APPENDIX A

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United States Court of Appeals
For the Eleventh Circuit
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Opinion by: HULL

Opinion

{934 F.3d 1205} HULL, Circuit Judge:

After a jury trial, John David Stahlman appeals his conviction and 292-month sentence for attempting to entice a minor to engage in sexual activity. On appeal, Stahlman argues that the district court erred: (1) in excluding the testimony of his proposed expert, Dr. Chris Carr; (2) in admitting the case agent's lay opinion{2019 U.S. App. LEXIS 2} testimony and in denying Stahlman's motion for a mistrial on that ground; (3) in denying his motions for judgment of acquittal; (4) in imposing a sentencing enhancement for obstruction of justice; and (5) in denying his post-trial motion for a new trial. After review, and with the benefit of oral argument, we affirm.

We begin by recounting the trial evidence about Stahlman's offense conduct, next review the procedural history, and then address Stahlman's claims in turn.

I. FACTUAL BACKGROUND

After two months of sordid email exchanges with a father who was offering his 11-year-old daughter for sex, Stahlman drove to a parking lot to meet up and live out his self-described "daddy/daughter fantasy." Unfortunately for Stahlman, the "father" was an undercover agent with the Federal Bureau of Investigation ("FBI"), and the "daughter" did not exist. At trial, Stahlman testified and told the jury that he believed all along that he was acting out a role-playing sexual game with other adults-that he never intended to have sex with an actual minor, just an adult pretending to be a minor. The jury found him guilty.

Stahlman's sordid conduct began on November 10, 2016, when he posted an ad on the "Casual{2019 U.S. App. LEXIS 3} Encounters" section of the "Personals" page on Craigslist entitled {934 F.3d 1206} "Daddy/daughter fantasy," with a picture of girl laying on a bed wearing only underwear and a camisole. In the ad, Stahlman wrote: "I am a married white guy looking for a young 'looking' girl to play out some fantasies with me." Stahlman added: "I have a daughter but wouldn't dare defile her. So I'd like to chat at first to fill this need, and maybe, just maybe move to physical pleasure." Stahlman closed the ad by requesting that interested persons contact him via email or the instant messaging application Kik and stating, "Hope to hear from you, honey."

On November 16, 2016, Special Agent Rodney Hyre came across Stahlman's Craigslist ad while working in an undercover capacity to identify persons who might be trying to sexually exploit children. Agent Hyre is the coordinator of the FBI's Violent Crimes Against Children Task Force. Agent Hyre estimated the age of the girl pictured in Stahlman's ad to be between 10 and 12 years' old and suspected from "the nature of the advertisement" that Stahlman might be someone who was "attempting to find a child to sexually exploit." Responding to the ad, Agent Hyre began an undercover{2019 U.S. App. LEXIS 4} conversation with Stahlman. The conversation lasted from mid-November 2016 through the end of January 2017. During that time, Stahlman and Agent Hyre exchanged 125 emails and 22 Kik messages discussing plans for Stahlman to meet and engage in sexual activity with Hyre's fictional 11-year-old daughter.

In his initial response to Stahlman's post, Agent Hyre stated he was a straight, single father of an 11-year-old daughter. Hyre indicated that he felt "the same way" Stahlman did and said "HMU [hit me up] if this interests you." Stahlman quickly responded: "Defin[i]tely interested. Depends on what

you want to do?" Agent Hyre asked about Stahlman's daughter. Stahlman responded that she was nine years' old and reiterated that he "wouldn't defile [his] little girl," but said, "I think I would play with someone else's."1 In another email, however, Stahlman stated that he fantasized about his own daughter "[i]n the right moments[,] when she is changing and I catch a glimpse or when we are tickle fighting and hands go places." Agent Hyre explained that, in this context "tickle fighting" or the "tickle game" meant "where people interested in children this way will pretend they're tickling the**{2019 U.S. App. LEXIS 5}** child to make them laugh, and they will let their hands drift into inappropriate places on the child to test the boundaries of the child."

As the conversation progressed, Agent Hyre indicated to Stahlman that his 11-year-old daughter had engaged in sexual activities with other adult men before. Stahlman stated that he "would like to act out [his] fantasies" and would like to "play" with Hyre's 11-year-old. Stahlman asked Agent Hyre: "So what would I have to do to . . . 'qualify' myself the opportunity to meet your lovely little lady?" Agent Hyre replied that Stahlman would "have to be okay with me watching," and Stahlman agreed that he would be "totally ok" with that.

Over the course of their conversations, Stahlman made several statements describing the types of sexual activities he would like to engage in with Agent Hyre's 11-year-old daughter. Among other things, Stahlman stated: "I just envisioned licking your daughter's pussy as she slept and you filming it"; "I'd defin[i]tely want to eat her pussy and watch her suck my cock. I'd probably want to eat her little ass too"; "[I]f it led to sex I'd be cool with **{934 F.3d 1207}** that too but I'm for sure into oral play"; "I would like to see her undress,**{2019 U.S. App. LEXIS 6}** or undress her myself and just kiss and play. Maybe do a little oral on eachother. Then see where it leads"; "I think I would want sex, maybe even anal"; "[C]ould her and I start with a shower[?]"; and "We could explore eachother's bodies and it not be all that sexual. Then be all clean for the fun part." Stahlman also asked Agent Hyre for pictures of his 11-year-old, and Agent Hyre sent him a picture of a fellow law enforcement officer when she was 12 or 13. Stahlman commented that she was "a little older than [he] pictured, which is quite alright," and that "she looks very cute and sexy."

Stahlman attempted to set up a meeting with Agent Hyre and his 11-year-old in mid-November while Stahlman's wife was supposed to be out of town, but the plan was cancelled when Stahlman's wife insisted that he travel with her. A bit later in November, Stahlman again discussed plans to meet Agent Hyre's 11-year-old, but that plan likewise fell through when Stahlman was unable to get away from his wife. In early December 2016, Agent Hyre reached out to Stahlman again and asked, "Hey man you still interested in playing or should I delete you?" Stahlman replied: "Go ahead and delete me. My availability**{2019 U.S. App. LEXIS 7}** has just dwindled lately. It's probably not gonna happen. Thanks for the opportunity." When Agent Hyre inquired whether Stahlman might "want to later" or had "just changed [his] mind about the whole thing," Stahlman replied that he had not changed his mind, but could not find the time to set up a meeting.

