

## EXHIBIT INDEX

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1 THE COURT: Both sides ready to proceed  
2 this morning?

3 MR. DRIVER: Yes, sir.

4 MR. WILLIAMS: Yes, sir.

5 MR. DRIVER: I think I passed the  
6 witness.

7 THE COURT: Okay. Mr. Williams?

8 MR. WILLIAMS: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. WILLIAMS:

11 Q. Corporal Lee, I want to go back to the area of  
12 your testimony where you were talking about collecting  
13 CDs from the house.

14 A. Yes, sir.

15 Q. Okay. And you made a compilation of those CDs  
16 and you designated in the CDs -- or DVDs Spindles 1, 2,  
17 3, 4 and loose CDs and DVDs.

18 A. Yes, sir.

19 Q. That is the list you compiled; is that  
20 correct, sir?

21 A. Yes, sir.

22 Q. Where did you obtain the CDs that you list on  
23 Spindle 1?

24 Where did you get those from in the  
25 house?

1           A.    It's my understanding that the loose CDs and  
2 DVDs were collected from the master bedroom for the  
3 spindles.

4           Q.    So, when you got the spindles for examination,  
5 you -- well, when you got the spindles, did you give  
6 them the -- did you classify Spindles 1, 2, 3, 4 and  
7 loose CDs?

8           A.    When the spindles came to me -- the DVDs and  
9 CDs came to me, they were in the bag that they're in  
10 now.

11          Q.    All right.

12          A.    And in order to keep the spindles in my mind  
13 separate, I put labels on them, 1, 2, 3 and 4.

14          Q.    All right. Do you know -- you were told then  
15 where they came from; is that correct?

16          A.    Yes, sir.

17          Q.    Okay. Were you told where they came from in  
18 the master bedroom? Like were they in a closet, were  
19 they in that bag? Do you know if any of the spindles  
20 that are depicted in some of the evidence that's been  
21 admitted here?

22          A.    The spindles -- what I know about the location  
23 of the spindles would be in the crime scene photographs  
24 that I took and also from the notations that were made  
25 on the search warrant return.

1 Q. All right. So, you took the photographs and  
2 there were some photographs of some spindles of CDs?

3 A. That's correct.

4 Q. Do you know if those -- those spindles or the  
5 spindles that you examined or were you handed spindles  
6 from some other person in the investigation?

7 A. The evidence was collected and categorized in  
8 a -- the warrant return. And then it was -- they were  
9 all placed into that large bag and brought.

10 As far as their specific locations as to  
11 where the spindles were in the room, that was not  
12 noted.

13 Q. Okay.

14 MR. WILLIAMS: May I have just a moment,  
15 Judge, to look at the inventory list on the warrant?

16 THE COURT: Yes, sir.

17 Q. (BY MR. WILLIAMS) Let me ask you this: Do  
18 you have a copy of your warrant there in front of you,  
19 the affidavit?

20 Okay. On that warrant, there's a return  
21 that lists all the items recovered; is that correct?

22 A. Not in this copy that I have, sir.

23 Q. Okay. Let's see.

24 MR. WILLIAMS: May I approach, Your  
25 Honor?

1 THE COURT: Yes, sir.

2 Q. (BY MR. WILLIAMS) I'll show you what's been  
3 marked for identification only as Defendant's Exhibit  
4 No. 2, consisting of three pages that are affixed to  
5 the back of the search warrant. Is that the return or  
6 is that some other document?

7 A. This appears to be a copy of the RCFL written  
8 report.

9 Q. This is not a return from -- from the items  
10 that were recovered from the search warrant?

11 A. No, sir. That is a denotation of the RCFL  
12 report.

13 MR. WILLIAMS: I'd ask the State, Your  
14 Honor, if they have a copy of the return.

15 THE COURT: All right. State, do you  
16 have a copy of that?

17 MR. DRIVER: Let me just check, Judge. I  
18 believe I do.

19 THE COURT: Just so the record is clear,  
20 according to my notes, State's Exhibit No. 1 was the  
21 search warrant, not including the affidavit. Just the  
22 warrant portion was admitted for both purposes of the  
23 motion to suppress and then admitted for the purposes  
24 of the court trial also.

25 Defense Exhibit 1 was the affidavit that,

1 which was only admitted for the motion to suppress and  
2 not for the trial purposes. That's what the court  
3 reporter has for her notes as well. So, I just want to  
4 make sure everyone is clear on that when we're talking  
5 about warrants.

6 MR. DRIVER: Yes, Judge. That's what I  
7 believe.

8 MR. WILLIAMS: May I proceed, Judge?

9 THE COURT: Yes, sir.

10 Q. (BY MR. WILLIAMS) So, I'll show you what's  
11 been marked for identification purposes only as  
12 Defendant's Exhibit 3. Can you tell us what that is?

13 A. That is the inventory for the search warrant.

14 Q. And --

15 MR. WILLIAMS: Judge, we'd offer into  
16 evidence and tender for inspection by counsel.

17 MR. DRIVER: No objection, Judge.

18 THE COURT: All right. No objection  
19 Defendant's Exhibit 3 will be admitted.

20 Q. (BY MR. WILLIAMS) Is this the only inventory?  
21 In other words, that's it in its -- in total?

22 A. Yes, from the search warrant.

23 Q. There's no other document listing other items  
24 that were taken?

25 A. No, sir.

1 Q. Okay. And on the document, where do you list  
2 the CDs or DVDs that were taken?

3 A. The items were miscellaneous non-com, which  
4 stands for non-commercial DVDs and CDs.

5 Q. Okay. So, that is supposed to be all the  
6 spindles and everything under that one descriptor?

7 A. Yes, sir.

8 Q. Okay. And, of course, this doesn't enumerate  
9 how many they are or what types they are or what  
10 spindles or anything, just CDs?

