

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-50160

Plaintiff-Appellee,

D.C. No.

v.

3:17-cr-01269-AJB-1

WILLIAM WALSH, IV,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Anthony J. Battaglia, District Judge, Presiding

Argued and Submitted November 5, 2019
Pasadena, California

Before: SCHROEDER and FRIEDLAND, Circuit Judges, and ROSENTHAL,**
District Judge.

Invoking *Old Chief v. United States*, 519 U.S. 172 (1997), William Walsh, IV
appeals his jury conviction and sentence for two counts of distributing child
pornography, in violation of 18 U.S.C. § 2252(a)(2), and one count of possessing

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable Lee H. Rosenthal, Chief United States District Judge
for the Southern District of Texas, sitting by designation.

child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). He also appeals three conditions of supervised release that the parties agree were improperly imposed. We have jurisdiction under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291. We affirm the conviction, vacate the three supervised release conditions, and remand.

1. Walsh argues that the district court abused its discretion under Federal Rule of Evidence 403 by admitting a limited number of pornographic images and videos into evidence rather than accepting Walsh's proffer to stipulate as to their nature and to allow the government to describe their contents to the jury. Walsh contends that because the "emotive effect assuredly overwhelmed anything else in the evidentiary record" and unfairly prejudiced the jury against him, the "error was not harmless beyond a reasonable doubt."

Walsh's Rule 403 claim fails. *United States v. Ganoe*, 538 F.3d 1117 (9th Cir. 2008), rejected a claim that was similar in most relevant respects. *Ganoe* held that the district court acted within its discretion in rejecting a defense offer to stipulate and "allowing the jury to briefly view a carefully limited number of [child pornography] images that were the subjects of the charged offenses." *Id.* at 1119. The defendant in *Ganoe* suggested that the pornography could have been downloaded by mistake. *Id.* at 1123. Walsh similarly denied knowledge, claiming that someone else—perhaps his son or stepson—must have used his password-protected computer for several months to complete hundreds of child pornography

downloads, view the contraband, and share the files. Tyrone Ganoë’s “offer to stipulate that anyone viewing the images would have known that they met the legal definition of child pornography did not render the evidence impermissible, because he refused to also stipulate that the titles of the computer files alone were enough to import knowledge of what they were.” *Id.* at 1119. Moreover, as we stated in *Ganoë*, “term[s] in the world of child pornography” can arguably be “ambiguous as to either the depiction of sexual conduct . . . or the age of participants.” *Id.* at 1119, 1123.

Like Tyrone Ganoë, Walsh did not offer to stipulate that no person, including himself, could download the files without realizing they were child pornography. *See id.* at 1123. And as in *Ganoë*, some of the file titles connected to Walsh’s laptop were ambiguous as to their contents, leaving the government with the burden to show that someone who downloaded, viewed, and organized the files would have known what was on them. In similar circumstances, *Ganoë* held that “the images themselves, published to the jury as part of the government’s detailed and comprehensive forensic evidence regarding the downloading, viewing, categorizing, and storing of the files”—which, in this case, included evidence that Walsh was the only one who used his computer, and that the computer was used to view the pornography files and buy the software used to share them—were “probative of the state of mind with which the files were received and possessed.” *Id.* at 1123–24. In

light of these similarities to *Ganoe*, we disagree with Walsh that the images and videos had scant probative value and were unfairly prejudicial.

Walsh's additional offer—which Tyrone Ganoe did not make—to allow the government to read narrative descriptions of the selected images and videos does not change this conclusion. The district court compared the probative value of the videos and images with that of the proffered stipulation and balanced that value against the potential for unfair prejudice. The district court reasonably decided that the videos and images were more probative of Walsh's knowing use of his computer to download, access, and share the pornography than his proffered stipulation, including the narrative descriptions, and that the probative value outweighed the risk of unfair prejudice.

As in *Ganoe*, the district court took careful steps to reduce that risk. *See id.* at 1124. These steps included thoroughly examining the jury panel in jury selection and admitting only a very small number of the hundreds of thousands of child pornography files the government claimed were downloaded to Walsh's computer.

Walsh cites *United States v. Merino-Balderrama*, 146 F.3d 758, 762–63 (9th Cir. 1998), in which we held that the district court had erred by allowing the jury to view films found in the defendant's car despite his offer to stipulate “that the films were child pornography and had travelled in interstate commerce.” But in *Merino-Balderrama*, the government offered no evidence that the defendant had ever seen

the videos; he saw only their box covers. *Id.* at 762–63. The video contents were thus “less probative of scienter than were their box covers,” *id.* at 762, while the images in this case are at least as probative of scienter as Walsh’s proposed stipulation plus the government’s narratives. Further, in *Merino-Balderrama*, “the prosecution made no fewer than ten references to the films during closing argument.” *Id.* at 763. By contrast, the government’s closing statement in this case referred to the contents of the admitted images and video clips just once, without details. The differences between this case and *Merino-Balderrama* support the conclusion that the district court did not abuse its discretion under Rule 403.

2. We agree with the parties that Standard Conditions of Supervision 4, 5, and 13 that the district court imposed are unconstitutionally vague under *United States v. Evans*, 883 F.3d 1154, 1162–64 (9th Cir. 2018). We remand for the district court to modify these conditions consistent with *Evans*.

3. Walsh’s request to reassign the case to a different district judge on remand to “preserve the appearance of justice” is denied. *See United States v. Walker River Irrigation Dist.*, 890 F.3d 1161, 1173 (9th Cir. 2018) (quoting *United States v. Rivera*, 682 F.3d 1223, 1237 (9th Cir. 2012)) (describing the standard for whether reassignment is appropriate). There is no basis for reassignment based on bias or its appearance.

AFFIRMED IN PART, VACATED IN PART, and REMANDED.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,)
4 PLAINTIFF,) CASE NO. 17CR1269-AJB
5 -V-)
6 WILLIAM FRANCIS WALSH IV,) FEBRUARY 12, 2018
7 DEFENDANT.) 3:06 P.M.
8) SAN DIEGO, CALIFORNIA
9)

10 TRANSCRIPT OF MOTION IN LIMINE HEARING
11 BEFORE THE HONORABLE ANTHONY J. BATTAGLIA
12 UNITED STATES DISTRICT JUDGE
13
14

15 APPEARANCES:

16 FOR THE GOVERNMENT: ADAM L. BRAVERMAN, UNITED STATES ATTORNEY
17 BY: JANET A. CABRAL, ESQ.
18 AMANDA GRIFFITH, ESQ.
19 ASSISTANT U.S. ATTORNEYS
20 880 FRONT STREET
21 SAN DIEGO, CALIFORNIA 92101

22 FOR THE DEFENDANT: BARDSLEY & CARLOS LLP
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26 OFFICIAL REPORTER: JEANNETTE N. HILL, CSR
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31 REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

FEBRUARY 12, 2018

1 SAN DIEGO, CALIFORNIA; MONDAY, FEBRUARY 12, 2018; 3:06 P.M.

2 DEPUTY CLERK: CALLING MATTER 19 ON CALENDAR, CASE
3 NUMBER 17CR1269, UNITED STATES OF AMERICA VERSUS WILLIAM
4 FRANCIS WALSH THE IV, ON FOR MOTION IN LIMINE HEARING.

5 MS. CABRAL: GOOD AFTERNOON, YOUR HONOR. JANET
6 CABRAL AND AMANDA GRIFFITH FOR THE UNITED STATES.

7 MS. GRIFFITH: GOOD AFTERNOON.

8 MR. CARLOS: GOOD AFTERNOON, YOUR HONOR. MARC CARLOS
9 ON BEHALF OF MR. WALSH. HE IS PRESENT ON BOND.

10 THE COURT: WELL, GOOD AFTERNOON TO ALL. WE HAVE A
11 NUMBER OF IN LIMINE MATTERS, AND THERE IS STILL A COUPLE
12 MOTIONS.

13 SO LET ME ASK FIRST, WITH REGARD TO THE MOTION TO
14 COMPEL DISCOVERY, 14-1, ANY DISCOVERY ISSUES, MR. CARLOS, WHICH
15 YOU REQUESTED?

16 MR. CARLOS: NO, NOT AT THIS TIME, YOUR HONOR.

17 THE COURT: SO WE'LL DENY THAT ONE AS MOOT.

18 AND THEN YOU MADE A MOTION FOR LEAVE TO FILE FURTHER
19 MOTIONS. ANYTHING CONTEMPLATED AT THIS TIME?

20 MR. CARLOS: YOUR HONOR, WE HAVE RECEIVED SOME
21 DISCOVERY RELATIVELY LATE AND I HAVE YET TO MAKE A DECISION AS
22 TO IT. SO I WOULD ASK TO RESERVE. IT WOULD BE A PRETTY
23 LIMITED MOTION, IF THERE WAS ANYTHING.

24 THE COURT: OKAY. WELL, I WILL GRANT YOU LEAVE TO
25 FILE FURTHER MOTIONS FOR INFORMATION THAT HAS BEEN RECENTLY

FEBRUARY 12, 2018

1 PROVIDED. HOW RECENTLY? IN THE LAST COUPLE DAYS? A WEEK?

2 MR. CARLOS: WITHIN A WEEK.

3 THE COURT: A WEEK. YOU CAN FILE A MOTION ON
4 ANYTHING YOU RECEIVED IN THE LAST WEEK THAT COULDN'T HAVE BEEN
5 CONTEMPLATED FROM OTHER INFORMATION THAT PRECEDED. SO THAT ONE
6 IS GRANTED.

7 AS TO MOTIONS IN LIMINE -- WELL, THE GOVERNMENT MOVED
8 FOR RECIPROCAL DISCOVERY. THAT IS 23-1. THIS WAS EARLIER IN
9 THE YEAR. I THINK THERE IS A RENEWED REQUEST FOR THAT.

10 WHERE DO YOU STAND ON MAKING RECIPROCAL DISCOVERY AT
11 THIS POINT, SIR?

12 MR. CARLOS: YOUR HONOR, I HAVE TO SAY THERE HAVE
13 BEEN SOME DEVELOPMENTS IN THE CASE WHICH HAVE GREATLY CHANGED
14 THE WAY -- THE COMPLETION OF THE DEFENSE. AND I AM STILL IN A
15 STATE OF REASSEMBLY OF THE CASE, SO TO SPEAK. IT JUST HAS HAD
16 A SIGNIFICANT IMPACT ON CHARACTER WITNESSES.

17 I DO HAVE AN EXPERT, BUT AT THIS POINT I DON'T SEE
18 THE EXPERT TESTIFYING BASED UPON INFORMATION THAT HAS BEEN
19 RECEIVED.

