to, is it
24 a one-on-one connection?

11:16AM 25 A. Yes. It's known as a single source download where my

11:16AM 1 computer will connect and it's only going to download
2 files from that specific computer rather than a network of
3 different people.

4 Q. So what you get from that download is from one
11:16AM 5 specific user?

6 A. Yes, ma'am.

7 Q. Not from multiple users, just from one user only?

8 A. That is correct.

9 Q. So after your computer makes these connections,
11:16AM 10 during your investigative process, what is the next thing
11 that you do?

12 A. I observe the log that says I connected with an IP.
13 I then view the content to make sure it does contain child
14 pornography. In this case, I noticed that it geolocated
11:17AM 15 back to Springdale, Arkansas, so I made contact with
16 Special Agent Gerald Faulkner, who I know, who does ICAC
17 investigations as well.

18 Q. Let's break that down a little bit. You said after
19 you do the downloads, then you view the content to verify
11:17AM 20 that it's child pornography?

21 A. Yes, ma'am.

22 Q. Does that happen all at once? Do you get the
23 downloads and then immediately view the child pornography?

24 A. No, ma'am.

11:17AM 25 Q. Explain to the Jury a little bit about that.

11:17AM 1 A. I have my peer-to-peer running on my law enforcement
2 machine. While it's running, I'm also doing my other
3 cases, investigations that I have going on. And then I
4 will go back to my computer, look at downloads, and then
11:17AM 5 go from there.

6 Q. So when you go back to look at your downloads, is
7 that when you view to verify that your download from a
8 user is child pornography?

9 A. Yes, ma'am.

11:18AM 10 Q. I'm going to turn your attention to Government's
11 Exhibit 3. What is Government's Exhibit 3?

12 A. It is the file of the 0216.mp4.

13 Q. Does it also contain images from the marissa.zip
14 file?

11:18AM 15 A. Yes, ma'am.

16 Q. So when you were able to make that connection with
17 that IP address, can you tell the Jury that on the
18 May 14th, 2019, what was that that you were able to
19 download?

11:18AM 20 A. A video file.

21 Q. A movie?

22 A. Yes.

23 Q. On May 15th, 2019, what was it that you were able to
24 download?

11:18AM 25 A. Approximately 65 images on the marissa.zip file.

11:19AM 1 Q. So on May 14th, it's a video. But on May 15th, it's
2 images, is that correct?

3 A. Yes, ma'am.

4 Q. Did you go back and view that movie and the images to
11:19AM 5 verify that they were, in fact, child pornography?

6 A. Yes, ma'am.

7 Q. Pertained on Government's Exhibit 3, have you had a
8 chance to look at the content of the flash drive of
9 Government's Exhibit 3 prior to today's court date?

11:19AM 10 A. Yes, ma'am.

11 Q. The contents on Government's Exhibit 3, does it
12 contain the movie that you downloaded from that IP address
13 on May 14th, 2019, as well as the 65 images that you
14 downloaded from that IP address on May the 15th, 2019?

11:19AM 15 A. Yes, ma'am.

16 Q. Is it a true and accurate copy of that movie and
17 those images?

18 A. Yes.

19 Q. Now, to be clear, on the disk, are the images titled
11:20AM 20 "3-A" when you view them?

21 A. Yes.

22 Q. So just to differentiate between the movie and the
23 images.

24 MS. MARSHALL: Your Honor, I would move to
11:20AM 25 introduce into evidence Government's Exhibit 3 that

11:20AM 1 contains 3-A and 3.

2 MR. GELFAND: No objection, Judge.

3 THE COURT: Government's Exhibit 3 as described
4 is received.

11:20AM 5 (Government's Exhibit 3 Received)

6 MS. MARSHALL: Your Honor, I would like
7 permission to publish first the movie to the Jury.

8 THE COURT: So just to keep the record straight,
9 is this file 3 or 3-A?

11:20AM 10 MS. MARSHALL: I apologize. It's 3-A. No, it's
11 3, Your Honor.

12 THE COURT: All right. You may. The Court has
13 instructed that the gallery monitors be turned off.

14 MS. MARSHALL: Your Honor, for record purposes,
11:21AM 15 the government is playing the first four seconds of the
16 movie. Then we will pause the video and move to the
17 1 minute, 20 second mark, play approximately one to two
18 seconds of that.

19 THE COURT: That's fine.

11:21AM 20 Q. (BY MS. MARSHALL.) Before we publish this to the
21 Jury, can you describe to the Jury what this video shows?

22 A. Yes. The video is two prepubescent females, both
23 nude, zoomed in on their vaginal areas being penetrated by
24 an adult male's erect penis.

11:21AM 25 MS. MARSHALL: Permission to publish, Your Honor.

11:21AM 1 THE COURT: You may.

2 MS. MARSHALL: It's coming up here.

3 MS. CRAIG: He instructed me to turn just those
4 off.

11:21AM 5 THE COURT: The gallery.

6 MS. MARSHALL: Okay. But I can see it on this.

7 THE COURT: Just turn it off, then. You can turn
8 your monitor off.

9 MS. MARSHALL: Just turn it off. Okay.

11:22AM 10 (Excerpt of Government's Exhibit 3 Published)

11 Q. (BY MS. MARSHALL.) Will you please move to the
12 1 minute, 20 second mark. Move to Government's 3-A. Can
13 you please explain to the Jury the images that are
14 depicted in Government's 3-A?

11:22AM 15 A. Yes. The video that we just -- that I just viewed?

16 Q. The images.

17 A. The images. The images are of a prepubescent female,
18 nude, and doing different poses with the focus being on
19 the vaginal area.

11:22AM 20 Q. And approximately how many images are depicted?

21 A. 65.

22 MS. MARSHALL: Your Honor, permission to publish
23 Government's 3-A.

24 THE COURT: You may.

11:23AM 25 (Government's Exhibit 3-A Published)

11:23AM 1 Q. (BY MS. MARSHALL.) You stated that after you viewed
2 the contents verifying that it is child pornography, that
3 you looked to see where the IP address geolocates, is that
4 right?

11:23AM 5 A. Yes, ma'am.

6 Q. And you said that in this instance, that it
7 geolocated where?

8 A. To Springdale, Arkansas.

9 Q. So what did you do because of that?

11:23AM 10 A. I contacted Special Agent Gerald Faulkner with HSI.

11 Q. So you're a detective in Little Rock, but your
12 computer is still able to download from someone in the
13 Northwest Arkansas area?

14 A. Yes, ma'am.

11:23AM 15 Q. How come?

16 A. You have the -- you can pick different states, and I
17 did the whole State of Arkansas to get downloads for our
18 entire state.

19 Q. So you said that you contacted Gerald Faulkner. What
11:24AM 20 happened next?

21 A. I contacted him, advised that I had downloads for an
22 IP in his area and asked if he wanted to take the case if
23 I sent them. And he stated he would.

24 Q. Do you remember approximately what date that was?

11:24AM 25 A. The date that I sent the content to Special Agent

11:24AM 1 Gerald Faulkner was on June 17th. So I made contact with
2 him prior to that, approximately June 14th.

3 Q. So would you have verified that it was child
4 pornography and then notified Special Agent Faulkner
11:24AM 5 approximately in the same time frame?

6 A. No. Usually view it first, contact, and then a
7 couple of days to get him the information.

8 Q. And so you said that you notified him. What do you
9 do with those files then that we saw?

11:25AM 10 A. The files that I download as well as the logs, I will
11 send those through our ICAC data system. And then I will
12 notify our ICAC commander to send those files to who I
13 want them to go to. In this case, it was Special Agent
14 Faulkner.

11:25AM 15 MS. MARSHALL: May I have one moment, Your Honor?

16 THE COURT: You may.

17 MS. MARSHALL: I'll pass the witness, Your Honor.

18 THE COURT: Thank you. Mr. Gelfand, you may
19 inquire. Is it okay to turn the monitors back on?

11:25AM 20 MR. GELFAND: Yes, Your Honor.

21 CROSS EXAMINATION

22 BY MR. GELFAND:

23 Q. Good morning, Detective Kalmer.

24 A. Good morning.

11:25AM 25 Q. Detective, you are and were at the time employed as a

11:25AM 1 detective with the Little Rock Police Department, is that
2 correct?

3 A. I was, yes.

4 Q. And you still are, correct?

11:26AM 5 A. That is correct.

6 Q. In fact, you've been employed as a law enforcement
7 officer with that department since all the way back to
8 2009, is that correct?

9 A. Yes, sir.

11:26AM 10 Q. One of your primary responsibilities in 2019 was to
11 investigate possible computer crimes, is that correct?

12 A. Yes, internet crimes against children.

13 Q. Now, as a law enforcement officer, would you agree
14 with me that it's important to be thorough?

11:26AM 15 A. Yes, sir.

16 Q. It's important to be fair?

17 A. Yes, sir.

18 Q. It's important to keep an open mind, correct?

19 A. That is correct.

11:26AM 20 Q. It's important to follow all leads, correct?

21 A. If able to, yes, sir.

22 Q. It's important to at least try to follow all leads,
23 correct?

24 A. Yes, sir.

11:26AM 25 Q. It's important to accurately document your work as a

11:26AM 1 police officer or as a detective, correct?

2 A. Yes, sir.

3 Q. And it's important to act quickly, within reason at
4 least, because in these kinds of cases, evidence can

11:26AM 5 disappear, correct?

6 A. Possibly.

7 Q. In other words, would you agree that -- I don't mean
8 within minutes, but that it's important to act as quickly
9 as possible?

11:27AM 10 A. Yes, sir.

11 Q. Now, in criminal cases like this, details matter,
12 correct?

13 A. Yes, sir.

14 Q. I want to just get our bearings for a second. You
11:27AM 15 testified just in talking about what you generally do
16 about something called cyber tips, correct?

17 A. Yes, sir.

18 Q. That's not what we're talking about in this case,
19 correct?

11:27AM 20 A. That is correct.

21 Q. So cyber tips are a totally different way that cases
22 like this can originate within law enforcement, correct?

23 A. Yes, sir.

24 Q. And that's where Google, for example, or whatever it
11:27AM 25 may be, Bing, for example, may give some sort of a tip to

11:27AM 1 law enforcement saying you may want to investigate
2 something, correct?

3 A. Yes, sir.

4 Q. To be clear, that didn't happen here, correct?

11:27AM 5 A. There was no cyber tip, no, sir.

6 Q. This case fell into the paradigm that you testified
7 about involving peer-to-peer investigations, is that
8 correct?

9 A. Yes, sir.

11:28AM 10 Q. And just so we're kind of speaking the same language,
11 peer-to-peer investigations are cases that involve the
12 BitTorrent network, correct?

13 A. BitTorrent, eMule, and Freenet are the ones that I
14 use.

11:28AM 15 Q. To be clear, these are file-sharing platforms,
16 correct?

17 A. Yes, sir.

18 Q. To be clear, as file-sharing platforms, the
19 BitTorrent network is not limited to sharing illegal
11:28AM 20 images, correct?

21 A. That is correct.

22 Q. In other words, there's a ton of legal stuff that
23 happens on the BitTorrent network, correct?

24 A. Yes, sir.

11:28AM 25 Q. Music sharing, commercial movie sharing, those kind

11:28AM 1 of things, correct?

2 A. Yes, sir.

3 Q. Now, I want to go back to May of 2019. You testified
4 that you were using a program called Torrential Downpour,

11:28AM 5 is that correct?

6 A. Yes, sir.

7 Q. And Torrential Downpour is a law enforcement only
8 program, is that correct?

9 A. The version that I use, yes, sir.

11:29AM 10 Q. Torrential Downpour, in general, is a law enforcement
11 only program, correct?

12 A. I do not know the answer to that one.

13 Q. Torrential Downpour creates auto-generated logs,
14 correct?

11:29AM 15 A. Yes, logs of connection.

16 Q. And you testified about two of those auto-generated
17 logs, Government's Exhibits 1 and 2, correct?

18 A. Yes, sir.

19 Q. So just to show you, for example, Government's
11:29AM 20 Exhibit 2.

21 MR. GELFAND: If I may publish this, Your Honor.

22 THE COURT: You may.

23 Q. (BY MR. GELFAND.) Can you see Government's Exhibit 2
24 in front of you, Detective?

11:30AM 25 A. Yes, sir.

11:30AM 1 Q. This is one of those auto-generated logs reflecting
2 that you were using Torrential Downpour version 1.44, is
3 that correct?

4 A. Yes, sir.

11:30AM 5 Q. You testified a few minutes ago, when the prosecutor
6 was asking you questions, that this log identified the
7 version of BitTorrent that was being used on the other
8 end, is that correct?

9 A. That is correct.

11:30AM 10 Q. What is the version of BitTorrent that this log
11 reflects was being used on the other end?

12 A. The 3.55. 3.5.5.

13 Q. And that's what we see here at the 18:45:12 time
14 stamp, correct?

11:30AM 15 A. That is correct.

16 Q. 6:45, that's 1845, correct?

17 A. Yes, sir.

18 Q. And is that local time?

19 A. Yes, sir.

11:30AM 20 Q. Now, this particular log reflects that you began at
21 6:00 p.m. on May 15th of 2015, is that correct?

22 A. That is correct.

23 Q. Now, were you physically at your computer using
24 Torrential Downpour at this time, or does this basically

11:31AM 25 run in the background?

11:31AM 1 A. Its best practice is to have it running on your law
2 enforcement 24/7.

3 Q. So I appreciate that it's best practices. What were
4 you doing here?

11:31AM 5 A. Best practices.

6 Q. So you were -- to be clear, this is running 24/7,
7 correct?

8 A. Yes. It's on my desk where it's password protected.
9 And once I leave for the day, it's locked, but it can
11:31AM 10 still run the program in the background.

11 Q. When did you start running Torrential Downpour in a
12 way that it would have picked up any known hash values, as
13 you testified, from this IP address?

14 A. When did I start running the program? Can you
11:31AM 15 restate your question?

16 Q. Sure. My understanding, if I understand your
17 testimony correctly, is that it's running 24/7 essentially
18 every day, correct?

19 A. Yes, sir.

11:32AM 20 Q. So to be clear, it was running on May 11th, correct?

21 A. I would have to go back and look at the logs to know
22 when it was running.

23 Q. Did you do that prior to testifying today?

24 A. No, sir.

11:32AM 25 Q. Was it running May 13th?

11:32AM 1 A. I would have to go back and look to see when the
2 computer was running.

3 Q. Was it running at any time between May 15th of 2019
4 and November 8th of 2019?

11:32AM 5 A. Most likely, yes.

6 Q. Definitely, correct?

7 A. Yes.

8 Q. And it was likely running throughout the vast
9 majority of that time period, correct?

11:32AM 10 A. Yes, sir.

11 Q. And the truth is, during the entire time period
12 between May 15th, 2019, and November 8th of 2019,
13 Torrential Downpour did not identify a single known hash
14 value from this same IP address beginning with 167,
11:33AM 15 correct?

16 A. It made connection due to a known hash value.

17 Q. In other words, there were no other connections
18 between the last date reflected here and the day of the
19 search warrant, November 8th of 2019, correct?

11:33AM 20 A. I believe so.

21 Q. Because there was no other alleged child pornography
22 from that IP address during that time period, correct?

23 A. I would have to see if the computer was up and
24 running to know if there was any other attempted
11:33AM 25 connections.

11:33AM 1 Q. But as a practical matter, meaning your computer was
2 up and running, correct?

3 A. Again, I would have to go look at my computer to see
4 if it was.

11:33AM 5 Q. But you testified that it was best practice to keep
6 it running 24/7, and you do best practice, correct?

7 A. During that time, yes. I haven't had it up and
8 running in the last probably six months.

9 Q. Now, in fact, Detective, the logs that are generated
11:34AM 10 are actually more extensive than the logs that have been
11 introduced into evidence as Government's Exhibits 1 and 2,
12 is that correct?

13 A. There's other logs that come with it, yes, sir.

14 Q. I'd like to direct your attention. There's a defense
11:34AM 15 exhibit binder that's next to you or in front of you.
16 Do you see that? Not the government one.

17 A. Do what?

18 Q. Do you have the defense exhibit binder in front of
19 you?

11:34AM 20 A. I believe so, yes.

21 Q. Could you turn to Defense Exhibits 8 and 9 and just
22 take a quick look at that to yourself, please.

23 Have you had a chance to look at Defendant's
24 Exhibit 8 and Defendant's Exhibit 9?

11:35AM 25 A. Yes, sir.

11:35AM 1 Q. Are these the remainder of the logs that are
2 associated with the two downloads on May 14th and May 15th
3 that you testified to?

4 A. No, sir.

11:35AM 5 Q. Your testimony under oath is that Defendant's
6 Exhibit 8 and Defendant's Exhibit 9 are not the logs
7 associated with the downloads on May 14th and May 15th?

8 A. The first pages are not until it gets to the actual
9 logging of the connection.

11:35AM 10 MR. GELFAND: Your Honor, may we approach
11 briefly?

12 THE COURT: Yes.

13 (Bench Conference)

14 MR. GELFAND: Your Honor, we made a discovery
11:36AM 15 request for the logs in totality associated with these two
16 downloads. These are the logs, Defendant's Exhibit 8 and
17 9, that were provided to us by the government.

18 MS. MARSHALL: Her testimony is that is not the
19 log.

11:36AM 20 MR. GELFAND: Then why were these provided to us
21 when we asked for the logs?

22 MS. MARSHALL: I'm not the one testifying.

23 MS. CRAIG: Judge, she can't hear Carly.

24 THE COURT: You need to speak up.

11:36AM 25 MS. MARSHALL: I said, I'm not the one

11:36AM 1 testifying.

2 MR. GELFAND: Well, I'm asking government counsel
3 what these are, if they are not the logs, because they
4 were represented to us to be the logs, which is what we
11:37AM 5 have provided to our expert, what we have been relying on.
6 We don't have independent access to logs.

7 THE COURT: Well, this is what has been provided
8 to you in discovery. I don't know if you can -- what she
9 may know about that. I would suggest you ask her if she
11:37AM 10 recognizes what the first -- get her to identify where
11 what she is defining as the logs begin, ask her whether
12 she knows what the preliminary pages are and go from
13 there. I mean, if there's a discovery issue to take up,
14 we can take that up, but we can't take it up with this
11:37AM 15 witness.

16 MR. GELFAND: I guess to cut to the chase, will
17 the government stipulate to the admissibility of
18 Defendant's Exhibits 8 and 9, which is my real goal in
19 doing this, because these were provided by them. We asked
11:37AM 20 for the logs.

21 THE COURT: You can ask them.

22 MS. MARSHALL: No.

23 MR. GELFAND: You guys e-mailed this to us in
24 response for discovery requests.

11:38AM 25 THE COURT: Authenticating what the exhibit is in

11:38AM 1 the courtroom is different than whether there is a
2 discovery issue. So you need to make whatever progress
3 you can make with this witness and we can take up
4 discovery issues later. But perhaps you will get some
11:38AM 5 idea of what the issue is by differentiating between the
6 first few pages and the page that she says is where the
7 actual download or whatever she said begins.

8 MR. GELFAND: Okay.

9 (Bench Conference Concluded)

11:39AM 10 Q. (BY MR. GELFAND.) Detective, let's take this one
11 step at a time. Defendant's Exhibit 8, do you recognize
12 the first page of that?

13 A. No, sir.

14 Q. You don't recognize the page that is the first page
11:39AM 15 of Defendant's Exhibit 8?

16 A. That is correct.

17 Q. By page number, can you tell me the first page that
18 you recognize as the logs?

19 A. Nine.

11:39AM 20 Q. Is that the page beginning with, "Torrential Downpour
21 Version 1.44?"

22 A. That is correct.

23 MR. GELFAND: Your Honor, at this point, I would
24 move Defendant's Exhibit 8 into evidence. And I will for
11:39AM 25 current purposes remove the first eight pages.

11:40AM 1 THE COURT: Any objection to the receipt of
2 Defendant's Exhibit 8 as described?

3 MS. MARSHALL: Your Honor, can we verify, it
4 starts at eight through what page? Is it the rest of the
11:40AM 5 document that the witness recognizes, or only a portion of
6 it?

7 THE COURT: Will the witness explain whether all
8 the inclusive pages through the end of the exhibit are
9 part of the log that she has referenced.

11:40AM 10 THE WITNESS: Page 9 is not.

11 THE COURT: All right. We're going to begin
12 with -- just be sure everyone is on the same page. You
13 have said that the page at the top that begins with
14 "Torrential Downpour Version 1.44," that is part of the
11:40AM 15 log that you recognize, is that right?

16 THE WITNESS: Yes, sir.

17 THE COURT: Now, paging through, can you point
18 out other pages that you do not recognize or associate as
19 being part of your log?

11:41AM 20 THE WITNESS: Just the following page, on page 9.

21 THE COURT: So the page right after the first
22 page should be removed as we're defining things for this
23 exhibit, is that right?

24 THE WITNESS: Yes, sir.

11:41AM 25 THE COURT: So I'm going to do that. What about

11:41AM 1 the remaining pages through the end of the exhibit?

2 THE WITNESS: The remaining are good.

3 THE COURT: Ms. Marshall, removing page 9 as the
4 witness has just described, what is your position on
11:41AM 5 receiving the balance of the pages as Defendant's
6 Exhibit 8?

7 MS. MARSHALL: The government has no objection,
8 Your Honor.

9 THE COURT: All right. The Court will receive
11:42AM 10 Defendant's Exhibit 8 as described.

11 (Defendant's Exhibit 8 Received)

12 THE COURT: Counsel are directed to confer at the
13 next recess to make certain that the Court's copy is the
14 same as you understand Exhibit 8 to be, and then the Court
11:42AM 15 will assist counsel in -- well, you should paginate each
16 page and put counsel initials on it or something to verify
17 for the record so there's no question later, but we can
18 take care of that at the break. You may proceed.

19 MR. GELFAND: Thank you, Your Honor.

11:42AM 20 Q. (BY MR. GELFAND.) If I direct your attention to
21 Defendant's Exhibit 9, is it fair to say, Detective, that
22 if we remove that first page, that the remainder are true
23 and authentic Torrential Downpour logs in connection with
24 your download on May 15th of 2019?

11:43AM 25 A. Yes, sir.

11:43AM 1 MR. GELFAND: Your Honor, at this point, I move
2 Defendant's Exhibit 9 with the exception of the previously
3 marked first page into evidence.

4 MS. MARSHALL: No objection, Your Honor.

11:43AM 5 THE COURT: Defense Exhibit 9, as described, will
6 be received. Counsel are directed at the next recess to
7 follow the same procedure.

8 (Defendant's Exhibit 9 Received)

9 MR. GELFAND: Thank you. May I publish both
11:43AM 10 exhibits, Your Honor?

11 THE COURT: You may.

12 Q. (BY MR. GELFAND.) The government exhibit that you
13 showed us, let's just start with Government Exhibit 1.
14 This is a single page log, correct?

11:44AM 15 A. Yes, sir.

16 Q. Now, if we look at -- just to be clear, this is a
17 single page log that correlates with May 14th, 2019,
18 correct?

19 A. Yes. That's a summary log.

11:44AM 20 Q. Now, if we look at Defendant's Exhibit 8, this
21 provides substantially more detail, correct?

22 A. Yes. It's called a detailed log.

23 Q. Substantially more information, correct?

24 A. Same information, just goes through more steps.

11:44AM 25 Q. In particular, it time stamps and date stamps what

11:44AM 1 happens and when, even to the second, correct?

2 A. Yes, sir.

3 Q. And similarly, Defendant's Exhibit 9 correlates with
4 Government Exhibit 2 related to May 15th, correct?

11:44AM 5 A. Yes, sir.

6 Q. And again, Defendant's Exhibit 9 provides
7 significantly more detail as to what was going on and
8 when, correct?

9 A. Yes. One is a summary log and the other one is a
11:45AM 10 detail log.

11 Q. This detailed log for May 14th and the detailed log
12 for May 15th, these are auto-generated by the system,
13 correct?

14 A. Yes, sir.

11:45AM 15 Q. In other words, you don't personally input anything
16 or not input anything, correct?

17 A. I do not.

18 Q. So on May 14th, showing you Defendant's Exhibit 8,
19 you made a direct connection to the IP address that you
11:45AM 20 previously identified, correct?

21 A. Yes, sir.

22 Q. And that began at 1741? In other words, 5:41 p.m.,
23 correct?

24 A. Yes, sir.

11:45AM 25 Q. Now, at that time, you testified that you downloaded

11:45AM 1 a video file entitled mov_0216.mp4, is that correct?

2 A. Yes, sir.

3 Q. Now, at that time that you downloaded that video, are
4 you personally behind the computer, or is this just

11:46AM 5 happening in the background?

6 A. It's happening in the background. It's automated
7 through the program.

8 Q. When is the first time that you know that the program
9 downloaded this video from this IP address?

11:46AM 10 A. When I go look at my undercover computer.

11 Q. When was that?

12 A. I can't tell you a date on that.

13 Q. Did you document it anywhere?

14 A. When I noticed it and I observed it is when I
11:46AM 15 contacted Special Agent Gerald Faulkner.

16 Q. You testified just a few minutes ago that that was
17 actually in June as opposed to in May, correct?

18 A. That is correct.

19 Q. So basically, if I understand your testimony
11:46AM 20 correctly, this all sat undetected with no one looking at

21 this computer for a month?

22 A. Yes, sir.

23 Q. At the time that you identified it in June of 2019,
24 you could not identify a specific location where the

11:47AM 25 device that participated in this encrypted handshake

11:47AM 1 occurred, is that correct?

2 A. A specific location, no, sir.

3 Q. In other words, all you have at that point is an IP
4 address, correct?

11:47AM 5 A. Yes, sir.

6 Q. So you can't identify from your station, so to speak,
7 from your vantage point, you can't identify where the
8 device connecting is, correct?

9 A. That is correct.

11:47AM 10 Q. And you actually can't identify even what kind of
11 device or what device it is, correct?

12 A. Not on the program, no, sir.

13 Q. In fact, you can't identify whether there's actually
14 a human on the other side of this device, so to speak,
11:47AM 15 correct?

16 A. Correct.

17 Q. Now, in fact, you've had tremendous experience with
18 BitTorrent peer-to-peer investigations, correct?

19 A. Yes, sir.

11:47AM 20 Q. Oftentimes, BitTorrent, just like on your side,
21 BitTorrent applications are running, quote, unquote, "in
22 the background," correct?

23 A. If the user allows it, yes, sir.

24 Q. And as a practical matter, what that means is that if
11:48AM 25 you're downloading something from another device using

11:48AM 1 Torrential Downpour, as you did on May 14th and May 15th,
2 you don't know one way or the other whether there's
3 actually a human being on the other end, correct?

4 A. Correct.

11:48AM 5 Q. In fact, it wouldn't be uncommon that there wouldn't
6 be a human being on the other end, correct?

7 A. I can't say for that.

8 Q. I'm sorry. I couldn't hear you.

9 A. I said, I can't say for that one way or the other.

11:48AM 10 Q. There are scenarios where there's no one on the other
11 end, correct?