11 A. CDs and DVDs, yes, sir.

12 Q. Okay. Did you make this list of the  
13 inventory?

14 A. No, sir, I did not make the inventory list.

15 Q. Who made this list?

16 A. The -- Investigator Foty down here at the  
17 bottom.

18 Q. Okay. Now, you may have already answered  
19 this, Corporal Lee, but let me ask it again for my  
20 clarification.

21 In one of the photographs that you took  
22 in the master bedroom, did it not depict a computer  
23 with some spindles on it of CDs?

24 A. I recall a photo with a computer with some CDs  
25 on a spindle near the bottom.

1 Q. Okay. And you didn't collect those; is that  
2 correct?

3 A. No, sir, I did not.

4 Q. Is it not your testimony that those CDs are  
5 the ones that you examined and categorized in your  
6 CD/DVD summary? Is that your testimony?

7 A. Yes, sir.

8 Q. Okay. That those are not the ones that you  
9 categorized?

10 A. No, sir. Everything that was in the bag that  
11 was listed as Item No. 1 is what I categorized.

12 Q. All right. So, if those CDs were in the bag  
13 -- well, you don't know exactly where -- you didn't  
14 collect those CDs and put them in that bag that came to  
15 you; is that correct?

16 A. No, sir, I did not.

17 Q. All right. And they were given to you by some  
18 other person. So, you don't know exactly where they  
19 were obtained from except somewhere in the house; is  
20 that correct?

21 A. Well, the search warrant return indicates they  
22 came from the MBR, which we use for -- stands for  
23 master bedroom.

24 Q. Okay. Is that the person who collected them,  
25 the man who did that inventory?



1 A. Who made the notation?

2 Q. Right.

3 A. Yes, sir.

4 Q. Okay. And those are all the CDs and DVDs you  
5 received?

6 A. Yes, sir.

7 Q. Okay. And is he the one who separated out the  
8 commercial from the others or did you?

9 A. I believe there was -- I can't remember exact  
10 number of the commercial ones that were in there. But  
11 the -- the spindles -- when spindles were collected,  
12 they're collected as is.

13 Q. Okay. So, what I was asking though: Are you  
14 the one who -- you said a moment ago this is the list  
15 of all the CDs and things that we took that were not  
16 commercial. Did you not say that?

17 A. Yes, sir.

18 Q. So, who separated the commercial from those  
19 that you got?

20 A. When I went through the CDs and DVDs and the  
21 spindles, I believe the only non-commercial one I found  
22 was the loose in the bottom of the bag.

23 Q. The only non-commercial one?

24 A. Or the commercial one. I'm sorry. I  
25 misspoke.

1 Q. Yeah. But my question was: Who separated the  
2 commercial CDs and DVDs from those you received?

3 A. On the scene?

4 Q. Yes, sir.

5 A. Any number of one of the investigators, sir.

6 Q. Okay. This Investigator Foty -- is that how  
7 you say that, F-o-t-y?

8 A. Yes, sir.

9 Q. Okay. Is he available? Is he here?

10 A. No, sir, he's not.

11 MR. DRIVER: For the Court's  
12 clarification, I have informed him that he might be  
13 needed. So, he'll be on his way right now.

14 MR. WILLIAMS: We're asking that he be  
15 asked to come down, Judge.

16 MR. DRIVER: Yeah. I informed him. He's  
17 on his way.

18 MR. WILLIAMS: Thank you.

19 THE COURT: Okay. He's on his way.

20 Q. (BY MR. WILLIAMS) Now, do you have your  
21 CD/DVD summary in front of you?

22 A. No, sir, I don't.

23 Q. Do you recall on Spindle 1 that you referred  
24 to some disk labeled V-50, V-37, V this, that and the  
25 other?

1 A. Yes, sir.

2 Q. Did you give them that number?

3 A. No, sir. There was -- they were labeled as --  
4 when they were recovered, they were labeled with that  
5 notation.

6 Q. Okay. Did that appear to you to be a label  
7 that your department put on there or do you think it  
8 was already there at the time they were collected?

9 A. I believe it was already there.

10 Q. At the time they were collected?

11 A. Yes, sir.

12 Q. Okay.

13 MR. WILLIAMS: May I have just a moment,  
14 Judge?

15 THE COURT: Yes, sir.

16 (Brief pause).

17 Q. (BY MR. WILLIAMS) Do you recall -- did you  
18 see any DVDs or CDs anywhere else in the house loose,  
19 on the spindles or anything else other than the master  
20 bedroom?

21 A. Not that I can recall, sir.

22 Q. You're not the one who searched the entire  
23 house, were you?

24 A. No, sir.

25 Q. Now, where was Mr. Luna when you-all broke in

1 the house?

2 A. I did not see what was going on inside the  
3 house because I was further back in the stack. But I  
4 believe he was encountered towards the master bedroom.

5 Q. Okay. And was there any problem or any  
6 resistance on his part in making the arrest?

7 A. I did not see that.

8 Q. Have you heard anything about that?

9 A. I heard that there was -- there was an issue  
10 with him coming towards the door and then turning  
11 around and going back inside the residence -- deeper  
12 inside the residence.

