

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

3 Call your next witness, please.

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

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

8 THE COURT: All right. Mr. Driver?

9 MR. DRIVER: Thank you, Judge.

10 DIRECT EXAMINATION

11 BY MR. DRIVER:

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

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

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

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

21 A. Yes, sir, I am.

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

23 A. 22 and a half years.

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

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

1 the Harris County Precinct 4. Been there 21 years.

2 Q. And as a Harris County Precinct 4 Constables
3 Deputy, what positions have you held?

4 A. Field training officer, regular patrol
5 officer, traffic enforcement, administrator for the
6 technical services division.

7 Q. And your present --

8 A. Forensic photographer, canine handler. I
9 figure if you're going to do it, you might as well have
10 a good time.

11 Q. So, you've covered a whole bunch of different
12 positions?

13 A. Yes, sir. I currently manage a four-man
14 computer crimes unit.

15 Q. Can you explain what your background, training
16 and experience is that qualifies you to hold that
17 position?

18 A. Prior to working in law enforcement, I worked
19 for Advanced Micro Devices in Austin, also a
20 Semiconductor Manufacturing Technologies in Austin as a
21 systems technician. I've been to many schools.
22 Written -- actual one of the authors of the Cyber Crime
23 Certification Course for the State of Texas.

24 Q. So, have you given that training, the cyber
25 crimes training to other officers?

1 A. Yes, sir. I've taught it approximately eight
2 times.

3 Q. And have you given any other trainings in the
4 area of cyber crime or that type of area?

5 A. Yes, sir. I'm certified to teach child
6 protection systems, which is a peer-to-peer
7 investigation tool. Also RoundUp areas, RoundUp
8 GNUtella, which are also investigation tools and quite
9 a few other courses as well.

10 Q. Do you hold other certifications that qualify
11 or that indicate your qualifications?

12 A. Yes, sir. I'm a certified hacking --
13 certified hacking investigator with Wetstone
14 Technologies, certified cybercom investigator for the
15 State of Texas, CPS, RoundUp, a bunch of others.

16 Q. So, as a cyber crimes investigator, what types
17 of -- what are your main duties?

18 A. Well, I currently I'm the administrative
19 lieutenant for the division, but I also carry a
20 caseload. So, we do proactive investigations, reactive
21 investigations into child exploitation or online child
22 exploitation.

23 Q. And what is your role in those?

24 A. Depending on if I'm the lead investigator or
25 if on an assistant helping another deputy. If I'm lead

1 investigator, then everything from start to finish.
2 Meaning identifying specific individuals who are
3 sharing images or exploiting children. Everything from
4 initial work up through interrogation and interview,
5 property, you name it, everything.

6 Q. Do you ever perform forensic examinations of
7 any digital devices?

8 A. I have in the past, yes, sir.

9 Q. What types of digital forensic examinations
10 have you done?

11 A. Basic computer forensic investigations using
12 EnCase ILook, FTK by Access Data. Also do mobile
13 forensics by using Cellbrite Ufed Touch Ultimate,
14 Susteen.

15 COURT REPORTER: I'm sorry. I'm having a
16 hard time understanding you.

17 THE WITNESS: Sorry. I know. Some of
18 the terms are a little strange.

19 A. Susteen is S-u-s-t-e-e-n, and Secure View and
20 then Katana Forensics software for mobile devices.

21 Q. (BY MR. DRIVER) All right.

22 A. K-a-t-a-n-a and then Forensics. And then
23 Lantern, just like the device.

24 Q. And all of these different things you've just
25 listen, are those forensic tools that you use?

1 A. Yes, sir, I have.

2 Q. I want to ask you about a specific
3 investigation that took place back in December of 2012
4 involving the defendant, Hugo Pachas-Luna.

5 Do you remember being involved in that
6 particular investigation?

7 A. Yes, sir, I do.

8 Q. What was your role in that investigation?

9 A. On scene supervisor, coordination of units and
10 then interview.

11 Q. Interview?

12 A. Yes, sir.

13 Q. Meaning what?

14 A. Meaning myself and another investigator
15 actually conduct an on-scene interview of individuals
16 located within the locations we go to on video. So,
17 it's video and audio recorded.

18 Q. In this case were you on the search warrant
19 execution?

20 A. Yes, sir, I was.

21 Q. What position did you hold within that search
22 warrant execution?

23 A. On that day probably about the mid of the
24 stack. Normally, we set a stack in order prior to
25 engaging the location. But once you get there,

1 depending on what the scene looks like and how things
2 flow from the vehicle to the door, your stack may
3 become altered. But we all train in being anywhere in
4 the stack.

5 So, it's probably -- if I remember
6 correctly from that day, it was like the middle of the
7 stack, about four people back.

8 Q. And upon entry did you immediately have an
9 interaction with the defendant or at some point later?

10 A. It would be some point later.

11 Q. Who had the immediate interaction with the
12 defendant?

13 A. I don't remember exactly who had the immediate
14 interaction. What I can tell you is that nothing stood
15 out of the ordinary for us. We run hundreds of search
16 warrants. I remember things that don't click
17 correctly. If everything clicked correctly, it doesn't
18 come to mind. In this case nothing went out of the
19 ordinary.

