

1 MR. DRIVER: State calls Doug Ertons.

2 THE COURT: Proceed, please.

3 MR. DRIVER: Thank you Judge.

4 **DOUGLAS ERTONS,**

5 having been previously duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 Q (BY MR. DRIVER) Please introduce yourself to
8 the ladies and gentlemen of the jury.

9 A My name is Douglas Ertons.

10 Q And where are you presently employed?

11 A I'm a forensic examiner for the Houston Police
12 Department, computers.

13 Q And what kind of forensics do you do?

14 A Basically computers, any kind of SmartMedia,
15 anything like that.

16 Q Digital devices?

17 A Yes.

18 Q And items capable of storing digital media?

19 A Correct.

20 Q How did you become qualified to be a digital
21 forensic examiner?

22 A I've taken certification courses with the SANS
23 Institute, which is a nationally recognized forensic
24 examination company. I've also gotten InCase
25 certification, which is the software that we use to

1 examine computers, and I've taken several courses
2 through NWC3, which is the National White Collar Crimes
3 Institute, and I also have FTK training, which is
4 another software that we use to examine computers.

5 Q Have you constructed forensic analyses on
6 computers on few or many occasions in the course of your
7 employment?

8 A Many.

9 Q And when you say many, does that mean a whole
10 heck of a lot or just a bunch?

11 A Hundreds and hundreds, yes.

12 Q Okay. And have you maintained those
13 certifications you have spoke about and kept up to date
14 with the technology as it's changed?

15 A I have.

16 Q Does technology change pretty quickly?

17 A Absolutely.

18 Q And in addition to being a forensic
19 investigator, are you a peace officer in the State of
20 Texas?

21 A I am.

22 Q Does that mean you went through a police
23 academy just like everybody else?

24 A Yes.

25 Q And you maintain your continuing education as

1 a normal officer would have to do as well as a peace
2 officer?

3 A Yes.

4 Q How long have you been assigned to the
5 forensic unit?

6 A Going on five years next month.

7 Q So how is it that you end up getting a case to
8 work on?

9 A There is suspicion that there is some criminal
10 activity going on in either a computer or a cell phone
11 or something along those lines and we are asked to
12 examine it for whatever the suspicious activity is.

13 Q So does an officer bring it into your lab?

14 A They do.

15 Q And once it's brought in -- how many officers
16 are assigned there with you?

17 A We currently have four officers and one
18 sergeant.

19 Q And does it matter who ends up taking in the
20 evidence from the various officers? Do you all rotate
21 who does that?

22 A It's just a matter of who is available when
23 the officer comes in. Some people may be busy, so an
24 officer will then take it.

25 Q So what's the intake process? What do you do?

1 A Basically you take the evidence items from the
2 officer, you tag it into our storage system and then you
3 give them a receipt for the evidence that they had
4 tagged in, including the name of the officer that took
5 the evidence from them, and then you take that item and
6 put it into our secure room.

7 Q So it is locked up?

8 A Yes.

9 Q And it's there with the paperwork that was
10 made at the intake when they're brought in?

11 A That's correct.

12 Q So how do you as an officer know to go in
13 there and take it out of that secure room?

14 A Each one of the items that we take in we'll
15 assign a certain number to it. Besides the case number
16 that HPD assigns to it, we also assign our own number to
17 it. So you actually have two separate numbers but they
18 remain for the same item. And we have a database system
19 that we just go in order. Whoever is ready for the next
20 one, we'll go in and we'll take the next item after
21 we're done with the previous item.

22 Q So in simple terms, if you started with the
23 number one, two, three, four for the different things
24 that come into the door and whoever is free will take
25 the next number?

