1 having been first duly sworn, testified as follows:

2   THE COURT: Mr. Driver, you can proceed.

3   MR. DRIVER: Thank you, Judge.

4   MR. WILLIAMS: Judge, may we have a

5 moment to reconfigure here?

6   Thank you, Judge. We're ready.

7   THE COURT: All right. Mr. Driver.

8   MR. DRIVER: All right. Thank you,

9 Judge.

10   DIRECT EXAMINATION

11 BY MR. DRIVER:

12   Q.   Can you please state and spell your name for

13 the record and introduce yourself to the Judge?

14   A.   I'm Corporal Jeff Lee. That's J-e-f-f, last

15 name, L-e-e. I'm an investigator with the Harris

16 County Precinct 4 Constables Office, High-Tech Crimes

17 Unit in the Houston Metro Internet Crimes Against

18 Children Task Force.

19   Q.   All right. Can you explain -- how long with

20 the Harris County Constables Precinct 4?

21   A.   I was hired on as a dispatcher in 1999 and

22 then into patrol in 2000. And I spent eight years in

23 the patrol division. And then I was selected to the

24 High-Tech Crimes Unit.

25   Q.   Are you a certified peace officer in the State

1 of Texas?

2   A.   That's correct.

3   Q.   Have you been specially trained to do the

4 position that you're in now?

5   A.   Yes.

6   Q.   Can you explain to the Judge the training and

7 experience you've had that's led you to be able to

8 conduct these kinds of investigations?

9   A.   I've attended several courses and several

10 conferences in the realm of high-tech crime

11 investigations specifically related to the operation of

12 peer-to-peer networks and the like. I've been blessed

13 to work underneath a recognized expert such as

14 Lieutenant Gary Spurger. And like I said, I've

15 attended several courses, so --

16   MR. WILLIAMS: Excuse me, Corporal.

17   Judge, I'd ask the Court to ask Corporal

18 to keep his voice up a little bit.

19   THE COURT: Okay.

20   Q.   (BY MR. DRIVER) Before you became a high-tech

21 crime officer, did you go through the regular police

22 academy?

23   A.   I did.

24   Q.   Were you trained in the investigation of basic

25 crimes at the street level?

1   A.   That's correct. The academy covers a lot of

2 that. And, of course, there's routine continuing

3 education as we go on.

4   Q.   Have you maintained your continuing

5 educational hours?

6   A.   That's correct.

7   Q.   Now, you mentioned that you had been trained

8 in peer-to-peer networks. Can you recall any specific

9 trainings that you attended that dealt with that area?

10   A.   I have attended training on the GNUWatch

11 peer-to-peer operations and also for the Child

12 Protective -- Protection System.

13   Q.   Can you explain what the Child Protection

14 System is?

15   A.   The Child Protection System is a software

16 package which allows investigators to track and

17 identify files of child pornography being traded via

18 these file sharing networks.

19   Q.   Now, does it do anything -- does it go into

20 people's computers any more than the average user of

21 that network would be able to?

22   A.   No. As a matter of fact, it works pretty much

23 just like a regular user does.

24   Q.   So, it just gives you a view towards what's

25 available to anybody that's on the network?

     1   A.   That's correct.

     2   Q.   Can you explain how these peer-to-peer

     3   networks work?

     4   A.   Peer-to-peer networks work on a variety of

     5   freely available file-sharing software. This

     6   file-sharing software could be chosen and downloaded to

     7   a specific computer, which allows it to look at other

     8   computers who are using file-sharing software packages

     9   and to observe different files available for sharing.

    10   Q.   Do you have to pay to get that software?

    11   A.   Not usually.

    12   Q.   Is it -- where do you download it from?

    13   A.   You can download it from a variety of sources

    14   on the Internet.

    15   Q.   Is this a software that you then install on

    16   your own computer?

    17   A.   That's correct.

    18   Q.   Once you've installed it, does it use the

    19   regular Internet or does it use a special network?

    20   A.   It uses the regular Internet and, you know,

    21   the network for which -- whichever software package you

    22   chose.

    23   Q.   When you -- now, what is the purpose of these

    24   peer-to-peer networks? What -- what are users trying

    25   to do?

1   A.   Share files, obtain files that people offer.

2   Q.   And where do the files come from when you --

3 when a user wants to download it, where is it coming

4 from?

5   A.   It's contributed by the user of the computer

6 of the files.

7   Q.   So, is it like another user that that computer

8 is connected to the network?

9   A.   That's correct.

10   Q.   So, the CPS program that you mentioned before,

11 does that act like a regular user?

12   A.   That's correct.

13   Q.   When you go onto this program, are you able to

14 see individuals who are -- who have child pornography

15 available for trade?

16   A.   We are able to see IP addresses and file names

17 and hash values.

18   Q.   Can you explain what a hash value is?

19   A.   A hash value is a -- basically a summation of

20 a file or a set of files or a data set. Basically adds

21 up the ones and zeros in a file input and uses a --

22 algorithms to determine a number which comes out. It's

23 a long number and it's unique to that specific file.

24   Q.   And when you have that hash value, can you

25 compare it to a known file and determine if it's the

1 same file?

2   A.   There have never, in my knowledge, been an

3 instance where two hash values --

4   MR. WILLIAMS: Objection, Your Honor.   I

5 don't think that's responsive to the question.

6   THE COURT: Why don't you re-ask your

7 question?

8   MR. DRIVER: Yes, Judge.

9   Q.   (BY MR. DRIVER)   If you have a hash value of

10 an unknown file, can you take that value and compare it

11 to the hash value of a known file of child pornography?

12   A.   That's correct.

13   Q.   When you do that, are you -- how certain are

14 you that the files match?

15   A.   Could you repeat the question, sir?

16   Q.   How certain are you that the files match when

17 the hash values match?

18   A.   Very certain.

19   Q.   And do you -- can you express to the Court

20 what degree of certainty you have?

21   A.   Depending upon, you know -- I've seen

22 percentages of upwards -- about as close to 100 percent

23 as you can get mathematically.

24   Q.   And have you ever known two files that have

25 the same hash value to be different files?

```
 1        A.    I've never heard of two -- two files having

 2   that instance, no.

 3        Q.    So, is it -- is the hash value, in your

 4   training and experience, a reliable way of determining

 5   what file is available?

 6        A.    Yes.

 7        Q.    And when you see a file that has a hash value

 8   that's consistent with or is the same as known child

 9   pornography, do you know whether there's child

10   pornography on that IP address or available for share?

11        A.    If the hash values match, then yes.

12        Q.    So, when you conduct this initial

13   investigation through CPS, does that end your

14   investigation or just begin it?

15        A.    It begins it.

16        Q.    So, what do you do next?

17        A.    Well, the CPS system also identifies the IP

18   address that the -- that the files we're seeing, we

19   investigate that.

20        Q.    What is an IP address?

21        A.    It's short for Internet Protocol address.  And

22   it's a series of numbers -- identifiable numbers which

23   allows Internet traffic to be directed to a specific

24   computer.

25        Q.    Is an IP address something that somebody's
```

1 computer generates or that a network assigns or what?

2   A.   Generally, I believe a network assigns it.

3   Q.   So, if you have an IP address, are you able to

4 take that and somehow figure out where geographically

5 in the world that IP address is assigned?

6   A.   Yes.

7   Q.   How do you do that?

8   A.   We figure out which -- which Internet Service

9 Provider, ISP, owns that IP address. And then we ask

10 them about it.

11   Q.   How do you go about determining which Internet

12 Service Provider may or may not -- may have had that IP

13 address available?

14   A.   By subpoena process.

15   Q.   Do you -- how do you know where to send the

16 subpoena?

17   A.   We use any number of freely available websites

18 on the Internet, which you can input the IP address and

19 it will tell you who the ISP is and also CPS will tell

20 you who the ISP is.

21   Q.   So, have you used these Internet services and

22 CPS on few or many occasions to determine the ISP that

23 has a particular IP address?

24   A.   Yes.

25   Q.   On few or many occasions?

```
1        A.    A few.

2        Q.    Okay.   And have you done that -- how many

3   times have you done it, do you think?

4        A.    I don't know if I can put a specific number on

5   it.   I would say between five and 10, perhaps.

6        Q.    All right.   How many of these types of

7   investigations have you conducted?

8        A.    Several.

9        Q.    And is that -- is this the only type of case

10  that you use the subpoena process to get an IP address

11  for?

12       A.    Oh, no.   No.

13       Q.    And have you subpoenaed information on IP

14  addresses on few or many occasions?

15       A.    Many occasions, different types of cases.

16       Q.    And have you gone through these websites and

17  other programs to determine the appropriate Internet

18  Service Provider on few or many occasions?

19       A.    Many occasions.

20       Q.    So, are you very familiar with this process?

21       A.    Sure.

22       Q.    And -- and I suppose more -- more

23  specifically, do you always investigate just child

24  pornography cases?

25       A.    No.
```

1   Q.   Do you investigate other types of high-tech

2 crime?

3   A.   That's correct.

4   Q.   Is this same process used in those other types

5 of high-tech crime frequently?

6   A.   Subpoenaing IP addresses from the ISP's, yes.

7   Q.   In this case did you determine which Internet

8 Service Provider had assigned the IP address?

9   A.   Yes.

10   Q.   And let me be more specific. Do you recall

11 starting an investigation in December of 2012 that

12 ultimately led to the charges being filed against Hugo

13 Domingo Pachas-Luna?

14   A.   The investigation started earlier, but yes, it

15 culminated in December of 2012.

16   Q.   When you -- did you start that investigation

17 exactly like you just told the Judge?

18   A.   That's correct.

19   Q.   Which Internet Service Provider did you

20 determine was the appropriate one to send the subpoena

21 to?

22   A.   Comcast.

23   Q.   And the subpoena, is it a grand jury subpoena

24 or an administrative subpoena?

25   A.   It was an administrative subpoena.

1   Q.   Is that a power given to the Internet Crimes

2 Against Children Task Force?

3   A.   That's correct.

4   Q.   Did you receive a response?

5   A.   I did.

6   Q.   And when you receive a response -- without

7 saying exactly what they told you -- what types of

8 information do you get back?

9   A.   You get the subscriber's name, address,

10 account number. If there's a phone number available,

11 it's there too.

12   Q.   Do you then take that information and do a

13 little bit more research?

14   A.   That's correct.

15   Q.   Do you run that information through other data

16 bases available to you as an investigator?

17   A.   That's correct.

18   Q.   Do you actually go to that address?

19   A.   Yes, I do.

20   Q.   And what do you do typically when you go to

21 these addresses?

22   A.   When I go to these addresses, I take photos of

23 the location.

24   Q.   And why do you take photos of that location?

25   A.   For the purposes of identifying the home in a

 1 later search warrant.

 2   Q.   You -- do you then draft a search warrant

 3 based on your investigation up to that point?