20 Q. So, can you explain what happens or happened
21 in this case to the defendant once you made entry into
22 the house?

23 A. Since nothing happened differently, the
24 individuals are brought out the residence. We then
25 secure the residence to make sure there's nobody else

1 in there, no weapons, no bombs, nothing like that.
2 Once that's done, I exit the residence along with other
3 investigators. Corporal Lee begins photographing.
4 Other investigators stay in the residence to make sure
5 everything is secure.

6 Then I set up a vehicle for the purposes
7 of interview. That normally means I'll bring a vehicle
8 from somewhere on the street. Put it as close to the
9 front of the house as I can get it safely. Make it
10 convenient for the individual to get in and out of the
11 car. Make sure it's running, the AC is running, or
12 heater, depending on what time of year it is. Make
13 sure the car is secure so there's no -- that I haven't
14 left anything in the car, any kind of weapons or
15 anything else.

16 Then I one, walk through the house to get
17 an idea of what the house looks like, you know,
18 upstairs, downstairs, where the computer is, where is
19 the Internet connectivity, that kind of stuff to get a
20 -- so, I can speak a little bit about what I know of
21 the house.

22 Then we bring the individual back down --
23 bring them out of the house. Walk him to the car. Get
24 in the car with another investigator and we conduct our
25 interview.

1 Q. Now, at that point is -- in this particular
2 case, was the defendant in custody when you took him to
3 your vehicle?

4 A. No, sir.

5 Q. Was he handcuffed?

6 A. Not when we went to the vehicle, no, sir.

7 Q. And what -- where was he when you found him to
8 take him to the vehicle?

9 A. If I remember correctly, in the front portion
10 of the house. Like just past the entryway.

11 Normally what occurs though is ask someone to
12 bring the individual out to the front of the house
13 because I'm in the process of the getting the car
14 ready.

15 Q. Are they -- was he detained in handcuffs or
16 told he had to stay where he was?

17 A. Only after we do the actual interview, we ask
18 them to kind of stay in one place to stay out of the
19 way. They're free to leave if they want to. We just
20 ask that they don't get in the way of the investigators
21 doing their job. And that we'll get out of their hair
22 as soon as we get done what we have there.

23 But as far as being detained on scene,
24 only the -- only time we encounter -- when we first
25 encounter them, we detain them for our safety and their

1 safety, just as a security precaution. Then they're
2 brought back in the house and allowed to sit in a
3 chair, sit on the couch. We make a safe spot for them
4 to sit that's comfortable for them.

5 If I remember right, this was December.
6 So, it was already cold. We don't leave them outside.
7 If it's hot, we don't leave them outside. If it's
8 raining, we don't leave them outside. We're very --
9 we're actually very polite on our search warrants.

10 Q. When you brought the defendant to your vehicle
11 to interview him, did you make it clear to him that he
12 was free to leave?

13 A. Yes, sir. We do the interviews the same way
14 all the time. And it's identify who I am, who else is
15 in the vehicle. Get their name and date of birth, kind
16 of an idea how old they are. And tell them no, you're
17 not under arrest. You're free to get out whenever you
18 want to. We have some questions for you. We're
19 conducting an investigation. And then we start our
20 interview and start talking to them.

21 Q. And is that what you did in this particular
22 case?

23 A. Yes, sir.

24 Q. Did the defendant agree to speak with you?

25 A. Yes, sir. He continued to talk with us.

1 Q. And did you record that interview?

2 A. Yes, sir, it is recorded.

3 MR. DRIVER: May I approach the witness?

4 THE COURT: Yes, sir.

5 Q. (BY MR. DRIVER) I'm going to show you what's
6 marked as State's Exhibit 67. Do you recognize it?

7 A. Yes, sir. This is my mark on the side of the
8 DVD.

9 Q. And is this a copy of the video recording of
10 the interview of the defendant that you conducted on
11 the day the search warrant was executed?

12 A. Yes, sir, it is.

13 MR. DRIVER: State offers State's Exhibit
14 67. I'll tender to opposing counsel.

15 MR. WILLIAMS: May I take him on voir
16 dire, Your Honor?

17 THE COURT: Yes, sir.

18 VOIR DIRE EXAMINATION

19 BY MR. WILLIAMS:

20 Q. Lieutenant Spurger, did you give him warnings
21 before you took this statement?

22 A. No, sir. He was not in custody.

23 Q. Okay. And you said he was free to leave at
24 any time?

25 A. Yes, sir. I told him he could leave whenever

1 he wanted to.