The conversation between Stahlman and Agent Hyre lapsed through the rest of December 2016 and into January 2017, but picked back up when Agent Hyre contacted Stahlman again in late January. In a January 23, 2017 email, Agent Hyre stated: "Last we talked you said you hadnt changed your mind[.] Just couldnt find the time, that still true[?]" Stahlman confirmed "that's still true," then asked "Are you two free a week from now? Next Monday?" Agent Hyre responded that he and his daughter would be available, and over the next few days, Hyre and Stahlman made plans for their meeting.

Ultimately, they decided to meet at 8:30 a.m. on Monday, January 30, 2017 in the parking lot of a Gander Mountain sporting goods store in Lake Mary, Florida. Agent Hyre proposed that the two men meet each other first, then go to meet Agent Hyre's 11-year-old, and Stahlman agreed. Stahlman told Agent Hyre he would**{2019 U.S. App. LEXIS 8}** be driving a "[w]hite VW." Among other things,

Stahlman asked Agent Hyre multiple times whether he should bring condoms, whether he could shower with Agent Hyre's daughter before engaging in sexual activity with her, whether she "like[d] kissing," and whether Agent Hyre would be filming or taking pictures of their activities. On the day before the meeting, Stahlman told Agent Hyre "I am really looking forward to Monday," and "I can't wait." On the morning of January 30, 2017, about an hour before they were scheduled to meet, Stahlman emailed: "Tik Tock. It's almost time."

The morning of their scheduled meeting, January 30, 2017, Stahlman drove to the Gander Mountain parking lot in Lake Mary from his home in Longwood, Florida. Stahlman arrived at approximately 8:25 a.m. in his white VW, wearing a green Teenage Mutant Ninja Turtles t-shirt. Stahlman exited his vehicle and approached the undercover agent (not Agent Hyre) who was playing the role of the father of the 11-year-old. At that point, Agent Hyre, who was watching from a surveillance vehicle, approached and arrested Stahlman.

{934 F.3d 1208} Stahlman waived his Miranda rights and agreed to speak with Agent Hyre and another agent, Kevin Kaufman.**{2019 U.S. App. LEXIS 9}** During the interview, Stahlman admitted that he was in a conversation for the last two-and-a-half months with the father of an 11-year-old and that conversation was about Stahlman's engaging in sex with the 11-year-old. Stahlman told Agent Hyre that he "knew that he could get arrested, he knew that this could have been a sting, but he came to the parking lot anyway." At one point during the interview, Stahlman told Agent Hyre that he "was there to have sex with [Hyre's] wife," but later conceded that they had never "talked about an adult woman a single time" and that there had been no mention of a wife or other adult. Agent Hyre also noted that he had told Stahlman he did not need to bring condoms because the 11-year-old was too young to get pregnant, and Stahlman acknowledged that he "showed up without condoms because he believed he was showing up for an eleven-year-old." Stahlman also told Agent Hyre, however, that he was expecting to meet an adult portraying a minor and referred to their conversation as a "fantasy fagade."

II. PROCEDURAL HISTORY

In 2017, a federal grand jury charged Stahlman with one count of attempting to persuade, induce, and entice a minor to engage in sexual activity,**{2019 U.S. App. LEXIS 10}** in violation of 18 U.S.C. § 2422(b). Stahlman pled not guilty and proceeded to trial.

A. Dr. Carr's Testimony

Prior to trial, Stahlman gave notice of his intent to present the testimony of psychologist Dr. Chris Carr, Ph.D., as an expert witness. Stahlman sought to introduce Dr. Carr's testimony to "provide the proper context to Mr. Stahlman's fantasy ad and his subsequent communications." Specifically, Dr. Carr would "opine that Mr. Stahlman's online communications at issue in this case, along with Mr. Stahlman's history of sexual behavior, is consistent with a person attempting to act out a fantasy rather than attempting sexual contact with an actual minor."

The government filed a motion in limine to exclude Dr. Carr's testimony, arguing that his testimony: would impermissibly give an opinion on Stahlman's intent, in violation of Federal Rule of Evidence 704(b); was not proper expert testimony under Rule 702; was not relevant under Rule 401; and should be excluded under Rule 403 because it carried an undue risk of misleading the jury.

Stahlman responded that: Dr. Carr's testimony was necessary to ensure his right to present a defense; that Dr. Carr was qualified to provide expert testimony based on his professional training and experience; that other courts**{2019 U.S. App. LEXIS 11}** have admitted expert testimony similar to Dr. Carr's; that Dr. Carr's testimony would help the jury understand the concept of internet-based sexual fantasy; and that Dr. Carr's testimony would not violate Rule 704(b).

The district court held an evidentiary hearing on the government's motion to exclude Dr. Carr's testimony. At the hearing, Dr. Carr testified that he was a licensed psychologist since 1994, worked as a forensic psychologist for his entire career, and focused on evaluating people who had committed sex offenses. Dr. Carr previously worked for the Florida Department of Corrections for six years. Since 2003, Dr. Carr worked for the State of Florida as a member of the Department of Children and Families Sexually Violent Predator Program. As part of that program, Dr. Carr conducted evaluations of the "highest risk" sexual offenders to determine whether they should be civilly committed after completing their prison terms.

Dr. Carr met with Stahlman in March 2017 and conducted a diagnostic interview. **{934 F.3d 1209}** As part of his evaluation, Dr. Carr took Stahlman's "psychosocial and psychosexual history," reviewed Stahlman's Craigslist ad and conversations with Agent Hyre, and consulted relevant journal**{2019 U.S. App. LEXIS 12}** articles. Dr. Carr believed Stahlman was "open" and truthful during their interview and provided "abundant information" to inform his diagnosis. Dr. Carr diagnosed Stahlman with moderate adjustment disorder with anxiety and "other specified sexual dysfunction," which Dr. Carr described as "qualified bisexual preoccupation and sexual fantasy online."

Dr. Carr opined that, in this case, Stahlman "was engaged in role-playing and fantasy role-play." Dr. Carr based this opinion on Stahlman's history, the Craigslist ad and emails, the DSM-V, and "research articles about this type of phenomena." In particular, Dr. Carr relied on two articles, "Typing, Doing and Being: Sexuality and the Internet," and "The Online Disinhibition Effect," which Dr. Carr stated were peer-reviewed and written by authors who are experienced and well-respected in this area.