1 A Yes.

2 Q Okay. So did you perform a forensic analysis
3 of some devices with your lab number 2012-206?

4 A I did.

5 Q And is that also related in some way in police
6 incident number or HP incident number 074733912H, like
7 Harry?

8 THE COURT: One more time.

9 Q (BY MR. DRIVER) 074733912, Harry, H?

10 A Yes.

11 Q Those are associated together?

12 A They are.

13 Q And when did you first become involved with
14 that particular case?

15 A I started the exam on 8-31 of 2012.

16 Q And what specific devices were you asked to
17 examine in that case?

18 A In this case there was a Compaq Presario
19 desktop, an HP Pavilion laptop and a Samsung camera.

20 Q I'm going to show you what has been admitted
21 as State's Exhibit 28. Is this the Compaq desktop
22 computer that you were referring to?

23 A Yes.

24 Q And State's Exhibits 29 and 30, are those the
25 laptop computer you just referred to?

1 A Yes.

2 Q And State's Exhibits 38 and 39, are those the
3 camera?

4 A They are.

5 Q Did you perform a forensic examination on each
6 one of those devices?

7 A I did.

8 Q Did you number them in some special way so you
9 could keep track of which device was which when you were
10 working with it?

11 A Actually they're numbered when they come in.
12 The officer that takes it in, he'll assign, like if you
13 have two computers, it will say CMP1, CMP2, as they go
14 along. And if you have like a camera, we'll put CAM1,
15 CAM2, in that order. And then we take however the
16 officer assigned those numbers and we'll use that as
17 reference when we do our forensic examination.

18 Q Let's talk specifically about the desktop
19 computer. What was the identifying number that you had
20 assigned or somebody had assigned on that one?

21 A CMP1.

22 Q CMP1. When you did your forensic examination
23 on CMP1, what's the first step you take with the desktop
24 computer?

25 A What I'll do is I'll take the computer itself,

1 I'll take photographs of it, I'll pop the tray to make
2 sure there's no disk inside, then I'll take pictures of
3 it all the way around and then I'll open it up and then
4 I'll take pictures inside the computer and then pull the
5 drive out and I'll take pictures of the drive and then
6 I'll label the drive.

7 Q Once you have the drive removed, what do you
8 do with it?

9 A I take photographs of it. I label it, like I
10 said, to associate it with that computer and then I will
11 hook it up to a hardware write block and my InCase
12 software and start to image it.

13 Q Okay. So you've said something that some
14 people may not be familiar with. What is a write
15 blocker?

16 A A hardware write blocker is basically a device
17 that keeps us from writing anything to the drive itself.
18 We don't want to go in there and corrupt the data. So
19 we're only reading off it.

20 Q So do you make a copy of that disk in some
21 way?

22 A Yes.

23 Q How do you that?

24 A Our InCase software makes images of that drive
25 and we call them E01 images basically. And then we take

1 those images and that's what we examine. We don't
2 actually do an examination of the device itself.

3 Q Is that to preserve the integrity of the data
4 that's on that hard drive?

5 A Yes.

6 Q And when you make that copy, is it an exact
7 copy of what was on that drive?

8 A It is.

9 Q When you're using your forensic software --
10 well, what exactly does the forensic software do with
11 the data that you copy?

12 A It takes it and it compresses it, for one
13 thing, so we have more storage data, but it also makes
14 what we call hash value, and a hash value is basically
15 identifying that all the data on here has to remain
16 exactly the same. If you change one bit of data on
17 there, the hash value will be completely different. So
18 if I were to go back and load that image again and it
19 doesn't match the hash value I first got at the
20 beginning, we would know something has changed?

21 Q So this is just another safeguard to prevent
22 change in the data before or after your analysis?

23 A Yes.

24 Q Okay. In this case what particular kinds of
25 information were you looking for during your forensic

1 examination of the computer?

2 A The case agent requested us to look for any
3 child pornography.

4 Q Did you find any child pornography on that
5 computer?

6 A I did.

7 Q Where did you find it?

8 A I found it in two different locations. There
9 was a space called system file allocations -- I'm sorry,
10 system -- I'm sorry. Give me a second. System volume
11 information and also unallocated space.

12 Q All right. Those two different places, what
13 do they indicate to you when you find them in those
14 specific places?

15 A Well, there's two different things you get
16 from that. When you find stuff that's in unallocated
17 space, that means it's been deleted. When you find
18 stuff in the system volume information, that means that
19 was on the system at the time and there was a snapshot
20 taken of it.