 4   A.   Yes.

 5   Q.   Are there other steps in the middle there

 6 or --

 7   A.   Oh, yes, there is.

 8   Q.   What other steps?

 9   A.   We have to verify the -- you know, the hash

10 values that were identified were actually files of

11 child pornography.

12   Q.   How do you go about doing that?

13   A.   In this particular instance, I asked other

14 investigators if they had seen them.

15   Q.   Do they have copies of those exact -- those

16 exact hash values or the files associated with those

17 hash values?

18   A.   I was given three.

19   Q.   Did you review those yourself?

20   A.   I did.

21   Q.   Were they in your opinion child pornography?

22   A.   Yes.

23   Q.   And did the hash values of those videos that

24 you reviewed match the hash values you saw for share on

25 the particular IP address that you sought information

1 on?

2   A.   Yes.

3   Q.   In this case, do you recall what the IP

4 address was?

5   And you can refer to your -- do you have

6 a copy --

7   A.   I did. I left it back there.

8   MR. DRIVER: May I approach the witness,

9 Judge?

10   THE COURT: Yes, sir.

11   A.   Thank you.

12   Q.   (BY MR. DRIVER) Did you refresh your memory?

13   A.   Yes.

14   Q.   And what was the IP address?

15   A.   98.194.180.106.

16   Q.   And that series of numbers, is that -- sorry.

17   Would that series of numbers be unique to

18 a particular subscriber?

19   A.   Yes.

20   Q.   When you -- when you got all that information

21 and you verified that it was child pornography, did you

22 take any other steps prior to securing the search

23 warrant?

24   A.   Other than researching the location,

25 researching the occupants, verifying the information,

1 receiving the subpoena and the files.

2   Q.   Did you draft a search warrant at that point?

3   A.   Yes, I did.

4   Q.   Did you include the photographs you had taken

5 when you went to the scene?

6   A.   I included some of them, yes.

7   Q.   Did you include a synopsis of your training

8 and experience?

9   A.   Yes.

10   Q.   Did you include in the search warrant the

11 information that you've just testified to today?

12   A.   I did.

13   Q.   And did you include other information relevant

14 to your investigation into the investigation of

15 Internet child abuse?

16   A.   Yes.

17   Q.   Did you take this -- the search warrant and

18 the affidavit to a district court judge here in Harris

19 County, Texas?

20   A.   I did.

21   Q.   Do you recall which judge that was?

22   A.   Ruben Guerrero.

23   Q.   Is that Judge Ruben Guerrero of the 174th

24 District Court?

25   A.   Yes, it is.

1   MR. DRIVER: May I approach the witness,

2 Judge?

3   THE COURT: Yes, sir.

4   Q. (BY MR. DRIVER) I want to show you what's

5 marked as State's Exhibit 1. Just review this and tell

6 me if you recognize it.

7   A.   It's a search warrant document.

8   Q.   Does it include your affidavit?

9   A.   No, it does not.

10   Q.   This is just the search warrant portion?

11   A.   That's correct.

12   Q.   And who's -- is this Judge Ruben Guerrero's

13 signature on the back page?

14   A.   Yes.

15   Q.   All right. Is this an exact copy of the

16 warrant that you had signed by Judge Guerrero?

17   A.   Yes.

18   MR. DRIVER: State offers State's

19 Exhibit 1.

20   MR. WILLIAMS: To which we object, Your

21 Honor, subject to our motion to suppress.

22   THE COURT: You're objecting to the

23 warrant?

24   MR. WILLIAMS: To the search warrant,

25 yes, sir, as it was based on an insufficient affidavit,

1 Your Honor, which is the subject matter of our motion

2 to suppress, Your Honor.

3   THE COURT: Okay.

4   MR. WILLIAMS: Judge, as a practical

5 matter, I take it we will hear this witness's testimony

6 through -- to the rest and then we will address the

7 search warrant issues as we cross-examine?

8   THE COURT: Well, that's what I was

9 actually about to ask how you. How -- I mean, if you

10 want to take him on voir dire now to ask him questions,

11 I mean, I'll let you do that. But if you're okay with

12 us just continuing through the rest of his testimony

13 and then you address it on cross, we can do it that

14 way.

15   MR. WILLIAMS: That's fine, Your Honor,

16 as long as I'm reserving the right to object to --

17   THE COURT: Yes, sir.

18   MR. WILLIAMS: All right. No problem.

19   MR. DRIVER: So, the warrant itself --

20 okay. So, where are we? I've offered it.

21   THE COURT: You've offered it. I'm going

22 to admit it for the purposes of the motion to suppress.

23   MR. DRIVER: But hold off for the trial

24 for now.

25   THE COURT: Correct.

1   MR. DRIVER: Okay. I understand.

2   Just as a practical matter, it might be

3 more efficient if I just pass him at this point for

4 purposes of the hearing. Because the rest -- a lot of

5 his testimony from this point on goes toward what

6 happened after the search warrant was issued.

7   MR. WILLIAMS: I don't have any problem

8 with him doing that, Your Honor. You know, if the

9 Court can keep it separate, you know, I don't have any

10 problem with him going forward just in the interest of

11 time. Whatever the Court wants to do.

12   THE COURT: Well, I mean, I think I can

13 keep it straight and I'm sure, you know, Trish can keep

14 it straight. But how is the record going to look, I

15 think is probably the issue. And Trish is nodding yes.

16   MR. WILLIAMS: Okay.

17   THE COURT: So -- and regardless this is

18 probably going to be a -- no matter what happens -- an

19 appellate issue. So, I guess let's keep it as clean as

20 we can for them.

21   So, for the purposes of this, the motion

22 to suppress, why don't you, yeah, go ahead and pass him

23 for that part.

24   Mr. Williams, you can do your

25 cross-examination regarding the motion to suppress and

1 then we'll continue on from there. I think it -- I

2 think you're right, it would just be cleaner if we do

3 it that way.

4   MR. WILLIAMS: Thank you, Judge.

5   THE COURT: And since we're not in that

6 much of a hurry.

7   MR. WILLIAMS: All right. Judge, may I

8 approach the witness?

9   THE COURT: Yes, sir.

10   CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12   Q.   I'm showing you what's been marked

13 as Defendant's Exhibit No. 1. Do you recognize that

14 document?

15   A.   Yes, I do.

16   Q.   Okay.

17   MR. WILLIAMS: Judge, at this time we'd

18 offer this document for the purposes of this hearing

19 only.

20   Q.   (BY MR. WILLIAMS) And what is the document?

21 I beg your pardon.

22   A.   That is an affidavit.

23   Q.   Is this the affidavit that accompanies the

24 search warrant that was just offered into evidence?

25   A.   Yes.

```
 1              MR. DRIVER:  And I don't have any

 2   objection, Judge.  I provided him a copy of it, if

 3   that's the copy I gave him.

 4              THE COURT:  All right.  Defense

 5   Exhibit 1, which is the affidavit to the search

 6   warrant, and State's Exhibit 1 will be admitted for the

 7   purposes of the hearing.

 8              MR. WILLIAMS:  May I have just one

 9   moment, please?

10              (Brief recess).

11              MR. WILLIAMS:  May I proceed, Judge?

12              THE COURT:  Yes, sir.

13              MR. WILLIAMS:  Thank you.

14       Q.   (BY MR. WILLIAMS)  Corporal, your last name is

15   what again, please?

16       A.   Lee, L-e-e.

17       Q.   All right.  You are the officer who presented

18   your affidavit in these facts you testified to to Judge

19   Guerrero; is that correct?

20       A.   Yes, sir.

21       Q.   Okay.  And would you tell us again -- give us

22   the benefit of your training and the area of computer

23   technology, that is how many hours have you invested in

24   that?

25       A.   I don't have a number on that, sir.
```

1   Q.   Well, how many courses have you taken in that

2 regard?

3   A.   Several.

4   Q.   And would that be two or would that be 10?

5   A.   We're -- you know, our office puts on, you

6 know, training quite a little bit. And, you know, at

7 different, you know, conferences and such, there are

8 different courses that are offered, yes.

9   Q.   Well, I'm -- there are a world of courses out

10 there all over, but how many have you attended?

11   A.   I don't have a number for you, sir.

12   Q.   Well, do you still attend them?

13   A.   Yes.

14   Q.   And is your accumulation of knowledge in this

15 area on going?

16   A.   Yes.

17   Q.   So, you don't profess to say that you know all

18 there is to know about this area, do you?

19   A.   No.

20   Q.   It's constantly changing; isn't that correct?

21   A.   That's correct.

22   Q.   All right. In the area of IP numbers that you

23 were talking about a moment ago, you know that there

24 are dynamic numbers and that there are numbers that are

25 static.

```
 1        A.    That's correct.

 2        Q.    Is that correct?

 3        A.    Yes, sir.

 4        Q.    Do you know the difference between the two of

 5  those?

 6        A.    Yes sir.

 7        Q.    What is it a static IP number?

 8        A.    A static IP address is one that's assigned,

 9  you know, to a specific piece of equipment.  And a

10  dynamic one is one that can change.

11        Q.    Well, is a dynamic one also assigned to a

12  specific piece of equipment?

13        A.    For a period of time, yes.

14        Q.    So, both of them are assigned to a specific

15  piece of equipment; is that correct?

16        A.    Well, sure.

17        Q.    And the difference then in both is that

18  dynamic may change?

19        A.    Yes, sir.

20        Q.    What would cause that change?

21        A.    Any number of factors.  Network conditions

22  would be the one that I can come up with.

23        Q.    What about a thunderstorm that knocked out the

24  power for some period of time?

25        A.    I wouldn't know.
```

1   Q.   Wouldn't know that.

2   Well, you know, that if the electrical

3   source that runs the computers is turned off for some

4   period of time, it disrupts the flow of information and

5   all that could change a dynamic IP?

6   A.   I would suppose it would, if it would -- when

7   it reaches the network again, yes.

8   Q.   Say that again, please.

9   A.   It may.

10   Q.   It may do that.

11   Okay. And do you know how long the power

12   has to be out for something to change -- for an IP

13   number to change?

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

15   Q.   Okay. At any rate, it doesn't take days, does

16   it?

17   A.   I wouldn't know.

18   Q.   Well, if you looked at an IP address one day

19   and went back next week on the same day and looked at

20   it, is it possible that number could change?

