

APPENDIX A

1a

FILED: March 12, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4660
(7:17-cr-00107-D-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL HUNTER COOK,

Defendant - Appellant.

O R D E R

Michael Hunter Cook seeks to appeal his sentence. The Government has moved to dismiss the appeal as barred by Cook's waiver of the right to appeal included in the plea agreement. Cook knowingly and voluntarily waived his right to appeal, and the issues Cook seeks to raise on appeal fall squarely within the compass of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

Entered at the direction of the panel: Judge King, Judge Keenan, and Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

MICHAEL HUNTER COOK

JUDGMENT IN A CRIMINAL CASE

Case Number: 7:17-CR-107-1-D

USM Number: 64065-056

Katherine E. Shea

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 7 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2252(a)(2), 18 U.S.C. § 2252(b)(1)	Receipt of Child Pornography	3/26/2017	7

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1, 2, 3, 4, 6, 8, 9, and 10 of Indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/23/2019

Date of Imposition of Judgment


Signature of Judge

James C. Dever III, United States District Judge
Name and Title of Judge

8/29/2019

Date

DEFENDANT: MICHAEL HUNTER COOK
CASE NUMBER: 7:17-CR-107-1-D

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Count 7: 222 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant receive intensive substance abuse treatment and vocational and educational training opportunities. The court recommends that the defendant receive a mental health assessment and mental health treatment while incarcerated. The court recommends that he receive sex offender treatment. The court recommends that he serve his term in FCI Butner, North Carolina.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MICHAEL HUNTER COOK

CASE NUMBER: 7:17-CR-107-1-D

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Count 7: 5 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: MICHAEL HUNTER COOK

CASE NUMBER: 7:17-CR-107-1-D

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: MICHAEL HUNTER COOK
CASE NUMBER: 7:17-CR-107-1-D

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall submit to a search of person, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects at any time, with or without a warrant. The search may be conducted by any law enforcement officer or probation officer with reasonable suspicion concerning a violation of a condition of supervision or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall submit to a psycho-sexual evaluation by a qualified mental health professional who is experienced in evaluating sexual offenders and who is approved by the U.S. Probation Officer.

The defendant shall participate in a sex offender treatment program as directed by the U.S. Probation Officer, and the defendant shall comply with and abide by all the rules, requirements, and conditions of the treatment program until discharged. The defendant shall take medication as prescribed by the treatment provider.

At the direction of the U.S. Probation Officer, the defendant shall submit to physiological testing, which may include, but is not limited to, polygraph examinations or other tests to monitor the defendant's compliance with probation or supervised release and treatment conditions.

The defendant's residence and employment shall be approved by the U.S. Probation Officer. Any proposed change in residence or employment must be provided to the U.S. Probation Officer at least ten days prior to the change and pre-approved before the change may take place.

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.), as directed by the U.S. Probation Officer, the Bureau of Prisons, or any state or tribal government sex offender registration agency in a state where the defendant resides, works, is a student, or was convicted of a qualifying crime.

To ensure compliance with supervision, the defendant shall submit to unannounced searches of any computer or computer equipment (including mobile phones) which, in the discretion of the U.S. Probation Officer, may include the use of computer monitoring technology, computer search or analysis software, and copying of all data from the device and external peripherals. Such examination may require the removal of devices from your possession for the purpose of conducting a thorough inspection.

At the direction of the U.S. Probation Officer, the defendant shall consent to the installation of systems or software that will allow the probation officer or designee to monitor computer use on any computer that the defendant owns or is authorized to use. The defendant shall pay the costs of this monitoring.

The defendant shall not use, possess, or control any computer-based counter forensic tools. The defendant shall not use or have installed any programs specifically and solely designed to encrypt data, files, folders, or volumes of any media. The defendant shall, upon request, immediately provide the U.S. Probation Officer with any and all passwords required to access data compressed or encrypted for storage by any software.

The defendant shall support his dependent(s).

The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

DEFENDANT: MICHAEL HUNTER COOK
CASE NUMBER: 7:17-CR-107-1-D

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$	\$ 9,000.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
At School/Violet	\$2,000.00	\$2,000.00	
Jan Socks/Skylar	\$2,000.00	\$2,000.00	
Vicky/Lily/Vicky	\$1,000.00	\$1,000.00	
Marineland/Sarah	\$1,000.00	\$1,000.00	
Sweet Sugar/Pia	\$1,000.00	\$1,000.00	
Sweet Sugar/Mya	\$1,000.00	\$1,000.00	
Jenny/Jenny	\$500.00	\$500.00	
TOTALS	\$ 9,000.00	\$ 9,000.00	

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MICHAEL HUNTER COOK
CASE NUMBER: 7:17-CR-107-1-D

ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Pink Heart Sisters/Tori	\$500.00	\$500.00	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MICHAEL HUNTER COOK
CASE NUMBER: 7:17-CR-107-1-D

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

The special assessment in the amount of \$100.00 shall be due in full immediately. Payment of restitution shall be due and payable in full immediately and shall not bear interest. However, if the defendant is unable to pay in full immediately, the special assessment and restitution may be paid through the Inmate Financial Responsibility Program (IFRP). The court orders that the defendant pay a minimum payment of \$25 per quarter through the IFRP, if available. The court, having considered the defendant's financial resources and ability to pay, orders that any balance still owed at the time of release shall be paid in installments of \$100 per month to begin 60 days after the defendant's release from prison. At the time of the defendant's release, the probation officer shall take into consideration the defendant's ability to pay the restitution ordered and shall notify the court of any needed modification of the payment schedule.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

The defendant shall forfeit to the United States the defendant's interest in the property specified in the Order of Forfeiture entered on August 29, 2019.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX C

10a

FILED: April 14, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4660
(7:17-cr-00107-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MICHAEL HUNTER COOK

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Keenan, and Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk

I N D E X

GOVERNMENT'S WITNESSES

CHARLES KITCHEN

Direct Examination by Mr. Parris

8

1 **(Thursday, August 22, 2019, commencing at 2:15 p.m.)**

2 **P R O C E E D I N G S**

3 THE COURT: We'll next take up the sentencing of
4 Michael Cook.

5 (Pause in the proceeding.)

6 THE COURT: Good afternoon, Ms. Shea and Mr. Cook.
7 Is the defense ready?

8 MS. SHEA: We are.

9 THE COURT: Good afternoon, Mr. Parris. Is the
10 Government ready?

11 MR. PARRIS: Yes, Your Honor.

12 THE COURT: At this time, I ask that Mr. Cook be
13 sworn or affirmed.

14 (The defendant, Michael Cook, was duly sworn.)

15 THE COURT: Mr. Cook, do you understand that having
16 been sworn, that your answers to my questions are subject to
17 the penalty of perjury; and if you were to lie to me, you could
18 be prosecuted for perjury or for making a false statement?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Have you taken any kind of medicine or
21 any other substance in the last 48 hours that would affect your
22 ability to hear and understand this proceeding?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Do you know why you're here today?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Ms. Shea, do you have any reason to doubt
2 Mr. Cook's competence to go forward today?

3 MS. SHEA: No, I don't.

4 THE COURT: Does the Government have any reason to
5 doubt Mr. Cook's competence to go forward today?

6 MR. PARRIS: No, Your Honor.

7 THE COURT: Based on Mr. Cook's answers to my
8 questions, my observations of Mr. Cook and the answers from
9 counsel, I find that he is competent.

10 Mr. Cook, you're here today having entered a plea of
11 guilty to the charge of receipt of child pornography. In light
12 of some cases from the Supreme Court of the United States,
13 including the *Booker*, *Rita*, *Gall*, *Kimbrough*, *Spears* and *Nelson*
14 cases, and a case from the Fourth Circuit called *U.S. v. Hecht*,
15 the guidelines are no longer mandatory, they're advisory.
16 Nevertheless, in accordance with those cases and a number of
17 cases from the Fourth Circuit interpreting them, including the
18 *Carter*, *Pauley*, and *Evans* cases, a sentencing court still must
19 take into account the now-advisory guidelines.

20 The Court does this by initially making findings of
21 fact and calculating an advisory guideline range. I'll then
22 consider any motion that might be made that might move the
23 range either up or down. I'll then consider all arguments Ms.
24 Shea makes on your behalf, the ones she's already made in the
25 sentencing memorandum she submitted, and the one she makes here

15a

1 today; any statement you'd like to make; any victim allocution;
2 and the arguments of the Assistant United States Attorney.
3 I'll then determine your sentence and I'll announce it here in
4 court today. That'll be the process we'll follow.

5 Ms. Shea, did you receive a copy of the presentence
6 report?

7 MS. SHEA: Yes, Your Honor.

8 THE COURT: Mr. Cook, did you speak with Ms. Shea
9 about that report, sir?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: At this time, the Court directs that the
12 presentence report be placed in the record under seal in
13 accordance with Rule 32 of the Federal Rules of Criminal
14 Procedure.

15 The Court accepts as accurate the presentence report,
16 except as to matters in dispute as set forth in the addendum.
17 I have reviewed the entire report, including the addendum. The
18 addendum does contain one objection.

19 I have read the materials. Did you want to add
20 anything to that, Ms. Shea?

21 MS. SHEA: Yes, Your Honor, briefly.

22 As you know, we believe that the two-level reduction
23 under 2G1.1(b)(1) should apply. Your Honor, that two-level
24 reduction applies if three conditions are met.

25 First, if (a)(2) applies. That's undisputed. He is

1 a 22, Your Honor. The conduct is limited to the receipt or
2 solicitation of material and he did not intend to traffic in
3 such material.

4 Your Honor, we believe he does meet all three
5 criteria. He received and viewed these images, he pleaded
6 guilty, he confessed to law enforcement during his interview
7 when he was initially approached. We do not dispute that.

8 He used Ares, which is a peer-to-peer program, to
9 view these images. And we're not disputing that either. We
10 understand that the way that law enforcement discovered this
11 crime was by downloading an image off of his computer; however,
12 he did not knowingly share that image. With the Ares program,
13 images are automatically downloaded into a shared folder. This
14 was unbeknownst to him. There is no evidence that he knew that
15 the folder allowed for sharing. There is no evidence in the
16 record to indicate knowledge. There is no active trading.
17 There are no conversations. Zero. Nothing. And that's
18 because he did not know that the folder automatically shared.

19 The Probation Office, in its response to our
20 objection, Your Honor, says that 2G2(b)(1) does not apply even
21 if there's no evidence that he didn't know, so even if it was
22 not knowingly.

23 Your Honor, we believe that that position is not
24 tenable. In order for enhancements to apply or not apply, we
25 think that there has to be knowledge, if -- definitely

1 knowledge, if not something more, like a conduct or action. We
2 believe that his conduct was limited to receipt, that he did
3 not intend to traffic in this, and that he should get the
4 two-level reduction; that his guideline should be 168 to 210.

5 THE COURT: Thank you.

6 Mr. Parris.

7 MR. PARRIS: Your Honor, I have Agent Kitchen here,
8 who investigated this case, and can call him if the Court feels
9 evidence should be put on to support the Government's position
10 that the two points should not be deducted.

11 It is the nature of the peer-to-peer network use,
12 especially in child pornography. And I call the Court's
13 attention to the subsection 1B1.3 that defines relevant conduct
14 as, "All acts and omissions aided, abetted, counseled,
15 commanded, induced, procured or willfully caused by the
16 defendant."

17 And that's what this peer-to-peer network does.

18 THE COURT: Do you think there's a mens rea
19 requirement for this enhancement?

20 MR. PARRIS: To a certain extent, yes.

21 THE COURT: What do you think it is?

22 MR. PARRIS: I believe it is a knowledge that
23 installing the peer-to-peer network and how it works satisfies
24 that mens rea.

25 And if I can call Agent Kitchen at this time for that

1 purpose.

2 THE COURT: All right. That's fine.

3 Come up and get sworn.

4 CHARLES KITCHEN,

5 having been duly sworn, testified as follows:

6 THE COURT: Good afternoon, Agent.

7 You may examine the witness.

8 DIRECT EXAMINATION

9 BY MR. PARRIS:

10 Q. Can you state your name and occupation for the Court,
11 please.

12 A. Charles Kitchen. I'm a Special Agent with Homeland
13 Security Investigations.

14 Q. Okay. And you're familiar with this investigation
15 concerning Mr. Cook, correct?

16 A. I am.

17 Q. Also, in your professional experience, are you familiar
18 with peer-to-peer file sharing networks?

19 A. Yes.

20 Q. And in this case, the defendant, when you seized his
21 computers and reviewed his computers, had two peer-to-peer file
22 sharing network programs on his computer, correct?