2 Q. Would you allow him to get dressed to leave?

3 A. If he wanted to, sure.

4 Q. Well, he was in his underwear when y'all
5 busted in the house, wasn't he?

6 A. Well, he was dressed in clothing, yes.

7 Q. But his underwear; is that correct?

8 A. I don't recall. You have to look at the
9 video.

10 Q. Sir?

11 A. You'd have to look at the video. But he was
12 wearing a shirt and pants when he came to the car.

13 Q. Okay. I'm talking when you first got to the
14 house and you go in, was he in his underwear when you
15 went in there?

16 A. I would expect so. It was 5:30 in the
17 morning.

18 Q. And did he have anything else on other than
19 his underwear when you took him outside for a moment to
20 secure him?

21 A. When he comes outside, he's dressed in
22 whatever we encounter him in to begin with?

23 Q. Okay. So, if he was in underwear when you
24 went in the house. For that brief time that you take
25 him outside to secure everything, he's in his

1 underwear?

2 A. Right. He's escorted with one of the two
3 officers the entire time he's outside.

4 Q. Okay. And then at that time while he's
5 outside, he's free to go once you secure him, right, if
6 he chooses to do so?

7 A. If he chooses to do. It's a search warrant,
8 not an arrest --

9 Q. All he has to do is just walk down the street
10 in his underwear and he's out of there?

11 A. Sure.

12 Q. All right.

13 A. We've actually had it happen on more than one
14 occasion.

15 Q. All right. And how many of you were there at
16 the house?

17 A. 12 to 13.

18 Q. Okay. And were there weapons drawn at the
19 time you entered the house?

20 A. Yes, sir, they were.

21 Q. Would he have seen that?

22 A. Yes, sir, he would have.

23 Q. You think that a citizen would be intimidated
24 by those activities?

25 A. Probably would be, yes.

1 MR. WILLIAMS: Judge, we object to the
2 offer of this video for the reason that we believe this
3 man was being detained, certainly with the number of
4 officers that were there, there were weapons drawn,
5 with him being in his underwear and told he could
6 leave. Obviously, he couldn't leave and walk down the
7 street in his underwear. Any ordinary citizen would be
8 intimidated by the show of force to the point where we
9 believe this warrant would be necessary that -- before
10 taking the statement from him, Your Honor.

11 THE COURT: All right. Are there any
12 other questions that either of you would like to ask
13 either this officer or any other testimony,
14 Mr. Williams, that you want to put on as far as
15 suppressing the statement or do you want me to make a
16 decision based on just what I've heard from this
17 witness so far?

18 MR. WILLIAMS: Well, I --

19 THE COURT: Just throwing it out there.

20 MR. WILLIAMS: No, sir.

21 Q. (BY MR. WILLIAMS) You said that you didn't
22 warn him; is that correct, sir?

23 A. In the vehicle, no.

24 Q. Did you warn him at any time before you took
25 this statement that --

1 A. Warn him which way?

2 Q. Sir?

3 A. Warn him in what way?

4 Q. Well, what kind of warnings do you --

5 COURT REPORTER: I'm sorry. I'm sorry.

6 One at a time, please.

7 Q. (BY MR. WILLIAMS) Miranda warnings.

8 A. No, sir. He was not under arrest.

9 Q. Okay. And that did not occur at any time
10 before the statement; is that correct?

11 A. No, sir.

12 Q. Okay.

13 MR. WILLIAMS: I think we suffice with
14 that, Your Honor.

15 THE COURT: All right. Just -- I know
16 it's -- it's weird in that I'm the -- you know, I have
17 to make a decision based on the law, but I'm also
18 making the guilt/innocence decision. So, I kind of
19 have to separate those two.

20 So, for the purpose of determining the
21 admissibility of the statement, I would like at least
22 to see the beginning of it to see how the defendant is
23 dressed.

24 MR. DRIVER: So, for purposes of the
25 hearing on --

1 THE COURT: On the admissibility.

2 MR. DRIVER: Shall I offer it for
3 purposes of the hearing of the initial admissibility,
4 State's Exhibit 67?

5 THE COURT: Yes, it will be admitted for
6 that purpose.

7 I just want to see the beginning of it.

8 MR. DRIVER: Yes, Judge.

9 CONTINUED DIRECT EXAMINATION

10 BY MR. DRIVER:

11 Q. Would it be fair to say that this doesn't
12 start for several minutes?

13 A. No, sir. It takes a few minutes to get -- the
14 walk through the house. This is my personal vehicle.
15 So, I mean, it's -- I make sure there's nothing else in
16 it.

17 (State's Exhibit 67 published, but not
18 reported).

19 THE COURT: I've seen enough as far as
20 I'm concerned, unless y'all want me to watch more for
21 any particular reason at this point.

22 MR. DRIVER: I just have -- I have more
23 questions.

24 THE COURT: Sure.

25 Q. (BY MR. DRIVER) At any point did you tell the

1 defendant hey, the door is opened, you can walk out of
2 here?

