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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA \* CRIMINAL NO. H-12-503  
\*  
VERSUS \* Houston, Texas  
\* July 23, 2018  
JASON DANIEL GANDY \* 8:30 a.m.

JURY TRIAL  
BEFORE THE HONORABLE LEE H. ROSENTHAL  
CHIEF UNITED STATES DISTRICT JUDGE  
(Day 3)

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Proceedings recorded by mechanical stenography, produced by  
computer-aided transcription

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I N D E X

WITNESS PAGE

JEFFREY CHAPPELL

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1 THE COURT: Anything we need to take up?

2 MR. BUCKLEY: I don't believe so offhand, Your  
3 Honor. I visited with Mr. Gandy yesterday, and we had a good  
4 visit.

5 THE COURT: Good.

6 MR. BUCKLEY: I know the government has expressed  
7 concern about the optics of his injury, and I don't know what  
8 to say.

9 THE COURT: I don't think we should do anything  
10 about it. It is -- I mean, he's got a bandage.

11 MS. ZACK: No, there is no bandage. There is an  
12 open, gaping wound.

13 THE COURT: Should there be a bandage for sanitation  
14 and health reasons?

15 MR. BUCKLEY: I don't know.

16 THE COURT: Lisa, let's get the nurse up here to see  
17 if a bandage should be put on him. Ask her to come up  
18 immediately, please.

19 MR. BUCKLEY: Pardon me.

20 THE COURT: Ask your lawyer.

21 MR. BUCKLEY: Also, Ms. Zack and I over the weekend  
22 had discussed an evidentiary issue that probably, because of  
23 the nature of it, I just to need make a record on it; but it  
24 probably should be addressed outside the presence of the  
25 jury.

1 THE COURT: Can we address it now?

2 MR. BUCKLEY: Sure. Are you ready to address it?

3 MS. ZACK: Anything you want.

4 MR. BUCKLEY: Okay. Let me grab it.

5 There was an issue in the testimony of Mr. Jose  
6 Alfaro --

7 THE COURT: You may all be seated, please.

8 MR. BUCKLEY: -- about a time frame. And as I  
9 recall his testimony, it was that in approximately August of  
10 2017 he met Mr. Gandy and within a short period of time there  
11 was sexual contact, including the type of massages that are  
12 the subject of this case, and then very shortly -- and then  
13 that occurred at a man named Eugene's condo or house in  
14 Houston, and then shortly thereafter Mr. Alfaro went with Mr.  
15 Gandy to Mr. Gandy's house in Austin.

16 And I have -- Mr. Gandy raised a concern with  
17 me about that because there was a timeline issue with when he  
18 purchased the house in Austin that on its face seems  
19 incompatible with the testimony of Mr. Alfaro.

20 So I researched it over the weekend and  
21 verified it. It appears to be that Mr. Gandy didn't purchase  
22 the house until October of 2017.

23 The concern is that I don't have, whereas this  
24 is a document, and I don't want to speak for Ms. Zack, but I  
25 have asked whether the government would agree to authenticity

1 that it came from the Travis County Appraised District. I  
2 don't know what her final answer is on that, but even  
3 assuming she does, I understand that I don't have a  
4 proponent. I have tried to find one, but I haven't.

5 THE COURT: Is it an official record?

6 MR. BUCKLEY: I believe it's an official record from  
7 Travis County because --

8 THE COURT: Do you have a certification of it as an  
9 official record?

10 MR. BUCKLEY: I don't have a certification, but I do  
11 have -- what I did was I went on the Travis County Appraisal  
12 District website and retrieved the information that way,  
13 taking screen shots of the steps that I took and also copying  
14 Ms. Zack on the method with which I retrieved the  
15 information.

16 THE COURT: Ms. Zack, do you have any reason to  
17 believe that it's not an official document?

18 MS. ZACK: Your Honor, I am not quarreling with the  
19 authenticity of it. I have tons of other issues.

20 THE COURT: So what are the other issues?

21 MS. ZACK: The other issues are, there is no  
22 foundation for this. No one testified to the address in  
23 Austin. We don't know how many properties he did or did not  
24 own in Austin. It appears to me it is some type of short  
25 sale or bank sale because it went from a bank on 8-20-07 to a

1 mortgage company and then from the mortgage company --

2 THE COURT: Not '17, '7?

3 MS. ZACK: '07, '07. I apologize.

4 THE COURT: No, not you.

5 MS. ZACK: To Mr. Gandy in October of '07.

6 We don't know when Mr. Gandy started possession  
7 of that property. All we know is the date that it says he  
8 owned it.

9 There is no testimony about the address of the  
10 place in Austin. There is no one to cross-examine.

11 THE COURT: So it could have been another place in  
12 Austin?

13 MS. ZACK: Huh?

14 THE COURT: It could have been another -- "huh?"

15 MS. ZACK: I'm sorry, Your Honor.

16 THE COURT: In response to your inquiry, what I  
17 meant was, it could have been another location in Austin that  
18 Mr. Gandy was either renting or borrowing or occupying under  
19 some arrangement.

20 MS. ZACK: Correct. And because there is no  
21 testimony about this piece of property --

22 THE COURT: Or where the events occurred other than  
23 somewhere in Austin?

24 MS. ZACK: Correct.

25 If this document came into evidence, A, I don't

1 believe that there's any testimony that would allow Mr.  
2 Buckley to make any argument because we don't know what the  
3 property was that Mr. Alfaro was at. It also does not go to  
4 any of the elements of the crime charged. All of that  
5 occurred in Houston as to Mr. Alfaro.

6 I believe it would be misleading to the jury  
7 and prejudicial in a way that we could not rebut at this  
8 point. I mean, I don't have the property appraiser from  
9 Travis County telling me what Mr. Gandy owned, when, where,  
10 and because that was never an issue as to --

11 (Nurse enters courtroom)

12 THE COURT: Hang on one second, Ms. Zack.

13 Please come forward. Would you take a look at  
14 the defendant and see if there should be a bandage put on the  
15 cut on the side of his neck both for appearance and for  
16 hygenic reasons.

17 MS. ZACK: Could we require him to close his shirt?

18 THE COURT: I am worried about it chafing the  
19 fabric. Let's get it bandaged.

20 I am pausing because I want Mr. Gandy to follow  
21 the discussion.

22 Is Mr. Gandy ready to proceed?

23 MR. BUCKLEY: Let me inquire, Your Honor.

24 THE COURT: Thank you.

25 MR. BUCKLEY: Pardon me.

1 Thank you, Your Honor, for your patience.

2 THE COURT: I gather that means he's ready?

3 MR. BUCKLEY: That's correct, Your Honor.

4 THE COURT: Terrific. Okay, thanks.

5 Anything further, Ms. Zack?

6 MS. ZACK: No, Your Honor.

7 MR. BUCKLEY: Briefly, Your Honor. And that is that  
8 I understand just for purposes of the record that there has  
9 not been clarity in development of a factual basis of a  
10 particular address for a particular description and --

11 THE COURT: Not even a general address or  
12 description. It's just more like a zip code.

13 MR. BUCKLEY: There is a speculative, perhaps,  
14 opportunity to develop such testimony by recalling one or  
15 more of these minor victim; but for tactical reasons relating  
16 to my view of the jury's impression and the uncertainty of  
17 what testimony I would extract, I've made a tactical decision  
18 not to plan on doing that, Your Honor.

19 THE COURT: All right. I am not going to admit it  
20 given the unavoidably speculative nature of any inference  
21 that it might support.

22 MR. BUCKLEY: Yes, Your Honor.

23 THE COURT: All right. We are waiting on our jury.  
24 We have the instructions. No basis to alter them unless the  
25 parties have come up with something.

1 MR. BUCKLEY: Not to my knowledge, Your Honor.

2 MS. ZACK: No, Your Honor.

3 Might we write on the easel and do stuff while  
4 we are waiting for the jury?

5 THE COURT: That's fine. Thank you.

6 MR. BUCKLEY: Thank you, Your Honor.

7 THE COURT: Is the government's witness here?

8 MS. ZACK: Yes, Your Honor.

9 THE COURT: In the hallway?

10 MS. ZACK: Yes, Your Honor. No. He's in the  
11 courtroom, Your Honor.

12 THE COURT: Okay.

13 Are we ready?

14 MS. ZACK: One moment, Your Honor.

15 THE COURT: Bring in the jury and bring up the  
16 witness.

17 (Jury enters courtroom)

18 THE COURT: Good morning, ladies and gentlemen.

19 JURORS: Morning.

20 THE COURT: Please be seated.

21 I am quite sincere when I say it is a real  
22 pleasure to see you all here and to be able to proceed with  
23 the trial, and I apologize for the disruption of last Friday;  
24 circumstances out of our control, and thank you for your  
25 patience and good humor in your responses. I hope you had a

1 pleasant weekend, warm but pleasant.

2           We are now ready to proceed with what I  
3 anticipate to be the last, or among the last witnesses in the  
4 case. We will then proceed to any additional evidentiary  
5 matters, then we will have my instructions on the law, the  
6 parties will argue in the closing arguments. Because we will  
7 start with the attorney for the government, then the attorney  
8 for defendant will address you in closing argument, and then  
9 you will get to hear a final word from the government because  
10 they have the burden of proof, and therefore, they get the  
11 privilege of talking last.

12           I will then give you some last instructions and  
13 excuse you to the jury room to begin your deliberations. To  
14 make this as efficient as possible, we have ordered lunch in  
15 for you.

16           We are now ready to proceed with the witness.

17           Ms. Zack, who is your next witness, please?

18           MS. ZACK: Your Honor, at this time the United  
19 States would call Special Agent Jeff Chappell.

20           THE COURT: All right. Agent Chappell, please come  
21 forward, sir. Pause to raise your right hand to be sworn.

22           Do you solemnly swear that the testimony you  
23 will give in the case now before this Court will be the  
24 truth, the whole truth and nothing but the truth so help you  
25 God, or you may affirm?

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1 THE WITNESS: I do.

2 THE COURT: Take the witness stand, please, sir.  
3 And as you testify, if you will lean close to the mic and  
4 pull it towards you and speak slowly and loudly and  
5 distinctly into the mic, everyone will hear you. Thank you.

6 MS. ZACK: May I proceed, Your Honor?

7 THE COURT: Please.

8 MS. ZACK: Thank you.

9 JEFFREY G. CHAPPELL

10 was called as a witness by the government and,  
11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ZACK:

14 Q Will you please state your full name and spell your last  
15 name for the court reporter.

16 A Jeffrey Glen Chappell. Last name is spelled  
17 C-h-a-p-p-e-l-l.

18 Q How are you employed, sir?

19 A I am employed as a special agent with Homeland Security  
20 Investigations.

21 Q How long have you been with Homeland Security  
22 Investigations?

23 A Since January of 2004.

24 Q And prior to that, what did you do?

25 A I was a U.S. Border Patrol Agent.

CHAPPELL-DIRECT

1 Q And before that?

2 A I was a police officer in the City of McAllen, Texas.

3 Q And when you became a special agent with Homeland  
4 Security back in, was it 2004?

5 A Yes, ma'am.

6 Q What kind of group or unit were you assigned to? What  
7 did you do?

8 A Initially I was assigned to our Alien Task Force picking  
9 up criminal aliens that were convicted in the system, but in  
10 November of 2004 I was assigned to the Cyber Investigation  
11 Group.

12 Q And as a member of the Cyber Investigation Group, what  
13 were you tasked with investigating, what type of crimes?

14 A Investigating the exploitation of children via the  
15 internet.

16 Q And at some point in time did your focus shift from being  
17 the investigator to becoming a forensic analyst?

18 A Yes, ma'am. In June of 2009 I became a Certified  
19 Forensic Analyst for Homeland Security.

20 Q And in order to become a Certified Forensic Analyst, what  
21 type of training or instruction did you have to undergo?

22 A The initial basic training is a eight-week course  
23 designed to teach us computer hardware with a pass or fail  
24 test on certification for hardware; and then we had to  
25 take -- that was two weeks, and then six weeks of actual

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1 forensic training on computers and software, et cetera.

2 Q And did you pass those tests?

3 A Yes, ma'am.

4 Q And once you became certified, do you have to keep up  
5 your certification?

6 A Yes, ma'am.

7 Q And how did that work?

8 A We had to have at least 40 hours of training per year,  
9 and then we are required to obtain certification,  
10 industry-recognized certifications, which I have also done.

11 Q And is there any type of test or competency training that  
12 you have to show each year with proficiency?

13 A Yes, ma'am.

14 Q And since 2009 have you participated in the proficiency  
15 training?

16 A Yes, I have.

17 Q And have you passed all of those tests?

18 A Yes, I have.

19 Q Have you been called to testify before as an expert on  
20 forensic analysis specifically of computer media, cell  
21 phones, digital media?

22 A Yes, I have.

23 Q And is that both state and federal?

24 A Yes, ma'am.

25 Q Have you ever been denied qualification as an expert in

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1 this area?

2 A No, ma'am.

3 MS. ZACK: Your Honor, at this time the United  
4 States would offer special agent --

5 THE COURT: We don't offer. That's not required.

6 MS. ZACK: Thank you, Your Honor.

7 BY MS. ZACK:

8 Q So, Special Agent Chappell, how did you become involved  
9 in this particular case?

10 A On July 20th of 2012 Special Agent Johnson contacted me  
11 regarding an incident at the airport that may have involved  
12 digital media and asked if I would come along to take a look  
13 at the devices.

14 Q Did you do that?

15 A Yes, ma'am.

16 Q And your purpose in looking at devices at that location  
17 was what?

18 A It was the Bush International Airport, which is  
19 considered a port of entry for international flights, and so  
20 under our border search authority we assist. Our  
21 investigation bases includes looking at digital media that's  
22 coming from porn.

23 Q Can you do a full forensic analysis at the airport?

24 A No, ma'am.

25 Q So when you are looking at stuff at the airport, you're

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1 just getting a preview; is that correct?

2 A Yes. We call it an on-site triage, but it's basically a  
3 preview of the computer or the device.

4 Q I am going to go show you what's been admitted, two items  
5 that have been admitted into evidence as Government Exhibit 1  
6 and Government Exhibit 1A and ask you if you recognize these  
7 items?

8 A Yes, ma'am.

9 Q And how do you recognize these?

10 A These are two devices that I not only reviewed at the  
11 airport but I conducted a full forensic exam back in 2012.

12 Q How do you know these items were are what you examined?

13 A The hard drive here was an Hitachi hard drive which was  
14 inside of an Acer. I know because I removed it, not only  
15 back then but again for our purposes. And back in 2012 after  
16 I finished my initial analysis, I put my initials and the  
17 date that initial analysis being completed on the hard dive.

18 Q Now, I am going to ask that Ms. Warren put up  
19 Government's Exhibit 1B on the screen. And if you could blow  
20 that up, that picture has previously been admitted.

21 Can you tell us, Special Agent Chappell, where  
22 the Hitachi hard drive was manufactured?

23 A The country of Thailand.

24 Q Now, you indicated that you performed a forensic analysis  
25 on this item; is that correct?

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1 A Yes, ma'am.

2 Q The Hitachi hard drive that was taken out of the Acer,  
3 correct?

4 A Yes, ma'am.

5 Q That's the only hard drive in that computer?

6 A Yes, ma'am.

7 Q And from that, how do you perform a forensic analysis?  
8 What do you do?

9 A The first step when dealing with a computer, in this  
10 instance a laptop, obviously we will check the device for any  
11 defects, damage, anything that might affect the performance  
12 of the computer itself to note. Then I will remove the hard  
13 drive from the actual computer, and I will place a hard  
14 drive, what we call a write blocker. It's a device that  
15 prevents us from adding any data to the device or removing  
16 data from the device. It basically seals it.

17 And using that write blocker and some forensic  
18 software I will make what is called a forensic image,  
19 basically a copy of that hard drive, and then that copy of  
20 the hard drive is actually what I do my analysis on.

21 Q At the time that you are performing this analysis, are  
22 you in contact with Special Agent Johnson?

23 A Yes, ma'am.

24 Q And are you privy to certain facts of the investigation  
25 that inform your analysis?

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1 A Yes, ma'am.

2 Q Okay.

3 So let's talk about what type of software.  
4 What do you do? What are you looking for? How do you find  
5 it?

6 A There are very similar types of software initially on  
7 this laptop. I used what's called a Linux boot disk. It's  
8 basically a self-contained operating system that will run off  
9 the hardware of the laptop but won't affect the actual hard  
10 drive on the inside. And then that allows me to look at the  
11 data, what's called allocated data, the useable data on the  
12 hard drive to see what's up there initially.

13 And then there are forensic software which  
14 actually goes deeper into the system, parses out the  
15 directories and file systems, all that stuff. In this  
16 particular case it was what we a perfect toolkit.

17 And then I also used what's called an Internet  
18 Evidence Finder. This is a specific piece of software that  
19 analyzes specifically internet-based files on a computer.

20 Q What is a registry report?

21 A A registry report is, all Windows-based operating systems  
22 use what's called a registry. They call it a hive. It's  
23 basically a whole lot of files and stuff that are used for  
24 the setting to tell the operating system what to do, when to  
25 do it, how to do it. It also keeps track of things that have

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1 been done on the computer by a user. It's one of the things  
2 that I will look at during my analysis.

3 Q And when you are doing this analysis, is information from  
4 the investigation such as dates and different items or facts  
5 that an investigator is able to inform you of, does that  
6 inform your ability to form an opinion about what you're  
7 analyzing?

8 A Yes, ma'am.

9 Q So this particular computer, were you able to determine  
10 when it came into existence? And by that I don't mean when  
11 it was manufactured. I mean somebody started using it.

12 A Correct. The operating system on this particular laptop  
13 was Windows 7 Home, and it was initialized on this laptop in  
14 I believe May of 2010.

15 Q May of 2010, okay.

16 And that is contained when you do your  
17 analysis. You're able to see when it's set up?

18 A Yes, ma'am.

19 Q Okay.

20 And are you aware of whether or not this  
21 computer was password protected?

22 A Yes, ma'am.

23 Q Was it?

24 A Yes, ma'am.

25 Q Okay.

## CHAPPELL-DIRECT

1                   And this particular device, were you asked to  
2 look for certain items?

3 A    Yes, ma'am.

4 Q    Was one of those items child pornography?

5 A    Yes, ma'am.

6 Q    And are you familiar with what child pornography is per  
7 the federal definition?

8 A    Yes, ma'am.

9 Q    And how are your familiar with that?

10 A   From November of 2004 until present day that's the only  
11 type of investigation or the main type of investigation I  
12 have done is child exploitation and child pornography. I  
13 have viewed it many, many, many, times.

14 Q   Okay.

15                   Now, in conducting your analysis did you find  
16 what you believe to be child pornography on the computer?

17 A    Yes, ma'am.

18 Q    And can you explain to the members of the jury where you  
19 found it and how that occurred?

20 A    Yes, ma'am.

21                   During my analysis, one of the areas I checked  
22 is called internet caches. It's basically a temporary folder  
23 or a folder that contains temporary data that a web browser  
24 uses on a computer. It's very indicative of the type of  
25 things that the computer is being used for, where a user

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1 goes, websites and so forth.

2 In this particular laptop in the internet  
3 cache, this temporary cache, I located an engine I believe to  
4 be child pornography. I also located within it what's called  
5 the system volume information. Again, it's another area of  
6 the computer that stores data about the usage of the  
7 computer.

8 Q And as far as items that you prepared for presentation in  
9 court, I am going to ask you to look at what's been admitted  
10 as Government's Exhibit 2A.

11 A Yes.

12 THE COURT: Got it?

13 MS. ZACK: Yes. I just want to make sure. Your  
14 Honor, can we make sure the jury has it on their screens?

15 THE COURT: I see no indication they don't.

16 MS. ZACK: Okay.

17 BY MS. ZACK:

18 Q So these images, Special Agent Chappell, can you explain  
19 what we're looking at and what can you tell us about these  
20 images and if, when they were looked at?

21 A Yes, ma'am. These images are segregated first off for  
22 core purposes for display. The way that I see them was  
23 actually as part of a web page that the person would see if  
24 they actually went on the internet and went to a web address.

25 Q Was that web address captured in your analysis?

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1 A Only partially, ma'am.

2 Q And so -- I'm sorry. Continue. I apologize for the  
3 interruption.

4 A All of the views that I viewed were male and female nudes  
5 showing their genitalia in what I believed to be a lewd and  
6 lascivious manner engaged in various activities with or  
7 without nude adults.

8 Q And what can you tell us about how these were viewed or  
9 when they were viewed?

10 A The images themselves were viewed all on the same date.  
11 I would have to look through the report I have offered. What  
12 I have, it was I believe 7-14 of 2012, but I --

13 Q Which report would that be?

14 A The FTK report.

15 Q Let's look at the FTK report, which is contained in  
16 Government's Exhibit 2C. And what portion of that?

17 A It's the second CP graphic file bookmark on the left-hand  
18 side.

19 Q Okay.

20 A I'm sorry. Correction. April 18th of 2012.

21 What's interesting on this, I believe the  
22 images were viewed individually by the user.

23 Q Why?

24 A Because the date is all the same, but the time fluctuates  
25 between the images. Had this been a single web page with all

## CHAPPELL-DIRECT

1 these pictures attached to it and loaded on to a computer in  
2 one page without the user looking at it, the created date  
3 and -- created time would have been a lot closer together  
4 than what they ended up actually being.