23 A. Yes.

24 Q. What were those programs?

25 A. The Tor Browser and Ares.

C. Kitchen 19a Direct Examination

1 Q. Okay. And tell us a little bit about Tor Browser.

2 A. It's referred to as the dark web. It's a place where you
3 can go anonymously to search anything on the internet. You can
4 search anything. People get drugs off there, child
5 pornography, even hitmen.

6 Q. And tell us about the peer-to-peer network program Ares.

7 A. Ares is a peer-to-peer program similar to LimeWire, where
8 you can put in search terms and it searches every network
9 within that program, within the Ares program, for those search
10 terms and it pulls all of those up.

11 Q. Okay. Now, are these common programs on computers? If
12 you go out and buy one, is it going to have Tor Browser or Ares
13 on it?

14 A. No, it's not.

15 Q. How would it have come to be on the defendant's computer?

16 A. You would -- for Ares, you would have to Google it and
17 download it yourself. For the Tor Browser, I do not know.

18 Q. Okay. So for Ares, he would have to Google it, download
19 the program knowingly on to his computer, correct?

20 A. Yes.

21 Q. And what else would he have to do to start searching or
22 using that peer-to-peer network?

23 A. He would have to log in with his -- according to the
24 defendant, he used his e-mail address to log into it.

25 Q. Okay. So he knowingly logged into this peer-to-peer

1 network?

2 A. Correct.

3 Q. Okay. And as is indicated in the PSR and the facts of the
4 case and through your search, he would leave this program
5 running, correct?

6 A. That is correct.

7 Q. And what is the significance of leaving a peer-to-peer
8 network running?

9 A. Some of the files are very large, so it allows it to
10 continuously download. So while it's also continuously
11 downloading files that he was looking for, it's also
12 continuously uploading files that other people are looking for.

13 Q. Okay. So let's say another user on the Ares program who
14 is looking for child pornography, they could actually look on
15 to his computer and pull it away, correct, for their own use?

16 A. From the general network, yes.

17 Q. Okay. And they could be all over the world?

18 A. Correct.

19 Q. And was there any indication that he tried to stop other
20 people from searching the files on his computer while using
21 Ares?

22 A. No.

23 MR. PARRIS: Thank you, sir.

24 THE COURT: How would you do that?

25 THE WITNESS: There is a way to go into the settings

1 to do that. But every time you log in, you have to go back and
2 do that again. So it automatically pops up, where you have to
3 go into the settings and not allow sharing.

4 THE COURT: Cross-examination.

5 MS. SHEA: I don't have any questions.

6 THE COURT: Thank you. Please watch your step
7 stepping down.

8 THE WITNESS: You're welcome, Your Honor.

9 MR. PARRIS: Thank you.

10 So, Your Honor, as to your question of the mens rea,
11 these are not just computer programs that are just on there
12 when you buy a computer, at least the Ares program specifically
13 used by this defendant.

14 And Tor Browser is a dark web search engine. How
15 many times on your computers have you had a dark web search
16 engine, Your Honor? He had to put these things on there. He
17 knowingly put these programs on there that would allow him to
18 search for child pornography.

19 It also -- I would offer to you, he knew, if he is
20 sharing files, if he is getting files specifically for child
21 pornography, people can get files from him. There's no
22 indication he secured his network through the settings to keep
23 that from happening.

24 So, Your Honor, he knowingly placed these programs on
25 his computer for his use, knowing that it was a peer-to-peer

1 network, that it could be shared backwards and forwards. He
2 could get what he wanted, and they could get what they wanted
3 from his computer and utilize his computer.

4 So that action, if you look at 1B1.3, aids and abets
5 and induces other people to share that same child pornography.
6 It is relevant conduct. Therefore, the Government offers that
7 the two points should not be taken off; that peer-to-peer
8 network he installed knowingly meets that mens rea that the
9 Court has asked about.

10 And also, the U.S. Probation Office's response
11 included that.

12 And it is especially appropriate for these child
13 pornography cases.

14 Thank you, Your Honor.

15 MS. SHEA: Your Honor, may I respond?

16 THE COURT: You may.

17 MS. SHEA: Thank you very much.

18 Your Honor, first, with respect to the Tor Browser,
19 there's no evidence that there was child pornography found off
20 of that. This investigation was limited to images that were
21 located from the Ares program.

22 Your Honor, I'm not disputing that he knowingly
23 downloaded the program, and I'm not disputing the agent's
24 description of how the program works, but what the record is
25 devoid of and, indeed, what this testimony was devoid of was

1 that he knew that that's how it worked. So I don't think that
2 they have put on evidence to meet the mens rea standard that
3 they just announced, that he downloaded Ares and that he knew
4 what it was. As the agent testified, this is the default
5 setting, that you have to actively go into the settings each
6 time to uncheck it.

7 Your Honor, I am proffering that my client is not a
8 sophisticated computer user. This was his first computer. He
9 does not have a lot of technological skills. I think the fact
10 that he used his own e-mail address sort of underscores that
11 point. So we would ask that they have not shown a mens rea and
12 that he get the two-level reduction.

13 THE COURT: Thank you.

14 (Pause in the proceeding.)

15 THE COURT: Let's take a recess until ten til.

16 (The proceedings were recessed at 2:34 p.m. and reconvened
17 at 3:10 p.m.)

18 THE COURT: All right. I'm going to continue this
19 matter until tomorrow afternoon. I'll put it last on
20 sentencing tomorrow afternoon.

21 So see you tomorrow afternoon. We'll be in recess
22 until 9:00 a.m.

23 * * *

24 (The proceedings concluded at 3:11 p.m.)
25

1
2 UNITED STATE DISTRICT COURT
3 EASTERN DISTRICT OF NORTH CAROLINA
4

5
6 CERTIFICATE OF OFFICIAL REPORTER
7

8 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
9 Court Reporter, in and for the United States District Court for
10 the Eastern District of North Carolina, do hereby certify that
11 pursuant to Section 753, Title 28, United States Code, that the
12 foregoing is a true and correct transcript of the
13 stenographically reported proceedings held in the
14 above-entitled matter and that the transcript page format is in
15 conformance with the regulations of the Judicial Conference of
16 the United States.
17

18
19 Dated this 28th day of October, 2019.
20

21 /s/ Amy M. Condon
22 Amy M. Condon, CRR, CSR, RPR
23 U.S. Official Court Reporter
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

vs.

MICHAEL HUNTER COOK,
Defendant.

7:17-CR-00107-D1

AUGUST 23, 2019
SENTENCING HEARING (CONT'D)
BEFORE THE HONORABLE JAMES C. DEVER III
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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AMY M. CONDON, CRR, RPR, CSR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Friday, August 23, 2019, commencing at 2:10 p.m.)

2 P R O C E E D I N G S

3 THE COURT: We'll next take up the sentencing of
4 Mr. Cook.

5 Good afternoon, Ms. Shea and Mr. Cook. Are you ready
6 to resume the sentencing hearing that we began yesterday?

7 MS. SHEA: We are.

8 THE COURT: Is the Government ready?

9 MR. PARRIS: Yes, Your Honor.

10 THE COURT: All right. The defendant was sworn
11 yesterday.

12 I did find him competent yesterday.

13 Yesterday we were talking about the one objection
14 concerning the defendant on not getting a two-level reduction
15 under 2G2.2(b)(1).

16 I've done some research, but I'll hear if anybody
17 else wants to share anything they may have found out.

18 MS. SHEA: In whatever order, Your Honor.

19 THE COURT: Okay. I'll hear from the Government.

20 MR. PARRIS: Your Honor, I'll attempt to make a more
21 succinct argument than I did yesterday based on the time that
22 we had to research.

23 As to the issue concerning whether the question of
24 the mens rea and the proof for that two-point enhancement for
25 use of a peer-to-peer network application for this defendant, I

1 would draw the Court's attention and the record to the advisory
2 comments for Section 2G2.2, which goes to the definition of
3 what distribution is.

4 And to kind of summarize quickly, I'll draw the
5 Court's attention to the case *United States vs. Layton*. And I
6 believe I've provided an e-mail copy to the Court and to
7 counsel.

8 THE COURT: Yes.

9 MR. PARRIS: That is directly on point concerning
10 this issue. And I would turn to page 334 through 335. And
11 basically, in short, looking at whether or not this two-point
12 enhancement attaches to the use or knowing use of a
13 peer-to-peer program the Fourth Circuit, adopting other
14 circuits' interpretation, stated that, "We concur with the
15 Seventh, Eighth and Eleventh Circuits and hold that the use of
16 a peer-to-peer file sharing program constitutes distribution
17 for the purposes of the United States sentencing guideline
18 Section 2G2.2(b)(3)(f)."

19 And they end by saying, "When knowingly using a file
20 sharing program that allows others to access child pornography
21 files, a defendant commits an act" -- and then quotes the
22 advisory opinion or, excuse me, note -- "related to the
23 transfer of materials involving sexual exploitation of minors,"
24 and cites that note.

25 So I would offer to you that the Fourth Circuit has

1 dealt with this issue and says that whatever -- mens rea, it's
2 that he knowingly used that peer-to-peer program, in this case
3 Ares.

4 I would also offer to you that this is a
5 preponderance of the evidence standard, when looking at the
6 evidence, to see if he knowingly used a peer-to-peer program.
7 And that is based on *U.S. v. Grubbs* -- I provided the cite for
8 the court reporter -- to show that the Fourth Circuit would
9 look at this as a preponderance of the evidence.

10 And I would then turn the Court's attention to the
11 revised presentencing report, document number 74 -- excuse me,
12 79. And I'll first call the Court's attention to paragraph 9,
13 where after the defendant's arrest he made an unprotected
14 statement stating that he used the Ares peer-to-peer program.
15 He also said that the peer-to-peer file, Ares application, was
16 for downloading music, like LimeWire, which is another
17 peer-to-peer network program.

18 You heard testimony yesterday from Agent Kitchen that
19 they found a third peer-to-peer program on this defendant's
20 computer. That specific one is actually used to look into the
21 dark web.

22 So I'd offer to you by a preponderance of the
23 evidence, if the Court or even the Fourth Circuit would need
24 more, there's evidence here of more sophistication than just
25 the program was there and I searched for these files. He at

1 least has knowledge of three peer-to-peer program applications.
2 So that shows an experience, which would show a knowledge.

3 Finally, looking at the PSR and the probation
4 officer's response to the objection, page 18, of docketed
5 entry 79, in their response to the objection they said that
6 this same network was utilized by law enforcement to reach into
7 this defendant's computer and pulled out child porn. So that
8 means that network, that bridge, that peer-to-peer sharing was
9 working, which would allow for the distribution of child porn
10 from his computer.

11 And then, finally, paragraph seven of that same
12 report, as the investigation began, quote, "The investigation
13 revealed an IP address used by the defendant was possessing and
14 distributing child pornography videos and pictures."

15 Once again, that's how the peer-to-peer works. Even
16 if he didn't intend to allow people to share, his use of it,
17 knowing that it could share, for the Fourth Circuit would be
18 enough for this two-point enhancement to remain.

19 THE COURT: Well, it's not a two-point enhancement to
20 remain. He didn't get a distribution enhancement.

21 But under your theory, you apparently would be of the
22 position that not only should he not get the two-level
23 reduction that we're talking about, you think he ought to get a
24 two-level enhancement, as I understand your argument, even
25 though the probation officer didn't score it that way?

1 MR. PARRIS: Yes, Your Honor.

2 But the Government would be happy that he just not
3 get the two-point --

4 THE COURT: Reduction.

5 MR. PARRIS: -- reduction in this case. But I would
6 say, by a preponderance of the evidence there is enough here to
7 support that.

8 THE COURT: All right.

9 I'll hear from Ms. Shea.

10 MS. SHEA: Thank you, Your Honor.

11 I do think it's important -- as Your Honor was doing,
12 there are two separate provisions. And the *Layton* case deals
13 with the distribution provision.

14 Your Honor, we believe that Probation properly found
15 that no distribution enhancement was appropriate because there
16 was not evidence of knowledge.

17 I think that with the *Layton* case -- and Your Honor,
18 I tried to read every case since we last saw each other on
19 2B1.1. I believe you are a very good researcher and you may
20 have read more than I did, but in the cases that I was reading,
21 all of them really do point to some sort of evidence of actual
22 knowledge. So even in the *Layton* case -- I understand it was
23 under the other provision, but *Layton* deliberately created a
24 shared folder.

25 And I think that the reason why *Layton* is informative

31a

1 is because I do think that these two provisions, the
2 distribution enhancements and the 2B1.1 production, often do
3 work in tandem. I think that without a distribution
4 enhancement, that is showing that he did not knowingly
5 distribute.

6 And so I think that in order to get that reduction,
7 there has to be no other kind of bad activity. So there can't
8 be evidence of, like, chats with a minor; there can't be
9 production of child pornography; there can't be, you know,
10 talking to someone that they believe is a child. All of those
11 things would preclude getting that two-level reduction.