3 A. I remember just at the beginning part there
4 where I told him he's free to leave, he can get out.

5 Q. And you didn't force him to stay?

6 A. No, sir.

7 MR. DRIVER: Well, that's it, Judge.

8 THE COURT: All right. Mr. Williams, do
9 you have any other questions that you want to ask him?

10 MR. WILLIAMS: No, sir.

11 THE COURT: Okay. All right. Based on
12 the testimony that I've heard, I'm going to find that
13 though the defendant may have been in his underwear at
14 the time the warrant was initially executed, at the
15 time he's giving the statement, he appears to be fully
16 clothed. He does not appear to be handcuffs. I can
17 clearly hear -- straining, but clearly hear the
18 Lieutenant say that he is not under arrest and that he
19 can leave at any point. He just has some questions to
20 ask him. It does not appear that the defendant appears
21 to be -- at least from what I can see -- in fear of the
22 show of force or anything of that nature regarding the
23 actions of the officers. Prior to that, he appears --
24 at least to the point that I've viewed already -- to be
25 freely and voluntarily engaging in conversation with

1 the Lieutenant and answering questions.

2 So, therefore, I'm going to find the
3 defendant was not in custody at the time he gave his
4 statement and was freely and voluntarily answering
5 questions of the officer. So, the defendant's
6 objection to State's Exhibit 67 will be overruled and
7 it will be admitted over that objection. But the
8 objection will be noted for the record.

9 MR. DRIVER: Can we go ahead and complete
10 the --

11 THE COURT: Yes.

12 MR. WILLIAMS: May I remain here, Your
13 Honor?

14 THE COURT: Yes, sir. I may come sit
15 with you if I can't hear it.

16 (State's Exhibit 67 published, but not
17 reported).

18 Q. (BY MR. DRIVER) Upon completion of the
19 interview with the defendant, did -- was the search
20 warrant execution finished or did y'all continue on?

21 A. Well, the search warrant is actually being
22 executed while we do the interview. So, those happen
23 simultaneously. We try to spend as little time on
24 scene as possible. And that's for a couple of
25 purposes. That's for our safety, for his safety. And

1 also so it's not quite as obvious as to what we're
2 doing, just out of deference to the individuals that
3 are there.

4 Q. And once you leave him or once he gets out of
5 the car, what's your role at that point?

6 A. My role back at that point then is basically
7 going to make sure that everybody is still safe,
8 everybody is accounted for. Kind of get an overview of
9 what was -- what was seen, what they've located, answer
10 any other questions that come up to play. And then we
11 start coordinating our exit. Which is making sure that
12 it's annotated on the documentation, that he does have
13 his copy. And then we make sure that everybody that's
14 on scene is in -- comes back out safely. And at that
15 point, we immediately remount cars and we leave.

16 Q. Now, in this case once you left, did -- was
17 there anything unusual that happened in regard to this
18 particular case?

19 A. Yes, actually there was.

20 Q. What was unusual that happened in this case?

21 A. At about 8:30 that evening, I got a phone call
22 from an ICE agent that said that -- that the individual
23 -- Mr. Pachas-Luna had purchased an airline ticket for
24 Lima, Peru. And I asked him how did he purchase an
25 airline ticket 'cause to show residency of the house,

1 we had his American passport. He said he purchased it
2 on a Peruvian passport.

3 Q. So, did you go to the airport?

4 A. Yes, sir. I contacted Corporal Lee and
5 instructed him to get with the DA and say here's what's
6 going on. Here's what was found at the residence.
7 They already started their forensics process. And then
8 I went straight to the airport to await the issuance of
9 the warrant.

10 Q. Which airport did you go to?

11 A. Bush Intercontinental.

12 Q. Did you locate the defendant at Bush
13 Intercontinental Airport?

14 A. We actually got to the gate before he did. We
15 did see him come to the gate. He did check in. Of
16 course, at that point, I still don't have an arrest
17 warrant. I can't do anything. I waited for a phone
18 call from Corporal Lee that said the warrant had been
19 signed. At which point Mr. Luna had actually already
20 entered the sky bridge heading to the plane.

21 Q. And the plane was heading internationally?

22 A. Yes, sir. I think it -- I know it was going
23 to Lima, Peru. But I don't remember if that was his
24 final destination or if it was just one of the many
25 that were on the flight itinerary.

1 Q. Once you had confirmed that there was an
2 active warrant, did you detain the defendant?

3 A. Yes, sir. When the active warrant was -- when
4 I was notified the warrant had been signed, TSA agents
5 were on the sky bridge and removed him from the sky
6 bridge and brought him back up onto the concourse.

7 Q. Did you find a copy of an airline ticket on
8 his person?

9 A. Yes, sir. He had his airline ticket.

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

12 THE COURT: Yes, sir.

13 Q. (BY MR. DRIVER) Show you what's marked as
14 State's Exhibit 69. Flip through that and see if you
15 recognize what's depicted there.