21 Q And then at some future time if it was
22 changed, you can still go back, like that system restore
23 point we might be familiar with on Windows.

24 A Correct.

25 Q So you found child pornography in both of

1 those areas?

2 A I did.

3 Q And did you and I go through the results of
4 your findings and select a few of those images and place
5 them on a disk?

6 A We did.

7 Q About 40 images. And from which place?

8 A From the system volume information.

9 MR. DRIVER: May I approach the witness
10 Judge?

11 THE COURT: You may.

12 Q (BY MR. DRIVER) Looking at State's Exhibit
13 43, is this the disk that you and I compiled of the
14 images, some of the images, a sampling of the images
15 that you collected, and specifically there are about 40
16 images from the forensic report that you made on the
17 defendant's computer CMP1?

18 A Yes.

19 MR. DRIVER: State offers State's Exhibit
20 43 and tenders to opposing counsel.

21 MR. DRIVER: Judge, may we approach?

22 THE COURT: Yes.

23 (Bench discussion:)

24 MR. DRIVER: Could we have a brief
25 recess. He needs to take a look at it and see what it

1 is.

2 THE COURT: All right.

3 (In the hearing of the jury)

4 THE COURT: Members of the jury, we need
5 you to step back for a minute.

6 (Recess taken)

7 MR. SCOTT: In relation to 43, Judge, we
8 would object to the images, one in relation to
9 preserving our objection to the original introduction of
10 that type of material in this case under the
11 circumstances of a man charged with aggravated sexual
12 assault of a child. Also, that there are numerous
13 photographs that are not in the Code as far as explicit
14 information or images, I'm sorry. Images. Therefore,
15 we would object.

16 THE COURT: I'm sorry, what did you say?
17 You're saying there are images that are not in the Code
18 what?

19 MR. DRIVER: I think his objection is
20 some of the images don't meet the definition of child
21 pornography.

22 MR. SCOTT: Correct.

23 MR. DRIVER: But, again, I'm not offering
24 them to show that they're child pornography.

25 THE COURT: Yes, that's what I

1 understand. So your objection is overruled.

2 We can bring the jury back, please.

3 (Jury seated)

4 THE COURT: Please be seated.

5 We're going to continue direct
6 examination. At the time the jury was excused, I
7 believe State's 43 had been tendered.

8 MR. DRIVER: Yes, Judge.

9 THE COURT: Is there objection on the
10 record outside out the presence of the jury?

11 MR. SCOTT: Yes, sir.

12 THE COURT: Overruled. State's 43 is
13 admitted.

14 Q (BY MR. DRIVER) The images that we are seeing
15 on the screen, are they what you would term pornography?

16 MR. SCOTT: If it please the Court, I
17 would object. This calls for an opinion from this
18 officer that has not been proven up to be qualified.

19 THE COURT: Sustained.

20 Q (BY MR. DRIVER) When you said you were
21 searching for child pornography, are these the types of
22 images that you were speaking about?

23 MR. SCOTT: If it please the Court, that
24 would call for an opinion on his part.

25 THE COURT: No, he can ask the part about

1 whether or not this is what he was looking for.

2 A This is what I was looking for.

3 Q (BY MR. DRIVER) Are you familiar, as a peace
4 officer, with the Texas Penal Code definition of child
5 pornography?

6 A Yes, sir.

7 Q Are any of these -- do you believe as an
8 officer that any of these meets that definition?

9 MR. SCOTT: If it please the Court, I
10 would object again. It calls for a legal conclusion.

11 THE COURT: Approach, please.

12 (Bench discussion:)

13 THE COURT: I'm going to continue along
14 this line to sustain these objections.

15 MR. DRIVER: Okay. I'll move away from
16 it. I'll move away from it.

17 (In the hearing of the jury)

18 THE COURT: That last objection was
19 sustained.

20 Q (BY MR. DRIVER) Are these the images that you
21 found on CMP1?

22 A They are.

23 Q Some of them?

24 A Some of them, yes, sir.

25 Q Are they typical of many of the images that

1 you located?