21   A.   It is possible.

22   Q.   Okay. So, you looked during the course of

23   your investigation at some IP numbers and you

24   subpoenaed on that IP number on a different date; is

25   that correct?

```
 1        A.    I subpoenaed two days and two times.

 2        Q.    Say again.

 3        A.    Two dates and two times.

 4        Q.    Okay.  And the last time you subpoenaed was

 5   when?

 6        A.    You mean issued a subpoena?

 7        Q.    Yes, sir.

 8              MR. WILLIAMS:  Let me -- let me rephrase

 9   that, Judge.

10        Q.    (BY MR. WILLIAMS)  When did you receive the

11   information from the -- from the subpoena?

12        A.    From the subpoena?

13        Q.    Yeah.

14        A.    My report indicates on or about 8/20/2012.

15        Q.    Okay, sir.

16        A.    Received the subpoena -- the information on

17   the return or the subpoena itself?

18        Q.    The return giving the information who the IP

19   belonged to.

20        A.    On or about August 20th, 2012.

21        Q.    Okay.  And was there any subpoena issued

22   subsequent or after that time?

23        A.    No.

24        Q.    Okay.  So, you went with that IP and that

25   address at the time; is that correct?
```

```
 1        A.   That's correct.

 2        Q.   Okay.  When did you verify again that you --

 3   that IP number had not changed, that you were at the

 4   right address?

 5        A.   I don't understand, sir.

 6        Q.   Well, did you ever go back to re-verify that

 7   the IP number remained at the same address?

 8        A.   No.

 9        Q.   Okay.  So, you just -- the address you got

10   that day, you went and continued your investigation

11   from that time; is that correct?

12        A.   I continued my investigation based on what I

13   got from Comcast, yes, sir.

14        Q.   All right.  And anything that happened after

15   that date, you assumed that all that information

16   belonged to that same address and that same user; is

17   that correct?

18        A.   After that date?

19        Q.   Yes, sir.

20        A.   I don't know if I -- I don't follow.

21        Q.   Well, if the IP user -- the person on that IP

22   number had changed, you wouldn't know that, would you,

23   until after you had done your search and all to

24   determine, you know, that's the same person?

25        A.   I continued my investigation based upon what
```

1 Comcast had told me was using -- their subscriber that

2 was using that IP address on those times.

3   Q.   On August 20th; is that correct?

4   A.   That's the return, yes.

5   Q.   All right. Well, is that -- what day did you

6 get the information that this is the address and this

7 is the user?

8   I'm sorry. Maybe I missed that.

9   A.   I got a subpoena return on or about August the

10 20th, 2012.

11   Q.   Is that the day you found out who the IP

12 belonged to and what address it was coming from?

13   A.   That's the date I found out that the IP

14 address was assigned to that account.

15   Q.   Okay. And the name of the person who owned

16 that address; is that correct?

17   A.   Yes. The name and the address -- the service

18 location.

19   Q.   Okay. All right. Okay. So, let's -- let's

20 go back to your testimony about the peer-to-peer

21 network.

22   A.   Yes.

23   Q.   Okay. You said that is an indicator of child

24 pornography or user -- a person who gathers child

25 pornography?

1   A.   The peer-to-peer network?

2   Q.   Yeah.

3   A.   No.

4   Q.   No. Okay.

5   So, a peer-to-peer network can be used by

6 people who gather music; is that correct?

7   A.   Sure.

8   Q.   Okay. And all other kind of different things

9 where people share in common -- some common interests

10 other than pornography; is that correct?

11   A.   It can.

12   Q.   Say again.

13   A.   It can.

14   Q.   Okay. And is it fair to say that -- looking

15 at your affidavit starting at the page of -- at the

16 bottom of Page 9 and proceeding all the way to the end

17 of that affidavit where you swore to it, the things you

18 mentioned in there about the collections of toys,

19 collections of stuffed animals, collections of things

20 that children like, books and movies, that's all part

21 of your boilerplate, isn't it?

22   That is, that accompanies every child

23 porn warrant that you do; is that correct?

24   A.   Yes.

25   Q.   Okay. It talks about what typical child

1   pornographers do. That has nothing to do with your

2   probable cause for this affidavit, does it?

3   A.   Pertaining to what, sir?

4   Q.   Well, pertaining to this investigation. You

5   never found, before you did your search, any of those

6   items or you never knew of any of those items being in

7   possession of this man, Mr. Pachas-Luna, until after

8   you search; is that correct?

9   A.   That's correct.

10   Q.   Okay. Incidentally, did you surveil this

11 house or did you just go out and take a photograph?

12   A.   I drove out to the location and looked at it

13 and took a picture.

14   Q.   Okay. Well, maybe I should ask it this way.

15 Did you go out there just once?

16   A.   Yes.

17   Q.   All right. So, you guys didn't set up on it

18 to see if there was any traffic of children or any

19 covert activities going on out there other than just to

20 look and take a picture of the house in preparation for

21 your search warrant; is that right?

22   A.   That's correct.

23   Q.   Did you observe or did it come to your

24 attention any other evidence of anything going on wrong

25 at that house having to do with child pornography?

1   A.   Could you say that question again?

2   Q.   Other than your investigation into the

3 computer portion of this, was there any other evidence

4 that came to your attention that would indicate there

5 was something going on at the house that involved child

6 pornography?

7   A.   No.

8   Q.   Okay. You had no statements from any

9 witnesses or anybody saying that they've seen a child

10 over there that shouldn't have been there or something

11 like that?

12   A.   No.

13   Q.   Did you actually talk to people who had kids

14 like, for example, his relatives about whether or not

15 they felt that their children had been molested or

16 anything like that?

17   A.   I did not.

18   Q.   Did not.

19   Okay. But that was done; is that

20 correct?

21   A.   I believe so.

22   Q.   Okay. And other than what you found on the

23 computers after your search, there is no other evidence

24 that would indicate any foul play other than these

25 images and the videos; is that correct?

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 1        A.   I'm sorry, sir.  Could you repeat?

 2        Q.   Well, at the house, did you find any

 3   movie-making equipment and stuff like that, sound

 4   stage?

 5             MR. DRIVER:  Objection.  This is beyond

 6   the scope of the hearing.

 7             MR. WILLIAMS:  That's true.  I'll

 8   withdraw that, Judge.

 9             THE COURT:  All right.

10        Q.   (BY MR. WILLIAMS)  Now, did you say anything

11   or talk to Judge Guerrero about hash values?  Did you

12   talk to SHA numbers?

13        A.   As far as the affidavit?

14        Q.   Yes.

15        A.   Yes.  I mean, I presented him the affidavit

16   and he looked at it.

17        Q.   And in the affidavit, you primarily refer to

18   your finding SHA numbers that you gave to the other

19   officers to look at; is that correct?