Dr. Carr explained that there is a difference between a desire to engage in role-play and a desire actually to engage in sexual activity with a minor. Dr. Carr elaborated that, with a daddy-daughter fantasy for example, there are two ways of seeking that out. One way "is to go to child pornography sites [where] you would find that kind of thing."**{2019 U.S. App. LEXIS 13}** The other would be to act out the fantasy with other adults. Dr. Carr opined that, with "people who have sexual interest in a child, it's about the child's body, whereas with adults acting out these types of fantasies, it's more about the psychological dynamics involved." In other words, in the fantasy context, "your sexual interest is in adults playing certain roles."

On cross-examination, Dr. Carr acknowledged that he had never published any academic papers or conducted research or studies on the online disinhibition effect, cybersexuality, fantasy, or role-play. Dr. Carr's interview with Stahlman lasted between one-and-a-half and three hours, and he did not meet with Stahlman a second time. Dr. Carr did not speak to Stahlman's wife, ex-wife, prior sexual partners, or children. Dr. Carr did not review Stahlman's National Guard service records or other employment records.

Dr. Carr further testified that Stahlman told him during their interview that he had watched videos simulating sex between a father and minor daughter with adults playing the parts. Dr. Carr asked Stahlman whether he ever had an interest in children, and Stahlman "did not express an interest in children." However,**{2019 U.S. App. LEXIS 14}** Stahlman also told Carr that he had read and masturbated to erotic stories involving adults and children, including stories on a website called Asstr.org, but Stahlman denied ever masturbating to pictures of children. Dr. Carr conducted a Static-99 test2 of Stahlman and considered the results of a polygraph test in evaluating Stahlman, but did not conduct any other psychosocial or sexual tests.

On redirect, Dr. Carr testified that he learned, after his interview with Stahlman, that no child pornography was found on Stahlman's phone, but the phone had evidence "of these daddy-daughter

role-plays without any children, with adults acting in that." Dr. Carr opined that this was "consistent with [his] findings."

The district court took the motion under advisement. On the first day of trial, the district court granted the government's motion to exclude Dr. Carr's testimony. **{934 F.3d 1210}** The district court determined that Dr. Carr's methodology was unreliable, his testimony would not assist the jury, and his testimony would violate Rule 704(b). The district court explained its decision as follows:

> In the Court's view, Dr. Carr seeks to tell the jury that defendant was only role-playing and therefore lacked the requisite**{2019 U.S. App. LEXIS 15}** intent to commit the offense.
>
> To state the Court's finding in the context of the Eleventh Circuit's Daubert analysis:
>
> One, Dr. Carr is a qualified psychologist;
>
> Two, what little is known of Dr. Carr's methodology is to this Court unreliable; and,
>
> Three, Dr. Carr's testimony falls well short of assisting the trier of fact.
>
> Dr. Carr's ultimate opinion invades the province of the jury as he seeks to substitute his judgment for the jury's, in violation of Federal Rule of Evidence 704(b).

B. Agent Hyre's Testimony

As the government's first witness at trial, Agent Hyre testified that he had been an FBI agent for 16 years and currently served as the coordinator for the Violent Crimes Against Children Task Force, which investigates the sexual exploitation of children. Agent Hyre received various types of training on how to conduct such investigations, and that training included, among other things, training on terminology used by sexual predators.

During Agent Hyre's testimony, Stahlman made a number of objections on the ground that Agent Hyre, a lay witness, was improperly giving expert testimony. Stahlman first objected when Agent Hyre, discussing Stahlman's Craigslist ad, stated: "To my experience, this ad would be flagged."**{2019 U.S. App. LEXIS 16}** Initially, Stahlman objected that this statement was "non-responsive," and the district court overruled the objection. Agent Hyre then continued his answer, but Stahlman objected again when Agent Hyre said: "In other words, Craigslist users, when they see an ad that they see to be illegal-[.]" At that point, Stahlman objected, citing Federal Rule of Evidence 701, and stating "He's not qualified as an expert on Craigslist postings."

The district court called counsel up for a sidebar, and Stahlman's counsel reiterated, "I'm objecting to this as improper expert testimony." Counsel for the government responded that Agent Hyre's testimony was appropriate lay witness testimony and was "necessary to complete the story." The district court then engaged in this colloquy with the government:

> Court: Well, all I can do is apply my common sense here, and I know what Craigslist is. I know what their communications are, but his specific explanation of what these terms mean in the context of child solicitation, child whatever, I think that's opinion testimony.
>
> Government Counsel (GC): Okay. So you're saying that it's excluded under 701?
>
> Court: No, I'm saying that you need an expert to testify to that.
>
> GC: Okay.

Later, as Agent Hyre**{2019 U.S. App. LEXIS 17}** was testifying about his communications with Stahlman, the government asked: "Now, in the context of this conversation, what did you interpret, 'I am selfish. I wouldn't give mine up in exchange. Just getting that out there,' to mean?" Stahlman

objected that the question called for an improper opinion, and the government responded that "this is admissible under Rule 701 as it's in the context of the conversation." The district court ruled: "701(a), the Court's finding is that this is rationally based, this **{934 F.3d 1211}** witness's perception, this particular answer. The objection is overruled."

Stahlman objected again when the government asked Agent Hyre what the term "tickle fighting" meant. Initially, Stahlman objected on the ground that Agent Hyre's answer was non-responsive, and the district court overruled the objection. Agent Hyre then finished his response, explaining that "tickle fighting" in this context referred to when a sexual predator, in the course of tickling a child, "will let their hands slip." Stahlman objected again, this time on the basis of improper opinion, citing Rule 701(c). The government agreed to "just move on," and the district court did not rule on the objection.

Stahlman made his next objection**{2019 U.S. App. LEXIS 18}** when the government asked Agent Hyre, "[I]n the context of this conversation, how did you interpret what he-when he said, 'qualify myself the opportunity,'" and Agent Hyre responded, "What does he have to do to be able to meet my eleven-year-old." Stahlman objected, stating: "Again, I'm going to renew my previous objections to 701. (a) through (c) are conjunction. They're all required in order to be admitted, and I'm objecting as improper expert testimony." The district court ruled:

> Okay. Under 701, I hereby find that this testimony is rationally based on this witness's perception; that it is helpful to clearly understanding the witness's testimony or to determining a fact in issue; and based on the predicate that the government laid, there is specialized knowledge within the scope of this testimony.
>
> So based on that finding, and that finding is applicable retroactively, I'm going to allow this testimony. Your objection, though, is noted for the record.