5 Q And looking at the top picture, it says 4-18-2012,  
6 6:56:03 UTC. What does that mean?

7 A UTC is the universal time code that is basically what is  
8 also called a mean time out of Greenwich Village, England.  
9 Everything is based off that zero hour time.

10 Q So what time would that have been in Houston?

11 A That would have been 1:56:03 a.m. in Houston on that  
12 particular day.

13 Q Now, given what you knew about this investigation, did  
14 you look at what specific day of the week that was?

15 A At the time, yes, ma'am.

16 Q Okay.

17 And did you determine whether or not it was a  
18 weekday or weekend?

19 A It was a weekday.

20 Q And did you learn what weekday it was?

21 A I believe it would have been a Wednesday.

22 Q Based on what you knew about the investigation, in April  
23 of 2012 would school have been in on that particular  
24 Wednesday?

25 A Yes, ma'am.

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1 Q Okay.

2 And the following Thursday?

3 A Yes, ma'am.

4 Q Now, you indicated that the date was all the same for  
5 these images. And approximately how many were there?

6 A 52. Well, it's 57 in total, 52 new images.

7 Q And they were looked at at different times all on  
8 4-18-2012?

9 A That's correct.

10 Q Okay.

11 By whoever was in control of the computer at  
12 that time?

13 A Yes, ma'am.

14 Q Okay.

15 And you were able to determine where these  
16 images came from?

17 A Yes, ma'am.

18 Q Where did it come from?

19 A On the report you can see for each image there is a  
20 column for path which says Acer expired.801 partition 3/Acer  
21 NTFS root users, and it follows along.

22 The root is the highest level of the operating  
23 system, and then it digs down from there users, and always  
24 the user account for this computer. There is only one user  
25 account, and it was home.

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1                   And then the temporary internet files are  
2 located within a system of folders within the operating  
3 system, and that's where they were located.

4 Q   So does the facts that they were in a temporary internet  
5 file indicate to you that these images came from the  
6 internet?

7 A   That is correct, ma'am.

8 Q   And to the best of your knowledge and training is the  
9 internet a means and facility of interstate or foreign  
10 commerce?

11 A   Yes, ma'am.

12 Q   And in order for something to get on one's computer from  
13 the internet, does that require proactive actions? Let me  
14 rephrase that.

15                   THE COURT: Thank you.

16 BY MS. ZACK:

17 Q   How does something get on a computer from the internet?

18 A   It's typically downloaded, whether on purpose or  
19 accidentally, but because a user has opened up that computer  
20 to the internet.

21 Q   And was there anything that indicated to you, given the  
22 activity surrounding these images, that they were  
23 accidentally there?

24 A   No, ma'am.

25 Q   Why not?

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1 A Again, going back to the usage and the way these  
2 photographs were created within the temporary cache and the  
3 system volume, had it been an accidental website, the times  
4 would have, the pictures would have been within seconds of  
5 each other; and in some cases there's minutes. I believe one  
6 is maybe even 20 minutes later.

7 Q Now, in your investigation did you look at different  
8 locations on the computer for child pornography or other  
9 images that would suggest a sexual interest in children?

10 A Yes, ma'am.

11 Q And when you conducted those searches, was that recorded  
12 in your process?

13 A Yes, ma'am.

14 Q I am going to show you what's been marked as Government's  
15 Exhibit 2B. And this is Government's Exhibit 2B, and that's  
16 the first image.

17 MS. ZACK: Is there, Ms. Warren, a page that has all  
18 four images contained in Government's Exhibit 2B together?

19 BY MS. ZACK:

20 Q Do you know where this image was found in the computer,  
21 Special Agent Chappell?

22 A Yes, ma'am.

23 Q And where was that?

24 A This was located within the My Pictures folder of the  
25 user account home.

## CHAPPELL-DIRECT

1 Q Okay. I am going to get you to explain that in one  
2 second, but I also want you to look at 2B2. And do you  
3 recognize that one?

4 A Yes, ma'am.

5 Q Where was that one found?

6 A Same folder.

7 Q And 2B3, do you recognize that one?

8 A Yes, ma'am.

9 Q And where was that one found?

10 A Same folder, My Pictures under the user account.

11 Q And picture 4, 2B4, do you recognize that one?

12 A Yes, ma'am.

13 Q Now, for each of these images were you able to for any of  
14 them to determine where they came from?

15 A Yes, but not based off the metadata. All the metadata on  
16 these four pictures was stripped.

17 Q What does that mean?

18 A Every file has a auxiliary file that is basically data  
19 about the file itself.

20 Q Okay.

21 A And pictures especially have what's called excess data.  
22 That excess data typically tells you what kind of camera took  
23 it, the day it was created, so forth. But sometimes using  
24 the internet that information gets stripped when you download  
25 it let's say from the internet or from let's say a chat

## CHAPPELL-DIRECT

1 program, Skype or something like that.

2 Q Forensically were you able to make any determinations  
3 about the history or the source of these images?

4 A No, ma'am.

5 Q Okay.

6 Were you able to determine whether or not they  
7 originated on that device?

8 A Yes, ma'am.

9 Q And did they?

10 A No, ma'am.

11 Q Okay.

12 And how do you know that?

13 A Just three of the files had a file name convention, what  
14 I recognized as a default naming convention for Facebook.

15 Q So what does that mean?

16 A The file name itself, the way -- the file name of the  
17 first group of pictures is consistent and looks the exact  
18 same as file names that were generated off of Facebook.

19 Q Okay.

20 A And then the third picture, the fact that it was --

21 Q Third or the fourth?

22 A I'm sorry. The fourth picture.

23 Q Okay.

24 A The fact it was a standard JPEG and all this was data,  
25 that metadata it took from it told me that it had not been

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1 created on this computer, that metadata was still in there.

2 Q Were you able to determine what type of devices had ever  
3 been attached to that computer?

4 A To the computer, yes, ma'am.

5 Q And could any of the devices that had been attached to  
6 that computer been the source of the fourth picture?

7 A Yes, ma'am.

8 Q Such as?

9 A Such as the cell phones and flash drives.

10 Q And you, through your analysis, were able to determine  
11 that those two things had at some point been attached to that  
12 laptop?

13 A Yes, ma'am.

14 Q I want to talk now about the Facebook, the naming  
15 convention. What does that tell you about where those  
16 pictures came from?

17 A It leads me to believe that they came from Facebook.

18 Q So using that computer would it be possible for someone  
19 to go to Facebook and capture those images?

20 A Yes, ma'am.

21 Q But you found the images in --

22 MR. BUCKLEY: Objection to leading.

23 BY MS. ZACK:

24 Q Where specifically did you find the images?

25 A They were in the user account home in their My Pictures

## CHAPPELL-DIRECT

1 folder.

2 Q I am going to show you what's been marked as Government  
3 Exhibit 2F. Does 2F demonstrate how one would get to those  
4 pictures?

5 A Yes, ma'am.

6 Q Can you explain to the members of the jury what we're  
7 looking at and what you were doing?

8 A On a standard computer, Windows computer running Windows  
9 7, when you open up Explorer, which is usually an icon on the  
10 bottom that looks like a folder or you go to My Computer and  
11 open it up, this is the screen or this is what you are going  
12 to see in the window. It's pretty default. Almost every  
13 Windows-based computer with Windows 7 will look like that.

14 Q And why does this one have your name on it?

15 A This was taken off my forensics machine, this particular  
16 one.

17 Q So does this one tell us anything about the Acer laptop  
18 specifically or do we need to go to the next one?

19 A The Acer laptop, specifically if you go back to the P and  
20 G files, I believe.

21 Q Okay.

22 A I can tell you where it is. The Acer one, I did screen  
23 shots of the Acer.

24 Q So let's go to the next image.

25 A These are all based off of My Computer.

## CHAPPELL-DIRECT

1 Q So where should we go? Can you explain to us, though,  
2 what we are looking at?

3 A This is when on the previous slide you showed the Windows  
4 Explorer and it had all the different drives available on  
5 that particular computer.

6 The C Drive is by default the standard. That's  
7 where the operating system is that a user would actually look  
8 at. So on this picture I clicked on the C Drive.

9 Q Okay.

10 A Which is the operating system.

11 Q And then where did you go from there? What's the next  
12 slide?

13 A The next slide would be going to users, and it would show  
14 you all the different users on the computer. On this  
15 particular one is My User account and then the two default  
16 folders for the operating system that most Windows 7  
17 computers have.

18 Q So anyone pulling up a computer and taking these steps to  
19 locate a particular place is going through these steps?

20 A Yes, ma'am.

21 Q And this is what that individual is seeing?

22 A Correct.

23 Q And they're making selections to get to these locations?

24 A Yes, ma'am.

25 Q So you indicated the images were located in what folder?

## CHAPPELL-DIRECT

1 A It would have been under the user account. In this case  
2 it was called Home in the My Pictures folder, which is a  
3 default group folder.

4 Q So then we're going where after this?

5 A On this particular one, this is explaining the public  
6 account.

7 Q Okay.

8 A Which is totally different.

9 Q So before we get to the public account, what, if anything  
10 else, do we need to know about the four images and where they  
11 were located? Can you tell when they were put on the  
12 computer?

13 A Yes, ma'am.

14 Q And where would you look for that, in which report?

15 A It would have been on the FTK report.

16 Q So that's Government Exhibit 2C. And if we go to that  
17 one, because clearly I jumped too far ahead, if we go to that  
18 one, where would we look on that?

19 A Actually they're not on this report. We created that  
20 exhibit separate.

21 Q So is there a corresponding -- let's talk about the  
22 public folder then. What was found in the public folder?

23 A In the public folder I found numerous photographs or  
24 digital images of Mr. Gandy that appears, depicts him  
25 traveling, with other people in his house or some different

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1 locations and so forth.

2 Q And do any of those images or file paths give you dates  
3 that predate April 8th of 2012?

4 A Yes, ma'am.

5 Q And within the computer, besides images were you able to  
6 find documents that also can be attributable to the  
7 defendant?

8 A Yes, ma'am.

9 Q What kind of documents?

10 A There were scan copies of screen shots of lease  
11 agreements or rental agreements. There was documents  
12 relating to purchase of property here in Houston. There were  
13 pictures, bills of sale for I believe an RV or a camper.

14 Q So things that conform to somebody's daily life or  
15 activities?

16 A Yes, ma'am.

17 Q Now, explain to me the significance of this public folder  
18 and where you found these things.

19 A I came across numerous images of Mr. Gandy engaged in  
20 various activities. The photos depicted travel, they  
21 depicted -- they were sexual in nature and so forth; but they  
22 were located in the My Pictures folder that was located in  
23 the public portion of the operating system, which is not a  
24 default location for pictures like this to be.

25 Q And so what was the significance to you as a forensic

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1 analyst?

2 A To me that indicated that there was some sort of  
3 deception or trying to hide these images for whatever reason.

4 MR. BUCKLEY: That calls for speculation, and it  
5 calls for a conclusion.

6 THE COURT: Well, speculation, yes. I will sustain  
7 the objection. The jury will disregard the answer.

8 BY MS. ZACK:

9 Q Let me ask you this. How many steps would it take for a  
10 user to store those images where they were stored, and is it  
11 a process that you've been describing as far as with --

12 THE COURT: One question at a time.

13 MS. ZACK: Oh, sorry.

14 BY MS. ZACK:

15 Q How many steps approximately would it take?

16 A There is numerous. You know, anywhere from five to seven  
17 depending on what you are doing.

18 Q Okay.

19 Is the process that we're looking at a pathway  
20 to that location?

21 A This is exactly the way it would have had to have been  
22 done.

23 Q So far we've looked at four screens to get to the one  
24 where we are?

25 A Correct.

## CHAPPELL-DIRECT

1 Q And what is this one showing us?

2 A Right. We start off with the computer, we go into the  
3 operating system, click on users, and within the user you  
4 have your user account and then you have this public folder.  
5 All Windows 7 operating systems contain it.

6 You click on "public" and then it gives you all  
7 of these files here. Your public desktop, public documents,  
8 downloads, music, pictures and recorded TV and videos.

9 Q Okay.

10 A This particular one I clicked on Public Pictures.

11 Q And it takes you to the next screen; is that correct?

12 A Yes.

13 Q So let's see the next one.

14 A Now, on a standard Windows install, this is what a user  
15 is identifying. Because this is My Computer, My Advan Video  
16 Corporation, which is a graphics card file, that's just based  
17 from my system, but the default is to have the sample  
18 pictures only.

19 Q And what is in sample pictures? If any of us opened a  
20 Windows computer and went to this sample pictures file, what  
21 is typically in the sample pictures?

22 A These are pictures set up by default the operating system  
23 would use to generate your background, screen saver and so  
24 forth.

25 Q Okay.

## CHAPPELL-DIRECT

1                   So would it be fair to characterize them as  
2 like generic throw-down pictures that Windows gives you?

3 A    Yes, ma'am.

4 Q    Okay.

5                   So it's like a mountain scene or a kitten or  
6 flowers, stuff like that?

7 A    Yes, ma'am.

8 Q    And those are provided to you as part of the Windows  
9 package?

10 A   Yes, ma'am.

11 Q   Okay.

12                   So how was it set up in the computer that's  
13 Government's Exhibit 1? Do we need to go to the next screen?

14 A   Go to the next slide.

15 Q   Okay.

16 A   And these are the pictures that are standard.

17 Q   Okay.

18 A   Then next slide we'll...

19                   Okay. This relates to Mr. Gandy's, or what I  
20 believe to be Mr. Gandy's computer, the Acer laptop,  
21 directly. Using the forensic image, I mounted it, which in  
22 the bottom right-hand side of it says Acer with the letter  
23 (N) in parenthesis. That would be the operating system for  
24 this Acer.

25 Q   What does this screen shot tell us about this, the Acer?

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1 A At this point nothing.

2 Q So let's go with the next one.

3 A So I clicked on Acer for that particular drive. And  
4 again, this is what pops up. This is similar to what we saw  
5 off of My Computer from a root with the different drives on  
6 it.

7 Q Should we go to the next one?

8 A Yes.

9 Q Okay.

10 A Going to root again, this is standard default operating  
11 system. And you will notice it has all the system files, and  
12 then about halfway down the screen is the folder for users.

13 Q Okay.

14 A On the Acer laptop, these were the users that were here.  
15 All the users, default users, default, default users and  
16 public are system-generated folders system; and then Home is  
17 the user-created account when the computer was initiated.

18 Q And the next screen?

19 A The next one is, I clicked on Public as I did off My  
20 Computer, and these were the standard folders that are shown.  
21 Again, Favorite, Libraries. OEM is the original drivers and  
22 stuff, the operating system, and then public desktop  
23 documents, downloads, pictures, videos.

24 Q And the next one?

25 A I began clicking on the public pictures. It does have

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1 the sample folder for the sample pictures, just like I showed  
2 on My Computer.

3 Q And if we clicked on sample pictures we will get to the  
4 next screen?

5 A Yes, ma'am.

6 Q Okay.

7 A And so I clicked on the sample picture, and this is where  
8 I noticed a folder called My Pictures, which should not be  
9 there.

10 Q And when you say it should not be there, you mean the  
11 computer would not generate that?

12 A Right. By default that folder should not exist within  
13 this public sample pictures.

14 Q So how would that folder have gotten there?

15 A The user would have to put it in there.

16 Q Okay.

17 So were you able to get into the My Pictures  
18 folder?

19 A Yes, ma'am.

20 MS. ZACK: Can we go to the next picture.

21 BY MS. ZACK:

22 Q And is that what was in this My Pictures?

23 A Yes, ma'am.

24 Q And in looking at this, are these the type of pictures  
25 that you described before as containing Mr. Gandy travel and

CHAPPELL-DIRECT

1 things like of that nature?

2 A Yes, ma'am.

3 Q And clicking through these were you able to determine any  
4 dates attributable to these images?

5 A Yes, ma'am.

6 Q And those predated April of 2012; is that correct?

7 A That's correct.

8 Q Now, you were tasked with looking for images of Minor  
9 Victim 1, Mr. Vasquez, correct?

10 A Yes, ma'am.

11 Q Did you find anything on the computer that predated April  
12 of 2012 with him?

13 A No, ma'am.

14 Q And you indicated that there was images that you believe  
15 came from Facebook?

16 A Yes, ma'am.

17 Q Do you know if Facebook was accessed with this computer?

18 A Yes, ma'am.

19 Q How would you know that?

20 A Based on my analysis using the internet evidence finder,  
21 I looked at all of the evidence, the internet activity on  
22 that computer and Facebook was public on there.

23 Q If I were to pull up the internet evidence finder, can  
24 you see that?

25 A Yes, ma'am.

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1 Q So let's look at Government Evidence No. 2D.

2 MS. ZACK: And, Your Honor, I believe 2C and 2D were  
3 conditionally offered.

4 At this time, based on the earlier testimony of  
5 Special Agent Chappell, I would move to admit --

6 THE COURT: Any objection?

7 MR. BUCKLEY: No objection.

8 THE COURT: They're admitted. Thank you.

9 MS. ZACK: Thank you, Your Honor.

10 BY MS. ZACK:

11 Q So this is the internet evidence finder; is that correct?

12 A Yes, ma'am.

13 Q And what type of information does this capture?

14 A It captures file and data information relating to  
15 internet uses on a computer.

16 Q So what is it telling us on this screen?

17 A This particular report is giving us information. On the  
18 left-hand side are particular bookmarks that I created for  
19 this report on usage. We have a Chrome Autofill chrome card  
20 web history which actually shows the web history using the  
21 Chrome web browser.

22 We have Chrome logins also using a Chrome web  
23 browser. We have Facebook Chat, Facebook emails and Facebook  
24 status updates of all those that I was able to recover, and  
25 then below that we have Skype accounts information relating

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1 to Skype.

2 Q Based on your analysis and knowledge of this case, was  
3 there any Skype activity that's of any value to you when you  
4 looked at that?

5 A No, ma'am.

6 Q Did it all predate the time of April, 2012?

7 A Yes, ma'am.

8 Q So let's talk about the things at the top and the Chrome  
9 Autofill. If we clicked on that, what would we see?

10 A Autofill is basically when you are typing something on  
11 your computer, filling out a form on the internet, your  
12 computer can allow you to auto populate something.

13 Q Okay.

14 A And Chrome, this is their version of that.

15 Q Okay. Should we take a look at that?

16 A We can, yes, ma'am.

17 Q So what are we looking at, and can you explain to us what  
18 it is?

19 A Yes, ma'am. Starting at the top where it says  
20 kevinvasquez64yahoo.com, if the user started typing in, that  
21 would, if they type in like say KEV, that would automatically  
22 pop up. It's stating this is what you want to complete it  
23 with.

24 Q And on what date -- so is that saying that someone went  
25 to that Yahoo account? What is this telling us?

## CHAPPELL-DIRECT

1 A That particular Autofill was created on June 27th of  
2 2012.

3 Q Okay.

4 But when you're saying that that Autofill was  
5 created, was it because someone was trying to go to that  
6 email account or was someone ending an email to that account?  
7 What can you tell us about that?

8 A They were at yahoo.com, and they were either, one,  
9 creating an account, or two, they were trying to log into the  
10 account.

11 Q And there is two different dates associated with that  
12 same email address, correct?

13 A Yes, ma'am.

14 Q And what are those?

15 A The first one is 6-27-2012. The next one is 7-14 or July  
16 14th of 2012.

17 Q So nothing about that email address predated 5-27-2012?

18 A That's correct.

19 Q Okay.

20 And then below that there's something that says  
21 "UK, United Kingdom, bring me the." What is that?

22 A Yes, ma'am. That is a user put in information regarding  
23 the United Kingdom. Actually the whole thing is bringing  
24 Horizon and some other band names. This is alternative rock  
25 music, and apparently that got put in as some sort of

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1 searchable address or something, and then so he created this  
2 Autofill for it.

3 Q Was there other references to the United Kingdom or  
4 London?

5 A Yes, ma'am.

6 Q And were those searches? What were those?

7 A Well, basically the other stuff that I found, yes, were  
8 searches and/or actual web addresses where the user actually  
9 went to a website related to that.

10 Q So would that be in the Chrome card of the web history?

11 A Yes, ma'am.

12 Q I just want to discuss two more things or three more  
13 things before we leave this page.

14 There's a reference on 7-7 of 2012 to "cute  
15 American skater. "

16 A Yes, ma'am.

17 Q And what is that telling us?

18 A The user was filling out something and used the term  
19 "cute American skater" as some sort of a form-fillable web  
20 page.