13 Q. Okay. Did y'all knock or did y'all just go  
14 in?

15 A. We knocked.

16 Q. Okay. Was it one of those knock, knock, boom  
17 come on in the house?

18 A. No, sir. We knocked and announced.

19 Q. And announced?

20 A. Yes.

21 Q. Okay. How long was it before you saw Mr. Luna  
22 after you entered the house?

23 A. I'm not sure, maybe a minute or so, maybe.

24 Q. Okay. And did you handle him in any way or  
25 talk to him or have anything to do with him in your

1 part of the investigation?

2 A. Not that I can recall.

3 Q. Okay. Now, I believe you testified yesterday  
4 that you are the one who went through all those DVDs  
5 and CDs that were recovered; is that correct?

6 A. That is correct.

7 Q. Okay. And the images that are the subject  
8 matter of this prosecution, that is the ones that are  
9 depicted in the indictment itself, those images, were  
10 they discovered in that group of CDs?

11 A. You mean the ones that are listed in the  
12 affidavit for the search warrant?

13 Q. No. The ones that were recovered in that bag  
14 that was given to you. Did they come off of those CDs  
15 or DVDs?

16 There are five images that are being  
17 offered in this case, one per indictment.

18 A. Yes.

19 Q. There are four images and one video.

20 A. Yes, sir.

21 Q. They were taken from somewhere in the house,  
22 we presume.

23 A. Yes, sir.

24 Q. And I'm asking you: Did they come from one of  
25 the CDs that was in the package that was given to you

1 by Officer Foty?

2 A. Yes, they did.

3 Q. That's where they came from?

4 A. Yes.

5 Q. All right. And did you enumerate which DVD or  
6 CD it came from?

7 A. No, sir.

8 Q. In other words, you took the image off of  
9 there and you didn't mark it any kind of way so we  
10 could -- someone could come back and find that same  
11 image or --

12 A. I may have made some notes, but I don't -- I  
13 don't have them.

14 Q. Well, I understand you're under oath and that  
15 you're an officer and all that, you're asking us to  
16 just take your word that's where the image came from,  
17 one of those CDs or DVDs. I mean, you can't show us  
18 which one you took the image off?

19 A. Not off hand, sir.

20 Q. I'm sorry?

21 A. Not off hand, sir.

22 Q. Well, how about on hand? Can you take a look  
23 at them and see if you maybe marked one to see where  
24 those images came from that are in your indictment?

25 A. I never marked on the CDs.

1 Q. Have you seen those images and videos that the  
2 State intends to offer as part of its proof to these  
3 indictments?

4 A. Yes, I have.

5 Q. Okay. And are they the ones that you  
6 recovered for the State?

7 A. Yes.

8 Q. And when you gave it to the State, those  
9 images that were going to be used, how did you give it  
10 to them?

11 A. I brought a -- CDs down to the DA's office and  
12 allowed them to view it.

13 Q. You said brought a CDs, is that one or some  
14 CDs?

15 A. I believe I brought a couple down for the  
16 review.

17 Q. And so, apparently then the images came off  
18 those couple?

19 A. They may have. We brought some down. The DA  
20 looked at them. And that's my recollection.

21 Q. Well, if they didn't come off those two, where  
22 else would they come off?

23 A. They would have had to come off the CDs.  
24 Because we didn't take any of the images off the drives  
25 for the indictment.

1 Q. Okay. So, you took them -- you took a couple  
2 of CDs. By a couple, do you mean two?

3 A. Two to three, perhaps.

4 Q. Two to three.

5 You're the one that took them down there?

6 A. I took some down there after we filed the  
7 charge, yes.

8 Q. Yes. That's what I'm asking.

9 Are you the person who took those down  
10 that contain the images that are in the indictment?

11 A. Yes.

12 Q. Okay. And you gave those three to whoever was  
13 handling the case at the time; is that correct?

14 A. Let them look at them, yes.

15 Q. That probably wasn't Stephen. Probably  
16 another assistant DA -- not Mr. Driver. Another  
17 assistant DA at the time?

18 A. Yes.

19 Q. And did he give them back to you at some point  
20 in time?

21 A. They were evidence CDs. Yeah, they were given  
22 back.

23 Q. To you?

24 A. Um-hum.

25 Q. Okay. And you took those three CDs and you



1 just to tossed them back in the bag?

2 A. I put them attached to a spindle.

3 Q. Do you know which spindle you put them on?

4 A. No, sir, I don't.

5 MR. WILLIAMS: May I have just one  
6 moment, please, sir?

7 THE COURT: Yes, sir.

8 (Brief pause).

9 Q. (BY MR. WILLIAMS) One other question -- a  
10 couple of questions.

11 Do you -- you testified that you're  
12 pretty familiar with computers and how they operate and  
13 stuff like that, right?

14 A. I have a familiarization, yes.

15 Q. Okay. Do you consider yourself an expert in  
16 the area?

17 A. No.

18 Q. Okay. Do you know whether or not you can  
19 download a -- some data having only the hash value?

20 A. Can you say your question again, sir?

21 Q. Can you download data on a computer having  
22 only the hash value of the item you want to download?

23 A. I'm not sure.

24 Q. Okay. Do you know whether or not hash values  
25 or SHA numbers indicate whether or not a file is

1 complete or not if it's found on a computer?

2 A. Not that I'm aware.

3 Q. Sir?

4 A. I don't -- I don't think you can tell by the  
5 hash value if it's complete or not.

6 Q. Okay. Could it mean that there are only  
7 fragments of a file on a computer?

8 A. I believe it could.

9 Q. Particularly in a peer-to-peer sharing  
10 network, these images may come from all different  
11 peers; is that correct?