Stahlman renewed his improper opinion objection again when the government asked Agent Hyre: "Now, again, in the context of this conversation, what did you interpret 'trimmed downstairs' to mean?" Stahlman's counsel asked to approach the**{2019 U.S. App. LEXIS 19}** bench, and the district court called both counsel to a sidebar, where this colloquy ensued:

> Defense Counsel (DC): Your Honor, again, this is specialized knowledge and he hasn't been disclosed as an expert to me, and I don't know how this Court is finding that it's-
>
> Court: Just let me ask you this.
>
> DC: Yes, Your Honor.
>
> Court: They laid a predicate on him of all the training he did, all the presentations he did, the fact that he's been doing this for eight years, leading investigations, testifying in Court many times with regard to solicitation, child exploitation, and child pornography. Now, they haven't asked that he be qualified as an expert, but, quite frankly, if they did, I would.
>
> But why doesn't he have specialized knowledge in this area, based on the predicate that he laid?
>
> DC: If he did, Your Honor, I would have asked for a Daubert hearing and I would have filed my own motion in limine. I don't think he's an expert, Your Honor.
>
> Court: Well, every single trial he's testified in these types of cases, he's either been able to testify under 702 or qualified as an expert. So your position is he's not an expert and, further, he has no specialized knowledge per 702?
>
> DC: Yes, Your Honor.

Court:{2019 U.S. App. LEXIS 20} Okay.

DC: And if Your Honor does find that he's an expert, then I would move to strike him as they did not disclose him.

Court: I'm not making that finding. They haven't requested it. But their {934 F.3d 1212} position [is] that under 702, he meets the criteria and has specialized knowledge that would assist the jury in the context of that ruling. You disagree with that, correct?

DC: Yes, Your Honor.

Court: All right. What's your position on that?

GC: Your Honor, under 701, he's talking about the context of the conversation.

The question was is he trimmed downstairs in the context of what they're discussing. That's both rationally based on his perception and helpful to understanding what-the fact at issue, which is what they were getting at.

So I fail to understand how-why we're here even.

DC: I guess I'm confused, because Your Honor is saying that this does require specialized knowledge, and now the government is saying that it doesn't require specialized knowledge. I believe that it does, Your Honor.

Court: Well, there's a mix of that. I will tell you that I don't know that I would understand what "playing" means. But in the context of what he does, which I think they laid the predicate for, you picked an{2019 U.S. App. LEXIS 21} interesting hill to have a battle on, because I'm not the most hip person, but even I know what "trimmed downstairs" means, and I'm not an expert on this by any means.

So if I ask the jurors one at a time, I'll bet every one of them knows what that means. So I don't know why that needs any expert experience at all.

DC: All of his opinion testimony I find to be improper. So can I have a standing objection?

Court: You can. But here's where I'm having a problem. Look, if you want him to testify as to what he meant with what he wrote, that's fine.

If you want him to make-draw conclusions based on 701 based on what's in there, that's fine. But when you get more specialized than that, for example, what do you think he meant by what he wrote, then she's got a point, because you're having him interpret the other guy's intent. And it's a really fine line.

GC: Okay.

Court: All right. So it might just be easier to have him read all the e-mails. None of this is that difficult to understand.

. . . .

Court: All right. The objection is overruled.

As Agent Hyre continued to testify, Stahlman objected once more to improper opinion testimony when Agent Hyre stated, as to a particular email, "I took that to mean{2019 U.S. App. LEXIS 22} he wasn't a favorite of condoms." The district court instructed the government to have Agent Hyre just read the email.

After the government's direct examination, Stahlman moved for a mistrial based on Agent Hyre's improper opinion testimony. Stahlman argued that (1) Agent Hyre was permitted to testify "to his opinion regarding what would constitute terms that a sexual predator would use, his interpretation of what [Stahlman] was saying, of what [Stahlman] meant," and (2) the district court "found that this was specialized knowledge," but Agent Hyre was never disclosed as an expert witness. The government responded that Agent Hyre's testimony was permissible under either Rule 701 (as lay testimony) or Rule 702 (as expert testimony). The government stressed that Agent Hyre's testimony was based on his perception of the communications, helpful to the jury, and circumscribed to the context of the emails.

{934 F.3d 1213} The district court denied Stahlman's motion for a mistrial. The district court reasoned that the government laid a predicate for Agent Hyre's knowledge and that Stahlman was not "ambushed" by Hyre's testimony regarding the emails.

C. Stahlman's First Motion for Judgment of Acquittal

After Agent Hyre testified,**{2019 U.S. App. LEXIS 23}** the government presented two more witnesses, a records custodian from Craigslist and another FBI agent. The government rested its case, and Stahlman made his first motion for a judgment of acquittal.

Stahlman's counsel argued that there was insufficient evidence to support a conviction because there was no evidence showing that he actually intended to engage in sexual activity with a minor, as opposed to merely engaging in fantasy role-playing with an adult. Stahlman contended that all of the evidence was consistent with fantasy role-playing, and there was no objective evidence (such as incriminating items in his car or child pornography on his phone) to show that his actual intent was to have sex with a minor.

The district court denied Stahlman's motion. The district court observed that, at that point, there was no evidence to support Stahlman's fantasy roleplaying theory and the evidence was sufficient to proceed further.

D. Stahlman's Defense

At the outset of his defense, Stahlman testified. Stahlman had two nieces, whose lives he was very involved in as they grew up. He had three children of his own-two sons from a previous marriage and one stepson with his current wife.

Since around**{2019 U.S. App. LEXIS 24}** September 2014, Stahlman had used Craigslist to seek fantasy relationships with other adults. Through his Craigslist activities, Stahlman had traveled to meet ten adults. Stahlman explained that, in his Craigslist ads, he adopts the "fantasy portrayal of a man named 'Sam.'" Stahlman stated that "Sam's" age would vary from ad to ad and that "Sam" "has fantasies" and "portrays fantasies with other adults."

Stahlman testified that, in September 2016, he posted an ad similar to the November 2016 ad Agent Hyre ultimately responded to. Stahlman later deleted that September 2016 ad because he "wasn't getting any traction," and then posted the November 2016 ad, which "modified the language a little bit" and had a photo attached. Stahlman was motivated to post the November 2016 ad because he recently broke up with his long-term girlfriend and "had been searching for another person to have sex with," but "wasn't having any . . . luck." Stahlman stated that he "posted [his] normal post, which is about sexting," but did not get any responses, so he moved on to his "second thing," which "is to go into like a fantasy portrayal."