12 MS. MARSHALL: Objection, Your Honor. Calls for
13 speculation.

14 MR. GELFAND: I'll withdraw the question, Your
11:48AM 15 Honor.

16 THE COURT: Very well. Sustained.

17 Q. (BY MS. GELFAND.) Now, as a practical matter,
18 May 15th of 2019 -- showing you Defendant's Exhibit 9 --
19 there's also a direct connection with that same IP
11:48AM 20 address, correct?

21 A. Correct.

22 Q. Similar to what I just asked you with respect to
23 May 14th, at this time, all you know is you have connected
24 to a device using an IP address. You have no clue where
11:49AM 25 the IP address is or what device that is, correct?

11:49AM 1 A. Correct.

2 Q. And you have no clue whether there's a human being
3 actually sitting --

4 MR. GELFAND: I didn't even ask the question yet,
11:49AM 5 Your Honor.

6 THE COURT: You may ask the question and then we
7 will pause to see if there's an objection.

8 MR. GELFAND: Thank you.

9 Q. (BY MR. GELFAND.) On May 15th, when your computer
11:49AM 10 participated in a handshake, is there anything on this log
11 that would tell you whether there was a human being
12 sitting behind the other device?

13 A. No, sir.

14 Q. Now, let's talk times for a second. What time of day
11:49AM 15 does Torrential Downpour, your law enforcement, start to
16 interact with this computer or this device, I should say,
17 on May 15th of 2019?

18 A. 6:00 p.m.

19 Q. Were you physically present when this happened, or
11:50AM 20 was this again running in the background?

21 A. I can't answer that one.

22 Q. You just don't know?

23 A. I do not know, no, sir.

24 Q. Between 6:00 p.m. and 6:39 p.m., is it fair to say
11:50AM 25 that Torrential Downpour, meaning your law enforcement

11:50AM 1 device, attempted repeatedly to connect to this device on
2 the other end, but failed?

3 A. Yes, sir.

4 Q. In other words, all of those attempts over the course
11:50AM 5 of approximately 40 minutes -- 39 minutes, to be
6 precise -- were unsuccessful, correct?

7 A. Correct.

8 Q. At 6:45 p.m., there's a successful connection,
9 correct?

11:50AM 10 A. Yes, sir.

11 Q. And you testified that at that time, 13 of 66 pieces
12 were downloaded, correct?

13 A. Correct.

14 Q. At 6:45, Torrential Downpour sent 168 requests for
11:51AM 15 data. What does that mean?

16 A. Requesting the files and the pieces to download.

17 Q. 168 times?

18 A. Yes, sir.

19 Q. In fact -- and you can look through this, but I think
11:51AM 20 you have before -- for the next 17 hours, your law
21 enforcement device attempted to connect to this IP
22 address 160 additional times, isn't that correct?

23 A. I wouldn't be able to -- I haven't went through the
24 log to count them, sir.

11:51AM 25 Q. You were never able to download the remainder of the

11:52AM 1 file, correct?

2 A. Only the 13 pieces.

3 Q. How do you explain that?

4 A. My computer downloaded the 13 pieces that were

11:52AM 5 available by the IP.

6 Q. Does that mean that the remainder, in other words, if
7 there's -- how many pieces were there total? 66?

8 A. Yes, sir.

9 Q. So does that mean that the remaining 53 pieces were
10 not available?

11:52AM 10
11 A. I wasn't able to download them.

12 Q. Now, when did you first view these files?

13 A. The log files or --

14 Q. No, the images themselves that you downloaded.

11:52AM 15 A. I would have viewed those the day that I contacted
16 Special Agent Gerald Faulkner.

17 Q. And what day was that?

18 A. It would be -- I forwarded it to him on the ICAC data
19 system on June 17th. And I would have made contact with

11:53AM 20 him prior, two to three days before that.

21 Q. So somewhere in the vicinity of June 14th or
22 June 15th of 2019 is the first time that you viewed those
23 images or those videos, correct?

24 A. I can't say with certainty, but around that time.

11:53AM 25 Q. Do you document, as a law enforcement officer, when

11:53AM 1 you perform investigative steps in connection with a case?

2 A. No. I called Special Agent Faulkner over the phone
3 to see if it was an investigation that he would want.

4 Q. Did you document a single thing that you did in a
11:53AM 5 police report?

6 A. I did not do anything on my end, sir.

7 Q. Now, you testified that what you knew is that the IP
8 address geolocated to Northwest Arkansas, correct?

9 A. Correct.

11:53AM 10 Q. So that's why you contacted Special Agent Faulkner
11 with Homeland Security Investigations, correct?

12 A. Yes, sir.

13 Q. And to be clear, you told Detective -- I'm sorry --
14 Agent Faulkner that you used Torrential Downpour and
11:54AM 15 downloaded two files, correct?

16 A. I don't know what our conversation was. It was, I
17 got downloads for an IP in his location, if he wanted it
18 to investigate.

19 Q. Is Torrential Downpour the only software that you
11:54AM 20 used?

21 A. In this investigation?

22 Q. Yes.

23 A. Yes, sir. BitTorrent.

24 Q. And when you say BitTorrent, BitTorrent is a network,
11:54AM 25 correct?

11:54AM 1 A. BitTorrent is the software. You have to use uTorrent
2 and stuff to view the torrents that you download.

3 Q. So let's talk about that for a second. From any of
4 the logs or anything else you did in your part of this,
11:54AM 5 quote, unquote, "investigation" that you conducted, were
6 you able to identify what software application was being
7 used on the other end on May 14th and May 15th to access
8 the BitTorrent network?

9 A. No, sir. Just his version of BitTorrent.

11:54AM 10 Q. So in other words, you don't know whether it was
11 uTorrent or Transmission or qBittorrent or anything along
12 those lines, correct?

13 A. No, sir. That's correct.

14 Q. You're familiar, though, based on your training and
11:54AM 15 experience that those are all ways, among others, to
16 access the BitTorrent network, correct?

17 A. Yes, sir.

18 Q. Now, you have a lot of experience independently
19 investigating these kinds of cases, correct?

11:55AM 20 A. I have experience, yes, sir.

21 Q. How do you connect an IP address to a physical
22 location?

23 A. By sending legal process for the IP for the date and
24 time.

11:55AM 25 Q. In other words, you know who the ISP, the internet

11:55AM 1 service provider, is from your end, correct?

2 A. Yes.

3 Q. You can access that, anyone can access that
4 essentially by Googling it, correct?

11:55AM 5 A. Yes, sir.

6 Q. So that takes two seconds to find out, correct?

7 A. Yes, sir.

8 Q. And then all that needs to happen to figure out the
9 physical location of where an IP address is associated is
10 to ask for it from the ISP, the internet service provider,
11 correct?

12 A. Correct.

13 Q. Whether that's AT&T or OzarksGo, that's all that has
14 to happen, correct?

11:55AM 15 A. Yes, sir.

16 Q. Now, sitting here today, Detective Kalmer, is it fair
17 to say that you don't have any firsthand knowledge of what
18 device or devices you connected with?

19 A. Correct.

11:56AM 20 Q. You do not know who, if anyone, was using any device
21 that you connected with, correct?

22 A. They had to use a device to be able to get the
23 content, but I don't know what that device was.

24 Q. But you don't know the "who" either, correct?

11:56AM 25 A. The "who?" No, sir.

11:56AM 1 Q. You don't know, as you just testified, what software
2 that person was using, is that correct?

3 A. Just the version of BitTorrent.

4 Q. Is it fair to say, based on your training and your
11:56AM 5 experience, that these cases require intense computer
6 forensic evaluations?

7 A. Yes, sir.

8 Q. Is it important in investigating these cases to
9 follow all of the evidence and see where it leads?

11:56AM 10 A. Just like any investigation, yes, sir.

11 Q. And just to be clear, you didn't personally
12 participate in the subsequent investigation of this case,
13 correct?

14 A. That is correct.

11:57AM 15 Q. So you don't know personally what happened with
16 respect to the rest of the investigation, correct?

17 A. Correct.

18 MR. GELFAND: Your Honor, may I have one minute,
19 please?

11:57AM 20 THE COURT: Certainly.

21 MR. GELFAND: Thank you. I have no more
22 questions, Detective.

23 THE COURT: Any redirect, Ms. Marshall?

24 MS. MARSHALL: Just briefly, Your Honor. May I
11:57AM 25 have a moment?

REDIRECT EXAMINATION

BY MS. MARSHALL:

Q. Detective Kalmer, the defense asked you about BitTorrent and stated that it's not limited to sharing illegal images, is that correct?

A. That is correct.

Q. Now, your law enforcement program that you have, you talked about it's looking for known images, is that right?

A. That is correct.

Q. So is the law enforcement program specifically looking for child pornography?

A. Yes, ma'am.

Q. It's not out looking for documents or anything like that?

A. No. It only looks for hash values of known images that contain child pornography.

Q. And it's not looking into someone's computer, it's looking to see what someone is sharing from their computer, is that correct?

A. That is correct.

Q. They also asked you about May 15th, 2019, talking about between 6:00 p.m. and 6:39 p.m. that it attempted to connect to the device, but failed. In your training and experience, why would something attempt to connect, but fail?

11:59AM 1 A. Due to the computer being shut off or the program
2 being not used or utilized. Multiple different things
3 like that.

4 Q. Now, is it true that to download videos or images
11:59AM 5 from another user, those videos or images have to be on
6 that other user's device?

7 A. Yes. Usually the way BitTorrent or any of the
8 peer-to-peer works is when you make connection with that
9 computer, they give you access to a folder that has
12:00PM 10 images, videos, and files in it and they are giving
11 permission for others to download specifically what's in
12 that file.

13 Q. So you would expect to see those images or videos on
14 that other person's device if you then looked at it?

12:00PM 15 A. Yes, ma'am.

16 Q. Going back to the logs that we talked about,
17 Government's Exhibit 1 and Government's Exhibit 2, is it
18 true that you contacted, on both of those days, a device
19 that was running the same version of BitTorrent both days?

12:00PM 20 A. Yes, ma'am.

21 Q. It was from the same IP address?

22 A. Yes, ma'am.

23 Q. And on each day, you downloaded child pornography
24 from that specific device, from that IP address?

12:00PM 25 A. That is correct.

12:00PM 1 Q. The defense also asked you about internet service
2 providers and he said all you have to do is ask for it.
3 Is it that easy to get something from an internet service
4 provider is just ask for it?

12:01PM 5 A. Normally, I have to take legal process and have an
6 open investigation or a reasoning that you're requesting
7 that information.

8 Q. And what is that legal process normally?

9 A. A subpoena.

12:01PM 10 Q. So you have to send them something? You don't just
11 pick up the phone and call them?

12 A. That is correct.

13 Q. Were you the end-all, be-all of this investigation?

14 A. No, ma'am.

12:01PM 15 Q. Were you just one part of it?

16 A. Yes, ma'am.

17 Q. Do you have all the answers about what happened?

18 A. Absolutely not.

19 MS. MARSHALL: No further questions, Your Honor.

12:01PM 20 THE COURT: Does that prompt anything further,
21 Mr. Gelfand?

22 MR. GELFAND: No, Your Honor.

23 THE COURT: May this witness be excused?

24 MR. GELFAND: Your Honor, may we just briefly
12:01PM 25 approach on that issue?

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THE COURT: Yes.

(Bench Conference)

MR. GELFAND: Before excusing her, we need to understand if it's not this witness who can authenticate those additional logs that were provided in discovery, because our understanding all along based on discovery is that it was her.

MS. MARSHALL: Why she did not --

MR. GELFAND:

THE COURT: No. No, but you need to find out -- go back and look at your discovery production to find your source for the entirety of the document so that you can provide a chain of where it came from --

MS. MARSHALL: Yes, Your Honor.

THE COURT: -- so that that can perhaps explain why she does not recognize it and you need to provide that information to the defense.

MS. MARSHALL: Yes, Your Honor.

THE COURT: I would suggest that we leave this witness technically under subpoena and you need to counsel her that she can't discuss her testimony with anyone, but that we let her leave. And if she needs to be recalled, then the defense could provide reasonable notice that she needs to come back.

MR. GELFAND: Sure.

12:03PM 1 THE COURT: Are we in agreement on that?

2 MR. ROBERTS: She's in Northwest Arkansas for
3 this week, so no problem.

4 MR. GELFAND: Thank you.

12:03PM 5 (Bench Conference Concluded)

6 THE COURT: Ma'am, you may step down for the time
7 being and counsel will explain any further
8 responsibilities that you may have with regard to your
9 subpoena.

12:03PM 10 THE WITNESS: Okay.

11 THE COURT: We do appreciate your time.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Members of the Jury, we are going to
14 take our lunch recess at this time. Some of you may not
15 be familiar with the downtown area and the restaurants and
16 cafes and that sort of thing, so we're going to take an
17 hour and 15 minutes today. And if you could be in the
18 jury room and ready to come back out at 1:20, that's when
19 we will call for you. Everyone please stand as the Jury
20 exits.

21 (Jury out at 12:04 p.m.)

22 THE COURT: I would ask that everyone else remain
23 in the courtroom until our jurors have cleared the fifth
24 floor elevator lobby. And I will pause here on the record
12:04PM 25 with you and let you know when you are free to leave.

12:05PM 1 Counsel, I would suggest this protocol with
2 regard to Defense Exhibits 8 and 9. I would propose that
3 you take the Court's courtesy copy of the exhibits, that
4 you number each page, for example, 8-1, 8-2, 8-3. Similar
12:05PM 5 numbering scheme for Exhibit 9, with the second number
6 representing the page in sequence of each exhibit. After
7 you have done that, I would like for one attorney for each
8 side to initial right next to the page number. If you
9 will then give that exhibit back to Ms. Craig, she will
12:05PM 10 make copies so that everyone has a copy of the same
11 exhibit with the same pagination system.

12 Any questions about that?

13 MS. MARSHALL: No, Your Honor.

14 MR. GELFAND: No, Your Honor.

12:06PM 15 THE COURT: Best I can tell, the Jury has cleared
16 the lobby, so we're in recess. We'll start back up at
17 1:20.

18 (Lunch recess taken, 12:04 p.m. to 1:20 p.m.)

19 (In-Chambers Proceeding)

12:06PM 20 THE COURT: What's up?

21 MR. ROBERTS: Two issues. One, I think we
22 resolved the defense exhibit. That was produced, although
23 the copy was not Bates stamped. We verified that it is
24 generated out of the Torrential Downpour program, however,
1:31PM 25 it is not something that Amber Kalmer looks at, knows, is

1 familiar with. So we're willing to -- and I think the
2 defense is in agreement -- stipulate that those are
3 generated from the Torrential Downpour program. They're
4 actually called something different, data something,
1:31PM 5 written files or something.

6 THE COURT: Okay.

7 MR. GELFAND: I think the best way to do it, even
8 though this would be a little bit out of order is, we'll
9 try to reach this evening a written stipulation to fairly
1:32PM 10 characterize what they are and what the stipulation is.
11 And then perhaps, I don't know, at whatever appropriate
12 time, the Court can read that to the Jury.

13 MR. ROBERTS: If you want to just read that.
14 Move to introduce Defendant's Exhibit 8-B or something
1:32PM 15 like that, we're not going to object. I mean, I'm good
16 either way. Whatever the Court's preference.

17 MR. GELFAND: Sure. I understand. I prefer that
18 it not sit for three days, but we can figure that out.

19 THE COURT: Yeah, and I think -- I mean, the Jury
1:32PM 20 heard the attempt at a foundation and may have some
21 question marks, and so if there is a sentence or two
22 that's part of the stipulation that explains why it's now
23 being received, especially if it's going to be another
24 part of an exhibit number, they need to have that so they
1:32PM 25 can understand that. So just get some language agreed to,

1:33PM 1 short and sweet, but contextual.

2 MR. GELFAND: Sure. We'll do that this evening.

3 MR. ROBERTS: Second thing. The next witness,
4 we'll be introducing sections of the defendant's
1:33PM 5 statement. We're going into kind of a Rule of
6 Completeness argument. We're glad to put it on the
7 record. We just kind of wanted to give you the option. I
8 understand the defendant is intending to play possibly,
9 depending on the testimony, sections of the interview that
1:33PM 10 we are not introducing.

11 THE COURT: You're not going to introduce
12 everything and you're wanting, on cross, to introduce more
13 sections?

14 MR. GELFAND: Correct, Your Honor.

1:33PM 15 THE COURT: And no one is going to enter a
16 section that would offend the motion in limine ruling?

17 MR. GELFAND: Correct, Your Honor.

18 THE COURT: Okay.

19 MR. GELFAND: The parties are on the same page on
1:33PM 20 that issue.

21 MR. ROBERTS: Yes.

22 MR. GELFAND: I think that their only
23 objection -- I don't want to speak for them -- is whether
24 or not we are entitled, under either the Rule of
1:34PM 25 Completeness or impeachment, to play other parts of that

1:34PM 1 interview.

2 THE COURT: I see.

3 MR. ROBERTS: Impeachment might come up, Your
4 Honor. Our argument actually right now is Rule of
1:34PM 5 Completeness. I think we are at least entitled to know
6 exactly what they want to put in where we can evaluate and
7 argue against it. You did show me all the sections,
8 however, you caveated some just might be for impeachment.
9 I need to know.

1:34PM 10 THE COURT: Well, so here's the issue. Under the
11 Rule of Completeness, you're obviously entitled to fill in
12 parts that naturally go together. But if it's a part
13 that's completely self-serving that is not connected by
14 the Rule of Completeness, then it doesn't come in.

1:34PM 15 MR. GELFAND: No, we understand. We're very
16 familiar with the Rule of Completeness. I wasn't going
17 to, even though technically under the Rule, we can move
18 for the admission at the time on direct. I don't think
19 that would be the Court's preference.

1:35PM 20 THE COURT: Well, I'm not going to be able to
21 make a ruling contextually on whether it comes in under
22 the Rule of Completeness or whether it is separate and
23 doesn't come in because it's not an admission by a party
24 opponent. I can't do that on the spot.

1:35PM 25 MR. GELFAND: Sure. What I can say, to be very

1:35PM 1 clear, we've provided segments that we believe come in all
2 under the Rule of Completeness. However, we think on top
3 of that, there's also segments that would independently be
4 admissible for impeachment, depending on the nature of the
1:35PM 5 testimony of Special Agent Faulkner.

6 MR. ROBERTS: Now, by provided, you haven't
7 provided to us, have you?

8 MR. GELFAND: What do you mean?

9 MR. ROBERTS: You showed me a transcript of
1:36PM 10 highlights five minutes ago, but you didn't present it to
11 us prior to today?

12 MR. GELFAND: Well, as far as isolating the
13 snippets, I don't know what your witness is going to
14 testify to.

1:36PM 15 MR. ROBERTS: Judge, I can address the
16 appropriate objection with the impeachment part. I'm fine
17 with that. It's the Rule of Completeness that I think
18 that we're at least entitled to. I understand they are
19 not going to try to play it during the middle of my direct
1:36PM 20 examination, so that resolves some of my issues. We're
21 still going to object, particularly to the third-party
22 guilt. We will not be touching on that in direct
23 examination.

24 MR. GELFAND: When you say third party --

1:36PM 25 MR. ROBERTS: Third parties who had access to the

1:36PM 1 lot. We will not be touching on that.

2 THE COURT: Look, I don't have my head wrapped
3 around this. I mean, if ya'll had brought this to my
4 attention before, I would take the transcript, I would
1:36PM 5 tell you to put what you all are going to play in one
6 color, what you all want to play in another color, mark
7 the excerpts so that I could then make a ruling on, does
8 it come in under the Rule of Completeness or does it not
9 come in, or is it impeachment, what have you. But I

1:37PM 10 can't -- I mean, this is interesting that you have this
11 disagreement, but I can't be of any help because I don't
12 have it in front of me. So we're just going to have to do
13 the best we can. And if you feel like you need to make a
14 motion to receive something, or I guess I should say if
1:37PM 15 you feel like you need to object to something that they
16 are wanting to play, all I would ask is that you
17 choreograph while we're in the courtroom before you go
18 there with a witness what the next snippet is that you're
19 wanting to play so that he has a basis to make an
1:37PM 20 objection, and I'll just have to do the best that I can.

21 MR. GELFAND: I understand. If I'm understanding
22 the government's position correctly, it seems like, to
23 state the obvious, there's no issue with the authenticity
24 or the accuracy. It's just whether or not the sections
1:37PM 25 come in under the Rule of Completeness.

1:37PM 1 MR. ROBERTS: You have not addressed that issue.
2 Have you shown the snippets to the witness?

3 MR. GELFAND: To your lead Special Agent? No, I
4 have not shown that. You guys provided -- 100 percent of
1:38PM 5 the recordings that you guys provided in discovery and you
6 played for the Court at the suppression hearing, that's
7 the audio that we're going off of.

8 THE COURT: Okay. Another issue, do you have
9 transcripts of the clips that you're playing?

1:38PM 10 MR. ROBERTS: Yes, Your Honor, specific. I
11 believe they have been provided to the Court. If not, I
12 have one right here and I will provide it.

13 THE COURT: But I mean individual?

14 MR. ROBERTS: Yes, sir. I'm going to be passing
1:38PM 15 those out to the Jury tentatively. I know that it's going
16 to be Court's exhibit, whatever the appropriate exhibit.

17 THE COURT: So are you playing one long --

18 MR. ROBERTS: No, sir.

19 THE COURT: -- that's been edited or are you
1:38PM 20 playing nine snippets?

21 MR. ROBERTS: I'm playing three sections. We
22 necessarily had to cut some of the stuff out based on the
23 defense motion, that's why we did provide it to the
24 defense to make sure we were not running afoul of that.

1:38PM 25 We represented we would just agree. And I think we're in

1:39PM 1 agreement that none of those sections are coming in, but
2 necessarily, we had to divide it up.

3 THE COURT: Okay. Well, we'll just have to do
4 the best we can. Have you all reached an agreement to
1:39PM 5 disclose who your witnesses are the night before or the
6 day before or something like that?

7 MR. GELFAND: We've asked for the batting order.
8 We haven't done anything formally.

9 MR. ROBERTS: Yes, we will talk about that, Your
1:39PM 10 Honor.

11 THE COURT: Because this is what's happening. If
12 you had told them last night that you're calling Faulkner,
13 then they could have anticipated this issue and ya'll
14 could have let us know and I could have been prepared.
1:39PM 15 But if we're trying to just hide behind the log on who our
16 witnesses are, it makes it more difficult on everyone.
17 And I told the Jury -- I need ya'll's help with this. I
18 told the Jury we were going back on the record at 1:20.
19 They are now down there twiddling their thumbs trying to
1:40PM 20 come up to talk about something that doesn't involve this
21 case for 20 minutes. And I promised them that I wouldn't
22 waste their time. And we're getting off to a start where
23 they are thinking to themselves, "That Judge is wasting
24 our time." I do not like to be put in that position.
1:40PM 25 Ya'll need to -- so you need to -- and what's sauce for

1:40PM 1 the goose is sauce for the gander. Either by, I would say
2 by 6:00 every night, you need to get them a list of
3 witnesses that will take you through for sure the next
4 day. And when it's the defense case, you need to do the
1:40PM 5 same. You need to be communicating with them about when
6 you are going to finish so everyone is on the same page so
7 that he can get you their witness list, and if there are
8 evidentiary issues that you think you can spot, you need
9 to let us know about them in advance so we don't have
1:41PM 10 downtime so that I'm in a position where I can make a
11 better ruling. All right?

12 MR. ROBERTS: Yes, Your Honor.

13 (In-Chambers Hearing Concluded)

14 (Jury in at 1:47 p.m.)

1:41PM 15 THE COURT: Members of the Jury, I asked you to
16 be ready to come back up at 1:20 and it is now almost
17 1:50, and I apologize. I do not want to get off to a bad
18 start with you thinking that when I say we're coming back
19 at 1:20, you develop the opinion that I don't mean what I
1:47PM 20 say. I do mean what I say. And what we had happen was,
21 there's some exhibits where some issues arose. Exhibits
22 will be coming up this afternoon and there was an
23 unanticipated issue that we were trying to resolve and it
24 took longer than we thought to get it resolved. I am
1:48PM 25 hopeful that the time that we took to make the efforts

1:48PM 1 that we did will lessen the delay that otherwise would
2 have been caused, but regardless, I apologize. I'll try
3 to do my best to make sure that we do not waste any more
4 of your time.

1:48PM 5 The government may call its next witness.

6 MR. ROBERTS: Thank you, Your Honor. The
7 government calls Special Agent Gerald Faulkner to the
8 stand.

9 THE COURT: Agent Faulkner, if you would please
1:48PM10 come inside the rail and approach the bench. If you would
11 pause about right there and raise your right hand.

12 (Witness Sworn)

13 THE COURT: Please have a seat in the witness
14 box. While testifying, you may remove your mask, but
1:49PM15 you're not required to. Pull the microphone and situate
16 it such that you can speak directly into it.

17 Mr. Roberts, you may inquire.

18 MR. ROBERTS: Thank you, Your Honor.

19 GERALD FAULKNER, having been first duly sworn,
1:49PM20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ROBERTS:

23 Q. Agent Faulkner, would you state your full name, spell
24 your last name for the court reporter?

1:49PM25 A. Yes, sir. Gerald Faulkner. F-A-U-L-K-N-E-R.

1:49PM 1 Q. Can you tell the Jury how you're currently employed?

2 A. Sure. I'm a Special Agent with Homeland Security
3 Investigations -- we also refer to it as HSI -- here in
4 our Fayetteville, Arkansas, office.

1:49PM 5 Q. Could you explain to the Jury what HSI, what type of
6 investigations HSI looks into?

7 A. Yes, sir. The general public often associates HSI
8 strictly with immigration enforcement actions. And that's
9 common because we do fall under the broad umbrella of
1:50PM 10 Immigration and Customs Enforcement, or ICE. But in
11 reality, we are the largest investigative arm of the
12 Department of Homeland Security and enforce over 400
13 federal statutes to include child exploitation violations
14 over the internet.

1:50PM 15 Q. How long have you been with HSI?

16 A. Since April of 2009.

17 Q. Are you assigned to a particular area within Homeland
18 Security?

19 A. Yes, sir. I'm currently assigned to the Internet
1:50PM 20 Crimes Against Children Task Force, so we refer to it as
21 the ICAC. I also hold a collateral duty as an operator on
22 one of HSI's 17 special response teams where we are often
23 called out to execute high-risk search warrants, high-risk
24 arrest warrants, respond to domestic terrorist threats,
1:50PM 25 active shooters. Any and all high-level threat dangers to

1:50 PM 1 the United States.

2 Q. Could you explain the role of HSI in Northwest
3 Arkansas as related to the Internet Crimes Against
4 Children Task Force?

1:51 PM 5 A. Yes, sir. So, again, the ICAC, we investigate child
6 exploitation-based offenses that occur over the internet.
7 The majority of these investigations usually revolve
8 around the possession and distribution of images and
9 videos of child pornography. The production of images and

1:51 PM 10 videos of child pornography by hands-on offenders. Those
11 usually take priority. We also receive numerous cyber
12 tipline reports from the National Center for Missing &
13 Exploited Children. That's, I'd say, the bulk of our
14 caseload. We also receive leads from our HSI C3, or the
1:51 PM 15 cyber crime center headquartered in Virginia. We work
16 peer-to-peer file network sharing investigations,
17 undercover chat online investigations, as well as the sex
18 trafficking of minors.