20 IF IT CHANGES, I WILL ALERT THE PROSECUTION
21 IMMEDIATELY, BUT THIS DOESN'T SEEM TO BE THE CASE AT THIS
22 POINT. THERE IS ISSUES REGARDING, I GUESS, 404(B) AND SOME
23 OTHER ISSUES WHICH HAVE IMPACTED THIS MATTER.

24 THE COURT: WE WILL CERTAINLY ADDRESS THOSE BUT, FOR
25 NOW, I AM GOING TO GRANT THE GOVERNMENT'S MOTION AND ASK YOU TO

FEBRUARY 12, 2018

1 MAKE RECIPROCAL DISCOVERY BY THE 20TH. THAT IS A WEEK AND A
2 DAY FROM NOW. AND ANYTHING THAT DEVELOPS BETWEEN THAT AND THE
3 DATE OF TRIAL, SUPPLEMENT YOUR DISCLOSURE.

4 MR. CARLOS: THANK YOU.

5 THE COURT: SOUND FAIR ENOUGH?

6 MR. CARLOS: YES, SIR.

7 THE COURT: THE GOVERNMENT HAPPY WITH THAT?

8 MS. CABRAL: YES, YOUR HONOR. THANK YOU.

9 THE COURT: AND THEN THE GOVERNMENT MOVED IN DOCUMENT
10 27-1 -- NO, I HAVE IT BACKWARDS. IN 26-1, THE FIRST MOTION IN
11 LIMINE IS TO ADMIT EXPERT TESTIMONY.

12 THERE HAPPENS TO BE AN OPPOSING MOTION TO PRECLUDE
13 EXPERT TESTIMONY, WHICH IS 27-4, FROM WHAT I READ. AND SUBJECT
14 TO DEVELOPING FOUNDATION IN COURT, THIS PERSON SEEMS LIKE AN
15 EXPERT TO OPINE ON THE DOWNLOAD AND THE DATA AND SO FORTH.

16 BUT THERE WERE A COUPLE CONCERNS, AT LEAST THAT YOU
17 HAVE, MR. CARLOS. SO WHY DON'T WE DEAL WITH THOSE AND ALONG
18 THE WAY THAT WILL RESOLVE TWO OF THESE MOTIONS.

19 YOU SAY, IN GENERAL, AT PAGE FIVE, THE EXPERT SHOULD
20 NOT BE ALLOWED TO OPINE AS TO OWNERSHIP, EXCLUSIVE ACCESS, OR
21 INTENDED USE OF THE VIDEOS, OR THAT HIS ANALYSIS CAN EXCLUDE
22 ANY THIRD PARTY FROM USE OF THE COMPUTER.

23 LET ME ASK, MS. CABRAL AND MS. GRIFFITH, IS THE
24 EXPERT GOING TO TOUCH ON THOSE AREAS?

25 MS. CABRAL: THE EXPERT WOULD NOT RENDER AN OPINION

FEBRUARY 12, 2018

1 AS TO THOSE THINGS. HE CERTAINLY WILL TESTIFY TO FACTS FROM
2 WHICH ARGUMENT WOULD BE MADE ON THOSE ISSUES.

3 WE WOULDN'T PROPOSE THAT HE WOULD TESTIFY, FOR
4 EXAMPLE, THAT THIS IS, YOU KNOW, THE INTENDED USE OF VIDEOS, OR
5 THAT HE -- WE CERTAINLY WOULDN'T ELICIT TESTIMONY THAT HE CAN,
6 YOU KNOW, EXPLICITLY EXCLUDE OTHER PEOPLE USED THE COMPUTER.
7 WE WOULD SIMPLY HAVE HIM TESTIFY AS TO THE INVESTIGATION THAT
8 HE DID, AND THOSE FACTS.

9 **THE COURT:** RIGHT. SO HE IS NOT GOING TO PROVIDE THE
10 ULTIMATE ANSWER TO OWNERSHIP, USE EXCLUSIVITY, BUT HE IS GOING
11 TO TESTIFY AS TO FACTS WITH REGARD TO HOW THE COMPUTER WAS SET
12 UP, AND THAT MIGHT LEAD TO A FINDING TO MAKE. THAT WOULD SEEM
13 APPROPRIATE.

14 WITH THAT LIMITATION, MR. CARLOS, WOULD YOU BE
15 SATISFIED?

16 **MR. CARLOS:** YOUR HONOR, I DID HAVE A CHANCE TO SPEAK
17 WITH MS. CABRAL. THE EXPERT IN THIS PARTICULAR CASE WROTE A
18 VERY LONG -- QUITE FRANKLY, ONE OF THE MOST DETAILED REPORTS I
19 HAVE SEEN IN A WHILE. AND HE MADE SEVERAL --

20 **THE COURT:** (PAUSE) I'M SORRY. GO AHEAD.

21 **MR. CARLOS:** I HEARD THIS MORNING YOU WERE HAVING
22 ISSUES WITH COUGHING. I WOULD SUGGEST TEQUILA.

23 **THE COURT:** I WOULDN'T GET ANY WORK DONE. MAYBE THAT
24 IS BETTER.

25 SO YOU LOOKED AT HIS LONG REPORT AND --

FEBRUARY 12, 2018

1 **MR. CARLOS:** AND THERE WERE SOME PRETTY CONCLUSORY
2 STATEMENTS. LIKE ONE OF THEM HE REFERRED TO, DURING HIS SEARCH
3 OF MR. WALSH THAT HE HAD ACCESS TO, WAS MOTHERLESS.COM, WHICH
4 IS ONE OF THE MORE VIAL -- OR IS A LASCIVIOUS WEBSITE. AND I
5 CALLED MS. CABRAL. AND I AM ASSUMING THAT HE WOULDN'T BE
6 THROWING PERSONAL OPINION INTO HIS TESTIMONY.

7 IT'S MY UNDERSTANDING THAT HE WOULD BE TESTIFYING AS
8 TO THE DOWNLOAD OF THE COMPUTER, HOW HE EVEN ASCERTAINED THE
9 SEARCH WARRANT IN THE FIRST PLACE, THE METHODOLOGY OF IT. BUT
10 THERE WERE SOME THINGS IN THERE THAT I THINK EVEN MS. CABRAL
11 WOULD AGREE ARE INADMISSIBLE.

12 **MS. CABRAL:** AND THE UNITED STATES DOES NOT INTEND TO
13 ELICIT INADMISSIBLE TESTIMONY.

14 **THE COURT:** LET'S DO IT THIS WAY. I WILL GRANT BOTH
15 MOTIONS. I WILL GRANT THE MOTION TO ALLOW JACKSON TO TESTIFY
16 AS AN EXPERT IN THE AREA OF FORENSIC DOWNLOAD AND ANALYSIS IN
17 THESE ISSUES THAT REQUIRE TECHNICAL KNOWLEDGE, AS WELL AS
18 TESTIFY, CERTAINLY, AS A FACT WITNESS, WHICH INDEED HE IS IN
19 MAJOR RESPECTS. AND SO 26-1 IS GRANTED.

20 AND I WILL GRANT 27-4, THE MOTION TO PRECLUDE ANY
21 OPINION TESTIMONY UNDER THE ULTIMATE QUESTION OF OWNERSHIP,
22 EXCLUSIVE ACCESS, AND/OR EXCLUSION OF ANY THIRD PERSON FROM USE
23 IN THAT SORT OF CONCLUSORY SUGGESTIVE WAY.

24 HE CAN CERTAINLY TESTIFY THAT HE SAW NO EVIDENCE OF
25 ANY THIRD-PARTY USE, NOT THAT THERE COULDN'T HAVE BEEN. BUT HE

FEBRUARY 12, 2018

1 CAN SAY I DIDN'T SEE ANY WHEN I MADE THESE TESTS AND I DID THIS
2 ANALYSIS. I MEAN, HE CAN DO ALL THE UNDERPINNINGS THAT CAN
3 LEAD TO THAT CONCLUSION. HE CAN'T SAY THAT IT'S HIS OPINION NO
4 PERSON IN THE WORLD BESIDES THE DEFENDANT USED IT, BUT HE CAN
5 TESTIFY TO THE FACTS.

6 SO DOES THAT HELP CLARIFY, MR. CARLOS, AS TO WHAT'S
7 IN HIS REPORT, IF THE QUESTION POSED IS APPROPRIATE TO ARGUE OR
8 TO OBJECT AS TO CONCLUSORY, SUGGESTIVE, SPECULATION, OR
9 WHATEVER?

10 MR. CARLOS: I AGREE, YOUR HONOR.

11 THE COURT: SO GRANTED, 27-4 AND 26-1.

12 AND THEN WE HAVE THE GOVERNMENT'S MOTION TO ADMIT
13 EVIDENCE OF THE CHILD PORNOGRAPHY IMAGES.

14 THE DEFENSE, I GUESS, IS WILLING TO STIPULATE THESE
15 ARE, INDEED, CHILD PORNOGRAPHY IMAGES INVOLVING SEXUAL CONDUCT,
16 BUT THE GOVERNMENT DOESN'T WISH TO ACCEPT THE STIPULATION AND
17 WANTS TO SHOW THE EVIDENCE, AS I UNDERSTAND THE DISPUTE.

18 THE FIRST QUESTION I ASK ON THIS, MS. CABRAL, IS HOW
19 MUCH OF THIS STUFF? I DON'T KNOW WHAT THE VOLUME IS THAT WAS
20 SEIZED FROM THE COMPUTER, BUT HOW MUCH OF THIS STUFF ARE WE
21 TALKING ABOUT, AS YOU CONTEMPLATE IT, TO DEMONSTRATE TO THE
22 JURY WHAT IT IS WE ARE HAVING A TRIAL ABOUT?

23 MS. CABRAL: WHAT WE INTEND TO SHOW, YOUR HONOR,
24 WOULD BE -- FIRST OF ALL, DETECTIVE JACKSON DOWNLOADED FIVE
25 VIDEOS OVER THE COURSE OF THE THREE DIFFERENT DAYS. SO THERE

FEBRUARY 12, 2018

1 ARE FIVE VIDEOS. THE TITLES ARE SET FORTH IN THE REPORTS. AND
2 WE CERTAINLY DON'T EVEN INTEND TO PLAY THOSE ENTIRE VIDEOS. WE
3 WOULD PLAY BETWEEN 10 AND 20 SECONDS OF EACH OF THESE FIVE
4 VIDEOS, IN ORDER FOR THE JURY TO UNDERSTAND WHAT THOSE ARE.

5 IN ADDITION TO THAT, YOUR HONOR, THERE ARE IMAGES,
6 THUMBNAIL IMAGES ON THE COMPUTER. WE WOULD LIKELY SHOW BETWEEN
7 FIVE -- SIX OF THOSE, AS WELL.