2 A They are.

3 Q And how many different images did you find
4 there?

5 A On the --

6 MR. SCOTT: If it please the Court, we
7 would object. The exhibit has been offered and we feel
8 he is restricted to those images on that particular
9 exhibit, Your Honor.

10 THE COURT: That's overruled.

11 A On the system volume information I found
12 approximately 40 images, child rocket pornography, and
13 then on the unallocated, I found a couple hundred.

14 THE COURT: On the what?

15 THE WITNESS: On the unallocated space.

16 Q (BY MR. DRIVER) In your opinion are these
17 types of images that would be harmful to a young child
18 if they were to see them?

19 MR. SCOTT: If it please the Court, once
20 again, we would object.

21 THE COURT: Sustained.

22 Q (BY MR. DRIVER) Are they images that would
23 appeal to a sexual --

24 MR. SCOTT: If it please the Court, we
25 would --

1 THE COURT: Sustained. Approach, please.

2 (Bench discussion:)

3 THE COURT: If you're ever going to prove
4 them up, this isn't required.

5 MR. DRIVER: No, all I'm doing at this
6 point is proving up the harmful material thing. That
7 has to be something that appeals to the prurient
8 interest of the child. That's the element of the
9 offense, and I think --

10 THE COURT: We're not going into one of
11 these offenses?

12 MR. DRIVER: No, no. This is what I was
13 talking about, the offense to Timothy Storemski.

14 THE COURT: Well, just a minute ago you
15 said prurient interest of the child.

16 MR. SCOTT: Prurient interest of the
17 defendant.

18 MR. DRIVER: No, of the child who viewed
19 the harmful material, he displayed the harmful material
20 to.

21 THE COURT: Well, you think he can
22 testify to that?

23 MR. DRIVER: Well, he can at least say
24 the character of the images appeal to the prurient
25 interest.

1 THE COURT: You don't think that's
2 something the jury can figure out? I won't let him
3 testify to that.

4 MR. DRIVER: Okay. I'll step away from
5 that.

6 (In the hearing of the jury)

7 Q (BY MR. DRIVER) Did you find any indications
8 on the computer that these images could have been
9 accidentally placed there in some way?

10 A No.

11 Q Did you find any indications that they were
12 intentionally sought?

13 A I did.

14 Q What kinds of indications did you find?

15 A One of the things we do is also Internet
16 history search. We look for key words that people look
17 for when they're searching the Internet. Like if you're
18 looking on Internet Explorer and you want to look up
19 Google and you type into Google, that will actually
20 record it in Internet Explorer. And some of the terms
21 that I found, among many, were, if you'll excuse the
22 phrases --

23 MR. SCOTT: If it please the Court, we
24 would object. There has been no evidence or no
25 predicate laid for him to testify as to this type of

1 information, Your Honor.

2 THE COURT: Are we referring to another
3 exhibit?

4 MR. DRIVER: We are about to, Judge.

5 THE COURT: I don't think we've had any
6 testimony whatsoever about that exhibit.

7 MR. DRIVER: No, not yet.

8 THE COURT: So I will sustain his
9 objection at this time.

10 Q (BY MR. DRIVER) Did you record all of that
11 information in specific documents?

12 A I did.

13 Q Did you compile them?

14 A I did.

15 Q And did you place those in your report?

16 A I did.

17 MR. DRIVER: May I approach the witness,
18 Judge?

19 THE COURT: You may.

20 Q (BY MR. DRIVER) I will show what you has been
21 marked as State's Exhibit 41. Is this a disk that
22 contains the three different documents you've compiled
23 with the Internet history of CMP1?

24 A Yes.

25 Q And you and I viewed this a little earlier

1 today, right? And this is the full version of it. Are
2 some of these documents quite lengthy?

3 A Very lengthy, yes.

4 Q And so do you think it would assist the jury
5 to be able to see portions of these documents, just kind
6 of taken out for their ease of use? And I'm going to
7 show you what I have marked as State's Exhibits 47 and
8 48.