Stahlman elaborated: "I often go to fantasies, and I had done a massage**{2019 U.S. App. LEXIS 25}**

fantasy. I had done a soldier fantasy. I had done a fantasy about . . . like you have no information about the person, you just meet and have sex." As to the particular daddy-daughter fantasy in the November 2016 ad, Stahlman stated: "So when I was doing research on what type of fantasies are out there, I came across daddy-daughter fantasies, and I found out that some women have daddy fetishes. So I thought, you know, it might be an avenue that I could go down."

Stahlman explained that his sexual communications, whether via texting, Kik, or email, were "definitely in the realm of fantasy" and "outside [his] regular life." Stahlman described these sexual communications prior to meeting someone as a sort of interview process to make sure that the other person "fit[s] the part" and can convincingly act out the fantasy.

{934 F.3d 1214} Regarding Agent Hyre's response to his November 2016 ad, Stahlman testified that he "believed [it] was a response to [his] Craigslist ad requesting a sexual fantasy." Stahlman stated that, "[i]n fantasy, there's in-character and out-of-character comments," and the goal of fantasy role-playing is to "stay in character as much as possible." Thus, when Stahlman received Agent**{2019 U.S. App. LEXIS 26}** Hyre's response to his ad, his "first instinct was this person was in character." Based on Agent Hyre's response, Stahlman believed he would be acting out his fantasy with "a straight man and a woman who's going to be portraying an eleven-year-old daughter."

As he reviewed the emails between Agent Hyre and himself, Stahlman testified that the majority of the messages were "in character" on his part and, he believed, "in character" on Agent Hyre's part as well. In other words, Stahlman indicated that the majority of his responses were meant to further the fantasy scenario he and Agent Hyre were discussing. Stahlman acknowledged, however, that some messages, such as when he told Agent Hyre he was busy at work or when Agent Hyre told him he had to attend a meeting, were out of character. Stahlman explained that he did not ask for confirmation that Agent Hyre was also engaging in fantasy role-playing when Agent Hyre first responded to the ad because he inferred that someone responding to his "ad about a fantasy" was engaging in that same fantasy. Stahlman stated that it "would have been breaking the atmosphere" to ask for confirmation that Agent Hyre was also engaging in fantasy.

Stahlman**{2019 U.S. App. LEXIS 27}** testified that he had never had sex with a minor or had sexual thoughts about children. In communicating with Agent Hyre, Stahlman never believed he was talking to an actual pedophile with a real minor daughter. Rather, he believed Agent Hyre was acting as an intermediary in the fantasy for his adult wife or girlfriend. When Agent Hyre sent him the picture of his supposed 11-year-old, Stahlman "didn't believe the photo was real" and assumed the couple he believed he was talking to "just uploaded a photo that didn't really exist" or "found a photo like I did online."

Stahlman explained that when he told Agent Hyre in December 2016 to "[g]o ahead and delete [him]," it was because his schedule was busy and he "wasn't willing to do the back and forth" of emailing if he was not going to be able to actually meet the couple he believed he was talking to. Stahlman also stated that some people on Craigslist "just do endless e-mails and continue forever and it never really pans out to anything, and I wasn't interested in that either." When Agent Hyre reached back out to him 45 days later, in late-January 2017, Stahlman believed he was "trying to re-engage the fantasy." Stahlman explained that**{2019 U.S. App. LEXIS 28}** his repeated questions to Hyre about condoms were an "in character" way to ask if the adult woman he believed he would be engaging with "was on some form of birth control." Stahlman explained that this was "very important to [him]" because "impregnating an adult [was] completely out of the question" given his personal circumstances.

When he went to meet with Agent Hyre, Stahlman "believed that there was a chance that if somebody was eavesdropping on the[ir] conversation," it was possible he could be caught up in a

sting operation. Stahlman assumed, however, that if that happened, it would be easy to demonstrate that "there was no actual eleven-year-old girl . . . in the scenario at all," and it was just fantasy. Stahlman described his Teenage Mutant Ninja Turtles t-shirt as "vintage" and "not the version that's on TV today that children watch."

{934 F.3d 1215} Stahlman also presented the expert testimony of Richard Conner, a computer forensics consultant. Conner had conducted forensic examinations in cases involving alleged sexual misconduct, including approximately 240 child pornography cases. Conner testified that the female in the picture Stahlman posted with his Craigslist ad was classified as "age{2019 U.S. App. LEXIS 29} difficult," meaning he could not tell if the picture was of an adult or a child. Conner also forensically examined the contents of Stahlman's cell phone. Conner examined approximately 87 videos and more than 2,000 still images on Stahlman's phone and did not find any images or video of children in the nude or depicted in a sexually explicit manner. Conner also did not find any evidence of deleted files, encryption software, or software that could be used to clean up deleted files. Conner also did not find any child pornography on Stahlman's phone.

E. Stahlman's Second Motion for Judgment of Acquittal

After Conner's testimony, the defense rested. Stahlman renewed his motion for a judgment of acquittal. Stahlman contended that, because he is presumed innocent until proven otherwise, his "ad was presumed non-criminal until the government proved that it was not." Stahlman maintained that the ad "sought fantasy," and his own unrebutted testimony demonstrated that "he showed up because he was expecting an adult and he was operating this entire e-mail and Kik dialogue as a role-play."

The government responded that the totality of the evidence, viewed in the light most favorable to the government,{2019 U.S. App. LEXIS 30} demonstrated that Stahlman did attempt to entice a minor to engage in sexual activity and took a substantial step toward doing so by showing up at the Gander Mountain parking lot. The government emphasized that Stahlman repeatedly indicated in the emails that he was interested in meeting the fictional 11-year-old, and the details of his conversation with Agent Hyre demonstrated that Stahlman "wanted to groom the child into easing her into a sexually exploitive situation."

The district court again denied Stahlman's motion for judgment of acquittal. The district court found that there were competing theories of the case, and it was for the jury to decide which was true. The jury disbelieved Stahlman and convicted him of attempting to entice a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b).