16 A. Yes, sir, I do.

17 Q. Are those the documents you found on the
18 person of the defendant on that day?

19 A. Yes, sir, they were.

20 Q. All right. And are these exact duplicates or
21 exact photocopies of those --

22 A. Photocopies of them, yes, sir.

23 MR. DRIVER: State offers State's Exhibit
24 69. Tender that to opposing counsel.

25 MR. WILLIAMS: We have no objection, Your

1 Honor. If I might just look at them for a minute?

2 THE COURT: Yes, sir.

3 MR. WILLIAMS: All right. Thank you.

4 THE COURT: All right. No objection,
5 State's 69 will be admitted.

6 Q. (BY MR. DRIVER) And what was this, just a
7 standard airline ticket?

8 A. Yes, sir.

9 Q. The destinations that we see over here on the
10 left-hand side of State's Exhibit 69, is one of those
11 destinations, Lima?

12 A. Yes, sir, it is.

13 Q. And what is this other city listed?

14 A. That would be Panama City, Panama.

15 Q. Do you know just -- I don't know -- by your
16 own knowledge, do you know if that means that he was
17 going through Panama City or going to Lima?

18 A. Well, the final destination I was told was
19 Lima. And that came from the Continental individuals
20 -- I, guess they're now United -- at the airport. And
21 that's just the ticket that he had to -- showing the
22 route to get there.

23 Q. Based on the fact that he was on the jet way
24 when he was arrested, do you believe he was about to
25 flee the country?

1 A. Yes, sir. He was past check in and within
2 sight of the door for the aircraft.

3 Q. And the date that this occurred was what date?

4 A. What is on the ticket, December 12th?

5 December 13th, right.

6 Q. Was that the same day you had executed the
7 search warrant at the defendant's residence?

8 A. Yes, sir.

9 MR. DRIVER: I'll pass the witness,
10 Judge.

11 THE COURT: All right. Mr. Williams?

12 MR. WILLIAMS: May I have just one
13 moment, please, sir?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. WILLIAMS:

17 Q. Lieutenant --

18 MR. WILLIAMS: May I proceed, Judge?

19 THE COURT: Yes, sir.

20 Q. (BY MR. WILLIAMS) Lieutenant Spurger, who's
21 the other party that is testified or that was asking
22 questions in the car?

23 A. That would be Sergeant Jerry Philpot with the
24 Harris County Sheriff's Office.

25 Q. All right. Now, when the defendant was

1 brought to the car to speak to you, was he escorted
2 down there or did somebody just let him walk down to
3 the car?

4 A. No. He's normally escorted within a couple of
5 feet.

6 Q. Okay. By whom, couple deputies?

7 A. Just a non-uniformed officer.

8 Q. Okay. And does that officer remain by the
9 car?

10 A. He goes back up to the house. Around the car
11 -- we actually have specific instructions during the
12 prebriefing of the search warrant that nobody walks
13 around the car. We don't -- we don't have a show of
14 force around the vehicle. It's not a marked patrol
15 car. It's actually an Acura MDX. It's a nice vehicle.
16 We don't let anybody walk around the vehicle during the
17 interviews. They all stay away.

18 Q. Okay. We can see that he had a jacket on
19 during the interview, but did he have on pants?

20 A. Yes, he had on pants.

21 Q. What about shoes?

22 A. If I remember correctly, it would be slip-ons.

23 Q. Okay. Like a house shoe?

24 A. Like a house shoe.

25 Q. Now, is it your testimony that if a file is

1 downloaded, let's say on a computer peer -- okay. And
2 someone is sharing a file with the computer at, let's
3 say, the defendant's house.

4 A. Um-hum.

5 Q. And that file is being shared is not complete
6 are you saying that the hash number for the origin file
7 will not appear there?

8 A. If the file is not fully downloaded and
9 resident in the folder, it doesn't create a hash value.

10 Now, you can do partial sharing, but that
11 is only during the time that the other individual is
12 sharing to you.

13 We can go way off into it, if you want.

14 Q. Well, no. All I want to know is can the hash
15 number show up and the file not be complete on another
16 computer?

17 A. On another computer there's a possibility.
18 But the file starts out as an initial full file and
19 it's there when it's hashed with eMule. It hashes it
20 there.

21 Q. But it doesn't mean that it's downloaded?

22 A. Yeah, it's there.

23 Q. Well, what does that mean that, that it is
24 downloaded --

25 (Simultaneous speaking).

1 COURT REPORTER: I'm sorry. One at a
2 time, please.

3 Q. (BY MR. WILLIAMS) What does that mean when
4 you say it's there, that it's downloaded?

5 A. If the file is not resident in the folder
6 being seen by the program, the program cannot create a
7 -- well, create the hash value that we see. It would
8 create a hash value, but it won't be the one that we're
9 looking at. If you have -- I'll make it slow.

10 Q. Okay.

11 A. If you remove --

12 Q. Going slow or fast, I'm still not getting it.

13 A. If I have a bucket and I put 25 balls in it
14 and all the balls have a number, right? All those
15 balls added together create a big, big number. If I
16 remove one ball, the number is now different. So, to
17 get the number that we had already seen, that file had
18 to be there. Otherwise, one of the balls wouldn't be
19 there, the number wouldn't be the same.