20        A.   That's correct.

21        Q.   Okay.  What is a SHA number?

22        A.   It is a particular type of hash value.

23        Q.   Okay.  And did you say -- in your affidavit

24   did you mentioned hash values as you were discussing it

25   with the Judge or were you talking in terms of the SHA
```

1 numbers in your affidavit?

2   A. I never -- verbally never spoke to the Judge

3 about SHA numbers. No. Whatever is contained in the

4 affidavit is what he looked at.

5   Q. Okay. So, you didn't explain any of that to

6 him. You just gave it to him and he read it and signed

7 it?

8   A. That's correct.

9   Q. Okay. Did you ever -- you said that these

10 files are open to the public as long as they know how

11 to get into this particular program; is that correct?

12   In other words, you didn't have to do

13 anything special to have access into the peer-to-peer

14 network?

15   A. Other than having the file-share software.

16   Q. Okay. Okay. And you said that's generally

17 open to the public. It's not covert or anything or

18 anything you have to do covert to get in there; is that

19 correct?

20   A. No.

21   Q. Okay. Could you share files or could you look

22 in there and see some of the files?

23   A. Look in where?

24   Q. Into the peer network or look into that IP

25 address and open some of the files that you found in

1 there?

2   A.   No.

3   Q.   Is that impossible for you to do?

4   A.   To my knowledge.

5   MR. WILLIAMS: May I have just a moment,

6 Judge?

7   THE COURT: Yes, sir.

8   (Brief pause).

9   Q.   (BY MR. WILLIAMS) You -- the programs that

10 you used in this investigation and the expertise that

11 you used in this investigation, would that not allow

12 you to download certain files once you get into the

13 peer network into his IP address?

14   A.   It is possible.

15   Q.   Did you try to do that to see what they were?

16   A.   No.

17   Q.   Why not?

18   A.   I believe that we -- that we tried, but for

19 whatever reason, it was not successful.

20   Q.   Could one of those reasons be that the file

21 was incomplete so it couldn't be downloaded?

22   A.   I'm not -- it could be any number of reasons.

23 I'm not specifically sure.

24   Q.   Did you personally try to download the file?

25   A.   No.

1   Q.   Wouldn't you like to have known what was on

2   that file before you go to a judge and ask for a search

3   warrant?

4   A.   Yes.

5   Q.   Do you think it's important to a magistrate

6   who's going to sign a search warrant alleging that

7   someone has child porn in his house, that you open one

8   of the files that's on his computer to see if there's

9   child porn on it?

10   A.   It could be.

11   Q.   Could be important?

12   A.   It's just one of the avenues that we take when

13   we conduct these investigations.

14   Q.   So, the fact of the matter is that you got his

15   IP address. You have the capabilities of downloading

16   the files that you actually saw. But for some reason

17   you chose not to do it or for some reason it was

18   impossible to do; is that correct?

19   A.   That's correct.

20   Q.   Who knows the answer to that question, whether

21   or not it was impossible to do it, you or your expert

22   or somebody else that worked with the computers?

23   A.   The expert would probably be able to enumerate

24   more reasons than I could.

25   Q.   Well, who was it that tried to download it and

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 1   couldn't?  Do you know who that person was?
 2        A.   I believe it was Lieutenant Gary Spurger.
 3        Q.   Is he an expert?
 4        A.   Yes.
 5        Q.   Is he here?
 6        A.   Yes.
 7        Q.   Okay.  In the courtroom?
 8              MR. DRIVER:  No.  He's the one outside.
 9              MR. WILLIAMS:  Okay.  All right.
10        Q.   (BY MR. WILLIAMS)  So, that lieutenant tried
11   to download this stuff and he couldn't get it done?
12        A.   I believe so.
13        Q.   So, based on that then, what you do is you
14   went and talked to some other guys who are police
15   officers who told you hey, I have some of those has --
16   those SHA numbers?
17        A.   I asked other investigators to look at the
18   data that CPS was giving me to try to determine if we
19   could procure copies of the files that are represented.
20        Q.   Tell me what that process is and what you were
21   trying to do there when you went to these other
22   officers?
23        A.   I asked another investigator to -- to provide
24   him the IP address that CPS had given me.  And I asked
25   him to look at the data and see if he could find me
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 1  some matching files.
 2       Q.   Find you some what?
 3       A.   Matching files.
 4       Q.   About a matching file, what do you mean?
 5       A.   Files that match the particular hash value
 6  that was provided.
 7       Q.   Are you taking about the SHA number?
 8       A.   I'm talking the hash value.
 9       Q.   Is that the SHA number?
10            That's what you refer to it in your
11  affidavit as these -- I gave them to these officers and
12  they gave me some files that had the same SHA number or
13  SHA number, as you call it.
14       A.   Yes, that's what the affidavit says.
15       Q.   Well, is that true?  Is that what you did?
16       A.   I provided the IP address to the investigator
17  who looked at the hash values and determined and was
18  able to procure copies of the files that were
19  represented.
20       Q.   Okay.  And I don't mean to argue with you.
21  But your affidavit says SHA value, it doesn't say hash.
22       A.   That's correct.
23       Q.   Okay.  So, which was it, the hash numbers you
24  did?  That's what you gave the investigators?
25       A.   I gave the investigator the IP address.
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         Q.   Did you -- so, when you gave the affidavit to

Judge Ruben Guerrero, you didn't read it to him or

explain to him. You just gave it to him and he read

that you gave them a SHA value; is that correct?

         A.   That's correct.

         Q.   And not a hash value; is that correct?

         A.   Well, the SHA value is a particular type of

hash.

         Q.   So, your testimony is -- well -- all right.

               The SHA numbers, are they specific to the

program that you are using? That's how it interprets

SHA values?

         A.   Which program, the CPS?

         Q.   Yes, sir.

         A.   It deals in different types of hash values.

         Q.   All right. Well, does it -- well, where did

you come up with this SHA number that you keep

referring -- that you referred to in your affidavit?

         A.   It's a particular type of file hash which is

indicated by the -- by the -- by the type of file

sharing network that's being used.

         Q.   You -- so, your bottom line -- your testimony

is you didn't see what those SHA numbers contained that

you went out and tried to find some like it and then

see what they looked like; is that correct?

1   A.   Find matching -- found matching hash values,

2 yes.

3   Q.   Okay. And did you tell Judge Guerrero that's

4 what you did, that you didn't actually see them

5 yourself in this man's computer?

6   A.   I did not see them in his computer, no.

7   Q.   Okay. And did you tell him that you didn't

8 even open those files?

9   A.   It was -- whatever is in the affidavit is what

10 he read.

11   Q.   Well, I'm asking you. Did you tell Judge

12 Guerrero that you never opened those files?

13   A.   Yes. The files that were -- any files in his

14 computer prior to the search warrant?

15   Q.   Right.

16   A.   No, I did not.

17   Q.   You didn't tell him?

18   A.   No, I didn't open it.

19   Q.   You didn't what?

20   A.   I didn't open any files.

21   Q.   I said did you tell Judge Guerrero that, that

22 you didn't open the file? That you hadn't see any porn

23 on his files, did you tell him that?

24   A.   In the affidavit.

25   Q.   You told him in your affidavit that you had

1 not opened the files on his computer?

2   A.   I told him that I procured copies.

3   Q.   So, what -- you told him by admission then

4 that you didn't open any files on his computer. Is

5 that what you're telling me?

6   A.   That I did not open any files that were

7 contained on his computer prior to the search warrant?

8 Yeah, that's what I'm telling you.

9   Q.   Okay. Okay. And did you tell him whose these

10 people were who gave you these other files?

11   A.   No.

12   Q.   Okay. Well, you've drawn a lot of search

13 warrants in your day, haven't you?

14   A.   Yes, sir.

15   Q.   And have you ever drawn a drug search warrant

16 where you're using a CI, confidential informant?

17   A.   No.

18   Q.   Not familiar.

19   Okay. Well, are you familiar with the

20 premise that you have to vouch for the credibility of

21 other people's information that you're going to use in

22 your search warrant?

23   A.   Sure.

24   Q.   Okay. But you didn't tell Judge Guerrero who

25 you got the information from or these other files from?

           1   A.   No.

           2   Q.   You didn't tell him what their experience was,

           3   if they had any experiences or not, if they've done

           4   that before or anything?

           5   A.   No.

           6   Q.   Just told him that you got some files from

           7   somebody else; is that correct?

           8   Some other law enforcement; is that

           9   correct?

          10   A.   That's correct, other investigators.

          11   Q.   Why didn't you identify them?

          12   A.   Just chose not to do it.

          13   Q.   And have you done any warrants since that

          14   time?

          15   A.   Yes, sir.

          16   Q.   And did you choose not to -- well, did that

          17   happen again where you had to get some other

          18   information from other people and did you tell that

          19   judge who it was?

          20   A.   In other search warrants? I believe

          21   sometimes.

          22   Q.   Well, what makes -- what makes the difference

          23   to you though? When do you do that and when don't you

          24   vouch for the credibility of the information you get?

          25   A.   Any number of reasons. But I can't -- for

1   this -- for this particular search warrant, no.

2   Q.   Okay. Could it be maybe you didn't have time?

3   Could that be a reason?

4   A.   At that time -- excuse me.

5   At that time, 2012, I -- don't know.

6   Q.   Don't remember. You're too busy to go and get

7   that done?

8   A.   If I was too busy? I don't think so. I can't

9   tell you. I don't know.

10   Q.   Okay. Could have been too busy to do it?

11   A.   I don't think so.

12   Q.   All right. So, it had to be some other

13 reason. You had time to get it done. But for some

14 other reason, it just didn't happen; is that right?

15   A.   I would say that.

16   Q.   Okay. All right.

17   MR. WILLIAMS: Judge, may I have just one

18 moment?

19   THE COURT: Yes, sir.

20   (Brief pause).

21   Q.   (BY MR. WILLIAMS) You --

22   MR. WILLIAMS: Just a few more questions,

23 please, sir.

24   THE COURT: Yes, sir.

25   Q.   (BY MR. WILLIAMS) After you conducted your

1 search --

2   MR. WILLIAMS: And this question will

3 refer back to the search warrant, Your Honor.

4   THE COURT: Okay.

5   Q. (BY MR. WILLIAMS) You then went through all

6 the materials that you received as a result of your

7 search; is that correct?

8   A. You talking about after the search warrant

9 service?

10   Q. Yes, sir.

11   A. And could you repeat?

12   Q. You went through the evidence that you

13 obtained from the house; is that correct?

14   A. Some of it.

15   Q. Okay. Well, certainly you tried to find in

16 that evidence the three images that you offered to

17 Judge Guerrero, did you not?

18   MR. DRIVER: Object, this is beyond the

19 scope of the hearing.

20   THE COURT: Overruled as to that

21 question.

22   A. Say again, sir.

23   Q. (BY MR. WILLIAMS) In the course of your

24 investigation after you ran your search warrant, did

25 you find on Mr. Pachas-Luna's computer those images

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 1  that you offered in your search warrant?

 2       A.   At which point?

 3       Q.   At any point.

 4       A.   At any point?

 5       Q.   Yes, sir.

 6       A.   I believe I located visually similar images to

 7  what was described in the affidavit.

 8       Q.   Well, that wasn't the question.

 9            Did you find the one that you offered to

10  the Judge as being the images that were on his

11  computer?  Did you find those?

12       A.   With my own two eyes?

13       Q.   Sir?

14       A.   With my own two eyes?

15       Q.   Yes, sir.

16       A.   No.  I mean, I located visually similar images

17  to the point that this image found in these media

18  versus the image that was provided to me and I

19  described in my affidavit, I located visually similar

20  to that.  But it's --

21       Q.   But the best evidence of what you told the

22  Judge that you saw that should be on his computer, you

23  didn't find those on his computer with your own two

24  eyes, did you?

25       A.   As I said, visually similar, you know, image
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1 files, yes.

2   Q.   Okay. Then I take it that's a no. You found

3 something like it, but you didn't find those?

4   A.   Not with my own two eyes.

5   Q.   Sorry?

6   A.   Not with my own two eyes.

7   Q.   Well, did somebody else's two eyes that you

8 were aware of see that?

9   A.   It could be.

10   Q.   Do you know about it?

11   A.   No.

12   Q.   Okay, sir.

13   You testified that you had never seen two

14 -- an example of two hash numbers having different

15 material; is that correct?

16   A.   Say that again, sir.

17   Q.   Did you testify that hash numbers -- once you

18 find a hash number that says ABC, you get another hash

19 number that's ABC, that they're going to be almost 100

20 percent the same thing?

21   A.   I've never heard of two different image files

22 having the same hash value.

23   Q.   Okay. So, you're telling the Court that

24 somebody told you that the numbers you had went to this

25 particular -- they gave you one like it; is that right?

1   These other police officers gave you one

2 like the numbers you had; is that right?

3   A.   Yes.

4   Q.   Okay. And you took that and you looked at

5 that and it had similar things that would indicate

6 child pornography, right?

7   A.   I'm sorry. I don't follow.

8   Q.   Well, you said that the files -- the three

9 files that other people gave you to look at had images

10 of child pornography on them; is that correct?

11   A.   That's correct.

12   Q.   All right. But you never -- you never even

13 saw what it was allegedly that was on his computer; is

14 that correct? You just saw the numbers; is that right?

15   A.   I saw what CPS was offering me. CPS was

16 offering me the values.

17   Q.   Okay. But that's all you saw was the values,

18 right?

19   A.   That's correct.

20   Q.   Okay. So, you don't know -- since you didn't

21 have the two before to compare, you don't know 100

22 percent that they had the same thing. You even

23 testified that they would have had similar items on

24 them; is that correct?

25   A.   Say that again.

1   Q.   That you don't know for a fact if the numbers

2 that you saw in the computer -- okay -- had the exact

3 material that you saw on the other items that were

4 given you by the other officers?

5   A.   That I don't know?

6   Q.   Yes, sir.

7   A.   What I do know is that the CPS provided me

8 some hash values. And I provided those hash values to

9 other investigators and they procured me a -- those

10 three files based upon those hash values in which I

11 used in the affidavit.

12   Q.   All right. And how many hash values did you

13 give them, do you know?

14   A.   I gave -- I provided the IP address that was

15 seen on CPS.

16   Q.   Well -- so, you gave them -- what was it you

17 gave them again?

18   A.   I gave them the IP address that I had seen and

19 was offering the values.

20   Q.   I thought you said that you picked the hash

21 numbers that you -- and asked them to look at them and

22 see if these were child porn and they gave you back

23 information saying they were. You didn't do that?

24 Somebody else did it?

25   A.   CPS, you know, provides the IP address and

1   also provides a spreadsheet type file which contains