19 Q. How long have you been assigned to the Internet
1:51 PM 20 Crimes Against Children Task Force?

21 A. Approximately 2010.

22 Q. Within that role since 2010, approximately how many
23 child exploitation cases can you estimate that you've
24 worked?

1:52 PM 25 A. In terms of being the case agent, co-case agent, peer

1:52 PM 1 review, assisting, lead undercover agent on an online chat
2 operation, I'd say somewhere approximately over 1,000
3 cases in the last 11 years.

4 Q. How many cases with respect to just specifically
1:52 PM 5 online child pornography cases do you think you have
6 worked?

7 A. Hundreds of hundreds. Again, that's being case agent
8 or co-case agent or reviewing.

9 Q. How many times do you think you have testified in
1:52 PM 10 federal court?

11 A. Several times.

12 Q. Are you familiar with the investigation that led to
13 the indictment and arrest of the defendant, Joshua Duggar?

14 A. Yes, sir.

1:52 PM 15 Q. Could you tell us how Mr. Duggar came to Homeland
16 Security's attention, your attention in this case?

17 A. Correct. In May of 2019, Detective Amber Kalmer of
18 the Little Rock Arkansas Police Department was conducting
19 an online investigation in the BitTorrent peer-to-peer

1:53 PM 20 file-sharing network, at which time she identified a
21 specific IP address that was participating in the sharing
22 and downloading of known images and videos containing

23 child pornography. Detective Kalmer was able to geolocate
24 that IP address to the Northwest Arkansas area. She then
1:53 PM 25 contacted me and asked if I would be willing to further to

1:53PM 1 look into the lead, to which I agreed and accepted the
2 lead.

3 Q. A few things we need to define for the Jury. Can you
4 tell them, make sure that we are understanding. What do
1:53PM 5 you mean by "IP address?"

6 A. An IP address, also known as an Internet Protocol
7 Address, is basically numbers that show where and how a
8 computer is connecting to the internet.

9 Q. In general, are these types of cases referred to as
1:53PM 10 peer-to-peer investigations?

11 A. Yes, sir.

12 Q. Can you walk the Jury through a general peer-to-peer
13 investigation?

14 A. Sure. So, typically, the first step is, you are
1:54PM 15 going to have to flag or tag a known IP address that's
16 participating in one of these networks to be sharing
17 images and videos of child pornography. Once that's done,
18 you then have to either download or acquire the files of
19 child pornography from that specific IP address in order

1:54PM 20 to view them and confirm that they are in fact child
21 pornography by either federal or state statute. Once
22 that's done, you need to locate the internet service
23 provider of that IP address. What you need to find out is
24 basically where is this internet being housed out of?

1:54PM 25 Once that's located, then you send a federal summons to

1:54PM 1 the internet service provider. They will return documents
2 for the subscriber of who is actually paying for that
3 internet, where is this internet coming from. Once that's
4 done, we put all that information into a probable cause
1:54PM 5 affidavit that we submit to a Federal Magistrate Judge.
6 If that Judge finds that we have enough probable cause,
7 then we then go forward on a search warrant.

8 Q. When you execute the search warrant, what generally,
9 on a peer-to-peer case, are you looking for?

1:55PM 10 A. So on peer-to-peer investigations, the three main
11 things that we look for is, one, any and all electronic
12 devices that contain the peer-to-peer file-sharing network
13 program. Two, any and all electronic devices that contain
14 child pornography on it. And then, three, any and all
1:55PM 15 electronic devices where we can put somebody behind the
16 computer during the dates and times that the crime
17 actually occurred.

18 Q. You have stated that Detective Kalmer reached out to
19 you regarding her downloads. Can you provide us a little
1:55PM 20 more specifics on those? On what specific days did those
21 downloads occur?

22 A. The downloads that Detective Kalmer had identified or
23 connected to were on May 14th and May 15th of 2019.

24 Q. When she reached out to you, did you agree to work
1:55PM 25 the lead?

1:55PM 1 A. Yes, sir.

2 Q. Can you tell us your steps involved in agreeing to
3 work that lead?

4 A. Once I agreed, Detective Kalmer then sent me that
1:56PM 5 lead in a law enforcement ICAC software program. It's
6 encrypted so we can in fact send each other child
7 pornography over the internet through that program, or
8 that portal. That was sent to me on June 17th of 2019.
9 And then in July of 2019, I accepted the case and then
1:56PM 10 downloaded the files and viewed them to in fact also be
11 images of child pornography.

12 Q. What happened next in the investigation after you
13 determined that the images fit with what you believed was
14 child pornography?

1:56PM 15 A. On, I believe it was July 31st, 2019, we had also
16 identified that the specific IP address was registered to
17 the internet service provider of OzarksGo. So on July
18 31st, 2019, I sent a federal summons, served a federal
19 summons onto OzarksGo for the subscriber information to
1:56PM 20 that specific IP address.

21 Q. Now, when you serve a federal summons for subscriber
22 information, by subscriber information, are you generally
23 referring to customer type information?

24 A. So the typical information we're looking for and what
1:57PM 25 we receive from an internet service provider is going to

1:57PM 1 be the subscriber's name, the dates of their service, the
2 types of service, and the physical address of where that
3 internet is being housed.

4 Q. Once you serve a summons on an internet service
1:57PM 5 provider such as OzarksGo, what is a time frame that you
6 typically run into in your cases for a response?

7 A. In terms of receiving responses, it varies. It can
8 be anywhere from three to four days to three to four
9 months.

1:57PM 10 Q. When did OzarksGo, or did OzarksGo respond in this
11 case?

12 A. They did not. In early October 2019, I ended up
13 reaching out to OzarksGo since I had not received a
14 response to my subpoena, or summons, I'm sorry. They
1:58PM 15 informed me that on August 9th, and again I believe on
16 August 15th, they did attempt to serve me those documents.
17 Unfortunately, I believe they left the "N" out of my last
18 name in my e-mail address, and, therefore, I never
19 received them. Again, after speaking with them and
1:58PM 20 learning this, on or about October 7th of 2019, they did
21 deliver those requested documents.

22 Q. Can you describe the documents that they returned to
23 you?

24 A. Yes, sir. So the subscriber on record for that
1:58PM 25 specific IP address that Detective Kalmer had connected to

1:58PM 1 was registered to a Joshua Duggar at 14993 Wildcat Creek
2 Road in Springdale, Arkansas.

3 Q. Based on this response, can you explain to the Jury
4 what happened next?

1:58PM 5 A. Yes, sir. We then obtained a federal search warrant
6 for the property located at 14993 Wildcat Creek Road in
7 Springdale, Arkansas.

8 Q. Did you attempt to execute that search warrant?

9 A. Yes, sir. On the morning of October 31st, 2019, we
1:59PM 10 attempted to execute the federal search warrant at the
11 home. Upon making contact with the residents, though, we
12 learned that they did not --

13 MR. GELFAND: Objection, Your Honor. I'm sorry.
14 I would object to any hearsay from any statements made by
1:59PM 15 any third parties.

16 THE COURT: Mr. Roberts?

17 MR. ROBERTS: Your Honor, this is going to be
18 course of conduct to explain how he got from that
19 residence to the defendant's car lot.

1:59PM 20 THE COURT: Objection overruled. Not offered for
21 its truth under 801(c).

22 Q. (BY MR. ROBERTS.) Agent, I asked you the question
23 of, could you explain the circumstances of if you went
24 about executing that warrant?

1:59PM 25 A. Yes, sir. Again, so on the morning of October 31st,

1:59PM 1 2019, we attempted to execute that warrant. But, again,
2 making contact with the residents, we learned that they
3 did not have internet access through OzarksGo. They also
4 informed us that they did not, or that Mr. Duggar did not
1:59PM 5 ever live at that residence. Further communications with
6 the people there told us that their property, which used
7 to be approximately 27 acres and identified as one
8 property, had been recently split into two separate
9 properties. They had their property, and then they
2:00PM 10 informed us that there was associated, or another business
11 that had opened up on the lot next to them. That was
12 Wholesale Motorcars that was owned and operated by Joshua
13 Duggar.

14 Based on that information, I then went back to
2:00PM 15 OzarksGo. I informed them of the error in their subpoena
16 service. They did in fact inform me that 14969 should be
17 the proper address for the subscriber of Joshua Duggar.
18 However, since they were still relying on outdated or old
19 mapping records, they did not have anything on file that I
2:00PM 20 could have concretely to show that.

21 Q. So how did you proceed?

22 A. I did some online research and I found out that when
23 Mr. Duggar was attempting to open his car lot, that he had
24 applied for some permits with the Washington County,
2:01PM 25 Arkansas, fire marshal. I reached out to the fire marshal

2:01PM 1 who then provided me with documents that he had in fact
2 met with Joshua Duggar at 14969 Wildcat Creek Road in
3 Springdale, Arkansas, the business address for Wholesale
4 Motorcars in Springdale, Arkansas. Furthermore, to
2:01PM 5 establish that that was our correct address, in early
6 November, I believe November 1st, 2019, we sent an HSI
7 undercover task force officer to the business who met and
8 identified Joshua Duggar inside of the office, so to
9 speak, there.

2:01PM10 THE COURT: Excuse me. Excuse me.

11 MR. GELFAND: I'm sorry. I'd just object to this
12 hearsay of whatever this undercover officer told him. The
13 undercover can testify.

14 THE COURT: Mr. Roberts?

2:01PM15 MR. ROBERTS: Your Honor, I haven't heard him say
16 that the task force officer said. He is saying that
17 Homeland Security, explaining the investigation, sent an
18 undercover task force officer into the dealership.

19 THE COURT: Well, let's back up. I'm going to
2:02PM20 sustain the objection to the extent that Agent Faulkner
21 has testified to what some other agent said. So rephrase
22 your question, we'll try again, but let's avoid the
23 hearsay.

24 MR. ROBERTS: Yes, Your Honor.

2:02PM25 Q. (BY MR. ROBERTS.) Now, Agent, will you explain the

2:02PM 1 steps that Homeland Security took to determine that Josh
2 Duggar controlled or operated Wholesale Motorcars for the
3 purposes of obtaining your search warrant?

4 A. I'm sorry. Say that again, sir.

2:02PM 5 Q. You were testifying regarding that you sent in, or
6 Homeland Security sent in an undercover agent, or an agent
7 in an undercover capacity?

8 A. Correct.

9 Q. Now, not with regard to what he stated, could you
2:02PM 10 tell us the steps in your investigation picking up from
11 there?

12 A. We were able to determine that Mr. Duggar was in
13 possession of an Apple iPhone inside of that office and
14 that there was also a laptop seen inside of that office.

2:03PM 15 MR. GELFAND: Your Honor, I would object. Same
16 objection.

17 THE COURT: Mr. Roberts?

18 MR. ROBERTS: Your Honor, again, I'm not
19 eliciting hearsay. I'm simply explaining how this
2:03PM 20 Detective, or this investigator, Special Agent, went about
21 obtaining a search warrant for the defendant's property.
22 This is not offered for the truth of the matter asserted.

23 THE COURT: I'm going to overrule the objection
24 and explain to the Jury that the Agent's testimony at this
2:03PM 25 point is being offered to explain a course of events that

2:03PM 1 caused the investigation in this case to take the
2 sequential steps that he is testifying to. You may not
3 use it as a substitute for what some other Agent may have
4 actually observed or actually seen or have said at the
2:04PM 5 time. You may proceed.

6 MR. ROBERTS: Thank you, Your Honor.

7 Q. (BY MR. ROBERTS.) After the Agent in the undercover
8 capacity went to the car lot, can you tell us your steps
9 next in order to obtain a search warrant?

2:04PM 10 A. Yes, sir. In terms of securing the next step search
11 warrant, I applied for and received a search warrant for
12 the businesses located, or the business of Wholesale
13 Motorcars located at 14969 Wildcat Creek Road in
14 Springdale, Arkansas.

2:04PM 15 Q. Ultimately, after obtaining this search warrant,
16 could you tell us what happened next?

17 A. We conducted surveillance prior to the execution of
18 that search warrant to ensure that on the day that we did
19 execute, or decide to execute, that the owner of the
2:05PM 20 business was present, also as well as the subscriber to
21 the IP address was present.

22 Q. And on what day did this occur?

23 A. November 8th of 2019.

24 Q. Now, will you turn in the government's exhibit book
2:05PM 25 to Government's Exhibit 4.

2:05PM 1 A. I'm sorry, 4?

2 Q. Four, yes.

3 A. Yes, sir.

4 Q. Could you identify Government's Exhibit 4?

2:05PM 5 A. This is the search and seizure warrant that I applied
6 for, for 14969 Wildcat Creek Road in Springdale, Arkansas,
7 that was signed by the Federal Magistrate Judge on
8 November 4th of 2019.

9 Q. Is that a true and accurate copy of the search
2:05PM 10 warrant you obtained in this case?

11 A. Of just the search and seizure warrant page.

12 MR. ROBERTS: Your Honor, I move to introduce the
13 one-page search and seizure warrant in this case.

14 MR. GELFAND: No objection.

2:06PM 15 THE COURT: The exhibit will be received.

16 (Government's Exhibit 4 Received)

17 Q. (BY MR. ROBERTS.) Now, could you describe for the
18 Jury where Wholesale Motorcars is located?

19 A. Yes, sir. It is positioned off Highway 412 in
2:06PM 20 between Springdale, Arkansas, and Siloam Springs,
21 Arkansas. It's approximately seven to eight miles off of
22 Interstate 49, if you're coming from the Springdale side.
23 And when you arrive, it's just a few minutes past
24 Tontitown.

2:06PM 25 Q. Agent, let me back you up for a second. I skipped

2:06PM 1 over a question I wanted to ask you. Now, with regard to
2 Government's Exhibit 4, is there anywhere on this document
3 that you detail the nature of the investigation involved?

4 A. No, sir. There is no language involving child
2:06PM 5 pornography on this page.

6 Q. We were describing where Wholesale Motorcars is
7 located. Could you turn to Government's Exhibit 5 and 6
8 in the exhibit book?

9 A. Yes, sir.

2:07PM 10 Q. With regard to Government's Exhibit 5, could you
11 describe that?

12 A. Yes, sir. So this is an aerial view of the Northwest
13 Arkansas area, specifically in the Springdale/Tontitown
14 area. It is geographically correct in terms of compass.
2:07PM 15 The top is north, bottom is the south. The yellow line

16 running north and south on the far right side of this
17 picture is Interstate 49. The yellow line running east
18 and west is Highway 412. On the left side of the image is
19 a red indicator, and that was the position of Wholesale
2:08PM 20 Motorcars at 14969 Wildcat Creek Road in Springdale,

21 Arkansas.

22 Q. Does Government's Exhibit 5 truly and accurately
23 depict where Wholesale Motorcars are located within that
24 layout of that map?

2:08PM 25 A. In November of 2019, yes, sir.

2:08PM 1 MR. ROBERTS: Your Honor, I move to introduce
2 Government's Exhibit 5 into evidence.

3 MR. GELFAND: No objection.

4 THE COURT: Government's 5 is received.

2:08PM 5 (Government's Exhibit 5 Received)

6 Q. (BY MR. ROBERTS.) With respect to Government's 5,
7 can you orient the Jury to what you just described?

8 A. Yes, sir. Again, in terms of a directional compass,
9 it is accurate. The top of the page is going to be north,

2:08PM 10 the bottom being south. That yellow line running down the

11 right-hand side north to south is going to be Interstate

12 49. The yellow line running east to west is going to be

13 Highway 412. And on the left-hand side of that image, the

14 red indicator is where Wholesale Motorcars was located at

2:08PM 15 14969 Wildcat Creek Road in Springdale, Arkansas, on the

16 date of November 8th, 2019.

17 Q. So, Agent, from the interstate intersection with 412

18 all the way to 14969 Wildcat Creek Road, could you

19 approximate the distance there?

2:09PM 20 A. Yes, sir. It was approximately seven to eight miles.

21 Q. Would you please turn in the government's exhibit

22 book to Government's Exhibit 6?

23 A. Yes, sir.

24 Q. Do you recognize Government's Exhibit 6?

2:09PM 25 A. Yes, sir.

2:09PM 1 Q. Could you tell me what Government's Exhibit 6 is?

2 A. This is another aerial photograph that was taken of
3 the Wholesale Motorcars car lot. This is not a law
4 enforcement image. We did not take this pursuant to the
2:09PM 5 search warrant. But this is an overview of where the lot
6 was associated and appears to have the vehicles on the
7 lot. Again, you can see Highway 412 in this. You can
8 also see Wildcat Creek Road running north and south past
9 the car lot.

2:10PM 10 Q. Does that aerial photograph truly and accurately
11 represent the location of Wholesale Motorcars in 2019 when
12 you executed the warrant?

13 A. Correct, the location of where it was in November of
14 2019.

2:10PM 15 MR. ROBERTS: Your Honor, I would move to
16 introduce Government's Exhibit 6.

17 MR. GELFAND: No objection.

18 THE COURT: Government's 6 is received.

19 (Government's Exhibit 6 Received)

2:10PM 20 Q. (BY MR. ROBERTS.) Again, will you orient the Jury to
21 this Government's Exhibit 6?

22 A. Yes, sir. Again, compass-wise, the top of the
23 photograph is north, the bottom is south. You can see
24 Highway 412 running east to west. Wildcat Creek Road is
2:10PM 25 running slightly northwest. And the gravel lot, what you

2:10PM 1 are seeing is what was Wholesale Motorcars in the image.

2 Q. All right. So I want to direct your attention to how
3 you and other members of the Internet Crimes Against
4 Children Task Force go about executing child exploitation
2:11PM 5 search warrants. Can you give the Jury some insight to
6 that?

7 A. Basically, we have individuals that have prearranged
8 duties for that day. And for this particular warrant,
9 myself and the case agent, Agent Howard Aycock, we were
2:11PM 10 already planning to encounter or go and speak with whoever
11 was present on the lot, inform them of what was going on,
12 while the other officers that were assisting us that day
13 cleared the scene for agent safety. We also have what's
14 called computer forensic analysts that accompany us on all
2:11PM 15 of these search warrants, obviously because it deals with
16 electronic devices, two of which that were there that day,
17 they are not law enforcement commissioned, meaning they
18 don't carry firearms, so they will stay back in what we
19 refer to as a forensic van until the scene is deemed
2:11PM 20 cleared and safe and then they will approach and assist
21 with the search warrant.

22 Q. Now, prior to executing this warrant, did you engage
23 in visual surveillance of the car lot?

24 A. Yes, sir. Again, we -- myself and Agent Aycock took
2:12PM 25 up a position on Highway 412, I believe in what would be

2:12PM 1 the eastbound lane. Again, we were wanting the owner of
2 the lot and the subscriber of the IP address and the
3 individual who had been seen with electronic devices
4 inside of the office to be present when we executed the
2:12PM 5 warrant.

6 Q. By doing visual surveillance, is there also a
7 component to officer safety?

8 A. Yes, sir. Since this was a business and it was
9 obviously, the majority of it was outside, myself and
2:12PM 10 Agent Aycock during our course of surveillance, we could
11 see, through binoculars, the individuals who were on the
12 lot. We didn't see any firearms brandished. We didn't
13 even see, or we did not see any immediate threats to where
14 we needed to execute this as a high-risk warrant. Since
2:12PM 15 this was, again, an outside business, it's unlike we're
16 going into a residential structure or something where we
17 don't know what's behind a door or we can't see into a
18 deep corner.

19 Q. So in child exploitation cases in general, do you
2:13PM 20 have a protocol or a particular pattern that you follow in
21 addressing the individuals you find on the premises?

22 A. Yes, sir. Again, for that particular day, myself and
23 Agent Aycock were going to approach the individuals who
24 were, or whatever individuals were on the lot, while our
2:13PM 25 remaining agents cleared the scene and our CFAs remained

2:13PM 1 waiting to enter onto the scene.

2 Q. Do you typically tell them that you're there for a
3 child pornography search warrant?

4 A. Oh, no, sir. I'm sorry. A common practice with our
2:13PM 5 search warrants is, when we first arrive on scene and we
6 make contact with somebody, we do not tell them the type
7 of case we are specifically investigating; rather, we tell
8 them the type of evidence we are lawfully searching for.
9 This common practice is often done because, most times,

2:14PM 10 when you tell individuals the case specifics of a detail
11 or law enforcement details prior to attempting to obtain a
12 statement, they will then include those law enforcement
13 details in their statement as opposed to providing an
14 unbiased or uninfluenced statement. It's a common
2:14PM 15 practice that we do in attempts to gain the truth.

16 Q. So when you arrive on scene, are you dressed in
17 insignia that indicates "Internet Crimes Against Children
18 Task Force?"

19 A. No, sir, we do not have that. That day, we were all
2:14PM 20 in plain clothes. We were all wearing what you call
21 bullet resistant vests or plate carriers. On the front of
22 those plate carriers, it either said, "HSI," "Police" or
23 "Special Agent." Nothing in terms of "ICAC, Internet
24 Crimes Against Children Task Force."

2:14PM 25 Q. Did you identify yourself as an ICAC or Internet

2:14PM 1 Crimes Against Children Task Force officer?

2 A. No, sir.

3 Q. How are you identified?

4 A. I'm sorry?

2:14PM 5 Q. How are you identified? What do you tell the
6 individuals you encounter your role is, your job is?

7 A. That we are Special Agents with Homeland Security
8 Investigations.

9 Q. So with regard to this specific warrant on Wholesale
2:15PM 10 Motorcars on November 8th, 2019, could you tell the Jury
11 what your goal in executing the search warrant was?

12 A. Yes, sir. Again, the goal, as we previously
13 discussed in these peer-to-peer file-sharing
14 investigations is, one, find and locate any and all
2:15PM 15 electronic devices that contain the peer-to-peer
16 file-sharing program on it. Two, locate and find any and
17 all electronic devices that contain child pornography on
18 them. Three, locate any and all electronic devices that
19 can put somebody, for this instance, on the car lot and
2:15PM 20 behind the computer when the crime was committed.

21 Q. And in this case, the crime, the span of time that
22 you're looking for, what would those days be?

23 A. At that point in time, on November 8th, 2019, we were
24 aware of May 14th and May 15th of 2019.

2:16PM 25 Q. With regard to digital devices you encounter on the

2:16PM 1 premises, what was the plan? How were you going to go
2 about handling those?

3 A. Again, we had those computer forensic analysts, or
4 the CFAs, we had three total that day. One was an HSI
2:16PM 5 task force officer. The other two were HSI employees.
6 Once we clear that scene for safety reasons, they then
7 come on scene. They search or find any and all the
8 electronic devices with us, and then they start to perform
9 on-scene forensic previews of digital electronics.

2:16PM 10 Q. Now, can you do on-scene forensic previews of all
11 electronic devices?

12 A. Yes, but it's not common.

13 Q. Are some devices more complex wherein that you would
14 need to examine those back at the Homeland Security
2:17PM 15 facility or in a lab?

16 A. Yes, sir. That is often the case.

17 Q. On the opposite end of the spectrum, if something is,
18 say, available to be forensically cleared on scene, what
19 would happen in that case?

2:17PM 20 A. If it is forensically cleared of those three things
21 that I previously discussed, that item, even though it's
22 seized, gets remitted back to that person.

23 Q. So forensically cleared means it has no evidence of
24 child pornography on it?

2:17PM 25 A. No child pornography. And in this situation, no

2:17PM 1 peer-to-peer file-sharing networks and nothing that would
2 put somebody on the car lot on the days in question.

3 Q. Approximately what time did you execute the search
4 warrant on Wholesale Motorcars car lot?

2:17PM 5 A. It was around 3:15 in the afternoon.

6 Q. Can you describe for the Jury how you went about
7 executing that warrant?

8 A. Yes, sir. So as we previously discussed, we did not
9 see any immediate threat from our surveillance.

2:18PM 10 Therefore, we approached in what we refer to as a "soft
11 approach," meaning we did not have any guns brandished, we
12 were not pointing guns at anybody. We arrived on scene.

13 Myself and Agent Aycock, again, approached Mr. Duggar.
14 There were two other individuals on the lot that day. As

2:18PM 15 we were speaking with them, the other agents cleared it
16 for safety reasons while our CFAs stayed back in that
17 forensic van.

18 Q. Who were the other two individuals on the lot other
19 than Mr. Duggar?

2:18PM 20 A. Employee, Randall Berry, and customer, Richard
21 Harrell, who we later determined not to be involved in
22 this investigation.

23 Q. When executing a search warrant, is it common to take
24 pictures of the premises?

2:18PM 25 A. Yes, sir. We often take pictures at the beginning of

2:18PM 1 the search warrant and at the end of a search warrant. In
2 doing so, we want to record the nature and position of
3 where potential evidence is located when we first see it
4 or recognize it.

2:18PM 5 Q. When executing the search warrant in this specific
6 case, were there images or pictures taken?

7 A. Yes, sir.

8 Q. I direct your attention to Government's Exhibit 7
9 through 19 in the government's exhibit book.

2:19PM10 A. Yes, sir.

11 Q. In preparation for this trial today, have you already
12 reviewed 7 through 19?

13 A. I have.

14 Q. Are those true and accurate representations of
2:19PM15 pictures taken on November 8th, 2019?

16 A. In relation to all except I believe for Exhibit 7.

17 Q. Let me ask that a different way. Are those true and
18 accurate representations of Wholesale Motorcars as existed
19 on November 8th, 2019?

2:19PM20 A. That is correct. Yes, sir.

21 MR. ROBERTS: Your Honor, I would move to
22 introduce Government's Exhibits 7 through 19.

23 MR. GELFAND: No objection, Judge.

24 THE COURT: Government's Exhibits 7 through 19
2:19PM25 are received.

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(Government's Exhibits 7-19 Received)

Q. (BY MR. ROBERTS.) Starting with Exhibit 7, can you please tell the Jury what we're looking at here?

A. Yes, sir. So that is a picture taken from a bit of a distance of the Wholesale Motorcars lot. Obviously, you can see on the mailbox the 14969 physical address on Wildcat Creek Road. In the background, past the sign, you will see two buildings. The one on the left was a wooden shed, which at the time of the search warrant was in the process of being remodeled, or refurbished, I guess. And the building on the right is a metal building which I have referred to as a tollbooth in terms of size. And that acted as the main office for Wholesale Motorcars.

Q. Moving to Government's Exhibit 6, could you orient the Jury -- excuse me -- Government's Exhibit 8, could you orient the Jury to Government's Exhibit 8?

A. Yes, sir. So this is in fact a search warrant photo from November 8th of 2019 when we arrived at the Wholesale Motorcars lot. This would have been taken at the beginning of our search warrant. As you can see, again, those are the two buildings I previously referenced. And you can see the Wholesale Motorcars signs with the phone number and the car lot office phone line attached to that metal building.