8 AND IN ADDITION, THERE ARE SOME ADDITIONAL IMAGES
9 THAT WE BELIEVE WE WOULD SHOW AS 404(B). AND THERE IS PROBABLY
10 MAYBE ANOTHER THREE OR FOUR OF THOSE.

11 **THE COURT:** OKAY. SO WE ARE TALKING ABOUT A DISCRETE
12 SUBSET IN TERMS OF THE STIPULATION. HOWEVER, WHY ISN'T IT
13 ENOUGH JUST TO DESCRIBE FOR THE JURY THE CONTENT, THE TITLE, AS
14 MR. CARLOS SUGGESTS?

15 **MS. CABRAL:** CERTAINLY, YOUR HONOR. UNDER *OLD CHIEF*
16 AND RELATED NINTH CIRCUIT LAW, THE UNITED STATES, JUST AT THE
17 END OF THE DAY, IS ENTITLED TO PRESENT ITS EVIDENCE AT TRIAL.

18 AND THERE IS A DIFFERENCE HERE, YOUR HONOR.
19 CERTAINLY THE COURT HAS TO BE CONCERNED ABOUT UNDULY
20 PREJUDICIAL EVIDENCE AND BALANCING THOSE TYPES OF THINGS.

21 BUT IN THIS CASE, YOUR HONOR, WE ARE THE UNITED
22 STATES AND HAVE TO PROVE KNOWING DISTRIBUTION AND KNOWING
23 POSSESSION OF CHILD PORNOGRAPHY. AND SO IN ORDER TO DO THAT,
24 IT'S IMPORTANT TO SHOW WHAT THESE IMAGES ARE -- THAT SOMEONE
25 WHO WOULD HAVE SEEN THESE WOULD HAVE KNOWN THAT THAT WAS CHILD

FEBRUARY 12, 2018

1 PORNOGRAPHY. AND IT IS JUST THE CITATION OUT OF *OLD CHIEF*
2 ITSELF. IT'S THE GOVERNMENT'S RIGHT TO CHOOSE ITS EVIDENCE AND
3 ALLOW THE JURORS TO SATISFY THEIR EXPECTATIONS AS TO WHAT THE
4 PROPER PROOF SHOULD BE.

5 AND I DO ALSO NOTE THAT THE NINTH CIRCUIT -- I
6 PROVIDED THE COURT AND DEFENSE COUNSEL A COPY, AS WELL. THERE
7 IS *OLD CHIEF* AND THEN THERE IS, FROM THE NINTH CIRCUIT ITSELF,
8 *U.S. V. GANOE*, WHICH IS 538 F3D 1117.

9 AND IT EXPLICITLY HELD THAT THE DISTRICT COURT DID
10 NOT ABUSE ITS DISCRETION IN ADMITTING SELECTED CHILD
11 PORNOGRAPHY IMAGES IN A CASE VERY SIMILAR TO THIS, WHERE THE
12 CHARGES WERE RECEIPT AND POSSESSION OF CHILD PORNOGRAPHY. AND
13 THE DEFENDANT HAD OFFERED TO STIPULATE AS TO THE CONTENTS OF
14 THOSE.

15 **THE COURT:** RIGHT. AND THE IMAGES THAT YOU HAVE
16 HIGHLIGHTED, THE FIVE PIECES OF THE FIVE VIDEOS, FIVE TO SIX
17 THUMBNAILS, AND THREE TO FOUR OTHER MATTERS, HAVE YOU
18 IDENTIFIED THOSE FOR MR. CARLOS SO WE KNOW, CONTENT-WISE,
19 WHETHER OR NOT THERE IS A PARTICULARIZED 403 ISSUE, AS OPPOSED
20 TO THE MORE GENERAL DEBATE HERE?

21 **MR. CARLOS:** THE ONES IN THE REPORT, RIGHT?

22 **MS. CABRAL:** CORRECT. THE DEFENSE HAS RECEIVED, ON
23 SEVERAL OCCASIONS IN REPORTS, DETAILED DESCRIPTIONS OF THE
24 VIDEOS THEMSELVES. AND THOSE ITEMS ALSO HAVE BEEN MADE
25 AVAILABLE TO THE DEFENSE TO REVIEW. THE EVIDENCE MUST STAY IN

FEBRUARY 12, 2018

1 THE POSSESSION OF THE UNITED STATES, BUT IT HAS BEEN MADE
2 AVAILABLE TO THE DEFENSE TO REVIEW. AND I HAVE LET MR. CARLOS
3 KNOW I WILL CERTAINLY -- WITH REGARD TO THE SPECIFIC ADDITIONAL
4 IMAGES -- HAVE THOSE AVAILABLE FOR HIM TO REVIEW, EVEN THIS
5 WEEK, IF HE WOULD LIKE TO DO THAT.

6 THE COURT: OKAY. I THINK HE SHOULD SEE THEM ALL.

7 MR. CARLOS, ANY LAST WORDS ON THIS?

8 MR. CARLOS: I DIDN'T GET ANY FIRST WORDS.

9 THE COURT: I WAS GOING TO LET YOU FINISH AND I WOULD
10 FINISH FROM THERE.

11 MR. CARLOS: WELL, YOUR HONOR, I UNDERSTAND THE
12 GOVERNMENT'S POSITION AND THE LAW THEY ARE RELYING UPON.
13 HOWEVER, IN THIS CASE, THE DEFENSE IS NOT THAT THIS ISN'T CHILD
14 PORNOGRAPHY. THE DEFENSE IS THAT IT'S NOT MR. WALSH THAT
15 DOWNLOADED OR VIEWED THESE IMAGES.

16 SO WE ARE WILLING TO STIPULATE AND ALLOW THEIR EXPERT
17 TO BASICALLY READ INTO THE RECORD THE DESCRIPTIONS. AND THE
18 DESCRIPTIONS ARE VILE ENOUGH. I DON'T THINK THEY NEED TO SEE
19 THE PHOTOS. AND EVEN IF THE PHOTOS OR THE SEGMENTS OF IMAGES
20 ARE TONED DOWN, ALL THEY ARE GOING TO DO IS PREJUDICE THE JURY.
21 BECAUSE IF THEY DON'T SHOW ANY OF THE MOLESTATION OR SEXUAL
22 ACTS, WHAT THEY ARE GOING TO SEE IS A YOUNG CHILD WHO IS ABOUT
23 TO BE HORRIBLY, HORRIBLY VICTIMIZED.

24 THE DESCRIPTION -- YOU KNOW, THE VIDEO IS -- I AM
25 GOING TO READ FROM ONE, JUST FOR THE RECORD. THE VIDEO IS ONE

FEBRUARY 12, 2018

1 AND FORTY SECONDS IN LENGTH, AND DEPICTS A COMPLETELY NUDE
2 ADULT MALE LYING ON HIS BACK WITH A COMPLETELY NUDE, VERY YOUNG
3 GIRL, PRETEEN, STRADDLING HIM WHILE FACING AWAY. THE SETTING
4 APPEARS TO BE IN A DARK BEDROOM AND THE SCENE APPEARS TO BE LIT
5 BY A FLASHLIGHT, WITH THE CONCENTRATION OF THE LIGHT ON THE
6 ADULT AND THE CHILD'S GENITALS. IN THE FIRST PORTION OF THE
7 VIDEO, THE MALE IS INSERTING HIS ERECT PENIS INTO THE CHILD'S
8 VAGINA WITH THE USE OF HIS HANDS, AND USES BOTH HANDS TO
9 FORCIBLY MOVE THE CHILD UP AND DOWN ON HIS PENIS AS HE
10 CONTINUES TO PENETRATE HER.

11 THE VIDEO THEN CHANGES TO SHOW THE CHILD LYING DOWN
12 ON HER BACK WITH THE MALE PENETRATING HER VAGINA WITH HIS PENIS
13 AND PULLING HIS PENIS OUT AND EJACULATES ON THE CHILD'S ABDOMEN
14 AND GENITALS. THE CHILD THEN RUBS THE SEMEN ON HERSELF WITH
15 HER HANDS AS THE MALE CONTINUES TO PENETRATE THE CHILD'S
16 VAGINA. THE VIDEO THEN CUTS OUT. IN THIS VIDEO, THE ADULT AND
17 THE CHILD'S FACES ARE NOT SHOWN.

18 THAT SHOULD BE ENOUGH. IF WE ARE WILLING TO
19 STIPULATE THIS IS, IN FACT, CHILD PORNOGRAPHY AND THE EXPERT
20 TELLS THE JURY THAT THIS IS WHAT IS ON THE VIDEO, YOU ARE NOT
21 GOING TO GET ANY CROSS-EXAMINATION AS TO COULD IT BE SOMETHING
22 ELSE. IT IS WHAT IT IS. AND I THINK JUST THE PHOTOS, ONCE THE
23 JURY SEES THE IMAGES OR SEES A LIVE VIDEO -- I'M SORRY -- A
24 LIVE PERSON WALKING -- A CHILD WALKING AROUND, IT'S JUST TOO
25 DEVASTATING FOR THE DEFENSE, BECAUSE THERE IS NO REASON --

FEBRUARY 12, 2018

1 THERE IS NO RELEVANCE TO THE ACTUAL VIDEO WHEN WE HAVE ALREADY
2 SAID THAT IT IS WHAT IT IS.

3 **THE COURT:** ALTHOUGH THE COURTS DISAGREE, THE
4 GOVERNMENT HAS ITS RIGHT, JUST LIKE ANY PLAINTIFF IN THE CASE,
5 TO PUT ON ITS EVIDENCE. THE REAL EVIDENCE HERE IS WHAT THE
6 CASE IS ALL ABOUT. OFTENTIMES, THE SAME ARGUMENT IS MADE IN
7 OPPOSITION TO BRINGING IN THE GUNS OR THE FIREARMS OR WHATEVER.
8 AND IT'S IN THE COURTS DISCRETION.

9 MS. CABRAL, YOU WANT TO ADD SOMETHING TO THAT?

10 **MS. CABRAL:** THE IMAGES ARE OF CHILD PORNOGRAPHY.
11 WHAT THE GOVERNMENT SEEKS TO PUBLISH TO THE JURY ARE INTEGRAL
12 COMPONENTS OF THE PROSECUTION COHERENT NARRATIVE, A PART OF THE
13 SEQUENCE OF WHAT THE DEFENDANT IS CHARGED WITH THINKING AND
14 DOING TO COMMIT THE OFFENSE. AND THE BIG ISSUE IN THIS CASE IS
15 KNOWLEDGE AND WHETHER OR NOT THIS DEFENDANT KNEW THAT HE HAD
16 THESE IMAGES.