2   the information that I'm looking for.

3   Q.   Yeah. But you -- you took the information you

4   downloaded and you just -- you gave it to some other

5   person to evaluate?

6   A.   I didn't download anything.

7   Q.   All right. Then the information you received

8   after you used your program that showed the hash

9   numbers on the computer at Luna's house, you gave that

10 to somebody else to investigate?

11   A.   I gave them the IP address and the information

12 that was contained in that hit on CPS.

13   Q.   And those were the folks that came back to you

14 and told you they found these child porn hash numbers

15 that match other numbers out there somewhere?

16   A.   They procured me copies of those files based

17 upon the hash values.

18   Q.   So, when you presented your affidavit to Judge

19 Guerrero and told him that this is what your

20 investigation has yielded and that you swear to it,

21 that these are the things that happened and this is

22 your investigation, that wasn't exactly true. Because

23 it was actually someone else who looked at that file

24 and who determined what the three images were that you

25 presented to the Judge; is that correct?

     1   A.   I was procured copies of the said files and I

     2   looked at them and I described it for the warrant.

     3   Q.   After they gave them to you?

     4   A.   Yes.

     5   Q.   Somebody else did this. You didn't find them.

     6   They found them; is that correct?

     7   A.   The copies?

     8   Q.   Yeah.

     9   A.   Yes.

    10   Q.   And when you first looked at it, you just gave

    11   them the IP address. You didn't open it to see what

    12   was in there. You took his IP address, guys go after

    13   it. They come back to you with three files; is that

    14   right?

    15   A.   I looked at the information that was contained

    16   in the CPS hit.

    17   Q.   And what did you do with that?

    18   A.   It was -- it goes along with -- when the other

    19   investigator looks at the CPS hit, he gets that

    20   information too.

    21   Q.   So, what did you personally recognize there

    22   then that you could tell Judge Guerrero that you saw

    23   that would indicate there might be some problem at the

    24   house?

    25   A.   I indicated that there were hash values that

1 had been identified by other investigator that --

2   Q. That's fine. All right. You gave it to them

3 and they checked it out and told you what it was and

4 you told the Judge, right?

5   A. Yeah. They gave me three files. I looked at

6 it and --

7   Q. All right. Thank you, sir.

8   MR. WILLIAMS: Thank you, Your Honor.

9 That's all the question I have for this witness.

10   THE COURT: Mr. Driver?

11   MR. DRIVER: Yes, Judge, I have some

12 redirect.

13   REDIRECT EXAMINATION

14 BY MR. DRIVER:

15   Q. I want to talk to you about -- focus in on

16 your investigation, just your investigation.

17   On the IP address, on how many dates did

18 you verify that child pornography was available for

19 trade from that particular IP address you mentioned

20 earlier?

21   A. Two days.

22   Q. Did you verify it on any other dates beyond

23 what you subpoenaed?

24   A. Verify?

25   Q. By getting on the CPS program and seeing if it

1 was still available?

2   A.   If there was still files being advertised?

3   Q.   Yes.

4   A.   Yes, I looked at other dates.

5   Q.   Did you look beyond those dates?

6   A.   Beyond the dates I subpoenaed?

7   Q.   Yes.

8   A.   Yes.

9   Q.   Which dates did you particularly subpoena the

10 subscriber information for the IP addresses -- for that

11 IP address?

12   A.   August the 5th, 2012 and April 14th, 2012.

13   Q.   Were those two particular dates where you had

14 seen child pornography available for trade?

15   A.   From the information contained on the CPS,

16 yes.

17   Q.   Did you determine whether -- closer in time to

18 when you served the warrant, did you verify whether or

19 not there was still child pornography still available

20 for trade?

21   MR. WILLIAMS: Judge, we're going to

22 object to him testifying that he observed child

23 pornography. He's already testified he didn't observe

24 anything, except he turned over a file to some other

25 agencies who looked at it to tell him there was some

1 child porn after the subpoena had come back, Your

2 Honor.

3   THE COURT: Overruled.

4   A.   You're going to have to repeat.

5   Q.   (BY MR. DRIVER) I want to --

6   MR. DRIVER: May I approach the witness,

7 Judge?

8   THE COURT: Yes, sir.

9   Q.   (BY MR. DRIVER) Does that refresh your

10 recollection?

11   A.   Yes.

12   Q.   Did you verify whether those same hash values

13 were present on that IP address at a date closer in

14 time to when you actually served the warrant?

15   A.   I verified that the -- looked at the IP

16 address again and saw whether they continued to

17 advertise files with child pornographic values.

18   Q.   What date was the last date you checked?

19   A.   I looked here, of course, on 11/13 and then I

20 looked again just prior to the warrant service.

21   Q.   And was that of 2012?

22   A.   Yes.

23   Q.   So, that would be November 13th, 2012?

24   A.   I did look on that date.

25   Q.   What other dates?

1   A.   I looked on the date that was the -- on the

2 morning of the warrant service.

3   Q.   What date was that?

4   A.   The warrant service was 12/12.

5   Q.   So, December 12th, 2012?

6   A.   That's correct.

7   Q.   Now, you have -- are there different methods

8 for conducting these Internet or these peer-to-peer

9 network investigations?

10   A.   Different methods? Yes.

11   Q.   Is one of those called a download case?

12   A.   Yes.

13   Q.   What is a download case?

14   A.   A download case is when a direct connection is

15 made with the computer and a file transfer takes place.

16   Q.   Who downloads the file?

17   A.   The investigator.

18   Q.   So, an investigator can choose to download?

19   A.   That's correct.

20   Q.   What is this kind of investigation called that

21 you did that doesn't involve an actual download?

22   A.   Historical.

23   Q.   A historical case.

24   Can you explain why it's called a

25 historical case?

          1   A.   Because it's based upon information over time.

          2   Q.   So, is that information that comes from the

          3   CPS program that you use?

          4   A.   That's correct.

          5   Q.   So, you're not just saying I downloaded child

          6   pornography on this one date. You're looking over a

          7   period of time and seeing if there are hash values

          8   consistent with child pornography on multiple dates?

          9   A.   For a historical case?

         10   Q.   Yes.

         11   A.   Yes. It takes into account what CPS has seen

         12   over a specific period of time.

         13   MR. WILLIAMS: Judge, may we have a

         14   running objection to testimony about his seeing child

         15   pornography over a period of time when the testimony

         16   clearly is that he didn't know there was child

         17   pornography until after he got the report back from

         18   these other officers, whoever they are? We want a --

         19   THE COURT: Yes, you can have running --

         20   you can have a running objection to that. My

         21   understanding -- y'all correct me if I'm wrong-- is

         22   that these hash values are consistent with child

         23   pornography and that's what you're referring to.

         24   MR. DRIVER: Yes, Judge.

         25   THE COURT: Okay. But yes, you can have

1 a running objection to that -- that phraseology.

2   MR. WILLIAMS: Thank you, Judge. And the

3 reason why I'm doing that is because although they may

4 be consistent with that, his testimony is he didn't

5 know of that consistency --

6   THE COURT: Yes, sir.

7   MR. WILLIAMS: -- until after that time.

8   THE COURT: I understand. Thank you.

9   Q. (BY MR. DRIVER) When you are doing these

10 cases, the historical cases, do you see the hash value

11 of the file that's available for share from a

12 particular IP address?

13   A. Yes.

14   Q. Does the CPS program indicate whether those

15 hash values are consistent with known child pornography

16 hash values?

17   A. Yes, they do indicate that it says it's

18 notable.

19   Q. So, the program earmarks it in some way?

20   A. That's correct.

21   Q. And is that how you know that there's some --

22 there's a possibility that there's child pornography on

23 that computer that's sharing?

24   A. Yeah.

25   Q. There's been a lot made of this hash versus

1 SHA1 value. What does SHA1 stand for?

2   A.   Secure Hash Algorithm.

3   Q.   Secure Hash Algorithm.

4   Is that sometimes used interchangeably

5 with the term "hash value" in your field?

6   A.   Yes.

7   Q.   So, sometimes you say SHA1, sometimes you may

8 say hash. Does that mean that you're talking about two

9 different things?

10   A.   In familiar terms, yes.

11   Q.   Do different programs have different

12 algorithms that compute the hash values?

13   A.   Some do.

14   Q.   And here's the question: Does it matter to

15 you which algorithm produced the hash value?

16   A.   No.

17   Q.   What are you looking at?

18   A.   I'm looking at the end -- the end outcome of

19 the hash value. I'm looking at that.

20   Q.   The actual hash number?

21   A.   That's correct.

22   Q.   And that hash number, if you match it to a

23 file that has the same hash number, is pretty much 100

24 percent the same; is that right?

25   A.   Yes.

1   Q.   So, when you got these hash values from the

2   CPS program, did you have at your disposal the actual

3   files represented by those hash values?

4   A.   Yes.

5   Q.   Were you able to pull them off of that -- this

6   person's computer?

7   A.   The suspect?

8   Q.   Right.

9   A.   No.

10   Q.   Did you have them in your own possession at

11   that time?

12   A.   At the time that I asked for them?

13   Q.   Yes.

14   A.   No, I did not have them.

15   Q.   So, when you asked for them -- is this a

16   common thing for you as an Internet Crimes Against

17   Children Task Force Officer to do, to ask for

18   assistance from other officers?

19   A.   Yes.

20   Q.   When you ask them for assistance, were you

21   asking them to search their own data bases?

22   A.   That's correct.

23   Q.   Were you -- did you point them towards

24   particular hash values?

25   A.   No. I pointed them towards the IP address

1 | that I had seen.

2 | Q.   And is that by -- did you basically tell them

3 | on CPS, this is the IP address, please look at those

4 | hash values?

5 | A.   Yes.

6 | Q.   Now, did they -- did you just rely on them

7 | saying yep, I've got it, it's child pornography?

8 | A.   No. I mean, I physically looked at it.

9 | Q.   So, you got a copy of the files?

10 | A.   Yes.

11 | Q.   Did you verify it was the same hash values?

12 | A.   Yes.

13 | Q.   Yourself?

14 | A.   Yes.

15 | Q.   And you reviewed the files yourself?

16 | A.   Yes. I opened up the files and looked at

17 | them.

18 | Q.   Were the files that had those hash values

19 | consistent with child pornography?

20 | A.   Yes.

21 | Q.   Based on your training and experience, did

22 | they each -- those three depict child pornography?

23 | A.   Yes.

24 | Q.   Did you describe those for Judge Guerrero in

25 | the warrant?

1   A.   Yes, I did.

2   Q.   When you looked at the hash values of those

3 three files that you reviewed and then looked at the IP

4 address that you had subpoenaed information on and

5 looked at the files available for share, did those hash

6 values match?

7   A.   Yes.

8   Q.   So, based on your training and experience,

9 does that mean that the files represented on CPS as

10 being available on that IP address were consistent with

11 or the same as the files you had just reviewed?

12   A.   Say that again. I'm sorry.

13   Q.   Were they the same as the files you had

14 reviewed if the hash values matched?

15   A.   Yes.

16   Q.   So, what degree of certainty could you place

17 on the files of child pornography that you reviewed

18 being the same as those that are on -- that are showing

19 in CPS coming from that IP address?

20   A.   Very certain.

21   Q.   And you don't -- just because you didn't

22 download it, doesn't mean that you are not certain,

23 right?

24   A.   That's correct.

25   Q.   But there is another method. You could have

1 downloaded it?

2   A.   That's correct.

3   Q.   That's also a valid method of investigation,

4 isn't it?

5   A.   That's correct.

6   Q.   And have you done download cases yourself?

7   A.   I have helped in download cases, yes.

8   Q.   You have not done those your -- initiated

9 those yourself. You've assisted?

10   A.   I've assisted, yes.

11   Q.   And you're aware that it's done by other

12 investigators?

13   A.   Yes.

14   Q.   But is a historical case any less valid in

15 your training and experience?

16   A.   No.

17   Q.   You were asked about how IP addresses could

18 change. Did you, in fact, verify that those same files

19 were still available for share even immediately before

20 the warrant?

21   A.   Yes.

22   Q.   And as far back as -- I think you said April

23 14th, 2012?

24   A.   Yes.

25   Q.   And over that time period, you checked

 1 multiple times?

 2   A.   Through the running course of the

 3 investigation, sure. It's a matter of course for us to

 4 see, you know, if the data is changing. Sure.

 5   Q.   That's different from the question of which

 6 information did you provide to -- under the

 7 administrative subpoena to the Internet Service

 8 Provider, right?

 9   A.   I don't follow.

10   Q.   You didn't ask the -- you didn't ask Comcast

11 for every single date you checked on, right?

12   A.   No.

13   Q.   How many dates did you specifically request

14 from Comcast to check that IP address?

15   A.   Two.

16   Q.   You were asked about upon the warrant being

17 served, whether you had observed those particular hash

18 values in any of the devices recovered.

19   Do you recall that question?

20   A.   Yes.

21   Q.   How many different devices and different disks

22 were recovered that contained child pornography in this

23 case?

24   A.   There were several hard drives and several CDs

25 and DVDs.

       Q.   When you say several CDS and DVDs,
   2 approximately how many contained child pornography?
   3   A.   About 70.
   4   Q.   Did you review the forensic results of the
   5 analysis of the hard drives that were recovered?
   6   A.   I reviewed the paper report.
   7   Q.   Would it -- would it be safe to say there were
   8 thousands of images recovered?
   9   A.   Yes.
  10   Q.   Did you look at each and every one of those
  11 yourself?
  12   A.   No.
  13   Q.   There was a question about the -- I'm just
  14 going to ask you one more thing about the SHA1 value.
  15   If a particular program used a different
  16 algorithm to determine the hash value, does that matter
  17 for the purposes of your investigation whether or not
  18 the hash values match?
  19   A.   The end result is what I'm concerned with, the
  20 end value. The processing in between, to me, does not.
  21   Q.   What was the actual program that you used in
  22 this case, the peer-to-peer network that was used?
  23   A.   What I saw on CPS?
  24   Q.   Yes.
  25   A.   What I saw on CPS was eMule.

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 1       Q.   Does eMule sometimes use a different hashing

 2  algorithm?

 3       A.   Yes, it does.

 4       Q.   What is that called?

 5       A.   ED2K.

 6       Q.   Does it do the same thing as SHA1?

 7       A.   It compares -- essentially, yes.

 8       Q.   Do you have any way of knowing which -- do you

 9  recall which one of the hashing algorithms was

10  necessarily used here?

11       A.   The CPS had indicated ED2K.

12       Q.   But were you looking at the hashing algorithm

13  or were you looking at the hash value itself?

14       A.   The end result hash value.

15       Q.   And again, does that matter for your purposes

16  whether it's SHA1 that's generated, an ED2K that's

17  generated?

18       A.   No.

19       Q.   And do you call all of those different things

20  the same name, hash?

21       A.   That's correct.

22       Q.   Do you sometimes call them SHA1?

23       A.   Sometimes.

24       Q.   What's the most important thing about the hash

25  values, in your training and experience?
```