Q. Government's Exhibit 9, could you do the same?

2:21PM 1 A. That is a close-up of the metal building, which we
2 were made aware of was the main office. Again, you can
3 see the Wholesale Motorcars title, the phone number, the
4 address of 14969. Two other things of interest on this is
2:21PM 5 the warning signs that were attached to the front that,
6 "security cameras in use." There's one attached to the
7 main window, and then one at the bottom right-hand corner
8 of the building.

9 Q. With respect to Government's Exhibit 10, could you do
2:21PM10 the same?

11 A. Yes, sir. This is just a side angle of those same
12 two buildings. The open door that you see was the main
13 entrance into the metal building or the main office.

14 Q. Moving to Government's Exhibit 11, could you orient
2:22PM15 the Jury?

16 A. Yes, sir. This is the initial picture taken of the
17 inside of the office. Of note in this is the keypad on
18 the door handle going into the office. And then you can
19 start to see some of the devices and equipment and
2:22PM20 business filings that were inside of the office that day.

21 Q. With respect to Government's 12, could you orient the
22 Jury?

23 A. Yes, sir. Again, this is another picture inside of
24 the office. What you're seeing on the desk is an HP
2:22PM25 All-in-One Desktop computer. Above that is a surveillance

2:22PM 1 camera. To the right of that HP desktop computer on the
2 windowsill is another surveillance camera. And then
3 obviously paperwork, assorted paperwork throughout the
4 office.

2:23PM 5 Q. With regard to Government's 13, could you orient the
6 Jury?

7 A. This is a close-up picture of a surveillance camera,
8 or the screen that the surveillance cameras were
9 live-streaming to.

2:23PM 10 Q. Was this a -- this picture was taken when you were
11 there, is that correct?

12 A. That is correct, yes, sir.

13 Q. So those screens and that surveillance was working
14 when you were there?

2:23PM 15 A. That picture was taken on November 8th, 2019.

16 Q. With respect to Government's 14?

17 A. This, again, is the front side of that HP All-in-One
18 Desktop computer. As you can see, the background is
19 Mr. Duggar and his family, and then assorted paperwork
2:23PM 20 around the computer.

21 Q. With respect to Government's 15, could you orient the
22 Jury?

23 A. Back outside, and, again, looking at those two
24 buildings, the one on the right, obviously, the main

2:23PM 25 office, and the one on the left, the wooden shed that was

2:23PM 1 being remodeled.

2 Q. Government's 16, could you orient the Jury?

3 A. That is inside of the wooden shed. Again, it
4 appeared to us on that date that it was in the process of
2:24PM 5 being worked on.

6 Q. Government's 17, could you do the same?

7 A. This is a picture on what would be the left-hand side
8 of these two buildings. We're now looking southwest, I
9 believe. In the background, you can see Highway 412. In
2:24PM 10 the middle of the picture is an RV that was on the lot
11 that day.

12 Q. Government's 18, could you do the same?

13 A. Yes, sir. We're still on the lot. We're now looking
14 northwest. And this is the RV that we -- myself and Agent
2:24PM 15 Aycock -- observed Mr. Duggar arrive on the scene that day
16 in.

17 Q. Government's 19, could you orient the Jury?

18 A. This is an HP laptop that was located inside of that
19 RV.

2:24PM 20 Q. Now, you just stated that that's an HP laptop, is
21 that correct?

22 A. I'm sorry. I'm sorry. That's a MacBook laptop. My
23 apologies.

24 Q. We're done with 19. Thank you. Now, taking you back
2:25PM 25 to when you first arrived on scene, where was Mr. Duggar

2:25PM 1 located? Where was he at?

2 A. Mr. Duggar and the other two individuals were
3 approximately, I'd say, 20 feet from in front of those two
4 buildings to about 20 feet of where we parked the front of
2:25PM 5 our vehicles.

6 Q. So they were standing outside?

7 A. Correct. Yes, sir.

8 Q. Could you describe for the Jury how you went about
9 approaching Mr. Duggar?

2:25PM 10 A. Yes, sir. Myself and Agent Aycock approached
11 Mr. Duggar. I properly identified myself as a Special
12 Agent with Homeland Security Investigations. I then
13 informed him that, based on an ongoing investigation, a
14 federal search warrant had been obtained for the property
2:25PM 15 for items of evidentiary value that possibly contained
16 digital contraband. Furthermore, I told Mr. Duggar and
17 the other individuals there that this was a federal search
18 warrant, this was not an arrest warrant, and they were
19 free to leave if they chose to do so.

2:26PM 20 Q. At that time, did Mr. Duggar produce anything?

21 A. Yes, sir. He took a cell phone out of his, what I
22 believe, right pocket.

23 MR. ROBERTS: Your Honor, may I approach?

24 THE COURT: You may.

2:26PM 25 Q. (BY MR. ROBERTS.) We're missing the exhibit sticker,

2:26PM 1 however, I'm handing you what is about to be marked
2 Government's Exhibit 20. Can you identify Government's
3 Exhibit 20 for me?

4 A. Yes, sir. This is the phone that Mr. Duggar produced
2:27PM 5 from his pocket.

6 Q. Is that phone in the same or similar condition as
7 when you confiscated it?

8 A. Yes, sir, I believe so.

9 MR. ROBERTS: Your Honor, I would move to
2:27PM 10 introduce Government's 20.

11 MR. GELFAND: No objection.

12 THE COURT: Government's 20 is received.

13 (Government's Exhibit 20 Received)

14 Q. (BY MR. ROBERTS.) So you approach Mr. Duggar. You
2:27PM 15 tell him that you're looking for digital contraband. He
16 produces the phone. At any point, did you tell him he was
17 being detained?

18 A. No, sir.

19 Q. What exactly with regard to detention did you tell
2:27PM 20 him?

21 A. That he was free to leave, as well as the other
22 individuals if they wanted to.

23 Q. At any point in this interaction, did you tell him
24 that this was regarding a child pornography investigation?

2:28PM 25 A. No, sir.

2:28PM 1 Q. Did you ask him any questions at this point?
2 A. No, sir.
3 Q. So you approach him, tell him you're looking for
4 digital contraband. You identify yourself. He produces a
2:28PM 5 phone. Can you describe how you seized the phone?
6 A. Mr. Duggar had it in his right hand. I reached out
7 with my left hand and seized the phone without touching
8 Mr. Duggar.
9 Q. Throughout this interaction, what was his demeanor
2:28PM 10 like?
11 A. Calm. No visible reaction.
12 Q. How long did this overall interaction occur, or take?
13 A. Just a few minutes.
14 Q. After taking the phone, did Mr. Duggar say anything
2:28PM 15 to you with regard to whether he was going to stay on the
16 premises or leave?
17 A. He stated that his wife was pregnant and that he may
18 have to leave the car lot to either contact her or have a
19 way for her to contact him.
2:29PM 20 Q. What was your response?
21 A. That was perfectly fine.
22 Q. Again, at this point, you have not -- have you told
23 him the purpose of the investigation at his car lot?
24 A. No, sir. Again, we do not say the specific details
2:29PM 25 of the case we were investigating on the onset of the

2:29PM 1 search warrant.

2 Q. So after you confiscated the phone in this initial
3 interaction, was Mr. Duggar detained in any way?

4 A. No, sir.

2:29PM 5 Q. Is it fair to say that he had free roam of the car
6 lot or even to leave?

7 A. He could have left. I wouldn't say free roam,
8 meaning he couldn't enter the RV or the building, the
9 office that we were currently searching it. If he had

2:29PM 10 asked, we would have escorted him into it. But for all
11 practical purposes, if he wanted to leave, he could have
12 left.

13 Q. Now, just to explain that, is that just common
14 practice? Could you explain that to the Jury?

2:29PM 15 A. Yes, sir, that is. Again, that's for officer safety
16 reasons.

17 Q. Would it also be a potential, if you let suspects
18 walk into where you're searching, they could actually
19 remove items of evidentiary value?

2:30PM 20 A. That is correct. In the past, during the execution
21 of search warrants, we have had individuals attempt to
22 take hammers to hard drives, throw them out of windows,
23 commit factory resets. So, yes, we obviously keep an eye
24 on an individual if they enter a secure scene that we were
2:30PM 25 searching.

2:30PM 1 Q. Is that also the reason that you confiscated the
2 phone directly when he produced it out of his pocket?

3 A. Yes, sir. I did not want there to be any chance to
4 potentially contaminate any digital evidence that would be
2:30PM 5 located on the phone by altering, deleting, or destroying
6 anything that was potentially on it.

7 Q. After Mr. Duggar indicated that he might leave to
8 check on or to attend his pregnant wife, could you tell us
9 what happened next?

2:30PM 10 A. Myself and Agent Aycock then started assisting the
11 other agents processing the scene, making sure photographs
12 were being taken, and that evidence was being located.

13 Q. Did you have any further contact with Mr. Duggar that
14 day?

2:31PM 15 A. Yes, sir. Again, about 10, 15 minutes later, myself
16 and Agent Aycock re-approached Mr. Duggar and asked if he
17 would be willing to accompany us to Agent Aycock's
18 government vehicle to further discuss the details
19 surrounding the issuance of the federal search warrant.

2:31PM 20 Q. When you say "re-approach," where was Mr. Duggar
21 standing during this time?

22 A. Roughly around the same area when we first
23 encountered him.

24 Q. So precisely what did you explain to Mr. Duggar when
2:31PM 25 you re-approached him?

2:31PM 1 A. We asked him if he would be willing to discuss
2 further details surrounding the issuance of the federal
3 search warrant.

4 Q. Better question. At that point, did you tell him
2:31PM 5 that the federal search warrant was for child pornography,
6 child exploitation, or anything similar?

7 A. No, sir.

8 Q. When you approached him, what was his demeanor like?

9 A. Still visibly no reaction. He was calm.

2:32PM 10 Q. Did he agree to make a statement?

11 A. He did.

12 Q. Where did that occur?

13 A. We relocated to Agent Aycock's truck. It was a Ford
14 truck, I believe. Myself and Agent Aycock entered the
2:32PM 15 driver's side portion of the vehicle. I sat in the
16 driver's seat. Agent Aycock sat in the back rear seat on
17 the driver's side. Mr. Duggar went around to the
18 passenger side. He opened the passenger door on his own,
19 he entered the truck, and he closed the door of the
2:32PM 20 passenger side front seat on his own.

21 Q. So was he physically escorted into the car?

22 A. No, sir.

23 Q. Now, you said it's a Ford truck. Now, is this like
24 an outfitted police truck, or could you describe it for
2:32PM 25 us?

2:32PM 1 A. No, sir. It's a civilian truck and we just retrofit
2 it with lights and sirens. There's no cage or anything
3 like that inside of the truck.

4 Q. Upon entering the truck, were the doors locked?

2:33PM 5 A. No, sir.

6 Q. Anyone guarding Mr. Duggar outside the doors?

7 A. No, sir.

8 Q. Tell us what happened upon Mr. Duggar entering the
9 vehicle.

2:33PM 10 A. Upon entering the vehicle, Agent Aycock asked and
11 received verbal consent to record our interview. Upon
12 receiving verbal consent, Mr. Duggar turned in his chair
13 facing both myself and Agent Aycock and then asked, "What
14 is this about? Has somebody been downloading child
2:33PM 15 pornography?"

16 Q. I'm going to stop you there. Now, you say that he
17 turned in his seat. Can you show us what you're talking
18 about?

19 A. Yes, sir. So if myself and Agent Aycock were seated
2:33PM 20 on the left-hand side of where I am in the jury box, he
21 turned and positioned to where he was facing the both of
22 us, myself in the front driver's seat and Mr. Aycock, or
23 Agent Aycock, in the back rear driver's seat.

24 Q. To be clear, at this point, had you told Mr. Duggar
2:34PM 25 you were there regarding a child pornography

2:34PM 1 investigation?

2 A. No, sir.

3 Q. So when he told you or asked you the question
4 regarding child pornography, how did you respond?

2:34PM 5 A. Agent Aycock had asked him to stop before asking any
6 more questions to let him get the recording device
7 started, and then he then read him his Miranda rights.

8 Q. Agent, if you do need a tissue, I understand. It's
9 right behind you. So you stopped him from asking

2:34PM 10 questions and you started recording, is that correct?

11 A. That is correct.

12 Q. Overall, how long did that recorded interview portion
13 take?

14 A. The interview in its entirety?

2:35PM 15 Q. Yes, in its entirety, beginning to end.

16 A. Approximately 51 minutes, I believe.

17 Q. On the onset of the interview, did you explain
18 Mr. Duggar his Miranda rights?

19 A. Yes, sir, we did.

2:35PM 20 Q. Could you tell the Jury generally what those are?

21 A. It's basically acknowledging the fact that Mr. Duggar
22 knows that he does not have to talk to us if he does not
23 want to, or if he would like an attorney present, that he
24 can have one present.

2:35PM 25 Q. Would you turn to Government's Exhibit 21?

2:35PM 1 A. Yes, sir.

2 Q. Could you identify Government's Exhibit 21?

3 A. This is the United States Immigration and Customs
4 Enforcement statement of rights form. This is the form
2:36PM 5 that we utilized that afternoon at the Wholesale Motorcars
6 lot. Mr. Duggar's signature is here above and below the
7 waiver, as well as myself and Agent Aycock's signature as
8 witnesses.

9 Q. Is that a true and accurate copy of the form that was
2:36PM 10 executed on the day regarding Mr. Duggar's Miranda rights?

11 A. Yes, sir, it is.

12 MR. ROBERTS: Your Honor, move to introduce
13 Government's Exhibit 21.

14 MR. GELFAND: No objection.

2:36PM 15 THE COURT: Government's 21 is received.

16 (Government's Exhibit 21 Received)

17 Q. (BY MR. ROBERTS.) Could you orient the Jury to
18 Government's Exhibit 21?

19 A. Yes, sir. Again, that is the U.S. Immigration and
2:36PM 20 Customs Enforcement Statement of Rights Form. It's a
21 standard form that I commonly use. As you can see, the
22 statement of rights are at the top. Then that is a
23 signature by Mr. Duggar. There's then a waiver, and
24 underneath that, a printed signature, or Mr. Duggar's
2:36PM 25 printed signature, and then he signed on the line next to

2:36PM 1 it. And then at the bottom, the two witnesses of myself
2 and Agent Aycock.

3 Q. Now, Agent, I might have missed it, I was looking at
4 my next question. Did you explain why there is two lines,
2:37PM 5 or the last line of the waiver section is lined out?

6 A. Yes, sir. So, again, Mr. Duggar was not in custody,
7 as we had informed him. While Agent Aycock was filling
8 out this form, it was brought, or Mr. Duggar brought it to
9 our attention about being in custody. And we explained to
2:37PM 10 him, no, he was not. And to make him feel better, that we
11 were going to scratch that part out of the waiver.

12 Q. And so you testified that the overall interview was
13 approximately 51 minutes. Would it be say to say that
14 throughout that interview, some parts were relevant for
2:37PM 15 this trial and some not, is that correct?

16 A. Yes, sir.

17 Q. In the beginning of the interview, did you cover
18 things like his background, date of birth?

19 A. We did.

2:37PM 20 Q. Did you cover how he's employed?

21 A. We covered the ownership, or his ownership of the
22 Wholesale Motorcars lot. And then we also covered his
23 ownership and access to electronic devices that were
24 currently on the lot.

2:38PM 25 Q. Do you recall if he provided his date of birth?

2:38PM 1 A. Yes, sir. March 3rd, 1988.

2 Q. Agent, I will direct your attention to Government's
3 22. Would you turn in the exhibit book to Government's
4 22?

2:38PM 5 A. Yes, sir.

6 Q. Can you identify Government's 22 for the Jury?

7 A. This is a thumb drive which I have previously
8 reviewed that contains three portions or sections of our
9 interview with Mr. Duggar.

2:38PM 10 Q. Now, when you previously reviewed it, did you verify
11 that it accurately and truly captures what was said on
12 November 8th, 2019, by Mr. Duggar?

13 A. Yes, sir.

14 MR. ROBERTS: Your Honor, move to introduce
2:38PM 15 Government's Exhibit 22.

16 MR. GELFAND: No objection, Your Honor.

17 THE COURT: Government's Exhibit 22 is received.

18 (Government's Exhibit 22 Received)

19 MR. ROBERTS: Thank you, Your Honor. Your Honor,
2:39PM 20 I also have transcripts that I would like to pass out to
21 the Jury. I believe it would assist them in listening to
22 the audio.

23 THE COURT: This is the version that contains all
24 three sections that you provided earlier?

2:39PM 25 MR. ROBERTS: It is, Your Honor.

2:39PM 1 THE COURT: That is fine. You may pass those
2 out.

3 Members of the Jury, as you have heard, there is
4 a transcript of the recording that you are going to hear,
2:39PM 5 or at least certain portions that you are going to hear.
6 And this is a transcript of those portions and three
7 sections. This transcript also undertakes to identify the
8 speakers engaged in the conversation. The transcript that
9 you are being provided now is for the limited purpose of
2:40PM 10 helping you to follow the conversation as you listen to
11 the recording and also to help you keep track of the
12 speakers. Differences in meaning between what you hear in
13 the recording and what you read in the transcript may be
14 caused by such things such as the inflection in a
2:40PM 15 speaker's voice. This is important. It is what you hear
16 that is evidence, not what you read. Whether the
17 transcript correctly or incorrectly reflects the
18 conversation or the identity of the speakers is entirely
19 for you to decide based upon what you hear on the
2:41PM 20 recording and what you have heard here about the
21 preparation of the transcript and upon your own
22 examination of the transcript in relation to what you hear
23 on the recording. If you decide that the transcript is in
24 any respect incorrect or unreliable, you should disregard
2:41PM 25 it to that extent.

2:41PM 1 One more thing. This is a demonstrative aid to
2 assist you for the reasons that I've just explained. The
3 recording is in evidence. If during your deliberations,
4 for example, you want to re-listen to the recording, that
2:41PM 5 could be possible. The transcript is not being received
6 into evidence so you will not have the transcript
7 available in the jury room. The Court will, however, mark
8 the transcript as Court's Exhibit 1. You may proceed.

9 (Court's Exhibit 1 Received)

2:42PM 10 MR. ROBERTS: Thank you.

11 Q. (BY MR. ROBERTS.) Prior to playing section one, can
12 you tell the Jury overall what they are about to hear?

13 A. Again, this is going to be the section where we
14 establish Mr. Duggar being the owner and operator of the
2:42PM 15 Wholesale Motorcars lot, as well as establishing the
16 ownership and access to certain devices that were located
17 on the lot.

18 MR. ROBERTS: Please play section one.

19 (Section One played as follows:)

2:42PM 20 AGENT AYCOCK: What do you do for work?

21 JOSH DUGGAR: I -- I own this business and then I
22 also do some real estate as well.

23 AGENT AYCOCK: Okay. What do you do? You got
24 your real estate license?

2:42PM 25 JOSH DUGGAR: I do not. No, we manage -- my dad

2:42PM 1 has commercial properties, so I help him with management
2 of that.

3 AGENT AYCOCK: Okay.

4 JOSH DUGGAR: I dabble in a lot of things. This
2:42PM 5 is -- you know, this is probably my primary income as far
6 as that goes.

7 AGENT AYCOCK: Okay. I got you. And how long
8 did you say that you've had this, this here?

9 JOSH DUGGAR: We moved here in June of last year,
2:42PM 10 I believe it was.

11 AGENT AYCOCK: Mm-hmm. So June here at
12 Wholesale?

13 JOSH DUGGAR: Yes.

14 AGENT AYCOCK: Okay. And your internet provider?

2:42PM 15 JOSH DUGGAR: Is OzarksGo.

16 AGENT AYCOCK: Ozarks? And how long have you had
17 them?

18 JOSH DUGGAR: I don't exactly remember.

19 AGENT AYCOCK: Okay. And do you guys operate on,
2:42PM 20 like, a Wi-Fi here or --

21 JOSH DUGGAR: So yes and no. We've had several
22 different things. In fact, last week I changed it because
23 we had three different -- we have -- I think there's three
24 routers in there right now. I honestly can't remember.

2:42PM 25 But we had it daisy-chained to where we had different --

2:42PM 1 so we could send it out over the lot so we could get to
2 each edge to be able to take pictures and things like that
3 and post them up because our cell service is not real
4 great down here in the valley.

2:42PM 5 So, but I think we -- right now, I think I
6 probably have two routers in there hooked up. One's more
7 of a long-range and one's closer up.

8 AGENT AYCOCK: Okay. Two routers. And are they
9 password-protected or secure?

2:42PM 10 JOSH DUGGAR: I believe one of them is. The
11 other one I think was more like a guest network, but I
12 think that's the way I've got them separated right now.

13 AGENT AYCOCK: All right.

14 JOSH DUGGAR: And yet last week, I changed the
2:42PM 15 configuration on the router because the one was open, the
16 one that said -- the main one that actually comes -- the
17 modem comes in.

18 AGENT AYCOCK: Uh-huh. Okay, okay. And you said
19 you didn't have very good cell service here, huh?

2:42PM 20 JOSH DUGGAR: Well, depending on the provider.

21 AGENT AYCOCK: Who do you have for your cell
22 phone?

23 JOSH DUGGAR: AT&T and Verizon -- well, I have --
24 I have Verizon, but --

2:42PM 25 AGENT AYCOCK: Okay. That's on your --

2:42 PM 1 JOSH DUGGAR: -- we've had both.
2 AGENT AYCOCK: That's on your personal phone or
3 --
4 JOSH DUGGAR: Yes, on my personal phone.
2:42 PM 5 AGENT AYCOCK: Okay. And what's that number?
6 JOSH DUGGAR: 479-200-2681.
7 AGENT AYCOCK: Okay. And you said AT&T on
8 another one or --
9 JOSH DUGGAR: I don't have any. I used to, but
2:42 PM 10 AT&T is -- I know there's -- and then Sprint, we can't
11 really get any signal here for them.
12 AGENT AYCOCK: Okay. And how long -- and how
13 long have you had Verizon?
14 JOSH DUGGAR: I don't know. I don't recall.
2:42 PM 15 AGENT AYCOCK: How about in your residence?
16 Electronics there?
17 JOSH DUGGAR: Electronics? What do you mean by
18 that?
19 AGENT AYCOCK: Like computers, phone, other
2:42 PM 20 phones, anything like that?
21 JOSH DUGGAR: I mean, my wife has a phone.
22 AGENT AYCOCK: Mm-hmm.
23 JOSH DUGGAR: But not any more than I possess.
24 AGENT AYCOCK: Okay.
2:42 PM 25 JOSH DUGGAR: I mean, I have in the past, and

2:42PM 1 I've recently upgraded my phone. So, I mean, as far as
2 that goes, I don't want to --

3 AGENT AYCOCK: All right. E-mail? Do you have
4 e-mail accounts?

2:42PM 5 JOSH DUGGAR: Yes.

6 AGENT AYCOCK: What would that be?

7 JOSH DUGGAR: So my e-mail is
8 JoshuaDuggar@iCloud.com is my full name.

9 AGENT FAULKNER: Sir, if you don't mind, I want
2:42PM 10 to go back real quick to those electronics. I know agent
11 had mentioned in your home residence, but for the reason
12 of why we're here today, what are we talking about
13 electronics on scene?

14 JOSH DUGGAR: Okay.

2:42PM 15 AGENT FAULKNER: So you have your cell phone,
16 right?

17 JOSH DUGGAR: Right, my cell phone, and then
18 there's a lap- -- there's a laptop in that RV over there.

19 AGENT FAULKNER: Okay. Now, let's do one by one.
2:42PM 20 The phone, that was one that you had in your pocket,
21 right?

22 JOSH DUGGAR: Right, in my pocket.

23 AGENT FAULKNER: Who else has access to that
24 phone?

2:42PM 25 JOSH DUGGAR: Well, depending on who's -- I mean,

2:42PM 1 sometimes I have a guy that works with me. He will take
2 pictures sometimes with the phone.

3 AGENT FAULKNER: So outside of you, other people
4 possibly have -- is it password-protected?

2:42PM 5 JOSH DUGGAR: Yeah, it's not -- not very secure.
6 I mean, everybody knows it.

7 AGENT FAULKNER: Okay.

8 JOSH DUGGAR: My kids use it quite a bit, my
9 wife. Mostly family and friends.

2:42PM 10 AGENT FAULKNER: Got you. Is it a swipe pass
11 code or PIN, number, numeric?

12 JOSH DUGGAR: It's a PIN.

13 AGENT FAULKNER: What is the PIN number for it?

14 JOSH DUGGAR: Am I required to give that to you?

2:42PM 15 AGENT FAULKNER: You're not, but --

16 JOSH DUGGAR: Okay. I'd rather not.

17 AGENT FAULKNER: Okay.

18 JOSH DUGGAR: Yeah.

19 AGENT FAULKNER: We'll get a little bit more into
2:42PM 20 the forensic side of stuff.

21 JOSH DUGGAR: No, that's fine.

22 AGENT FAULKNER: You said a laptop. That's the
23 one in the RV, right?

24 JOSH DUGGAR: Yes.

2:42PM 25 AGENT FAULKNER: So the lap --

2:42 PM 1 JOSH DUGGAR: It is password-protected as well.

2 AGENT FAULKNER: Is that yours?

3 JOSH DUGGAR: Yes.

4 AGENT FAULKNER: Who else would have access to

2:42 PM 5 that?

6 JOSH DUGGAR: Same, same kind of deal. We use it
7 for, you know, kids watching movies, you know, browsing
8 online, whatever.

9 AGENT FAULKNER: Okay. But it has --

2:42 PM 10 JOSH DUGGAR: It doesn't get used all that much.

11 AGENT FAULKNER: But it is password-protected?

12 JOSH DUGGAR: Yes.

13 AGENT FAULKNER: Just one password or multiple?

14 JOSH DUGGAR: Well, so it's password-protected in
2:42 PM 15 the fact that if you log in, I think it will automatically

16 log you in --

17 AGENT FAULKNER: Mm-hmm.

18 JOSH DUGGAR: -- but if you are -- you know, if
19 you go to -- it sits idle, it will lock up sometimes.

2:42 PM 20 AGENT FAULKNER: Okay.

21 JOSH DUGGAR: I don't know exactly how I have it
22 set.

23 AGENT FAULKNER: But in terms of ownership, that
24 is your laptop; and in terms of the phone, that is your

2:42 PM 25 phone?

2:42 PM 1 JOSH DUGGAR: Yes.

2 AGENT FAULKNER: We noticed inside of the

3 whatever -- I don't know which one is your office.

4 JOSH DUGGAR: Yes.

2:42 PM 5 AGENT FAULKNER: But the one over here that has

6 the open sign --

7 JOSH DUGGAR: Mm-hmm.

8 AGENT FAULKNER: -- that there was another elec-

9 -- computer in there?

2:42 PM 10 JOSH DUGGAR: Yes. That's an HP. That computer

11 is -- it's now password-protected, but pretty much the

12 guys that work here are the ones that use it.

13 AGENT FAULKNER: Okay.

14 JOSH DUGGAR: And so there's, you know, different

2:42 PM 15 --

16 AGENT FAULKNER: So there's currently a password

17 on it right now?

18 JOSH DUGGAR: Yes, there is, yeah. And the

19 password's written. I mean, I have it written around so

2:42 PM 20 the guys know.