17 AND, IN PARTICULAR, WITH REGARD TO -- YOU KNOW, THERE
18 IS EVIDENCE OF THESE IMAGES. THERE IS EVIDENCE OF THE TITLES
19 IN NUMEROUS DIFFERENT PLACES ON THE COMPUTER. SO TO BE ABLE TO
20 SHOW THAT SOMEONE, HAVING EVEN SEEN A SNIPPET OF THIS, WOULD
21 HAVE KNOWN OR UNDERSTOOD THAT THAT IS WHAT WAS SHOWING UP WHEN
22 IT WAS ON THE JUMP LIST AND ON THE LNK FILE AND WHETHER IT WAS
23 THUMBNAILLED IN ANOTHER DATABASE.

24 **THE COURT:** SEE, I THINK MS. CABRAL ARTICULATES IT
25 QUITE WELL. IT'S MORE THAN JUST THE IMAGES. IT TIES INTO THE

FEBRUARY 12, 2018

1 CASE IN MANY WAYS, TOUCHING ON A VARIETY OF THE COMPONENTS
2 HERE. AND IF WE KEEP IT TO A DISCRETE SET, WHICH APPEARS TO BE
3 WHAT THE GOVERNMENT INTENDS HERE WITH THREE-TO-FOUR PICTURES,
4 FIVE-TO-SIX THUMBNAILS, AND SNIPPETS, 10-TO-20 SECONDS OF THE
5 FIVE VIDEOS, I AM GOING TO ALLOW IT. I THINK THAT THE
6 PROBATIVE VALUE CUTTING ACROSS SEVERAL ISSUES OUTWEIGHS ANY
7 POTENTIAL PREJUDICE.

8 AND THE GOVERNMENT IS NOT REQUIRED TO ACCEPT THE
9 DEFENSE STIPULATION. SO I WILL GRANT THE ADMISSION OF THE
10 IMAGES IN A DISCRETE FASHION, AS WE HAVE DISCUSSED.

11 26-3, THE NEXT MOTION FILED IN THE CASE, WAS TO ADMIT
12 DEFENDANT'S VOLUNTARY, GRATUITOUS OR WHATEVER STATEMENTS,
13 WHICH, I THINK, ASSUMING THE FOUNDATION IS LAID THAT THEY WERE
14 JUST VOLUNTEERED, IT WOULD BE ADMISSIBLE.

15 ANYTHING YOU WANT TO SAY IN REGARDS TO THAT,
16 MR. CARLOS?

17 **MR. CARLOS:** NO, YOUR HONOR.

18 **THE COURT:** OKAY. THAT IS GRANTED, SUBJECT TO THE
19 FOUNDATION BEING LAID, OF COURSE.

20 26-4, EXCLUDING WITNESSES FROM THE COURTROOM. IS
21 THERE ANY OBJECTION THERE, MR. CARLOS?

22 **MR. CARLOS:** NO, YOUR HONOR.

23 **THE COURT:** THAT IS GRANTED.

24 AND 26-5 TOUCHES ON THE RECIPROCAL DISCOVERY. AND
25 IT'S TO PRECLUDE EVIDENCE NOT DISCLOSED BY THE DEFENSE. WE SET

FEBRUARY 12, 2018

1 HONOR.

2 MR. CARLOS: IN THE AFTERNOON, YOUR HONOR?

3 THE COURT: 3:00 ON THE 26TH. AND IF THERE IS ANY
4 LAST ISSUES ON THOSE THREE OR FOUR PHOTOS, OR ANYTHING ELSE
5 THAT COMES UP WITH REGARD TO RECIPROCAL DISCOVERY OR DELAYED
6 DISCOVERY, WE CAN ADJUST IT THEN. AND YOU WILL HAVE TIME
7 BEFORE THE NEXT MORNING TO DEAL WITH THE REPERCUSSIONS OF THAT.

8 SOUND OKAY?

9 MR. CARLOS: THAT'S GOOD.

10 MS. GRIFFITH: YOUR HONOR, I JUST WANTED TO RAISE A
11 CONCERN. I DON'T KNOW IF WE SHOULD. I SUGGEST THAT WE ASK THE
12 JURY ADMINISTRATOR IF WE COULD HAVE A SLIGHTLY LARGER POOL --
13 JURY POOL -- THAN USUAL. I THINK SOMETIMES IN THESE CASES IT
14 IS DIFFICULT ONCE THEY HEAR THE SUBJECT MATTER.

15 THE COURT: BECAUSE OF THE YUCK FACTOR. NO OFFENSE
16 TO ANYBODY.

17 MS. GRIFFITH: BECAUSE OF THE NATURE OF THE CHARGES,
18 I COULD SEE US GOING THROUGH A REGULAR-SIZED PANEL.

19 THE COURT: OR I COULD PRESCREEN, WHICH WOULD BE
20 ANOTHER WAY TO GO. WE HAVE ABOUT SIX WEEKS WHERE I COULD
21 ASK -- NO, WE HAVE ABOUT FOUR. WE HAVE A FEW WEEKS. WE COULD
22 PRESCREEN, WHERE WE SEND THE VENIRE A QUESTIONNAIRE ABOUT THEIR
23 FEELINGS ABOUT BEING FAIR AND IMPARTIAL IN A CASE INVOLVING THE
24 ALLEGED POSSESSION AND DISTRIBUTION OF IT.

25 MR. CARLOS: I FEAR IF WE DO THAT WE WOULD NOT GET

FEBRUARY 12, 2018

1 MANY PEOPLE TO COME IN.

2 THE COURT: I AM JUST THROWING OUT IDEAS. SO WHAT WE
3 NORMALLY ASK FOR IS 40, WHICH MEANS THAT THE JURY COMMISSIONER
4 CALLS 60 BECAUSE WE'VE GOT A BIG NO-SHOW RATE.

5 YOU THINK 50 WOULD DO THE TRICK?

6 MS. GRIFFITH: 60.

7 MR. CARLOS: 60.

8 MS. GRIFFITH: YOUR HONOR, IN MY EXPERIENCE, EVEN IF
9 THEY DON'T HAVE ISSUES REGARDING CHILD PORNOGRAPHY, YOU HAVE
10 ISSUES WITH CHILD ABUSE. AND THOSE THINGS ARE HARD TO ADDRESS
11 UNTIL THEY ARE PHYSICALLY HERE BEFORE YOUR HONOR AND HERE
12 BEFORE THE PARTIES. SO IF THE COURT IS INCLINED TO GET 60, I
13 THINK IT'S BETTER TO HAVE MORE JURORS THAN LESS.

14 THE COURT: OKAY.

15 MR. CARLOS: AND, YOUR HONOR, MAY I ASK DO YOU DO THE
16 VOIR DIRE YOURSELF, THE ENTIRE VOIR DIRE?

17 THE COURT: I WILL BE DOING A LOT OF THE VOIR DIRE.
18 I WILL GIVE YOU TIME TO FOLLOW UP. AND YOU'RE WELCOME TO
19 SUBMIT QUESTIONS THE WEEK BEFORE THAT. I WILL WEAVE THEM INTO
20 MINE IF THEY ARE NOT OBJECTIONABLE OR FAR AFIELD.

21 I AM JUST COUNTING CHAIRS. WE CAN DO 60 OUT OF AN
22 ABUNDANCE OF CAUTION. THAT MEANS WE WILL BE TAKING UP ALL
23 MORNING, FOR SURE. WITH THE EXAMINATION, IT MAY BE MORE. WE
24 OTHERWISE HAD PLANNED THIS BEING A FOUR-DAY CASE.

25 MR. CARLOS: THREE DAYS, PROBABLY.

FEBRUARY 12, 2018

1 **THE COURT:** WE DON'T HAVE TIME TO SCREEN. IT'S ON
2 THE 27TH. IF WE TAKE ALL OF THAT UP IN OPENING STATEMENTS AND
3 JURY SELECTION, WE ARE GOING TO NEED THREE DAYS, MAYBE FOUR.

4 **MR. CARLOS:** THREE AT MOST, I WOULD THINK.

5 **MS. CABRAL:** FOR THE UNITED STATES, I DON'T THINK IT
6 WOULD BE MORE THAN TWO DAYS FOR OUR CASE-IN-CHIEF, IF THAT.

7 **THE COURT:** OKAY. SO WE ARE STILL A GOOD FOUR DAYS
8 FOR THE JURY, AS FAR AS THEIR EXPECTATIONS. OKAY. SO WE'LL
9 CALL 60. WE'LL BRING 60 TO THE COURTROOM. AND I WILL LET YOU
10 SCREEN THEM FOR TIME FIRST WHEN THEY ARE HERE, SO WHEN THEY
11 HEAR IT'S A CHILD PORNOGRAPHY CASE, THEY DON'T HAVE AN
12 APPOINTMENT TOMORROW. AND THEN WE'LL GET INTO THE SENSITIVITY
13 ISSUES AND GO THROUGH THAT.

14 I WILL PROBABLY GIVE MORE THAN THE NORMAL 10 MINUTES
15 A SIDE I GIVE FOR COUNSEL TO FOLLOW UP, SINCE THERE IS A LOT
16 MORE FOLLOW UP, POTENTIALLY, TO DO. I WILL THINK ABOUT THAT.
17 OKAY.

18 AND ANYTHING ELSE PRELIMINARILY OR OTHERWISE?

19 **MR. CARLOS:** NO, YOUR HONOR.

20 **MS. CABRAL:** NO, YOUR HONOR.

21 **THE COURT:** YOU CAN HOOK INTO THE SYSTEM AND USE ALL
22 OF THAT. THERE IS THE DOCUMENT CAMERA THERE YOU CAN USE. AND
23 IF YOU HAVE ANY QUESTIONS, CHECK WITH THE COURTROOM DEPUTY AND
24 SHE WILL EVEN LET YOU COME IN AND PLAY WITH IT A BIT FIRST, IF
25 YOU WOULD LIKE.

FEBRUARY 12, 2018

1 AND AT THE END OF THE TRIAL, NOTWITHSTANDING THE
2 OUTCOME AND AS I DISCHARGE THE JURY, I WILL ALERT THEM TO THE
3 FACT THAT IF THEY FEEL BEING SUBJECTED TO THE EVIDENCE HAS
4 CAUSED THEM ANY DISTRESS, WE DO HAVE COUNSELING AVAILABLE. BUT
5 THAT IS GOING TO BE AFTER ALL BETS ARE OFF AND DONE.