20 Q. Okay. Well, back -- so, are you saying then
21 that if files are being shared online and you're
22 looking at someone's IP address, you can tell because
23 the hash number is there --

24 A. Correct.

25 Q. -- that that file is complete. Is that what

1 you're saying?

2 A. That that file is there.

3 Q. And I'm asking you is it complete. Is that
4 what you're saying?

5 A. It is complete when it is hashed on the
6 machine.

7 Q. Okay. And you don't know of any situation
8 where a file may be partial, that is, and not received
9 all --

10 A. Yes.

11 Q. I'm sorry.

12 That has not received all of the entirety
13 where the hash mark would show?

14 A. Yes, there is.

15 Q. There is a possibility that could happen?

16 A. Yes. I'll explain it to you.

17 Q. Okay. Did you open those hash values -- well,
18 first let me ask you this: Are you the officer that
19 the hash values were -- or the IP data was given to you
20 to determine if there were a matching hash values
21 elsewhere?

22 A. No, sir.

23 Q. You're not that person. Okay.

24 Did you make attempts to open the hash
25 values that were found on that particular IP address,

1 that is the one at the house, that computer?

2 A. Well, you can't open a hash value.

3 Q. Well, I mean, open that file.

4 A. If the files were downloaded and we obtained
5 them, then they can open those. Did I do that? No,
6 sir, I did not.

7 Q. Okay. Who did that, do you know?

8 A. The person that reviewed the files would be
9 Corporal Lee.

10 Q. He opened them?

11 A. He reviewed the files that we had, yes.

12 Q. Did you ever make any attempt to download or
13 open those files that were in the IP address that you
14 seized?

15 A. We always attempt to make a download from
16 those IP addresses. That's just general principle.

17 Q. Yeah.

18 A. There are going to be times when you can't
19 download.

20 Q. Was this one of those times or do you know?

21 A. If I'm not mistaken, he was not able to get it
22 downloaded during the time frame we were working it.
23 That occurred because of a couple different situations.
24 One is each person who runs the client on their
25 computers -- meaning I make files available for share

1 in the room. All right. So, I say I've got a
2 computer. Here's my files available to share. You can
3 come get them.

4 Well, I only have so many available
5 connections for you to come get a file from me. But if
6 there's other people in front of you getting files from
7 me, you can't connect to me. You can see me, but you
8 can't connect. Now, you're put in what's called a
9 waiting status. You wait. You're not really in line,
10 but you're waiting. Once you get past waiting, you go
11 into queued. Now, you're in line. But the whole time
12 my computer has to be on. So, if I decide at some
13 point I'm not going to use my computer or it goes to
14 sleep and I've got it set to shut down, well, you just
15 died in line. So, you didn't get anything.

16 It can also occur because there could be
17 a networking traffic error. Just like when you try to
18 go to Google and you type Google and hit enter and it
19 takes forever to get there, same thing can happen in
20 these cases. Where I try to connect to you, but
21 because of network traffic on the network -- just like
22 on a freeway -- I'm not going to be able to get there
23 yet. And because either we timeout or you timeout, we
24 don't connect. So, we don't get those files at that
25 point.

1 Q. So, then are you saying that -- that one of
2 the reasons why it may not -- could have been opened
3 because it wasn't -- the file wasn't there?

4 A. No. If the -- if the hash is there, the file
5 is there.

6 Q. All right. Is it your testimony that the file
7 was there on the IP address of Mr. Pachas-Luna?

8 A. I'm not sure how to answer your question since
9 I don't do that part of the investigation.

10 If I saw a hash value listed while I was
11 connected to you and that hash value is there at that
12 time, then that file is there at that time. So, if I
13 saw that hash value three weeks ago and I note the date
14 and time and the IP address, well, then on that date
15 and time and that IP address that file was there then.

16 Can you delete it between now and then?
17 Sure you can.

18 Q. Okay. And finally, your testimony is that if
19 the file is not there completely, that hash value is
20 not going to show?

21 A. Correct.

22 Q. And that --

23 A. Not in that --

24 (Simultaneous speaking).

25 Q. I'm sorry.

1 And there is no circumstance where an
2 incomplete file on a computer, one that has not been
3 opened, would ever have the hash number there, the hash
4 value?

5 A. Opening and closing files have nothing to do
6 with hash in a file. You don't open --

7 Q. Now, what about --

8 (Simultaneous speaking).

9 COURT REPORTER: I'm sorry.

10 THE COURT: Hold on.

11 A. I will answer your question. Can you do
12 partial file sharing? The answer to your question is
13 yes.

14 Now, if I'm downloading from Mr. Schlerf
15 and he's got the file that you're looking for and I
16 have the file you're looking for, then while you're
17 downloading the file, you can start to get it from me
18 and him at the same time. That is partial file
19 sharing. And it will show that way.