21 Q And that appears to be on the same date that the  
22 jasonrmt@gmail was being accessed?

23 A Yes, ma'am, same date and time.

24 Q And what about the two entries below that. The  
25 cuteskater64@yahoo.com, that appears twice?

## CHAPPELL-DIRECT

1 A Yes, ma'am.

2 Q Is that also -- that's the next day; is that correct?

3 A It's actually the same date.

4 Q So it's 7- --

5 A 7-7. They were just a few minutes, approximately four  
6 minute apart.

7 Q So that's all around the same time that all of those  
8 things are being accessed?

9 A That is correct.

10 Q So now let's go to the -- we want to go to the  
11 Chrome-carved web history?

12 A Yes, ma'am.

13 Q And what is this going to tell us?

14 A This is basically the web history from the Chrome web  
15 browser that existed on this computer at the time I conducted  
16 my analysis.

17 Q And is this organized by date, by time? How is this  
18 organized, or is it not organized?

19 A This is organized basically by report number off of my --  
20 there's no -- this particular report is not in order of time  
21 or date.

22 Q What items of evidentiary value did you find that were of  
23 interest to you based on your other analysis? And do we need  
24 to scroll?

25 A No, ma'am. This is fine. There was information provided

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1 me by the investigator regarding world tour, which is again  
2 an alternative rock tour. I found information relating to  
3 that. I found information related to London and Craigslist,  
4 which was also provided to the case agent for further  
5 investigation.

6           There are links to adult pornography, adult gay  
7 pornography, to dating sites for adult gay men and gay women.  
8 There is more information relating to Europe and basically  
9 how to exchange Euros for dollars, et cetera; just all kinds  
10 of information relating to things that we knew at the time of  
11 the investigation.

12 Q And do the dates line up with when the defendant would  
13 have been preparing to travel or traveling to the UK?

14 A Yes, ma'am.

15 Q And is there anything else of significance in -- which  
16 one are we in -- in the carved web history that we need to  
17 discuss, or should we go to the next one?

18 A No, ma'am.

19 Q Okay. Let's go to -- this is a Chrome login?

20 A Yes, ma'am.

21 Q Okay.

22           And what does the Chrome login tell us?

23 A This is information that Chrome, the web browser, has  
24 saved for the user relating to websites and the user name  
25 related to the websites.

## CHAPPELL-DIRECT

1 Q Now, it appears here there's a reference to Facebook at  
2 the bottom?

3 A Yes, ma'am.

4 Q No. 6?

5 A Yes, ma'am.

6 Q Okay. So what is that telling you?

7 A That is, that particular website is actually a home page  
8 for Facebook. Chrome did not capture a user name. That  
9 typically happens when it's logged in more than once, several  
10 times.

11 Q Now, we have seen evidence referencing cute skater and  
12 such. Is that also referenced on this page?

13 A Yes, ma'am.

14 Q And the dates associated with that are all the same; is  
15 that correct?

16 A Yes, ma'am.

17 Q And that's 7-7 of 2012, correct?

18 A That is correct, ma'am.

19 Q Now, within the Chrome logins was there anything else of  
20 significance to you that related to the facts or  
21 circumstances of this case?

22 A As to an attempt to determine usage and ownership of the  
23 computer, the websites themselves were indicative of what I  
24 had seen off of the previous web history and dating back  
25 prior to May of 2012 that I saw those same websites and same

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1 usage.

2 Q Was there anything of significance in Facebook checked?

3 A No, ma'am.

4 Q What about Facebook email?

5 A No, ma'am.

6 Q What about Facebook status updates or something post  
7 comments?

8 A No, ma'am.

9 Q Okay.

10 Did the fact that those show up indicate to you  
11 that this computer was used to visit Facebook?

12 A That is correct, ma'am.

13 Q So had no one ever gone to Facebook on this computer,  
14 that category was not addressed?

15 A Correct.

16 MS. ZACK: May I have a moment, Your Honor?

17 THE COURT: You may.

18 MS. ZACK: I am going to ask Ms. Warren to go to  
19 Government's Exhibit 2E, which I believe we briefly touched  
20 on this.

21 BY MS. ZACK:

22 Q And what is this, and should she click on it?

23 A This is the registry report. Again, all Windows-based  
24 operating systems use what's called a registry to keep track  
25 of data for usage. And this is a report that I created from

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1 information that I gathered from there.

2 Q Which one would show this?

3 A First one.

4 Q The first one, okay.

5 So this is essentially like what you see?

6 A Correct.

7 Q So now scroll down a little, and right here, Item No. 59.

8 A Correct.

9 Q What is that?

10 A That is a, what's basically a shortcut, he created a  
11 shortcut to a picture called Middle School Kevin.JPEG.

12 Q And somebody named a picture that?

13 A Yes, ma'am.

14 Q And that would be user generated; is that correct?

15 A That is correct.

16 Q And are there dates associated with that necessarily?

17 A Yes, ma'am, if we scroll back up to the top.

18 Q Okay.

19 A The lists are -- this is an actual file, for lack of a  
20 better term. And so the file itself doesn't keep track of  
21 the date and times of the data within. It's basically a  
22 first-on, last-off type list.

23 Q Okay.

24 A So basically the last time it was written, some data on  
25 here somewhere was last written to it 7-14 of 2012 at

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1 19:16:10 UTC, meaning that all the data on here either  
2 occurred on or before that date.

3 Q So the picture titled Middle School Kevin was on there  
4 prior to July 14th of 2012?

5 A Someone looked at it prior to, on or prior to that date.

6 Q And in order for that to get wherever it was located on  
7 the computer, it had to have been put there by a particular  
8 user?

9 A Yes, ma'am.

10 Q Okay.

11 Now, if we look at the -- where else do we want  
12 to go in this one?

13 A Well, in this particular one, the interest was the second  
14 entry on there. TN.JPEG was the picture of Mr. Vasquez that  
15 I located where he's in the loincloth, or whatever that is  
16 that he is wearing; and it shows that either on or before  
17 7-14 of 2012 a user clicked and actually viewed that picture.

18 Q And it appears above that there's a My Pictures?

19 A Correct.

20 Q What does that tell us?

21 A That the user opened up that folder, My Pictures, and the  
22 first picture that they looked at or clicked on was the  
23 TN.JPEG.

24 Q Which is the fourth picture in Government's 2B of Mr.  
25 Vasquez as you're describing in the loincloth?

## CHAPPELL-DIRECT

1 A Yes, ma'am.

2 Q Now, the My Pictures folder that you're discussing that  
3 was opened, is that the one that you described to us that was  
4 located in the public, in that area or is this a different  
5 location?

6 A No, ma'am. This is the default My Pictures that the user  
7 account, in this case Home, has right there. It's linked to  
8 My Documents, and there may have been a shortcut on the  
9 desktop part of it.

10 Q And that was visited several times it appears?

11 A Yes, ma'am.

12 Q On or before 7-14 of 2012?

13 A That is correct.

14 Q Anything else of significance in this, on this page that  
15 we need to scroll down to and discuss?

16 A No, ma'am.

17 Q So let's go back to where we were before there. And if  
18 we click on the second report, what does this tell us?

19 A This is a report that shows all of the cache devices to  
20 this computer that were attached to the computer either on or  
21 before January 7th of 2012.

22 Q And as far as you can tell, you've discussed that a bunch  
23 of things were attached. You said thumb drives, cell phones,  
24 things of that nature?

25 A In the cache system.

CHAPPELL-DIRECT

1 Q Does this mean nothing was attached after January of  
2 2012?

3 A Correct.

4 Q So anything that would have got into the computer after  
5 January of 2012, does that mean it would have had to come  
6 from the internet?

7 A Correct.

8 Q Or an email or some other way without a direct connect to  
9 the computer?

10 A That is correct.

11 Q So including the image of, the old images of Mr. Vasquez?

12 A That is correct.

13 Q All of those had to come from the internet or some sort  
14 of internet-accessible clips?

15 A Correct.

16 Q And I believe the first three you indicated you believe  
17 they came from Facebook?

18 A Correct.

19 Q Based on your training and experience, how would that  
20 fourth picture have been able to get to the computer?

21 A It would had to have been, based on the dates and times,  
22 it would had to have been downloaded from the internet either  
23 by email or by chat in some way.

24 Q Okay.

25 And when you say "downloaded from the

CHAPPELL-DIRECT

1 internet," is that like if I send a picture from my phone to  
2 myself at my email address?

3 A Correct.

4 Q Okay.

5 Because there is no other way to get it on to  
6 that computer?

7 MR. BUCKLEY: Objection to leading.

8 THE COURT: Excuse me. Please refrain from leading,  
9 Ms. Zack. Rephrase.

10 BY MS. ZACK:

11 Q What other ways -- are there other ways besides the  
12 internet that could have gotten those pictures there given  
13 what you know about when devices were attached?

14 A The only other way would have been on an actual DVD or  
15 CD. That information would not have been recorded by the  
16 registry.

17 Q Okay.

18 So either method that you've described, that  
19 would require an individual to take a action in order to get  
20 it there?

21 A Correct.

22 Q And then what would be required to direct it to where you  
23 found it?

24 A The user would have placed it there.

25 Q Okay.

CHAPPELL-CROSS

1                   Is there anything else of significance, Special  
2 Agent Chappell, in the registry reports?

3 A    No, ma'am.

4                   MS. ZACK: Your Honor, at this time the United  
5 States would pass the witness.

6                   THE COURT: Cross.

7                   MR. BUCKLEY: Thank you, Your Honor.

8                                   CROSS-EXAMINATION

9 BY MR. BUCKLEY:

10 Q   Good morning, Special Agent Chappell.

11 A   Morning, sir.

12 Q   And for clarity again, the testimony that you have given  
13 this morning is related to an Acer laptop computer; and your  
14 understanding from the investigation is that that laptop  
15 computer was retrieved from Mr. Kevin Vasquez; is that  
16 correct, sir?

17 A   That is correct.

18 Q   And, of course, you have done a very thorough analysis of  
19 the contents and history of the laptop, but you are not able  
20 to form your own personal opinion on who actually did what in  
21 this computer, right, sir?

22 A   Depending. Some of it, yes; some of it, no.

23 Q   But in any event, you don't have personal knowledge of  
24 who actually sat at the computer and entered commands and  
25 data, correct?

## CHAPPELL-CROSS

1 A That is correct.

2 Q What you do is you forensically retrieve the data itself  
3 and information that informs you as to how the data got to a  
4 computer, right?

5 A Correct.

6 Q And then you may form an opinion about who probably did  
7 it, right?

8 A Correct.

9 Q But the fact is that unless you're sitting there watching  
10 it happen, no one could know with absolute certainty who it  
11 is who's the one doing it, right?

12 A Correct.

13 Q And as to this laptop being in the possession of Mr.  
14 Kevin Vasquez when it was seized by law enforcement, you  
15 don't have any personal knowledge yourself of how it came to  
16 be in his possession, correct, sir?

17 A No, sir.

18 Q And you don't have personal knowledge yourself of whether  
19 Mr. Gandy knew that it was in Mr. Vasquez' possession at that  
20 time, correct, sir?

21 A No, sir. I do not.

22 Q You testified briefly about an entry. Ms. Zack inquired  
23 as to an entry during a time period when I think you  
24 mentioned that school would have been in session during the  
25 time period of that entry. Do you recall generally that

## CHAPPELL-CROSS

1 conversation?

2 A Yes, sir.

3 Q Of course, you don't have any personal knowledge of  
4 whether someone would have been attending school on a  
5 particular day, correct?

6 A No, sir.

7 Q And you didn't -- that's just a general belief on your  
8 part due to the time of the year that's involved and the time  
9 of the day, correct?

10 A Well, that, and I went to several school district  
11 calendars, Galena Park, Deer Park, Pasadena ISD and looked at  
12 their school calendar for that year and that date.

13 Q But you never cross-referenced the attendance records of  
14 any of these alleged minor victims against that time period,  
15 did you?

16 A Oh, no, sir.

17 Q In your testimony about the Chrome Autofill records on  
18 this Acer laptop, there was an email there that was  
19 kevinvasquez64@yahoo.com. You recall that, sir?

20 A Yes, sir.

21 Q And if I understood your testimony and the data  
22 correctly, that email had been accessed on June 27th, 2012.  
23 That was one date, correct?

24 A That's would be when the Chrome Autofill was created,  
25 yes, sir.

## CHAPPELL-CROSS

1 Q And would that mean to you that there was some activity  
2 associated with that email address on that date?

3 A That is correct.

4 Q And then again the Chrome Autofill feature recorded some  
5 activity associated with that email on 7-14 of '12; is that  
6 correct?

7 A That is correct.

8 Q And it's your understanding that this computer was seized  
9 at the airport on approximately 7-20 of 2012, correct?

10 A That is correct.

11 Q So activity within the prior month and the month of the  
12 seizure of this computer in Mr. Vasquez' possession included  
13 some activity involving an email that appears to relate to  
14 Mr. Vasquez himself. That's fair, right?

15 A Yes, sir.

16 Q But, of course, as with everything else, unless you're  
17 sitting there watching a person do it, we don't have  
18 knowledge really of who it was who did what, right?

19 A That's correct.

20 Q In the course of your work with this computer, did you  
21 come to form an opinion about who had access to the device,  
22 who had likely accessed or used the device?

23 A Yes, sir.

24 Q And would it be fair to say that your opinion is that  
25 three people had in some way used this device?

CHAPPELL-CROSS

1 A Yes, sir.

2 Q Meaning one of those would be OCL Martinez, correct?

3 A That is correct.

4 Q Another would be Jason Gandy, right?

5 A Yes, sir.

6 Q And then another one would be Kevin Vasquez himself  
7 right?

8 A That's correct.

9 MR. BUCKLEY: May I have a moment, Your Honor?

10 THE COURT: Yes.

11 BY MR. BUCKLEY:

12 Q One more thing, sir. I don't want to mischaracterize,  
13 but I will describe the exhibits, the photographs that you  
14 testified about that you discovered on this Acer laptop that  
15 could be described as photographs from a nudist colony of  
16 some kind. It was clear to you that those had come from the  
17 internet, correct, sir?

18 A That is correct.

19 Q And not from one of the devices that had been hooked up  
20 to a computer. Is that a fair statement?

21 A No, sir. That is -- could it be on a device? Yes, sir.  
22 But the computer itself was used to access that web page.

23 Q Understood.

24 So that's where, that was the path through  
25 which those pictures came to be on that computer is from the

CHAPPELL-REDIRECT

1 internet, right?

2 A Or from it. It was used to view it. Whether the web  
3 page was stored on another device, that is possible; but the  
4 computer itself was used at a web page, so it had come from  
5 the internet at some point.

6 Q I guess the distinction I am making is that these were  
7 not photographs that were taken from one of the devices such  
8 as an i-Phone and then loaded on. You were able to determine  
9 that?

10 A No, sir, not investigated, no, sir.

11 Q So it came from somewhere on the internet, not generated  
12 on one of the devices itself?

13 A That is correct.

14 Q Okay. Understood.

15 MR. BUCKLEY: Thank you, sir. I pass the witness.

16 THE COURT: Thank you.

17 Ms. Zack.

18 REDIRECT EXAMINATION

19 BY MS. ZACK:

20 Q When you looked at this computer you were aware of the  
21 dates of travel of the two individuals, Jason Gandy and Kevin  
22 Vasquez; is that correct?

23 A Yes, ma'am.

24 Q And that was from sometime on July 18th to July 20th; is  
25 that correct?

CHAPPELL-REDIRECT

1 A That is correct.

2 Q Did you find any internet activity on that device for  
3 those three days?

4 A Actually, the computer was shut down on 7-17 of 2012. It  
5 was not turned back on until it was in our custody.

6 Q Okay. So whoever's possession it was in, when it was  
7 traveling it was never accessed by anybody after 7-17 of  
8 2012?

9 A That is correct.

10 Q And the OCL Martinez activity all predates the Kevin  
11 Vasquez activity; is that correct?

12 A That is correct.

13 MS. ZACK: Nothing further, Your Honor.

14 THE COURT: All right. Thank you.

15 Anything further?

16 MR. BUCKLEY: Nothing further, Your Honor.

17 THE COURT: Thank you, sir.

18 May this witness be excused?

19 MS. ZACK: Yes, Your Honor.

20 THE COURT: Thank you. You are free to leave, sir.

21 Ms. Zack.

22 MS. ZACK: Your Honor, at this time the people of  
23 the United States would rest.

24 MR. BUCKLEY: May we have a moment, Your Honor, to  
25 have a discussion on the record?

1 THE COURT: Of course.

2 Ladies and gentlemen, I think that this is a  
3 very good point for us to take a somewhat early mid morning  
4 break. I anticipate that we will do this fairly  
5 expeditiously and that in 15 minutes you should be ready to  
6 return, and we look forward to presenting the concluding  
7 phases of the case to you today. Thank you.

8 (Jury excused)

9 THE COURT: Please be seated.

10 Yes, sir.

11 MR. BUCKLEY: We do have a motion, Your Honor.

12 THE COURT: All right.

13 MR. BUCKLEY: And if I may, for the benefit of the  
14 court reporter.

15 We move for judgment of acquittal under Rule 29  
16 as to all counts, and specifically, first of all is Count 1.

17 Count 1 incorporates an element of conduct that  
18 would be illegal in the place where it is conducted. In  
19 other words, this was a case that relates to transporting a  
20 minor to the U.K. And there was some testimony that it is  
21 illegal in the U.K. to engage in sexual conduct with minors.

22 I don't recall from the record that in that  
23 context "minor" was defined under U.K. law. That's not my  
24 recollection. I understand that "minor" was defined in the  
25 context with U.S. law, but I don't recall --

1 THE COURT: Is it different?

2 MR. BUCKLEY: I believe it may be, Your Honor. And  
3 I don't know if --

4 THE COURT: Does anybody know in the context of  
5 criminal law?

6 MR. BUCKLEY: Your Honor, in candor to the Court, I  
7 generally believe that it's probably 16, which would still  
8 had it been defined in the record, but I don't believe it was  
9 defined in the record.

10 THE COURT: It wouldn't make a difference, though,  
11 would it?

12 MR. BUCKLEY: Had it been defined.

13 THE COURT: But it's an instruction on the law. Can  
14 I not take judicial notice of that?

15 MR. BUCKLEY: Well, I certainly would hope it  
16 doesn't come from the defense, Your Honor.

17 THE COURT: No. It would come from whatever the  
18 statutes of the United Kingdom reveal.

19 MR. BUCKLEY: I don't have the statutory citation.

20 THE COURT: I think we can find it.

21 MR. BUCKLEY: Understood, Your Honor.

22 THE COURT: All right.

23 MR. BUCKLEY: And furthermore, the evidence in the  
24 record I don't believe showed that Mr. Gandy was transporting  
25 Mr. Vasquez for sexual conduct or illegal sexual conduct or

1 prostitution.

2           As to Count 2, Mr. Gandy is charged with  
3 producing child pornography. I don't believe that the record  
4 includes -- or attempted production of child pornography.  
5 And I don't believe the record includes any evidence of an  
6 attempted production that's been admitted.

7           My recollection is that there's the photograph  
8 of Mr. Gandy -- pardon me -- of Minor Victim 1, Mr. Vasquez,  
9 wearing a loincloth of some kind; and it's my understanding  
10 that that's the basis of this. And if that's correct, I  
11 don't think that that constitutes any kind of attempt to  
12 produce child pornography, because if it was intended they  
13 would have just taken the loincloth off.

14           But that's the basis of my understanding, and  
15 that there's no evidence in the photograph that there was any  
16 attempt beyond photographing Mr. Vasquez in that loincloth.

17           As to Count 3, Your Honor, the evidence  
18 establishes that the Acer laptop containing what is arguably,  
19 has been argued by the government to be child pornography  
20 was in Mr. Vasquez' possession, not Mr. Gandy's possession.  
21 I understand that there are circumstances that could suggest  
22 that Mr. Gandy was aware it was being transported, but that  
23 link has not been made.

24           Furthermore, the images that have been  
25 identified by the government as alleged child pornography --

1 and not to minimize, but they're nudist images. I know that  
2 there is case law that has in some circumstances recognized  
3 images like that as child pornography, but I don't believe  
4 that in this case the images rise to that level; and I  
5 believe the government's proof has fallen short in that  
6 regard.

7 And as to the remaining counts, I simply,  
8 without further argument, move for an acquittal under Rule  
9 29.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 Ms. Zack, does the government wish to make a  
13 response on the record?

14 MS. ZACK: Briefly, Your Honor.

15 THE COURT: Go ahead, please.

16 MS. ZACK: As to Count 1, Your Honor, I believe that  
17 the purpose for which the travel occurred was well  
18 established with Mr. Vasquez. He even indicated that there  
19 would be two massages that occurred that were already booked  
20 in London. He also indicated he never performed a massage at  
21 Mr. Gandy's behest that did not involve some type of sexual  
22 contact.

23 Additionally, there is the advertisement for  
24 what was going to happen in London, the jasonrmt saying they  
25 would be in London. Additionally, he was 15 years old, and

1 there is no indication that he was not of the age of minority  
2 in the UK, which was part of the reason that CBP UK stopped  
3 him and Mr. Gandy because they believed he was vulnerable in  
4 some way.

5           As to the attempted production, there was  
6 testimony by Mr. Vasquez that not only was the image with  
7 what we are referring to as a loincloth produced by Mr. Gandy  
8 but that there were other images taken by Mr. Gandy when he  
9 was completely nude. One focused from behind and one was a  
10 full frontal nudity that occurred in the massage room at Mr.  
11 Gandy's residence.