6 IF YOU HEAR ME SAY THAT, I DIDN'T WANT YOU TO BE
7 SURPRISED. THE JURY IS CONSIDERED EMPLOYEES DURING THE TERM IN
8 WHICH THEY SERVE. AND BEFORE DISCHARGE I CAN EXTEND THEIR
9 PERIOD OF SERVICE TO ALLOW THEM COUNSELING IF THEY ARE
10 AFFECTED. THAT IS HOW I TYPICALLY DO THAT.

11 **MR. CARLOS:** ONE MOMENT, YOUR HONOR.

12 **THE COURT:** SO ANYTHING ELSE?

13 **MS. CABRAL:** NO, YOUR HONOR.

14 **THE COURT:** WE'LL SEE YOU AT THE READINESS HEARING
15 FEBRUARY 26 AT 3:00, AND THEN THE TRIAL IS THE NEXT DAY. ALL
16 RIGHT. WELL, THANK YOU ALL VERY MUCH.

17 AND WE'LL ORDER YOU BACK, MR. WALSH, ON FEBRUARY 26TH
18 AT 3:00, FOR THE READINESS HEARING. OKAY?

19 **THE DEFENDANT:** YES.

20 **MR. CARLOS:** THANK YOU, YOUR HONOR.

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25 ////

FEBRUARY 12, 2018

1 **THE DEFENDANT:** THANK YOU, SIR.

2 **THE COURT:** THANKS VERY MUCH.

3 (PROCEEDINGS CONCLUDED AT 3:55 P.M.)

4 CERTIFICATION

5 I HEREBY CERTIFY THAT I AM A DULY APPOINTED,
6 QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED
7 STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT
8 TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE
9 ON FEBRUARY 12, 2018; THAT SAID TRANSCRIPT IS A TRUE AND
10 CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE
11 FORMAT USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF
12 THE UNITED STATES JUDICIAL CONFERENCE.

13 DATED: JULY 16, 2018, AT SAN DIEGO, CALIFORNIA.

14 S/N
15 JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148

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FEBRUARY 12, 2018

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United States District Court
For the Southern District of California

UNITED STATES OF AMERICA,
Plaintiff,
v.
WILLIAM FRANCIS WALSH IV,
Defendant.

)
)
) No. 17cr1269-AJB
)
) March 2, 2018
)
) San Diego, California
)
)
)

Jury Trial Day Four
Transcript of Verdict
BEFORE THE HONORABLE ANTHONY J. BATTAGLIA
United States District Judge

APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEY'S OFFICE
JANET CABRAL
AMANDA GRIFFITH
Assistant United States Attorneys
For the Defendant: MARC X. CARLOS
Attorney at Law

Court Reporter: Dana Peabody, RDR, CRC
District Court Clerk's Office
333 West Broadway, Suite 420
San Diego, California, 92101
DanaPeabodyCSR@gmail.com

10:11

1 San Diego, California, March 2, 2018

2 * * *

3 (Proceedings held outside the presence of the jury panel.)

4 THE COURT: All right. Good morning, all.

10:26 5 MS. CABRAL: Good morning, Your Honor.

6 THE COURT: Let's call the case and proceed with this
7 session.

8 THE CLERK: Yes, Your Honor.

9 Number 1 on calendar, 17cr1269, United States of America
10:26 10 versus William Francis Walsh IV for a jury trial.

11 THE COURT: For the government this morning?

12 MS. CABRAL: Good morning, Your Honor. Janet Cabral
13 and Amanda Griffith for the United States.

14 THE COURT: For the defense?

10:26 15 MR. CARLOS: Marc Carlos on behalf of Mr. Walsh.

16 THE COURT: Good morning, all. Have a seat.

17 The jury has advised the bailiff that they have reached a
18 verdict in this case, and so we'll call them forward and hear
19 what they have decided.

10:28 20 (Proceedings held in the presence of the jury panel.)

21 THE COURT: All right. Good morning, ladies and
22 gentlemen. We have our 12 jurors reassembled here in the
23 courtroom.

24 Has the jury selected a foreperson in the case?

10:28 25 PANEL MEMBER: Yes, Your Honor.

1 THE COURT: All right. [Juror 9].

2 [Juror 9], has this jury reached a verdict in this case?

3 PANEL MEMBER: Yes, we have.

4 THE COURT: And on all counts, sir?

10:28 5 PANEL MEMBER: Yes, sir.

6 THE COURT: Would you please hand it to the courtroom
7 deputy, and I'll examine it for completeness then.

8 Thank you. All right. The verdict form is complete.

9 We'll have the clerk read the verdict.

10:28 10 THE CLERK: Thank you, Your Honor.

11 United States District Court, Southern District of
12 California, United States of America, plaintiff, versus William
13 Francis Walsh IV, defendant, case number 17cr1269AJB.

14 Verdict: As to Count 1 in the indictment. We, the jury in
10:29 15 the above-entitled cause, find the defendant William Francis
16 Walsh IV guilty of distribution of images of minors engaged in
17 sexually explicit conduct in violation of Title 18 United
18 States Code section 2252(a)(2).

19 As to Count 2 in the indictment. We, the jury in the
10:29 20 above-entitled cause, find the defendant William Francis Walsh
21 IV guilty of distribution of images of minors engaged in
22 sexually explicit conduct in violation of Title 18 United
23 States Code section 2252(a)(2).

24 As to Count 3 in the indictment. We, the jury in the
10:29 25 above-entitled cause, find the defendant William Francis Walsh

1 IV guilty of possession of images of minors engaged in sexually
2 explicit conduct in violation of Title 18 United States Code
3 Section 2252(a)(4)(B).

10:30 4 If you find the defendant guilty of Count 3 in the
5 indictment, answer the following paragraphs below:

6 Does the jury unanimously find beyond a reasonable doubt
7 that any visual depiction involved in the offense involved a
8 prepubescent minor? Yes.

10:30 9 Does the jury unanimously find beyond a reasonable doubt
10 that any visual depiction involved in the offense involved a
11 minor who had not attained 12 years of age? Yes.

12 Dated March 2, 2018, signed by [Juror 9], foreperson of the
13 jury.

14 Ladies and gentlemen of the jury, is this your verdict as
10:30 15 presented and read, the verdict of each of you, so say you all?

16 JURY PANEL: Yes.

17 THE COURT: Let's individually poll, if you would,
18 sir.

19 THE CLERK: Yes, Your Honor.

10:30 20 [Juror 1], is this your verdict as presented and read?

21 PANEL MEMBER: Yes.

22 THE CLERK: [Juror 2], is this your verdict as
23 presented and read?

24 PANEL MEMBER: Yes.

10:30 25 THE CLERK: [Juror 3], is this your verdict as

1 presented and read?

2 PANEL MEMBER: Yes.

3 THE CLERK: [Juror 4], is this your verdict as
4 presented and read?

10:31 5 PANEL MEMBER: Yes.

6 THE CLERK: [Juror 5], is this your verdict as
7 presented and read?

8 PANEL MEMBER: Yes.

9 THE CLERK: [Juror 6], is this your verdict as
10:31 10 presented and read?

11 PANEL MEMBER: Yes.

12 THE CLERK: [Juror 7], is this your verdict as
13 presented and read?

14 PANEL MEMBER: Yes.

10:31 15 THE CLERK: [Juror 8], is this your verdict as
16 presented and read?

17 PANEL MEMBER: Yes.

18 THE CLERK: [Juror 9], is this your verdict as
19 presented and read?

10:31 20 PANEL MEMBER: Yes.

21 THE CLERK: [Juror 10], is this your verdict as
22 presented and read?

23 PANEL MEMBER: Yes.

24 THE CLERK: [Juror 11], is this your verdict as
10:31 25 presented and read?

1 PANEL MEMBER: Yes.

2 THE CLERK: And [Juror 12], is this your verdict as
3 presented and read?

4 PANEL MEMBER: It is.

10:31 5 THE CLERK: Your Honor, the jury has been polled.

6 THE COURT: Thank you. The clerk will record the
7 verdict.

8 And, ladies and gentlemen, in a moment I'll discharge you
9 from responsibility in the case and relieve you of your
10:31 10 obligation to stay silent or not talk about the case. You may
11 talk about it to anyone you want or, if you prefer, you're not
12 required to talk to anyone about it. Okay?

13 I want to thank you for your service here. This has been a
14 case where we've had to look at some unpleasant material.
10:32 15 Everybody agrees to that. And so thank you for being patient
16 and hearing all the evidence. You were very attentive, and I
17 appreciate it.

18 Because the evidence was unpleasant, if any of you feel
19 that having to view it has caused you some distress where it's
10:32 20 affecting you such that you'd like counseling or someone to
21 talk to about it to deal with reactions, the Court would
22 provide that. You just need to let me know that yeah, you'd
23 like to talk it over with someone. You're relieved of the
24 obligation to discuss the facts and the circumstances in the
10:32 25 case. You can speak with a counselor on that all at government

1 expense. Okay?

2 I'm going to have the clerk hand each of you a jury
3 certificate, and so they should be in order for [Juror 1],
4 [Juror 2], [Juror 3], [Juror 4], [Juror 5], [Juror 6],
10:33 5 [Alternate Juror] has his, [Juror 7], [Juror 8], [Juror 9],
6 [Juror 10], [Juror 11], and [Juror 12].

7 So again thank you. I'm going to discharge you now. Let
8 me know soon if you do want to follow up on the issues in the
9 matter I've described. And thank you. We can't do this
10:33 10 without you. We need citizens from the community to decide the
11 facts where they are disputed as they were here, and without
12 your assistance, we can't run a judicial system. So I hope
13 that the certificate is a small way to thank you, something you
14 can look at and hopefully have pride in that you did what
10:34 15 citizens need to do, tough as it can be.

16 So thank you. You're discharged. We can probably send
17 them home, Steve.

18 THE CLERK: Yes, Your Honor.

19 THE COURT: You are free to go about your business,
10:34 20 and I don't think anything else will be required of this term
21 of jury service, but perhaps I'll see you again some day. So
22 thanks.

23 (Proceedings held outside the presence of the jury panel.)

24 THE COURT: The jury has now been discharged, is on
10:34 25 its way home or wherever.

1 pending sentencing, and we'll exonerate the bond unless there's
2 some opposition to that at this point.

3 MS. CABRAL: No, Your Honor, the government would move
4 to exonerate the bond.

10:39 5 THE COURT: The bond is exonerated, and we'll see you
6 for sentencing May 21, 2018.

7 MS. CABRAL: Thank you, Your Honor.

8 THE COURT: Here are the courtesy exhibits. Those
9 will be returned with the originals.

10:40 10 Anything else that we need to address then at this point?