9 A Yes.

10 Q And are all these bits of information, stuff
11 that came from CMP1?

12 A It is.

13 Q And did you use this information in your
14 forensic evaluation of that computer?

15 A I did.

16 MR. DRIVER: State offers State's
17 Exhibits 41, 47, 48 and tender to opposing counsel.

18 MR. SCOTT: We have no objection, Your
19 Honor.

20 THE COURT: State's Exhibits 41, 47 and
21 48 are admitted.

22 Q I want to talk a little bit about, first,
23 State's Exhibit 47, and I see that this is information
24 that came from the unallocated and I see a name here.
25 It says Leonard. What is that referring to?

1 A That refers to the count that that search was
2 performed under.

3 THE COURT: I'm sorry, is this 47 or 48?

4 MR. DRIVER: 47, Judge.

5 Q (BY MR. DRIVER) So I see in here www.google.
6 Com/search. Does this mean that what we're looking at
7 is a Google search?

8 A It does.

9 Q The rest of the information from this point
10 forward, is that the search terms that were sought
11 during this search?

12 A Yes. Did you see the "q" there? That means
13 query equals preteen.

14 Q Plus pussy.

15 A Correct.

16 Q So those two terms together were typed into
17 Google to search out information?

18 A Yes.

19 Q And going over to State's Exhibit 48, again, I
20 see a whole bunch of different information here. On the
21 left, is this, again, from the unallocated clusters you
22 mentioned before?

23 A Yes.

24 Q And under that same account is Leonard?

25 A It is.

1 Q And then a whole bunch of different websites.
2 Are these websites that were visited at some point on
3 that computer?

4 A Correct.

5 Q So nudeyounggirls.net is one of the URL
6 websites that was visited?

7 A It was.

8 Q I see over here on page 90 bing.com. What is
9 bing.com?

10 A It's just another search engine.

11 Q Again, "q" equals query. That means query
12 equals nude plus children. Does that mean that somebody
13 typed in nude children into bing, the search word?

14 A Yes.

15 Q Are those things consistent with the images
16 that you discovered in the actual -- in CMP1 as well?

17 A They are.

18 MR. DRIVER: I'll pass the witness, Your
19 Honor.

20 THE COURT: Proceed.

21 MR. SCOTT: Thank you, Judge.

22 **CROSS-EXAMINATION**

23 Q (BY MR. SCOTT) Officer, in relation to the
24 searching -- I probably can't go any further than plug
25 it in and on and off, quite frankly, but when you talk

1 to us about this process, you're talking about using
2 another program to look at a program, basically, right?

3 A It's a program to look at an image that we
4 created on the system.

5 Q How many of those separate programs are there,
6 do you know?

7 THE COURT: Hang on one second. Could
8 you all approach? This is a housekeeping matter.

9 (Bench discussion:)

10 THE COURT: Is 42 what was on the screen
11 or did you do that separately?

12 MR. DRIVER: No, 43. I'm not going to
13 admit it, Judge.

14 THE COURT: Okay. Thank you.

15 (In the hearing of the jury)

16 Q (BY MR. SCOTT) Okay, I can't even remember
17 where I was. You have a computer and you've got a
18 program and it looks up things on the program once you
19 start it?

20 A It looks for predefined things, yes.

21 Q And when you run that, these items that have
22 been shown to you or these, I guess, designations or
23 whatever you want to call them, list of things, those
24 are the things that came up during that process,
25 correct?

1 A They're not automatically. They don't
2 automatically do that. We have to actually go in, like
3 if we want to search for specific things like on
4 unallocated clusters, I have to check that off and say
5 what I'm looking for on unallocated clusters. It's not
6 an automatic process. It's manual. You have to go in
7 and tell it what you want to look for.

8 Q So that "q" thing that they were talking
9 about, then you would put "q" and then you type in
10 something, is that accurate or not?

11 A No, I don't put in "q." What InCase was
12 looking for is Internet Explorer history, and Internet
13 Explorer history, one of the things it does is it tracks
14 the queries that are put into it. So when I pulled all
15 this up, those were the queries that were put in under
16 the Leonard account.