21 AGENT FAULKNER: I got you.

22 JOSH DUGGAR: So it's not like -- I mean, it's

23 just mainly to keep somebody from breaking in and

24 accessing file stuff --

2:42 PM 25 AGENT FAULKNER: Oh, no, I understand.

2:42PM 1 JOSH DUGGAR: -- you know.
2 AGENT FAULKNER: Right, right.
3 JOSH DUGGAR: On customers, whatever.
4 AGENT FAULKNER: And so computer in the office,
2:42PM 5 laptop in the RV?
6 JOSH DUGGAR: Yep.
7 AGENT FAULKNER: Your cell phone and then your
8 coworker's cell phone?
9 JOSH DUGGAR: Yeah. And then there's also --
2:42PM 10 they reminded me there's a hard drive probably in the
11 security system, which is up above.
12 AGENT FAULKNER: Oh, for your surveillance?
13 JOSH DUGGAR: Right, for surveillance system.
14 AGENT FAULKNER: But you only use that to recover
2:42PM 15 --
16 JOSH DUGGAR: It's not even -- it's not active
17 right now. I mean, I didn't tell anybody else that but
18 I'm just --
19 AGENT FAULKNER: I promise we don't plan on
2:42PM 20 breaking in, so --
21 JOSH DUGGAR: No, I'm just saying it's, you know
22 --
23 AGENT FAULKNER: We won't give up your secret.
24 How long for your cell phone? How long have you
2:42PM 25 had that?

2:42 PM 1 JOSH DUGGAR: I bought it probably when it -- I
2 mean, a week after it came out, the iPhone 11.

3 AGENT FAULKNER: So guesstimate. I don't need an
4 exact day.

2:42 PM 5 JOSH DUGGAR: Two months, maybe.

6 AGENT FAULKNER: Two months ago?

7 JOSH DUGGAR: Three months. Yeah, two, three
8 months.

9 AGENT FAULKNER: All right. What about that
2:42 PM 10 laptop?

11 JOSH DUGGAR: The laptop I've had for probably
12 five years?

13 AGENT FAULKNER: Five years? And that's the one
14 that's in the RV?

2:42 PM 15 JOSH DUGGAR: Yes.

16 AGENT FAULKNER: All right. What about the
17 desktop that's in there?

18 JOSH DUGGAR: The desktop?

19 AGENT FAULKNER: The HP.

2:42 PM 20 JOSH DUGGAR: I think I've had that for two and a
21 half years, three years, something like that.

22 AGENT FAULKNER: And then that hard drive, if you
23 can remember?

24 JOSH DUGGAR: That's probably five -- seven years
2:42 PM 25 maybe. It's an old one.

2:42PM 1 AGENT FAULKNER: Okay. That kind of helps us
2 narrow things down to what --

3 JOSH DUGGAR: Right. I don't think there's any
4 others in there. I mean, honestly, I can't remember. I
2:42PM 5 might have an old, you know, phone laying around or
6 something somewhere.

7 AGENT FAULKNER: In the RV or in the office?

8 JOSH DUGGAR: I know there's an old phone in the
9 back of this Honda, but that's -- we found it in the car,
2:42PM 10 you know. It's not like it's ours.

11 AGENT FAULKNER: What about any other type of --
12 I mean, now, we talk about electronics, I know a lot of it
13 people often just jump to cell phones, tablets, laptops,
14 things of that nature, but also electronic devices that
2:42PM 15 store dig- -- thumb drives?

16 JOSH DUGGAR: So there's -- there's a -- there's
17 probably more than one thumb drive in there.

18 AGENT FAULKNER: And --

19 JOSH DUGGAR: I don't know how many in the
2:42PM 20 office.

21 AGENT FAULKNER: You're pointing to this one on
22 the right?

23 JOSH DUGGAR: In the office on the right.
24 There's also camera -- two cameras in there. Both of
2:42PM 25 those have the ability to record, I think, on them.

2:42PM 1 AGENT FAULKNER: Mm-hmm.

2 JOSH DUGGAR: I don't know if any of them

3 actually have any SD cards or anything in there. I don't

4 know.

2:42PM 5 AGENT FAULKNER: Right. And those thumb drives,

6 are those yours, are they your coworkers or --

7 JOSH DUGGAR: I don't know. I don't know. I

8 don't actually know because I don't think I have -- there

9 might be one in that laptop bag as well, but they would

2:42PM 10 all be -- like, they would all be -- I mean, if they are

11 here, they are here. I don't know. We find stuff in cars

12 all the time.

13 AGENT FAULKNER: Oh, I can imagine.

14 JOSH DUGGAR: Yeah. I mean, we find -- when he's

2:42PM 15 cleaning underneath the seats, he will find money. I mean

16 --

17 AGENT FAULKNER: You name it, huh?

18 JOSH DUGGAR: Yeah, pretty much everything. I

19 don't want to say everything we find, but we --

2:42PM 20 AGENT FAULKNER: That's more of a -- that's more

21 of a lost and found of thumb drives that's in the office

22 right now?

23 JOSH DUGGAR: Right.

24 AGENT FAULKNER: But then the one that --

2:42PM 25 JOSH DUGGAR: I -- well, I mean, we may have

2:42PM 1 wiped some of them and used them for -- because we do car
2 photos mostly is what we're doing.

3 AGENT FAULKNER: Right.

4 (End of Section One)

2:42PM 5 Q. (BY MR. ROBERTS.) Now, Agent, in that section, you
6 ask him about the digital devices, the digital contraband
7 that he owns. I want to make sure that we are referring
8 to the right devices. Excuse me, digital devices, not
9 digital contraband.

2:51PM 10 A. Yes, sir.

11 Q. With regards to Government's Exhibit 14.

12 A. Yes, sir.

13 Q. Now, is that the desktop, the HP computer, that
14 Mr. Duggar was referring that he owned for two and a half,
2:52PM 15 three years?

16 A. Yes, sir, that is it.

17 Q. With regard to Government's Exhibit 19, is that the
18 laptop that he referred to that he owned?

19 A. That is correct, yes, sir.

2:52PM 20 Q. Finally, with regard to Government's Exhibit 20,
21 that's the phone that's up there by you. Is that the
22 phone he was referring to? Please speak into the mic. I
23 couldn't catch you.

24 A. Correct. Yes, sir, this phone.

2:52PM 25 Q. Now, with respect to Government's Exhibit 13, please

2:52PM 1 pull that up. Is that the surveillance system that
2 Mr. Duggar stated they had?

3 A. That is. And what we're seeing here is a live stream
4 from the surveillance system. But as told to us by
2:52PM 5 Mr. Duggar during the interview that he was not recording
6 this, and that none of his other employees were aware of
7 that, that these cameras were not recording the day-to-day
8 operations or interactions on this lot.

9 Q. With respect to Government's Exhibit 12, are those
2:53PM 10 the security cameras that Mr. Duggar referenced inside the
11 building?

12 A. Correct. Those, again, were live streaming to a
13 screen, but they were not recording.

14 Q. So they were checked and there was no recording like
2:53PM 15 an SD card, anything to keep a recording on them, is that
16 correct?

17 A. According to our CFAs, that is correct.

18 Q. They were cleared?

19 A. Yes, sir.

2:53PM 20 Q. I'm going to direct your attention to the second
21 audio portion of the interview. Could you please tell us
22 the topic of this section?

23 A. In this section, myself and Agent Aycock speak with
24 Mr. Duggar about his knowledge of peer-to-peer
2:53PM 25 file-sharing networks.

2:53PM 1 Q. Please play the second section.

2 (Section Two played as follows:)

3 AGENT FAULKNER: We are trying to figure out what
4 led us to this business.

2:54PM 5 JOSH DUGGAR: Okay.

6 AGENT FAULKNER: That's going to involve stuff
7 that's been either uploaded or downloaded onto the
8 internet. And I know Agent Aycock had mentioned just now
9 -- a while ago about uTorrent files. Well, we'll play
2:54PM 10 this out question by question.

11 JOSH DUGGAR: Yeah.

12 AGENT FAULKNER: You tell me what you feel
13 comfortable with. Do you know or do you remember Napster
14 back in the day? Napster was a file-sharing program where
2:54PM 15 millions of users throughout the world could get online
16 and download music files. So if I had an entire album of,
17 say, Garth Brooks, I could upload it onto this, into
18 Napster.

19 JOSH DUGGAR: I mean, I'm familiar. It was
2:54PM 20 probably a little before my --

21 AGENT FAULKNER: Right.

22 JOSH DUGGAR: -- time, but, yeah.

23 AGENT FAULKNER: I'm showing my age.

24 AGENT AYCOCK: You're not familiar with it. Come
2:54PM 25 on.

2:54PM 1 JOSH DUGGAR: 31.

2 AGENT FAULKNER: Yeah. Well, I'm 41, so you got

3 me.

4 But that was what was called a peer-to-peer

2:54PM 5 file-sharing network.

6 JOSH DUGGAR: Okay.

7 AGENT FAULKNER: And now it's evolved. Over the

8 years --

9 JOSH DUGGAR: Yeah.

2:54PM 10 AGENT FAULKNER: -- it's turned into where these

11 particular programs not only share music files but they

12 share video files, software programs, documents, you name

13 it.

14 Do you -- are you familiar with or do you know

2:54PM 15 anything about peer-to-peer file-sharing networks?

16 JOSH DUGGAR: I mean, I'm familiar with, I guess

17 you could say.

18 AGENT FAULKNER: Okay. Have you ever used or do

19 any of these electronics currently on the property have

2:54PM 20 any of those types of software downloaded onto them?

21 JOSH DUGGAR: Yes.

22 AGENT FAULKNER: Okay. Which, which devices are

23 we talking about?

24 JOSH DUGGAR: Probably all of them.

2:54PM 25 AGENT FAULKNER: All? So, and I just want to --

2:54PM 1 JOSH DUGGAR: Right.

2 AGENT FAULKNER: -- make sure. Again, we're not

3 here to put words in your mouth. So when you say "all"

4 and I'm thinking --

2:54PM 5 JOSH DUGGAR: Well, okay. I won't say all

6 because I'm going to say -- I'm going to say the laptop,

7 the phone, and the computer in the office.

8 AGENT FAULKNER: Okay. So laptop in the RV?

9 JOSH DUGGAR: Yes.

2:54PM 10 AGENT FAULKNER: Okay. The phone, your phone or

11 --

12 JOSH DUGGAR: I believe. To the best of my

13 knowledge.

14 AGENT FAULKNER: That's fine.

2:54PM 15 JOSH DUGGAR: Yeah.

16 AGENT FAULKNER: Again --

17 JOSH DUGGAR: I don't know if they actually all

18 have them or not. I don't know.

19 AGENT FAULKNER: We're not here to pen you in a

2:54PM 20 corner --

21 JOSH DUGGAR: Right.

22 AGENT FAULKNER: -- on any of your answers.

23 JOSH DUGGAR: Right.

24 AGENT FAULKNER: The laptop that's -- possibly on

2:54PM 25 the laptop in the RV?

2:54PM 1 JOSH DUGGAR: Right.

2 AGENT FAULKNER: Possibly on the phone that you

3 had on you, right, your phone, not Randall's?

4 JOSH DUGGAR: Mm-hmm, right.

2:54PM 5 AGENT FAULKNER: And then possibly --

6 JOSH DUGGAR: I don't know about Randall's.

7 AGENT FAULKNER: Yeah. We're going to -- we're

8 going to --

9 JOSH DUGGAR: Yeah.

2:54PM 10 AGENT FAULKNER: -- have a conversation very

11 similar to what we are having with you when we're done, if

12 he wants to talk to us.

13 And then possibly peer-to-peer networks on the HP

14 that's in the --

2:54PM 15 JOSH DUGGAR: Yes.

16 AGENT FAULKNER: Okay. And I guess that would --

17 that's what Agent Aycock was kind of getting to.

18 JOSH DUGGAR: Like a TOR -- like a TOR browser or

19 a TOR -- we upload stuff for our cars and things like

2:54PM 20 that. I've had a friend of mine that came and set up with

21 file-sharing so we could do, you know, more encrypted type

22 stuff. He just said it's safer that way. He got me onto

23 it. It's safer.

24 AGENT FAULKNER: Now, I want to make sure we're

2:54PM 25 getting -- that we're clear. When you say "TOR," my

2:54PM 1 definition, that's kind of a --

2 JOSH DUGGAR: I don't -- I actually don't know
3 the definition, so I don't really want to --

4 AGENT FAULKNER: Well, because TOR, T-O-R stands
2:54PM 5 for The Onion Router, which stands for basically the Dark
6 Web and the deep web.

7 JOSH DUGGAR: Okay.

8 AGENT FAULKNER: I don't know if you've heard of
9 the Dark Web? That's --

2:54PM 10 JOSH DUGGAR: I mean, I've heard people talk
11 about it.

12 AGENT FAULKNER: Right, but then there's Torrent,
13 so two different things.

14 JOSH DUGGAR: Okay.

2:54PM 15 AGENT FAULKNER: Peer-to-peer involves the
16 Torrent files.

17 JOSH DUGGAR: So what are you --

18 AGENT FAULKNER: So you have peer-to-peer files,
19 which is software that you can download, and you can
2:54PM 20 exchange files with users all over the world. TOR, T-O-R
21 --

22 JOSH DUGGAR: Okay.

23 AGENT FAULKNER: -- standing for The Onion Router
24 is the Dark Web. That's a program you -- that's where you
2:54PM 25 can surf the internet anonymously and get on all these

2:54PM 1 different sites.

2 JOSH DUGGAR: Yeah.

3 AGENT FAULKNER: So do you know --

4 JOSH DUGGAR: I don't know which -- I mean, I

2:54PM 5 don't know. Just, he said "TOR," so I don't really know

6 --

7 AGENT FAULKNER: Okay.

8 JOSH DUGGAR: -- which one.

9 AGENT FAULKNER: That's fine. I just want to

2:54PM 10 make sure I'm not -- when you say "TOR," I'm not thinking

11 Dark Web and while you're thinking peer-to-peer or vice

12 versa.

13 JOSH DUGGAR: No, I don't -- so you're -- so are

14 you saying -- what -- I guess I'm still confused.

2:54PM 15 AGENT FAULKNER: In terms of the peer-to-peer --

16 JOSH DUGGAR: Because you said you can download

17 -- I don't actually know.

18 AGENT FAULKNER: Right.

19 JOSH DUGGAR: So I guess I better not --

2:54PM 20 AGENT FAULKNER: Okay.

21 JOSH DUGGAR: -- say if I don't understand.

22 AGENT FAULKNER: And I'm not going to put words

23 in your mouth, but I'm assuming, because you said they

24 have peer-to-peer programs on these devices, that he was

2:54PM 25 talking about Torrent files, not T-O-R.

2:54PM 1 JOSH DUGGAR: TOR?

2 AGENT FAULKNER: Torrent, T-o-r-r-e-n-t.

3 JOSH DUGGAR: Oh, I don't know.

4 AGENT FAULKNER: As opposed to T-O-R. And there

2:54PM 5 is a difference there.

6 JOSH DUGGAR: So are you saying that TOR -- are

7 you saying -- is your question pertaining to which one?

8 AGENT FAULKNER: I was just making sure that you

9 and I were on the same page as to what you're talking, but

2:54PM 10 I don't think you're seeing the difference between TOR.

11 JOSH DUGGAR: I don't see any difference.

12 AGENT FAULKNER: Okay.

13 JOSH DUGGAR: As far as -- I mean, I don't know.

14 AGENT FAULKNER: So your friend said that there's

2:54PM 15 potentially on these devices.

16 JOSH DUGGAR: Well, no, no. I -- so I have

17 knowledge that there is something that says TOR on there.

18 AGENT FAULKNER: Okay.

19 JOSH DUGGAR: At least on one of them.

2:54PM 20 AGENT FAULKNER: Gotcha. All right.

21 JOSH DUGGAR: And then -- and that has been --

22 I'm just saying that was at his recommendation that I use

23 those and so a different -- and I don't know at what point

24 or -- right.

2:54PM 25 AGENT FAULKNER: Let's leave it at that point

2:54PM 1 based on your description of it.
2 JOSH DUGGAR: Right.
3 AGENT FAULKNER: And what would you say the usage
4 of the TOR that --
2:54PM 5 JOSH DUGGAR: I -- I don't recall.
6 AGENT FAULKNER: Okay.
7 JOSH DUGGAR: Yeah.
8 AGENT FAULKNER: Is it more for the business or
9 is it personal? Hey, look. I promise you we're not --
2:54PM 10 JOSH DUGGAR: I mean, most -- okay. So I can't
11 --
12 AGENT FAULKNER: We're not here --
13 JOSH DUGGAR: I can't speak to that because, I
14 mean, I have -- you have my laptop; you have my phone. So
2:54PM 15 it's probably split, you know, down the middle. The
16 office computer, probably the same thing.
17 AGENT FAULKNER: All right. And I don't want you
18 to think that we're here because --
19 JOSH DUGGAR: No, and my --
2:54PM 20 AGENT FAULKNER: -- somebody's downloading music.
21 We wouldn't --
22 JOSH DUGGAR: So what are you here for, then?
23 AGENT FAULKNER: That's what we're getting at.
24 AGENT AYCOCK: So part --
2:54PM 25 AGENT FAULKNER: Oh, I'm sorry. Go ahead.

2:54 PM 1 JOSH DUGGAR: I mean, is somebody communicating
2 --

3 AGENT AYCOCK: Part of -- we do a lot of things
4 with Homeland Security Investigation.

2:54 PM 5 JOSH DUGGAR: Right.

6 AGENT AYCOCK: We enforce over, like, 400
7 different federal statutes.

8 JOSH DUGGAR: Okay.

9 AGENT AYCOCK: Immigration, narcotics, gaming.

2:54 PM 10 JOSH DUGGAR: Yeah.

11 AGENT AYCOCK: And part of the other stuff we do
12 is child exploitation. So we kind of work with saving
13 kids essentially.

14 JOSH DUGGAR: Yeah.

2:54 PM 15 AGENT AYCOCK: A lot of times we'll find through
16 internet tips that people have, you know, downloaded child
17 pornography.

18 JOSH DUGGAR: Okay.

19 AGENT AYCOCK: You know, stuff like that. And --

2:54 PM 20 JOSH DUGGAR: So is that what you're saying -- is
21 that what you're saying's going on?

22 AGENT AYCOCK: Well, what we -- what we're saying
23 is there is a possibility that there are pieces to this
24 puzzle where we might be able to help save children.

2:54 PM 25 Okay?

2:54PM 1 JOSH DUGGAR: Okay.

2 AGENT AYCOCK: That's what we're trying to --

3 that's what we're trying to do.

4 JOSH DUGGAR: Okay.

2:54PM 5 AGENT AYCOCK: All right?

6 JOSH DUGGAR: So what is -- what is the -- I

7 guess what is the scope is what I've been trying to say.

8 Like, is there some -- is there something going on on my

9 devices where that's been -- something's accessed or

2:54PM 10 something's downloaded or uploaded or something like that?

11 AGENT AYCOCK: That's what led us here, yes.

12 JOSH DUGGAR: Okay.

13 AGENT AYCOCK: Okay. So what we're trying to do

14 is hopefully find out exactly what happened so we can try

2:54PM 15 to use that information to put some pieces of the puzzle

16 together --

17 JOSH DUGGAR: So --

18 AGENT AYCOCK: -- to help save --

19 JOSH DUGGAR: Does it -- does it include -- so

2:54PM 20 did it mark this IP address? Is that basically what

21 you're saying?

22 AGENT AYCOCK: Yeah.

23 JOSH DUGGAR: Okay. So does it -- so I guess in

24 the scope of your investigation, is there going to be, I

2:54PM 25 guess -- I mean, you'll narrow it down. You'll be able to

2:54PM 1 figure out probably which device or which thing -- or at
2 least know if it's any of these devices that are here?

3 AGENT AYCOCK: Well, that's what -- that's what
4 you see all these other guys running around doing. They
2:54PM 5 are our computer forensic analysts. So, like, even, you
6 know, even if something's on a computer that someone might
7 have downloaded and then deleted, they are going to be
8 able to find it, you know.

9 JOSH DUGGAR: Yeah. That's great.

2:54PM 10 AGENT AYCOCK: They have been doing that. That's
11 what they do, you know?

12 JOSH DUGGAR: Yeah.

13 AGENT AYCOCK: So, you know, with that being
14 said, we're just trying to get -- get to the bottom of it.

2:54PM 15 JOSH DUGGAR: Exactly. No, well, that helps me a
16 lot to understand what you're -- what you're here for. So
17 I understand that. I respect that. That's good.

18 So what other -- I guess, you know, they will do
19 their work and figure out what they can find, so --

2:54PM 20 AGENT FAULKNER: Has there been anything, let's
21 say within the last five to six months between yourself or
22 any of your employees or any of their associates that have
23 been on this property that has raised a red flag as to why
24 that search warrant -- or federal search warrant might
2:54PM 25 have been signed --

2:54PM 1 JOSH DUGGAR: Not at all.

2 AGENT FAULKNER: -- as to why we're here?

3 JOSH DUGGAR: No.

4 AGENT FAULKNER: Nothing that might have been

2:54PM 5 accidentally or intentionally downloaded or uploaded from

6 any of these networks or software programs that we've

7 talked about?

8 JOSH DUGGAR: Not that I know of, no.

9 (End of Section Two)

2:54PM 10 Q. (BY MR. ROBERTS.) Now, during that section of the

11 audio, Mr. Duggar specifically said they had peer-to-peer

12 software installed, I believe his laptop phone and

13 computer in the office. Again, that's the HP we have seen

14 the picture of, is that correct?

3:02PM 15 A. Yes, sir.

16 Q. The iPhone that you have there at the stand, is that

17 correct?

18 A. Correct. Yes, sir.

19 Q. And the laptop with the American flag?

3:02PM 20 A. The MacBook laptop, yes, sir.

21 Q. Now, during the interview, Mr. Duggar referenced the

22 TOR browser. At this point in your investigation, did you

23 have any reason to believe the TOR browser was involved?

24 A. On November 8th of 2019, we had no knowledge the TOR

3:03PM 25 browser or the Dark Web, so to speak, was involved in this

3:03PM 1 investigation.

2 Q. Now, you attempted to in the interview, but could you
3 explain to the Jury what the TOR browser is?

4 A. So TOR, T-O-R, stands for "The Onion Router." And
3:03PM 5 it's basically a network that users can surf the internet
6 on anonymously, meaning that their IPs cannot be tracked
7 or it's very difficult to track them.

8 Q. So as opposed to a peer-to-peer network where you
9 could see the IP, law enforcement can see the IP, on this
3:03PM 10 network, you cannot, is that true? Law enforcement

11 generally cannot see that IP address?

12 A. It's very, very difficult.

13 Q. So within your occupation as a Special Agent, do you
14 often see or work cases involving TOR?

3:03PM 15 A. Yes, sir, I have.

16 Q. What kind of cases?

17 A. The majority, obviously, with the ICAC is child
18 exploitation based where individuals are surfing this
19 network anonymously. They are trading images and videos
3:04PM 20 of child pornography. They are downloading images and
21 videos of child pornography. There's websites that I've
22 come across where you can actually buy a child in terms of
23 sex-trafficking websites.

24 Q. And so this is just accessible to this TOR browser
3:04PM 25 program that you download, is that right?

3:04PM 1 A. Correct, in terms of what we investigate.

2 Q. That's a free program?

3 A. Yes, sir.

4 Q. Within law enforcement, is the TOR browser or the
3:04PM 5 Dark Web a known source of child pornography?

6 A. Yes, sir, it is.

7 Q. Now, during the interview, Mr. Duggar stated that
8 they would upload stuff for cars and things like that to
9 the TOR, using the TOR browser. Does that make sense to
3:04PM 10 you as an investigator?

11 A. Common sense of it, no, sir.

12 Q. Could you explain?

13 A. Again, people enter, for most parts, the Dark Web to
14 remain anonymous to where nobody knows who you are or
3:05PM 15 especially where you are. If a business is uploading
16 photographs for a car lot in order to sell them at a
17 specific location, I would not think that the Dark Web
18 would be the best place to do that.

19 Q. In your experience using the Dark Web, have you ever
3:05PM 20 been able to access something like a car lot website?

21 A. Honestly, I don't think I have ever attempted.

22 Q. Just never dawned on you?

23 A. Not to look for a car lot on the Dark Web, no, sir.
24 Or purchase a vehicle on the Dark Web.

3:05PM 25 Q. You've never purchased one?

3:05PM 1 A. Not on the Dark Web.

2 Q. What other things, known to law enforcement, is
3 available on the Dark Web?

4 MR. GELFAND: Your Honor, I object on relevance
3:06PM 5 and 403.

6 THE COURT: Mr. Roberts?

7 MR. ROBERTS: Your Honor, my response
8 specifically is that this case involves the TOR browser,
9 which is accessible to the Dark Web. I think the Jury is
3:06PM 10 entitled to know what the Dark Web specifically entails in
11 law enforcement investigations.

12 THE COURT: Well, overruled. But let's move on
13 from those sorts of personal anecdotal questions.

14 Q. (BY MR. ROBERTS.) So at this point in your
3:06PM 15 investigation, did you know if Mr. Duggar had TOR browser
16 on his personal iPhone or his personal laptop?

17 A. No, sir, not on November 8th of 2019.

18 Q. At this point in the investigation, did you know if
19 TOR browser was on the HP computer?

3:07PM 20 A. On November 8th, 2019, no, sir.

21 Q. Now, directing your attention to the third audio
22 portion. Can you tell the Jury what topic is discussed in
23 this section?

24 A. Yes, sir. So this section, myself and Agent Aycock
3:07PM 25 give Mr. Duggar the specific details as to why the federal

3:07PM 1 search warrant was actually issued.

2 THE COURT: Can I see counsel at side bar,
3 please?

4 (Bench Conference)

3:07PM 5 THE COURT: I want to go back to the ruling on
6 the last objection. The last thing that I heard Agent
7 Faulkner talking about had to do with the question about
8 whether he had ever purchased vehicles on the Dark Web and
9 kind of what sort of sense that would be. And right on

3:08PM 10 the heels of that, there was an objection. And I thought
11 that the objection was to the relevance of these sort of
12 personal anecdotal deals. But just looking at the
13 real-time transcript, you had actually began a question
14 that was shifting away from that. Your question was to

3:08PM 15 the effect of, "Are there other law enforcement objectives
16 that are pursued on the Dark Web?" And, technically, that
17 is the point where the objection was made.

18 If you had more questions about whether he buys
19 personal vehicles on the Dark Web, you need to move on
3:08PM 20 from that. But if you had questions that relate to, "Are
21 there other law enforcement objectives on the Dark Web," I
22 did not mean to tell you that you had to move on from
23 that.

24 MR. ROBERTS: I understand. That was where I was
3:09PM 25 trying to go, Your Honor, but it's not a big point. I

3:09PM 1 don't need to revisit it.

2 THE COURT: I just want to be clear.

3 (Bench Conference Concluded)

4 Q. (BY MR. ROBERTS.) Now, Agent, I lost my place a
3:09PM 5 little bit, but I believe where we were at is directing
6 your attention to the third audio portion. Could you
7 remind us what that section deals with?