20 Q. And will it show the hash number for the
21 entire file?

22 A. Yes, sir.

23 Q. Okay.

24 A. During that transition.

25 MR. WILLIAMS: May I have one moment,

1 Judge?

2 THE COURT: Yes, sir.

3 (Brief pause).

4 MR. WILLIAMS: I'm ready to proceed.

5 THE COURT: Go ahead.

6 Q. (BY MR. WILLIAMS) Sir, you testified earlier
7 that you -- the night before when you were talking to
8 Mr. Pachas-Luna, you said that you saw the computer was
9 on and that at that time there were a list of the files
10 shown on the eMule program?

11 A. There was a list of files registered, yes.

12 Q. Okay. And did you get a listing of those?

13 A. That listing is created from the CPS website.
14 I don't have it. Corporal Lee has it.

15 Q. But were they compared with the listing on his
16 PC?

17 A. I'm not sure, sir.

18 Q. Is this something that you would have done if
19 you had been handling that part of the investigation?

20 A. It depends. Because once we get to the
21 residence, regardless of what we saw during the
22 investigation, that's information for us to look to
23 see, to get probable cause to look in the house.

24 Now, when I get to the residence and we
25 run the search warrant, he either has child porn or he

1 doesn't. Plain and simple. Was it Brand A of Coke or
2 was it Brand B of Coke? I don't know. Was it coke?
3 Yeah.

4 Q. Well, to go and take information from another
5 program and you don't have the actual information off
6 the PC itself, don't you kind of want to round it off
7 to verify that you've done the right thing?

8 A. Well, we do. The guy had child porn when we
9 got there.

10 Q. So, was it verified with child porn that you
11 say you detected when you looked at it?

12 A. I don't know what the type, but child porn is
13 child porn. So, it's not -- I mean, I'm missing your
14 point in this situations. It's either child porn or
15 it's not --

16 Q. Well, the point is --

17 A. -- period.

18 Q. Finished?

19 A. Um-hum. Go ahead.

20 Q. I'm sorry.

21 My point is that you, in your affidavit
22 -- you didn't prepare the affidavit?

23 A. No, sir.

24 Q. The affidavit suggests that child porn was
25 seen on that computer. And we find out later that it

1 was not because it was never downloaded. That the hash
2 value was taken off the files, was given to other
3 unknown officers and they gave other corresponding
4 files that had that hash value. Okay.

5 And I'm simply asking in that scenario --
6 and I understand it's your belief that once you got the
7 hash value, it's like a fingerprint. You got one, you
8 got the other. Okay.

9 But I was simply asking: Did someone
10 compare what you saw on the list the night it was
11 viewed with his PC to see if those files actually
12 appeared after you did your arrest?

13 A. Normally we do some of that, yes. But the
14 problem we run into is -- did you delete an email
15 within the last month? Did you?

16 Q. Who me?

17 A. Yeah.

18 Q. I don't know if I did or not.

19 A. Okay. There you go. The same problem lies in
20 this world too. If I look to see what you have today,
21 nothing says that you're not going to be able to delete
22 some of that tonight or when you leave the courtroom.

23 Q. And, of course, we're not talking about a last
24 month scenario. We're talking about you saw it the
25 night before you ran your warrant.

1 A. Right. They saw some things the night before.

2 Q. Right.

3 MR. WILLIAMS: We'll pass the witness,

4 Your Honor.

5 THE COURT: All right. Mr. Driver?

6 MR. DRIVER: Thank you, Judge.

7 REDIRECT EXAMINATION

8 BY MR. DRIVER:

9 Q. I guess I want to clear up one thing. If
10 you are on the file sharing network eMule, for example,
11 and you do a search and you find particular files with
12 associated hash values available for share from a
13 particular user, is the whole file there if there's a
14 hash value there?

15 A. Yes, sir.

16 Q. So, if you were to get on CPS and you were to
17 look and see that within a particular person's
18 computer, there are certain hash values that are files
19 available for share and those hash values match up with
20 files that you know to be child pornography, are the
21 whole files of those child pornography there?

22 A. Yes.

23 Q. This stuff about partial downloading, does
24 that have anything to do with whether or not those
25 files that have the full hash value are resident on

1 that particular computer?

2 A. Not really, no.

3 Q. Does that have more to do with how the files
4 are actually shared and downloaded?

5 A. It's more a function of how the network works
6 to get it shared and downloaded.

7 Q. Do all of the networks do it that way?

8 A. Several of them do, several of them don't. It
9 depends on the network.

10 Q. And if they don't do it that way, if they just
11 download from one single computer, what do you call
12 that?

13 A. That's a single point download.

14 Q. It's a single source download?

15 A. Um-hum.

16 Q. When you when -- they download from multiple
17 different computers that have the same file like, I
18 guess, they download different bits of the same file --

19 A. Right.

20 Q. -- from different computers. What do you call
21 that?

22 A. We call that a swarm.

23 Q. Is that the principle that like Bit Torrent
24 operates on?

25 A. Well, that's the whole point of file sharing,

1 is to increase and to leverage your ability to download
2 versus somebody else's ability to upload. So, your
3 upload speed is slow. My download speed is fast. So,
4 instead of getting it only from you, which means I can
5 only get it as fast as you can upload it, I now get it
6 from everybody else. Therefore, I'm leveraging your
7 upload speed to increase my download speed.