12 A. It can.

13 Q. And if a piece of it is downloaded, then you  
14 may see that SHA number as if the whole file exists on  
15 that computer; is that correct?

16 A. I'm not sure.

17 Q. Well, you are sure though that a SHA number  
18 can appear and a file may not be complete on the  
19 computer on which the SHA number appears; is that  
20 correct?

21 A. I believe the value can -- you know, reflects  
22 a data set and as far as an incomplete download will  
23 have a different value than a complete one,  
24 representing a file.

25 Q. You think it will have a different SHA number,

1 an incomplete download?

2 A. I believe so.

3 Q. And finally, if the file is not complete, can  
4 you download it?

5 A. You can -- you can download what -- what is  
6 available of the file.

7 Q. Even though a file is not complete?

8 A. I'm not sure on the mechanics of that.

9 Q. You're not sure.

10 Now, is it -- is it typical of your  
11 office and of your practice as a police officer to  
12 submit evidence to another authority like the district  
13 attorney's office without marking what that evidence  
14 is?

15 A. Marking it as far as which ones I took down.

16 Q. Yeah. Like initial it, like this came from me  
17 to Mr. Driver or whomever.

18 A. Is there a practice?

19 Q. Is that something you do?

20 A. I have done it.

21 Q. Did you do it in this case?

22 A. I made some notations as to which disks were  
23 turned over, but I don't have those available.

24 Q. You don't have what available, the notes?

25 A. The notations, yes.

1 Q. Where is it? Those notes, where are they?

2 A. I don't have them in my office. So, I don't  
3 know if I discarded the notes or not.

4 Q. Don't tell me they're at home. Now, you know  
5 we just went through that with HPD.

6 A. No, sir. I don't take that stuff home.

7 Q. Okay. So, don't know where they are?

8 A. No, sir.

9 Q. Well, you handle, I guess, hundreds and maybe  
10 even thousands of CDs at that office, don't you, when  
11 you're doing these kind of investigations?

12 A. Sure.

13 Q. Well, how do you keep them apart? I mean, if  
14 you have no way of labeling them, do you just throw  
15 them back in the pile or you don't know where you put  
16 them or you don't know which ones you gave them or you  
17 don't know which ones you put back or where they are or  
18 you can't recover them or can't see the notes?

19 How do you, you know, keep up with the  
20 stuff?

21 A. That was the particular case that I was  
22 working on at the time. And I know where the disk came  
23 from. And I know that they belong there when I  
24 returned them back.

25 Q. But the only way that we could see what it is

1 you drew your information from would be if we went  
2 through each and every disk that we have here?

3 A. I would be able to recognize which particular  
4 disk it came from if I saw it again.

5 Q. If you saw it again?

6 A. Sure.

7 Q. Okay. Well, after I pass you, I'll ask the  
8 Court to allow you look at the evidence to see if you  
9 can recognize those CDs.

10 MR. WILLIAMS: May I do that, Judge,  
11 after we finish with the witness?

12 THE COURT: Yes, sir.

13 MR. WILLIAMS: Thank you.

14 Q. (BY MR. WILLIAMS) Now, did you do any further  
15 investigation of this matter, that is, into the family  
16 life of Mr. Pachas-Luna?

17 A. Pertaining to what?

18 Q. Well, talking to -- to see if he had any  
19 relatives, to see if anybody frequented his house or to  
20 see if any children had been there or anything like  
21 that?

22 A. Some inquires were made. I believe he had  
23 family next door.

24 Q. Next door.

25 And do you know if that consisted of a

1 brother or do you know?

2 A. I believe it was his brother.

3 Q. And they had children; is that correct?

4 A. Yes.

5 Q. Okay. And those children visited; is that  
6 correct?

7 A. I did not receive any direct information on  
8 that.

9 Q. Don't know?

10 A. No.

11 Q. Okay. The dolls -- stuffed animals you found  
12 in the house, the train set and that nice little  
13 village that went with it, is that unusual for people  
14 to have in their house around Christmastime?

15 A. I wouldn't say so.

16 Q. Okay. And I mean in and of itself. I don't  
17 mean as a total picture. But you -- do you have a  
18 train set like that?

19 A. Not like that.

20 Q. Okay. Do you have a village like that that  
21 you put out at Christmas?

22 A. We have a of couple structures, sure.

23 Q. Okay. Yeah. And do you have any stuffed  
24 animals or do you think that's unusual to have stuffed  
25 animals at the house even though you don't have

1 children?

2 A. It struck me as unusual.

3 Q. Well, would you think it was -- do you have  
4 nieces and nephews, children that are cousins and  
5 things like that?

6 A. I do.

7 Q. Okay. Do you keep things around the house to  
8 play with when they visit or maybe you have kids and  
9 it's already there. I don't know.

10 But would that be unusual for someone to  
11 keep those kind of items around for the kids to play  
12 with when they come?

13 A. Some items.

14 Q. Okay. Were there some that you didn't think  
15 that should have been there?

16 A. Well, I mean, a number of items, you know.

17 Q. You think there were too many. Is that what  
18 you're saying?

19 A. It struck me as a little odd, yes, sir.

20 Q. All right. But you didn't see any kind of  
21 unusual item likes a CPS doll or something that had CPS  
22 written on the back or anything like that?