12           And while those, while we were unable to find  
13 those pictures within the devices we had access to for  
14 purposes of trial presentation, the fact is they were taken  
15 at a time when Mr. Gandy knew that the victim was under the  
16 age of 18, and that is what is required, and focused on his  
17 naked genitals. We believe that we meet our burden in this  
18 for Count 2.

19           For Count 3, the laptop clearly did travel to  
20 the United Kingdom, and it was clear from Mr. Vasquez'  
21 testimony that that laptop was given to him by Mr. Gandy at  
22 the airport and was caused to go to the United Kingdom by Mr.  
23 Gandy.

24           And as far as the nudist images, I know Your  
25 Honor is very aware that those images can constitute child

1 pornography based on a trial and an opinion that Your Honor  
2 rendered in this Court in United States versus David Berry.

3 THE COURT: I remember it well.

4 MS. ZACK: Where you did an exhaustive opinion about  
5 the Dost factors and the application of those factors to  
6 nudist images. And I believe these images meet the federal  
7 definition of child pornography, Your Honor.

8 As to Counts 4, 5, 6 and 7, I believe the Court  
9 is very aware of the testimony that you heard and the other  
10 evidence presented.

11 THE COURT: Thank you.

12 I am going to overrule the motions. I don't  
13 think that the arguments are clear enough or the law strong  
14 enough to overcome the inferences and the sufficiency of the  
15 evidence to support those inferences consistent with a  
16 finding of guilt.

17 I will verify the status of UK law. I am  
18 confident, unless the parties find something that shakes that  
19 confidence -- and I urge you to look to see if there is  
20 anything -- that a judicial notice of the law would be  
21 appropriate even though it is foreign law.

22 And even without a statutory definition, the  
23 evidence of the actions of the UK border officials in seeing  
24 a basis to exclude Mr. Gandy and his young companion from  
25 entering the country are a sufficient basis to go to the

1 jury.

2 I don't find the argument that nudist  
3 photographs or photographs that could have been worse than  
4 they are sufficient to take from the jury and issue judgment  
5 as a matter of law on any of the counts relating to the  
6 production of pornographic material involving minors or  
7 depicting minors. So I am going to overrule the motion.

8 Have you, Mr. Buckley, co-counsel and Mr. Gandy  
9 discussed with Mr. Gandy in detail his right not to testify,  
10 his right to testify if he wishes and the advantages and  
11 disadvantages of both courses of action?

12 MR. BUCKLEY: Yes, Your Honor. And it's my  
13 understanding as of yesterday that Mr. Gandy will not  
14 testify. Of course, I welcome the Court to inquire of the  
15 defendant.

16 THE COURT: Mr. Gandy, will you please rise. Mr.  
17 Gandy, raise your right hand.

18 Do you solemnly swear that the statements you  
19 will make in this case are the truth, the whole truth and  
20 nothing but the truth so help you God, or you may affirm?

21 THE DEFENDANT: Yes.

22 THE COURT: All right.

23 Mr. Gandy, have you and your lawyers had a  
24 thorough discussion about whether you will testify in this  
25 case?

1 THE DEFENDANT: It was some days ago. I just don't  
2 recall what the problem would be again if I were to testify,  
3 what would be --

4 THE COURT: All right. I am going to give you 15  
5 minutes to talk right now.

6 MR. BUCKLEY: Thank you, Your Honor.

7 THE COURT: I want everybody else to clear the  
8 courtroom and leave it to Mr. Gandy and the lawyers to have a  
9 discussion. Thank you.

10 (Brief recess taken)

11 THE COURT: Please be seated. Go ahead.

12 MR. BUCKLEY: We have resolved the issue, Your  
13 Honor. And I'd be pleased to let Mr. Gandy answer for  
14 himself, but he has decided not to testify.

15 THE COURT: All right. Mr. Gandy, you have now had  
16 a additional opportunity specifically to discuss the issue  
17 with your attorneys outside the presence of other counsel,  
18 the Judge and jury. What is your decision, sir?

19 THE DEFENDANT: I decided not to testify.

20 THE COURT: Say that louder.

21 THE DEFENDANT: I decided not to testify.

22 THE COURT: All right. Thank you, sir.

23 I did misspeak with respect to the law on the  
24 issue of foreign law. The government was required to give  
25 advance notice of its intent to rely on foreign law, and it

1 did not do so.

2 MS. ZACK: It is contained in the criminal complaint  
3 that was filed in this case originally. It states --

4 THE COURT: Show me where.

5 MS. ZACK: Absolutely, Your Honor.

6 THE COURT: There was no separate written notice?

7 MS. ZACK: No separate notice, Your Honor.

8 THE COURT: Right.

9 MS. ZACK: But he doesn't have to engage in it. And  
10 I believe counsel has been on notice.

11 THE COURT: I want to see where it is in the record.

12 MS. ZACK: Okay. We need to pull it up on a tablet,  
13 Your Honor. I don't have a copy.

14 THE COURT: Somebody pull it up right now.

15 MS. ZACK: It's the first entry in Pacer for this  
16 case number.

17 THE COURT: Will you look it up? Is it in the  
18 indictment?

19 MS. ZACK: The statute cited to in the indictment?  
20 No, it is not.

21 THE COURT: Was it cited in the complaint?

22 MS. ZACK: It was cited in the complaint.

23 THE COURT: But not in the indictment or the  
24 superseding indictment?

25 MS. ZACK: No, Your Honor, it was not, because the

1 act was never completed.

2 THE COURT: I'm sorry. Say that again.

3 MS. ZACK: The act was never completed. And it's  
4 engaged in prostitution and/or other sexual activity for  
5 which a person could be.

6 And prostitution, Your Honor, we have a  
7 definition of, which is to perform a sex act for money. And  
8 I believe the victim testified that there was going to be sex  
9 acts performed for money.

10 THE COURT: I understand that. The question is,  
11 would it be a crime?

12 MS. ZACK: In the United Kingdom, I believe that the  
13 border patrol people did testify that prostitution, that  
14 would be a crime.

15 THE COURT: All right. I think there is enough to  
16 go to the jury and to overrule the motion. And I think there  
17 is enough without specifically or explicitly relying by  
18 judicial notice or otherwise on the British definition, the  
19 UK law definition of a minor for the purposes of sexual  
20 offenses.

21 The Court does note that it is 16 unless there  
22 is an exception not present here, and it would obviously  
23 apply here. But without the need to rely on that, the Court  
24 nonetheless overrules the motion for judgment as a matter of  
25 law on that count.

1 MR. BUCKLEY: Yes, Your Honor.

2 THE COURT: What says the defendants then? Do you  
3 rest?

4 MR. BUCKLEY: We rest, Your Honor.

5 THE COURT: Do both sides rest and close?

6 MS. ZACK: Yes, Your Honor.

7 MR. BUCKLEY: Yes, Your Honor.

8 THE COURT: Are we now ready to proceed with the  
9 jury instructions?

10 MS. ZACK: Yes, Your Honor.

11 THE COURT: Are there any objections to the  
12 instructions that will be given to the jury?

13 MS. ZACK: None from the United States.

14 MR. BUCKLEY: None from the defense, Your Honor.

15 THE COURT: All right.

16 We are going to put individual copies of the  
17 charge on the jurors' chairs. Bring the jury back in.

18 It is now almost 11:00, not quite. It will  
19 take me about a little more than half an hour to read the  
20 instructions, so I suggest that we have the opening portion,  
21 that is, the government's argument presented, then we will  
22 break for lunch, then the defense will make its argument, the  
23 government will make its rebuttal, I will give final  
24 instructions and the jury can begin deliberating.

25 Does that work? Does that work?

1 MR. BUCKLEY: It works for the defense, Your Honor.

2 THE COURT: Ms. Zack?

3 MS. ZACK: I feel that in some respects it gives Mr.  
4 Buckley a great deal of time to contemplate what I have said  
5 before he gets up.

6 THE COURT: Well, the alternative would be not to  
7 argue until after lunch.

8 MR. BUCKLEY: I don't have any objection to that  
9 either, Your Honor.

10 MS. ZACK: If that works for the Court, the  
11 government would prefer that.

12 THE COURT: All right. We can do that. It might be  
13 a somewhat extended lunch hour, but that's okay.

14 MS. ZACK: Would the government be able to get a  
15 copy that does not say "draft" of the final jury  
16 instructions?

17 THE COURT: Yes. We have extras for you.

18 MS. ZACK: Thank you, Your Honor. It's just  
19 distracting to me, though.

20 THE COURT: Of course.

21 Tell me when you are ready.

22 MS. ZACK: We are ready, Your Honor.

23 MR. BUCKLEY: We are ready, Your Honor.

24

25 (Jury enters courtroom)

1 THE COURT: Please be seated, ladies and gentlemen.

2 The defendant, as you know, ladies and  
3 gentlemen, is not required to present any evidence or call  
4 any witnesses at all; and as you have been previously  
5 instructed, there is no obligation on the defendant to  
6 testify, he has an absolute privilege not to do so, and if he  
7 elects not to testify, you may not consider that fact for any  
8 purpose in your deliberations.

9 And at this point, with that reminder, let me  
10 ask Mr. Buckley if the defense rests?

11 MR. BUCKLEY: Defense rests, Your Honor.

12 THE COURT: And do both sides rest and close?

13 MS. ZACK: Yes, Your Honor.

14 MR. BUCKLEY: Yes, Your Honor.

15 THE COURT: All right.

16 Ladies and gentlemen, you have found, as  
17 promised, individual copies of the jury instructions on your  
18 chair. I am going to now give you those instructions by  
19 reading them to you. You may follow along as I read, and you  
20 need not worry about taking notes because you will be able to  
21 take these copies with you to the jury room to use during  
22 your deliberations.

23 Each of you also has a copy of the verdict  
24 form, but only one copy will be filled out by the person you  
25 select as your foreperson. It must have the unanimous

1 verdict of all the jurors as to each count, and the signed  
2 and dated verdict form when completed will be the only copy  
3 to come back into the courtroom when you have concluded your  
4 deliberations. I think we are now ready to begin.

5           Members of the jury, you have now heard the  
6 evidence in the case. It is my duty to instruct you on the  
7 rules of law that you must follow and apply at arriving at  
8 your decision in the case.

9           In any jury trial there are in effect two  
10 judges. I am one of the judges. The other is the jury. It  
11 is my duty to preside over the trial and to decide what  
12 testimony and evidence is relevant under the law for your  
13 consideration. It is also my duty at the end of the trial to  
14 explain to you the rules of law that you must follow and  
15 apply in arriving at your verdict.

16           First I will give you some general instructions  
17 that apply in every case. For example, instructions about  
18 the burden of proof and how to judge the believability of  
19 witnesses.

20           Second, I will give you some specific  
21 instructions on the law that applies in this case.

22           Finally, I will give you instructions  
23 explaining the procedures for you to follow in your  
24 deliberations.

25           You, as jurors, are the judges of the facts;

1 but in determining what actually happened, that is, in  
2 reaching your decision as to the facts, it is your sworn duty  
3 to follow all the rules of law as I explain them to you. You  
4 have no right to disregard or give special attention to any  
5 one instruction or to question the wisdom or correctness of  
6 any rule I may state to you.

7           You must not substitute or follow your own  
8 notion or opinion as to what the law is or ought to be. It  
9 is your duty to apply the law as I explain it to you  
10 regardless of the consequences. That was the promise you  
11 made and the oath you took before being accepted by the  
12 parties as jurors, and they have the right to expect nothing  
13 less.

14           The indictment or formal charge against a  
15 defendant is not evidence of guilt. Indeed every defendant  
16 is presumed by the law to be innocent. Every defendant  
17 begins with a clean slate. The law does not require any  
18 defendant to prove his innocence or to produce any evidence  
19 at all, and no inference whatsoever may be drawn from the  
20 defendant's election not to testify.

21           The government has the burden of proving the  
22 defendant guilty beyond a reasonable doubt, and if it fails  
23 to do so, you must acquit the defendant. While the  
24 government's burden of proof is a strict or heavy burden, it  
25 is not necessary that the defendant's guilt be proved beyond

1 all possible doubt. It is only required that the  
2 government's proof exclude any reasonable doubt about the  
3 defendant's guilt. A reasonable doubt is a doubt based on  
4 reason and common sense after careful and impartial  
5 consideration of all the evidence in the case. Proof beyond  
6 a reasonable doubt is proof of such a convincing character  
7 that you would be willing to rely and act on it without  
8 hesitation in making the most important decisions on your own  
9 affairs.

10           As I told you earlier, it is your duty to  
11 determine the facts. To do so you must consider only the  
12 evidence presented during the trial. Evidence is the sworn  
13 testimony of the witnesses, including stipulations and the  
14 exhibits. The questions, statements, objections and  
15 arguments made by the lawyers are not evidence.

16           The function of the lawyers is to point out  
17 those things that are most helpful to their side of the case  
18 and in doing so to call to your attention -- to call your  
19 attention to certain facts or inferences that might otherwise  
20 escape your notice.

21           In the final analysis, it is your own next  
22 recollection and interpretation of the evidence that controls  
23 in the case. What the lawyers say is not binding on you.

24           During the trial I sustained objections to  
25 certain questions and exhibits. You must disregard those

1 questions and exhibits entirely. Do not speculate as to what  
2 the witness would have said if permitted to answer the  
3 question or as to the contents of an exhibit. Do not  
4 consider any testimony or other evidence that was removed  
5 from your consideration in reaching your decision. Your  
6 verdict must be based solely on the legally admissible  
7 evidence and testimony.

8           Also, do not assume from anything I did or said  
9 during the trial that I have any opinion about any of the  
10 issues in this case. Except for my instructions to you on  
11 the law, you should disregard anything I said during the  
12 trial in arriving at your own verdict.

13           In considering the evidence, you are permitted  
14 to draw such reasonable inferences from the testimony and  
15 exhibits as you feel are justified in the light of common  
16 experience. In other words, you may make deductions and  
17 reach conclusions that reason and common sense lead you to  
18 draw from the facts that have been established by the  
19 evidence. Do not be concerned about whether the evidence is  
20 direct evidence or circumstantial evidence. You should  
21 consider and weigh all of the evidence that was presented to  
22 you.

23           Direct evidence is testimony of one who asserts  
24 actual knowledge of a fact, such as an eyewitness.  
25 Circumstantial evidence is proof of a chain of events and

1 circumstances indicating that something is or is not a fact.  
2 The law makes no distinction between the weight you may give  
3 to either direct or circumstantial evidence; but the law  
4 requires that you, after weighing all of the evidence,  
5 whether direct or circumstantial, be convinced of the guilt  
6 of the defendant beyond a reasonable doubt before you can  
7 find him guilty.

8 I remind you that it is your job to decide  
9 whether the government has proved the guilt of the defendant  
10 beyond a reasonable doubt. In doing so you must consider all  
11 of the evidence. This does not mean, however, that you must  
12 accept all of the evidence as true or accurate.

13 You are the sole judges of the credibility or  
14 believability of each witness and the weight to be given the  
15 witness's testimony. An important part of your job as jurors  
16 will be making judgments about the testimony of the witnesses  
17 who testified in this case. You should decide whether you  
18 believe all, some part or none of what each person had to say  
19 and how important that testimony was.

20 In making that decision I suggest you ask  
21 yourself a few questions: Did the witness impress you as  
22 honest? Did the witness have any particular reason not to  
23 tell the truth? Did the witness have a personal interest in  
24 the outcome of the case? Did the witness have any  
25 relationship with either the government or the defense?

1                   Did the witness seem to have a good memory?  
2 Did the witness clearly see or hear the things about which he  
3 or she testified? Did the witness have the opportunity and  
4 ability to understand the questions clearly and answer them  
5 directly? Did the witness's testimony differ from the  
6 testimony of other witnesses? These are a few of the  
7 considerations that will help you determine the accuracy of  
8 what each witness said.

9                   When a defendant does not testify, you may not  
10 consider that fact for any reason in your deliberations.

11                   Your job is to think about the testimony about  
12 each witness you have heard and decide how much you believe  
13 of what each witness had to say. In making up your mind in  
14 reaching a verdict, do not make any decisions simply because  
15 there were more witnesses on one side than on the other.

16                   Do not reach a conclusion on a particular point  
17 just because there were more witnesses testifying for one  
18 side on that point. You must always bear in mind that the  
19 law never imposes on a defendant in a criminal case the  
20 burden or duty of calling any witnesses or producing any  
21 evidence.

22                   You will note that the indictment charges that  
23 the offenses were committed on or about a certain specified  
24 date. The government does not have to prove that a crime was  
25 committed on the exact date so long as the government proves

1 beyond a reasonable doubt that the defendant committed the  
2 crimes alleged in the indictment reasonably near the dates  
3 stated in the indictment.

4           If you have taken notes, they should be used  
5 only as memory aids. You should not give your notes  
6 precedence over your own independent recollection of the  
7 evidence. If you have not taken notes, you should rely on  
8 your own independent recollection of the proceedings, and you  
9 should not be unduly you influenced by the notes of other  
10 jurors.

11           Your verdict, whether it is guilty or not  
12 guilty, must be unanimous.

13           Specific Instructions For This Case.

14           Instructions that apply to more than one count

15           A separate crime is charged in each count of  
16 the indictment. Each count and the evidence pertaining to it  
17 should be considered separately. The fact that you may find  
18 Mr. Gandy guilty or not guilty as to one of the counts  
19 charged should not control your verdict as to others.

20           Mr. Gandy is not on trial for any act, conduct  
21 or offense not alleged in the indictment. Neither are you  
22 called upon to return a verdict as to the guilt of any other  
23 person or persons not on trial as a defendant in this case  
24 except as you are otherwise instructed.

25           You have heard evidence of acts of Mr. Gandy

1 that may be similar to those charged in the indictment but  
2 were committed on other occasions. You must not consider any  
3 of this evidence in deciding if Mr. Gandy committed the acts  
4 charged in the indictment. However, you may consider this  
5 evidence for other, very limited purposes.

6 If you find beyond a reasonable doubt from  
7 other evidence in the case that Mr. Gandy did commit the acts  
8 charged in the indictment, then you may consider evidence of  
9 similar acts allegedly committed on other occasions to  
10 determine whether Mr. Gandy had the state of mind or intent  
11 necessary to commit the crime charged in the indictment or  
12 whether Mr. Gandy committed the acts for which he is on trial  
13 by accident or mistake. These are the limited purposes for  
14 which the evidence of other similar acts may be considered.

15 If Mr. Gandy is found guilty, it is my duty to  
16 decide what the punishment will be. You may not be concerned  
17 with punishment in any way. It may not enter your  
18 consideration or discussion.

19 Definitions that apply to more than one count

20 The term "knowingly," as used in Counts 1, 3,  
21 4, 5, 6 and 7, means that the act was done voluntarily and  
22 intentionally, not because of mistake or accident.

23 The term "interstate commerce," as used in  
24 Counts 1, 2, 3, 4, 5, 6 and 7, means commerce or travel  
25 between one state, territory or possession of the United

1 States and another state, territory or possession of the  
2 United States, including the District of Columbia.

3 The term "foreign commerce," as used in Counts  
4 1, 2, 3, 4, 5, 6 and 7, means commerce or travel between any  
5 part of the United States, including its territorial waters,  
6 and any other country, including its territorial waters.

7 The term "minor," as used in Counts 1, 2, 4, 5,  
8 6 and 7, means any person under the age of 18 years.

9 The term "commercial sex act," as used in  
10 Counts 4, 5, 6 and 7, means any sex act on account of which  
11 anything of value is given to or received by any person.

12 The term "computer," as it appears in the  
13 definitions of visual depiction in Count 2, and child  
14 pornography in Count 3, means an electronic, magnetic,  
15 optical, electrochemical or high-speed data processing device  
16 performing logical, arithmetic or storage function and  
17 includes any data storage facility or communication facility  
18 directly related to or operating in conjunction with such  
19 device. But such term does not include an automated  
20 typewriter or typesetter, a portable hand-held calculator or  
21 other similar device.

22 Instructions on Count 1

23 Count 1 charges Mr. Gandy with transporting a  
24 minor with the intent that the minor engage in criminal  
25 sexual activity. Federal law makes it a crime to transport a

1 minor with the intent to engage in criminal sexual activity.  
2 In order for you to find Mr. Gandy guilty of this charge, you  
3 must be convinced that the government has proved each of the  
4 following beyond a reasonable doubt:

5 First, that Mr. Gandy knowingly transported  
6 Minor Victim No. 1.

7 Second, that Minor Victim No. 1 was under 18  
8 years of age at the time.

9 Third, that Mr. Gandy intended Minor Victim No.  
10 1 to engage in prostitution or other criminal sexual  
11 activity.

12 Fourth, that the transportation was in  
13 interstate or foreign commerce.

14 The term "prostitution" means knowingly  
15 engaging in or offering to engage in a sexual act in exchange  
16 for money or other valuable consideration.

17 The term "criminal sexual activity" means  
18 sexual activity for which any person could be charged with a  
19 crime.