11 MS. CABRAL: Not from the government, Your Honor.

12 THE COURT: Or from the defense?

13 MR. CARLOS: No, Your Honor.

14 THE COURT: Nothing further? Okay. The matter is in
10:40 15 recess. We'll see you all at sentencing. So take care.

16 MS. CABRAL: Thank you, Your Honor.

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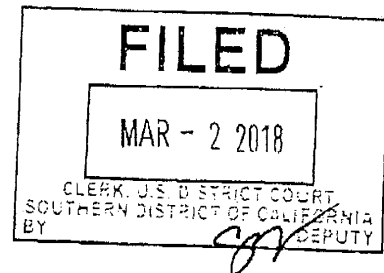
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C-E-R-T-I-F-I-C-A-T-I-O-N

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Dated June 26, 2018, at San Diego, California.

/s/ Dana Peabody
Dana Peabody,
Registered Diplomat Reporter
Certified Realtime Reporter



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
WILLIAM FRANCIS WALSH IV,
Defendant.

Case No. 17cr1269-AJB

VERDICT

As to Count 1 in the Indictment:

We, the jury in the above entitled cause, find the defendant William Francis Walsh, IV, guilty (guilty/not guilty), of Distribution of Images of Minors Engaged in Sexually Explicit Conduct, in violation of Title 18 United States Code, Section 2252(a)(2).

As to Count 2 in the Indictment:

We, the jury in the above entitled cause, find the defendant William Francis Walsh, IV, guilty (guilty/not guilty), of Distribution of Images of Minors Engaged in Sexually Explicit Conduct, in violation of Title 18 United States Code, Section 2252(a)(2).

As to Count 3 in the Indictment:

We, the jury in the above entitled cause, find the defendant William Francis Walsh, IV, guilty (guilty/not guilty), of Possession of Images of Minors Engaged in Sexually Explicit Conduct, in violation of Title 18 United States Code, Section 2252(a)(4)(B).

If you find the defendant guilty of the Count 3 in the Indictment, answer the following paragraphs below:

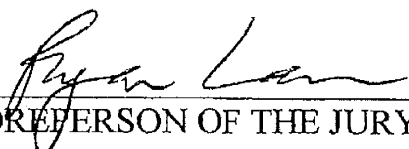
Does the jury unanimously find beyond a reasonable doubt that any visual depiction involved in the offense involved a prepubescent minor?

✓ YES NO

Does the jury unanimously find beyond a reasonable doubt that any visual depiction involved in the offense involved a minor who had not attained 12 years of age?

✓ YES NO

DATED: March 2, 2018


FOREPERSON OF THE JURY

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

DEC 10 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM FRANCIS WALSH IV,

Defendant-Appellant.

No. 18-50160

D.C. No.

3:17-cr-01269-AJB-1

Southern District of California,
San Diego

ORDER

Before: SCHROEDER and FRIEDLAND, Circuit Judges, and ROSENTHAL,*
District Judge.

The petition for panel rehearing is **DENIED**.

* The Honorable Lee H. Rosenthal, Chief United States District Judge
for the Southern District of Texas, sitting by designation.

FILED

17 MAY 19 PM 12:46

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY MPL DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

September 2016 Grand Jury

UNITED STATES OF AMERICA,
Plaintiff,

v.

WILLIAM FRANCIS WALSH IV,
Defendant.

Case No. 17 CR 1269 AJB

I N D I C T M E N T

Title 18, U.S.C., Sec. 2252(a)(2) -
Distribution of Images of Minors
Engaged in Sexually Explicit
Conduct; Title 18, U.S.C.,
Sec. 2252(a)(4)(B) - Possession of
Images of Minors Engaged in
Sexually Explicit Conduct;
Title 21, U.S.C., Sec. 853, and
Title 18, U.S.C., Sec. 2253 -
Criminal Forfeiture

The grand jury charges:

Count 1

On or about April 17, 2015, within the Southern District of California, defendant WILLIAM FRANCIS WALSH IV, did knowingly distribute visual depictions, that is, digital and computer images, using a means and facility of interstate and foreign commerce, the production of which involved the use of a minor engaging in sexually explicit conduct, as defined in Title 18, United States Code, Section 2256(2), and which visual depictions were of such conduct; in violation of Title 18, United States Code, Section 2252(a)(2).

Count 2

On or about May 7, 2015, within the Southern District of California, defendant WILLIAM FRANCIS WALSH IV, did knowingly distribute visual depictions, that is, digital and computer images, using a means and facility of interstate and foreign commerce, the production of which involved the use of a minor engaging in sexually explicit conduct, as defined in Title 18, United States Code, Section 2256(2), and which visual depictions were of such conduct; in violation of Title 18, United States Code, Section 2252(a)(2).

Count 3

On or about July 14, 2015, within the Southern District of California, defendant WILLIAM FRANCIS WALSH IV, did knowingly possess at least one matter, that is, a Dell Inspiron Laptop Computer with Samsung Hard Drive, containing visual depictions, that is, digital and computer images, that had been mailed, and that had been shipped and transported using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce, the production of which involved the use of a prepubescent minor and a minor who had not attained 12 years of age engaging in sexually explicit conduct, as defined in Title 18, United States Code, Section 2256(2), and which visual depictions were of such conduct; all in violation of Title 18, United States Code, Section 2252(a)(4)(B).

FORFEITURE ALLEGATION

1. Upon conviction of the offenses alleged in Counts 1 through 3 of this Indictment and pursuant to Title 18, United States Code, Section 2253, and Rule 32.2, Federal Rules of Criminal Procedure, defendant WILLIAM FRANCIS WALSH IV shall forfeit to the United States any visual depictions which were produced, transported, mailed, shipped

1 or received in violation of law, any property real and personal,
2 constituting or traceable to gross profits or other proceeds obtained
3 from the offenses, and any property, real and personal, used or intended
4 to be used to commit or to promote the commission of the offenses and
5 any property traceable to such property.

6 2. If any of the above-described forfeited property, as a result
7 of any act or omission of defendant WILLIAM FRANCIS WALSH IV, cannot be
8 located upon the exercise of due diligence; has been transferred or sold
9 to, or deposited with, a third person; has been placed beyond the
10 jurisdiction of the Court; has been substantially diminished in value;
11 or has been commingled with other property which cannot be subdivided
12 without difficulty, it is the intent of the United States, pursuant to
13 Title 21, United States Code, Section 853(p), made applicable herein by
14 Title 18, United States Code, Section 2253(b), to seek forfeiture of any
15 other property of the defendant up to the value of the property described
16 above subject to forfeiture.


17 All pursuant to Title 21, United States Code, Section 853, and Title 18,
18 United States Code, Section 2253.

19 DATED: May 19, 2017.

20 A TRUE BILL:

21 
22 _____
Foreperson

23 ALANA W. ROBINSON
24 Acting United States Attorney

25 By: 
26 JANET A. CABRAL
Assistant U.S. Attorney

1 Marc X. Carlos
California State Bar No. 132987
2 **BARDSLEY & CARLOS L.L.P.**
424 "F" Street, Suite A
3 San Diego, CA 92101
Telephone: (619) 702-3226
4 Facsimile: (619) 702-5415

5 Attorney for Defendant
WILLIAM FRANCIS WALSH, IV
6

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10 **(HONORABLE ANTHONY J. BATTAGLIA)**
11

12 UNITED STATES OF AMERICA,)

13 Plaintiff,)

14 v.)

15 WILLIAM FRANCIS WALSH, IV)

16 Defendant.)
17)
18)
19)

CASE NO. 17CR1269-AJB

DATE: February 12, 2018
TIME: 3:00 P.M.

**NOTICE OF MOTION AND
MOTIONS IN LIMINE**

PRECLUDE 404(b) EVIDENCE;
PRECLUDE 403 EVIDENCE;
PRECLUDE 609 EVIDENCE;
PRECLUDE EXPERT TESTIMONY,
AND LEAVE TO FILE
ADDITIONAL MOTIONS

20 TO: **ADAM L. BRAVERMAN, UNITED STATES ATTORNEY, AND JANET**
21 **A. CABRAL, ASSISTANT UNITED STATES ATTORNEY:**

22 PLEASE TAKE NOTICE that on February 12, 2018, at 3:00 p.m., or as soon
23 thereafter as counsel may be heard, the defendant, WILLIAM FRANCIS WALSH,
24 IV, through his attorney Marc X. Carlos, will bring the below listed motions.

25 ///

26 ///

27 ///

28

1 **A. If This Court Allows Any Government Expert Testimony, the Grounds for**
2 **the Expert's Opinion Must Be Revealed to the Defense Immediately.**

3 Congress recently amended Federal Rule of Criminal Procedure 16, the
4 discovery rule, to provide for expanded discovery on expert witnesses. It has added
5 the following section:

6 **(E) Expert Witnesses.** At the defendant's request, the government shall
7 disclose to the defendant a written summary of testimony the
8 government intends to use under Rules 702, 703, or 705 of the Federal
9 Rules of Evidence during its case in chief at trial. This summary must
10 describe the witnesses' opinions, the bases and reasons therefor, and the
11 witnesses' qualifications.

12 The purpose of this amendment was to "minimize the surprise that often results
13 from unexpected expert testimony, reduce the need for continuances, and to provide
14 the opponent with a fair opportunity to test [rebut/impeach] the merit of the expert's
15 testimony through focused cross-examination." Notes of Advisory Committee on
16 1993 Amendment. A key aspect of the amended rule is that the government must
17 provide the defense with a summary of the bases underlying the expert's opinion.

18 If the government fails to comply with this request, Mr. WALSH vigorously
19 opposes any expert testimony offered by its witnesses as violating the federal rules
20 on discovery.

21 **IV.**

22 **IMAGES OF CHILD PORNOGRAPHY SHOULD BE EXCLUDED**

23 Counsel has been informed the government intends to introduce and publish
24 to the jury images depicting child pornography. **Mr. WALSH will not be disputing**
25 **that the downloaded images are not child pornography. Further Mr. WALSH**
26 **is prepared to stipulate that subject images are legally child pornography for the**
27 **purposes of this trial.** Although relevant, evidence may be excluded if its probative
28 value is substantially outweighed by the danger of unfair prejudice, confusion of
issues, or misleading the jury. FRE 403. In the instant case, the Government's
proffered rationale for publication of the images is that the jury must make the
determination that the images depict minors engaged in sexually explicit conduct. As

1 discussed above, Mr. WALSH will stipulate that these images contain minors
2 engaged in sexually explicit conduct. There then becomes no issue regarding the
3 images for the jury. They will be provided with titles and verbal descriptions of the
4 conduct depicted in the videos by Detective Jackson. There is no reason for the jurors
5 to actually see the videos given Mr. WALSH's agreement to stipulate to the contents.
6 The only reason that the Government would want to publish the videos and images
7 would be to inflame the passions of the jurors. The videos and images are
8 particularly graphic and disturbing. There is no question that the images are those of
9 children engaged in sexual activities. There is no dispute to this fact, therefore,
10 publication of the images to the jury would be extremely prejudicial to Mr. WALSH's
11 right to a fair and impartial jury.