23 A. No, sir.

24 Q. Okay. And any other kind of what we might  
25 call a deviant scenario of dolls or anything like that?

1 A. Not that I recall.

2 Q. Okay. Certainly you would have brought it  
3 here if you saw something like that?

4 A. If it was selected for some reason, yes.

5 Q. All right. And did you see any camera  
6 equipment in there, video equipment, things made for  
7 making movies or any setups like taking movies?

8 A. Other than a normal handycam, you know,  
9 digital type stuff.

10 Q. Okay. You saw a movie -- you saw theater; is  
11 that correct?

12 A. Yes.

13 Q And you-all -- you brought that picture of the  
14 theater. Did that have some significance to you, that  
15 there was movie theater in the home?

16 A. Just by the way with -- you know, with it the  
17 decorated with the lights and things. It was just --  
18 and the big -- the fans, it was unusual. I hadn't seen  
19 that before.

20 Q. What was it that was unusual?

21 A. The cooling fans for the DVD or the -- they're  
22 usually used in the computer desktops.

23 Q. What do you think those fans were used for?

24 A. I can't say for sure.

25 Q. Okay. So, that's why they struck you as



1 unusual, because you don't know what they were being  
2 used for. So, they're unusual?

3 A. Sure.

4 Q. Okay. You're not trying to suggest that they  
5 had some purpose, are you, that reflects upon what's  
6 going on in this case or evidence in this case?

7 A. No, I just -- I couldn't pin, you know, one  
8 reason specific. It was just unusual. I've never seen  
9 something like that before.

10 Q. All right.

11 MR. WILLIAMS: Thank you, Judge. We'll  
12 pass the witness, Your Honor.

13 THE COURT: All right. Mr. Driver?

14 MR. DRIVER: Thank you.

15 THE COURT: Hold on. Let me stop you  
16 right there.

17 Is there some DVD or CD or something that  
18 he needs to look at or --

19 MR. DRIVER: I've got that, Judge. And I  
20 can kind of do it during the course of testimony. If  
21 necessary, I can show it to you.

22 THE COURT: All right.

23 REDIRECT EXAMINATION

24 BY MR. DRIVER:

25 Q. Do you take evidence that has been submitted

1 to your property room and then just haphazardly treat  
2 it and lose it?

3 A. No.

4 Q. What do you do with the actual physical  
5 evidence, namely like the CDs and the drivers and the  
6 computers and things you collect?

7 A. From the scene on?

8 Q. Yes.

9 A. Generally they're, you know, brought back to  
10 the office where they are tagged -- property tagged and  
11 placed in either, you know, secure evidence lock up and  
12 where they're held until, you know, for review or sent  
13 out to RCFL.

14 Q. Do you tag the original evidence with  
15 identifying information so you know what case it  
16 belongs to?

17 A. The property tag has a case number on it.

18 Q. And is that unique to that particular case?

19 A. Yes.

20 Q. Once it's checked into the property room, is  
21 it in a secure location?

22 A. Yes.

23 Q. Once you take it back to your station, is it  
24 in a secure location?

25 A. From the search warrant?

1 Q. Yes.

2 A. Yes.

3 Q. And the place where you office, is that  
4 building a secure building?

5 A. Yes.

6 Q. Can random people wander into your office off  
7 the streets?

8 A. No.

9 Q. So, once you have custody, the original  
10 evidence, it's secure and it's tagged?

11 A. Yes.

12 Q. When you're talking to defense counsel about  
13 this -- these disks that you brought down for review,  
14 are these disks that you took some of the images and  
15 copied them onto another disk or did you take the  
16 original evidence with you down to talk to the DA?

17 A. The original evidence.

18 Q. So, did you take this whole stack of CDs and  
19 DVDs?

20 A. No, I just -- I just took some that I had  
21 already reviewed.

22 Q. And the purpose of that was for you and the  
23 district attorney that reviewed the case to come up  
24 with what charges were appropriate?

25 A. Yes.

1 Q. Now, you -- ultimately you aren't the ones  
2 that decides which evidence would be presented in  
3 court, right?

4 A. That's right.

5 MR. WILLIAMS: We'll ask him not the lead  
6 the witness.

7 THE COURT: Don't lead your witness.

8 Q. (BY MR. DRIVER) If you were to review each  
9 and every one of these disks and then look at the  
10 evidence CD I showed to you yesterday, could you  
11 identify where those images came from?

12 A. Sure.

13 Q. And for clarity sake, you reviewed each and  
14 every one of these disks already.

15 A. Yes.

16 Q. And you created a summary of --

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

19 THE COURT: Yes, sir.

20 Q. (BY MR. DRIVER) Did you create this summary  
21 that defense counsel was referring to?

22 A. Yes, I did.

23 Q. If I were to call your attention to what you  
24 labeled as Spindle 2 Drive F -- I mean, Disk F --

25 A. Yes.

1 Q. -- would that be consistent with your  
2 recollection of what is contained on that disk?

3 A. Yes.

4 MR. DRIVER: May I approach the witness,  
5 Judge?

6 THE COURT: Yes, sir.

7 Q. (BY MR. DRIVER) I'm going to show you what  
8 we've referred to previously as State's Exhibit 71.  
9 And I'm removing from it a spindle that has the label  
10 No. 2.

11 MR. DRIVER: And for purposes of the  
12 record, Exhibit 71 is a pinkish colored plastic bag  
13 containing four spindles of CDs and some miscellaneous  
14 loose CDs. Each of the spindles has a number affixed  
15 to it that's handwritten in marker.

16 Q. (BY MR. DRIVER) And I've pulled off of that  
17 spindle what's referred -- what has a marking on it as  
18 -- looks like an F.