20 The terms "knowingly," "interstate commerce"  
21 and "foreign commerce" have the meanings set out on page 8 of  
22 these instructions.

23 Instructions on Count 2

24 Count 2 charges Mr. Gandy with producing child  
25 pornography. Federal law makes it a crime to employ, use,

1 persuade, induce, entice or coerce any minor to engage in  
2 sexually explicit conduct for the purpose of producing a  
3 visual depiction or transporting a live -- transmitting a  
4 live, visual depiction of this conduct or attempt to do so.

5           You may find Mr. Gandy guilty of attempting to  
6 commit this crime or guilty of actually committing this  
7 crime. For you to find Mr. Gandy guilty of attempting to  
8 commit this offense you must be convinced that the government  
9 has proved each of the following beyond a reasonable doubt:

10           First, that Mr. Gandy intended to employ, use,  
11 persuade, induce, entice or coerce Minor Victim No. 1 to  
12 engage in sexually-explicit conduct for the purpose of  
13 producing a visual depiction of such conduct.

14           Second, that Mr. Gandy engaged in a purposeful  
15 act that under the circumstances as he believed them to be  
16 amounted to a substantial step toward the commission of that  
17 crime and strongly corroborated his criminal intent.

18           And third, A, that the visual depiction would  
19 have been transmitted using any means or facility of  
20 interstate or foreign commerce.

21           Or B, that the visual depiction would have been  
22 produced using materials that had been mailed, shipped or  
23 transported in or affecting interstate or foreign commerce.

24           For you to find Mr. Gandy guilty of actually  
25 committing this crime you must be convinced that the

1 government has proved each of the following beyond a  
2 reasonable doubt:

3 First, that Mr. Gandy employed, used,  
4 persuaded, induced, enticed or coerced Minor Victim No. 1 to  
5 engage in sexually explicit conduct.

6 Second, that Mr. Gandy acted with the purpose  
7 of producing a visual depiction of such conduct.

8 And third, A, that the visual depiction was  
9 actually transmitted using any means or facility of  
10 interstate or foreign commerce.

11 Or B, that the visual depiction was produced  
12 using materials that had been mailed, shipped or transported  
13 in or affecting interstate or foreign commerce.

14 The term "sexually explicit conduct" means  
15 actual or simulated sexual intercourse, including  
16 genital/genital, oral/genital, anal/genital or oral/anal  
17 whether between persons of the same or opposite sex,  
18 bestiality, sadistic or masochistic abuse or lascivious  
19 exhibition of the genitals or pubic area of any person.

20 Whether a visual depiction is a lascivious  
21 exhibition requires you to consider the overall content of  
22 the material. You may consider such factors as whether the  
23 focal point of the visual depiction is on the child's  
24 genitalia or pubic area, whether the setting of the depiction  
25 is sexually suggestive, that is, in a place or pose

1 associated with sexual activity, whether the child is  
2 depicted in an unnatural pose or inappropriate attire  
3 considering the child's age, whether the child is fully or  
4 partially nude, whether the visual depiction suggests sexual  
5 coyness or a willingness to engage in sexual activity or  
6 whether the depiction is designed to elicit a sexual response  
7 in the viewer. The list is not exhaustive or complete, and  
8 no single factor is dispositive.

9           The term "producing" means producing, directing  
10 manufacturing, issuing, publishing or advertising.

11           The term "visual depiction" includes  
12 undeveloped film and videotape, data stored on computer disk  
13 or by electronic means which is capable of conversion into a  
14 visual image and data which is capable of conversion into a  
15 visual image that has been transmitted by any means whether  
16 or not stored in a permanent format.

17           The terms "minor," "interstate commerce" and  
18 "foreign commerce" have the meaning as set out on page 8 of  
19 these instructions.

20           Instructions on Count 3

21           Count 3 charges Mr. Gandy with transporting or  
22 shipping child pornography. Federal law makes it a crime to  
23 knowingly mail, transport or ship any child pornography in or  
24 affecting interstate or foreign commerce.

25           For you to find Mr. Gandy guilty of this crime,

1 you must be convinced that the government has proved each of  
2 the following beyond a reasonable doubt:

3 First, that Mr. Gandy knowingly transported by  
4 any means or facility of interstate or foreign commerce an  
5 item or items of child pornography as alleged in the  
6 indictment.

7 And second, that when Mr. Gandy transported the  
8 items, Mr. Gandy knew the items were child pornography.

9 The term "child pornography" means individual  
10 depiction, including any photograph, film, video, picture or  
11 computer or computer-generated image or picture, whether made  
12 or produced by electronic, mechanical or other means of  
13 sexually-explicit conduct where the production of such visual  
14 depiction involves the use of a minor engaging in sexually  
15 explicit conduct.

16 The terms "knowingly," "interstate commerce,"  
17 "foreign commerce" and -- I don't know why there's an  
18 "and" -- "have the meanings set out on page 8 of these  
19 instructions.

20 Instructions on Count 4

21 Count 4 charges Mr. Gandy with sex trafficking  
22 of a minor. Federal law makes it a crime or offense for  
23 anyone knowingly in or affecting interstate or foreign  
24 commerce to recruit, entice, harbor, transport, provide,  
25 obtain or maintain a person knowing or in reckless disregard

1 of the fact that this person would be caused to engage in a  
2 commercial sex act or knowing that the person was under the  
3 age of 18 and would be caused to engage in a commercial sex  
4 act.

5 For you to find Mr. Gandy guilty of this crime,  
6 you must be convinced that the government has proved each of  
7 the following beyond a reasonable doubt:

8 First, that Mr. Gandy knowingly recruited,  
9 enticed, harbored, transported, provided or maintained by any  
10 means Minor Victim No. 1.

11 Second, that Mr. Gandy committed such act  
12 knowing or in reckless disregard of the fact that Minor  
13 Victim No. 1 had not reached the age of 18 years and would be  
14 caused to engage in a commercial sex act.

15 Third, that Mr. Gandy's acts were in or  
16 affected interstate or foreign commerce.

17 The term "knowingly, "interstate commerce,"  
18 "foreign commerce" and "commercial sex act" have the meanings  
19 set out on page 8 of these instructions.

20 In determining whether Mr. Gandy's conduct was  
21 in or affected interstate or foreign commerce, you may  
22 consider whether he used means or facilities of interstate  
23 commerce such as telephones, the internet or hotels that  
24 serviced international travelers, or whether his conduct  
25 substantially affected interstate commerce by virtue of the

1 fact that he purchased items that had moved in interstate  
2 commerce.

3           If the government proves beyond a reasonable  
4 doubt that Mr. Gandy had a reasonable opportunity to observe  
5 the person recruited, enticed, harbored, transported  
6 provided, obtained or maintained, then the government does  
7 not have to prove that Mr. Gandy knew that the person had not  
8 reached the age of 18 years. A sex act does not have to  
9 actually occur to find Mr. Gandy guilty under Count 4.

10                           Instructions on Count 5

11           Count 5 charges Mr. Gandy with sex trafficking  
12 of a minor. Federal law makes it a crime or offense for  
13 anyone knowingly, in or affecting interstate or foreign  
14 commerce, to recruit, entice, harbor, transport, provide or  
15 obtain a person knowing that the person had not reached the  
16 age of 18 and would be caused to engage in a commercial sex  
17 act.

18           For you to find Mr. Gandy guilty of this crime,  
19 you must be convinced that the government has proved each of  
20 the following beyond a reasonable doubt:

21           First, that Mr. Gandy knowingly recruited,  
22 enticed, harbored, transported, provided or obtained by any  
23 means Minor Victim No. 2.

24           Second, that Mr. Gandy committed such act  
25 knowing that Minor Victim No. 2 had not reached the age of 18

1 years and would be caused to engage in a commercial sex act.

2 Third, that Mr. Gandy's acts were in or  
3 affected interstate or foreign commerce. The terms  
4 "knowingly," "interstate commerce," "foreign commerce" and  
5 "commercial sex act" have the meanings set out on page 8 of  
6 these instructions.

7 In determining whether Mr. Gandy's conduct was  
8 in or affected interstate or foreign commerce, follow the  
9 instructions set out on page 14. A sex act does not have to  
10 actually occur to find Mr. Gandy guilty under Count 5.

11 Instructions on Count 6

12 Count 6 charges Mr. Gandy with sex trafficking  
13 of a minor. Federal law makes it a crime or offense for  
14 anyone knowingly, in or affecting interstate or foreign  
15 commerce, to recruit, entice, harbor, transport, provide or  
16 obtain a person knowing that the person had not reached the  
17 age of 18 and would be caused to engage in a commercial sex  
18 act or attempt to do so.

19 For you to find Mr. Gandy guilty of this crime,  
20 you must be convinced that the government has proved each of  
21 the following beyond a reasonable doubt:

22 First, that Mr. Gandy attempted to knowingly  
23 recruit, entice, harbor, transport, provide or obtain by any  
24 means Minor Victim No. 3.

25 Second, that Mr. Gandy committed such act

1 knowing that Minor Victim No. 3 had not reached the age of 18  
2 years and would be caused to engage in a commercial sex act.

3 Third, that Mr. Gandy's acts were in or  
4 affected interstate or foreign commerce.

5 The terms "knowingly," "interstate commerce,"  
6 "foreign commerce" and "commercial sex act" have the meanings  
7 set out on page 8 of these instructions.

8 In determining whether Mr. Gandy's conduct was  
9 in or affected interstate or foreign commerce, follow the  
10 instructions set out on page 14. A sex act does not have to  
11 actually occur to find Mr. Gandy guilty under Count 6.

12 Instructions on Count 7

13 Count 7 charges Mr. Gandy with sex trafficking  
14 of a minor. Federal law makes it a crime or offense for  
15 anyone knowingly, in or affecting interstate or foreign  
16 commerce, to recruit, entice, harbor, transport, provide or  
17 obtain a person knowing that the person had not reached the  
18 age of 18 and would be caused to engage in a commercial sex  
19 act.

20 For you to find Mr. Gandy guilty of this crime,  
21 you must be convinced that the government has proved each of  
22 the following beyond a reasonable doubt:

23 First, that Mr. Gandy knowingly recruited,  
24 enticed, harbored, transported, provided or obtained by any  
25 means -- and that should be in there only once -- Minor

1 Victim No. 4.

2 Second, that Mr. Gandy committed such act  
3 knowing that Minor Victim No. 4 had not reached the age of 18  
4 years and would be caused to engage in a commercial sex act.

5 Third, that Mr. Gandy's acts were in or  
6 affected interstate or foreign commerce.

7 The terms "knowingly," "interstate commerce,"  
8 "foreign commerce" and "commercial sex act" have the meanings  
9 set out on page 8 of these instructions.

10 In determining whether Mr. Gandy's conduct was  
11 in or affected interstate or foreign commerce, follow the  
12 instructions set out on page 14. A sex act does not have to  
13 actually occur to find Mr. Gandy guilty under Count 7.

14 Final Instructions on Your Deliberations

15 To reach a verdict, whether it's guilty or not  
16 guilty, all of you must agree. Your verdict must be  
17 unanimous on each count of the indictment. Your  
18 deliberations will be secret. You will never have to explain  
19 your verdict to anyone.

20 It is your duty to consult with one another and  
21 to deliberate in an effort to reach agreement if you can do  
22 so. Each of you must decide the case for yourself, but only  
23 after an impartial consideration of the evidence with your  
24 fellow jurors.

25 During your deliberations, do not hesitate to

1 reexamine your own opinions and change your mind if convinced  
2 that you were wrong, but do not give up your honest beliefs  
3 as to the weight or effect of the evidence solely because of  
4 the opinion of your fellow jurors or for the mere purpose of  
5 returning a verdict.

6 Remember, at all times, you are judges, judges  
7 of the facts. Your duty is to decide whether the government  
8 has proved the defendant guilty beyond a reasonable doubt.

9 Ladies and gentlemen, the remainder of the  
10 instructions deal with your steps when you first go to the  
11 jury room to begin deliberations. That will occur after  
12 lunch and after the parties present closing arguments, so I  
13 am going to give you these last instructions at that time.

14 At this time I am going to ask you to go to the  
15 jury room, wait for lunch and wait for us to tell you that  
16 we're ready to resume. We will be as expeditious as  
17 possible.

18 Leave the instructions that you have been given  
19 on your chairs, please. They will be waiting for you when  
20 you return.

21 You have not yet heard all you need to hear to  
22 begin deliberations. You still haven't heard the closing  
23 arguments. It is not yet time for you to begin discussing  
24 this case even among yourselves. And all of the rules that  
25 you have been given continue to apply.



1 MS. ZACK: It is. And that was the only one.

2 The other thing is --

3 THE COURT: There was that one typo, which I will  
4 correct in the filed copy.

5 MS. ZACK: The other thing is, because Mr. Buckley  
6 only rested in front of the jury and there wasn't a break, he  
7 did not have an opportunity to renew any of his motions. I  
8 just wanted to make sure --

9 THE COURT: Well, he had already rested. I just  
10 wanted him to be able to do it in front of the jury. He  
11 rested, he made his motion, so I think we are covered.

12 MS. ZACK: Good, okay. Then we have nothing else.

13 THE COURT: Mr. Buckley.

14 MR. BUCKLEY: Just for the record, I do re-urge the  
15 Rule 29 motions, Your Honor.

16 THE COURT: That's fine. And the Court renews its  
17 rulings.

18 MR. BUCKLEY: Understood.

19 THE COURT: Thank you very much.

20 Anything else we need to do now?

21 MS. ZACK: Other than what time you would like us  
22 back.

23 THE COURT: I have a lunch meeting. I will be back  
24 in -- be back by 10 minutes to 1:00. I hope we will begin  
25 right around that time.



1 minutes or two minutes" you'll understand why.

2 Ms. Zack, you may proceed.

3 MS. ZACK: Thank you, Your Honor. May it please the  
4 Court, counsel.

5 Members of the jury, love, acceptance, a place  
6 to stay and money, that is why we are here. It's those  
7 things that the defendant, Jason Gandy, used to manipulate  
8 and to entice the victims that you've heard from to commit  
9 the sex acts that they engaged in and as part of the common  
10 plan and scheme to achieve what he wanted, which was to get  
11 them to engage in commercial sex so that he could profit from  
12 it.

13 Judge Rosenthal has given you jury  
14 instructions. Within those instructions are the elements of  
15 the crimes charged in this case. I would like to take this  
16 opportunity to go through those elements with you and to  
17 point out what it is that the government believes, what  
18 testimony and what exhibits in evidence support a finding of  
19 guilt as to each and every one of the charges.

20 Count 1, which is transportation of minors. In  
21 order for you to find the defendant guilty -- and I will  
22 summarize. Please, please, please rely on the instructions  
23 that the Judge gave you and the testimony and exhibits that  
24 are in evidence. If I misspeak about what the law is or the  
25 testimony, that is for you to rely on the instructions and

1 your recollection. Nothing I say or Mr. Buckley says is  
2 evidence.

3           The defendant would have to knowingly have  
4 transported Minor Victor 1. As you recall, Minor Victim 1 in  
5 this case is Kevin Vasquez. At the time he would have to be  
6 under 18.

7           For your ease of use and reference we have  
8 written this out, which shows Minor Victim 1; and as to his  
9 age, here's his date of birth 4-5-97, and the times at which  
10 the counts apply, April of 2012 through July of 2012, he was  
11 15 years old.

12           You have his birth certificate, and we know  
13 when we traveled. We know when he traveled because you heard  
14 from the two British officers from the UK home office, being  
15 Border Patrol. We know from the victims themselves, Minor  
16 Victim 1 telling you how old he was.

17           We know that Minor Victim 1 was to engage in  
18 prostitution or other criminal sexual activity in the UK for  
19 a multitude of reasons. First, prior to leaving for the UK,  
20 Minor Victim 1 testified to you that he had already been  
21 engaging in the massagings with the happy endings, that each  
22 massage he engaged in had some sexual component, whether the  
23 client touched his penis, he was caused to touch the client's  
24 penis and that this resulted in sexual gratification and then  
25 money was exchanged.

1 He indicated that when they got to London he  
2 was informed by Mr. Gandy that they already had two  
3 appointments booked. And how do we know that Mr. Gandy  
4 intended to have a business in London? We have the ad that  
5 was posted, the jasonrmt ad that said London, and that ad's  
6 in evidence, you can refer to it. We have the activity on  
7 the computer, Government's Exhibit 1 that is in evidence, and  
8 you have a backpack full of condoms, 90 condoms, clearly not  
9 an amount for personal use over the course of 34 days.

10 We have the fact that the victim, the other  
11 element, was transported in or affecting interstate or  
12 foreign commerce. He was on an airplane that left from  
13 Houston Bush Intercontinental Airport, and he landed in the  
14 United Kingdom, a foreign country.

15 If you find all of those facts support the  
16 transportation of minor charge, Count 1, then I would implore  
17 you to find the defendant guilty of Count 1.

18 Count 2 is attempted production or production  
19 of child pornography. And in order for you to find the  
20 defendant guilty of that, you have to believe that the  
21 defendant intended to employ, to use, persuade Minor Victim 1  
22 to engage in sexually explicit conduct, which I am going to  
23 read you a definition in a second, that includes lewd,  
24 lascivious exhibition of his genitals; that he did some  
25 purposeful or substantial steps, the defendant did, in order

1 to create a visual depiction which would have been  
2 transmitted via the internet or interstate or foreign  
3 commerce or that the defendant used Minor Victim 1, took  
4 pictures, lewd, lascivious pictures, acted with the purpose  
5 of creating that visual depiction and actually transmitted  
6 the images or used a device that had been traveling somehow  
7 within interstate or foreign commerce at some point to create  
8 them.

9 I would suggest to you in that case the cell  
10 phone that Mr. Gandy used to take the pictures of Minor  
11 Victim 1, Minor Victim 1 told you that on one occasion he was  
12 in the massage room at defendant's residence, that the  
13 defendant was giving him a massage, he was face down on the  
14 massage table, he was nude and that he saw the flash of a  
15 camera and that when he got up, the defendant took a full  
16 frontal nude picture of him.

17 MR. BUCKLEY: Arguing outside the record.

18 THE COURT: Jury's heard the evidence; jury will  
19 determine.

20 MS. ZACK: That the defendant took a picture of the  
21 front of his body where he was fully nude and his genitals  
22 were exposed.

23 And how do we know that wasn't an accident?  
24 What do we have to support Minor Victim 1's testimony? Well,  
25 we do have the image in Government's Exhibit 2B, the fourth

1 image, that has been referred to as the "loincloth image,"  
2 the one that Minor Victim 1 testified he was wearing his  
3 boxers; that Mr. Gandy told him to roll his boxers a certain  
4 way and took that image and then put that image, that image  
5 appeared on ads and in the Craigslist ad that was posted.

6 As far as the lewd and lascivious depiction of  
7 the genitals, the Judge is going to instruct you when you are  
8 determining if something is child pornography, and this will  
9 apply, the definition applies to both Count 2, which is the  
10 production or attempted production of child pornography, and  
11 Count 3, which is the transportation of child pornography.

12 That sexually explicit conduct can also include  
13 a depiction of the lascivious exhibition of the genitals, and  
14 you have to look at the overall content; and there are  
15 factors that you should consider when evaluating if that lewd  
16 and lascivious exhibition of the genitalia is child  
17 pornography.

18 In this visual depiction in a setting that is  
19 sexually suggestive, is it a pose or something associated  
20 with sexual activity where the child is unnaturally posed or  
21 in an inappropriate attire. The rolled-up boxer of  
22 loincloth, there is nothing appropriate about that given that  
23 the victim was 15 years old and standing in front of a  
24 massage table at the defendant's residence, whether that you  
25 consider the child's age, whether they are full or partially

1 nude and whether the depiction was designed to elicit a  
2 sexual response in the viewer.

3           What other purpose could those images, the  
4 three that we are talking about, the loincloth image, but  
5 more importantly the other two images of Minor Victim 1's  
6 naked buttocks and Minor Victim 1's full frontal nudity, what  
7 other purpose could those have than to elicit a sexual  
8 response in the viewer?

9           This wasn't a vacation, this wasn't documenting  
10 some event or some milestone in anybody's life. This wasn't  
11 a candid image of people in a cafe or going about their daily  
12 business. This was a sexually explicit image taken for a  
13 particular purpose.

14           As to Count 3, the transportation of child  
15 pornography, what do we know about that charge? The child  
16 pornography was found on the Acer laptop, Government's  
17 Exhibit 1. That laptop traveled in interstate or foreign  
18 commerce. It went from Houston Intercontinental Airport to  
19 the United Kingdom.

20           What do we know about how it got there? Well,  
21 we know from Minor Victim 1 that the defendant gave him that  
22 computer before they left Houston at the airport and he had  
23 it with him while he traveled across international waters and  
24 was sent back with it from the UK after being denied  
25 entrance. But on the way over, who caused that computer to

1 get to London? Not Minor Victim 1. The defendant.