12 In addition, even for someone like Mr. Cook, who did
13 not knowingly distribute and doesn't get a distribution
14 enhancement, I think that -- and he doesn't have any sort of
15 extra bad acts. I think that even someone like him could
16 potentially not get that two-level reduction if, for example,
17 an FBI agent had reached out to him in an undercover capacity
18 and tried to trade with him and there was something to indicate
19 an intent to traffic.

20 So I think that there could be scenarios where, you
21 know, both B and C would be -- you know, would operate together
22 to preclude someone who, even if he didn't distribute, could
23 have shown an intent to traffic in the material.

24 Your Honor, I think that the Government's
25 presentation of evidence yesterday was devoid of evidence of

1 knowledge. In every other case that I read -- and I imagine
2 that you've read some of these cases, too.

3 There's the *Abel* decision, which was an appeal. That
4 was an appeal of both of these, right? That defendant,
5 Mr. Abel, got both the two levels and did not get the two-level
6 reduction and was appealing both. As you I'm sure recall, in
7 that sentencing hearing the agent testified; and he testified
8 that Mr. Abel had tinkered with the default settings. Again,
9 evidence of knowledge, which is not present here.

10 In the *Monetti* case, which was an 11th Circuit case,
11 that was a case that actually dealt with Ares, with this
12 program. Right? And in that case, Mr. Monetti changed the
13 default settings.

14 So, again, I think that there -- in all of these
15 there is this sort of action or just even something to indicate
16 knowledge. And in this case there just isn't that.

17 Your Honor, I think coupled with that is also -- I
18 proffered this yesterday, but he is not sophisticated with
19 computers. We have some child pornography defendants, Your
20 Honor, who are very well-educated, who have extensive
21 experience with computers. Your Honor, I proffer to the Court
22 that this is not someone that is like that.

23 I think that Your Honor can look at his record and
24 see he is not a typical child pornography defendant. He is not
25 well-educated. He works in bars and restaurants. He -- he --

1 he does not have a typical background for someone that would --
2 that you, I think, can more reasonably impute knowledge to.

3 I also think that -- I'm asking you to look at a mens
4 rea el -- to look at this with a mens rea element to it. And I
5 think that not -- that allowing someone who unknowingly
6 distributes to be precluded of this reduction, I think that
7 that would lead to an overbroad interpretation of that, and I
8 think that that would -- I think it would lead to absurd
9 results, by not putting in any requirement whatsoever.

10 I think that that means that someone whose child
11 pornography was stolen would also be precluded. I mean, you
12 can think of -- you can think of ways that that would not lead
13 to fair results.

14 I think that the Government's articulation of mens
15 rea, that he knowingly downloaded Ares and that he knew how it
16 works -- I mean, I don't think that they proved that. And I
17 think in all of these cases -- I really do think that they had
18 something else. They had that extra bit of evidence to show
19 knowledge. I don't think that they have it here.

20 I think Probation properly found that no distribution
21 enhancements applied. I think that he should get the two
22 levels off because I think -- I think it's limited to receipt.

23 THE COURT: Well, I appreciate the presentations.

24 MS. SHEA: Thank you, Your Honor.

25 THE COURT: I will now offer my view of research and

1 how these actually fit together logically in the framework of
2 the guidelines.

3 Section 2G2.2(b)(1) requires three things
4 conjunctively to get a two-level reduction: Subsection (a)(2)
5 to apply. There is no dispute about that. It requires the
6 defendant's conduct was limited to the receipt or solicitation
7 of material involving the sexual exploitation of a minor. And
8 thirdly, under paragraph C, that the defendant did not intend
9 to traffic in or distribute such material. If those three
10 elements are met, then you get a two-level reduction.

11 The Second Circuit in a published decision, *United*
12 *States v. Bleau*, 930 F.3d 35, pages 39-40 (2nd Cir. 2019) (per
13 curiam) and in *U.S. v. Familetti*, 705 Fed.App'x 16 at page 20,
14 (2nd Cir. 2017) (per curiam) and (published), as well as the
15 Sixth Circuit in *United States v. Shepard*, 661 Fed.App'x 348,
16 at page 351 (6th Cir. 2016), in a discussion of *U.S. v. Abbring*
17 -- although, it's not as clear as the one in *Bleau* and
18 *Familetti* and *Shepard* -- the *Abbring* case is 788 F.3d 565 at
19 page 568, (6th Cir. 2015), discussed issues associated with
20 distribution.

21 But the *Bleau* case and the *Familetti* case, you have
22 to sort of read these cases in the context of the guideline
23 language as well as understanding the reality of the April 2016
24 amendments that dealt with peer-to-peer file sharing, which are
25 referenced at the end of the guidelines. So sort of somewhat

1 perilous, obviously, to go in, in looking at case law,
2 interpreting guidelines, without looking at the Commission had
3 resolved a circuit split dealing with any issues or perhaps
4 changed the language in the guidelines.

5 Here, as the *Bleau* case makes clear -- and I think as
6 the language makes clear -- that the defendant's conduct was
7 not limited to the receipt or solicitation. It does meet the
8 definition of distribution, as the *Bleau* court noted, by virtue
9 of the installation of this peer-to-peer network.

10 And so -- and as in *Bleau*, how do we know it? What
11 is Exhibit A of that fact? It's how he got caught. The law
12 enforcement went in and got the child pornography off of his
13 computer. That is the act of distribution for purposes of the
14 second requirement.

15 Now, the third -- the third issue or the third
16 requirement in here, and the reason he doesn't get the
17 enhancement for knowing distribution, the Commission in
18 resolving a circuit split -- if you actually go and look at the
19 current text of subparagraph -- 2G2.2(b)(3), you'll note that
20 paragraphs (a) through (e) don't have an expressed mens rea
21 requirement. The distribution itself will result in an
22 enhancement, but that for -- to get additional two for
23 distribution it has to be knowing distribution. So that's why
24 he doesn't get the two levels. That's why he's properly not
25 scored to get an extra two levels for knowingly distributing

1 it.

2 But it also explains why he doesn't qualify for the
3 two-level reduction, because the distribution itself is by
4 virtue of installing the peer-to-peer file sharing and then
5 it's then made available and it's distributed by virtue of the
6 agent being able to pull it. And we know the agent pulled it
7 because that's how he got caught.

8 And so that's how these things -- when you actually
9 look at the case law and look at the text, that they actually
10 fit together. It's why it's not -- if you don't get the
11 knowing distribution, you automatically get the two-level
12 reduction; that you actually can have a situation where
13 somebody in theory could -- who didn't, let's say -- to take a
14 variant on Ms. Shea's hypothetical, you can have a scenario
15 where somebody downloaded child pornography not with a
16 peer-to-peer, but downloaded it, had it in their computer or in
17 their residence, someone broke in and stole it. Right? They
18 wouldn't be distributing it. There wouldn't be a distribution
19 by them if someone came in and stole it. And that person, in
20 theory, then, could still get the two-level reduction.

21 But the cases and the way the Commission sort of
22 dealt with this issue of resolving a circuit split about how do
23 we really analyze peer-to-peer issues for purposes of a knowing
24 distribution enhancement, of getting a higher guideline for
25 knowingly distributing it, then there's going to be that mens

1 rea about you knew how to.

2 But for purposes of getting a two-level reduction, if
3 you've installed it on there, then the distribution is the act.
4 And that's how -- that's at least, again -- I mean, for -- and
5 for a discussion of mens rea-related issues associated with
6 this, even prior to the amendment, but a discussion of sort of
7 the textual difference -- and have a difference in the textual
8 language because some -- there was a circuit split that had
9 developed for the discussion of the issue of mens rea in
10 connection with the 2G2.2 guidelines, the Tenth Circuit in *U.S.*
11 *v. Ray*, 704 F.3d 1307, talked about that and then the -- in
12 *U.S. v. Foreny*, the Second Circuit also talked about that.
13 Those -- both of those cases, I'll note, were prior, again, to
14 the Commission and the amendments to the guidelines on
15 April 28th, 2016, resolving this peer-to-peer.

16 So I think this case fits squarely into that
17 scenario, where he doesn't properly -- he properly is not
18 scored for a distribution enhancement, but by virtue of the
19 definition of distribution, which, again, means any act, the
20 "act" is that installation of the peer-to-peer, and then the
21 ability of somebody to just go in and get it off of the
22 computer.

23 So I'm not giving him the two-point reduction because
24 I don't think the law is in his favor on it. But I do thank
25 you-all for researching that.

1 So there's no other objections to the report.

2 The total offense level is 32. The criminal history
3 category is VI. The advisory guideline range is 210 to 240
4 months.

5 Does the Government agree that a 32 and a VI yields
6 210 to 240?

7 MR. PARRIS: Yes, Your Honor.

8 THE COURT: And again, with the objection preserved,
9 do you agree that it's -- 32 and a VI yields 210 to 240, Ms.
10 Shea?

11 MS. SHEA: With the objection noted. Thank you.

12 THE COURT: Okay. I'll now hear from Ms. Shea, then
13 I'll hear from Mr. Cook, then I'll hear any victim allocution,
14 and then I'll hear from Mr. Parris.

15 MS. SHEA: Thank you, Your Honor.

16 Your Honor, in this case I am asking you to consider
17 a sentence less than 210 months. I'm asking you to consider a
18 sentence of less than 17 years. That was because I believe
19 that all of the goals of sentencing can be met with a sentence
20 less than 17 years. And that's why I'm asking you to consider
21 it.

22 Your Honor, in terms of the nature and circumstances
23 of this offense, he downloaded child pornography, he viewed
24 child pornography. That is the offense. Your Honor, we
25 understand that this is an extremely serious offense, that it

1 is a horrible offense.

2 In this case, and every other child pornography case
3 that I've had, the Government and the probation officer
4 describes in detail some of the worst of the images, Your
5 Honor. And Your Honor, that is inherent in this offense; that
6 is the nature of this crime; that is what is illegal about it.

7 I think that there are three aspects of this case,
8 though, in terms of just -- I'm still on the nature and
9 circumstances of the offense, that I think deserve
10 consideration.

11 First is the length of time that he viewed these
12 images. Your Honor, as you know, in the presentence report, he
13 looked at these images for a period of three months. Your
14 Honor, I believe that that is atypical in these cases.

15 And I know that Your Honor has had a number of child
16 pornography cases. In most of them that I have had and that I
17 have seen, we see years' long downloads. We see a pattern that
18 often spans the entire adult life of someone that is looking
19 for child pornography, that has amassed a collection of child
20 pornography. In many, the person -- that has -- that has
21 become a primary focus of the person's life, is to look at
22 child pornography. I do not think that that is the case with
23 Mr. Cook.

24 Which brings me to the second aspect, which I think
25 is unusual about this case. First was the length of time.

1 Second is the motivation for looking at these images and
2 viewing them. And I realize that this is a little bit of a
3 difficult argument perhaps to land, Your Honor, but I do think
4 that it's worth making; and I'm asking you to consider it. It
5 is his motivation for looking at these.

6 So Your Honor, he has told me over and over again --
7 and he will tell you in his allocution -- that he started
8 looking at pornography on Ares, started looking at very,
9 obviously, illegal, taboo videos and doesn't -- can't really
10 explain why he kept looking at them, but he did.

11 I do not think this is someone who is driven by an
12 intense attraction to children. I do not think that this is
13 someone who is a typical child pornography defendant, in that
14 sense. I think that the reason why child pornography sentences
15 are often so long is because we are worried that this person is
16 fixated on children and could -- you know, is a true threat to
17 children and the community.

18 I think he is different than those defendants, Your
19 Honor. I think that his motivation for viewing these images,
20 while not pure or positive -- but I do think that he is
21 differently situated from other child pornography defendants.

22 And the last one, I think the fact that there are no
23 sort of -- I understand the Court's ruling on the
24 enhancement -- or reduction, but I do think that it's relevant,
25 that this was limited to knowing receipt, and that there aren't

1 sort of these extra distribution, creation, chats, trades, sort
2 of the things about child pornography offenses that I think
3 really do sort of distinguish them in severity and character.
4 I think that those are missing in this case.

5 So in terms of the true just nature and circumstances
6 of the offense, I think that in terms of the spectrum, where
7 you have one person who has been collecting for years and who's
8 chatting with children -- I think that his conduct falls on the
9 other end of that spectrum.

10 In terms of the history and characteristics of the
11 client, Your Honor, I understand that he has a criminal record.
12 I understand that that is not a good thing. I understand that
13 he has a very bad assault conviction from -- and that's his
14 most recent conviction. I understand that that's probably one
15 of the most aggravating facts in this case, is his record.