19 A. Yes.

20 Q. Is this the marking that you were referring to  
21 in your own notes?

22 A. Yes.

23 Q. So, if you say that something is Disk F, is  
24 this Disk F?

25 A. That would be Disk F.

1 Q. And if we were to look on here, would you  
2 expect to see what you had mentioned there?

3 A. Yes.

4 MR. DRIVER: May I ask the witness to  
5 step down briefly, Judge?

6 THE COURT: Yes, sir.

7 MR. DRIVER: And I think for the purposes  
8 of the record, I will mark this Disk F separately as  
9 State's Exhibit 72, the same disk that we just referred  
10 to as coming from State's Exhibit 71. I'm going to  
11 affix State's Exhibit 72 to that.

12 MR. WILLIAMS: Your Honor, may I inquire  
13 of the State if they're about to play this CD for the  
14 Court or just allow the officer to compare what he sees  
15 to what he notated?

16 THE COURT: I'm assuming since it's not  
17 in evidence that he's just showing it to him and not to  
18 me.

19 MR. DRIVER: Right. I'm just complying  
20 with his original request that I have officer review.  
21 And that's what I'm having him do right now.

22 Q. (BY MR. DRIVER) Okay. First, I want to have  
23 you review State's Exhibit 68, which we previously  
24 referred to on the record.

25 (Brief recess).

1 THE COURT: Go ahead.

2 Q. (BY MR. DRIVER) So, you have now reviewed a  
3 couple of the disks with me that are contained within  
4 State's Exhibit 71. Are you able to say with  
5 specificity which disk in this whole collection  
6 contains the ones that we particularly discussed as  
7 meeting certain charges -- charging elements?

8 A. The disk label V-60.

9 Q. And again, just referring to State's Exhibit  
10 71. 72 is contained within it. I reinserted it.

11 So, State's 71 and its contents were  
12 collected from where?

13 A. The master bedroom of the location.

14 Q. Is that the defendant's residence?

15 A. That's correct.

16 Q. Now, when you are out on a search warrant,  
17 does just one person do everything?

18 A. No.

19 Q. Do you divide up different tasks?

20 A. Yes.

21 Q. And is one of the person's tasks to make an  
22 inventory and then help with that inventory return?

23 A. That's correct.

24 Q. In this case was that your job?

25 A. No.

1 Q. In this case though, did you see everything in  
2 its place?

3 A. Yes, during the crime scene photos and such.

4 Q. And --

5 MR. DRIVER: May I approach the court  
6 reporter?

7 Q. (BY MR. DRIVER) I just want to go briefly  
8 back to one of these exhibits.

9 Looking at State's Exhibit 18, is this  
10 one of the photographs you took?

11 A. Yes.

12 Q. And is this item that's depicted in State's  
13 Exhibit 18 beside the computer on the right-hand side,  
14 is that one of the spindles?

15 A. Yes.

16 Q. Did you observe it in that position?

17 A. Yes.

18 Q. And State's Exhibit 21, do you see these two  
19 items on the computer desk?

20 A. I do.

21 Q. Did you observe those also in the position?

22 A. Yes.

23 Q. All of the things that are on the bookshelf,  
24 did you see them in the position they were originally  
25 located?



1 A. Yes.

2 Q. And ultimately whose vehicle was it that they  
3 were loaded into upon collection?

4 A. My vehicle.

5 Q. And whose care, custody and control were they  
6 in from that point on?

7 A. Mine, back to the office for labeling.

8 Q. And then until you brought them to court?

9 A. That's correct.

10 Q. You reviewed -- I think you already testified  
11 that you reviewed each of these?

12 A. Yes.

13 Q. And is this -- is State's Exhibit 71 and the  
14 things contained in it, are they in substantially the  
15 same condition that they were in when you first  
16 received them and when you first tagged them into  
17 evidence?

18 A. Yes.

19 Q. Have they been altered in any way other than  
20 the numbers that were placed on there, as you testified  
21 to earlier?

22 A. No.

23 MR. DRIVER: State offers State's Exhibit  
24 71 and its contents and I'll tender to Mr. Williams.  
25 And that includes State's Exhibit 72, which is

1 contained therein.

2 MR. WILLIAMS: May I take the witness on  
3 voir dire, Your Honor?

4 THE COURT: Yes, sir.

5 MR. WILLIAMS: Thank you.

6 VOIR DIRE EXAMINATION

7 BY MR. WILLIAMS:

8 Q. Corporal Lee, these exhibits that Mr. Driver  
9 is attempting to offer now, are these the ones that  
10 were in the photographs that we just saw?

11 A. Yes.

12 Q. You didn't collect them; is that correct?

13 A. That's correct.

14 Q. How do you know they're the same ones that are  
15 in the photographs?

16 A. Because they were noted on the search warrant  
17 return as coming from the master bedroom.

18 Q. These were?

19 A. Yes.

20 Q. Okay. But you didn't see them recovered from  
21 there; is that correct?

22 A. I saw them after they were bagged.

23 Q. Did you see them when they picked them up and  
24 put them in the bag?

25 A. No.

1 Q. Okay. And were there any other CDs recovered  
2 in the house?

3 A. In another location?

4 Q. Yes.

5 A. Not that I'm aware of.

6 Q. Did you take pictures of any other CDs in  
7 other location in the house that you can recall?

8 A. Not that I can recall right now.

9 Q. Okay.

10 MR. WILLIAMS: Judge, our objection is  
11 that this bag of evidence contains probably some more  
12 items of extraneous proof that were coming before the  
13 Court and that the Court could view. And we object to  
14 them. We do not object to the disk that the State --  
15 when it comes to that time to offer that disk to show  
16 what's in the indictment. But we object to the  
17 existence of extraneous material that may be within the  
18 disks that are being offered.