8 Q. Does that have any bearing on when you're
9 doing these CPS investigations and looking and seeing a
10 particular hash value on a particular computer?

11 A. No.

12 Q. I think we're --

13 A. If the hash value is there, we review the hash
14 value. We get a copy of the file and we review it. It
15 either is or it isn't child porn.

16 Q. And when you serve the search warrant, how
17 concerned are you to find that particular file?

18 A. It would be nice, but to us, it's just finding
19 that the individual is actually engaged in possessing
20 child pornography.

21 Q. In your mind if you have -- if you recover
22 several thousand images of child pornography upon
23 serving a search warrant, do you feel the need to go
24 through and individually examine each one to see if
25 they're the same as the one you originally thought was

1 on his computer?

2 A. No.

3 Q. And is -- again, is that -- would it be nice
4 to know?

5 A. We would call that just icing on the cake.

6 Q. Because you've already found what you were
7 looking for?

8 A. He's already in possession of contraband
9 items, yes.

10 Q. Can you express in -- based on your training
11 and experience and your understanding of hash values,
12 how likely is it that if there's a hash value on a
13 particular computer and you match it up to another file
14 with the same hash value, how likely is it that they're
15 the same file?

16 A. Two the 160th power, relatively speaking.

17 Q. Okay.

18 MR. DRIVER: Pass the witness, Judge.

19 THE COURT: Mr. Williams?

20 MR. WILLIAMS: Yes, sir.

21 RE-CROSS-EXAMINATION

22 BY MR. WILLIAMS:

23 Q. If only a partial file is shared, what hash is
24 displayed by eMule?

25 A. Well, if it's being shared by you and by

1 Mr. Schlerf and Mr. Luna, and I'm downloading it from
2 the three of you, then the system actually creates the
3 full file hash and I get that file because that's what
4 I'm looking for.

5 Q. Okay.

6 A. Now, if they're separate -- if they're
7 different I can't get the same file parts.

8 Q. I understand.

9 The point being though, you could have a
10 partial file that would show the hash number -- hash
11 value of the entire file?

12 A. Only during a transition or transfer of files.

13 Q. Okay. Thank you.

14 MR. WILLIAMS: That's it, Your Honor.

15 THE COURT: Mr. Driver?

16 MR. DRIVER: Nothing further, Judge.

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

18 You may step down and step outside.

19 How many more witnesses do you have?

20 MR. DRIVER: I plan on calling just one
21 more.

22 THE COURT: One more.

23 Are you going to have -- if you can say
24 right now -- Mr. Williams, any witnesses?

25 MR. WILLIAMS: I'm not sure, Your Honor.

1 If any at this point, one, that would be the defendant
2 if we -- if he chooses, if I choose, if we choose
3 together for him to testify.

4 THE COURT: I'm just trying to decide
5 should -- I don't know how everybody feels. But it's
6 20 till 12:00. We can go ahead and take a lunch break
7 now and start back at 1:00 o'clock or we can try to go
8 through this witness for another 30 or 45 minutes and
9 take a lunch break then.

10 MR. WILLIAMS: Well, as you can imagine,
11 I'd like to talk with my client. In other words, if we
12 put that witness on, I need a break to talk with him
13 about testifying and whether if he should or should not
14 testify.

15 THE COURT: Okay.

16 MR. DRIVER: So, perhaps we should --

17 MR. WILLIAMS: Why don't we do it now?

18 THE COURT: Let's go ahead and go then.

19 MR. WILLIAMS: Thanks, Judge.

20 MR. DRIVER: State calls Officer Lawrence
21 Potier.

22 MR. WILLIAMS: Oh. I thought we were
23 going to break now.

24 THE COURT: I thought you --

25 MR. WILLIAMS: I can't get anything right

1 on this.

2 THE COURT: It was a partial download,
3 Connie.

4 MR. WILLIAMS: I was saying that if we
5 put him on to 1:00 o'clock, I'm still going need a
6 break to talk to my guy. So, could we just break now
7 and then go straight through?

8 THE COURT: Oh, talk to him now about it?

9 MR. WILLIAMS: Yes, sir.

10 THE COURT: Oh, okay. Yeah, that's fine.
11 That's fine. I misunderstood.

12 MR. DRIVER: Yeah, I did too. I thought
13 that you meant go ahead and put him on, then we take
14 the break and then you talk to him during the break.

15 MR. WILLIAMS: No.

16 THE COURT: All right. We'll break till
17 1:00 o'clock then.

18 (Court recess).

19 THE COURT: Let's go.

20 MR. DRIVER: State calls Lawrence Potier.

21 LAWRENCE POTIER,
22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. DRIVER:

25 Q. Could you please introduce yourself to the