17 Q And when were those put in there, do you know,
18 those queries?

19 A If you'll put it back up, it shows you on
20 there the dates that those were put on, because Windows
21 Explorer tracks those dates, the ones that were put in.

22 Q When the queries were put in?

23 A When the queries were put in, yes.

24 Q Does it show, likewise -- where did that thing
25 go? I got to read that exhibit.

1 MR. SCOTT: Is it up there?

2 MR. DRIVER: I think I put it up there.

3 MR. SCOTT: Could I approach, Your Honor?

4 THE COURT: You may.

5 Q (BY MR. SCOTT) Can you point that out to me,
6 what we're talking about here?

7 A If you're talking about when these entries
8 were made, these are the dates and times right along in
9 here.

10 Q Aah. Thank you.

11 MR. SCOTT: May I approach again, Your
12 Honor?

13 THE COURT: You may.

14 Q (BY MR. SCOTT) Officer, I can't start to
15 decipher this at all, so let me ask you. On Exhibit 48,
16 once again, this was taken out of -- 43, the big disk,
17 right?

18 A Right.

19 Q And you say these are the dates, so it shows
20 the dates all the way down when that was done, right?

21 A Yes.

22 Q Is that 2001 then?

23 A 2011.

24 Q Oh, '11. So in 2011 all done in -- I see.
25 2011, it looks like, right?

1 A Correct.

2 Q And in 47, 2011, correct?

3 A Yes.

4 Q Were you able to track through those queries
5 that are on that blog history log to the photographs?
6 Is that the way that works? You go query, the writing,
7 the history log, and then see what's at the end of that
8 or not?

9 A No. When you pull that query, it's just going
10 to give you a listing of places that you want to go and
11 see the images.

12 Q So if you went to visit -- and I don't
13 remember. I won't walk up there again. Does it tell
14 you how long those were on there? That just shows you
15 the date and time of the query, correct?

16 A Right.

17 Q On the list I've got up there, 47 and 48. So
18 a person does the query, and wherever that might go,
19 might be the end of the query, or you can't tell where
20 that ends up, can you?

21 A You can't tell from that, no.

22 Q Right. What can you tell from?

23 A That it is an obvious search for nude
24 children.

25 Q Well, but you don't know whether that's

1 successful, do you? When you do that, you don't have a
2 guarantee that -- I don't know, I looked up airstream
3 one time and I couldn't find a one, and I knew they were
4 out there. But you don't know where it goes then, do
5 you, actually?

6 A No.

7 Q All right.

8 MR. SCOTT: Pass the witness.

9 MR. DRIVER: Just one more clarification.

10 **REDIRECT EXAMINATION**

11 Q (BY MR. DRIVER) When you were looking through
12 all the different files on that computer, did you see
13 any files that indicated who the owner or user of that
14 computer was?

15 A They was also unallocated space that were
16 images of documents that belonged to the defendant.

17 Q And they had his name on them?

18 A They did.

19 Q And they said Leonard Storemski?

20 A They did.

21 Q Did you see pictures that looked like family
22 pictures on there?

23 A They looked like pictures, regular home
24 pictures, yes.

25 Q And did they depict a young girl and a young

1 boy, blonde hair?

2 A They did.

3 Q Not like nude pictures, but just like family
4 function type pictures, that kind of thing?

5 A Yes.

6 Q And you found those images and you found some
7 documents that seemed to be related to Leonard
8 Storemski?

9 A I did.

10 Q And were they found in the same place that you
11 found some of these images?

12 A They were.

13 MR. DRIVER: Pass the witness.

14 MR. SCOTT: No further questions, Judge.

15 THE COURT: You may stand down.

16 What says the State?

17 MR. DRIVER: State rests, Judge.

18 THE COURT: What says the defense?

19 MR. SCOTT: We would like to make a
20 motion, if we might.

21 THE COURT: All right. Let's do it up
22 here.

23 (Bench discussion:)

24 MR. SCOTT: We would move for a directed
25 verdict of not guilty in that the State has wholly