19 MR. DRIVER: And I think, Judge, it's  
20 been placed at issue whether or not these images that  
21 were placed on the State's Exhibit 68 were, in fact,  
22 recovered from the defendant's house. And because  
23 that's now been placed squarely at issue, I don't think  
24 I have any choice other than to offer the original  
25 evidence.

1                   MR. WILLIAMS: Judge, he can -- he's  
2 testified that these are the disks he got from the  
3 house. We're talking -- to offer the contents of these  
4 disks is our objection, that is they may contain  
5 extraneous --

6                   THE COURT: The contents other than the  
7 specific videos or photographs or whatever that were  
8 taken off of one or more of those disks and placed onto  
9 State's Exhibit 68? Is that -- am I understanding  
10 correctly?

11                   MR. WILLIAMS: That's my objection, that  
12 -- to other images other than those that they extracted  
13 for use to prove their indictment.

14                   THE COURT: But am I understanding  
15 correctly, that's what's happening here. Is that y'all  
16 -- whomever that is -- went through all of the CDs and  
17 DVDs that are contained in State's Exhibit 71. Took  
18 off, I guess, the five that we're talking about for  
19 these indictments and put them on a separate disk that  
20 is State's Exhibit 68.

21                   MR. DRIVER: That's partially true. A  
22 couple of the images that are contained on 68 were  
23 taken directly from the disks. Some of them were taken  
24 from hard drives.

25                   THE COURT: Oh, okay.

1           MR. DRIVER: But yes, they were -- what  
2 is contained on State's Exhibit 68 are images and a  
3 video that are designed to meet the elements of the  
4 offense -- of the charged offense.

5           THE COURT: All right.

6           MR. DRIVER: That's exactly what that is.

7           THE COURT: So -- and, Mr. Williams, your  
8 objection is not to those images or videos or whatever  
9 that came from State's 71 that were put on 68. Your  
10 objection is everything else?

11           MR. WILLIAMS: That's correct, Judge, as  
12 being extraneous.

13           MR. DRIVER: Judge, it certainly goes to  
14 common scheme, common plan, absence of mistake. And  
15 under the new 38.37, they then go to establish  
16 character under the new law by using the same types of  
17 offense. That specifically includes child pornography  
18 offenses.

19           I understand his objection, but at the  
20 same time it's been so squarely contested that I don't  
21 think that I have any other possible recourse to meet  
22 his objections and his concerns other than them placing  
23 them all in.

24           MR. WILLIAMS: Well, Judge, he's met my  
25 concerns. All I wanted to know is where did he get

1 those images that he used in the indictment. Can you  
2 point those out to us from these disks. And I think  
3 that is what they've done in State's Exhibit No. 68, I  
4 believe it is.

5 MR. DRIVER: And that's -- again, to that  
6 ends, that's why I compiled this disk that's called 68  
7 so that we could avoid putting in everything. But --  
8 but questioning, you know, which particular disk, which  
9 particular thing --- by going into all of that, the  
10 only way that we can properly evaluate whether or not  
11 these images came from those disks is if those disks  
12 are now in evidence before the Court.

13 MR. WILLIAMS: It sounds to me, Judge,  
14 like he wants to punish me for asking where this came  
15 from.

16 THE COURT: Well, I don't know that  
17 that's the case. But again, the issue is not the  
18 images in 71 that are part of 68, but it's everything  
19 else. My understanding is, is that the images  
20 contained on 68 -- at least some of them -- came from  
21 images that are contained in State's 71. For -- at  
22 least for my purposes, I think that that has been  
23 cleared up as far as what those images were, where they  
24 came from the contents of 71 and that they're now on  
25 68.

1 I mean, the way I understand again,  
2 Mr. Williams's objection is that it's any other  
3 extraneous material or evidence that may be on there  
4 that are not for the purposes of guilt or innocence at  
5 this point, but may be something that could be  
6 considered for punishment later, your objection.

7 If I understand correctly, your position  
8 is that under the recent changes of the law and also  
9 the common scheme and also the mistake of fact is that  
10 it should all come in.

11 MR. DRIVER: Yes, Judge.

12 THE COURT: All right. All right. Your  
13 objection to State's 71 and as a part of that 72,  
14 right? Did you --

15 MR. DRIVER: Yes, Judge. It is contained  
16 within 71.

17 THE COURT: Will be overruled. 71 and 72  
18 will be admitted.

19 MR. WILLIAMS: Did you admit them, Judge?

20 MR. DRIVER: He did.

21 May I have just a moment, Judge?

22 Q. (BY MR. DRIVER) Just really just a couple  
23 more questions. When you examined the contents of  
24 State's Exhibit 71, did any of those disks contain a  
25 video that was similar to or seen to be the same as the

1 videos that you originally saw on the CPS program?

2 A. Yes.

3 Q. And do you -- do you happen to recall which  
4 disk that was on?

5 A. Can I look?

6 Q. Yes. And you can refer to your notes.

7 Go ahead.

8 A. I do believe it's going to be Item No. 36,  
9 disk labeled V-18.

10 Q. V, like Victor, 18?

11 A. Yes, sir.

12 Q. And two particular images that are contained  
13 on State's Exhibit 68, which disk in particular are  
14 those contained on, the images we reviewed just a  
15 moment?