2           How do we no that? Because we know it's the  
3 defendant's computer, and we know that for a multitude of  
4 reasons, ladies and gentlemen. We know that because the  
5 forensic analyst told us that the computer was initiated in  
6 2010. At that point in time the defendant had never met  
7 Minor Victor 1. Minor Victim 1 didn't come into play until  
8 the spring of 2012. And all over that computer are evidence,  
9 is evidence of Mr. Gandy's life, travel photos, leases,  
10 documents that relate to the defendant, the jasonrmt ad, all  
11 of those things, and pictures of Minor Victor 1. Those  
12 pictures then appeared, some of them, in ads.

13           We also have on that computer the image that  
14 was titled "Kevin Middle School." And that certainly will  
15 demonstrate -- we will get to that in a minute -- that he  
16 knew how old Minor Victim 1 was.

17           But as to the transportation charge, the  
18 defendant caused Minor Victim 1 to carry that computer there.  
19 Now, how do we know Minor Victim 1 didn't bring that for his  
20 own personal use? A multitude of reasons. First, Minor  
21 Victim 1 told you, I didn't have the password. He couldn't  
22 get into that computer.

23           The computer forensics demonstrate that that  
24 computer was not accessed at all during that trip and in fact  
25 had not been accessed since the 17th of July. Travel

1 occurred on the 18th. They were stopped on the morning of  
2 the 19th in the UK and returned on the 20th.

3 That the items contained in that computer were  
4 child pornography. And what we are specifically talking  
5 about are the items in Government's 2B, the images in there  
6 that came from the internet, which is a means and facility of  
7 interstate or foreign commerce. Those images are, 52 of them  
8 according to Special Agent Chappell, depicting minor children  
9 nude with their genitals exposed, often engaging in  
10 activities with unclothed adults.

11 And going back to the instructions that Judge  
12 Rosenthal gave you, you have to look at, is the child's  
13 genitalia or pubic area exposed? Is the setting sexually  
14 suggestive, whether the child is depicted in an unnatural  
15 pose or inappropriate attire? When you look at these images,  
16 they are clearly inappropriate for children to be engaging in  
17 the activities they're engaging in without clothes on, and  
18 considering the age of the children in those images, the  
19 level of nudity and whether the depiction was designed to  
20 elicit a sexual response. And, of course, you have these  
21 instructions and you can refer back to them.

22 The defendant knew they were child pornography  
23 when they were transported and that he knowingly caused them  
24 to be transported.

25 Well, when were those images put on the

1 computer? At approximately 1:00 a.m. on April 18th of 2012,  
2 which was a school day. And why is that important? Minor  
3 Victim 1 told you he met the defendant on a Sunday, April 8th  
4 of 2012. April 18th was Wednesday. And he testified, Minor  
5 Victim 1, that until school let out the only time he was with  
6 the defendant doing the massages and the like was on the  
7 weekends, not during school because then his parents would  
8 have found out. And remember, he even told you that he would  
9 meet the defendant at the elementary school near his house  
10 and be picked up there so that his parent didn't know who he  
11 was going with.

12               So I would suggest to you the fact that whoever  
13 put those on the commuter did it at 1:00 in the morning and  
14 accessed them over a period of time within the hour of them  
15 being placed on that computer and looked at them suggests  
16 that it was not Minor Victim 1, who also testified that never  
17 downloaded anything to the computer. What he indicated he  
18 did was he wrote the ad, the cute skater ad, at the direction  
19 of the defendant and he searched for housing in London at the  
20 direction of the defendant and looked at some band stuff,  
21 concert things for when they were going to be in London, not  
22 that he ever looked at child pornography.

23               The Judge indicated to you that certain other  
24 evidence that you heard can be used to demonstrate that  
25 something is a mistake or an accident. And I would suggest

1 to you the fact that several of the other victims' testimony,  
2 including Minor Victim 1, that they saw images that they  
3 believed were minors engaging in sexually explicit conduct  
4 and things that would meet what you now have as the federal  
5 definition of child pornography, that they had seen those on  
6 Mr. Gandy's computer lead you to believe that this was not a  
7 mistake, that these images were on that computer that was  
8 transported to England.

9           And why did he use that computer? Well, we  
10 know why. He needed it to get to London because he used it  
11 to post his ads, he used it to book clients, he used it to  
12 search for housing, he used it for a multitude of reasons and  
13 he needed it.

14           This was not something that was done by Minor  
15 Victim 1 without the defendant giving him that computer to  
16 go. Minor Victim 1 would have had no reason to take that  
17 computer. He didn't use it on the plane to watch movies, he  
18 didn't do anything with it; and he told you he couldn't even  
19 get into without the defendant helping him because he didn't  
20 know the password.

21           Now let's move on to Counts 4, 5, 6 and 7.  
22 And what do we know? We know here for Count 4, which is the  
23 trafficking of Minor Victim 1, that for all intents and  
24 purposes the entire time from April of 2012 through July when  
25 he was turned around by border protection that Minor Victim 1

1 was 15.

2                   And in order for the defendant to be guilty of  
3 trafficking in Minor Victim 4, you have to look at the  
4 elements of that charge. And before you do that, I want you  
5 to keep in mind that the definition that you have been given  
6 for commercial sex is any sex act on account of which  
7 anything of value is given or received by any person. That  
8 is the definition of commercial sex.

9                   So going to Count 4, the first count of  
10 commercial sex, the defendant would have had to, you have to  
11 believe that the defendant recruited, enticed, harbored,  
12 transported, provided or obtained Minor Victor 1.

13                   Well, what do we know? We know he recruited  
14 him online, meaning that's how he met him. And it was the  
15 online activity that caused Minor Victim 1 to meet the  
16 defendant for the first time. And he met him and he was  
17 enticed by the defendant to engage in commercial sex.

18                   Why? Why was he enticed? And let's first talk  
19 about did he meet the elements? He was recruited, he was  
20 enticed. Then at the time the defendant committed the act  
21 knowing that Minor Victim 1 had not reached the age of 18 and  
22 would be caused to engage in commercial sex. Well, how do we  
23 know he knew his age?

24                   Well, Minor Victim 1 told you. He testified to  
25 you what his age was. You have images of how Minor Victim 1

1 looked during that period of time. You have the fact that  
2 there is a photo saved in the defendant's computer that says  
3 "Kevin Middle School," and you have the fact that he, he, the  
4 defendant, told Minor Victim 1 if anyone asks, tell them  
5 you're 18. Well, if he was of age, why was he being told  
6 "tell them you're 18?"

7           When you look at the elements of the crimes  
8 charged, the one thing you are never going to see -- and you  
9 will never hear instruction on this, it is not contained  
10 anywhere in the instructions that you have been given or in  
11 the law that applies to the crimes charged -- is that any of  
12 the victims were ever forced to engage in any of these acts  
13 because that's not a requirement.

14           The mere fact that they were under 18 is  
15 enough. The law has determined that they cannot make that  
16 decision. Did they willingly participate for all intents and  
17 possesses? Yes.

18           Did each one of them have a reason why they  
19 participated? Yes. And we will talk about those.

20           But whether you like it or not, the fact that  
21 they willingly engaged in these activities or what level of  
22 willingness you want to attribute to their actions, the law  
23 says they were not of an age to be able to consent to this  
24 activity.

25           So, even if you want to say, well, but they

1 were willing to do it. How can you blame the defendant?  
2 You can blame the defendant, you are required to blame the  
3 defendant because the law says he can't use a minor in that  
4 way.

5 Now let's talk about Kevin. What do you know  
6 about Minor Victim 1? He was 15 years old. He had brothers  
7 and sisters. There were eight people total to feed in his  
8 family on one salary.

9 Did he have food? Yes.

10 Did he have a roof over his head? Yes.

11 Did he have the things that he wanted, the  
12 material things? No.

13 And at 15 there was nothing more important to  
14 him than keeping up with the other 15 year olds and having  
15 the latest and greatest, the best skateboard, the cool  
16 sneakers, the clothes, the concerts, the trips.

17 The defendant gave him access to a world he had  
18 no access to before. And you may think it would warrant the  
19 activities he engaged in for whatever reason. It violates  
20 your morals, your values, your religious beliefs. None of  
21 that matters. You cannot attribute your feelings to that.  
22 You can't use bias or prejudice or sympathy. On the facts  
23 alone he engaged in an act at the behest of the defendant and  
24 he, that act constituted commercial sex.

25 Why? Because every time one of those massages

1 occurred, the client paid the defendant. And even though the  
2 defendant gave a portion of that money to the victim, it  
3 doesn't vitiate his culpability, it doesn't take that away.  
4 He profited, the defendant profited from the commercial sex  
5 act of the victim.

6 As to Count 2 -- I am sorry -- Count 5, Minor  
7 Victim 2, what do we know about that time period and Minor  
8 Victim 2? Well, we know that Minor Victim 2 would have had  
9 to have been knowingly recruited, enticed, harbored,  
10 transported, provided or obtained by any means. We know that  
11 Minor Victim 2 was in high school and he was at the time --

12 THE COURT: You've used 25 minutes.

13 MS. ZACK: Thank you, Your Honor.

14 -- 17 years old.

15 That during the period of time the defendant  
16 provided him a place to stay because he had been essentially  
17 betrayed by his family when he told them about being raped in  
18 the club, and he felt that he was not safe at home and he  
19 wanted out. He withdrew from high school and he moved in  
20 with the defendant, who made him sign a contract saying he  
21 would pay, that this minor would pay the defendant to stay in  
22 his house.

23 According to Minor Victim 2, he believed that  
24 he was in love with the defendant and the defendant loved  
25 him, and he was caused to engage in these massages, he said,

1 a countless amount of times, and that he received financial  
2 support from the defendant who was profiting from these  
3 massages and that he got a cut.

4 The defendant knew of Minor Victim 2's age and  
5 they celebrated Minor Victim 2's 18th birthday while Minor  
6 Victim 2 was living with the defendant.

7 As to Minor Victim 3, Count 6, he was 15 years  
8 old. He met the defendant because his father was a client.  
9 He, as to his count you will see it had to do with the  
10 attempted trafficking. And this is from June 1 of '05 to  
11 August 15th, and that was only because he was there during  
12 the summer.

13 And how did the defendant know his age? You  
14 saw the picture of what he looked like during that summer.  
15 He was driving without a license. He had to go back to where  
16 his mother lived at the end of the summer, and it was obvious  
17 that this was a break between school years.

18 And why was he vulnerable? How was he enticed  
19 to, or the attempt of Gandy to do this to him? And he was in  
20 love with him. This was his first love. He said he was  
21 uncomfortable, that while he never completed any act that  
22 would constitute commercial sex, but the one time he did  
23 participate, he rubbed someone's leg for approximately 15  
24 minutes, and the defendant told him that if he did this,  
25 engaged in the commercial sex and did what the clients

1 wanted, he would get paid.

2           And if you believe that the defendant wanted  
3 him to engage in the commercial sex and put all of the other  
4 elements in play in order to accomplish that, he would be  
5 guilty of Count 6.

6           Count 7, Minor Victim 4 during this period of  
7 time was 16 years old. And you have all their birth  
8 certificates, you can check all our math. He was not only  
9 recruited and enticed, he was met online, he met the  
10 defendant online.

11           He was then transported by the defendant from  
12 where he was staying with his friend that he told you, his  
13 girlfriend, who he couldn't stay at her house.

14           The defendant came and picked him up, brought  
15 him back to Houston, so he was transported. And then he was  
16 harbored in that the defendant provided for him a place to  
17 stay. He had no money. He was essentially disowned from his  
18 family because of his sexual orientation. And this was, as  
19 he believed, his only way to take care of himself.

20           He indicated that while in Houston he was  
21 caused to engage in commercial sex five to seven times for  
22 anywhere from 25 to \$50 per time. And he also indicated that  
23 it was the same activity with the clients that the others  
24 indicated; that the client would either touch their genitals  
25 or penis, that they would be caused to masturbate the client,

1 and that all of this was for the sexual gratification of the  
2 client.

3                   What else do we know, ladies and gentlemen,  
4 that is truly important in considering this -- and the Judge  
5 will instruct you as to the credibility of witnesses -- is  
6 that the majority of these boys at the time this was going on  
7 did not know each other.

8                   THE COURT: You have used half an hour.

9                   MS. ZACK: Thank you, Your Honor.

10                   And I implore you to look at the similarities  
11 in their experiences to demonstrate that nothing that  
12 happened to any of them was a mistake, an accident or  
13 anything other than the intentions of the defendant in this  
14 case.

15                   The United States believes, ladies and  
16 gentlemen, that when you look at the facts and circumstances  
17 surrounding this case, when you go back and you go through  
18 the evidence and you review the testimony of each of the  
19 witnesses that you will find that the defendant is guilty of  
20 each of the charges in the indictment beyond a reasonable  
21 doubt; and the United States is asking you to hold the  
22 defendant responsible for his actions and find him guilty.

23                   Thank you.

24                   THE COURT: Thank you.

25                   Mr. Buckley.

1 MR. BUCKLEY: Thank you, Your Honor. May it please  
2 the Court, counsel.

3 Good afternoon, ladies and gentlemen of the  
4 jury. When we started this case I told you that you would  
5 see evidence and learn things that you would find upsetting  
6 and maybe even repulsive, and I think that has certainly  
7 happened. The evidence that we have seen in this case has  
8 not been pretty, and there is no way to sugar coat it.

9 The question, as I laid out to you in the  
10 beginning of this case is, does this conduct violate the  
11 specific federal statutes with which Mr. Gandy has been  
12 charged? And thank you for sitting through this, hearing the  
13 things that we all agree are unpleasant so that you can serve  
14 our community by applying the law to the facts of this case.

15 Let me start by going through part of the jury  
16 instructions in this case that Judge Rosenthal read earlier.  
17 I will start on page 3. If you would just look on page 3 of  
18 your jury instructions, it sets out the standard for proof  
19 beyond a reasonable doubt; and it's in the top paragraph or  
20 the end of the follow-over paragraph on page 2.

21 It says, "proof beyond a reasonable doubt is  
22 proof of such a convincing character that you would be  
23 willing to rely and act on it without hesitation in making  
24 the most important decisions in your own affairs."

25 And that's a very important sentence because

1 it employs the phrase "without hesitation." And what that  
2 means is as you go through this jury charge and you're  
3 applying the law of this case to the facts that you've heard  
4 in evidence and you're considering whether, for example, one  
5 particular element of any one of these crimes has been met  
6 and you hesitate: Have they met that element? Do I have a  
7 concern, based on what I heard, about whether the government  
8 has met that element?

9           That hesitation is what is defined as a  
10 reasonable doubt in this case. And in the most important --  
11 hesitating and making the most important decisions on your  
12 own affairs. For example, would you take your family on a  
13 boat if you had a hesitation about whether it was seaworthy?  
14 Would you get on an airplane with your family if you had a  
15 hesitation about whether it was airworthy?

16           Those are the types of hesitations. That is  
17 the magnitude of importance you should apply and that the  
18 jury instructions instruct you to apply to the concept of  
19 beyond a reasonable doubt.

20           Please take a look at page 5. Now, in the  
21 upper paragraph, which begins with the sentence "I remind  
22 you," a couple sentences down it says, "you are the sole  
23 judges of the credibility or believability of each witness."  
24 And then in the following paragraph it says, "in making that  
25 decision, I suggest you ask yourself a few questions, and

1 among those: Did the witness have any particular reason not  
2 to tell the truth? Did the witness have a personal interest  
3 in the outcome of the case?"

4           And this is a very important concept for you  
5 because the government wants you to take at face value all of  
6 the testimony that you have heard in this case without  
7 subjecting it to any scrutiny, without subjecting it to a  
8 question of whether it was credible. And you don't have to  
9 find all of a person's testimony to be not credible or all of  
10 a person's testimony to be credible. As the instructions  
11 point out, you can find some part credible and some parts not  
12 credible if you so choose; but the point here is that just  
13 because someone says something during this trial doesn't mean  
14 it's automatically true.

15           And one of the most important jobs that you  
16 will have as jurors back as you deliberate is piecing out the  
17 parts of the testimony that you have a problem with in terms  
18 of credibility and the parts that you are able to accept, if  
19 any. But certainly instructions guide you not to just take  
20 anything that was said on the witness stand at face value.

21           Please look at page 6, the last sentence in the  
22 final -- pardon me -- the last sentence in the first  
23 paragraph says, "you must always bear in mind that the law  
24 never imposes on a defendant in a criminal case the burden or  
25 duty of calling any witness or producing any evidence.

1                   And that's particularly important in this case  
2 whereas you know the defense did not offer any evidence. We  
3 rested at the end of the prosecution's case. And this  
4 instruction instructs you unequivocally, without any  
5 discretion, that you cannot take that as any part of your  
6 deliberations, you cannot consider it in any way, you cannot  
7 under any circumstances hold it against the defendant that he  
8 did not produce any evidence. It is the government's burden  
9 and only the government's burden to prove this case beyond a  
10 reasonable doubt.

11                   I want to address Count 1. The government is  
12 correct that whether or not Mr. Gandy violated these statutes  
13 is not determined by whether the individuals who are alleged  
14 as minor victims wanted to participate or not. That is a  
15 correct statement and it's a correct principle under the  
16 application of this law.

17                   However, it is relevant to your consideration  
18 of whether Mr. Gandy committed the elements of the offense to  
19 consider the actions of the individuals who have been alleged  
20 as minor victims.

21                   Count 1 alleges that Mr. Gandy committed the  
22 offense of transportation of a minor victim for prostitution  
23 or other illegal specs. And that's a paraphrase.

24                   What we know from the evidence is that when Mr.  
25 Gandy and Mr. Vasquez, who is listed as Minor Victim 1,

1 showed up in the United Kingdom that Mr. Vasquez, in the  
2 hours that the two were separated, Mr. Vasquez and Mr. Gandy  
3 were separated, Mr. Vasquez never asked for help, he never  
4 asked to be rescued, he never asked for any assistance to  
5 separate himself from Mr. Gandy. And, in fact, Officer  
6 O'Donovan indicated that he seemed independently motivated to  
7 enter into the UK on his own, that he wanted to be there.  
8 Mr. Vasquez himself testified that he was excited about going  
9 to the UK, very importantly that he was the one who asked Mr.  
10 Gandy to take him there. He was looking forward to a music  
11 concert, he was looking forward to going shopping; and he and  
12 Mr. Gandy in fact authored a personal ad for Mr. Vasquez to  
13 try to meet a woman while he was there in London.

14           And that is a very interesting point, because  
15 if Mr. Gandy had been taking Mr. Vasquez to the UK for the  
16 purposes that the government claims, Mr. Gandy would not have  
17 helped Mr. Vasquez author a personal ad that would allow Mr.  
18 Vasquez to possible meet a woman in the UK, spend time with,  
19 take him away from Mr. Gandy, someone who, if Mr. Gandy had  
20 been doing something improper or oppressive or abusive, as  
21 the government claims, a woman who might detect that and  
22 rescue Mr. Vasquez. Mr. Gandy participated in writing this  
23 personal ad, which is inconsistent with the allegations of  
24 the government.

25           There is no credible testimony in the record,

1 no credible testimony in the record that Mr. Vasquez had any  
2 plans to commit prostitution in the United Kingdom, that Mr.  
3 Gandy had any plans to employ Mr. Vasquez to commit  
4 prosecution in the United Kingdom, or likewise to commit an  
5 illegal sex act in the United Kingdom.

6           It's very important for your consideration that  
7 although the definition of "minor" has been defined in the  
8 jury charge, it has not been defined under the laws of the  
9 United Kingdom.

10           As you may recall, a witness testified that it  
11 is illegal to commit prostitution in the United Kingdom and  
12 that it is illegal to have sexual intercourse or sexual  
13 contact with minors in the United Kingdom; but under that  
14 concept or that construct, no one testified as to what the  
15 definition is of a "minor" in the United Kingdom.

16           And so if your deliberation as to this count  
17 comes on the question of whether there was an illegal sex act  
18 involved and that is the point of your deliberation, you must  
19 acquit on that reason alone that there is not sufficient  
20 evidence in the record to support a finding that Mr. Vasquez  
21 was a minor for purposes of UK law.

22           Count 2 alleges that Mr. Gandy produced or  
23 attempted to produce child pornography. If I could draw your  
24 attention, please, to page 10 of your jury instructions which  
25 sets for the elements of Count 2; and first, "that Mr. Gandy

1 intended to employ, use, persuade, induce, entice or coerce  
2 Minor Victim No. 1" -- and this is important -- "to engage in  
3 sexually explicit conduct for the purpose of producing a  
4 visual depiction of such conduct."

5           And if you look at page 11, the following page,  
6 it defines sexually explicit conduct. It begins, "the term  
7 sexually explicit conduct means" -- and I will read to you  
8 the relevant parts -- "actual or simulated sexual  
9 intercourse." No evidence of any of that going on. No  
10 evidence of any production of or attempted production of  
11 material depicting actual or simulated sexual intercourse,  
12 likewise nothing involving bestiality, nothing involving  
13 sadistic or masochistic abuse. So the only remaining place  
14 that it could fall is lascivious exhibition of the genitals  
15 or pubic area of any person.