1   A.   The most important thing about the hash values

2   is that it depicts and accurately identifies what it

3   represents.

4   Q.   Does it have to match?

5   A.   The hash value?

6   Q.   Yes.

7   A.   Yeah, the hash value has to match.

8   Q.   And if it doesn't match, then what?

9   A.   If it doesn't match, then that means that --

10   that the -- the two files are not the same.

11   Q.   Okay. You were asked a question about

12   incomplete files. Was it possible that there was an

13   incomplete file located on the hard drive of the user

14   that had that particular IP address, the defendant

15   ultimately?

16   If you had an incomplete file, would it

17   have the same hash value as the complete file?

18   A.   No.

19   Q.   So, when you were referring -- when -- when

20   you got a copy of the video with the same hash value,

21   could you be assured you had a full copy of what was on

22   the hard drive that was -- that you saw on CPS there?

23   A.   If the hash values match, then yes.

24   Q.   What happens if it's an incomplete file?

25   A.   The hash value changes.

1   Q.   How much of a change does there have to be to

2 a file in order for the hash value to change?

3   A.   Very, very small, I mean, as much as a pixel.

4   Q.   So, if you change one pixel in a file, does

5 that change the hash value?

6   A.   Yes.

7   MR. DRIVER: I'll pass the witness,

8 Judge.

9   MR. WILLIAMS: One moment please, sir.

10   THE COURT: Yes, sir.

11   MR. WILLIAMS: Just a couple questions,

12 please, sir.

13   THE COURT: Yes, sir

14   RECROSS-EXAMINATION

15 BY MR. WILLIAMS:

16   Q.   I believe you told Mr. Driver that you went

17 back and checked many times to see if certain files

18 were still up for trade; is that correct?

19   A.   I went back to see the account -- the activity

20 associated with that over the associated IP address,

21 yes.

22   Q.   Okay. And the last time Comcast spoke with

23 you about that was sometime in August that they -- when

24 they spoke through the subpoena answer saying that the

25 IP number belonged to such and such an address, such

1 and such a person; is that correct?

2   A.   Yes.

3   Q.   Okay. And when you go back and look in

4 December, what you're looking at is the address; is

5 that correct?

6   A.   I'm looking at the IP address.

7   Q.   Okay. And that IP address doesn't tell you

8 where something is. It tells you where the computer

9 is.

10   Well, it doesn't even tell you that. Just

11 tells where the IP address is located at that time; is

12 that correct?

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

14   Q.   The IP address doesn't tell you the address of

15 where the computer is, does it?

16   A.   No.

17   Q.   Okay. It could be moved across town or the IP

18 address could be used in Africa a month later; is that

19 correct?

20   A.   No. It is somewhat geographically specific.

21   Q.   All right. Well, Deer Park then as opposed to

22 Pasadena?

23   A.   I couldn't hazard a guess if it -- no.

24   Q.   Doesn't have to be at the same house, is my

25 point; is that correct?