16 Your Honor, we do note that it is primarily made up
17 of misdemeanor offenses. He has this larceny, where he stole
18 scrap metal out of a dumpster. And then, he has that very bad
19 assault. We understand that his misdemeanor offenses are for
20 domestic violence protective order violations. You might note
21 that the complainant in all four of those is the same person
22 that lived -- it was this relationship that went on for a long
23 time, and they lived together and had a child together.

24 I also do note for the Court that even though he does
25 have a long record, it's not made up of offenses against

1 children. He's not convicted of that. He's not convicted of
2 child pornography-type offenses. So this is the offense that
3 will trigger him to be a sex offender, to require registration,
4 to be on the registry.

5 In terms of his other characteristics, Your Honor,
6 he's 36 years old. He came within a credit of graduating from
7 high school in Charlotte; it's where he grew up. His father
8 moved to the coast. And his father is here as well as his
9 fiancée, who submitted letters, as well. His dad relocated to
10 eastern North Carolina. He came here to get a fresh start. He
11 moved to eastern North Carolina.

12 Your Honor is aware that he was in this very serious
13 motorcycle accident, required extensive surgery and
14 rehabilitation. But with the exception of that, he really has
15 worked throughout his entire adult life. He has had some
16 substance abuse issues, as noted in the presentence report and
17 in his girlfriend's letter that we submitted.

18 But I think, in particular, his work history -- he's
19 got a really good sense of financial responsibility. His
20 father discusses that in his letter. He does maintain a
21 support system. And I think that all of those three things are
22 worth your consideration, and we would ask you to consider
23 that.

24 I think it's also important to talk about punishment
25 and deterrence, Your Honor. 210 months is an enormous sentence

1 and a sentence less than that would still serve to punish him
2 extremely, would still serve to deter him and others extremely.

3 Your Honor, even though he does have a record, the
4 longest -- he's never served a full year in prison. He served
5 almost a year for larceny and assault. But this is going to be
6 the longest sentence by far that you -- that he's ever served
7 in his life. It is going to be a huge sentence for him, even
8 if it's a sentence less than 210 months.

9 I think that -- the context that he viewed these
10 images for three months, I really don't believe that he was
11 motivated by a pedophilic disorder. I think that it means that
12 he needs less deterrence than others when it comes specifically
13 to this type of offense.

14 Your Honor, I also think that it's really important
15 in terms of the punishment and the deterrence angle to look
16 also at the other things that are punishing him in addition to
17 just the sentence of imprisonment that Your Honor imposes, and
18 that is because the collateral consequences in sex offender
19 cases are truly enormous. He will be on the registry for the
20 rest of his life. I mean, he is going to have a number of
21 other aspects of punishment. And so we really ask you to
22 consider, when you're considering what length of imprisonment
23 is necessary, to think about these other ways that he will be
24 punished even after a prison sentence. And that's, of course,
25 supervised release, registration and he also has restitution.

1 Your Honor, we were able to negotiate settlements in
2 the restitution. That was noted to be outstanding in the
3 presentence report. And I've given the Government a copy of
4 the restitution settlements. Your Honor, we note that -- and I
5 can pass this up at the appropriate time, but we note that he's
6 actually already paid two of them. He's already paid two of
7 the victims. And we have the certified mail stubs that we'll
8 turn into the clerk's office, in the financial litigation unit,
9 after this. But he has already begun the process of paying
10 restitution.

11 I think that that's another aspect of the sentence
12 that we ask that you consider in terms of thinking of a
13 sentence less than 210 months.

14 I would also ask for you to consider just what prison
15 is like for a sex offender. It is different in kind than if
16 you go in and you're a gang-banger and you've got a record,
17 like, you're going to have a much different prison experience
18 than someone with this offense.

19 Your Honor might note when he speaks that his tooth
20 is broken. He was beat up in Brunswick County as a result of
21 his charges. The marshals were gracious and got him moved to
22 another facility. But that is the reality of being a sex
23 offender in prison. It is, rightfully or wrongfully --
24 depending on your perspective, it is a very rough journey that
25 he is going to embark on for the term of months that Your Honor

45a

1 decides. And we ask that you take that into account in
2 considering less than 210 months.

3 Your Honor, I think that -- and again, I don't know
4 if this argument will land, but I truly believe it. In terms
5 of promoting respect for the law, I actually believe that a
6 shorter sentence would do a better job of promoting respect for
7 the law. And that is because it is well-known that if you
8 actually have a hands-on offense against a child, you are going
9 to look at far less time than if you're a child pornography
10 offender.

11 So he's looking at a -- he's standing here looking at
12 a 17-year sentence. If you actually have a hands-on offense
13 against a child -- and Your Honor has seen this, I know, in all
14 of the PSRs that we review from across the country and looking
15 at the 4248 cases, people get a very short term of years; very
16 often less than 10 years for molesting a child. I'm not saying
17 that those sentences are justified, but I'm saying that is the
18 reality.

19 Now, if you manufacture child pornography and you're
20 in Federal Court, you're looking at a boatload of time. And I
21 understand that. But I'm just talking about true hands-on
22 offenses of children that are in State Courts across the
23 country, you're looking at a lot less than 17 years.

24 To give someone twice, three times as long for
25 looking at images for a period of three months I don't think

1 promotes respect for the law.

2 And I'm just asking you to take a step back and think
3 about that, you know, 17 years for three months' worth of
4 images. That's the sentence of an armed career criminal.
5 That's the sentence of a career offender. That's the sentence
6 of manslaughter.

7 I mean, it is an enormous sentence. And I don't
8 think it matches the conduct in this case, even with his
9 criminal record. Your Honor, I think it would avoid
10 unwarranted sentencing disparities. We noted in our memorandum
11 that the average child pornography sentence last year, in 2018,
12 was 105 months.

13 Your Honor, I understand that his criminal history is
14 an aggravating factor, but I do think that there are a lot of
15 mitigating factors in terms of his -- the actual nature of this
16 offense that make him very different in kind than the typical
17 child pornography defendant.

18 And we would ask you to sort of consider that average
19 sentence and think of something around that instead of over
20 twice as much.

21 In just terms of the spectrum of child pornography
22 defendants, I just can't believe that he is twice as bad as the
23 average child pornography offender.

24 In terms of the Guidelines, I think that -- you know,
25 that's really sort of the one thing that's weighing in favor of

47a

1 the 210 months, is the guidelines. And I've made guideline
2 arguments in front of Your Honor about child pornography, the
3 child pornography guidelines not being based on empirical
4 research. And I know that I have not persuaded you in the
5 past, but I would ask you to consider the rationale of other
6 judges who are putting less weight in these guidelines.

7 You know, Your Honor, he has 13 levels of
8 enhancements. You know, he goes from a 22 to a 35, with three
9 levels off of 32, but he gets 13 levels of enhancements for
10 things that are all but inherent to this -- to the crime. This
11 is how child pornography offenses are being committed. And
12 that's why use of a computer and number of images and S&M and
13 prepubescent victims, that's why they apply in the vast
14 majority of cases, because that is the nature of the crime.

15 Now -- and it doesn't make sense to have a base
16 offense level that's -- you know, you're increasing it by so
17 much for aspects of the crime that are all but inherent to the
18 way that it is committed.

19 So to summarize, Judge, this is a man who looked at
20 horrific images for three months. That's who he is. And he
21 has a record. But he didn't distribute them, he didn't make
22 them, he didn't create them.

23 We're asking you to consider something less than 17
24 years.

25 THE COURT: Thank you, Ms. Shea.

48a

1 At this time, I'll hear from Mr. Cook. If you'd like
2 to make a statement, sir.

3 THE DEFENDANT: Yes, Your Honor.

4 I would just like -- before I read this, I would just
5 like to let you know that I didn't know what P2P or PSP was
6 until after I was arrested. I thought I was getting those
7 videos from Ares. I didn't know that they were coming from
8 other people and I didn't know they were taking them from my
9 computer. I just didn't. I just didn't know.

10 I take full responsibility for my actions in 2017. I
11 bought my first computer ever. I was so proud of myself. I
12 had hopes and dreams of becoming a daily currency trader and
13 trying to retire in five years. Instead, I found child porn on
14 a site that I thought was going to get me new release movies.
15 Three months later, the Feds busted in my door and arrested me.
16 Instead of retiring in five years, I found out I was going to
17 prison for a long time.

18 I did not set out to look or find these illegal
19 videos. While looking for new movies, all these porn titles
20 kept popping up. Eventually, my curiosity got the better of me
21 and I clicked on a couple of them. At first, I was shocked and
22 disturbed of what I was seeing. I shut down my computer and I
23 didn't mess with it for a while. For reasons I can't explain,
24 I went back and I looked again. I did not like what I was
25 looking at, but my curiosity was beating my better judgment. I

49a

1 found videos of Americans being beheaded that pissed me off and
2 made me sick; I still watched. There were videos of shootings
3 and assassinations I could not believe; I still watched. There
4 were disgusting porn videos that I never knew existed; I still
5 watched. I'm not an American executioner, but I watched those
6 videos. I'm not an assassin, but I watched those videos. And
7 I'm definitely not a child pornography person or 90 percent of
8 the other things that I found on Ares, but I did watch.

9 What I am is curious. What I am is stupid. What I
10 am is embarrassed and ashamed of myself. I'm a father, for
11 God's sake. What if that was my child? I can't imagine what
12 I'd feel if that was my daughter. What was I thinking? I've
13 shamed myself and my family. My children will never look at me
14 the same. I'll be in prison for a really long time. If I make
15 it out alive, I'll be on probation for five more years. I'll
16 be a registered sex offender for the rest of my life.
17 Essentially, what I've done is given myself a life sentence.

18 By the time I'm out of prison, off probation and not
19 having to check in as a sex offender, I'll probably be in the
20 grave. I will not be there for my daughter, to see her
21 graduate from high school; I will not get to walk her down to
22 the college campus; I will miss her graduate college; I will
23 not be there to walk her down the aisle when she gets married.
24 Fallyn has lost her father, and I can only blame myself for the
25 rest of my life.

50a

1 I will not be there to take my son to football
2 practice. I will not see him graduate or go to his first prom.
3 I will not be there to teach him how to be a good man or loving
4 father.

5 Instead, they will grow up without me in their lives,
6 embarrassed and ashamed of why their dad is not there for them.
7 They will learn to eventually hate me. I'm not a pedophile,
8 but they already hate me.

9 I would never do anything to hurt a child. Never. I
10 never raised a hand to either of my kids. But because of me
11 finding this website called Ares and clicking on some things
12 that I should not have, I will be labeled a pedophile for the
13 rest of my life.

14 I feel sorry and my heart goes out to every child in
15 those sick videos. I hope they catch the men that made those
16 videos and shut down Ares. I hope they go to prison.

17 I'm sorry for what I've seen. This is the biggest
18 regret of my life. I will never go to Ares again. I will
19 never even look for free movies. I'm ashamed of what I've done
20 to the point of severe depression. I'm not a pedophile, but I
21 will be labeled one for the rest of my life.

22 Dear God, please forgive me.

23 Judge Dever, I will never do this again. I've
24 learned my lesson. I promise you that you will never hear from
25 me again. I promise to be a good man and father. I'll work

1 hard to support my family and try to gain back their respect.

2 THE COURT: Thank you, Mr. Cook.

3 At this time, I'll hear any victim allocution and
4 then I'll hear from Mr. Parris on behalf of the United States.

5 MR. PARRIS: Your Honor, we don't have any --
6 although we've had contact with the eight victims and their
7 representatives, there were no allocutions to give the Court at
8 this time.

9 I would like to start off with the first aspect, the
10 short duration of this offense. And I'd offer to the Court
11 that he did not abandon the crime. It stopped when law
12 enforcement came in with a search warrant and took the porn in
13 the computers. There was no abandonment of it.

14 His disgust of those videos when he first saw them
15 didn't stop him from continuing to look at them for three
16 months and collect them until law enforcement came in and took
17 the computers.

18 Looking at what Your Honor has to consider under
19 Section 3533, in looking at the revised presentencing report
20 and preparing for today, what the Government saw was a tendency
21 for this defendant to have very dangerous fixations.

22 I would draw the Court's attention to paragraphs 22
23 through 25, criminal convictions dating back to 2007 and 2008,
24 where this defendant had a dangerous fixation with someone
25 named Crystal Leak, dangerous in that he walked through a

1 domestic violence protective order five times. A court ordered
2 him to stay away and he walked through that order five times
3 because of fixation; including, according to the report, on
4 May 22nd, 2007, where he assaulted Crystal Leak by pushing her
5 down, taking her phone so she could not call 911.