16           The government wants you to believe that this  
17 photograph, which is in evidence, of Mr. Vasquez wearing the  
18 loincloth, that that is somehow a production or attempted  
19 production of child pornography, but it just simply does not  
20 meet that definition.

21           And secondly, the government wants you to infer  
22 that this incident where one of the minor victims, I believe  
23 it was Minor Victim No. 1, Mr. Vasquez, was laying down on a  
24 massage table and he saw a flash and he's laying face down  
25 and he saw a flash. Well, there is no evidence that that

1 flash was an attempt to photograph Mr. Vasquez' genitals or  
2 pubic area; and particularly that is contrary to the evidence  
3 if he was laying face down.

4           And we have a difference of opinion, I think,  
5 with the government about what the testimony was regarding  
6 whether Mr. Gandy attempted to take a frontal photograph of  
7 someone, Minor Victim 1. We disagree that that was the  
8 testimony. Obviously the government feels differently. And  
9 the Judge has instructed you to go by your own recollection  
10 of what the testimony was.

11           But even if Mr. Gandy, even if there is  
12 testimony that Mr. Gandy attempted to photograph Mr. Vasquez  
13 from the front, there is no indication and the record does  
14 not support the conclusion that that was a lascivious  
15 exhibition of the genitals.

16           Count 3 alleges that Mr. Gandy transported  
17 child pornography. And you heard testimony from Mr. Vasquez  
18 that Mr. Gandy asked him to carry this small computer, which  
19 has been put into evidence, this Acer laptop; that Mr. Gandy  
20 asked Mr. Vasquez to carry this small Acer laptop which  
21 contains this hard drive that was analyzed earlier today,  
22 which the analysis of which was testified to earlier today.

23           But Mr. Vasquez' testimony on that point just  
24 doesn't make sense. Why would Mr. Gandy need Mr. Vasquez to  
25 carry a small computer, and there is no testimony that the

1 computer wouldn't fit into Mr. Gandy's bag?

2           Mr. Vasquez has claimed that he did not have  
3 the password to that computer, that he didn't use it; and yet  
4 we learned today that there is evidence that someone has  
5 accessed an email address for Mr. Vasquez on that computer,  
6 and that it is the government's position through their own  
7 witnesses that three people used that computer, someone named  
8 OCL Martinez, Mr. Gandy and Mr. Vasquez.

9           And so for Mr. Vasquez to claim otherwise and  
10 claim that he was not a user of that computer should draw the  
11 remainder of his testimony into question. And likewise, you  
12 may have noticed when I was cross-examining him about his use  
13 of the laptop or why he was carrying it that he attempted to  
14 explain it away as, well, Mr. Gandy didn't want to get caught  
15 at the border with the laptop. But then as I questioned him  
16 further, he admitted that Mr. Gandy had never stated that to  
17 him, that that was just his assumption and that there wasn't  
18 any basis for it at all.

19           Mr. Vasquez has turned his life around in a  
20 remarkable way. He is serving our country in the U.S.  
21 military, and we should be proud and appreciative of him for  
22 that; but it is also one of the reasons why we should be  
23 particularly concerned about his credibility in this case.

24           Mr. Vasquez does not want interference of this  
25 case in any of his military career, he doesn't want this

1 bubbling up and embarrassing him as he serves his country,  
2 and he certainly doesn't want the U.S. Department of Justice  
3 getting in the middle of his military service. And those  
4 motives alone are enough to question the veracity of Mr.  
5 Vasquez' testimony.

6           Furthermore, we also know from Mr. Vasquez  
7 himself admittedly that he had an interest in teenage  
8 pornography even before he met Mr. Gandy and that he looked  
9 at it on his own before meeting Mr. Gandy. You might  
10 conclude that Mr. Gandy probably knew that there was child  
11 pornography on that computer, but the government hasn't  
12 proven it beyond a reasonable doubt. And you may feel that  
13 Mr. Gandy probably told Kevin Vasquez to bring that computer  
14 to the UK, but the government hasn't proven it beyond a  
15 reasonable doubt.

16           The remaining counts address the sex  
17 trafficking of minors alleged by the government against Mr.  
18 Vasquez, Mr. D, Mr. Villa Gomez and Mr. Alfaro.

19           What we know about Mr. Vasquez again hinges on  
20 our concerns about his credibility. He's already admitted  
21 that when he was in the UK he lied to the UK border agents to  
22 get what he wanted, which was entry into the UK.

23           He admittedly that he lied to the United States  
24 investigators early on in this case to deflect from himself  
25 and to protect Mr. Gandy at the time is what he says now.

1           He claimed he lied to investigators at the  
2 Childrens Assessment Center for his own motives, and he  
3 claims that he lied to an investigator who was sent by Mr.  
4 Gandy's former attorney to interview him. Only now he wants  
5 you to believe that what he is telling you is true and is  
6 true to the degree that you can rely on to convict Mr. Gandy  
7 beyond a reasonable doubt.

8           Moving on to Count 5 involving the sex  
9 trafficking allegation involving Mr. D. The testimony in  
10 this case as to this individual is important for a number of  
11 reasons. First of all, Mr. D explained that Mr. Gandy had  
12 him come into a massage room and rub a man's leg. There is  
13 no testimony that Mr. D ever engaged in a sex act with the  
14 person who was receiving the massage. And it is important  
15 because not only does that not constitute a sex act as to  
16 Count 5, but it's important because it draws into question  
17 some of the other testimony in this case, which was that all  
18 of Mr. Gandy's massages always had a sexual nature to them,  
19 which just can't be true, because it's inconsistent with the  
20 testimony of Mr. D.

21           And there is another reason why it's  
22 inconsistent. Mr. D met Mr. Gandy because Mr. Gandy was  
23 receiving or was providing massages to Mr. D's father. And  
24 there's no evidence in the record that Mr. D's father had any  
25 hesitation about Mr. Gandy associating with his son. And I

1 think it's safe to assume that if Mr. Gandy had been  
2 providing sexual massages to Mr. D's father, if he was  
3 providing sexual massages to everyone, as some of the  
4 witnesses claim, that Mr. D's father would not have  
5 acquiesced with Mr. D spending so much time with Mr. Gandy.  
6 So it's just inconsistent and it doesn't make sense.

7           Count 6 involves sex trafficking allegations  
8 involving Mr. David Villa Gomez, who admitted that he met Mr.  
9 Gandy on a gay dating site where you have to commit to being  
10 at least 18 in order to join. And I believe his testimony  
11 was that he probably or he thought that he was under 18.  
12 That seemed to equivocate a little bit.

13           He explained that he had a tragic experience in  
14 his own life where he was victimized at a nightclub, where he  
15 ended up after stealing his family's car and stealing his  
16 father's work phone; and following that tragic experience he  
17 became acquainted with Mr. Gandy, and that Mr. Gandy and Mr.  
18 Villa Gomez entered into a domestic and business partnership.

19           Mr. Villa Gomez saw himself as a business  
20 partner of Mr. Gandy's. This is not the type of arrangement  
21 where someone is being trafficked and victimized in the way  
22 that the government claims. He was a business partner.

23           There is no evidence at all that Mr. Villa  
24 Gomez had any problem whatsoever with this partnership while  
25 he was in it, but he eagerly reached out to authorities to

1 report it at a later point; and frankly, it's pretty clear  
2 the reason why, which is that he was upset with Mr. Gandy for  
3 the way that their relationship ended after having felt that  
4 he and Mr. Gandy were exclusive and then learning otherwise  
5 and remaining upset about it, another factor which should  
6 affect your analysis of his credibility.

7           Count 7 relates to the sex trafficking  
8 allegations involving Mr. Jose Alfaro. And this is perhaps  
9 the most concerning of them all, because Mr. Alfaro did not  
10 report or complain to anyone until six years after the fact  
11 and only after publicity hit. He seems to blame Mr. Gandy  
12 for everything that went wrong in his life. But again, at  
13 the core of his dissatisfaction with Mr. Gandy is this  
14 expression that he thought that they were exclusive and then  
15 learned at some later point that they were not and having a  
16 residual feeling of dissatisfaction and anger because of  
17 that.

18           And you may recall that Mr. Alfaro claimed that  
19 he met Mr. Gandy in August of 2007 and that he and Mr. Gandy  
20 performed sexual massages at someone named Eugene's apartment  
21 and then they went to Austin together after that, and then  
22 Mr. Alfaro during that same time period observed pictures.  
23 And this was a big thing that he threw out here, and the  
24 government has alluded to it in their closing argument, that  
25 he saw pictures of Mr. Gandy receiving oral sex from some

1 kids in Bali.

2           As you review the evidence in this case back in  
3 the jury room you will have an opportunity to review Mr.  
4 Gandy's passport, and what you will see is that Mr. Gandy was  
5 not in Bali or any of the other countries that resemble Bali  
6 until 2008. And I encourage you to take your time and look  
7 through the passport because it is not a sinister document as  
8 the prosecution claims, but it is a record that no one is  
9 hiding of Mr. Gandy's travels and a record that refutes the  
10 claim of Mr. Alfaro that he saw this disturbing material  
11 which, frankly, is Mr. Alfaro doing whatever he can do to  
12 help the government's case because he is suing Mr. Gandy for  
13 a lot of money.

14           He downplays the extent to which he wants to  
15 get money from Mr. Gandy, but it's clear, he sued him and he  
16 sued them at the last minute before the statute of  
17 limitations runs out; and he has come in here and presented  
18 himself to you as a very meek and mild victimized person  
19 whose life has been ruined by Mr. Gandy.

20           But that is not the person that he presented  
21 himself to be during the time that he was associating with  
22 Mr. Gandy. He was not at that time forcing that smile, he  
23 was not forcing that demeanor, he was not being enslaved by  
24 Mr. Gandy. Like everyone else in this case, he was willingly  
25 and eagerly participating.

1           And the crux of the government's case requires  
2 you to conclude that they are being truthful when they  
3 testify that there were commercial sex acts going on. And  
4 that's why credibility is so important in this case as to the  
5 trafficking counts, because if you cannot believe parts of  
6 the testimony of these alleged minor victims, then you can't  
7 believe the allegation that they were engaging or led to  
8 engage in some kind of commercial sexual transaction, because  
9 just having sex with Mr. Gandy is not charged in this  
10 indictment. This indictment charges something very specific.

11           And in order to find that Mr. Gandy committed  
12 that specific trafficking conduct, you have to find that  
13 these witnesses who told you about it and who claimed that  
14 that was going on are being honest with you about it and not  
15 vindictive.

16           And you might find it interesting that Mr. D,  
17 as he testified, appeared to be not vindictive, appeared to  
18 really just tell you very neutrally what he remembers. And  
19 he was not happy to be here. You could tell that was an  
20 emotional experience for him. But he was not vindictive.  
21 And interestingly, he was also the only one who didn't  
22 falsely accuse Mr. Gandy of some kind of commercial sexual  
23 conduct like the others did.

24           And so, in conclusion, the key to this case is  
25 credibility and the key to this case is examining the

1 government's case and the government's proof and holding them  
2 to their burden. And I ask that you find Mr. Gandy, as to  
3 all counts in this indictment and as to each individual  
4 count, not guilty because the government did not prove the  
5 cases beyond a reasonable doubt.

6 Thank you again.

7 THE COURT: Thank you, Mr. Buckley.

8 I think we are now ready to hear from the  
9 government and the final portion of its closing argument.  
10 And I believe you have 10 minutes -- 15 minutes, 15 minutes.

11 MS. ZACK: Thank you, Your Honor.

12 Ladies and gentlemen, there is a couple of  
13 reasons why this passport doesn't say Bali. One, it says  
14 Indonesia. Bali is in Indonesia.

15 Two, we know that the minor victim that  
16 testified seeing pictures in Bali, there were pictures of  
17 Bali on this computer. If you look at Government's Exhibit  
18 2F, that contains these screen shots of what was in the  
19 public folder. Special Agent Chappell testified, and you saw  
20 those images with all those thumbnails up. Underneath many  
21 of those images, before it said "dot JPEG," it said Bali.

22 So this whole, he's never been to Bali and the  
23 victim was disingenuous or made this up is supported by facts  
24 that are in evidence. You have a passport showing multiple  
25 trips to Indonesia, and that passport only goes back to 2004.

1 You have pictures that say Bali inside the computer.

2 And let's talk about the credibility of these  
3 witnesses. Why were they here talking about this? Not  
4 because they wanted to. They were here because they were  
5 under subpoena. They didn't want to be here.

6 And let's go through each of them in turn. As  
7 to Minor Victim 1 and to what was going on at the time, if we  
8 could look at the image of Minor Victim 1 and these other  
9 victims, please, at the time, Mr. Buckley talked about the  
10 fact that Minor Victim 1 never told customs control or the  
11 people in London that he was scared or upset or worried or  
12 any of that because he wasn't, he wanted to be there. He  
13 wanted to go to London, and he did what he believed he needed  
14 to do to go there, which was to cooperate with what the  
15 defendant wanted him to do.

16 You know what? Mr. Buckley was absolutely  
17 correct in saying that this is upsetting and repulsive  
18 because all of the things the defendant did to manipulate  
19 these children is upsetting and is repulsive. And you will  
20 have the opportunity to find him guilty of all of those  
21 crimes.

22 As to the credibility of Minor Victim 1, there  
23 is absolutely no evidence to suggest that the Department of  
24 Justice has done anything to influence his career, to derail  
25 his career or has anything to do with his career in the

1 military. He was 15 years old when he was stopped in London,  
2 and the fact that he was trying to protect the defendant and  
3 to protect himself because he thought he was going to be in  
4 trouble back when he was 15 has nothing to do with when he is  
5 sitting here today and it's being suggested that somehow what  
6 happened to him when he was 15 could hurt his career now.  
7 That's just a leap and a stretch and not supported in any  
8 way, shape or form by this record.

9 Let's talk about Minor Victim 2 and his  
10 credibility. But before we get there, I just want to suggest  
11 to you one thing as to the images that were taken of Minor  
12 Victim 1. He testified that two images were taken in the  
13 massage room that exposed his backside naked and the front of  
14 his body, his genitals. And I would suggest to you that if  
15 you look at the definition of lewd and lascivious as it's  
16 described and related to child pornography you will find that  
17 it fits within the instructions that Judge Rosenthal gave  
18 you.

19 As to the credibility of all of the witnesses,  
20 please, please scrutinize their testimony. Use the criteria  
21 the Judge gave you because there is nothing to explain the  
22 fact that all of them told you a similar story when they did  
23 not know each other than it is true. They had no contact  
24 with each other.

25 Minor Victim 1 was 2012. Minor Victim 3 was

1 back in school when Minor Victim 2 met the defendant. None  
2 of their time frames overlap. They were not with the  
3 defendant at the same time. And three of them didn't come  
4 forward until either after the defendant was arrested or when  
5 Special Agent Johnson made a plea to the public for anyone  
6 involved with the defendant to come forward.

7           So to claim that somehow Mr. Alfaro is some  
8 type of scorned individual because of disillusionment with  
9 his relationship because he is taking it upon himself to  
10 utilize all legal means to hold the defendant responsible for  
11 his actions and that doesn't mean what he said in court is  
12 true, you make that determination.

13           But in looking at the images of these  
14 individuals at that time, when you consider what they are  
15 testifying to, don't consider how they look today, don't  
16 consider the young men sitting here today discussing this  
17 with you as an adult. Look at what they looked like when  
18 they were 15, 16, 17 years old because that's who this  
19 happened to. They were children, children that were  
20 manipulated by the defendant.

21           Why didn't Minor Victim 1 question taking this  
22 to London? Because why would he? He was getting a free trip  
23 to London. The defendant paid for his passport, got a  
24 notarized letter from his mother. The defendant manipulated  
25 everything he possibly could to get him to go, and somehow

1 the defense wants you to find it suspect that when the  
2 defendant said, hey, carry this for me, he didn't say no.  
3 And now as a 21-year-old man he recognizes that the reason  
4 the defendant gave it to him, he believes the reason the  
5 defendant gave it to him was because he knew there was  
6 contraband on there.

7           At the time he was 15 he didn't care, and he  
8 shouldn't have had to care. He was 15, and he was being  
9 used, used and abused by the defendant. Whether he  
10 recognized that or not, the law does, and we have these laws  
11 because people like the defendant exist. If what he did  
12 wasn't illegal there would be no law in place for which you  
13 could hold him responsible; but because unfortunately we live  
14 in a society where people do take advantage of minors, where  
15 people do repulsive and upsetting things that are illegal, we  
16 have these laws, and he violated all of them.

17           Minor Victim 3, as far as his credibility and  
18 this suggestion that his father should have protected him.  
19 Well, we never heard from his father; but what we did hear  
20 certainly doesn't suggest that what his father got was a  
21 legitimate massage.

22           What did he tell you about when he would talk  
23 to the defendant? That it was when his father was showering  
24 after the massage and while the defendant was brushing his  
25 teeth. Who needs to shower after a massage at the same time

1 that the massage therapist is brushing their teeth if this  
2 was a legitimate massage? If this was really something on  
3 the up-and-up, that the minute the defendant walked out of  
4 the room with Minor Victim 3's father, he has to run and  
5 brush his teeth?

6 I would suggest to you that if Minor Victim 3's  
7 father was the type of client that Jason Gandy had on a  
8 regular basis, his judgment as a father may not have been the  
9 best in allowing his son to go with him.

10 But it doesn't matter. What matters is what  
11 Minor Victim 3 told you. And that was that the defendant  
12 wanted him to engage in these massages, but he couldn't do  
13 it. He was offered the opportunity by the defendant. The  
14 fact that he didn't go through with it, other than rubbing  
15 one person's leg, one man's leg for 15 minutes, only suggests  
16 that in that particular case the defendant wasn't able to get  
17 everything that he got out of the other three victims.

18 The individuals that came forward and spoke to  
19 you, all of these victims, I would suggest to you that not  
20 only was this incredibly difficult for them, but they were  
21 incredibly brave, incredibly brave to stand up to someone who  
22 manipulated them emotionally, who used them physically and  
23 who profited off of them for a period of time going back as  
24 far as 2005.

25 And but for the UK border protection, we may

1 have never found out about this. But for a very astute  
2 Officer Reeves noticing that there was no reason for a  
3 15-year-old boy to be traveling with a 35-year-old man that  
4 wasn't related to him and knowing that this would have not  
5 fit within the legal schemes and the lawfulness of the UK, he  
6 referred them for further investigation.

7 Ladies and gentlemen, I am asking you to take  
8 this opportunity to apply the facts and circumstances, the  
9 evidence, the testimony, the exhibits to all of the elements.  
10 You have four different victims with the defendant over four  
11 different times with similar if not identical experiences.  
12 And there should be no hesitation, based on the evidence you  
13 have heard, as to the guilt of the defendant, as to the  
14 credibility of these witnesses, as to the culpability.

15 And, yes, ladies and gentlemen, it is  
16 upsetting, it is repulsive, but it is also criminal and the  
17 fact that it is criminal that I am asking you and the  
18 government is asking you to find the defendant guilty of each  
19 of the counts charged in the indictment and make the  
20 defendant take responsibility for his action.

21 Thank you.

22 THE COURT: Thank you counsel for both sides.

23 Ladies and gentlemen, I am going to give you  
24 some final instructions.

25 When you go to the jury room, the first thing

1 that you should do is to select one of your number as your  
2 foreperson who will help to guide your deliberations and will  
3 speak for you here in the courtroom.

4 A verdict form has been prepared for your  
5 convenience. The foreperson will write the unanimous answer  
6 of the jury in the space provided for each count of the  
7 indictment either guilty or not guilty.

8 At the conclusion of your deliberations, the  
9 foreperson should date and sign the verdict form. The  
10 foreperson will retain possession of the verdict form until  
11 the Court asks for it.

12 If you need to communicate with me during your  
13 deliberations, the foreperson should write the message and  
14 give it to the court security officer, who will be right  
15 outside the jury room. I will either reply in writing or  
16 bring you back in the courtroom to answer your message.

17 Bear in mind that you are never to reveal to  
18 any person, not even to the Court, how the jury stands  
19 numerically or otherwise on any count of the indictment until  
20 after you have reached a unanimous verdict.

21 Ladies and gentlemen, before I excuse you to  
22 begin deliberating, I must first excuse from the  
23 deliberations our two alternate jurors. In every jury trial  
24 we have two extras. In any jury trial that's going to take  
25 any period of time we have two extras and some we have one

1 extra. We don't tell the extra who the extra is because we  
2 want the extras to attend to the proceedings with the same  
3 degree of care as the rest of the jury. But we have extras  
4 because the law requires that at least 12 of you hear  
5 everything and deliberate to a verdict. We have gotten to  
6 the end of the evidence, ready to start deliberations with no  
7 attrition, you're all still here.

8           So the two of you who have been our insurance  
9 against having to do it all over if one of you should have  
10 been become ill or unable to return to jury duty and complete  
11 your service in this case, I am now going to excuse you from  
12 participating in the deliberations, have you go to the jury  
13 room first with Ms. Eddins and get your necessary paperwork  
14 and leave before the rest of the jury begins deliberations.

15           I am not going to release you from the  
16 restrictions you have been under until the case is completely  
17 finished. So you still can't talk about the case with  
18 anybody or allow anybody to talk about it with you or do any  
19 research into the case.