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 1        A.    Where the -- where the contact point to the
 2   Internet is.
 3        Q.    Sir?
 4        A.    Where the contact point to the Internet is.
 5        Q.    Where the contact point is to the Internet is,
 6   is what?
 7        A.    Where the Internet access -- accesses, you
 8   know, the outside, the Internet.
 9        Q.    Well, I mean, that could be anywhere; is that
10   correct, within the geographical region?
11        A.    I'm not sure what you --
12        Q.    You've got an address from Comcast saying this
13   -- this IP number belongs to Pachas-Luna and is located
14   at such and such an address?
15        A.    The IP -- the subpoena reflects that, you
16   know, on a particular date and time --
17        Q.    Yeah.
18        A.    -- the IP address is in use by a particular
19   account.
20        Q.    Okay.  And they told you that in August.  But
21   you checked back again to see if there was still
22   trading as late as December; is that correct?
23        A.    As far as the activity on -- on the -- on CPS?
24        Q.    Yes, sir.
25        A.    Yes.
```

1   Q.   Okay. And all I'm asking you is: Does that

2 mean that the address of that IP number is still the

3 address that you received from the subpoena?

4   A.   I wouldn't know unless I subpoenaed it again.

5   Q.   Exactly. That's the point. You don't know

6 where it is at that time. You just know the same IP

7 address is still trading.

8   A.   That's correct.

9   Q.   All right. Now, the information that you gave

10 to these other officers to look at for you, they came

11 back and gave you three files; is that right?

12   A.   That's correct.

13   Q.   And your testimony is that after you conducted

14 the search, you don't know if anybody looked for those.

15 All you know is you didn't find those files in his hard

16 drives; is that correct?

17   A.   With my own two eyes, no.

18   Q.   Okay. Did somebody else do that, that you

19 know of?

20   A.   The hard drives are sent, you know, off to the

21 Regional Computer Forensics Lab.

22   MR. WILLIAMS: Well, excuse me, Your

23 Honor, that's -- I asked him did somebody else know

24 that that was done.

25   THE COURT: Listen to the question and

 1   answer that question.

 2   Q.   (BY MR. WILLIAMS) Did somebody else know?

 3   A.   I'm sure, but I --

 4   Q.   You're not aware of it?

 5   A.   Not right now.

 6   Q.   Okay. And when the people that you gave

 7   these, the IP address, sent you back the three files,

 8   what did you do then?

 9   What was the very next thing you did

10   then?

11   A.   I looked at them.

12   Q.   Looked at what?

13   A.   Looked at the files that were provided to me.

14   Q.   Okay. And then what did you do?

15   A.   Looked at the -- you know, the information on

16   CPS.

17   Q.   What does that mean, you looked at information

18   on CPS?

19   A.   To verify that the files were still being

20   shown advertised for share.

21   Q.   Okay. And you ran this warrant on the 12th?

22   A.   Yes.

23   Q.   Okay. Why did y'all wait for two days to run

24   the warrant? Any idea?

25   A.   There's any number of reasons.

1   Q.   But you don't recall exactly why?

2   A.   No, sir.

3   Q.   When was the warrant issued, do you remember

4 that?

5   A.   10th.

6   Q.   Okay. Let me ask you this: You're familiar

7 with SHA numbers, as you've testified, hash values, MD5

8 and ED2K as all being hashes; is that correct?

9   A.   I'm familiar with them, yes.

10   Q.   Do you know if they all generate the same data

11 if they have same number or would they sometimes use a

12 different number?

13   A.   Say that again, sir.

14   Q.   Do you know if all four of those will use a

15 common number to -- number to identify certain files?

16   A.   A common number?

17   Q.   Yeah, the same number. Will they produce the

18 same numbers in identifying a file?

19   A.   No, not that I'm aware of.

20   Q.   So, they might be different?

21   A.   The different processes can produce different

22 values.

23   Q.   Okay. So, when you testified a moment ago to

24 Mr. Driver's question of don't you just use them

25 interchangeably. I suppose you can use them

1   interchangeably, but they don't necessarily yield the

2   same numbers for the same activities; is that correct?

3   A.   Say that again, sir.

4   Q.   Well, you testified a moment ago that these

5   four hash identifiers can come up with different

6   numbers for the same activity. They may vary.

7   A.   Perhaps.

8   Q.   You also testified that you can use those

9   interchangeably when you're referring to values?

10   A.   Interchangeably?

11   Q.   Yeah, like one is same -- pretty much the same

12   as the other one?

13   A.   The processes for -- to obtain each hash

14   value, you know, may be different, but the hash value

15   is still the end result.

16   Q.   Okay. So, you're saying that the hash value

17   identifier, is that what we're talking about? Those

18   numbers that identify what a file contains, you're

19   saying they're going to be the same for each of these?

20   A.   The same as pertaining to what, sir?

21   Q.   The same identifying numbers. That's what you

22   use. You looked at those -- how did you identify the

23   hash number? By looking at a series of numbers and

24   alphabets, correct?

25   A.   Well, the hash value is represented on a data

1 table that comes from the information on the CPS hit.

2   Q. Well, what does the data table -- does it have

3 numbers and alphabets or does it have Chinese on it or

4 what is it?

5   A. Numbers and -- numbers and letters, yeah.

6   Q. All right. And so, you looked at those

7 numbers. And I'm asking you: These four identifiers

8 here, SHA, hash, MD5, ED2K, those are all hashes, but

9 they may show different numerical values for same

10 activities; is that correct?

11   A. Yes. They could produce different results.

12   Q. Okay. But you said that you can use them

13 interchangeably?

14   A. Interchangeably?

15   Q. In terms of if you can SHA and you can say MD5

16 and you could say hash, it's all the same thing. But

17 that's not exactly correct, is it?

18   A. Well, when we're -- you know, when you're

19 speaking familiarly, you can use -- you know, a lot of

20 people, you know, do use hash value or SHA because it's

21 most prevalent.

22   Q. Thank you, sir.

23   MR. WILLIAMS: That's all we have, Your

24 Honor.

25   THE COURT: Anything else for this

1 witness on the motion to suppress, Mr. Driver?

2   MR. DRIVER: Nothing further for this

3 witness on the motion to suppress, Judge.

4   THE COURT: All right. Is there anything

5 else that either side wants to present regarding the

6 motion to suppress at that point?

7   MR. WILLIAMS: Judge, if I could have a

8 few minutes to put this together, I may not call a

9 witness.

10   THE COURT: Okay.

11   MR. WILLIAMS: And save us some time.

12   THE COURT: Okay. Why don't we take a

13 little break and let see if I've got anything going on.

14 Okay.

15   MR. DRIVER: That's fine, Judge. Like

16 five or 10 minutes?

17   (Court recess).

18   MR. WILLIAMS: Judge, we don't have any

19 further questions and we rest on our motion to

20 suppress --

21   THE COURT: All right.

22   MR. WILLIAMS: -- as to the search

23 warrant.

24   THE COURT: Okay. I think I asked y'all

25 this, but I can't remember.

1   Mr. Driver, did you have anything else to

2   present on the motion to suppress?

3   MR. DRIVER: No, Judge.

4   THE COURT: Okay. So, with both of you

5   having rested regarding the motion to suppress, defense

6   is saying they're standing on their motion, do y'all

7   have -- is there any argument that y'all want to make

8   for purposes of the record?

9   MR. DRIVER: Yes, Judge.

10   THE COURT: Okay.

11   MR. DRIVER: I would like to make an

12   argument.

13   THE COURT: All right.

14   MR. DRIVER: The standard obviously is

15   whether there was probable cause contained within the

16   four corners of the search warrant for an issuing judge

17   to determine that a search warrant should issue.

18   In this case, you've actually even heard

19   the live testimony. But even on the four corners of

20   the warrant, it's very clear that Jeff Lee took very --

21   took the very exact steps that he's taken on many

22   occasions. He saw hash values, which are extremely

23   reliable indicators of the contents of a file to the

24   point where he said it's almost 100 percent. And

25   changing one pixel would change the hash value. He was

1 able to match that up with images or videos of known

2 child pornography. And because those hash values

3 matched, he was virtually certain that there was child

4 pornography contained on the computer assigned to the

5 IP address that he listed.

6   Based on that information he was able to

7 secure a -- an administrative subpoena. And he asked

8 for two different dates of four months apart. And the

9 defendant's name and address was what came up. Over

10 that four-month period it had not changed. Officer Lee

11 told you that he even continued to verify that there

12 was -- there was child pornography or files or hash

13 values consistent with child pornography right up until

14 the day the warrant was signed. And he didn't see any

15 changes or he didn't see any fall off in child

16 pornography. He saw child pornography hash values

17 there when he started and he saw it when he finished.

18   There's no issue of staleness because he

19 verified this stuff over and over and over again. And

20 he saw within -- over a long term period of time that

21 the IP address remained at the same physical address.

22 That's the defendant's address.

23   I would point the Court to 209 Southwest

24 3rd, 205. It's McKissick (phonetic) versus State. In

25 particular when reviewing these warrants, the court

1 should not use hypertechnical scrutiny over it. They

2 should take it as -- they saw should take what the

3 affiant says within the totality of the circumstances

4 that are documented within the affidavit.

5   And I will refer you to that just -- just

6 for generally knowledge, that it was a similar type

7 case. It was a child pornography case. And the court

8 in that case said that the document was not stale even

9 if it had been some elapse of time based on the way

10 that the officer was able to articulate it based on his

11 training and experience and based on his many uses of

12 that particular -- that particular method. That it was

13 clear that this warrant would still -- still

14 articulated a degree of probable cause.

15   Further, this same -- if you consider

16 what Officer Lee or what Jeff Lee testified to

17 regarding the SHA1 versus hash value versus ED2K, if

18 that can even be considered a misstatement or a false

19 statement, it was clearly an inadvertent misstatement

20 if at all. It's -- it's clear that based on what he

21 testified to, that this is a common parlance issue that

22 members in the Internet Crimes Against Children Task

23 Force and the like commonly refer to hash values or

24 SHA1 values, they use those interchangeably in their

25 common speech. Any misstatement, if there is one even

1 at all -- and the State doesn't concede that there is

2 one -- is the result of simple negligence in speech and

3 not a reckless misrepresentation to the officer -- to

4 the judge.

5   And it doesn't change the end result of

6 what Jeff Lee ultimately rested his belief on. His

7 belief was rested on matching hash values, which his

8 training and experience tell him are extremely

9 reliable. And because they're so reliable, it is

10 certainly reasonable to believe that child pornography

11 is available for share on that particular IP address at

12 that particular physical address over at least a

13 four-month period of time. It's certainly reasonable

14 to believe that it's going to continue to be located

15 there based on the rest of the representations he made

16 in his search warrant.

17   Specifically in his affidavit he talked

18 about how child -- people who collect child pornography

19 very frequently will keep it for a very long period of

20 time, even going so far as to transfer it from hard

21 drive to hard drive, even going so far as to put it on

22 backup disks. So, once it's there, it's very clear

23 that a collector of child pornography and especially

24 one who would trade it openly on a file-sharing network

25 would be likely to retain it for a long period of time.

1 And that's been verified by his training, by his

2 experience and by his speaking with other officers who

3 have engaged in this kind of investigation over a

4 period of time. He told you so in his affidavit -- or

5 he told Judge Guerrero in his affidavit.

6 Judge, I think that it's very -- I think

7 that based on his training, his experience and what he

8 saw in this particular case, Jeff Lee had probable

9 cause to believe that child pornography would be found

10 at Hugo Pachas-Luna's address. And he went there based

11 on that probable cause warrant. And he did, in fact,

12 find child pornography.

13 The only reason I bring that up is

14 because in cross-examination, they brought up the idea

15 that well, maybe you should have matched up the hash

16 values or maybe you should have looked for those

17 particular files. Well, his belief was borne out. It

18 was reasonable at the time he offered it. He certainly

19 had probable cause. I ask you not to suppress the

20 warrant or any evidence pursuant to the warrant.

21 THE COURT: All right. Mr. Williams, do

22 you have argument for me?

23 MR. WILLIAMS: Yes, sir.

24 And our position is that it is still

25 unborne because nobody has yet to find those three

1 images that he said he -- should be there on this man's

2 computer based upon his investigation.

3   Judge, these warrants now that go into

4 the area of computers and computer science and the way

5 they're presented to our magistrates, Your Honor, as

6 opposed to a plain old dope search warrant are a little

7 bit different. They need more explanation. You can't

8 just lay it on the table and assume that Judge Guerrero

9 or any other judge -- and I'm not speaking about that

10 judge, but any judge -- would automatically know what's

11 in that warrant, what a hash number means, what an

12 algorithm means, what a SHA number is.

13   The fact that you did not yourself make

14 that determination, that somebody else made that

15 determination is not clear from the reading of that

16 affidavit and it's something that should -- the Judge

17 should have known.

18   Just looking back at some of the

19 testimony, Judge -- and this sticks out in my mind more

20 than anything with reference to that the child

21 pornography was known to him over a period of four

22 months. It wasn't known to him until these other

23 unknown police officers told him hey, here is this

24 child porn. Didn't know that until after he got that

25 information from other officers. He didn't know that

1   in April. Didn't know that in August. Wasn't there --

2   the information wasn't there. All he had was the other

3   things that he's relying on. And I assume he relied on

4   them because he put them in the warrant. That they

5   were using in peer-to-peer scenario, that means that

6   the porn collectors use peer-to-peer along with people

7   who save music, along with people who share and save

8   movies. They also use that same thing. So, that

9   doesn't mean anything. What has to mean something to

10   him is the pornography is there. And that fact didn't

11   come known to him until after someone else had him.

12   Which brings me to my next point is what

13   is the credibility of the people who gave you this

14   information. There is no measure that the Court can