6 The next fixation we see in his history is paragraph
7 30, where he's convicted of assault by strangulation. And that
8 title is not enough. According to the presentence report, the
9 facts are that on February 25th of 2015 the defendant got in an
10 argument with his girlfriend, a Ms. Grier, she slapped him,
11 attempted to flee the apartment, he caught her, tied her to a
12 chair, nude, assaulted her repeatedly, choked her with a belt
13 multiple times to where she vomited multiple times. Because of
14 his fixation with her. And she was only able to escape after
15 he fell asleep. And she was able to go for help. That is a
16 dangerous fixation.

17 The next time we see a new fixation within the
18 report, the revised sentencing report, is paragraph 38. And
19 you heard the defendant's own statements, he would never hurt a
20 child. But on December 8th of 2014, he was charged in
21 Mecklenburg County with indecent liberties with a child. He
22 was 31 at the time. It states that he "committed or attempted
23 to commit lewd and lascivious acts upon the body of a juvenile
24 female under the age of 16."

25 The charges were dismissed because she didn't appear

1 for court. But that is evidence of a dangerous fixation,
2 focusing on sexual activities with a minor. And that is in
3 2014.

4 And then, in 2017 we have law enforcement entering
5 his house and obtaining images and movies of minors, including
6 two-year-olds and younger, engaged in sexual activities.

7 So based on that, looking at the 3533 factors, that
8 is not only a horrible history of criminal activity, it's a
9 malicious, sadistic history. But it also shows a
10 characteristic of the defendant that you have to consider, a
11 fixation; a very dangerous fixation.

12 And when you look at the seriousness of the offense,
13 he has a peer-to-peer network, where people can share back and
14 forth these horrible images for three months. We have eight
15 victims who are still victimized by this. That's why they're
16 getting paid restitution for this, so that they can get
17 therapy. And they had to receive notice that there's another
18 time that another person has seen them victimized.

19 An effort to adequately deter criminal conduct.
20 Protective order wasn't enough. Someone trying to leave wasn't
21 enough; he strapped them down. Luckily -- having his charges
22 dismissed in Mecklenburg County wasn't enough. And we're here
23 looking at these images of two-year-olds and younger.

24 And he says he doesn't know, but the investigation
25 showed he had searched terms for PTHC, which I'm told is

54a

1 preteen hard core; searched terms of preteen hard core toddler;
2 preteen hard core pain. He knew what he was looking for. He
3 didn't stumble across it looking for free movies.

4 And in -- the final 3533 factor I would offer to the
5 Court, which is what the Government would focus on in this
6 case, is the need to protect the public from this dangerous
7 fixation for as long as possible.

8 So that is why the Government is asking for the
9 statutory max in this case of 240. It is based on his history,
10 his history of dangerous fixations and fixations that have
11 leaned towards minors in sexual activity. And that is what the
12 Government feels is needed to provide protection.

13 This is not a child pornographer that has a clean
14 record, who is computer savvy and just has images. His history
15 shows that when he's fixated on something it can turn horrible.
16 And that's why the statutory max in this case is needed.

17 THE COURT: Thank you.

18 Ms. Shea.

19 MS. SHEA: Your Honor, I'm sorry, I can't help
20 myself, I do just want to respond to a couple of things Mr.
21 Parris said.

22 I think he is reading too much in the report in terms
23 of his dangerous fixations presentation. Your Honor, I'm
24 offering to the Court that the domestic violence protective
25 order violations -- I'm not saying this was a healthy

55a

1 relationship at all, but they were living together. So they
2 kept going back to living together, despite a protective order
3 being in place. And then, as soon as there would be a fight,
4 there would be another violation that was adjudicated. Again,
5 I'm not saying it was a healthy relationship by any means, I'm
6 not trying to absolve him of guilt, but I don't think it's
7 actually evidence of a dangerous fixation.

8 And Your Honor, we would ask you not to credit any of
9 the arguments that the Government has presented with respect to
10 the dismissed charge. Your Honor, he vehemently denies that
11 anything happened. That was a false accusation. There is no
12 evidence. They have put on no evidence of what happened. We
13 would ask that you just disregard that completely. It is not a
14 valid basis to sentence him to anything.

15 And we're asking you to consider less, again, than
16 210 months.

17 And if I can pass up the restitution. Whatever --

18 THE COURT: Is it 8?

19 MS. SHEA: Yes. Oh, I'm sorry. You already have it.
20 Thank you, Your Honor.

21 (Pause in the proceeding.)

22 THE COURT: All right, Mr. Cook.

23 The Court recognizes its obligation to impose a
24 sentence sufficient but not greater than necessary to comply
25 with the purposes set forth in the statute.

56a

1 I have considered all arguments that your lawyer has
2 made on your behalf, both here in court and in the memos she
3 submitted, I have considered your statement, sir, I have
4 considered the position of United States, I have considered the
5 advisory guideline range.

6 I'm not at all relying on any dismissed charges in
7 fashioning this sentence.

8 I'm to consider the nature and circumstances of the
9 offense and the history and characteristics of the defendant,
10 the need for the sentence imposed to reflect the seriousness of
11 the offense, to promote respect for the law and to provide just
12 punishment, the need for the sentence imposed to deter others
13 who might choose to engage in the behavior that brings you
14 here, the need for the sentence imposed to protect the public
15 from further crime by you, the need for the sentence imposed to
16 provide you with needed educational or vocational training,
17 medical care, other correctional treatment in the most
18 effective manner.

19 The statute lists numerous other factors. I've
20 considered all those factors, although I won't mention each one
21 individually.

22 As for the nature and circumstances of the offense,
23 you did receive child pornography, as we've talked about here
24 today, and as reflected in the report, over essentially about a
25 three-month period until you were caught by law enforcement.

57a

1 You were downloading these images.

2 I don't credit your statement that you were just
3 looking for free movies because I've had enough of these cases
4 to know you have to put search terms in to get things. And I
5 think that Mr. Parris makes a fair point about search terms to
6 get child pornography, it means you're looking for it.

7 And so -- and to say it's a serious offense is --
8 words are insufficient to describe how serious it is in the
9 sense of every one of those children is somebody's little girl
10 or little boy. Every one of them. Some of them are babies.
11 Babies who are assaulted. And then, the assault is recorded
12 and is put on the internet. And it's a re-victimization every
13 time.

14 I've heard enough of these cases. Just to read the
15 description is hard. Can you imagine if you're that little
16 girl who lived it? And then, who knows there are these images
17 out there and these videos that people are watching that makes
18 them re-victimized all over again. So there's a reason why the
19 guidelines are where they are.

20 Now, in connection with policy issues associated
21 with: Should hands-on offenders get more time? They should.
22 But whatever disparities from some State Court practices
23 associated with what people do if they sexually assault
24 children, I don't think that mitigates at all the reality of
25 the horrible nature of this offense.

58a

1 There are worse offenses. I mean, I'd be the first
2 -- and I've had the production cases. I've had a few of them
3 here recently. And they're worse. But we cannot ignore the
4 reality that every person in those videos is a real child.
5 This is not make-believe, computer fantasy. It is a real human
6 being, that some mother held in a hospital when that baby was
7 born.

8 And could there ever be a more hopeful day in the
9 life of a human being than that day? I mean, you dream about
10 what that child might -- she might grow up to be the president,
11 she might grow up to cure cancer, she might grow up to be an
12 astronaut and be on the moon.

13 Nobody could even imagine their child being violated
14 in the way these children are violated; and it being recorded
15 for perpetuity. It's horrible. And that's why the penalties
16 are so serious.

17 As for your history and characteristics, you're 36
18 years old, you do have a work history, but you also have a --
19 you have a serious criminal history. There is no getting
20 around it. Between legitimate employment. I mean, you're a
21 criminal history category VI, which, again, I'll say is
22 atypical in these cases.

23 And I've had a lot of these cases. And that's not a
24 helpful fact for you. And the convictions -- particularly that
25 last assault by strangulation conviction when you were 32, that

59a

1 is a hard one to read about, but -- you know, don't shake your
2 head now. This is my time to talk.

3 It's horrible. And you got the other ones in there,
4 the larcenies and the domestic violence protective order
5 violations. Whatever the reality of that relationship is,
6 that's concerning to me about your behavior. I've taken all of
7 that into account.

8 The issues of motive -- again, I don't really have to
9 solve the issue of motive, but I know that things just don't
10 pop up. I know people have to go out and search for it. You
11 don't just sort of download Ares and then all of a sudden child
12 pornography starts coming on your computer. That's just not
13 how it works. That's just not how it works.

14 And I've taken into account the arguments about the
15 substance abuse issues, the issues associated with collateral
16 consequences. I recognize there are collateral consequences
17 associated with being a sex offender, in terms of registration
18 and things like that; and I've taken those into account in
19 fashioning a sentence.

20 I know there are arguments that are made against the
21 advice in the guidelines, and there's a debate. And I've read
22 all the literature about it. And I don't think it's bad
23 advice. I think the Fourth Circuit, going all the way back to
24 *U.S. v. Hecht*, 470 F.3d 177 to page 182, recognized in
25 essentially applying the *Booker* remedy to the protect act in

1 making the guidelines advisory, also recognized the serious
2 nature of these offenses. So I've taken into account the
3 argument, but I just respectfully disagree with it.

4 I understand the statistical argument about what an
5 average sentence is for a receipt case. And every sentence is
6 individualized. And I just don't think the averages are all
7 that helpful of a data point for me. I have to look at that
8 individual who is standing in front of me and what the totality
9 of his life was and is and what his behavior was and is.

10 I've taken into account that you started to make
11 payment on restitution. I actually give you credit for that.
12 That's actually a helpful thing because these are real
13 children, real victims whose lives have been changed in a way
14 that those of us who have not been victimized in that way, I
15 would submit, cannot even imagine in terms of the distortion of
16 that child about their relationships with every other human
17 being in the world.

18 And no child brings it upon themselves. Again, it is
19 the worst form of victimization, short of that child being
20 murdered, when you think about how it affects everything in
21 their lives; and especially once they realize it's on the
22 internet and there is no getting it off of there. No child
23 wakes up. And they can't. And no child can even imagine it.
24 Whatever that day was. And then, it comes to pass. I've taken
25 that into account in thinking about what just punishment is.

61a

1 I've taken into account the letters. There are
2 certainly people that care about you; they've written in. And
3 you're fortunate that they still care about you.

4 I'm not going to go as high as the Government
5 suggested, but I'm not going to vary down. I've balanced the
6 serious nature of this offense, the serious criminal history,
7 the fact that you have made some restitution payments -- and
8 I'll make restitution part of this as a positive thing that
9 you've done in this case. I've taken into account the issues
10 associated with the other issues and arguments that Ms. Shea
11 has made on your behalf about the positive things in your life.

12 Having fully considered the entire record in the
13 case, the need to promote respect for the law and impose just
14 punishment to account for the serious nature of the offense and
15 the serious criminal history, it's the judgment of the Court
16 that the defendant, Michael Hunter Cook, is hereby committed to
17 the custody of the Bureau of Prisons to be imprisoned for 222
18 months.

19 He'll be on supervised -- Counts 1 through 6 and 8
20 and 10 are hereby dismissed.

21 You'll be on supervised release for five years.
22 You'll comply with the standard conditions and the following
23 additional conditions: You'll participate in a narcotic
24 addiction treatment program; you'll participate in a mental
25 health assessment treatment program; submit to searches by law

62a

1 enforcement with reasonable suspicion concerning the violation
2 of conditions of supervision; cooperate in the collection of
3 DNA; submit to a psychosexual evaluation; participate in sex
4 offender treatment as directed by Probation; submit to
5 physiological testing as directed by Probation; you'll have to
6 get your residence and employment approved by Probation; comply
7 with the Sex Offender Registration and Notification Act; to
8 ensure compliance with supervision, you'll submit to searches
9 of any computers and submit to computer monitoring technology
10 on any computers that you have access to; you'll consent to
11 monitor computer use technology by Probation to make sure
12 you're not -- doing what you're supposed to do with the
13 computer; not possessing any computer counter-forensic tools;
14 support your children; make restitution.

15 I signed the forfeiture order. You owe a special
16 assessment of \$100. The restitution will be with the eight
17 victims that are in the statement that was submitted by me for
18 the "At School," "Violet" victim, the "Jan Socks," "Skylar"
19 victim, the Vicky -- "Lily" "Vicky" victim, the "Marineland
20 Sarah" victim, the "Sweet Sugar Pia" victim, the "Sweet Sugar
21 Mya" victim, the "Jenny" victim and the "Pink Heart Tori"
22 victim.

23 I'm not imposing a fine.

24 I recommend Butner. I recommend intensive substance
25 abuse treatment. I recommend mental health evaluation and

1 treatment. I recommend sex offender treatment. I recommend
2 vocational educational opportunities.