12 **A. The Court Should Exclude Non-Child Related Pornography**

13 During his examination of the computer, Detective Jackson discovered other
14 images depicting adults in various stages of sexual and non sexual activity. Detective
15 Jackson described it as follows:

16 "I noted that there was an extensive collection of images of adult pornography
17 that appeared to be of WALSH and his spouse, including images that have appeared
18 to have been taken surreptitiously of WALSH's wife in the bathroom, changing
19 clothing and th two of them engaged in sexual activities. There were also a number
20 of images "voyeuristic" in nature; where photographs were taken of WALSH's wife's
21 buttocks, crotch and chest when she was laying down asleep or turned away from
22 him."

23 "I also noted an extensive amount of self-portraits of WALSH completely
24 nude, close up photographs of his genitals, anus and other various photographs of
25 himself in sexually suggestive poses."

26 The proffered evidence is neither relevant nor probative of any material fact.
27 Mr. WALSH takes photographs of his adult wife are in no way probative as to
28 whether or not he knowingly possessed or distributed Child Pornography. Moreover,
there is no evidence available to the government that Mrs. Walsh did not, in fact,
consent to the making of the videos. Detective Jackson's conclusion that some of the
photographs were "voyeuristic" would also be impermissible expert opinion
regardless of the fact that he has no way of knowing whether or not Mrs. Walsh was

1 children.

2 It is clear that there is a clear lack of any probative value to the introduction of
3 these particular images. The danger of prejudice, speculation and character judging
4 by jurors far outweighs any minor probative value. The only reason that the
5 government would want to have the evidence admitted would be to prejudice the jury
6 against Mr. WALSH. The proffered evidence is disturbing an “creepy” but unrelated
7 to the charges in the instant case. The evidence should be excluded.

8

9

CONCLUSION

10 For the foregoing reasons, it is respectfully requested that the court grant the
11 above motions.

12

13

Respectfully submitted,

14

15

16 Dated: February 7, 2018

/S/MARC X. CARLOS
MARC X. CARLOS

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Attorney for Defendant
WILLIAM FRANCIS WALSH, IV

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CERTIFICATE OF SERVICE

Counsel for WILLIAM FRANCIS WALSH, IV, hereby certifies that on this date copies of the attached documents were served on all parties to this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 7, 2018, at San Diego, California.

/s/Marc X. Carlos
MARC X. CARLOS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,) VOLUME 1-A
4 PLAINTIFF,) CASE NO. 17CR1269-AJB
5 -V-)
6 WILLIAM FRANCIS WALSH IV,) FEBRUARY 27, 2018
7 DEFENDANT.) 9:10 A.M.
8) SAN DIEGO, CALIFORNIA
9)
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10 PARTIAL TRANSCRIPT/SEALED JURY VOIR DIRE
11 BEFORE THE HONORABLE ANTHONY J. BATTAGLIA
12 UNITED STATES DISTRICT JUDGE
13
14

15 APPEARANCES:

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REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

FEBRUARY 27, 2018

1 SAN DIEGO, CALIFORNIA; TUESDAY, FEBRUARY 27, 2018; 9:10 A.M.

2 (PROCEEDINGS HAD IN OPEN COURT, IN THE HEARING OF THE
3 PROSPECTIVE JURY)

4 **THE COURT:** GOOD MORNING, LADIES AND GENTLEMEN.
5 WELCOME TO COURTROOM 4A. I AM JUDGE BATTAGLIA AND I AM GOING
6 TO BE PRESIDING OVER THE TRIAL THAT STARTED TODAY.

7 ALL OF YOU ARE HERE AS POTENTIAL JURORS FOR THE CASE,
8 AND WE ARE GOING TO GO THROUGH A PROCESS TO SELECT 13 OF YOU,
9 12 REGULAR JURORS AND ONE ALTERNATE, TO HEAR AND DETERMINE THE
10 ISSUES IN THIS CASE.

11 AND THE WAY WE GO ABOUT THAT, AS YOU MAY OR MAY NOT
12 KNOW, IS SWEAR YOU UNDER OATH, ASK YOU A NUMBER OF QUESTIONS,
13 ALL DESIGNED TO SEE IF THERE IS SOME BIAS OR PREJUDICE THAT
14 MIGHT MAKE THIS AN UNSUITABLE CASE FOR YOU TO SERVE ON. BIAS
15 BEING A STRONG PREDISPOSITION IN FAVOR OF SOMETHING AND
16 PREJUDICE BEING A STRONG PREDISPOSITION AGAINST SOMETHING.

17 WE ALSO LOOK FOR IMPLICIT BIASES IN TERMS OF LIKES
18 AND DISLIKES, BECAUSE JURIES ARE TO DETERMINE THE FACTS WITHOUT
19 BIAS, PREJUDICE, PASSION, SYMPATHY, LIKES OR DISLIKES. JUST ON
20 THE FACTS.

21 SO WE WILL ASK YOU QUESTIONS. AND THEN BASED UPON
22 EITHER SPECIFIC REASONS THAT WOULD BE GOOD CAUSE TO EXCUSE YOU
23 OR THE LAWYERS' PREFERENCES, WE'LL WHITTLE IT DOWN TO 13.

24 SO YES, IT WILL TAKE A LITTLE TIME. I ASK YOU TO BE
25 PATIENT, BUT WE'LL MOVE IT VERY QUICKLY SO WE CAN GET INTO THE

FEBRUARY 27, 2018

1 CASE-IN-CHIEF LATER IN THE DAY.

2 THE FIRST ORDER OF BUSINESS IS TO SWEAR YOU. SO
3 WOULD OUR 60 JURORS PLEASE RISE. RAISE YOUR RIGHT HANDS AND
4 TURN YOUR ATTENTION TO THE CLERK.

5 **DEPUTY CLERK:** LADIES AND GENTLEMEN, YOU AND EACH OF
6 YOU DO SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL TRUE ANSWERS MAKE
7 TO SUCH QUESTIONS AS MAY BE PUT TO YOU, TOUCHING UPON YOUR
8 QUALIFICATION TO SERVE AS TRIAL JURORS OF THE CAUSE NOW BEFORE
9 THIS COURT, SO SAY I DO?

10 **PROSPECTIVE JURORS:** (ALL CONCUR)

11 **THE COURT:** IT LOOKS LIKE EVERYBODY DID.

12 OKAY. THERE ARE NO RIGHT OR WRONG ANSWERS TO ANY OF
13 THE QUESTIONS YOU ARE GOING TO BE ASKED HERE TODAY. WE JUST
14 WANT YOUR ANSWERS; YOUR CANDID, TRUTHFUL ANSWERS. IF AT SOME
15 POINT YOU'RE ASKED A QUESTION YOU FEEL DELVES INTO SOMETHING
16 OVERLY PERSONAL OR OVERLY SENSITIVE, JUST SAY SO AND WE'LL MEET
17 OVER ON THE SIDE -- YOU, ME, AND THE LAWYERS -- AND WE'LL TALK
18 ABOUT IT IN PRIVACY.

19 WE'VE ALREADY HAVE A QUESTION. CAN YOU GET THE MIKE
20 OUT THERE, YOLI, SO WE CAN ALL HEAR.

21 **DEPUTY CLERK:** PLEASE RAISE YOUR HAND AGAIN.

22 **THE COURT:** THE GENTLEMAN WITH THE BALL CAP.

23 **PROSPECTIVE JUROR:** YEAH.

24 **THE COURT:** WHAT IS YOUR NAME, SIR?

25 **PROSPECTIVE JUROR:** PETER HOFMAN.

FEBRUARY 27, 2018

1 OBLIGATION TO CALL WITNESSES OR TAKE THE STAND HIMSELF. THAT
2 IS OUR CONSTITUTION.

3 IS THERE ANY WITNESSES THAT I LEFT OFF THE LIST, FROM
4 THE DEFENSE STANDPOINT?

5 **MR. CARLOS:** YOUR HONOR, NOT AT THIS TIME.

6 **THE COURT:** OKAY. ALL RIGHT. SO WE'RE CLEAR ON
7 THAT.

8 NOW, SPECIFICALLY, THE CHARGES HERE, FOR WHICH THERE
9 IS A PRESUMPTION OF INNOCENCE, ARE IN THREE COUNTS. THREE SETS
10 OF CHARGES. FIRST, THAT ON OR ABOUT APRIL 17TH OF 2015, HERE,
11 IN OUR SOUTHERN DISTRICT OF CALIFORNIA, MR. WALSH KNOWINGLY
12 DISTRIBUTED -- DID KNOWINGLY DISTRIBUTE VISUAL DEPICTIONS --
13 THAT IS, DIGITAL AND COMPUTER IMAGES, USING A MEANS AND
14 FACILITY OF INTERSTATE AND FOREIGN COMMERCE, THE PRODUCTION OF
15 WHICH INVOLVED THE USE OF A MINOR ENGAGING IN SEXUALLY EXPLICIT
16 CONDUCT.

17 COUNT 2 RELATES TO A DIFFERENT DATE, MAY 7TH, 2015.
18 THE CHARGE IS ESSENTIALLY THE SAME: KNOWING DISTRIBUTION OF
19 VISUAL DEPICTIONS IN INTERSTATE COMMERCE, THE PRODUCTION OF
20 WHICH INVOLVED THE USE OF A MINOR ENGAGING IN SEXUALLY EXPLICIT
21 CONDUCT.

22 THE THIRD COUNT HAS THE DATE OF JULY 15, 2015, AND,
23 ONCE AGAIN, CHARGES MR. WALSH WITH KNOWING POSSESSION OF AT
24 LEAST ONE MATTER. AND IN THIS INSTANCE, A DELL INSPIRON
25 LAPTOP COMPUTER, THE PRODUCTION OF WHICH INVOLVED THE USE OF A

FEBRUARY 27, 2018

1 PREPUBESCENT MINOR, WHICH MEANS A CHILD UNDER THE AGE OF 12, IN
2 THE SEXUALLY EXPLICIT CONDUCT.

3 SO GIVEN THE NATURE OF THESE CHARGES, IS THERE ANYONE
4 THAT FEELS RIGHT FROM THE GET-GO THIS IS A CASE THEY COULD NOT
5 SIT AND HEAR EVIDENCE ON AND BE FAIR AND IMPARTIAL, GIVEN THE
6 TOPIC INVOLVED? WE HAVE A FEW. LET'S START WITH THE JURY BOX.