15   use to judge the credibility of those people. To

16   analogize to a search warrant on the confidential

17   informant, where it has to be vouched for that person's

18   credibility, why could you rely upon him, how did you

19   rely upon him, and, you know, you tell him what his

20   name. And there's a requirement about a court to know

21   how you base your belief on their credibility.

22   Here we've got the full opportunity to

23   fully disclose who these officers were, what they

24   actually did, what their level of expertise. But all

25   that remains unknown to the Court as to whether that

1 exists at all or to what degree it does exist among

2 these officers. Certainly that is something that's

3 clearly missing from the ordinary tenets of what a

4 search warrant requires.

5   The warrant is stale, Your Honor. It's

6 stale for the reason that the IP address was subpoenaed

7 on the 20th of August, I believe. And at that time we

8 know that the IP address belonged to -- or shortly

9 thereafter belonged to Mr. Hugo Pachas-Luna. After

10 that time until after the search, we don't know who

11 that IP number belonged to. We don't know what address

12 it went to. The last known address given and the last

13 known home of that IP number was Hugo Pachas-Luna at

14 the address on the search warrant. However, by the

15 testimony of the officer, that IP number can change,

16 can be issued to someone else. He could be given

17 another IP number based on a thunderstorm cutting off

18 his electricity or based upon him changing routers.

19 Any number of things could happen that would cause that

20 IP address to change.

21   That being -- and what I'm getting to,

22 this does not refer to the fact that at a certain time

23 it belonged to him and necessarily belonged to him in

24 December or in November. Some checks should have been

25 done to make sure that hey, does this guy still have

1 this stuff to make sure that the warrant is not stale,

2 Your Honor.

3   Now, certainly the investigation was

4 ongoing. I understand that part of it. But it was so

5 easy. As easy as it was for him to find out or put in

6 the warrant who the officers were as to -- it would

7 have been just as easy to confirm before they went

8 there into the man's house, if he was still the person

9 -- that IP address was still located at that location.

10   And, Judge, I believe I've already spoken

11 to the point of the warrant being misleading. To go in

12 and tell a magistrate that you viewed these images,

13 they are, in fact, child pornography, that they're

14 going to be on the computer of this man is misleading,

15 Your Honor. You never saw -- to the knowledge of the

16 Court, no one has ever seen what exactly was on that

17 computer. We don't know for a fact that the numbers

18 that -- that were given back to him were compared back

19 to the numbers that he originally gave off of the IP

20 address. All we know is that he gave them an IP

21 address. They looked at it and they looked at a number

22 of hash marks and told us that these three have the

23 same number as -- SHA number as this hash mark and vice

24 versa or the -- well, one of the other hash identifiers

25 as if they were just all totally interchangeable. And

1 expect the Court to believe that. And the Court really

2 -- that is the Court who issued this warrant doesn't

3 really have before it all of the data on how the

4 investigation was done, who actually viewed these, when

5 they were viewed and who the people were by way of

6 expertise and making these findings that they made,

7 Judge.

8   So, for all these reasons that would

9 apply to any search warrant, be it a -- one involving

10 super science or be it one involving a dope deal, we

11 believe that the warrant fails because of these -- the

12 lack of obeying these rules that apply to all search

13 warrants. And we ask the Court to find that there was

14 no probable cause to make this arrest, Your Honor, and

15 search.

16   THE COURT: All right. Thank you.

17   All right. Of course, I've listened to

18 testimony and I've read over the search warrant and the

19 affidavit and have been reading it again while y'all

20 are arguing. I'm certainly remembering the testimony,

21 but specifically looking at the search warrant itself,

22 what I see here is that the term that's used here, SHA1

23 number, that was found to be on -- I don't know if I'm

24 saying this -- forgive me if I'm saying this the wrong

25 way -- from coming from the IP address, these SHA1

1 numbers match known SHA1 numbers -- I'm from reading

2 this correctly. Meaning the movies and images would

3 match. There's a description for the three that's

4 listed here. Which tells me that if the number that is

5 on the IP address that the officer was investigating

6 matches some known number -- if those numbers match,

7 then they do know what is -- at least have probable

8 cause to know what is on -- what the two numbers -- the

9 two matching numbers should show, if that's accurate.

10   While I do agree that certainly that the

11 best practice to know when you're getting information

12 from someone else to be able to list that -- those

13 individuals in a warrant so we will know the

14 credibility. It's always been my understanding that

15 peace officers are presumed to be credible. And since

16 the information doesn't say specifically, it does

17 indicate that it was other officers who provided that

18 information. So, I think that we can base or have some

19 resemblance of credibility getting that information

20 from other officers.

21   Now, regarding the IP address and

22 staleness -- according to information in the search

23 warrant that the officer got or -- the information in

24 the search warrant that the officer got from the grand

25 jury subpoena from Comcast shows that this IP address

1 was created on July 9th of 2009 for this defendant at

2 that address and remained with him at least up until

3 the point of, I guess, August 9th of 2012. Which is a

4 fairly significant period of time.

5   The question I have though is this: My

6 understanding is, is the IP address could change, but

7 usually is the same. On Page 6 of the affidavit, where

8 it says on the afternoon of August 9th, 2012, it goes

9 on and says your affiant located IP address -- and then

10 it has an IP address. And if then you go a few lines

11 further, numerous other files contained within the list

12 had titles which were indicative of child porn. An

13 additional check of IP address conducted on 12/7/12,

14 that IP address is different.

15   Is that --

16   MR. DRIVER: I believe based on the

17 testimony that he -- that Jeff Lee specifically said he

18 checked the same IP address on 12/7/12, my belief is

19 that is a typographical error. But I can't -- I can't

20 obviously give evidence about that.

21   THE COURT: Well, yeah, I understand

22 that. But just looking at the four corners of the

23 affidavit itself --

24   MR. DRIVER: But he did testify to that

25 specific thing as well.

1   THE COURT: Well, I do know that there

2 are some allowances for typographical errors in

3 warrants. But -- well, let me ask you this: You cited

4 a case that talked about staleness.

5   MR. DRIVER: Yes, Judge, McKissick

6 (phonetic) versus State.

7   THE COURT: And in this type of case, I

8 mean, what would constitute staleness? We all know in

9 dope cases because the dope is fungible. It's

10 something that is used and/or sold. So, it's not going

11 to necessarily always be present. This is different

12 than that.

13   What -- what would constitute stale and

14 not stale? Obviously if the IP addresses were the same

15 and he checked it on December 7th of 2012 and the

16 search warrant was signed on the 10th of December,

17 2012, there's not an issue there. At what point does

18 it become stale if --

19   MR. DRIVER: Certainly, I think that you

20 have to take into account how long it takes to get back

21 an administrative subpoena. I mean, these things do

22 not just take one day or two days. So, certainly

23 staleness should come into the calculation if the

24 officer hasn't had any fresh information over a period

25 of some long -- some long period of time.

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 1              But as you pointed out earlier, Judge,
 2   this has been an IP address that's been in existence
 3   since 2009 at the same location.  And we know for sure
 4   that it's had child pornography over a period of at
 5   least four months, just based on the initial
 6   investigation.  Whether you consider that portion --
 7   whether you consider that IP address, that section of
 8   one -- on Page 6 that you just cited, whether you
 9   consider that sentence or not, my belief -- I would
10   argue that you have not -- it has not gone stale
11   because there's been no information that there's been
12   any change to the IP address in over four years or
13   three years -- excuse me -- my calculation.
14              THE COURT:  Do you have something you
15   wanted to say?
16              MR. WILLIAMS:  Yes, Judge.  I'm a four
17   corner's person.  And the test for staleness, Judge,
18   would be -- I have to admit I haven't looked at the
19   case law.  It's certainly stale for a drug search
20   warrant unless it's shown that there's ongoing
21   investigation.
22              But the problem with these types of
23   investigation is that IP number and the warrant issued
24   is issued for the house.  And the problem with that is
25   the house may change and the IP is still doing its
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1 dirty deeds. And therein is the problem with

2 staleness. Is this the house we're supposed to go to

3 get this IP or is it some other, which could have been

4 verified by the use of subpoena power.

5   And so, we still main our -- of course,

6 our argument, Judge, is the staleness of this address.

7   THE COURT: Okay. Well, I agree with

8 you, I mean, if we were talking about drugs or

9 something, like I said, fungible like that. I think

10 certainly we would have a staleness issue. There may

11 still be a staleness issue.

12   MR. WILLIAMS: As to the typo, Judge,

13 whatever -- this isn't a typo. This is saying that I

14 want you to go search Jeff instead of searching John.

15 Because that's how we identify these computers, by the

16 numbers. If an IP number is wrong, it's just wrong.

17 And how you can decide if it's flipped this way or that

18 way, I can't fathom, Your Honor.

19   THE COURT: Well, I guess the -- you

20 know, I certainly see that as being an issue or I can

21 see where that would be an issue. I guess in my mind

22 at this point in looking at the entirety of the

23 affidavit, I see the same IP address in at least two,

24 if not more, places in the affidavit itself. It's just

25 that one spot where it's changed. It's one number off,

1 basically. I mean, I can certainly see where that

2 would be an issue. But thinking back to the case law,

3 looking at it as -- that itself being a specific

4 address, if it were a dope search warrant and there was

5 one number that was changed that, clearly looking at

6 the rest of the affidavit, that it was a typographical

7 error, it's my recollection that the case law has said

8 if that's -- if it's clear in my mind as the person

9 who's deciding it, that that may be the case. Then I

10 can go with it as being a typographical error.

11   MR. WILLIAMS: Can I just say one more

12 thing, Your Honor, absolutely?

13   THE COURT: Sure.

14   MR. WILLIAMS: And that is, Judge, in

15 search warrant for the dope house or the house is

16 described as green, having such and such numbers on the

17 corner, this, that and the other at 12307 Split Rail

18 Lane and then they put it at 12308 or 12208, a

19 different address, but all other descriptors are there

20 -- this is the only description for this IP address,

21 Your Honor. So, that's all I wanted to say.

22   THE COURT: Yeah. And I don't agree with

23 you on that. I just -- it's unique.

24   MR. DRIVER: With regard to the staleness

25 issue, Judge, I found a section in the opinion --

1   THE COURT: Okay.

2   MR. DRIVER: -- that I'd like to quote to

3   you. It says -- this is quote on McKissick versus

4   State that I quoted -- that I cited earlier.

5   Probable cause ceases to exist when at

6   the time the search warrant is issued, it would be

7   unreasonable to presume the items remain at the

8   suspected place. The proper method to determine

9   whether the facts supporting the search warrant would

10 -- or have become stale is to examine in light of the

11 type of criminal activity involved, the time elapsing

12 between the occurrence of the event set out in the

13 affidavit and time the search warrant was issued. When

14 the affidavit recites facts indicted activity of a

15 protracted and continuous nature, i.e., a course of

16 conduct, the passage of time becomes significant.

17   Here we do have a protracted course of

18 possession of child pornography or at least hash values

19 consistent with child pornography over several months

20 at a particular IP address that has been in existence

21 for several years. So, I don't believe staleness is

22 appropriate.

23   THE COURT: All right. Well, taking

24 everything into consideration and while -- again,

25 State, for the record, I see where there are issues

1 here and there are things that certainly could have

2 been done better I think in this search warrant. Based

3 on testimony I've heard and reviewing the warrant in

4 its entirety and -- well, reviewing the warrant in its

5 entirety, I'm going to deny the defense motion to

6 suppress.

7   MR. DRIVER: Shall I recall him to the

8 stand and proceed or do you --

9   THE COURT: Well, let's talk about that

10 off the record for a second.

11   (Discussion off the record).

12   MR. DRIVER: Judge, just for my

13 information, can we proceed as we've been going and not

14 rehash any of what we just did?

15   THE COURT: I would prefer not to rehash

16 -- whatever kind of hash that is, hash tag.

17   MR. DRIVER: Then the State would offer

18 State's Exhibit 1 for the purpose of case in chief as

19 well at this point. And that's the search warrant.

20   THE COURT: All right.

21   MR. DRIVER: I'm going to offer the

22 search warrant State's Exhibit 1 --

23   MR. WILLIAMS: Oh, okay.

24   MR. DRIVER: It was in for purposes of

25 the hearing. I'm offer it for the case in chief.

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 1                    THE COURT:  And subject to the same

 2   objections by the defense, which are noted for the

 3   record, it will be admitted.

 4                    MR. WILLIAMS:  Thank you, Your Honor.

 5                    MR. DRIVER:  Thank you, Judge.

 6                    CONTINUED DIRECT EXAMINATION

 7   BY MR. DRIVER:

 8        Q.   All right.  So, after you secured the search

 9   warrant, did you compile a team of people to search --

10   to execute the search warrant?

11        A.   Yes, I did.

12        Q.   What day did you execute the search warrant?

13        A.   The 12th.

14        Q.   And can you say the whole date?

15        A.   I'm sorry.  December 12th, 2012.

16        Q.   And how many people did you secure to help

17   execute the search warrant?

18        A.   It was a number of people.  I made an ops plan

19   that details the names of the people that are on it and

20   their positions.

21        Q.   When you say an ops plan, is that just the

22   plan of how the warrant should be executed?

23        A.   It's an operational plan which dictates who's

24   coming along, information about the particular case,

25   the location, staging areas for briefing and also
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