3 I do think I properly calculated the advisory
4 guideline range, but I announce pursuant to *U.S. v.*
5 *Gomez-Jimenez*, 750 F.3d 370 (4th Cir. 2014) and *U.S. v.*
6 *Hargrove*, 701 F.3d 156 (4th Cir. 2012), that I'd impose the
7 same sentence as an alternative variant sentence if I have, in
8 any way, miscalculated the advisory guideline range.

9 You can appeal your conviction if you believe that
10 your guilty plea was somehow unlawful or involuntary or if
11 there's some other fundamental defect in the proceeding that
12 was not waived by your guilty plea.

13 You also have a statutory right to appeal your
14 sentence under certain circumstances, particularly if you think
15 your sentence is contrary to law

16 However, you did enter into a plea agreement that
17 contains an appellate waiver. In light of your sentence, I
18 believe you've waived your right to appeal your sentence. If
19 you believe the waiver is unenforceable or inapplicable for any
20 reason, you can present that theory to the Appellate Court with
21 few exceptions: Any Notice of Appeal must be filed within 14
22 days of the judgment being entered on the docket in your case.
23 If you're unable to pay the cost of an appeal, you may apply
24 for leave to appeal *in forma pauperis*; if you so request, the
25 Clerk of Court will prepare and file a Notice of Appeal on your

1 behalf

2 I think I made all the recommendations you asked for,
3 Ms. Shea. Is there any other thing you want me to recommend?

4 MS. SHEA: Your Honor, I do respectfully note an
5 objection to the alternative variant sentence.

6 And did you say a special assessment of \$100, Your
7 Honor?

8 THE COURT: Yes.

9 MS. SHEA: Thank you, Your Honor. I just didn't hear
10 it.

11 There was one other note in the forfeiture order. I
12 believe you said that you signed a forfeiture order. I don't
13 have a motion for forfeiture in front of me, but in the
14 Indictment I have six things listed. I don't know if that's
15 what the forfeiture order looks like. The first two are HP
16 All-In-One desktops and Western Digital 1TB hard drive. Those
17 were the two things where the child pornography was found.

18 Your Honor, the other things, the last -- again, I'm
19 not sure if my list is the same as you, but number three is
20 Samsung Galaxy S7, Motorola Moto G, Apple iPad and RCA tablet.
21 Your Honor, those four things, in all of the discovery I
22 reviewed, did not have child pornography. And we would ask
23 that the forfeiture order just be limited to the tools that
24 actually accessed the child pornography, which, again, on my
25 list was just number one and two, the HP All-In-One and the

1 Western Digital hard drive.

2 THE COURT: Mr. Parris.

3 MR. PARRIS: I spoke with our office on forfeiture.
4 They would be okay with the return of any items that did not
5 contain or were used to receive the child pornography. So that
6 would be fine. I believe there was some hesitation about the
7 phone.

8 THE AGENT: Yes. The phone may contain some
9 questionable images. We'll have to go back and check that.

10 THE COURT: Why don't you-all -- I'll just -- I'll
11 enter an order of forfeiture, then, after you submit -- you
12 consult with Ms. Shea about if there's an agreement, if you-all
13 dispute something, then let me know what the dispute is. And
14 I'd like you-all to figure that out and get me something next
15 week.

16 MR. PARRIS: Yes, Your Honor.

17 THE COURT: Okay. So I'll hold off on that.

18 MS. SHEA: Thank you very much, Your Honor.

19 THE COURT: If you-all consult on that.

20 Any other thing you want me to recommend?

21 MS. SHEA: Nothing else on recommendations.

22 We do also note an objection to the specific
23 conditions that you ordered with respect to the sex offender
24 treatment and polygraphs.

25 THE COURT: Okay. That's fine.

66a

1 MS. SHEA: Thank you, Your Honor.

2 THE COURT: That'll conclude the matter of Mr. Cook.

3 Good luck to you, sir.

4 We'll be in recess until 10:00 a.m. Monday.

5 * * *

6 (The proceedings concluded at 3:20 p.m.)

67a

1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3
4

5 CERTIFICATE OF OFFICIAL REPORTER
6

7 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
8 Court Reporter, in and for the United States District Court for
9 the Eastern District of North Carolina, do hereby certify that
10 pursuant to Section 753, Title 28, United States Code, that the
11 foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is in
14 conformance with the regulations of the Judicial Conference of
15 the United States.
16
17

18 Dated this 28th day of October, 2019.
19
20

21 /s/ Amy M. Condon
22 Amy M. Condon, CRR, CSR, RPR
23 U.S. Official Court Reporter
24
25

APPENDIX F

68a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

-- -- -- -- --
UNITED STATES OF AMERICA

v.

Docket No. 7:17-CR-107-D-1

MICHAEL HUNTER COOK

Raleigh, North Carolina
April 19, 2018
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**TRANSCRIPT OF ARRAIGNMENT HEARING
BEFORE THE HONORABLE JAMES C. DEVER III, CHIEF JUDGE,
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA**

APPEARANCES:

For the Government: James J. Kurosad, Esq.
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United States Courthouse
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For the Defendant: Steven B. Wright, Esq.
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Contract Reporter: Harold M. Hagopian, RDR, CRR
United States District Court
Eastern District of North Carolina

Proceedings recorded by mechanical stenography
Transcript produced by computer-assisted transcription

PROCEEDINGS

(The following proceedings were held in open court at the United States Courthouse, 310 New Bern Avenue, Raleigh, North Carolina, before the Honorable James C. Dever III, Chief Judge, United States District Judge for the Eastern District of North Carolina, on April 19, 2018.)

(Assistant United States Attorney James J. Kurosad, Esq., is present for the government. Attorney Steven B. Wright, Esq., is present with the defendant.)

* * *

THE COURT: Good morning, and welcome to the United States District Court for the Eastern District of North Carolina. At this time I'd ask that the interpreter be sworn.

THE CLERK: Please raise your right hand and state your name for the record.

THE INTERPRETER: Sofia Cruise.

(Sofia Cruise was duly sworn by the Clerk as English-Spanish interpreter.)

THE COURT: The Court will call the calendar at this time to be sure that all defendants and their lawyers are present. When the Court calls a defendant's name, the defendant's lawyer is to answer. If a defendant does not have a lawyer or if the defendant's lawyer is not present, the defendant should answer.

After the Court calls the calendar, all defendants and

1 their lawyers shall remain in the courtroom to hear a general
2 advice of all the rights that each defendant has under the
3 Constitution and laws of the United States.

4 After the Court provides its general advice of rights,
5 the Court will take up each individual case on the calendar
6 for purposes of the entry of a plea of either guilty or not
7 guilty. As part of that process, each defendant will be
8 placed under oath individually.

9 A defendant may consult with their lawyer at any time
10 before answering the Court's questions.

11 At this time the Court will call the calendar.

12 (Unrelated cases called by the Court.)

13 * * *

14 THE COURT: Michael Hunter Cook.

15 MR. WRIGHT: Good morning, Judge. Steven Wright
16 on behalf of Mr. Cook. We'll be tendering a guilty plea
17 today.

18 THE COURT: Good morning, Mr. Wright.

19 Each defendant should pay close attention to what the
20 Court is about to say. It will be an important part of each
21 defendant's case, and each defendant will be asked if he or
22 she understood the Court's comments.

23 I now advise each defendant as follows:

24 If you are accused of a felony, you have a
25 constitutional right to be charged by an indictment returned

1 by a grand jury. Unless you waive indictment, you will not be
2 charged in federal court of a felony. To be indicted by a
3 grand jury, the grand jury must find that there is probable
4 cause to believe that you committed the charged crime.

5 A grand jury consists of 16 to 23 persons, and at least
6 12 grand jurors must find that there is probable cause to
7 believe that you committed the charged crime before you may be
8 indicted. However, you may waive the grand jury indictment
9 and consent to being charged by an information filed by the
10 United States Attorney.

11 If you do not waive indictment, the government may
12 present the case to the grand jury and ask the grand jury to
13 indict you. The grand jury may or may not do so based on the
14 U.S. Attorney's information just as though you had been
15 indicted.

16 If you waive grand jury indictment, the case will
17 proceed against you based on the U.S Attorney's information
18 just as though you had been indicted.

19 In addition to the right to be charged by an
20 indictment, the Constitution and laws of the United States
21 gives you the right to plead not guilty and have a jury trial
22 with respect to all charges brought against you. In that
23 regard, you should consider the following:

24 First, at a jury trial you would be presumed innocent.
25 The government would be required to prove your guilt through

1 competent evidence and beyond a reasonable doubt. You would
2 not have to prove that you were innocent.

3 Second, at a trial, witnesses for the government would
4 have to come to court and testify in your presence. Your
5 lawyer could cross-examine those witnesses, object to evidence
6 offered by the government, and offer evidence on your behalf.

7 Third, at a trial, you would have the right to use the
8 subpoena power of the Court to make witnesses come to court on
9 your behalf, whether they wanted to or not.

10 Fourth, at a trial you would have the right to testify
11 if you chose to do so, and you also would have the right not
12 to testify. If you chose not to testify, the Court would
13 express or tell the jury that no inference or suggestion of
14 guilt could be drawn from your failure to testify.

15 Fifth, you have the right to be represented by a lawyer
16 at trial and at every other stage of the proceedings in this
17 court. If you are unable to afford a lawyer, you have the
18 right to have the Court appoint a lawyer to represent you at
19 trial and at every other stage of the proceeding in this
20 court.

21 Whether you plead guilty or not guilty will not affect
22 whether you will have a lawyer in this court. If you want a
23 lawyer to represent you in your case here, you will have a
24 lawyer.

25 If you plead guilty, you will waive your right to a

1 jury trial and these other rights. Instead of a trial, you
2 will be adjudged guilty and will be sentenced on the basis of
3 your guilty plea after the Court considers all relevant
4 factors under 18 U.S.C., Section 3553(a), considers any
5 departure or variance motion, and considers the now advisory
6 federal sentencing guidelines.

7 If you have reached a plea agreement with the
8 government, the Court is obligated to examine carefully any
9 such plea agreement to ensure that the agreement conforms with
10 the objectives of sentencing, including imposing a sentence
11 that is within the parameters of your actual offense behavior
12 and your past criminal conduct, if any. The Court will
13 evaluate such behavior and conduct only after it receives a
14 detailed written presentence report from the probation office.

15 If you have reached a plea agreement with the
16 government, you should realize that the Court is not a party
17 to the plea agreement. Such agreements are negotiated solely
18 between you, your lawyer and the lawyer for the government.

19 You are advised that any stipulations contained in your
20 plea agreement are not binding on the Court. Rather, the
21 Court will make an independent determination as to your
22 sentence after applying all relevant sentencing factors to
23 your case, considering all arguments of counsel, any statement
24 you make, the advisory guideline range and any departure or
25 variance motion.

1 A plea of guilty has the following additional
2 consequences:

3 First, you'll have to waive your right not to
4 incriminate yourself, because the Court will ask you questions
5 about what you did in order to ensure that you are guilty as
6 charged, and you would have to admit your guilt;

7 Second, the Court may impose the same punishment as if
8 you had been convicted by a jury;

9 Third, if you are on probation or parole in another
10 case in this or another court, by pleading guilty here, your
11 probation or parole in that other case might be revoked, and
12 you might be required to serve time in that other case in
13 addition to any sentence or imprisonment that might be imposed
14 here;

15 Fourth, in addition to any sentence imposed, your plea
16 of guilty to a felony may deprive you of certain valuable
17 civil rights, such as the right to vote, the right to hold
18 public office, the right to serve on a jury, and the right to
19 ever possess any kind of a firearm.

20 Moreover, if you are not a citizen of the United States
21 and you are convicted of a felony, you may be removed from the
22 United States, denied citizenship and denied future admission
23 to the United States.

24 Furthermore, if you are ordered imprisoned due to your
25 felony conviction, deportation ordinarily takes place after

1 you've served your term of imprisonment.

2 Unless otherwise advised, you may be assessed per count
3 a sum of not less than \$100, and any fine imposed will bear
4 interest.

5 If you have, in some cases, obligations in addition to
6 a sentence of imprisonment, a fine may be imposed. For
7 example, you may be ordered to pay restitution in the form of
8 money to the victims of your offenses or you may be required
9 to forfeit certain property to the government, or, in the
10 cases of events involving fraud, you may be ordered to pay
11 restitution to the victims of your offenses.

12 Additionally, in most cases, you will be given a term
13 of supervised release in addition to a term of imprisonment.
14 The term of supervised release follows the term of
15 imprisonment. Such release is conditioned on your
16 noncommission of another federal, state or local crime and
17 such other conditions as may be appropriate. If you violate
18 the conditions of supervised release, you are subject to
19 further imprisonment.

20 Cases in which guilty pleas are tendered and accepted
21 today are set for sentencing at this court's July 23rd, 2018,
22 term of court here in Raleigh.