F. Sentencing

The presentence investigation report ("PSR") calculated Stahlman's total offense level as a 40, consisting of: (1) a base offense level of 28, pursuant to U.S.S.G. § 2G1.3(a)(3); (2) a two-level increase under U.S.S.G. § 2G1.3(b)(3) because his offense involved the use of a computer; (3) an eight-level increase under U.S.S.G. § 2G1.3(b)(5) because the offense involved a minor under the age of 12; and (4) a two-level increase for obstruction of justice,{2019 U.S. App. LEXIS 31} pursuant to U.S.S.G. § 3C1.1, based on Stahlman's perjured testimony at trial. As to perjury, the PSR recounted that: (1) Stahlman "informed the jury he has never had sexual thoughts about children"; but (2) during his proffered examination, outside the presence of the jury, he "acknowledged masturbating to sexually explicit stories engaging minors posted on the ASSTR.org website."3 Stahlman's total offense {934 F.3d 1216} level of 40 and criminal history category of I resulted in an advisory guidelines range of 292 to 365 months' imprisonment. His § 2422 conviction carried a mandatory minimum sentence of 10 years. The probation officer recommended a low-end sentence

of 292-months' imprisonment.

Stahlman filed a written objection to the obstruction of justice enhancement. Stahlman submitted that the mere fact that his trial testimony did not coincide with Agent Hyre's was not evidence of obstruction-Stahlman "simply exercised his constitutional right to trial as well as to testify." Stahlman asserted that the probation officer's and the government's belief that he lied was insufficient to warrant the obstruction enhancement and, in any event, he had not lied. Stahlman argued that "when asked questions by the government during{2019 U.S. App. LEXIS 32} the proffered cross examination regarding the asstr.org stories, those stories were based on fantasy," whereas "[t]he question asked during direct examination in front of the jury," about his sexual attraction to children, "was based on reality." Because the questions were different, Stahlman contended, he did not lie. Stahlman additionally pointed out that the jury did not hear his testimony during the proffer, and thus his answer did not bear on the verdict.

The probation officer responded that Stahlman's testimony about masturbating to sexually explicit stories involving minors was contradictory to his earlier testimony that he never had sexual thoughts about children. The probation officer therefore maintained that the obstruction enhancement was appropriate.

At the sentencing hearing, Stahlman did not offer any additional argument regarding his objection to the obstruction enhancement. The district court overruled Stahlman's objection, stating that "[a]s to the controverted . . . guideline applications, the Court adopts the position of the Probation Office as stated in the [PSR] addendum." The district court determined that Stahlman's total offense level was 40, his criminal history{2019 U.S. App. LEXIS 33} category was I, and his advisory guidelines range was 292 to 365 months' imprisonment.

Stahlman argued for a mandatory-minimum, below-guidelines sentence of 10 years, based on, among other things, his lack of criminal history, his years of military service, the fact that he is an engaged and involved father to his sons, and the fact that he will experience collateral consequences from having to register as a sex offender. The government requested a within-guidelines sentence, emphasizing various factors including the seriousness of Stahlman's offense, the explicit nature of his communications with Agent Hyre, and the fact that he traveled to meet the fictional 11-year-old.

In pronouncing Stahlman's sentence, the district court remarked, "[b]luntly, Mr. Stahlman, your position on what happened here was implausible." The district court elaborated:

> If you were indeed only involved in role-playing and had no intention to do this, there is simply no plausible answer for why you would drive from Seminole County, Florida, to Orange County, Florida, to meet in that parking lot, dressed the way you were, in order to do anything but meet with that child.
>
> Your position went from implausible to incredible{2019 U.S. App. LEXIS 34} for me. The jury didn't {934 F.3d 1217} believe you and, frankly, I don't believe you. . . .
>
> I don't blame you for taking the position that you have. I don't blame you for defending yourself. You're certainly never going to be penalized in any courtroom, and you shouldn't be, for exercising your right to a trial. But you can be held accountable for what you say at trial, and what you said at trial simply wasn't true.The district court then sentenced Stahlman to 292 months' imprisonment. Stahlman objected that the sentence was procedurally and substantively unreasonable. On September 28, 2017, Stahlman filed his first notice of appeal, which was docketed as case number 17-14387.

G. Stahlman's Post-Trial Motion for New Trial

While his appeal was pending, Stahlman filed a "Motion for New Trial, Request for an Indicative Ruling, and Prayer for an Evidentiary Hearing," under Federal Rule of Criminal Procedure 33 and Federal Rule of Appellate Procedure 12.1, in the district court. In his motion, Stahlman explained that on November 2, 2017, after his May 2017 trial and September 2017 sentencing, the government disclosed for the first time4 that Agent Hyre was sanctioned by the FBI in August 2013 for conducting undercover child exploitation investigations using his home computer.

Specifically,**{2019 U.S. App. LEXIS 35}** the November 2 disclosure advised that the FBI "issued administrative disciplinary action against [Agent Hyre]" in August 2013, in the form of a seven-day suspension without pay, after finding "that SA Hyre violated FBI policy by using a home computer to conduct undercover child sexual exploitation investigations." The disclosure further stated that, because of Agent Hyre's unauthorized use of his personal computer during an undercover operation, Homeland Security Investigations ("HSI"), "not knowing that SA Hyre was acting in an undercover capacity, investigated SA Hyre's online identity." Upon learning who Agent Hyre was, HSI provided the information to the FBI for further action.

During the subsequent FBI investigation, Agent Hyre admitted to using his home computer for investigative purposes on several occasions but stated that he was unaware doing so was in violation of FBI policy. Although the standard penalty for such a violation is a five-day suspension, the FBI found that "aggravation was appropriate because SA Hyre's actions caused him to be the subject of a child pornography investigation by another federal agency," and he "acknowledged engaging in similar behavior on several**{2019 U.S. App. LEXIS 36}** other occasions." Agent Hyre contested the finding that he had violated FBI policy, as well as the severity of the sanction, but the FBI upheld his seven-day suspension.

Stahlman's post-trial motion argued that Agent Hyre's prior discipline constituted "newly discovered evidence" of either a Brady5 violation or a Federal Rule of Criminal Procedure 16 violation, and the suppression of this evidence substantially prejudiced his rights to a fair trial, to present his theory of defense, and to attack the elements of the charged offense. As to his Brady claim, Stahlman contended that Agent Hyre's prior discipline constituted impeachment evidence that was favorable to him. Stahlman further asserted that, had this evidence been timely disclosed, **{934 F.3d 1218}** there was a reasonable probability the outcome of his trial would have been different. Stahlman emphasized that his case "really boiled down to a credibility determination" between himself and Agent Hyre, and having information about Agent Hyre's prior discipline would have "played a material and substantial factor" in how Stahlman prepared his defense.