8 A. Yes, sir. That section, myself and Agent Aycock
9 explained to Mr. Duggar the specific details as to why the
3:09PM 10 federal search warrant was issued.

11 MR. ROBERTS: I would ask to play section three
12 at this time.

13 (Section Three played as follows:)

14 AGENT FAULKNER: So, and I know Agent Aycock had
3:10PM 15 kind of alluded to the fact that -- what we do, but we're
16 part of a specialized task force and that task force is
17 called the internet Crimes Against Children Task Force.

18 JOSH DUGGAR: Yeah.

19 AGENT FAULKNER: Based on an ongoing
3:10PM 20 investigation, we were able to directly connect --
21 actually, one of our task force affiliates in the Eastern
22 District was able to directly connect to a certain IP
23 address that was participating in the uploading and
24 sharing of known videos and images of child pornography.

3:10PM 25 JOSH DUGGAR: Okay.

3:10 PM 1 AGENT FAULKNER: That information was then sent
2 to us because the IP geolocated back into the Western
3 District somewhere in Northwest Arkansas.

4 JOSH DUGGAR: So it was transmitting or
3:10 PM 5 receiving?

6 AGENT FAULKNER: At this point I probably -- it's
7 probably best that you just listen. Okay?

8 JOSH DUGGAR: Okay.

9 AGENT FAULKNER: We were able to get from this IP
3:10 PM 10 address one specific video of child pornography and one
11 folder containing approximately 65 images of child
12 pornography from a specific IP address.

13 We then, once that information was turned over to
14 us because of the fact that it was geolocated in Northwest
3:10 PM 15 Arkansas, we served a federal summons onto -- or for that
16 IP address. That IP address came back to OzarksGo --

17 JOSH DUGGAR: Okay.

18 AGENT FAULKNER: -- with a subscriber of --

19 JOSH DUGGAR: Yeah, my name.

3:10 PM 20 AGENT FAULKNER -- Joshua Duggar, Duggar with cell
21 phone.

22 JOSH DUGGAR: Yeah.

23 AGENT FAULKNER: I'm assuming that's personal
24 cell phone?

3:10 PM 25 JOSH DUGGAR: Mm-hmm.

3:10 PM 1 AGENT FAULKNER: With that e-mail address that
2 you had just mentioned.

3 JOSH DUGGAR: Yeah.

4 AGENT FAULKNER: Now, it came back to a P.O. Box.

3:10 PM 5 JOSH DUGGAR: Yeah.

6 AGENT FAULKNER: We kind of briefly talked about
7 this when we got on scene. So your -- their service
8 address --

9 JOSH DUGGAR: Right.

3:10 PM 10 AGENT FAULKNER: -- from OzarksGo has you at --

11 JOSH DUGGAR: Right.

12 AGENT FAULKNER: -- at this lady's house down the
13 street.

14 AGENT AYCOCK: Down the road.

3:10 PM 15 JOSH DUGGAR: Well -- oh, that's -- that's where
16 it is? Okay.

17 AGENT FAULKNER: That's where it is because
18 Washington County property records have not updated or --

19 JOSH DUGGAR: Right.

3:10 PM 20 AGENT FAULKNER: -- or separated your land from
21 this lot.

22 JOSH DUGGAR: Right.

23 AGENT FAULKNER: So your actual physical address,
24 which we had to find out -- and OzarksGo does not have it;
3:10 PM 25 they have corrected now because this poor lady keeps

3:10PM 1 getting your mail -- as to what it is right now.

2 JOSH DUGGAR: Okay.

3 AGENT FAULKNER: Based on all that information,
4 we were able to determine that this was the business where
3:10PM 5 downloads of child pornography had occurred.

6 JOSH DUGGAR: Okay.

7 AGENT FAULKNER: It came from -- or it occurred
8 on two separate dates, which I believe to be approximately
9 May 14th and May 15th of 2019, through a uTorrent software
3:10PM 10 and that's why I was asking you earlier to make sure we
11 understood or were on the same page --

12 JOSHUA DUGGAR: Right, right.

13 AGENT FAULKNER: -- with what T-O-R is, TOR, and
14 what Torrent is.

3:10PM 15 JOSH DUGGAR: Yeah.

16 AGENT FAULKNER: And everything, again, was at
17 the late night hours, I want to say roughly between, from
18 what we can guesstimate, between 10:00 and 11:00.

19 JOSH DUGGAR: Okay.

3:10PM 20 AGENT FAULKNER: So based on all that
21 information, a federal search warrant was obtained for the
22 property and everything on it to include the RVs, office
23 and vehicles to find out or look for electronic devices
24 that possibly were responsible for those downloads or
3:10PM 25 uploads of child pornography.

3:10 PM 1 JOSH DUGGAR: Okay.

2 AGENT FAULKNER: That's what's gotten us here
3 today and that's why you can see some of our questions
4 were tailored around electronics --

3:10 PM 5 JOSH DUGGAR: Right.

6 AGENT FAULKNER: -- who has access, who has
7 ownership, knowledge of certain softwares and forensic --
8 or peer-to-peer groups. And, you know, at this stage, all
9 we're trying to do -- and I'll tell you this: I didn't
3:10 PM 10 know much about you leading up to this until I did, you
11 know --

12 JOSH DUGGAR: A little research? Yeah.

13 AGENT FAULKNER: -- some research in the last few
14 weeks. Man to man, I don't know how you do it. It is
3:10 PM 15 amazing to me what the media is putting you through on a
16 daily basis all because of stuff which would be considered
17 speculation by most parts.

18 We don't want to speculate. That's why we came
19 here. We tried to be as courteous as possible and have a
3:10 PM 20 one-on-one or a conversation to figure out who's doing
21 this on this lot because these are not actors and
22 actresses that are in these videos and images that we know
23 came from here. Okay?

24 JOSH DUGGAR: Okay.

3:10 PM 25 AGENT FAULKNER: These are somebody's little boy,

3:10 PM 1 little girl.

2 JOSH DUGGAR: I agree.

3 AGENT FAULKNER: At the end of the day, that's
4 our main objective is to find out who's doing it so that
3:10 PM 5 we can -- or what electronic devices it's being done on so
6 we can get those devices and take these images back off
7 the internet so that these kids aren't revictimized.

8 JOSH DUGGAR: So they are being -- so, yeah. I
9 guess I have -- I mean, I have quite a few questions about
3:10 PM 10 it, but I don't know, you know, how much you can divulge,
11 but I'm just, I'm curious. You're saying there's images
12 being uploaded or images being downloaded?

13 AGENT FAULKNER: That the IP address from this
14 lot had child pornography associated to it in a
3:10 PM 15 peer-to-peer software program, and our task force
16 affiliate was able to download those, that video and
17 images, from the folder of the IP address going to this.

18 JOSH DUGGAR: Okay. Got you.

19 AGENT FAULKNER: Well, that's one of the things
3:10 PM 20 too, and I know Agent Aycock had also spoke about this
21 briefly. Those individuals you see walking around, we
22 didn't just decide to wake up this morning and come here.
23 So we did our homework and we've been doing this for
24 almost a decade now. We're pretty good at what we do.

3:10 PM 25 JOSH DUGGAR: Appreciate -- yeah, I appreciate

3:10PM 1 the work you guys do.

2 AGENT FAULKNER: Thank you.

3 JOSH DUGGAR: Yeah.

4 AGENT FAULKNER: But these forensic guys are some
3:10PM 5 of the best in the country.

6 JOSH DUGGAR: That's great.

7 AGENT FAULKNER: And what they do is they take
8 electronic devices and they, through third-party software
9 or through certain forensic software, without altering or
3:10PM 10 deleting anything that's on those electronic devices, can
11 go in and see a digital fingerprint of anything and
12 everything that's ever happened.

13 So some -- if there's an electronic device -- and
14 that's why we're trying to get ahead of the game. If
3:10PM 15 there's an electronic device that may possibly have these
16 videos or images or anything associated like that that's
17 on it, we'd like to know now because once we leave here
18 today, it's kind of the end of our conversation and we
19 wrap our -- wrap everything up then and we don't have
3:10PM 20 anything else to go on other than, "No, I don't know
21 anything about it," and then we see it and it's like,
22 "Okay. Well, we had an opportunity to talk about that."

23 JOSH DUGGAR: Right.

24 AGENT FAULKNER: "Why wasn't it addressed then."

3:10PM 25 JOSH DUGGAR: Right.

3:10 PM 1 AGENT FAULKNER: You see what I'm getting at?

2 JOSH DUGGAR: Right.

3 AGENT FAULKNER: But as long as you're confident
4 that there's no -- or at least you --

3:10 PM 5 JOSH DUGGAR: I don't want to be -- I've watched
6 my friends, you know, answer things and they get them for
7 conspiracy or for something and I'm just, I'm not --

8 AGENT FAULKNER: I promise you --

9 JOSH DUGGAR: I know federal statutes are broad
3:10 PM 10 and there's a lot of things to it and I'm not going to say
11 anything that's going to --

12 AGENT FAULKNER: We don't -- we don't -- that's
13 not our intent.

14 JOSH DUGGAR: -- incriminate me or anything at
3:10 PM 15 all. I don't want to -- I'm not a -- you know, I'm not
16 denying guilt, but I'm not saying that I'm -- you know, I
17 mean, as far as anything goes, I don't want to be -- I
18 don't want to say the wrong thing.

19 AGENT FAULKNER: Right. At the end of the day,
3:10 PM 20 you need to protect yourself.

21 JOSH DUGGAR: Yeah, I don't want to -- I mean, I
22 don't want to -- I don't want to say that I'm guilty or
23 not. I'm just not saying, you know, on search -- finding,
24 accessing inappropriate content at some point, at any
3:10 PM 25 point in my life.

3:10 PM 1 (End of Section Three)

2 Q. (BY MR. ROBERTS.) Now, Agent, during that section,
3 you explained to Mr. Duggar that these downloads occurred
4 at late night hours. Could you explain that to the Jury?

3:16 PM 5 A. Yes, sir. So when I initially received the lead from
6 Detective Kalmer, I, in error, converted the times -- I
7 think I put them ahead six hours or so -- into a
8 different, or I converted to a time zone when I didn't
9 need to. They were already in Central form. So at that
3:17 PM 10 time in November 8th, 2019, I was under the impression, as
11 well as Agent Aycock, that the download times in question
12 were in the mid to late hours of the evening.

13 Q. So when Mr. Duggar, at the outset of this interview,
14 asked you this question regarding whether someone has been
3:17 PM 15 downloading child pornography, is it correct that the only
16 time that you actually told him someone was downloading
17 child pornography was the subsequent conversation, the one
18 that we have heard?

19 A. That is correct.

3:18 PM 20 Q. Now, what happened after this interview was concluded
21 with Mr. Duggar?

22 A. Mr. Duggar left the property and we ended up giving
23 the copies of the search warrant return, things that we
24 seized, to his employee, Randall Berry.

3:18 PM 25 Q. Now, in an effort to further identify employees who

3:18PM 1 had access to Wholesale Motorcars on May 14th, 15th, did
2 law enforcement obtain the Wholesale Motorcars employee
3 pay records?

4 A. Yes, sir.

3:18PM 5 Q. I'd like to reference you to Government's Exhibit 23.

6 A. Yes, sir.

7 Q. Can you identify and have you previously reviewed
8 Government's Exhibit 23?

9 A. Yes, sir, I have. This is a Wholesale Motorcars'
3:18PM 10 check -- I'm sorry, there's a glare -- made out to a
11 Joshua Williams in the amount of \$150.

12 Q. Well, Agent, before you go through all of them.
13 Collectively, all the checks that are a part of
14 Government's Exhibit 23, are they true and accurate copies
3:19PM 15 of the records that you obtained from Wholesale Motorcars
16 reflecting the employee pay records of 2019?

17 A. They are true and correct as to what we received.

18 MR. ROBERTS: Your Honor, I would move to
19 introduce Government's Exhibit 23 into evidence.

3:19PM 20 MR. GELFAND: We have no objection. Can I confer
21 with opposing counsel for just one second?

22 THE COURT: Yes.

23 (Off-the-record discussion)

24 MR. ROBERTS: Your Honor, may we briefly
3:20PM 25 approach?

3:20PM 1 THE COURT: Yes.
2 (Bench Conference)
3 MR. ROBERTS: The stipulation finally came
4 together, Your Honor, and it's signed regarding the
3:20PM 5 records. We would ask, perhaps if it's appropriate, to be
6 a Court exhibit.
7 MR. GELFAND: We join in that request, Your
8 Honor.
9 THE COURT: This is what?
3:20PM 10 MR. GELFAND: I said we join in that request,
11 Your Honor.
12 THE COURT: Okay.
13 MR. ROBERTS: The stipulation is in regard to one
14 of the motions, the pretrial motions that was filed.
3:20PM 15 THE COURT: Yes. Okay. All right.
16 MR. GELFAND: Mark it as Court Exhibit 1 or
17 whatever.
18 THE COURT: So we'll mark it as a Court exhibit.
19 Are you asking that the Court read this at this time?
3:20PM 20 MR. ROBERTS: Your Honor, on behalf of the
21 government, yes, sir.
22 MR. GELFAND: We have no objection.
23 THE COURT: And if it's received as a Court's
24 exhibit, it does not go back to the jury room. That is
3:21PM 25 the default way that it would be handled. If the parties

3:21PM 1 want the stipulation to go back to the jury room, you need
2 to mark it as a sub-exhibit or an associated exhibit to
3 the bank records.

4 MR. ROBERTS: Your Honor, I would rather mark it
3:21PM 5 as an exhibit that does go back to the jury room.

6 MR. GELFAND: We're fine with that. However the
7 Court wants to handle that.

8 THE COURT: Thank you.

9 (Bench Conference Concluded)

3:21PM 10 THE COURT: The Court will receive Government's
11 Exhibit 23, which are the bank records, essentially
12 canceled checks from Wholesale Motorcars.

13 (Government's Exhibit 23 Received)

14 THE COURT: After conferring with counsel, the
3:21PM 15 Court is also going to receive and mark, I'm going to
16 refer to it just for housekeeping purposes as Government's
17 Exhibit 23-1, but this is actually a stipulated exhibit
18 that contains a written stipulation of the parties that
19 pertains to this exhibit. And I would like to read the
3:22PM 20 stipulation to you now, and this has to do with how these
21 bank records were procured.

22 "The United States, by and through its counsel,
23 and defendant, Joshua James Duggar, by and through his
24 counsel, hereby stipulate and agree that the following
3:22PM 25 fact is true and must be accepted as true by you as if

3:23PM 1 otherwise established through other witnesses that would
2 have to be called."

3 "On or about April 29, 2020, a federal subpoena
4 was issued to FiveStone Group, LLC, that does business as
3:23PM 5 Wholesale Motorcars. The subpoena requested copies of any
6 and all IRS forms, 1099, and copies of all employee
7 paychecks issued for the time period January 1, 2019,
8 through December 31, 2019."

9 "On or about May 5 of 2020" -- so about one week
3:23PM 10 later -- "FiveStone Group, LLC" -- again, this LLC does
11 business as Wholesale Motorcars -- "provided responsive
12 documents consisting of all IRS forms, 1099, and all
13 employee paychecks in the business's possession, custody,
14 and control issued by FiveStone Group, LLC, doing business
3:24PM 15 as Wholesale Motorcars between the dates of January 1,
16 2019, through December 31, 2019. The records provided by
17 FiveStone Group, LLC, doing business as Wholesale
18 Motorcars, are true and authentic business records of
19 FiveStone Group, LLC."

3:24PM 20 And this has been signed by counsel for both
21 parties and you will have this stipulation in the jury
22 room. It's a jointly made stipulation, but it's been
23 marked as Government's 23-1 to indicate that it goes with
24 the records that are received as Government's Exhibit 23.

3:24PM 25 (Government's Exhibit 23-1 Received)

3:24PM 1 THE COURT: You may proceed.

2 MR. ROBERTS: Thank you, Your Honor.

3 Q. (BY MR. ROBERTS.) Now, with regard to Government's
4 Exhibit 23, those are the employee pay records section,
3:25PM 5 not the IRS 1099s, is that correct?

6 A. Correct.

7 MR. ROBERTS: Your Honor, I would move to publish
8 Government's Exhibit 23.

9 THE COURT: You may.

3:25PM 10 Q. (BY MR. ROBERTS.) Please just orient the Jury.

11 A. Again, that is a Wholesale Motorcars' check made out
12 to Joshua Williams with a date of January 12th, 2019, in
13 the amount of \$150.

14 Q. Next page.

3:25PM 15 A. Wholesale Motorcars' check made out to Matthew
16 Waller, the date of January 26th, 2019, in the amount of
17 \$264.

18 Q. Agent, instead of going check by check, would it be
19 accurate that all the next several checks leading up to
3:25PM 20 the end of April would be made out to Matthew Waller and
21 the same description that you've already provided?

22 A. That is correct. Yes, sir.

23 Q. Please go forward to the end of April. Stop there.
24 One forward, please. Now, with regard to what's on the
3:26PM 25 screen before the Jury, is that last paycheck issued to

3:26PM 1 Matthew Waller per the records that we have obtained?

2 A. That is correct. Yes, sir.

3 Q. And at the bottom, could you read the memo section to
4 make sure the Jury can understand?

3:26PM 5 A. Yes, sir. It says, "Commissions for 3-30 - 4-29-19,
6 11 sales."

7 Q. Now, in your investigation, did Homeland Security
8 locate Mr. Waller and interview him?

9 A. Yes, sir. We sent a collateral request of
3:26PM 10 investigation to our St. Paul, Minnesota, office. Agents
11 out of that office located and interviewed Mr. Waller.

12 Q. Please go forward to the next page. Now, Agent, will
13 you orient the Jury to this page?

14 A. Again, this is a Wholesale Motorcars' check made out
3:27PM 15 to Randall Steve Berry from May 31st, 2019, in the amount
16 of \$450.

17 Q. Now, Agent, was there any records, employee pay
18 records, produced by Wholesale Motors for the time period
19 covering May 14th, 15th, and 16th?

3:27PM 20 A. No, sir, not that I'm aware of.

21 Q. Now, Mr. Berry, you have testified, was on scene that
22 day, is that correct?

23 A. Yes, sir.

24 Q. Did you interview Mr. Berry?

3:27PM 25 A. We did.

3:27PM 1 Q. Was his cellular phone forensically reviewed?

2 A. One of our computer forensic analysts did a manual
3 triage, basically a manual examination, on Mr. Berry's
4 phone.

3:28PM 5 MR. ROBERTS: Your Honor, may I have a moment?

6 THE COURT: You may.

7 MR. ROBERTS: Pass the witness.

8 THE COURT: Thank you. I think that we're going
9 to go ahead and take our afternoon recess. We'll be in
3:28PM 10 recess until 3:50, so for 20 minutes. If you would be
11 ready to go, we'll call for you at 3:50. If everyone
12 would please stand while the Jury is in recess.

13 (Jury out at 3:28 p.m.)

14 THE COURT: You may be seated, but I would ask
3:29PM 15 that you remain in the courtroom while the Jury clears the
16 elevator lobby. I'll pause with you here and let you know
17 when you may leave the courtroom.

18 While we're waiting, the issue that we took up in
19 chambers at the tail end of the lunch hour, I have now had
3:30PM 20 an opportunity to correlate Court's Exhibit 1, which is
21 the transcript that was handed out to the Jury of the
22 audio recordings that were received into evidence. And
23 I've correlated those to the complete transcript that was
24 received in earlier proceedings. And for members of the
3:30PM 25 gallery, you're free to go. The Jury has cleared the

3:30PM 1 elevator lobby. And so I can tell you that section one
2 can be found at page 8, beginning at line 25, and goes
3 through page 20, line 12.

4 Section two goes from page 29, line 9, through
3:31PM 5 page 40, line 25.

6 And with a couple of exceptions, section three
7 goes from page 48, line 7, to page 56, line 24. The two
8 exceptions are some internal gaps within that page range,
9 specifically page 53/21, to page 54, line 9. And
3:31PM 10 secondly, page 55, line 24, through page 56, line 2.

11 Those two gaps contain very short sets of questions that
12 go to the Fifth Amendment issue that the Court precluded
13 in its motion in limine rulings about the transcript.

14 To the extent, Mr. Gelfand, that you are wanting
3:32PM 15 to introduce additional portions of the recording pursuant
16 to Rule 106, I need you to identify for me from the
17 original transcript the page and line references. And I
18 also need you to be prepared to explain why the contents
19 of the excluded passages would be relevant to one of the
3:32PM 20 issues at trial and to also identify for the Court how
21 those excluded portions would either explain or provide
22 context to the portions that were admitted by the
23 government or that would be necessary to avoid misleading
24 the Jury or for some reason to ensure fairness and
3:33PM 25 impartiality and a correct understanding of the evidence.

3:33PM 1 And I realize we only have 20 minutes, but just giving you
2 a heads-up as to where my scorecard is so far so you can
3 help me correlate that.

4 MR. GELFAND: I'm prepared to do that whenever
3:33PM 5 the Court would like, Your Honor.

6 THE COURT: All right. You can tell me now.

7 MR. GELFAND: First of all, for organization
8 purposes, Your Honor, in light of just keeping this
9 organized, we've marked essentially sub-exhibits by giving
3:33PM 10 them separate defense exhibit numbers so that we can at
11 least have a clear record of what we're all talking about.

12 I will note for the record that the clips I
13 potentially intend to play that are included within the
14 government clips are Defendant's Exhibits 68, 69, 71, 72,
3:33PM 15 and 75. In other words, that's not something that falls
16 within what the Court just asked.

17 THE COURT: You are going to replay --

18 MR. GELFAND: Very small snippets from this.

19 THE COURT: -- vignettes within what's already
3:34PM 20 before the Jury?

21 MR. GELFAND: Correct, Your Honor.

22 THE COURT: 68, 69.

23 MR. GELFAND: 71, 72, and 75. There is a clip
24 that we have identified for identification purposes as
3:34PM 25 Defendant's Exhibit 76. It's on page 57 of what I think

3:34PM 1 the Court is referring to as kind of the master
2 transcript. And it begins with line 16 and ends with line
3 25. And to be clear, this is a direct follow-up to this
4 suggestion that Mr. Duggar's statement, "I'm not denying
3:34PM 5 guilt" has some sort of significance when he expressly
6 denies guilt.

7 THE COURT: That comes on the heels of the very
8 end of section three?

9 MR. GELFAND: Yes, Your Honor, with the exception
3:35PM 10 of an excluded portion due to the Court's in limine.

11 MR. ROBERTS: What was the end of that section
12 that you are referring to? What end are you going to?

13 MR. GELFAND: 25.

14 THE COURT: What else?

3:35PM 15 MR. GELFAND: Defendant's Exhibit 70 is on
16 page 25 of the master transcript, Your Honor, beginning
17 with line 1 going to line 11. This provides context to
18 the government's clips that they played about Mr. Duggar
19 identifying the devices as his and that he had access to
3:36PM 20 it when Mr. Duggar states very clearly that others had
21 access too.

22 The next one is Defendant's Exhibit 73, which is
23 on page 41 of the master transcript, line 11 through line
24 23, referring specifically to Mr. Berry and also referring
3:37PM 25 to these explained, but confusing questions, about being

3:37PM 1 there past 6:00 p.m. in light of the Special Agent's time
2 translation confusion.

3 THE COURT: What was the time translation
4 confusion?

3:37PM 5 MR. GELFAND: That he asked Mr. Duggar
6 essentially, "Are you here late at night," as the Special
7 Agent, as I understood his testimony, essentially
8 miscalculated, for whatever reason thought 5:00 p.m. was
9 11:00 p.m. or whatever the specific testimony was.

3:37PM 10 THE COURT: Right. Okay.

11 MR. GELFAND: And then there's one additional
12 clip. And that's Exhibit 74, which is on page 43 of the
13 master transcript. This one is a little bit longer, Your
14 Honor. It begins on page 43, line 20. And it goes
3:38PM 15 through page 48, line 3. And this all directly relates to
16 William Mize and specifically access to the car lot.

17 THE COURT: So it's relevant. How does it
18 explain or give context to the portions of the recording
19 that have already been received?

3:38PM 20 MR. GELFAND: I think it deals with the Agent's
21 subsequent investigation and it explains why he goes to
22 William Mize. And then the failure to forensically image
23 Mr. Mize's devices.

24 THE COURT: So you are saying this is
3:39PM 25 impeachment?

3:39PM 1 MR. GELFAND: It's potential impeachment,
2 depending on what the Agent testifies to. I realize the
3 Agent is on the witness stand right now.

4 THE COURT: I understand. Sorry.

3:39PM 5 MR. GELFAND: I'm just trying to be a little bit
6 cryptic. Depending on what the Agent testifies to, it may
7 be relevant; it may not be.

8 THE COURT: I understand. Anything else?

9 MR. GELFAND: I think that's it.

3:39PM 10 THE COURT: Will the government please take a
11 look at those right now and send word back if you have any
12 objections to these passages coming in under 106?

13 MR. ROBERTS: Your Honor, we will.

14 THE COURT: Thank you. We're in recess.

3:39PM 15 (Recess taken from 3:39 p.m. to 3:55 p.m.)

16 (Outside the Presence of the Jury)

17 THE COURT: Does the government have a position?

18 MR. ROBERTS: Yes, Your Honor. We are going to
19 move to exclude the mentioned portions under the Rule of
3:55PM 20 Completeness. We don't believe they provide context.

21 With respect to page 57, the identified portions,
22 line 16 through 25, if you look at the preceding section,
23 that is the exact section the government took out because
24 of the defense motion. And that section gives context to
3:56PM 25 the sections that they are trying to introduce. That's

3:56PM 1 actually a Rule of Completeness within a Rule of
2 Completeness challenge.

3 THE COURT: So if Defendant's Exhibit 76, if the
4 Court were going -- would the government be agreeable if
3:56PM 5 it required the defense to also play from page 56, line
6 25, through page 57, line 11?

7 MR. ROBERTS: Your Honor, we would not, just
8 because that's not the answer to the question that's
9 posed. I just think it gives the Jury a false sense of
3:56PM 10 what was discussed that day. That's not, in fairness, of
11 what completes the actual audio interview. That's
12 actually, in the government's perspective, the opposite.
13 It's giving the wrong impression.

14 THE COURT: To be clear, I'm talking about where
3:57PM 15 Faulkner says, "Let me be a little more specific because
16 video images that I'm specifically talking about is
17 something that's not -- cannot be misinterpreted as a
18 21-year-old dressed up like a 15-year-old," et cetera, et
19 cetera, et cetera. "These are very clearly 5 to
3:57PM 20 10-year-olds." We would have to exclude line 12, where
21 Josh says, "I would rather not answer that question."
22 Faulkner says, "That's perfectly fine." Aycock says,
23 "That's your right." And then Josh Duggar says the five
24 or six lines that they are wanting.

3:57PM 25 So you're saying you don't -- even if the Court

3:58PM 1 required them to include the question, you don't want that
2 answer?