16 A. V-60.

17 Q. V, like Victor, 60?

18 A. That's correct.

19 Q. And that's not the same one that's labeled as  
20 State's Exhibit 72, right?

21 A. That would be correct.

22 Q. Just for clarification, I had labeled -- I  
23 think the one labeled as F, like Frank, has now a  
24 sticker that says State's Exhibit 72. That's not the  
25 same disk?



1 A. No, they're not the same.

2 MR. DRIVER: Pass the witness, Judge.

3 THE COURT: Mr. Williams?

4 MR. WILLIAMS: Yes, sir. Just a couple  
5 questions, Your Honor.

6 THE COURT: Yes, sir.

7 RECROSS-EXAMINATION

8 BY MR. WILLIAMS:

9 Q. In addition to the material that you've  
10 testified to that you recovered, did you recover the  
11 defendant's cell phone, iPad or any other devices like  
12 that?

13 A. May I see the inventory?

14 There is a cell phone listed on the  
15 search warrant return.

16 Q. No iPad, iBook or anything like that?

17 A. There is an iPad listed No. 31.

18 Q. And did you search those devices?

19 A. They were forensically examined, yes. They  
20 were looked at.

21 Q. I'm sorry?

22 A. They were looked at.

23 Q. Okay. By yourself?

24 A. No. I believe I had some assistance from  
25 Lieutenant Gary Spurger.

1 Q. Okay. And was any material that was found in  
2 the indictment found on those devices?

3 A. Not that I'm aware of.

4 Q. Okay. These CDs that you looked at, did you  
5 look at them in order or did you just pull them out  
6 randomly?

7 A. I opened up the spindles and started with the  
8 top and worked my way down.

9 Q. And you just listed by number as you worked  
10 through them?

11 A. When I worked through them, they were labeled,  
12 you know, on top of the disk. I noted that as such.  
13 But there's a numeric order in the order in which I  
14 viewed the disks.

15 Q. Okay.

16 A. Does that make sense?

17 Q. Well, the way you have listed it on your  
18 summary, some of the numbers are out of order. Did you  
19 put them in that order or did you just pick them up as  
20 they came?

21 A. You mean out of order as far as the Vs are  
22 concerned? That would be the order that I encountered  
23 them on spindle.

24 Q. So, they came up as you listed them; is that  
25 correct?

1 A. That's correct.

2 Q. All right. Do you know when they were opened  
3 or when they were made, those DVDs or CDs?

4 A. When they were made, no.

5 Q. Can you tell -- is there anyway you can tell  
6 from the CD -- from the data on the CD when it was made  
7 or when it was created?

8 A. There would be a date that's on there.

9 Q. On what? Within the data or on the CD?

10 A. Written -- as far as like a handwritten or on  
11 the -- in the data.

12 Q. Well, wherever you would get that data,  
13 wherever the --

14 A. There is information on the file creation, you  
15 know, on the CD, that the data itself.

16 Q. Okay. But you don't know or you didn't look  
17 to see when they were created?

18 A. I looked at some of the dates on there.

19 Q. Do you recall any of those dates?

20 A. Not specifically, sir.

21 Q. Well, do you recall if they were far-away  
22 dates, very current dates, last year dates, just any  
23 indication from what you remember?

24 A. Just looking at the CDs itself -- you know,  
25 looking at the dates that are on there, without knowing

1 anything about the equipment which produced those CDs,  
2 the dates to me are irrelevant.

3 Q. So, you don't remember the dates?

4 A. Not specifically, no. Because I consider them  
5 irrelevant when I don't know anything about the  
6 equipment that made them.

7 Q. You said a moment ago that Mr. Driver asked  
8 you, did you find similar material in the disk -- in  
9 the CDs that were in State's Exhibit No. 71 to --  
10 similar to the CPS program that you looked at. Do you  
11 recall that question?

12 A. Yes, I do.

13 Q. Okay. What CPS program was that that you  
14 looked at that showed images?

15 A. Well, not necessarily to the CPS program  
16 itself. It was the files that were given to me based  
17 upon the CPS data.

18 Q. Those -- you're talking about those ones that  
19 the other officers gave you to look at?

20 A. That's correct.

21 Q. Is that what you're talking about? Okay.

22 MR. WILLIAMS: We'll pass the witness,  
23 Your Honor.

24 THE COURT: Mr. Driver?

25 MR. DRIVER: No more questions.

1 THE COURT: All right. Thank you, sir.  
2 You may step down.

3 Call your next witness, please.

4 MR. DRIVER: State calls Lieutenant Gary  
5 Spurger.

6 GARY SPURGER,  
7 having been first duly sworn, testified as follows:

8 THE COURT: All right. Mr. Driver?

9 MR. DRIVER: Thank you, Judge.

10 DIRECT EXAMINATION

11 BY MR. DRIVER:

12 Q. Please introduce yourself to the Court  
13 spelling your name out for the court reporter?

14 A. I'm Gary Spurger, G-a-r-y. Last name is  
15 S-p-u-r-g-e-r. I'm a lieutenant with the Harris County  
16 Precinct 4 Constables Office.

17 Q. Can you pull the microphone a little closer to  
18 you? It's hard to hear what you're saying.

19 How long have you been a -- well, are you  
20 a peace officer in the State of Texas?

21 A. Yes, sir, I am.

22 Q. How long have you been a peace officer?

23 A. 22 and a half years.

24 Q. Which agency or agencies have you been with?

25 A. I've worked for several. Currently work for