7 AND NUMERICALLY, LET'S GO UP TO MR. ZAVALA, JUROR
8 NUMBER 4. AND, MR. ZAVALA, YOU DON'T FEEL YOU CAN BE FAIR IN A
9 CASE LIKE THIS?

10 **PROSPECTIVE JUROR:** NO, YOUR HONOR.

11 **THE COURT:** IN SIMPLE TERMS, WHY NOT?

12 **PROSPECTIVE JUROR:** WELL, I'M AN ELEMENTARY
13 SCHOOLTEACHER. SO I WORK WITH YOUNG CHILDREN EVERY DAY. AND
14 ALTHOUGH I HAVEN'T SEEN THE EFFECTS OF THIS, I DON'T THINK I
15 COULD PUT THAT OUT OF MY MIND. IF THIS IS BEING ACCUSED OF
16 THIS PERSON, THAT I WOULD BE BIASED IN FAVOR OF THE
17 PROSECUTION.

18 **THE COURT:** THE PROSECUTION THAT BRINGS THE CASE?

19 **PROSPECTIVE JUROR:** YES.

20 **THE COURT:** SO EVEN THOUGH THERE IS A PRESUMPTION OF
21 INNOCENCE, THE BURDEN OF PROOF IS BEYOND A REASONABLE DOUBT,
22 AND THERE IS NO OBLIGATION FOR MR. WALSH TO PROVE INNOCENCE,
23 YOU FEEL JUST BECAUSE OF THE TOPIC, YOU ARE GOING TO BE ALREADY
24 LEANING WITH A PREFERENCE TO THE PROSECUTION BECAUSE OF YOUR
25 EXPOSURE TO YOUNG CHILDREN AND YOUR TEACHING?

FEBRUARY 27, 2018

1 **PROSPECTIVE JUROR:** YES, YOUR HONOR.

2 **THE COURT:** THAT SUMS IT UP. OKAY.

3 ANYBODY ELSE IN THAT BACK ROW? RIGHT NEXT DOOR.

4 MS. HARPER, YOU FEEL YOU CANNOT BE FAIR, GIVEN THE
5 NATURE OF THE CHARGES THAT ARE BROUGHT HERE?

6 **PROSPECTIVE JUROR:** IT'S A HARD QUESTION FOR ME TO
7 ANSWER. IT'S NOT SO MUCH THAT I DON'T THINK I COULD BE FAIR,
8 BUT I THINK THAT THE COURT SHOULD BE AWARE OF MY BACKGROUND.

9 **THE COURT:** PLEASE.

10 **PROSPECTIVE JUROR:** I WAS A PROSECUTOR IN ORANGE
11 COUNTY FOR 25 YEARS, AND I SPECIALIZED IN PROSECUTING CRIMES
12 AGAINST WOMEN AND CHILDREN, INCLUDING CHILD PORNOGRAPHY.

13 **THE COURT:** OKAY.

14 **PROSPECTIVE JUROR:** SO I THINK I PROBABLY COME WITH A
15 BUILT-IN BIAS IN FAVOR OF THE PROSECUTION BECAUSE OF THAT.

16 **THE COURT:** BASED ON HISTORY. BUT IS THAT SOMETHING
17 YOU FEEL YOU CAN SET ASIDE, LIKE YOU WOULD OTHER LIKES OR
18 DISLIKES THAT YOU MIGHT HAVE, AND BE FAIR IN THIS CASE?

19 **PROSPECTIVE JUROR:** OF COURSE, I WOULD BE FAIR.
20 THAT'S MY TRAINING; AND I CAN BE OBJECTIVE. AND IF THE
21 EVIDENCE ISN'T THERE, IT ISN'T THERE, BUT --

22 **THE COURT:** SO IF THE GOVERNMENT DID NOT PROVE ANY OF
23 THE CLAIMS BY EVIDENCE BEYOND A REASONABLE DOUBT, YOU WOULD
24 HAVE NO RELUCTANCE IN FINDING NOT GUILTY IN THE CASE?

25 **PROSPECTIVE JUROR:** NO.

FEBRUARY 27, 2018

1 **THE COURT:** OKAY. ALL RIGHT. THANKS, MS. HARPER,
2 FOR SHARING THAT.

3 ANYBODY ELSE IN THAT ROW?

4 ON THE END, MR. FROEDER.

5 **PROSPECTIVE JUROR:** YES, SIR.

6 **THE COURT:** SO WHY IS IT YOU FEEL, GIVEN THE NATURE
7 OF THE CHARGES IN THIS CASE, YOU COULD NOT BE FAIR?

8 **PROSPECTIVE JUROR:** APPROXIMATELY 30 YEARS AGO I WAS
9 INVOLVED IN A BITTER DIVORCE CASE. I WAS FALSELY ACCUSED OF
10 SEXUAL ABUSE OF MY OWN CHILDREN. AND I VOLUNTEERED FOR
11 POLYGRAPHS AND PSYCHOLOGICAL TESTING. THE POLICE DROPPED THE
12 CHARGES BUT CPS PURSUED IT, AND I WAS DENIED VISITATION FOR
13 ALMOST TWO YEARS. AND I PASSED A BATTERY OF PSYCHOLOGICAL AND
14 PHYSICAL TESTING. IT WAS EXTREMELY EMOTIONALLY HARD, AND IT'S
15 STILL HARD FOR ME TO DEAL WITH.

16 **THE COURT:** SO THE TOPIC OF CHILDREN INVOLVED IN
17 SEXUAL CONDUCT TRIGGERS ALL THOSE MEMORIES BACK TO YOU?

18 **PROSPECTIVE JUROR:** ABSOLUTELY.

19 **THE COURT:** IN ADDITION TO JUST BEING UNCOMFORTABLE,
20 AS WE'D ALL EXPECT YOU WOULD BE, DO YOU FEEL THAT IS GOING TO
21 MAKE IT HARD TO GIVE BOTH SIDES AN EVEN PLAYING FIELD IN
22 PRODUCING EVIDENCE ON THEIR SIDE OF THE CASE?

23 **PROSPECTIVE JUROR:** YES.

24 **THE COURT:** THANKS, MR. FROEDER. I AM SORRY FOR THAT
25 SET OF CIRCUMSTANCES.

FEBRUARY 27, 2018

1 WHO ELSE IN THAT JURY BOX, IF ANY? THE GENTLEMAN
2 RIGHT IN THE MIDDLE, YOLI.

3 MR. FITZPATRICK, JUROR 11.

4 PROSPECTIVE JUROR: YES, SIR.

5 THE COURT: WHY, GIVEN THE NATURE OF THE TOPIC OF
6 THIS CASE, SIR, DO YOU FEEL YOU COULD NOT BE FAIR?

7 PROSPECTIVE JUROR: I AM A SOCIAL WORKER IN THE FIELD
8 OF CHILD ABUSE PREVENTION. I'VE SERVED PREVIOUSLY IN THE CHILD
9 WELFARE SYSTEM. MANY OF MY CLIENTS HAVE EXPERIENCED SEXUAL
10 EXPLOITATION THEMSELVES, AND I FEEL IT WOULD BE DIFFICULT FOR
11 ME TO SEPARATE MY EXPERIENCES IN THIS SITUATION.

12 THE COURT: I TAKE IT THAT IN YOUR WORK AS A SOCIAL
13 WORKER YOU MAKE CERTAIN BONDS AND ESTABLISH EMPATHY FOR THOSE
14 THAT YOU SERVE, AND THAT'S WHAT IS DRIVING, MAYBE, THE BIAS OR
15 THE PREJUDICE IN A CASE LIKE THIS, RIGHT?

16 PROSPECTIVE JUROR: YES.

17 THE COURT: OKAY. WELL, THANK YOU FOR SHARING THAT,
18 MR. FITZPATRICK.

19 ANYBODY ELSE IN THAT SAME ROW? RIGHT NEXT DOOR,
20 MR. BARRY.

21 PROSPECTIVE JUROR: YES. JUST BEING HONEST HERE,
22 WHEN YOU BROUGHT UP THAT TOPIC, IT'S AN UNCOMFORTABLE TOPIC FOR
23 ME, WITH NO REASON OTHER THAN JUST KIND OF RELIGIOUS BELIEFS.
24 AND I'M SINGLE. I KIND OF BRISTLED WHEN YOU MENTIONED IT. IT
25 MAKES ME UNCOMFORTABLE.

FEBRUARY 27, 2018

1 **THE COURT:** IT IS AN UNCOMFORTABLE TOPIC. WE ARE ALL
2 ENTITLED TO OUR FEELINGS OF WHETHER IT IS SOMETHING LIKE A GUT
3 CHECK OR DEFINED REASON -- MORALLY, RELIGIOUSLY, FROM AN ETHNIC
4 BACKGROUND OR CULTURAL BACKGROUND.

5 BUT THE QUESTION BECOMES, GIVEN THAT IT'S AN
6 UNCOMFORTABLE SUBJECT FOR ANYONE, INCLUDING YOU, CAN YOU BE
7 FAIR AND IMPARTIAL IN LISTENING TO THE EVIDENCE AND DECIDING
8 THE ULTIMATE ISSUE OF GUILT OR LACK OF GUILT, BASED SOLELY ON
9 THE EVIDENCE?

10 **PROSPECTIVE JUROR:** HONESTLY, I CAN ABSOLUTELY
11 ATTEMPT TO, BUT IT WOULD BE HARD.

12 **THE COURT:** OKAY. ALL RIGHT. NOT TO OVERLY DELVE,
13 BUT YOU DON'T FEEL YOU CAN GIVE US A DEFINITE CONFIRMATION OF
14 YOUR ABILITY TO BE UNBIASED IN THIS CASE? YOU CAN'T TELL US
15 CONCRETELY, FAIR?

16 **PROSPECTIVE JUROR:** I AM ADMITTING MY BIAS. IT'S
17 HARD TO NOT BE BIASED.

18 **THE COURT:** I AM JUST TRYING TO PIN YOU DOWN A LITTLE
19 BIT. IT DOESN'T MATTER WHICH WAY, BUT I WILL TRY. IT LEAVES
20 US WANTING OR WONDERING. IF YOU FEEL THE BIAS IS JUST GOING TO
21 BE OVERRIDING, THEN SO BE IT. IS THAT THE CASE?

22 **PROSPECTIVE JUROR:** LIKE I SAID, I CAN TRY TO BE FAIR
23 AND IMPARTIAL, BUT I FELT COMPELLED TO ADMIT THAT I HAVE A
24 BIAS.

25 **THE COURT:** MUCH APPRECIATED. THANK YOU.

FEBRUARY 27, 2018