3 MR. ROBERTS: Your Honor, we didn't even
4 challenge the defense on their motion. We took out the
3:58PM 5 entire section. Now we're talking about putting sections
6 of the challenged section back in just to satisfy this --

7 THE COURT: I'm not saying you have to. I'm
8 asking if you want to.

9 MR. ROBERTS: I do not, Your Honor.

3:58PM 10 THE COURT: What about the next one, page 25,
11 1 through 11?

12 MR. ROBERTS: Your Honor, again, we don't believe
13 it adds clarity. We played a clip talking about the
14 ownership of the devices that Mr. Duggar had. We didn't
3:58PM 15 play any clip about others who had access to it.

16 THE COURT: And then what about page 41, lines 11
17 through 23?

18 MR. ROBERTS: Your Honor, we did discuss
19 Mr. Berry, but not during the audio. We separately did
3:58PM 20 him through the employee pay records.

21 THE COURT: What about if the Court required them
22 to play the section right above that, page 41, lines 1
23 through 10? I may have my notes off for some reason.
24 Yeah, they are wanting 11 through 23. So if we included
3:59PM 25 anything above line 11, would that resolve any of the

3:59PM 1 government's position?

2 MR. ROBERTS: One moment. Make sure I'm tracking
3 what the Court is referring to.

4 THE COURT: Where Faulkner says, "In terms of
4:00PM 5 what you were talking about earlier of possibly staying
6 here late at night with work, have there been times where
7 anyone other than yourself stayed here, lived here?"
8 Duggar says, "No, I mean, you know, other than" -- he
9 says, "No, other than the other people that come through.
4:00PM 10 I've never slept in any RVs out here that I recall."

11 MR. ROBERTS: Your Honor, again, the government's
12 position, we just didn't play anything with regard to
13 Randall Berry. I don't believe we played anything with
14 regard to who would sleep here at night. There was a
4:01PM 15 reference to late night, but not who stayed here.

16 THE COURT: What about Exhibit 74, which they are
17 wanting this five pages, or four and a half pages, about
18 Mize and perhaps others?

19 MR. ROBERTS: Your Honor, for the same reason, we
4:01PM 20 didn't play or touch on Mize. And specifically Mize is
21 even in a different category because he was not even an
22 employee of Wholesale Motorcars. So that's a totally
23 different topic, one we did not broach. I don't see how
24 it gave any context to what we played.

4:01PM 25 THE COURT: Okay. The Court has read all of the

4:01PM 1 transcripts that correspond to Defense Exhibits 76, 70, 73
2 and 74. If the government were okay with adding some
3 questions before the clip at page 57, line 16 through 25,
4 the Court would have required the defendant to do that.

4:02PM 5 But the Court agrees with the government that
6 this particular clip is not adding any explanation or
7 clarification. What it's doing is, it's directly
8 responsive to a question that was not played. And so I
9 don't understand how a question that is responsive to
4:02PM10 something that wasn't played can properly be considered
11 under 106.

12 As to defendant's transcript at Exhibit 70, this
13 is 10 or 11 lines that are a complete island in the middle
14 of the overall transcript and there's no question on the
4:03PM15 table. So, again, we would have to -- the government
16 would have to figure out some sort of compromise so that
17 there's at least a question on the table. And they say
18 that they are not willing to do that, so the Court will
19 find that this is the same thing. It doesn't explain or
4:03PM20 add context or clarify. It's just some additional nuggets
21 that the defense would like to get in. And they can call
22 Mr. Duggar to the stand if they want to, but it's
23 inappropriate to allow self-serving testimony to come in
24 under the guise of the Rule of Completeness, so the Court
4:03PM25 will not permit that, unless there is some other basis, if

4:04PM 1 there's an impeachment basis or something like that. My
2 rulings are just going to whether it is appropriate under
3 106.

4 With regard to the portions under Exhibit 73,
4:04PM 5 again, it would be unfair to include lines 11 through 23
6 of page 43 of the main transcript -- I'm sorry -- page 41,
7 lines 11 through 23 because there's no question on the
8 table. Well, there is a question, but it's a follow-up.
9 Agent Faulkner says, "What about, you said Randall,
4:05PM 10 right?" Well, there's no context to why Agent Faulkner
11 transitions to Randall, and there really needs to be.
12 Again, if the government wanted, beginning at page 1, line
13 10 to come in, that would be one thing. But these are all
14 follow-up questions to the original question at
4:05PM 15 lines 1 through 6, and that is not necessary to explain or
16 clarify or to avoid confusion.

17 With regard to the proposed transcript at
18 Exhibit 74 -- you can go ahead and have the Jury come up,
19 please -- this is four and a half pages that the defendant
4:06PM 20 is wanting of the main transcript of this interview,
21 page 43, line 20, to page 48, line 3. And this is four
22 and a half pages of an island all to its own among the
23 portions of the recording that have been played for the
24 Jury. And it goes to Mize and the homeless guy. And, I
4:06PM 25 mean, it's just basically five pages of self-serving

4:07PM 1 testimony, self-serving in the sense that it goes to the
2 defense theory of the case. But it is not necessary to
3 explain or to put into context any other admitted
4 portions. So the government's objections to these clips
4:07PM 5 corresponding to those defense exhibits will be sustained.

6 MR. GELFAND: Your Honor, understanding the
7 Court's ruling with respect to these clips, I was still
8 intending to get into investigative activities with
9 respect to some of these other people. I assume that's
4:07PM 10 not encompassed in --

11 THE COURT: You can cross-examine him. All I'm
12 saying is, there was this issue about whether you could
13 play for the Jury audio clips under 106, and that's the
14 extent of my ruling.

4:07PM 15 MR. GELFAND: I understand. Thank you.

16 (Jury in at 4:07 p.m.)

17 THE COURT: Members of the Jury, I have done
18 little to improve my credibility with you about the
19 Court's ability to start back on time. And not that this
4:09PM 20 may make any difference to you, but during our last break,
21 including past the time that we told you we would start
22 back up, the Court and the attorneys have been working on
23 some exhibit issues. None of us took any break
24 whatsoever. So we've been working. And although it may
4:09PM 25 not seem like it, we're actually saving time here. So

4:10 PM 1 give me one more chance, all right?

2 Mr. Gelfand, you may inquire.

3 CROSS EXAMINATION

4 BY MR. GELFAND:

4:10 PM 5 Q. Good afternoon, Special Agent Faulkner.

6 A. Good afternoon, sir.

7 Q. Agent Faulkner, you testified that you performed a
8 significant role in this investigation involving Josh
9 Duggar, correct?

4:10 PM 10 A. That is correct. I was assisting Agent Aycock in his
11 first ICAC investigation.

12 Q. So to be clear, Special Agent Howard Aycock was what
13 you would call the lead agent on this case, is that
14 correct?

4:10 PM 15 A. Yes, sir.

16 Q. This was his first investigation of this nature,
17 correct?

18 A. Yes, sir, that I'm aware of.

19 Q. You trained him, correct?

4:10 PM 20 A. As best I could.

21 Q. You acted essentially as a co-lead agent, so to
22 speak. Is that fair to say?

23 A. Yes, sir.

24 Q. Now, you would agree with me, would you not, that

4:10 PM 25 anytime you're investigating a case like this, it's

4:10PM 1 critical that law enforcement be thorough, correct?

2 A. Absolutely, yes, sir.

3 Q. Fair?

4 A. Yes, sir.

4:11PM 5 Q. Keep an open mind throughout the investigation?

6 A. Yes, sir.

7 Q. Follow all leads?

8 A. Yes, sir.

9 Q. Not rush to judgment until you have all relevant

4:11PM 10 evidence?

11 A. Correct.

12 Q. Be honest and accurate in reports?

13 A. Yes, sir.

14 Q. Work as quickly as possible before memories fade and

4:11PM 15 evidence disappears?

16 A. I don't know if I could necessarily agree with that

17 based on forensic examinations.

18 Q. So let's break that down for a second. If I

19 understand your testimony correctly, forensic

4:11PM 20 examinations, and let's be clear, computer forensic

21 examinations can take quite some time, correct?

22 A. Correct. Yes, sir.

23 Q. Those only happen once law enforcement actually has a

24 device in its hand, correct?

4:11PM 25 A. In terms of the lengthy forensic examinations, that's

4:11PM 1 more so when it gets back to our forensic lab at the
2 office.

3 Q. In other words, that's at the point of the
4 investigation, if you ever get to that point, where
4:11PM 5 there's actually a device; a phone, a computer, a tablet,
6 an iPad, whatever it may be, correct?

7 A. Yes, sir.

8 Q. So up until that point, before you have seized any
9 device or devices, it's important to act quickly, correct?

4:12PM 10 A. Depending on the nature of the investigation.

11 Q. This investigation. This kind of investigation.

12 A. In terms of ICAC cases, there are different levels of
13 the severity that we deal with, so we have to put some in
14 priority order.

4:12PM 15 Q. Was this shuffled to kind of the bottom of the deck?

16 A. I wouldn't say it was shuffled to the bottom of the
17 deck, no, sir.

18 Q. Not the highest priority?

19 A. At this time, and since I received the initial lead
4:12PM 20 prior to giving it to Agent Aycock, between April and
21 September of 2019, I had received an unrelated cyber
22 tipline report from the National Center for Missing &
23 Exploited Children where I located and identified a
24 previously registered sex offender who was actively
4:13PM 25 producing child pornography on two 8 and 9-year-old little

4:13PM 1 boys. That individual was residing at the time, or we
2 luckily found him in Holiday Island, Arkansas. Throughout
3 the course of that investigation, which obviously was a
4 priority because we had a hands-on offender with two
4:13PM 5 little boys, I was able also to identify another believed
6 hands-on producer in Mexico City based on going through
7 search warrants of the individual's accounts. I then had
8 to coordinate with our attaché office in Mexico to make
9 sure that that individual was also being investigated.

4:13PM 10 Since we solely focus what we do for children, it
11 didn't stop that particular investigation after we
12 arrested the individual. We wanted to make sure that
13 these kids were being put into a correct safe home and
14 that they were properly getting the services that they
4:13PM 15 truly needed. I think the last interaction that I had
16 with the National Center for Missing & Exploited Children
17 on that unrelated case would have been sometime
18 mid-September of 2019.

19 Q. So bottom line -- and I understand why cases like
4:14PM 20 that would take priority -- those cases took priority over
21 this case, correct?

22 A. In terms of the two children, yes.

23 Q. Now, let's rewind the clock for a second. You
24 testified that this investigation began, albeit not with
4:14PM 25 HSI, in May of 2019, correct?

4:14 PM 1 A. Correct.

2 Q. And you testified that Detective Amber Kalmer, as you
3 understood it, was conducting an online investigation
4 using software on the BitTorrent network, correct?

4:14 PM 5 A. Yes, sir.

6 Q. You were not involved in the investigation at that
7 time, correct?

8 A. No, sir.

9 Q. In fact, this was not a federal investigation at that
4:14 PM 10 time, correct?

11 A. I'm unaware if Detective Kalmer -- I know she was a
12 federal task force officer, not with HSI at that time. I
13 believe it was with the FBI. I'm not sure if she was in
14 May of 2019. But it was not -- to answer your question,
4:14 PM 15 sir, it was not an initial HSI federal case, no, sir.

16 Q. It did not come to HSI's attention until June,
17 approximately 17th of 2019, correct?

18 A. That's when Detective Kalmer had sent me the initial
19 lead through our ICAC software program.

4:15 PM 20 Q. And when did she first contact you in connection with
21 the case?

22 A. It probably would have been sometime around the same
23 time.

24 Q. I'm sorry. I mis-heard the end. You said sometime
4:15 PM 25 around when?

4:15PM 1 A. Sometime around then, around June 17th.

2 Q. So plus or minus June 17th is when this case hits
3 HSI's desk, correct?

4 A. Roughly, yes, sir.

4:15PM 5 Q. You prepared a whole number of memoranda called
6 reports of investigation in connection with this case,
7 correct?

8 A. Myself and Agent Aycock had, yes, sir.

9 Q. You're aware that every single official report in
4:15PM 10 this case says that HSI received lead information in
11 October 2019 for the first time, correct?

12 A. Yes, sir.

13 Q. That's false, correct?

14 A. No, sir.

4:15PM 15 Q. So that's accurate, HSI received lead information for
16 the first time in October 2019?

17 A. Am I allowed to explain?

18 Q. Absolutely.

19 A. Thank you. So initially, when I received the lead
4:16PM 20 from Detective Kalmer in June of 2017, or 2019, I had not
21 handed the lead over or had received any information,
22 obviously because of the other case, to Agent Aycock until
23 October of 2019. Agent Aycock, acting as the case agent,
24 he opened our initial investigation into that specific IP
4:16PM 25 address. In our reporting system for HSI, at the

4:16PM 1 beginning -- I'm not a fan of it -- but at the beginning
2 of every case opening, you put a general synopsis
3 paragraph into it. And that general synopsis paragraph
4 carries over into every single report of investigation
4:16PM 5 that we upload into this system. So, no, it is not
6 accurate as to when I initially received the lead from
7 Detective Kalmer. But it is accurate as to when I turned
8 that lead over to Special Agent Aycock to start working
9 the lead.

4:16PM10 Q. So let's break this down, just facts. June 2017, HSI
11 gets the case, correct?

12 A. Yes, sir.

13 Q. October 2019, you turn over the case to Special Agent
14 Aycock to make this essentially his first lead
4:17PM15 investigation of this nature, correct?

16 A. That was correct. I believe it was after I received
17 the summons, the initial summons from OzarksGo on or about
18 October 7.

19 Q. Now, let's back up to OzarksGo.

4:17PM20 A. Yes, sir.

21 Q. All you had from Detective Kalmer was an IP address
22 in connection with her two purported downloads on May 14th
23 and May 15th of 2019, correct?

24 A. From Detective Kalmer, we had a specific IP address
4:17PM25 believed to be connected to a computer, yes, sir.

4:17PM 1 Q. Now, an IP address, as you explained briefly, it's a
2 series of numbers, correct?

3 A. Yes, sir.

4 Q. You testified on direct examination when the
4:17PM 5 prosecutor was asking you questions that it tells us where
6 and how a computer is connected to the internet, correct?

7 A. Essentially, yes, sir.

8 Q. Let's break that down for a second. The numbers of
9 an IP address alone mean virtually nothing, correct? In
4:18PM 10 other words, you can't do anything with just the numbers
11 unless you go to an ISP provider, correct?

12 A. Correct. We do not know who or where specifically
13 the target is when we get an IP address.

14 Q. In other words, an IP address itself leads us to the
4:18PM 15 internet service provider, the cable company, for example,
16 correct?

17 A. Correct. Yes, sir.

18 Q. That company -- in this case, OzarksGo -- can tell
19 you who had the IP address at any given time, correct?

4:18PM 20 A. Yes, sir.

21 Q. That company can tell you whether the IP address was
22 static or dynamic at that time, correct?

23 A. They should be able to.

24 Q. When you just have an IP address and downloads on
4:18PM 25 Torrential Downpour or any software on the BitTorrent

4:19PM 1 network, you don't know what device, if any, was actually
2 connected, correct?

3 A. Just to be clear. I'm not certified or approved to
4 do direct connect, what we call direct connect

4:19PM 5 investigations on the BitTorrent network that Detective
6 Kalmer can do. I will agree with you, but I don't know
7 that for certain.

8 Q. That's fair enough. Multiple devices can be
9 associated with an IP address at any given time, correct?

4:19PM 10 A. Yes, sir.

11 Q. And you are familiar with that based on your 10 years
12 or so of investigations of this nature, correct?

13 A. Yes, sir.

14 Q. So a laptop at my house, an iPhone at my house, they
4:19PM 15 could both be connected to the same IP address through
16 Wi-Fi, correct?

17 A. Correct.

18 Q. An IP address obviously doesn't tell us who is using
19 a particular device at any given time, correct?

4:19PM 20 A. No, sir.

21 Q. In June of 2019, did you contact OzarksGo to find out
22 what this IP address, where it was associated?

23 A. In June of 2019?

24 Q. Yes.

4:20PM 25 A. No, sir.

4:20PM 1 Q. In fact, it was not until the last day of July of
2 2019, July 31st, that you sent this administrative
3 summons, this legal process, so to speak, to OzarksGo,
4 correct?

4:20PM 5 A. That is correct. Yes, sir.

6 Q. Just so we all understand, we're talking about
7 OzarksGo is the internet service provider, essentially the
8 company that provides internet, correct?

9 A. For this particular investigation, yes, sir.

4:20PM 10 Q. And fairly widely throughout the region, correct?

11 A. I'm sorry. I didn't hear you.

12 Q. And fairly widely throughout the region, correct?

13 A. I believe at the time when this case first started,
14 they were fairly new, but they have expanded since.

4:20PM 15 Q. You did not, at the time that you applied for either
16 of the two search warrants, have a Mac address identifying
17 a particular address, correct?

18 A. No, sir, we were not provided with a Mac address.

19 Q. Tell the Jury if you would what a Mac address is.

4:21PM 20 A. In correlation to what an IP address of showing where
21 internet is coming from, the Mac address would show you
22 what device was actually connected.

23 Q. In other words, the IP address tells us where the
24 internet is, but doesn't isolate the device. A Mac
4:21PM 25 address actually identifies a particular device, correct?

4:21PM 1 A. Yes, sir.

2 Q. Is that fair?

3 A. Yes, sir.

4 Q. Now, you testified that when it comes to a

4:21PM 5 peer-to-peer investigation, you essentially have what you

6 described as three goals. Do you remember that?

7 A. Yes, sir.

8 Q. And when we say peer-to-peer, that's synonymous --

9 that's the same thing as a BitTorrent investigation,

4:21PM 10 correct?

11 A. BitTorrent is a peer-to-peer file-sharing network.

12 Q. So we're saying the same thing, correct?

13 A. Yes, sir.

14 Q. So in a BitTorrent, or a peer-to-peer investigation,

4:21PM 15 you want to identify all devices that have the program

16 that was used to access the BitTorrent network, correct?

17 A. Correct.

18 Q. You want to identify, obviously, any device with

19 alleged child pornography on it, correct?

4:22PM 20 A. Correct.

21 Q. And you testified that you want to identify any

22 device that would put someone -- your words -- quote,

23 "behind the computer," end quote, correct?

24 A. Yes, sir, on the dates in question.

4:22PM 25 Q. Now, at the beginning of an investigation before you

4:22PM 1 have all of the facts, is it fair to say that you're not
2 always going to know what's important?

3 A. Before having all the facts, not knowing what's
4 important.

4:22PM 5 Q. I asked a terrible question. Let me rephrase that.
6 At the beginning of an investigation, you don't know all
7 the details that might come out over the course of an
8 investigation, correct?

9 A. That is correct. Yes, sir.

4:22PM 10 Q. There may be facts that would be significant in terms
11 of clues or evidence that you wouldn't even know of at the
12 beginning of an investigation, correct?

13 A. Yes, sir.

14 Q. There may be software on a device that you don't even
4:22PM 15 know to look for at the beginning of an investigation,
16 correct?

17 A. Yes, sir.

18 Q. There may be Microsoft Word documents or PowerPoints
19 that you don't even know to look for at the beginning of
4:23PM 20 an investigation, correct?

21 A. Correct.

22 Q. That's why it's important to get your hands on all of
23 the evidence so that you can gradually look back at it
24 over time and investigate, correct?

4:23PM 25 A. In terms of grabbing everything that we can and

4:23PM 1 executing a search warrant, that's why we bring our
2 computer forensic analysts, to decide what needs to come
3 with us and what does not need to come with us.

4 Q. To image devices, correct?

4:23PM 5 A. No, sir. I'm not a computer forensic analyst,
6 obviously, so in terms of having to image something on
7 scene, I don't know if that was something that they would
8 absolutely have to do.

9 Q. Let's back up for a second. Halloween, October 31st?

4:23PM 10 A. Yes, sir.

11 Q. You and your team execute the first search warrant at
12 the house that was not the car lot, correct?

13 A. No, sir, not correct. We did not execute that
14 warrant on October 31st, 2019.

4:24PM 15 Q. Did you obtain a search warrant?

16 A. Agent Aycock did, yes, sir.

17 Q. And you were supervising Agent Aycock?

18 A. Yes, sir.

19 Q. Did you show up with your team to execute the search
4:24PM 20 warrant?

21 A. We did show up to execute the search warrant, but we
22 did not execute the warrant after making contact with the
23 residents.

24 Q. What time of day did you show up?

4:24PM 25 A. It was 6:00 in the morning.

4:24PM 1 Q. Did you knock on the door?

2 A. Knocked on the door.

3 Q. Did you have computer forensic analysts prepared to
4 assist in the event that you were going to execute the
4:24PM 5 search warrant?

6 A. Yes, sir. Again, they would not have been initially
7 at the front door with us when we knocked and announced.
8 They stay back until a scene is cleared.

9 Q. You're familiar with the search warrant, correct?

4:24PM 10 A. Yes, sir.

11 Q. You all thought there would be evidence of the crime
12 that began with Detective Kalmer's investigation at this
13 house on Halloween day of 2019, correct?

14 A. Yes, sir. Based on the initial response from
4:25PM 15 OzarksGo, we had no reason not to believe that 14993 was
16 not the correct subscriber address.

17 Q. You told the Judge that people who commit these kinds
18 of crimes most often keep child pornography at their
19 houses, correct?

4:25PM 20 A. In the particular paragraph, I believe it's 47 in our
21 search warrant affidavit, it's stated that it's often the
22 case, but not always.

23 Q. Which is what I asked. It's often the case that
24 people store child pornography at their houses, correct?

4:25PM 25 A. Yes, sir.

4:25PM 1 Q. That's what you told the Judge when you were trying
2 to go search the house, correct?

3 A. Correct, in the first one.

4 Q. At that point in the investigation, you had no reason
4:26PM 5 to believe that Josh Duggar was a suspect?

6 A. No, sir.

7 Q. So you show up at the house. You learn very quickly
8 that Josh Duggar does not live there, correct?

9 A. Correct.

4:26PM 10 Q. You leave?

11 A. When we further speak with the residents, they
12 informed us about the -- that they also did not have,
13 obviously, the internet services. They explained to us
14 how the property had been split, which then informed us as
4:26PM 15 to Mr. Duggar owning a used car lot adjacent to their
16 property. And then we left, yes, sir.

17 Q. So you leave?

18 A. Yes, sir.

19 Q. You don't search any devices, correct?

4:26PM 20 A. No, sir. We did not search any devices at that
21 residence.

22 Q. You have a search warrant in hand, but you don't
23 execute it, correct?

24 A. Correct.

4:26PM 25 Q. You testified, briefly, that an undercover agent was

4:26PM 1 sent in by your team to Wholesale Motorcars, correct?

2 A. Yes, sir. We were trying to further the probable
3 cause submitted to the Federal Magistrate Judge to make
4 sure that we had the right place.

4:27PM 5 Q. On November 1 of 2019, you sent in an undercover
6 agent, correct?

7 A. Yes, sir.

8 Q. You actually prepared the search warrant affidavit a
9 few days later for what would become the search execution
4:27PM 10 on November 8th of 2019, correct?

11 A. Yes, sir.

12 Q. You told the Judge that the undercover agent observed
13 Josh Duggar use two devices, correct?

14 A. No, sir. I believe, without getting into hearsay,
4:27PM 15 that the undercover had stated he saw Mr. Duggar with an
16 Apple iPhone and then noticed a laptop in the main office.

17 Q. So let me rephrase that. You identified two and only
18 two electronic devices, correct?

19 A. Yes, sir.

4:27PM 20 Q. Both Apple products, correct?

21 A. I don't believe he gave an actual model description
22 on the laptop. It was an Apple iPhone.

23 Q. But it was a laptop and it was an Apple iPhone,
24 correct?

4:27PM 25 A. Right. Yes, sir.

4:27PM 1 Q. No mention at all of any sort of HP desktop, correct?

2 A. Not from the undercover, no, sir.

3 Q. You would have put that in your search warrant
4 affidavit if you learned that, correct?

4:28PM 5 A. Yes, sir.

6 Q. You would agree with me that an All-in-One Desktop
7 plugged into the wall is a very different kind of device
8 than a portable laptop, correct?

9 A. Yes, sir, in appearance.

4:28PM 10 Q. Now, November 4th, you get your search warrant that
11 was introduced into evidence, correct?

12 A. Correct. Yes, sir.

13 Q. November 8th of 2019, you and your team are
14 conducting surveillance of Wholesale Motorcars, correct?

4:28PM 15 A. Myself and Agent Aycock, yes, sir.

16 Q. And the reason you're conducting surveillance is
17 because you want to make sure that Josh Duggar is there
18 when you execute the search warrant at this business,
19 correct?

4:29PM 20 A. Not specifically Mr. Duggar. We wanted the owner on
21 record of the car lot or the business to be present, as
22 well as we wanted the subscriber of the IP address to be
23 present.

24 Q. So I think we're saying the same thing. You knew
4:29PM 25 that Josh Duggar was the subscriber of the IP address,

4:29PM 1 correct?

2 A. Yes, sir. I apologize. If it would have been
3 another name, it would have been the same thing is what I
4 was, I guess, trying to get at.

4:29PM 5 Q. But it wasn't another name, correct?

6 A. Yes, sir.

7 Q. It was Josh Duggar, correct?

8 A. Correct.

9 Q. You were waiting for Josh Duggar to be present at the
4:29PM 10 car lot when you executed the search of the business,
11 correct?

12 A. Correct.

13 Q. You testified that at some point, Josh shows up,
14 correct?

4:29PM 15 A. Correct. Yes, sir.

16 Q. Driving what?

17 A. An RV.

18 Q. You watch, through binoculars, Mr. Duggar drive the
19 RV into the business parking lot, so to speak, correct?

4:29PM 20 A. Yes, sir.

21 Q. You watch, through binoculars, that there's other
22 people present, correct?

23 A. There are two other individuals, yes, sir.

24 Q. Randall Berry was present, correct?

4:30PM 25 A. Yes, sir.

4:30PM 1 Q. Had you identified who he was at this point in your
2 investigation?

3 A. We did not. All we knew from the undercover was
4 there was another employee named, I think he said Randy or
4:30PM 5 Randall. I think it was Randy.

6 Q. But when you were looking at binoculars, I presume
7 you wouldn't have known who that was?

8 A. We did not know who he was at that time, no, sir.

9 Q. And then Richard Harrell was present, correct?

4:30PM 10 A. Correct. Yes, sir.

11 Q. You all had a pre-op meeting, correct?

12 A. Yes, sir.

13 Q. Tell the Jury what a pre-op meeting is, just
14 generally.

4:30PM 15 A. Before any HSI law enforcement action, we have an
16 operational briefing where we assign jobs to each of the
17 Special Agents who will be attending the search warrant,
18 as well as notifying what we're looking for, where we are
19 going to be, so that the computer forensic analysts have a
4:30PM 20 better idea of what equipment to bring for forensic

21 examinations or previews on scene.

22 Q. Showing you Government Exhibit 6.

23 MR. GELFAND: May I publish Exhibit 6?

24 THE COURT: You may.

4:31PM 25 Q. (BY MR. GELFAND.) You identified Exhibit 6 as kind

4:31PM 1 of an aerial map that reflected what the car lot looked
2 like from the sky on that day, correct?