23 Regardless of the advisory guidelines ultimately found
24 to be appropriate to your case, you may not withdraw a guilty
25 plea tendered and accepted today.

1 Between now and the sentencing date just announced, the
2 probation office will prepare a detailed presentence report.
3 It is important that the presentence report be complete and
4 accurate. The presentence report will be an important tool to
5 aid the Court in determining your sentence. You and your
6 lawyer may give information for that report.

7 You and your lawyer will be furnished a copy of that
8 report and will have an opportunity to timely comment on it.
9 Examine it carefully. Within 15 days after receiving the
10 presentence report, you and your lawyer must communicate in
11 writing to the probation office with any objections contained
12 in the report or omitted from the report. The Court will not
13 consider any dispute which has been the subject of such
14 written communication. Furthermore, the Court will consider
15 and resolve any issues relevant to the disputed sentencing
16 factors previously stated in writing,

17 Additionally, at the time of sentencing you should
18 advise the Court orally if you have objections to any matters
19 contained in or omitted from the report that your lawyer has
20 failed to raise. Contentions not stated by you or your lawyer
21 will be deemed abandoned.

22 Your failure to challenged the validity of any prior
23 convictions will bar you from contesting those convictions at
24 a later date.

25 In short, if you do not contest the facts set forth in

1 the presentence report, the Court will accept those facts as
2 well as any prior convictions as correct and may rely on them
3 in determining your sentence.

4 You and your lawyer on your behalf may submit written
5 memorandum and other written material, such as character
6 letters, before the sentencing hearing. The government may,
7 as well. Either party must submit any such material to the
8 Court at least seven days before the date set for your
9 sentencing hearing.

10 After you are sentenced, the government is limited in
11 most instances to one year in which to move for a reduction in
12 your sentence pursuant to Rule 35(b) of the Federal Rules of
13 Criminal Procedure due to assistance rendered by you to the
14 government. The government is not required to return to court
15 with a Rule 35(b) motion to seek a reduction in your sentence,
16 and it is completely within the government's discretion
17 whether to do so.

18 If the government decides not to make a Rule 35(b)
19 motion on your behalf, you are entitled to relief from the
20 Court only in a very few exceptional circumstances.

21 At sentencing you should advise the Court whether the
22 government has made any representations to you or your lawyer
23 that you might receive a Rule 35(b) motion.

24 If the government does make a Rule 35(b) motion to seek
25 a reduction in your sentence by virtue of your assistance, the

1 making of such motion does not extend, toll or modify the
2 one-year statute of limitations that applies to your time for
3 filing a Section 2255 motion to vacate, set aside or correct
4 your sentence. Furthermore, the United States Attorney cannot
5 promise you that the Court will grant a Rule 35(b) motion, nor
6 can the United States Attorney promise you that law
7 enforcement officers will accept or act upon your offers of
8 cooperation.

9 If you are convicted, whether by jury or as a result of
10 a guilty plea, you can appeal such conviction if you believe
11 that the conviction was somehow unlawful or if there is some
12 other fundamental defect in the proceeding that was not waived
13 by your guilty plea.

14 You also have a statutory right to appeal your sentence
15 under certain circumstances, particularly if you think that
16 the sentence is contrary to law.

17 You may agree to waive certain appellate rights both as
18 to your conviction and sentence in a plea agreement. We will
19 go over such appellate waiver in your agreement when we take
20 up your individual case. Such waivers generally are
21 enforceable, but if you believe that the waiver is
22 unenforceable or inapplicable for any reason, you can present
23 that theory to the appellate court.

24 With few exceptions, any notices of appeal must be
25 filed within 14 days of the judgment being entered on the

1 docket of your case.

2 If you are unable to pay the cost of an appeal, you may
3 apply for leave to appeal in forma pauperis.

4 If you so request, the Clerk of Court will prepare and
5 file a notice of appeal on your behalf.

6 I'm now going to ask all defendants as a group certain
7 questions. Please listen carefully, because these questions
8 and your answers will constitute part of the record of your
9 plea.

10 If you wish to answer any question yes, please raise
11 your hand and address the Court orally. Counsel are
12 admonished to take note of their client's responses to my
13 questions.

14 As to any defendant pleading guilty to a charge
15 contained in a criminal information, is there any such
16 defendant who has not discussed the matter of waiving his or
17 her right to indictment by a grand jury with his or her
18 lawyer?

19 (No response.)

20 Is there any defendant who does not understand his or
21 her right to indictment by grand jury?

22 (No response.)

23 Is there any defendant who has been induced to waive
24 indictment by reason of any threat or promise?

25 (No response.)

1 Is there any lawyer present representing a defendant
2 who intends to plead to a criminal information who sees any
3 reason why his or her client should not waive indictment?

4 (No response.)

5 As to all defendants, is there any defendant who has
6 taken any drugs, medicines, pills or drunk any alcoholic
7 beverages in the last 24 hours?

8 DEFENDANT ALDEN: Yes.

9 THE COURT: And what's your name, sir?

10 THE DEFENDANT: Alden.

11 THE COURT: And what kind of medicine have you
12 taken?

13 THE DEFENDANT ALDEN: Psychological.

14 THE COURT: Does that medicine affect your ability
15 to hear and understand me?

16 DEFENDANT ALDEN: No, I can hear you.

17 THE COURT: And that medicine is prescribed by a
18 doctor?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Thank you, sir.

21 Is there any defendant who does not understand what is
22 happening here today?

23 (No response.)

24 Is there any lawyer present representing a defendant
25 who has any doubt or questions about their client's competence

1 to enter a plea here today?

2 (No response.)

3 Is there any defendant who has not received a copy of
4 his or her indictment or information?

5 (No response.)

6 Is there any defendant who has not discussed his or her
7 case with his or her lawyer?

8 (No response.)

9 Is there any defendant who is not completely and fully
10 satisfied with his or her lawyer's legal services?

11 (No response.)

12 Is there any defendant who needs or wishes to have the
13 indictment or information read to them for any reason?

14 (No response.)

15 Is there any defendant who has any questions about
16 their right to a jury trial or the other rights under the
17 Constitution and laws of the United States that I've just
18 explained?

19 (No response.)

20 I've just concluded explaining the right to a jury
21 trial and the other rights under the Constitution and laws of
22 the United States.

23 We'll now take up each individual case. We'll start
24 with Mr. Villavicenzio's case.

25 (Unrelated cases addressed by the Court.)

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THE COURT: We'll next take up Michael Cook's case.

(The defendant returned to the courtroom.)

A. Good morning, Mr. Wright and Mr. Cook. Is the defense ready?

MR. WRIGHT: Yes, your Honor.

THE COURT: Is the government ready, Mr. Kurosad?

MR. KUROSAD: Yes, your Honor.

THE COURT: At this time I'd ask the defendant be sworn or affirmed.

MICHAEL HUNTER COOK, having been duly sworn by the Clerk, was examined and testified as follows:

A. Mr. Cook, do you understand, having been sworn, that your answers to my questions are subject to the penalty of perjury, and if you lie to me, you could be prosecuted for perjury or making a false statement?

THE DEFENDANT: Yes, sir.

THE COURT: Please tell me your full name?

THE DEFENDANT: Michael Hunter Cook.

THE COURT: How old are you, sir?

THE DEFENDANT: Thirty-five.

THE COURT: And how far did you go in school?

THE DEFENDANT: Twelfth grade.

THE COURT: You obviously can speak and understand

1 English; right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You can read and write; correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you hear me and understand me this
6 morning, sir, when I described all the rights that you have
7 under the Constitution and laws of the United States?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And did you hear and understand all
10 those other questions that I asked the defendants as a group?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Wright, do you have any reason to
13 doubt Mr. Cook's competence to go forward today?

14 MR. WRIGHT: No, your Honor.

15 THE COURT: Does the government have any reason to
16 doubt Mr. Cook's competence to go forward today?

17 MR. KUROSAI: No, your Honor.

18 THE COURT: All right. I do find that he is
19 competent based on his answers to my questions, my
20 observations of him, and the answers from counsel.

21 Mr. Cook, it's my understanding you've reached a plea
22 agreement as to Count 7 of the indictment. Is that correct,
23 sir?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: All right. I'm going to describe all

1 the counts against you and all the potential penalties, and
2 then we're going to focus in on Count 7, which is the subject
3 of your plea agreement.

4 So, Counts 1 through 10 in this case charging receipt
5 of child pornography beginning at a time unknown and ending on
6 or about May 30, 2017, in the Eastern District of North
7 Carolina, the defendant, Michael Hunter Cook, did knowingly
8 receive the following visual depictions, that is, digital
9 computer images and files that had been mailed, shipped,
10 transported in interstate or foreign commerce by any means,
11 including by computer.

12 The indictment then contains a table that lists by
13 count and date and file name Counts 1 through 9.

14 Count 1 -- and I'm not going to read the file names --
15 Count 1 is dated 4/30/2017. Count 2 is dated 4/20/2017; Count
16 3 is dated 2/7/2017. Count 4 is dated 2/12/2017. Count 5 is
17 dated 4/29/2017. Count 6 is dated 4/16/2017. Count 7 is
18 dated March 26, 2017. Count 8 is dated 4/29/2017. Count 9 is
19 dated 4/29/2017.

20 The production of the foregoing visual depictions
21 involve the use of a minor engaging in sexually explicit
22 conduct and where depictions of such conduct each entry of the
23 above table constituting a separate violation of Title 18,
24 U.S. Code, Section 2252(a)(2)(A).

25 Do you understand the charges in Counts 1 through 9,

1 sir?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Count 10 charges possession of child
4 pornography in that on or about May 3, 2017, in the Eastern
5 District of North Carolina, the defendant, Michael Hunter
6 Cook, did knowingly possess one or more matters, that is,
7 computer hard-drives and computer media containing digital
8 images and videos, the production of which involved the use of
9 one or more minors engaging in sexually explicit conduct, and
10 which images visually depicted such conduct. The images and
11 videos had been mailed, shipped and transported in interstate
12 and foreign commerce and by use of means and facilities of
13 interstate commerce, i.e, the Internet, and were produced
14 using materials which had been mailed, shipped or transported
15 in interstate and foreign commerce by any means, including by
16 computer, all in violation of Title 18, United States Code,
17 Section 2252(a)(4)(B).

18 Do you understand the charge in Count 10?

19 THE DEFENDANT: (Nodding head in the affirmative.)

20 THE COURT: Do you understand that the charge in
21 Count 10? You have to say it out loud.

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: If you're convicted as to Count 9,
24 each count carries the following penalties: Not less than
25 five years nor more than 20 years' imprisonment; a fine not to

1 exceed \$250,000, or both such fine and imprisonment; not less
2 than five years up to a lifetime of supervised release. You
3 can be ordered to pay restitution. You will be ordered to pay
4 a \$100 special assessment. That's a per-count requirement if
5 you are convicted of all those counts. The forfeiture notice
6 also applies to Counts 1 through 9.

7 If you have a prior conviction under 18 U.S. Code,
8 Section 1591, Chapter 71, 109A, 110 or 117 of United States
9 Code, or 10 United States Code, Section 920, or a prior
10 conviction under the laws of any state believed to aggravate
11 sexual abuse, sexual abuse, abusive sexual conduct involving a
12 minor or ward, or sex-trafficking in children in the
13 production, reception, receipt, mailing, sale, distribution,
14 shipment or transportation of child pornography, potential
15 penalties are increased by not less than 15 years nor more
16 than 40 year's imprisonment, a fine not to exceed \$250,000, or
17 both such fine and imprisonment; not less than five years up
18 to a lifetime of supervised release. You can be ordered to
19 pay restitution. There is a forfeiture notice. And there
20 will be a \$100 special assessment per count.

21 Do you understand those potential penalties as to
22 Counts 1 through 9?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: If you were convicted of Count 10, the
25 potential penalties are up to ten years' imprisonment, but if

1 any of the child pornography involved in the offense involved
2 a prepubescent minor or a minor who had not obtained 12 years
3 of age, imprisonment is shifted upward to not more than 20
4 years', a fine not to exceed \$250,000, or both such fine and
5 imprisonment; not less than five years and up to a lifetime of
6 supervised release. Restitution can be ordered. A \$100
7 special assessment would be ordered if you were convicted of
8 Count 10. The forfeiture notice applies to Count 10.

9 If, with respect to Count 10, you have a prior
10 conviction under Chapter 71, 109A, 110 or 117 of United States
11 Code, or 10 United States Code, Section 920, or a prior
12 conviction under the laws of any state relating to aggravated
13 sexual abuse, sexual abuse, abusive sexual misconduct
14 involving a minor or ward for sex-trafficking of children, or
15 the production, possession, receipt, mailing, sale,
16 distribution, shipment or transportation of child pornography,
17 the potential penalties are not less than ten years nor more
18 than 20 years' imprisonment and/or a fine not to exceed
19 \$250,000, or both; not less than five years up to a lifetime
20 of supervised release. You can be ordered to pay restitution.
21 You would have to pay a \$100 special assessment. And the
22 forfeiture notice applies.