As to his discovery violation claim, Stahlman submitted that the government's failure to disclose Agent Hyre's prior discipline was an**{2019 U.S. App. LEXIS 37}** egregious violation of Criminal Rule 16. Stahlman acknowledged that, to obtain a new trial on a non-Brady, newly discovered evidence claim, the evidence cannot be "merely impeaching." Stahlman maintained, however, that Agent Hyre's prior discipline was "so much more" than just impeachment evidence, as having that information would have affected Stahlman's entire trial strategy.

Stahlman acknowledged that, because his appeal in Case No. 17-14387 was then pending, the district court lacked jurisdiction to grant his motion for new trial. Stahlman therefore requested that the district court enter an indicative ruling certifying that the motion should be granted, which would allow this Court to consider a motion to remand jurisdiction to the district court to hold an evidentiary hearing and address the merits of his new trial motion.6

In response, the government argued that Stahlman's Brady claim failed because: (1) he did not coherently articulate how evidence of Agent Hyre's prior discipline would have changed the outcome

of the trial; (2) he failed to show how Hyre's prior discipline would be admissible; (3) Hyre's misconduct "did not involve any finding of dishonesty or untruthfulness," making{2019 U.S. App. LEXIS 38} it inadmissible as evidence bearing on credibility under Federal Rule of Evidence 608(b); (4) Hyre's discipline would also be inadmissible under Rules 403 and 404(b); (5) other circuits have found a law enforcement policy violation does not constitute Brady material; and (6) in any event, the evidence against Stahlman was "overwhelming," making it unlikely that evidence of Hyre's prior discipline would have altered the jury's verdict.

As to Stahlman's discovery violation claim, the government argued that Agent Hyre's prior discipline was merely impeachment evidence and that Stahlman failed to show it was material or would have produced a different result at trial. Lastly, the government asserted that an evidentiary hearing was not required to resolve Stahlman's motion.

In a June 2018 order, the district court denied Stahlman's new trial motion. The district court acknowledged that Appellate Rule 12.1 supplies the rule for a district court's consideration of a Criminal Rule 33 motion based on newly discovered evidence while an appeal is pending. However, the district court went on to recite the legal standards governing motions for new trial "based on the weight of the evidence." The district court then stated:

> Defendant elected to testify at trial.{2019 U.S. App. LEXIS 39} The written communications between Special Agent Hyre and Defendant were introduced as evidence. The substance of those communications were not at issue. Defendant told the jury that he was simply role-playing and that his statements were in no way a sincere attempt to engage in sexual activity with a child. This was not, as Defendant continues to argue, a credibility determination between {934 F.3d 1219} the testimony of Special Agent Hyre and Defendant. Rather, Defendant urged the jury to rely on his interpretation of the electronic communications instead of their own common sense interpretation. The jury declined to do so.The district court then denied Stahlman's Criminal Rule 33 motion and stated: "In the Court's view, the Motion does not raise a substantial issue."

Stahlman filed a new notice of appeal from the denial of his post-trial motion, which was docketed as case number 18-12866 in this Court. We consolidated that appeal with Stahlman's earlier appeal in Case No. 17-14387.

With this background, we turn to Stahlman's issues on appeal.

III. EVIDENTIARY RULINGS

Stahlman raises two claims of evidentiary error: (1) improper exclusion of Dr. Carr's expert testimony; and (2) improper admission of Agent{2019 U.S. App. LEXIS 40} Hyre's lay testimony on matters that were the subject of expert testimony. We first review the rules governing expert testimony and then address each claim.

A. Applicable Federal Rules of Evidence

Under the Federal Rules of Evidence, opinion testimony by witnesses is divided into two categories: lay testimony and expert testimony. See Fed. R. Evid. 701 & 702. If a witness is testifying as a lay witness, and not as an expert, that witness may only testify to an opinion that is:

> (a) rationally based on the witness's perception;
>
> (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
>
> (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.Fed. R. Evid. 701.

By contrast, "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education" may give opinion testimony if:

> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> (b) the testimony is based on sufficient facts or data;
>
> (c) the testimony is the product of reliable principles and methods; and
>
> (d) the expert has reliably applied the principles and methods to the facts**{2019 U.S. App. LEXIS 41}** of the case.Fed. R. Evid. 702. If the government intends to present a witness as an expert in a criminal trial, the government must disclose that witness as an expert prior to trial and provide a written summary of the expected testimony. See Fed. R. Crim. P. 16(a)(1)(G); United States v. Hamaker, 455 F.3d 1316, 1331 (11th Cir. 2006).

In determining whether to admit expert testimony under Rule 702, district courts must consider if: (1) the expert is qualified to give competent testimony about the matters he intends to address; (2) the methodology the expert employed to reach his conclusions is sufficiently reliable under Daubert7; and (3) the testimony will assist the trier of fact, through the application of scientific, technical, or other specialized expertise, to understand the evidence or determine a fact in issue. City of Tuscaloosa v. Harcros Chems., Inc., 158 F.3d 548, 562 (11th Cir. 1998).

In Daubert, the Supreme Court explained that a district court faced with a **{934 F.3d 1220}** proffer of expert testimony must assess whether the reasoning or methodology underlying the testimony is scientifically valid and can properly be applied to the facts in issue. Daubert, 509 U.S. at 592-93, 113 S. Ct. at 2796. Many factors bear on that inquiry, including: (1) whether the theory or technique has been or can be tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential error rate;**{2019 U.S. App. LEXIS 42}** and (4) whether the theory or technique is widely accepted. Id. at 593-94, 113 S. Ct. at 2796-97. The Supreme Court emphasized that the Rule 702 inquiry is "a flexible one," the ultimate goal of which is to determine the evidentiary relevance and reliability of the proposed expert testimony. Id. at 594-95, 113 S. Ct. at 2797.

Even if an expert's proposed testimony satisfies Rule 702 and Daubert, the testimony also must comply with other limitations contained in the Rules of Evidence. Of relevance here, Rule 704(b) provides:

> In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.Fed. R. Evid. 704(b). In other words, an expert may not opine on the defendant's intent. See United States v. Augustin, 661 F.3d 1105, 1123 (11th Cir. 2011). However, an expert may, consistent with Rule 704(b), give testimony "that supports an obvious inference with respect to the defendant's state of mind if that testimony does not actually state an opinion on [the] ultimate issue, and instead leaves this inference for the jury to draw." Id. (internal quotations and alteration omitted).