3 A. No, sir, not from that day.

4 Q. Does it approximately look like what it would have
4:31PM 5 looked like on that day?

6 A. Give or take. Again, we're zoomed out a little bit.
7 I just want to make sure that I see, or would be able to
8 see the two office businesses, or the two office
9 buildings, which is blurred. So I would assume if they
4:31PM 10 were there, then that's an accurate representation of
11 Wholesale Motorcars.

12 Q. For our purposes, forget about the office buildings
13 for a second. Where are you doing surveillance from to
14 see the car lot and who is present?

4:31PM 15 A. So I would have been set up a little further east
16 outside of the frame of this picture off of the emergency
17 lane on Highway 412.

18 Q. So somewhere in kind of this area?

19 A. I'm sorry. West. West, I'm sorry. Left-hand side.

4:32PM 20 Q. Somewhere in this area?

21 A. Yes, sir.

22 Q. Is that fair?

23 A. Yes, sir.

24 Q. Just to the left of the frame; yes?

4:32PM 25 A. Yes, sir.

4:32PM 1 Q. Now, how many agents are with you when you pull up to
2 the car lot?

3 A. After we made a positive confirmation that Mr. Duggar
4 had arrived, we actually had to call everybody because
4:32PM 5 they were in different areas of the Northwest Arkansas
6 area. We then rallied about, I'd say a half a mile
7 outside of the business. We had, in total, four HSI
8 Special Agents, one HSI task force officer, who was also a
9 computer forensic analyst, and then two HSI computer
4:33PM 10 forensic analysts.

11 Q. In other words, you've got, if I count right.

12 A. Six total.

13 Q. How many agents? How many analysts?

14 A. Four agents. Three analysts. Seven.

4:33PM 15 Q. Seven total, three of whom are there for one purpose,
16 and that's computer forensic analysis, correct?

17 A. Yes, sir.

18 Q. And those individuals, that's not you. They are
19 trained to do computer forensic analysis, correct?

4:33PM 20 A. Correct.

21 Q. The reason you have so many of them there is because
22 in cases of this nature, that's often the ball game,
23 correct?

24 A. Yes, sir.

4:33PM 25 Q. And you knew that going into this, correct?

4:33PM 1 A. Very rarely. I think it's only happened one time in
2 my 11 years of working these types of peer-to-peer cases
3 have we actively entered a residence and caught somebody
4 red-handed behind a computer downloading child

4:33PM 5 pornography. So these cases heavily rely on forensic
6 examinations.

7 Q. They are computer forensic investigations, correct?

8 A. Yes, sir.

9 Q. You show up. You and your team immediately identify
4:34PM 10 the three people who are present as Josh Duggar, Randall
11 Berry, and Richard Harrell, correct?

12 A. Yes, sir.

13 Q. You tried to talk to Richard Harrell that day,
14 correct?

4:34PM 15 A. I did not.

16 Q. Your team did, correct?

17 A. Agent Aycock I believe did.

18 Q. He refused to speak with --

19 MR. ROBERTS: Your Honor, objection. Hearsay.

4:34PM 20 MR. GELFAND: I asked he refused to speak to him.
21 There's no hearsay.

22 MR. ROBERTS: Your Honor, it calls for hearsay.
23 The Agent testified he did not speak with him.

24 THE COURT: Well, he hasn't asked him what anyone
4:34PM 25 said yet. He's just asking him what he did. So rephrase,

4:34PM 1 please, Mr. Gelfand.

2 Q. (BY MR. GELFAND.) You all did not speak with
3 Mr. Harrell that day, correct?

4 A. Agent Aycock, to my knowledge, briefly spoke with
4:34PM 5 Mr. Harrell and then he left.

6 Q. After that, you never interviewed Mr. Harrell,
7 correct?

8 A. We have, yes, sir.

9 Q. You have?

4:35PM 10 A. We've spoken to him leading up to this trial.

11 Q. When?

12 A. This month. Well, I apologize. Last month.

13 Q. Who was present?

14 A. Myself, Agent Aycock, and Agent William Devito,
4:35PM 15 D-E-V-I-T-O.

16 Q. You testified that you approached Josh Duggar and
17 physically took a phone from him, correct?

18 A. Yes, sir.

19 Q. You testified that you told him at that point that
4:35PM 20 your investigation involved allegations of, quote,

21 "digital contraband," correct?

22 A. Correct. Yes, sir.

23 Q. And to be clear, that was your phrase that you used,
24 "digital contraband," correct?

4:36PM 25 A. Yes, sir.

4:36PM 1 Q. In fact, you told him that you were seizing items of
2 evidentiary value that possibly contained digital
3 contraband, correct?

4 A. Correct.

4:36PM 5 Q. You searched the office at Wholesale Motorcars,
6 correct?

7 A. No, sir. I did not personally.

8 Q. Let's back up for a second. You're aware of the
9 office at Wholesale Motorcars, correct?

4:36PM 10 A. Yes, sir.

11 Q. I'm going to show you Government's Exhibit 9. Do you
12 see that in front of you?

13 A. Yes, sir.

14 Q. That's the office at Wholesale Motorcars when you
4:36PM 15 executed the search warrant on November 8th of 2019,
16 correct?

17 A. Yes, sir.

18 Q. Just from a vantage point standpoint, if I'm walking
19 up to that office, is what I'm looking at the picture? In
4:37PM 20 other words, if I'm a customer and I'm walking up to that
21 office, is this the front of the office as it would face
22 the car lot?

23 A. If you entered through the main driveway, this would
24 most probably be the side of the building that you would
4:37PM 25 most commonly first encounter.

4:37PM 1 Q. In other words, this is the front with the big sign,
2 "Wholesale Motorcars," the phone number?

3 A. Yes, sir. I would assume that to be the front.

4 Q. The advertisements, "Call or text at this number,"
4:37PM 5 correct?

6 A. Correct. Yes, sir.

7 Q. There's a giant window in the front of the office,
8 correct?

9 A. Yes, sir.

4:37PM 10 Q. And, in fact, if we look at Government's Exhibit 10,
11 you testified this is essentially the side-view, correct?

12 A. Yes, sir.

13 Q. There's also a window on the side next to the door,
14 correct?

4:38PM 15 A. Yes, sir.

16 Q. In fact, there's a window on the other side as well,
17 correct?

18 A. On the back side, yes, sir.

19 Q. It's a fish bowl of sorts, correct?

4:38PM 20 A. I'm sorry. What?

21 Q. It's a fish bowl of sorts, correct?

22 A. I would call it a tollbooth, but, yes, sir.

23 Q. This building, you learned over your investigation
24 that the building next to what you call the tollbooth was
4:38PM 25 not there in May of 2019, correct?

4:38PM 1 A. That building was not at the lot in May of 2019?
2 Q. The one that's next to what you call the tollbooth,
3 the office?
4 A. I'm not aware what was on the lot in May of 2019 in
4:38PM 5 terms of that specific building, sir.
6 Q. You didn't investigate what was there in May of 2019?
7 A. May of 2019?
8 Q. Yes.
9 A. No, sir.
4:38PM 10 Q. I'm going to show you Government's Exhibit 16. You
11 identified this for the Jury when the prosecutor was
12 asking you questions. Can you tell us what that is?
13 A. That is the inside of the wooden building.
14 Q. In other words, this is the inside of the building I
4:39PM 15 was just asking you about, correct?
16 A. Correct.
17 Q. Under construction?
18 A. Yes, sir.
19 Q. Unfinished?
4:39PM 20 A. Yes, sir.
21 Q. Literally construction equipment on the floor that
22 you executed the search warrant?
23 A. Correct.
24 Q. In fact, you took, or identified, I should say, a
4:39PM 25 number of photographs at the search warrant, correct?

4:39PM 1 A. Yes, sir. Well, I did not take the photographs, but
2 photographs were taken at the search warrant.

3 Q. And you're familiar with the photographs?

4 A. Yes, sir.

4:39PM 5 Q. Correct?

6 A. Yes, sir.

7 Q. And you're aware that those photographs are true and
8 accurate?

9 A. Yes, sir. I'm just clarifying that I didn't take the
4:39PM 10 photographs.

11 Q. So Government Exhibit 17, you testified, is an RV,
12 correct?

13 A. Yes, sir.

14 Q. In fact, that's the same as Government Exhibit 18,
4:40PM 15 just from a different angle, correct?

16 A. No, sir.

17 Q. Different RV?

18 A. Yes, sir.

19 Q. Which one did Josh pull up in?

4:40PM 20 A. The one on top that you have underneath, or that one.

21 Q. Exhibit 18?

22 A. Yes, sir.

23 Q. You testified that Josh Duggar was driving that RV
24 when you watched him pull into the car lot, correct?

4:40PM 25 A. Correct.

4:40PM 1 Q. Now, let's look at 19. Can you tell us what that is?

2 A. That is the MacBook laptop that was located inside of
3 the RV that Mr. Duggar arrived in.

4 Q. The RV that Josh was driving in? In other words,
4:40PM 5 this was with Josh in the RV, correct?

6 A. Yes, sir.

7 Q. This is the MacBook Pro that you seized that day,
8 correct?

9 A. Correct.

4:40PM 10 Q. Can you tell me what the placard indicates, the
11 number 8?

12 A. No, sir, not offhand. I didn't place the placard
13 there, and, again, didn't take the photograph. Special
14 Agent Jeffery Pryor did that. I would assume it's for
4:41PM 15 identification purposes for him taking the photograph.

16 Q. In other words, evidentiary collection purposes?

17 A. Yes, sir.

18 Q. Government Exhibit 12, you identified. Do you see
19 that in front of you?

4:41PM 20 A. Yes, sir.

21 Q. Let's zoom in for a second. That's the HP computer,
22 correct?

23 A. Yes, sir.

24 Q. Would you agree with me, Special Agent, that there's
4:41PM 25 Wholesale Motorcars stickers, for lack of a better way of

4:41PM 1 putting it, on the end face that customers would look at?
2 A. Yes, sir.
3 Q. And there's credit card placards, so to speak, that
4 customers would look at on the back of the computer,
4:41PM 5 correct?
6 A. Yes, sir.
7 Q. It's located on a desk physically plugged into a
8 wall, correct?
9 A. Yes, sir.
4:42PM 10 Q. It's next to a big window, correct?
11 A. Yes, sir.
12 Q. And it's next to a router, in other words, a Wi-Fi
13 box?
14 A. Yes, sir.
4:42PM 15 Q. And it was accessing this Wi-Fi on the day that you
16 executed the search warrant, correct?
17 A. I believe so.
18 Q. That Wi-Fi was correlated with OzarksGo, correct?
19 A. Yes, sir.
4:42PM 20 Q. Now, in fact, if we look at Government's Exhibit 13,
21 you identified this as the live-feed security monitor,
22 correct?
23 A. Correct. Yes, sir.
24 Q. Do you have any clue whether that was there and
4:43PM 25 operational in May of 2019?

4:43PM 1 A. I believe so, based on other witness testimony, or
2 statements.

3 Q. Let's look at where that is. I asked you whether a
4 customer would be facing into this big, giant window in
4:43PM 5 the front of Wholesale Motorcars, the office?

6 A. Yes, sir.

7 Q. Is this the other end, kind of the inside looking out
8 of that same window?

9 A. Correct. Yes, sir.

4:43PM 10 Q. And there happens to be a red van right in front
11 there, correct?

12 A. Yes, sir.

13 Q. But it essentially looks out to the highway, correct?

14 A. Yes, sir.

4:44PM 15 Q. I want to ask you to look, if you would, in the
16 defense exhibit binder at Defendant's Exhibits 19 through
17 34 and 36 through 40.

18 A. I'm sorry. What were the numbers again, sir?

19 Q. 19 through 34 and 36 through 40. If you could, will
4:44PM 20 you look at them, just evaluate them for whether they are
21 true and accurate pictures taken at the search warrant on
22 November 8th of 2019?

23 A. 19 through 34?

24 Q. 19 through 34 and 36 through 40. In other words, 19
4:45PM 25 through 40, with the exception of 35.

4:45 PM 1 A. They appear to be accurate.

2 MR. GELFAND: Your Honor, at this point, I would
3 move each of those exhibits, 19 through 34 inclusive and
4 36 through 40 into evidence, please.

4:45 PM 5 MR. ROBERTS: Your Honor, the government has no
6 objection.

7 THE COURT: Defense Exhibits 19 through 34 and 36
8 through 40 are received.

9 MR. GELFAND: Thank you.

4:45 PM 10 (Defendant's Exhibits 19-34 and 36-40 Received)

11 Q. (BY MR. GELFAND.) Before I publish those, I'm going
12 to show you Government's Exhibit 14. This is a picture of
13 the front of the HP computer that was taken on
14 November 8th of 2019, correct?

4:46 PM 15 A. Yes, sir.

16 Q. And to be clear, you testified about this when the
17 prosecutor was asking you questions in this case, correct?

18 A. Correct.

19 Q. I want to zoom in for a second. Do you see on the
4:46 PM 20 desktop, and it may be a little difficult to see with the
21 resolution. Do you see an icon with a big "F" in yellow?

22 A. Yes, sir.

23 Q. Does that appear to be an icon for software called
24 Frazer?

4:46 PM 25 A. Again, it's hard to make out, but I believe so.

4:46 PM 1 Q. Now, I'm not going to go through all of these with
2 you, but I want to show you a couple of different
3 exhibits. The day that you execute the search warrant,
4 you all show up in daylight as opposed to nighttime,
4:47 PM 5 correct?

6 A. Correct.

7 Q. I'm showing you Defendant's Exhibit 20. This was
8 taken November 8th of 2019, correct?

9 A. I believe so, yes, sir.

4:47 PM 10 Q. For our bearings, this looks out onto the highway,
11 correct?

12 A. Highway 412, correct.

13 Q. This is a used car lot, like virtually any car lot
14 that is on a large traffic-way, correct?

4:47 PM 15 A. Yes, sir.

16 Q. Caters to the general public to come in and buy cars,
17 correct?

18 A. It's not in a very heavy populated area, but if
19 somebody from the general public wanted to drive by and
4:47 PM 20 possibly purchase a vehicle, they would.

21 Q. It's a car lot, correct?

22 A. Yes, sir.

23 Q. Now, Exhibit 22, these are all defense exhibits.
24 That's the front door into that office, correct?

4:47 PM 25 A. Yes, sir.

4:48PM 1 Q. There's additional credit card insignia, correct?

2 A. Yes, sir.

3 Q. And there's a combination lock on the door to get in,
4 correct?

4:48PM 5 A. Yes, sir.

6 Q. In the course of your investigation, were you able to
7 determine what that combination was?

8 A. I don't believe so.

9 Q. Showing you Defendant's Exhibit 28. Can you tell me
4:48PM 10 what that is?

11 A. Yes, sir. That is Mr. Duggar's phone that was seized
12 that day.

13 Q. The reason you seized that phone was to do computer
14 forensic analysis, correct?

4:48PM 15 A. Yes, sir.

16 Q. Showing you Exhibit 29. Can you see that in front of
17 you?

18 A. Yes, sir.

19 Q. What's Exhibit 29?

4:49PM 20 A. A phone that was located on the lot, I'm assuming in
21 the main office.

22 Q. Did you all analyze that phone?

23 A. I did not, no, sir.

24 Q. Did you all seize that phone?

4:49PM 25 A. No, sir. It's my understanding that a CFA or one of

4:49PM 1 our computer forensic analysts had manually triaged that
2 phone.
3 Q. You used that word a couple of times.
4 A. Manually examined, I'm sorry.
4:49PM 5 Q. In other words, not actually taking an image, a copy
6 of the phone, correct?
7 A. Not connecting it -- not connecting it to a forensic
8 tool.
9 Q. Not preserving it so that you could look at it today
4:49PM 10 if you wanted to?
11 A. Correct.
12 Q. Defendant's Exhibit 30, that's the HP computer,
13 correct?
14 A. Yes, sir.
4:49PM 15 Q. There's a receipt book right next to it, correct?
16 A. Yes, sir.
17 Q. Did you seize the receipt book?
18 A. I'm sorry?
19 Q. Did you seize the receipt book?
4:50PM 20 A. No, sir, I do not believe we did.
21 Q. Defendant's Exhibit 33 is a bag or a briefcase,
22 correct?
23 A. Yes, sir.
24 Q. Whose?
4:50PM 25 A. I'm sorry?

4:50PM 1 Q. Whose?

2 A. I don't recall, sir.

3 Q. I'll make it easy for you. Do you see a name tag on

4 it?

4:50PM 5 A. Yes, sir.

6 Q. Whose?

7 A. It has the name "Josh" on it.

8 Q. What was in there?

9 A. I didn't search the RV, sir.

4:50PM 10 Q. Is that a better question for Mr. Pryor?

11 A. Yes, sir. We were conducting interviews while that

12 was going on.

13 Q. You all seized a number of thumb drives, correct?

14 A. Correct.

4:51PM 15 Q. I'm going to show you just by way of example

16 Defendant's Exhibit 36.

17 A. Yes, sir.

18 Q. Do you see that?

19 A. Yes, sir.

4:51PM 20 Q. Is that a thumb drive, just by way of example?

21 A. Yes, sir.

22 Q. Thumb drive is commonly called the USB drive or a

23 flash drive, correct?

24 A. Can be, yes, sir.

4:51PM 25 Q. It can literally be on a keychain, correct?

4:51PM 1 A. Correct.

2 Q. Thumb drives can actually be quite important in
3 investigations, correct?

4 A. Yes, sir.

4:51PM 5 Q. Now, you all were on scene for quite some time,
6 correct?

7 A. I believe we arrived approximately 3:15 and I believe
8 we departed approximately 5:45.

9 Q. Showing you Defendant's Exhibit 39. Was it nighttime
4:51PM 10 when you left?

11 A. It was getting to that point, yes, sir.

12 Q. Defendant's Exhibit 40, also nighttime?

13 A. Yes, sir.

14 Q. Fair to say you had as much time as you needed on
4:52PM 15 site, correct?

16 A. Give or take. Since this was a known operating
17 business, we don't like to stay on scene more than what we
18 need to so that we're keeping a business from operating.

19 Q. But you were there until the nighttime, basically,
4:52PM 20 correct?

21 A. 5:45, approximately.

22 Q. If you needed to stay until 9:00 p.m., you would have
23 stayed, correct?

24 A. If the situation presented itself, we would have.

4:52PM 25 Q. No one kicked you out, correct?

4:52 PM 1 A. No, sir.

2 Q. No one was in a position to kick you guys out,
3 correct?

4 A. No, sir.

4:52 PM 5 Q. You chose when you left, correct?

6 A. Correct.

7 Q. Now, you testified that you showed up initially and
8 you testified that Josh Duggar made a comment to you, and
9 I'm paraphrasing, about maybe needing to leave because his
4:53 PM 10 wife was pregnant, correct?

11 A. Yes, sir.

12 Q. And you testified that you told him essentially, "No
13 problem," correct?

14 A. Correct.

4:53 PM 15 Q. That statement that you claim Josh made is not in any
16 of your reports, correct?

17 A. I did not author the search warrant report for that
18 day, but I do not believe it's in there.

19 Q. So that's correct?

4:53 PM 20 A. Correct. Yes, sir.

21 Q. Now, you testified that you conducted an approximate
22 one-hour interview with Mr. Duggar, is that correct?

23 A. Yes, sir.

24 Q. And you claim that prior to turning on the recording
4:53 PM 25 device, Josh said, "What is this about, has somebody been

4:53PM 1 downloading child pornography?" Did I hear your testimony
2 correctly?

3 A. Yes, sir.

4 Q. Let me get this straight for a second. What you're
4:53PM 5 claiming is that Josh said, "What is this about, has
6 somebody been downloading child pornography," and that's
7 the second before you turn on the recording device?

8 A. This was right after Agent Aycock had received verbal
9 consent to record the interview, correct.

4:54PM 10 Q. In other words yes?

11 A. Yes, sir.

12 Q. So you claim this statement is made and then the
13 recording device is immediately turned on, correct?

14 A. Agent Aycock tells him to stop before asking any more
4:54PM 15 questions and then turns on the recording device.

16 Q. The rest of the interview as you claim happened, or
17 whatever word you want to use for it, was captured on a
18 recording device, correct?

19 A. Yes, sir.

4:54PM 20 Q. And the Jury had an opportunity to hear some snippets
21 or excerpts from that, correct?

22 A. That is correct.

23 Q. You record interviews so that there's no ambiguity
24 about what's said and what's not said, correct?

4:54PM 25 A. Yes, sir.

4:54 PM 1 Q. You record them for your own protection, correct?

2 A. For both ours and the individuals that we are
3 interviewing.

4 Q. In other words, so that we're not debating whether
4:55 PM 5 something was said or whether something wasn't said. We
6 have a memorialization of it, correct?

7 A. Correct. Yes, sir.

8 Q. It beats someone's memory, right?

9 A. Yes, sir.

4:55 PM 10 Q. It doesn't make us guess about context, correct?

11 A. Correct.

12 Q. You record so that there's an accurate
13 memorialization of whether someone said something or
14 didn't, correct?

4:55 PM 15 A. Yes, sir.

16 Q. Over the next 51 minutes, did you ever circle back
17 around so that you had it captured on a recording and say,
18 "Hey, Josh, remember when you said, what's this about, has
19 somebody been downloading child pornography," or anything
4:55 PM 20 along those lines?

21 A. No, sir. We did not directly verbatim ask him about
22 that question or statement, but we did cover the topic.

23 Q. You covered the topic of child pornography, correct?

24 A. Yes, sir.

4:55 PM 25 Q. But you never once covered the topic of even

4:55PM 1 suggesting on the recording that he had said this to you
2 before there was a recording, correct?
3 A. Not verbatim, no, sir.
4 Q. When you say "not verbatim," not at all. Did you
4:56PM 5 ever circle back around and say, "Josh, remember when you
6 asked this question? Now the recording device is on."
7 A. No, sir, not directly.
8 Q. Throughout the 51-minute recording; that's how long
9 it is, correct?
4:56PM 10 A. Yes, sir.
11 Q. You describe Josh's demeanor as calm, correct?
12 A. Correct. Yes, sir.
13 Q. In fact, you describe Josh's demeanor as calm from
14 the moment you arrived on site, correct?
4:56PM 15 A. Yes, sir.
16 Q. Now, during this recording, the Jury heard some
17 excerpts of the discussion that you had with Mr. Duggar,
18 correct?
19 A. Yes, sir.
4:56PM 20 THE COURT: Mr. Gelfand, for our planning
21 purposes, it's almost 5:00. If you can wrap up in the
22 next 10, 15 minutes, we might do that, but if you have a
23 lot more to go, then perhaps it would be a good idea for
24 you to find a convenient stopping point and we'll start
4:57PM 25 again in the morning.

4:57PM 1 MR. GELFAND: This is a perfectly fine stopping
2 point, Your Honor, as far as topics, but I would defer to
3 the Court as far as how long the Court wanted to go.

4 THE COURT: Well, if this is a good stopping
4:57PM 5 point, then we will stop now.

6 MR. GELFAND: Sure.

7 THE COURT: Members of the Jury, we will take our
8 evening recess. And I would like to start tomorrow
9 morning at 8:30. Would that be okay with everyone? In an
4:57PM 10 attempt to make up for today and our delays, I'm informed
11 that the Court Clerk is going to have some breakfast
12 sandwiches or something like that, so if you wanted to
13 come a little bit early, there will be some coffee. I'm
14 not saying it's bacon and eggs or anything, but there will
4:58PM 15 be something for you to munch on. But we will call for
16 you at 8:30 in the morning. And I need to read you the
17 recess instruction before you go today, though.

18 Remember that during every recess, including this
19 evening recess, you must remember that you may not discuss
4:58PM 20 this case with anyone, including your fellow jurors or
21 members of your family or people involved in the trial or
22 anyone else. And you must not allow anyone to discuss the
23 case with you or within your hearing, because only you
24 have been chosen as jurors in this case and only you have
4:58PM 25 sworn to uphold the law. No one else has been chosen to

4:58PM 1 do this. You should not even talk among yourselves about
2 the case before you have heard all of the evidence and the
3 case has been submitted to you by me for deliberations,
4 because if you were to do that, it would start solidifying
4:59PM 5 in your mind your opinions or what you believe the facts
6 are. And if anyone were to try to talk to you about the
7 case, you should let me know that immediately by conveying
8 that information to a court security officer or to the
9 Court Clerk. And, again, when I say don't discuss, that's
4:59PM 10 through any form; in person, electronically, what have
11 you.

12 Do not read any newspaper accounts. Do not
13 listen or watch any television or radio accounts of the
14 trial. Do not get online. Do not look at your phones to
4:59PM 15 see if there are Tweets or Instagrams or whatever the case
16 may be. You must keep your mind free of outside
17 influences that may be reporting on the case or commenting
18 on the case. And you must do this because your decision
19 has to be made solely on the evidence that comes in in the
5:00PM 20 four walls of this courtroom and not from any outside
21 information, and this is very important.

22 The same is true with regard to doing outside
23 research. You can't do that. Whether it's about the
24 subject matter of the case or the law in the case or
5:00PM 25 locations or people that have been discussed, you can't do

5:00PM 1 any research on your own.

2 So this is the recess instruction. You've taken
3 an oath to comply with that. Please do so. We will see
4 you tomorrow morning at 8:30. Everyone please stand as
5:00PM 5 the Jury is in recess. I would ask that everyone in the
6 gallery remain in the gallery until the jurors have
7 cleared. If you would leave your transcripts that you
8 were handed out just in your chair, we will take care of
9 those. Everyone in the gallery, please remain in the
5:01PM 10 gallery until the Jury has cleared the lobby.

11 (Jury out at 5:01 p.m.)

12 THE COURT: Everyone may be seated. So, counsel,
13 I think we have discussed earlier in chambers that we're
14 going to start a practice whereby the side, when it's your
5:01PM 15 turn to present evidence, will be disclosing your
16 witnesses the evening before that will get you through the
17 next day. Let's be sure that we do that by an agreed
18 time. To the extent that in preparing for the next day's
19 witnesses there are issues that come up, please e-mail us.
5:02PM 20 And if you need -- if you know tonight that you need to
21 get something on the record, then just plan to be early.
22 And kind of the default would be if there's something that
23 we need to take up, be here at 8:00. If you think it's
24 something that's going to take longer than that, I'll come
5:02PM 25 in as early as we need to. But we need to call the Jury

5:02 PM 1 up at 8:30 tomorrow or I'm going to lose all credibility
2 with them. So are there any issues that we can take up
3 now?

4 MR. ROBERTS: No, Your Honor.

5:02 PM 5 THE COURT: Mr. Gelfand, any issues?

6 MR. GELFAND: We have no issues, Your Honor.

7 THE COURT: All right. Ya'll get some sleep
8 tonight. We'll see you in the morning.

9 (proceedings adjourned at 5:03 p.m.)

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C E R T I F I C A T E

I, Paula K. Barden, CCR, RPR, RMR, Federal Official Court Reporter, in and for the United States District Court for the Western District of Arkansas, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 16th day of January 2022.

Paula K Barden

PAULA K. BARDEN, CCR, RPR, RMR #700
Federal Official Court Reporter
Western District of Arkansas