20           The two alternate jurors are No. 13 and 14.  
21 I'd like to thank you very much for the time you have spent  
22 with us. Please don't think your time has not been as  
23 valuable as that of the other 12 members of the panel. It  
24 has been every bit as critical to the ability of the Court to  
25 provide the kind of trial that I'm required to provide, and

1 we are grateful to you.

2           So if you will now follow Ms. Eddins, she will  
3 take care of what needs to be taken care of before you can  
4 leave, and in just a few minutes the rest of the jury will  
5 follow and begin its deliberations.

6           Please rise.

7           (Alternate jurors excused)

8           THE COURT: Ladies, and gentlemen, let's give them  
9 just a few minutes, so please be seated.

10           And let me take this opportunity to thank the  
11 rest of you as well for all of the time you have spent with  
12 us and the time that you will continue to spend with us until  
13 we complete deliberations.

14           You can decide how long you want to work this  
15 evening. I will be here until at least 6:00 o'clock,  
16 probably longer. It is up to you how much after 5:00 you  
17 want to work. If you have not concluded before then, there  
18 is no rush, and you should feel absolutely no rush. You  
19 should give these deliberations the time, the care, the  
20 discussion they deserve.

21           In just a few moments we will send the evidence  
22 that has been admitted back to the jury room with you. Some  
23 of the evidence requires computer devices to display. If you  
24 need to see or hear any of that evidence, give a note to that  
25 effect to the court security officer who will be outside the

1 jury room and it will be brought promptly to my attention.

2           And remember that although you are now not only  
3 permitted but required to discuss the case among yourselves  
4 to deliberate, the restrictions against talking to anybody  
5 else or allowing anybody else to talk to you about it remain  
6 in place until your deliberations are complete and you are  
7 released from these restrictions.

8           I believe that you can now go ahead to the jury  
9 room, and the exhibits will follow you in just a few moments.

10           Thank you.

11           (Jury commenced deliberations at approximately 2:25 p.m.)

12           THE COURT: Please be seated.

13           In just a moment Ms. Eddins is going to ask the  
14 attorneys to sign a form saying you have looked at the  
15 exhibits, they're all there, nothing that's there should not  
16 be there.

17           I wanted to take a moment to compliment the  
18 lawyers on both sides for a very well tried case. It was not  
19 an easy case to prepare or to try, and it had some unexpected  
20 curves; but the lawyers did a very good job in responding to  
21 those and presented the case in a very professional, clear  
22 way that can only benefit the jury and the entire system, so  
23 I thank you for that.

24           Please have available for Ms. Eddins a single  
25 phone number for both sides that can reach all of you who

1 need to be here if we get a note or a verdict within just a  
2 few minutes. If you are going to be in the building, so much  
3 the better; and let us know if there is going to be any more  
4 significant delay, which there should not be. The jury is, I  
5 am sure, not going to be happy with extended delay while we  
6 wait for people to gather if we need to get counsel's  
7 reaction or participation.

8 Anything further we need to take up right now?

9 MR. BUCKLEY: Nothing from us, Your Honor.

10 MS. ZACK: Nothing from the United States, Your  
11 Honor.

12 THE COURT: All right. Thank you again.

13 (Jury note at 3:30 p.m.)

14 THE COURT: Good afternoon. We have a note. You  
15 have each gotten a copy. All counsel and Mr. Gandy are  
16 present.

17 The note says: Regarding Counts 5, 6 and 7,  
18 the third point regarding interstate or foreign commerce.  
19 Does this specifically relate to victim in the indictment or  
20 does this question in No. 5 relate to Victim No. 2?

21 Request or suggestions or response are welcome.

22 MR. BUCKLEY: I think -- we've discussed it, Your  
23 Honor. The question itself seems a little ambiguous. And we  
24 have looked at the portion of the charge that it appears  
25 attention to relate, which is on page 15.

1                   And one interpretation of the question could be  
2 whether the third element of count -- for example, Count 5,  
3 which is that Mr. Gandy's acts were in or affected interstate  
4 or foreign commercial must relate in some fixed way to Minor  
5 Victim 2, which seems like a question that would be simply  
6 answered by just reading the charge, but that's why I am  
7 concerned that I may not understand the question.

8                   THE COURT: I think it is pretty simply answered,  
9 and I am not sure we should make it more complicated than it  
10 is.

11                   MS. ZACK: What is Your Honor's suggestion as to how  
12 to answer it?

13                   THE COURT: Well, I was sort of hoping you would  
14 help me craft the word, but I think it is specific to each  
15 count, which means that it would be specific as to Victim No.  
16 2.

17                   MS. ZACK: My interpretation of the charge, not what  
18 their question is, I believe the law states that if Mr. Gandy  
19 did anything in or affecting interstate or foreign commerce  
20 during the time period of that charge, he doesn't -- the fact  
21 is that he posted an ad during that time using the internet.  
22 That ad didn't have to relate to Minor Victim 2. It just had  
23 to occur during the time he was using Minor Victim 2 --

24                   THE COURT: But it has to relate to that count.

25                   MS. ZACK: Correct. And to that time period.

1 THE COURT: All right.

2 MS. ZACK: So I don't know -- when it gets back to  
3 the ambiguity, the question is, are they talking about, when  
4 they say Minor Victim 2, for example, the time period of that  
5 charge or specifically --

6 THE COURT: Well, you are making this too  
7 complicated. We are going to tie them up hopelessly. We  
8 need to answer in a simpler way.

9 So the question is: Does it relate to Minor  
10 Victim No. 2 in Count No. 5 and in Count No. 6 specifically  
11 to Minor Victim No. 3 or is it enough to say, did the acts --  
12 I mean, it doesn't have to refer to Minor Victim 2 to relate  
13 to Minor Victim No. 2, okay. It can relate to Minor Victim  
14 No. 2 if it could be, if it was or could be used in relation  
15 to getting business that would involve Minor Victim 2, but it  
16 doesn't have to name Minor Victim No. 2. And I think the  
17 response should be something along those lines.

18 So I think that the response would be: The  
19 instructions, under the instructions you must be convinced  
20 that the government has proved beyond a reasonable doubt that  
21 Mr. Gandy's acts in each of the three counts related to the  
22 minor victims in those counts but need not name or  
23 specifically refer to those victims.

24 MR. BUCKLEY: I would agree with that, Your Honor.

25 THE COURT: Or must relate to or involve. I don't

1 think it's enough to say time period. We wouldn't instruct  
2 on that. It's not in the instructions the government asked  
3 me to give.

4 MS. ZACK: Right. I am wondering if Your Honor  
5 needs to be more specific in that relate to or involved to  
6 the minor victim in as much as Mr. Gandy's act affected  
7 interstate or foreign commerce.

8 THE COURT: Well, the acts affected interstate or  
9 foreign commerce. But the question is, what acts? Acts that  
10 named Minor Victim 2 or acts that related to or involved the  
11 minor victims? Maybe that's the way to say it.

12 MS. ZACK: Right.

13 Or maybe related to or involved the specified  
14 minor victims.

15 THE COURT: I don't think that helps. That's too  
16 wordy. Let me try this. Let's try something.

17 Under the instructions for counts for the third  
18 element -- and is the third element of each of the counts?

19 MS. ZACK: Yes.

20 THE COURT: Hang on. 5, 6 and 7.

21 MR. BUCKLEY: Because there are four trafficking  
22 counts which presumably have the same element.

23 THE COURT: They have only asked about 5, 6 and 7.

24 MR. BUCKLEY: Yes. I just thought it was curious.

25 THE COURT: Well, okay.

1 Under the instructions for the third element of  
2 Counts 5, 6 and 7, you must be satisfied, you must find that  
3 the government has proved beyond a reasonable doubt that Mr.  
4 Gandy's acts involving or relating to the minor victims were  
5 in or affected interstate commerce. The government need not  
6 prove that Mr. Gandy's acts specifically named the minor  
7 victims.

8 MS. ZACK: I think they're hung up on the fact Minor  
9 Victim 1 was taken to London while none of these other  
10 victims traveled in interstate commerce.

11 And the problem with Count 5, 6 and 7 --

12 THE COURT: Well, we could say specifically named or  
13 required the minor victims or required them to travel, and  
14 that would also be accurate.

15 MS. ZACK: Could you refer them back to Your Honor's  
16 instruction, which those counts do, specifically because only  
17 in Count 4 does it say, "in determining whether Mr. Gandy's  
18 conduct was in or affecting interstate commerce."

19 THE COURT: What is it that you want me to  
20 specifically refer back to? Dictate.

21 MS. ZACK: Please refer back to page 14.

22 THE COURT: Of the jury instructions.

23 MS. ZACK: As to whether Mr. Gandy's conduct was "in  
24 or affecting," in quotes, "in or affecting interstate or  
25 foreign commerce" what you can consider as to whether he used

1 a means or facility of interstate, if that's what --

2 THE COURT: That's gobbledegook, Ms. Zack. They  
3 need that which is helpful.

4 MS. ZACK: I think it is helpful because it doesn't  
5 say that in 5, 6 or 7. And I think they're hung up on the  
6 fact that Minor Victim 1 traveled and the other three didn't,  
7 and they're not required to.

8 THE COURT: What if we simply said that, as to  
9 whether or in foreign commerce?

10 I think that you are assuming that they will  
11 say, oh, it's in 4 but not in -- it's in 1 but not in the  
12 others; and I am not sure that's going to be because that  
13 refers specifically to -- it's the fourth element of  
14 Instruction No. 1.

15 MS. ZACK: I am looking at page 14, Your Honor.

16 THE COURT: I'm with you now.

17 MS. ZACK: Counts 4, 5, 6 and 7 all charge the same  
18 thing.

19 THE COURT: Hang on one second. All right.

20 MS. ZACK: But only Count 4 directly refers to the  
21 fact that you can consider --

22 THE COURT: They didn't ask about Count 4.

23 MS. ZACK: I understand that, because Minor Victim 1  
24 traveled, and I think they can hang --

25 THE COURT: But we tell them to look at 14

1 throughout.

2 MS. ZACK: I understand that. But I think that the  
3 hang-up is that there was no travel in Count 5, 6 or 7.

4 THE COURT: So, "please refer to page 14 of the jury  
5 instructions as to whether Mr. Gandy's acts were in or  
6 affected interstate or foreign commerce. Under the  
7 instructions for the third element of Counts 5, 6 and 7 you  
8 must find that the government has proved beyond a reasonable  
9 doubt that Mr. Gandy's acts involving or relating to the  
10 minor victims were in or affected interstate or foreign  
11 commerce."

12 MR. BUCKLEY: The only thing --

13 THE COURT: "But the government need not prove that  
14 Mr. Gandy's acts specifically named the minor victims or  
15 required them to travel."

16 Does that help?

17 MS. ZACK: That satisfies the United States.

18 MR. BUCKLEY: That is very satisfactory except that  
19 I have one residual concern, and that is that it may not  
20 adequately convey that the interstate commerce or foreign  
21 commerce as to each count, the third element, had to apply to  
22 the minor victim that's named in that count. I realize it  
23 may seem intuitive.

24 THE COURT: Say that again.

25 MR. BUCKLEY: In other words, that the instruction

1 or the answer that Your Honor proposed seems to leave open  
2 the possibility that if a juror believes that interstate  
3 commerce was affected say as to Minor Victim 1, they might  
4 say feel, they might feel that that satisfies as to count --

5 THE COURT: I think we say it has to involve or  
6 relate to the Minor Victims.

7 MR. BUCKLEY: To the minor victims named in the  
8 respective counts or in -- that was the only concern, is that  
9 it relates to the specific minor victim.

10 THE COURT: Well, I can say "in each of these  
11 counts," and that's still clear.

12 MS. ZACK: For the time period charged or something?

13 THE COURT: In each of these counts. It's clearly  
14 for the time periods charged. So I think that satisfies your  
15 point, Mr. Buckley.

16 MR. BUCKLEY: Yes, Your Honor.

17 THE COURT: So it says, under the instructions for  
18 this, after saying look back on page 14, then it says:  
19 "Under the instructions for the third element of 5, 6 and 7,  
20 you must find the government has proved beyond a reasonable  
21 doubt that Mr. Gandy's acts involving or relating to the  
22 minor victims in each of these counts were in or affected  
23 interstate or foreign commerce. But the government need not  
24 prove that Mr. Gandy's acts specifically named the minor  
25 victims or required them to travel."

1                   Is everybody okay on that?

2           MR. BUCKLEY: Yes, Your Honor.

3           MS. ZACK: Absolutely, Your Honor.

4                   Are we allowed to inquire what Jury Note No. 1  
5 said?

6           MR. BUCKLEY: They may have just used the wrong  
7 form. It says Jury Note 2.

8           CASE MANAGER: They have the instructions that if  
9 they mess up on one they have to void it because I have to  
10 have a consecutive pattern. My guess is they messed up on  
11 the first one, and I will know that when it's done.

12           MS. ZACK: These are our copies, correct, Your  
13 Honor?

14           THE COURT: Those are your copies.

15           MS. ZACK: Thank you.

16           THE COURT: Evan, I just sent it to you. If you can  
17 put it on the proper response form, I'll sign it and we will  
18 get it in there right away.

19           MR. BUCKLEY: Thank you, Your Honor.

20           THE COURT: Interesting.

21                   I have no idea how long they intend to continue  
22 to work tonight. I do have hearings at 5:00 and 5:30, but I  
23 will make them come up here and you guys can leave your stuff  
24 there.

25                   It is printed out. Take a look, inspect it

1 before I send it back. Thank you.

2 MS. ZACK: The government approves, Your Honor.

3 MR. BUCKLEY: Defense agrees, Your Honor.

4 THE COURT: Thank you. Send it back.

5 Anything else we need to take up?

6 MR. BUCKLEY: Nothing from us, Your Honor.

7 MS. ZACK: Nothing from the United States.

8 THE COURT: I appreciate you being here as quickly  
9 as you were. Thank you. Stay tuned.

10 (Jury continues deliberations)

11 THE COURT: The jury has indicated that it has  
12 reached a verdict. All parties and counsel are present. You  
13 may be seated while we wait for the jury to come in.

14 I do have one question: Have the victims been  
15 notified to be available in the event they wish to be present  
16 when the verdict is read?

17 MS. ZACK: Yes, Your Honor. And those that are  
18 available and wanted to be here are here.

19 THE COURT: Very good. Thank you.

20 All right. Please have the jury come in.

21 (Jury enters courtroom)

22 THE COURT: Thank you, ladies and gentlemen. All  
23 but the foreperson may be seated.

24 And what is the juror number of the foreperson?

25 JURY FOREPERSON: 7, Your Honor.

1 THE COURT: Juror No. 7, foreperson, has the jury  
2 returned a verdict?

3 JURY FOREPERSON: Yes, Your Honor.

4 THE COURT: And is the verdict unanimous as to each  
5 count of the indictment?

6 JURY FOREPERSON: Yes, Your Honor.

7 THE COURT: And have you dated it and signed the  
8 verdict form?

9 JURY FOREPERSON: Yes, Your Honor.

10 THE COURT: Would you please hand it to our deputy  
11 who will bring it to me, and then you may be seated, sir.  
12 Thank you.

13 JURY FOREPERSON: Thank you, Your Honor.

14 THE COURT: Ladies and gentlemen, I am going to read  
15 aloud the verdict, and then I am going to ask Ms. Eddins to  
16 ask each of you if the verdict that I have read is the  
17 verdict that each of you returned.

18 As to Count 1, guilty.

19 Count 2, guilty.

20 Count 3, guilty.

21 Count 4, guilty.

22 Count 5, guilty.

23 Count 6, guilty.

24 Count 7, guilty.

25 Ms. Eddins, will you please poll the jury.

1 CASE MANAGER: When I call your juror number,  
2 please answer appropriately to the following question: Was  
3 the verdict just read your verdict?

4 No. 1?

5 JUROR NO. 1: Yes.

6 CASE MANAGER: 2?

7 JUROR NO. 2: Yes.

8 CASE MANAGER: 3?

9 JUROR NO. 3: Yes.

10 CASE MANAGER: 4?

11 JUROR NO. 4: Yes.

12 CASE MANAGER: 5?

13 JUROR NO. 5: Yes.

14 CASE MANAGER: 6?

15 JUROR NO. 6: Yes.

16 CASE MANAGER: 7?

17 JUROR NO. 7: Yes.

18 CASE MANAGER: 8?

19 JUROR NO. 8: Yes.

20 CASE MANAGER: 9?

21 JUROR NO. 9: Yes.

22 CASE MANAGER: 10?

23 JUROR NO. 10: Yes, ma'am.

24 CASE MANAGER: 11?

25 JUROR NO. 11: Yes.

1 CASE MANAGER: 12?

2 JUROR NO. 12: Yes.

3 CASE MANAGER: Thank you.

4 THE COURT: Thank you, Ms. Eddins.

5 Ladies and gentlemen, this does now conclude  
6 your jury service. It is with the thanks of the Court, all  
7 parties, the lawyers and the public that I excuse you from  
8 your service in this case.

9 You were privileged in the sense that you saw  
10 the lawyers, who worked hard to bring you the facts and  
11 present them in a professional way.

12 I told you when we started this last Wednesday  
13 that I hoped that at the end, with all the inconvenience and  
14 disruption, you would have a renewed appreciation for the  
15 rights that our system gives those who come into the court  
16 system as defendants, as litigants, and I hope that has  
17 indeed proven true.

18 You have been a great jury because you have  
19 been cheerful and patient in the face of unexpected delays  
20 and attentive throughout. All of that is greatly  
21 appreciated.

22 You are now excused to go to the jury room  
23 one last time to collect your things and to get the paperwork  
24 that Ms. Eddins will give you to give to your employers and  
25 for other related purposes, and I will follow her in in just

1 a few minutes to give you my personal thanks for the time and  
2 the work you have given to us.

3 Thank you, ladies and gentlemen. You are  
4 excused.

5 (Jury excused)

6 THE COURT: Please be seated.

7 Court accepts the verdict and directs that it  
8 be made part of the record.

9 Mr. Gandy, you have now been convicted today on  
10 each of the Counts 1 through 7 of the superseding indictment.  
11 There will now be a presentence investigation conducted. You  
12 will be interviewed as part of that investigation. Your  
13 lawyers may be present during that interview if you wish them  
14 to be.

15 A report will be prepared to assist me in  
16 sentencing. Your lawyers will get a copy. Through your  
17 lawyers you will be able to make any objections that you  
18 think should be presented, and at the sentencing hearing,  
19 which is set for October 25th at 10:00 a.m., you and your  
20 counsel will be able to make any statements you wish on your  
21 behalf.

22 Do you understand these rights?

23 THE DEFENDANT: (Indicating in the affirmative).

24 THE COURT: I'm sorry. I need a verbal response.

25 THE DEFENDANT: Yes.

1 THE COURT: Thank you.

2 Mr. Gandy will be remanded back into custody.

3 MS. ZACK: Yes, Your Honor.

4 THE COURT: And I know that he has been kept under  
5 arrangements at the Bureau of Prisons. I leave it to the  
6 discretion of the bureau on the type of custody and  
7 conditions that should be applied consistent, of course, with  
8 the constitutional protections; but I think that the Marshals  
9 and the detention center are fully aware of the issues that  
10 need to be addressed, and any question on that account should  
11 promptly be raised with me.

12 Are there any motions that need to be filed and  
13 a schedule set for that or are you going to file a notice of  
14 appeal as soon as we impose sentence?

15 MR. BUCKLEY: I will await the natural course, Your  
16 Honor.

17 THE COURT: All right. Very good.

18 Anything else we need to do today?

19 MS. ZACK: Nothing from the United States, Your  
20 Honor.

21 MR. BUCKLEY: Nothing from the defense, Your Honor.

22 THE COURT: I am going to tell the jury that you can  
23 talk to them if they want to talk to you and only about  
24 counsel's performance, not about anything that happened in  
25 the jury room or that they considered or that influenced

1 their verdict one way or the other, all right?

2 MR. BUCKLEY: Yes, Your Honor.

3 THE COURT: And it is a sign that I trust counsel to  
4 stay well within the bounds.

5 MR. BUCKLEY: We will probably collaborate so that  
6 we can -- I wouldn't term it "fleece" each another, but we  
7 can do it together.

8 THE COURT: And I would not be surprised if many  
9 members of the jury are interested more in leaving than  
10 speaking with you.

11 MR. BUCKLEY: That's been my experience.

12 THE COURT: Yes. I think that's right.

13 Thank you all very much. It really was a  
14 well-trying case; and the Court is grateful, recognizing  
15 particularly the challenges that the case presented.

16 Thank you.

17 MS. ZACK: Thank you, Your Honor.

18 MR. BUCKLEY: Thank you, Your Honor.

19 THE COURT: You are all excused.

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22 (Conclusion of proceedings for July 23, 2018)

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CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 154 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable LEE H. ROSENTHAL, Chief United States District Judge, on the 23rd day of July, 2018.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 29th day of November, A.D., 2018.

          /s/ Fred Warner            
Fred Warner, CSR  
Official Court Reporter