23 Do you understand those potential penalties as to Count
24 10, sir?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Do you understand all the possible
2 consequences of pleading guilty that we've talked about here
3 today, sir?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand you have an absolute
6 right to plead not guilty to all these charges and have a jury
7 trial with respect to these charges, sir?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And that if you plead not guilty,
10 you'd enjoy all those trial rights that we've talked about?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: But if you plead guilty to Count 7,
13 pursuant to the plea agreement, there won't be a trial in your
14 case. Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: You will have waived or given up all
17 those trial rights.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: With respect to sentencing, the Court
21 advises you that at the sentencing hearing I'll rule on any
22 objections there might be to the presentence report; I'll
23 calculate an advisory guideline range; I'll consider any
24 motion that might be made that might move that range either up
25 or down; I'll consider all the arguments that your lawyer

1 makes on your behalf; any statement you'd like to make; any
2 victim allocution; any arguments of the Assistant United
3 States Attorney. I'll then determine your sentence and I'll
4 announce it in court on the day of your sentencing hearing.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: The Court advises you that even if
8 your lawyer or anyone else has given you his best estimate of
9 what he thinks the advisory guidelines will be, whether he
10 thinks there will be a departure or variance motion, whether
11 he thinks the Court will grant or deny such a departure or
12 variance motion, or any prediction from your lawyer or anyone
13 else as to your actual sentence, any prediction from anyone on
14 any sentencing topic is not binding on the Court.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And if it turned out that any such
18 prediction was incorrect, that error would not provide a basis
19 for you to withdraw your guilty plea.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Has anyone threatened you or anyone
23 else or forced you in any way to plead guilty?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Has anyone made any promise to you or

1 anyone else that's made you decide to plead guilty, sir?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: And you signed a plea agreement in
4 this case; correct?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And will you just look at the very
7 last page of that agreement -- I think it's page 7. Will you
8 confirm for me, Mr. Cook, that you, in fact, sign it. Did you
9 sign this agreement?

10 THE DEFENDANT: Yes, I believe I did.

11 THE COURT: Okay.

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Okay. Did you read and discuss this
14 entire agreement with your lawyer before you signed it?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Does this plea agreement constitute
17 the entire agreement that you have with the government about
18 resolving your case?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand each term in this
21 plea agreement, sir?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: I need to go over one term in
24 particular. It has to do with the waiver of certain appellate
25 and other rights. It's in paragraph 2(c.) I'm going to read

1 it to you. In that paragraph you agree to the following:

2 "To waive knowingly and expressly all rights conferred
3 by 18 U.S.C., Section 3742, to appeal the conviction of
4 whatever sentence is imposed on any ground, including any
5 issues that relate to the establishment of the advisory
6 guideline range, reserving only the right to appeal to a
7 sentence in excess of the applicable advisory guideline range
8 that is established at sentencing; and, further, to waive all
9 rights to contest the conviction or sentence of any post-
10 conviction proceeding, including one pursuant to 28 U.S.C.,
11 Section 2255, excepting appeal or motion based upon grounds of
12 ineffective assistance of counsel or prosecutorial misconduct
13 not known to the defendant at the time of the defendant's
14 guilty plea. The foregoing appeal waiver does not constitute
15 or trigger a waiver by the United States of any of its rights
16 of appeal provided by law."

17 Mr. Cook, do you understand the appellate and other
18 rights you're giving up in that paragraph, sir?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And you understand that if you plead
21 guilty to Count 7, and I accept that plea of guilty, I'd have
22 the authority to impose the maximum penalty authorized by law
23 as your sentence?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And if I did impose such a maximum

1 penalty sentence, you would not then be allowed to withdraw
2 your guilty plea?

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand Count 7 is a felony?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand the maximum penalty
8 authorized by law to Count 7?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that by pleading
11 guilty to Count 7 you will be deprived of certain valuable
12 civil rights, such as the right to vote?

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that if you plead
16 guilty to Count 7 today, and I accept that plea of guilty, you
17 will not later be able to withdraw that plea of guilty?

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand right now, at this
21 very moment, you still can plead not guilty to all these
22 charges if you want to?

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And if you did plead not guilty, you'd

1 enjoy all those trial rights we've talked about.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But if you plead guilty to Count 7,
5 there will not be a trial in the case. You will have waived
6 or given up all your trial rights.

7 Do you understand that, sir?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Cook, have you answered all my
10 questions truthfully here today?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: I'm now going to ask you how you
13 plead. I've already read the charge to you in full. The
14 charge in Count 7 is receiving child pornography in that -- in
15 violation of 18 U.S.C., Section 2252(a)(2), as set forth in
16 full in Count 7, in that on or about March 26, 2017, in the
17 Eastern District of North Carolina, you knowingly received a
18 visual depiction using means and facilities in interstate and
19 foreign commerce, the production of such visual depiction
20 involving the use of a minor engaging in sexually explicit
21 conduct. The visual depiction of such conduct is set forth in
22 full in Count 7.

23 How do you now plead to that charge, sir, guilty or not
24 guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: Did you commit that crime, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So, you are, in fact, guilty of Count
4 7, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Thank you, Mr. Cook. Please have a
7 seat at this time.

8 At this time I would ask Mr. Kurosad to make a proffer
9 that will provide the Court with a factual basis for the plea.

10 MR. KUROSAD: Thank you, your Honor.

11 Homeland Security agents monitoring the ARS Peer-to-
12 Peer Network traced several downloads of child pornography to
13 2208 Cottage Field Lane in Leland, North Carolina, which is in
14 the Eastern District of North Carolina. On May 3rd, 2017,
15 agents executed a search warrant at that residence. The only
16 residents who were at home were the defendant and his fiancée.

17 In the living room, agents found a desktop computer.
18 Preliminarily, that computer revealed numerous files of child
19 pornography.

20 After being advised of his rights, defendant admitted
21 to downloading the ARS Peer-to-Peer Network and downloading
22 child pornography from that network. He expressed remorse.
23 He also stated that his girlfriend knew nothing about the
24 videos.

25 At his request, the defendant spoke to his girlfriend

1 in the presence of law enforcement and admitted to using a
2 file-sharing program to watch child pornography.

3 A certified forensic analyst analyzed the hard-drive of
4 the computer found in the defendant's home. It contained 28
5 images and 332 videos of confirmed child pornography. Among
6 those files was the file identified in Count 7 of the
7 indictment.

8 The depictions were stored in visual computer files
9 that had been mailed, shipped or transported in interstate or
10 foreign commerce, including by computer.

11 THE COURT: Thank you.

12 Based on the government's summary and based on your
13 plea of guilty to Count 7, and because you know of your right
14 to a trial and what the maximum possible punishment is, and
15 because you're voluntarily pleading guilty, the Court will
16 accept your plea of guilty to the charge contained in Count 7.

17 Let the record reflect that the Court is satisfied and
18 finds as a fact the defendant's plea was freely and
19 voluntarily entered; that at the time he entered the plea he
20 was fully competent and had a full and complete understanding
21 of the nature of the charges against him and the maximum
22 penalties authorized by law. The plea is supported by an
23 independent basis in fact containing each essential element of
24 the offense.

25 The defendant's plea is accepted and he is adjudged

1 guilty of the charged contained in Count 7.

2 The Clerk is instructed to enter a plea of not guilty
3 as to the other charges.

4 Pursuant to the plea agreement, the Court anticipates
5 dismissing the other charges other than Count 7 at the time of
6 sentencing.

7 Sentencing is set for the July 23, 2018, term of court.

8 After court today, Mr. Wright should contact probation,
9 which is in the courthouse, to arrange a time for your
10 interview. That interview is with probation, and Mr. Wright
11 be can be with you during that interview.

12 You and Mr. Wright will get a copy of the report, and
13 so will the prosecutor. If either side thinks something in
14 the report is incorrect, they need to timely object to it.
15 I'll calculate any advisory guideline range.

16 We'll proceed with sentencing as I've already
17 described. Today you will be remanded into the custody of the
18 United States Marshal. You will continue to have access to
19 Mr. Wright.

20 Mr. Wright, is there anything else for me to take up
21 regarding Mr. Cook?

22 MR. WRIGHT: No, your Honor.

23 THE COURT: Mr. Kurosad, is there anything else by
24 the government?

25 MR. KUROSAD: No, thank yu.

1 THE COURT: All right. Thank you. That will
2 conclude the matter involving Mr. Cook.

3 MR. KUROSAI: Thank you, your Honor.

4 MR. WRIGHT: Thank you, your Honor.

5 (Whereupon the proceedings concluded.)

6 * * *

7 **CERTIFICATION**

8 I certify that the foregoing is a correct transcript of
9 the record of proceedings in the above-entitled matter to the
10 best of my skill and ability.

11
12 /s/ Harold M. Hagopian
13 Court Reporter

October 13, 2019
Date

APPENDIX G

98a

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

FILED IN OPEN COURT
ON 8-22-17
Peter A. Moore, Jr., Clerk
US District Court
Eastern District of NC

NO. 7:17-CR-107-ID(4)

UNITED STATES OF AMERICA)
)
)
)
)
)
MICHAEL HUNTER COOK)
)

INDICTMENT

The Grand Jury charges that:

COUNTS ONE THROUGH NINE

(Receipt of Child Pornography)

Beginning at a time unknown and ending on or about May 3, 2017, in the Eastern District of North Carolina, the defendant, MICHAEL HUNTER COOK, did knowingly receive the following visual depictions, that is, digital and computer images in files that had been mailed, shipped and transported in interstate and foreign commerce by any means, including by computer:

Count	Date	File Name
1	04/30/2017	2yr assfuck she cries for mommy.mpg
2	04/20/2017	2 kid - 6yr inga(2).3gp
3	02/07/2017	(pthc) babyj.5yr assfuck(2)(2)(2).avi
4	02/12/2017	Pthc - I fuck my step daughter jeniefer sofie 9yr she cries realy good.mpg
5	04/29/2017	!new! (pthc) 2007 tara 8yr - gets buttfucked by 14 inch long(2).fly
6	04/16/2017	p101. - phillip(pthc gay) cute boy gets finger fucked.mpg
7	03/26/2017	goldberg assfuckin nigger babygirl ((oh yea)).avi
8	04/29/2017	(pthc) real sex family 8 years dad and mom sex.mpg

APPENDIX G

99a

9	04/29/2017	Pthc-real dads & toddler daughters sex - various vids - sdpa(2).wmy
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The productions of the foregoing visual depictions involved the use of a minor engaging in sexually explicit conduct and were depictions of such conduct. Each entry in the above table constituting a separate violation of Title 18, United States Code, Section 2252(a)(2)(A).

COUNT TEN

(Possession of Child Pornography)

On or about May 3, 2017, in the Eastern District of North Carolina, the defendant, MICHAEL HUNTER COOK, did knowingly possess one or more matters, that is, computer hard drives and computer media containing digital and computer images and videos, the production of which involved the use of one or more minors engaging in sexually explicit conduct, and which images visually depicted such conduct. The images and videos had been mailed, shipped and transported in interstate and foreign commerce and by use of means and facilities of interstate commerce, i.e., the Internet, and were produced using materials which had been mailed, shipped, or transported in interstate and foreign commerce, by any means including by computer, all in violation of Title 18, United States Code, Section 2252(a)(4)(B).

FORFEITURE

If convicted of one or more of the offenses set forth in Counts One through Ten above, the defendant, MICHAEL HUNTER COOK, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 2253(a), all his rights, titles and interests in:

(1) any visual depiction described in 18 U.S.C. § 2251 or 2252, or book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of the offenses;

(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from the offenses; and

(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offenses, or any property traceable to such property.

The forfeitable property includes, but is not limited to:

1. HP All-In-One Desktop Computer, s/n 8CC6360LJ4;
2. Western Digital 1 TB hard drive, s/n WCC6Y5VKRD74;
3. Samsung SM-G930T Galaxy S7, IMEI 355916070270622;
4. Motorola XT1032 Moto G, IMEI 359307055644146;
5. Apple Ipad Model A1395, serial number DYTJGB4YDKPH,
6. RCA Tablet, serial number P2EH1Z1910D5

APPENDIX G

101a

If any of the property described above, as a result of any act or omission of the defendant:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A ~~TRUE~~ BILL

REDACTED VERSION

Pursuant to the E-Government Act and the federal rules, the unredacted version of this document has been filed under seal.

~~FOREPERSON~~

Date: 8/22/2017

JOHN STUART BRUCE
United States Attorney

Erin C. Blondel

ERIN C. BLONDEL
Assistant United States Attorney