B. Dr. Carr's Testimony and Rule 704(b)

The district court excluded Dr. Carr's testimony for two reasons. First, it concluded that**{2019 U.S. App. LEXIS 43}** Dr. Carr's testimony was inadmissible under Rule 702 because his methodology was unreliable, and his testimony would not assist the trier of fact. Second, it determined that Dr. Carr's testimony would violate Rule 704(b).8 Because we agree with the district court that Dr. Carr's

testimony was inadmissible under Rule 704(b), we do not address its separate conclusion that his testimony was also inadmissible under Rule 702.

Here, Stahlman sought to present Dr. Carr's opinions that "[t]here [was] insufficient behavioral evidence to conclude that Mr. Stahlman intended to have real sex with a minor, rather than act out a fantasy involving adults," and that "[t]he clinical evidence suggests that Mr. Stahlman intended to act out a fantasy, rather than have sexual contact with a minor." (emphasis added). These statements plainly run afoul of Rule 704(b)'s directive that an expert not opine on whether a criminal defendant had or did not have the requisite mental state to commit the charged crime. See Fed. R. Evid. 704(b). In testifying that the clinical and behavioral evidence showed Stahlman intended to act **{934 F.3d 1221}** out a fantasy with adults, rather than engage in sex with a minor, Dr. Carr would be doing more than providing testimony that supports an inference as**{2019 U.S. App. LEXIS 44}** to intent-he would, in effect, be telling the jury Stahlman did not intend to induce a minor to engage in sexual activity. See 18 U.S.C. § 2422(b); Augustin, 661 F.3d at 1123; see also United States v. Hofus, 598 F.3d 1171, 1180 (9th Cir. 2010) ("To say that Hofus meant the texting only as fantasy is simply another way of saying he did not really intend to entice or persuade the young girls, which is precisely the question for the jury.").

In arguing to the contrary, Stahlman cites the D.C. Circuit's decision in United States v. Hite, 769 F.3d 1154, 1168-1170, 413 U.S. App. D.C. 66 (D.C. Cir. 2014), a § 2422 prosecution in which the D.C. Circuit reversed the district court's exclusion of the defendant's expert witness. In Hite, the defendant sought to present the expert testimony of Dr. Frederick Berlin on, inter alia, (1) the difference between an actual desire to engage in sex with a minor and mere fantasy or role-playing, and (2) his diagnosis that the defendant Hite did not suffer from any psychiatric condition associated with, or that would predispose a person to, a desire to have sexual contact with minors. Id. at 1168. Importantly, the district court in Hite did not exclude the expert's proffered testimony under Rule 704(b). See id. Rather, it excluded Dr. Berlin's testimony because it found the testimony was not properly disclosed under Federal Rule of Criminal Procedure 16 and had little probative value. Id.

On appeal, the D.C.**{2019 U.S. App. LEXIS 45}** Circuit not only rejected the district court's Rule 16 analysis, but also concluded that "[b]ecause the District Court determined that Hite's sexual interest in children was relevant to the question of whether he had the requisite intent with respect to 18 U.S.C. § 2422(b), Hite should have been permitted to introduce [Dr. Berlin's testimony] so that he could seek to demonstrate to the jury that he did not possess such an interest." Id. at 1169. The D.C. Circuit further noted that Dr. Berlin's proposed general testimony concerning fantasy and role-playing could "shed light on what may be an unfamiliar topic to most jurors: sexual fantasy involving children, particularly the kind that unfolds in the virtual realm of the Internet." Id. at 1170. The D.C. Circuit then stated that "Dr. Berlin may not testify that Hite lacked the requisite intent, see Fed. R. Evid. 704(b)," but that "expert testimony that generally explains the world of sexual fantasy on the Internet is permissible." Id.

Hite is distinguishable from Stahlman's case because the proposed testimony in Hite was materially different from, and did not go as far as, Dr. Carr's proffered testimony here. In Hite, the defendant sought to have his expert testify about (1) the difference, generally speaking,**{2019 U.S. App. LEXIS 46}** between real-life attraction to children and online fantasy and role-playing, and (2) the fact that the defendant Hite had not been diagnosed with any psychiatric condition that was associated with a sexual attraction to children. Id. at 1168. While that testimony might support an inference that the defendant Hite lacked the requisite intent to induce a minor to engage in sexual activity, see Augustin, 661 F.3d at 1123, neither of those statements directly opines on the defendant's intent.

Here, by contrast, Dr. Carr's proposed testimony went beyond general testimony about online

fantasies and Stahlman's psychiatric diagnosis. Rather, Dr. Carr directly opined that Stahlman intended to act out a fantasy and did not intend to have sex with a minor. Under Rule 704(b), this is a bridge too far.9 We therefore conclude {934 F.3d 1222} that the district court did not abuse its discretion in excluding Dr. Carr's testimony.

C. Agent Hyre's Testimony

Stahlman contends that the district court erred in allowing Agent Hyre to offer lay opinions regarding: (1) the age of the girl in the picture Stahlman posted with his Craigslist ad; (2) what Craigslist is used for; (3) whether Stahlman's ad would{2019 U.S. App. LEXIS 47} be "flagged"; (4) what Stahlman meant in the ad; (5) Hyre's interpretation of the email communications between Hyre and Stahlman; and (6) what he thought Stahlman meant in those communications. Stahlman asserts that all of this testimony was based on specialized knowledge and could not be offered as lay testimony. Further, the government did not disclose or present Agent Hyre as an expert witness.10

The district court appears to have based its rulings on Agent Hyre's testimony on a misunderstanding of the rules concerning lay and expert witnesses. Despite allowing the government to present Agent Hyre as a lay witness, the district court specifically found that "there is specialized knowledge within the scope of this testimony." But Rule 701(c), addressing lay opinion testimony, makes quite clear that a lay witness's opinions must "not [be] based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Fed. R. Evid. 701(c) (emphasis added); see also Fed. R. Evid. 702 (addressing expert testimony).

When a district court bases an evidentiary ruling on an erroneous view of the law, that "constitutes an abuse of discretion per se." United States v. Henderson, 409 F.3d 1293, 1297 (11th Cir. 2005). However, errors in admitting opinion testimony as lay testimony are subject{2019 U.S. App. LEXIS 48} to harmless error review. See United States v. Sarras, 575 F.3d 1191, 1217 (11th Cir. 2009). In other words, we will not reverse a conviction based on an erroneous evidentiary ruling unless the error had a substantial influence on the outcome of the case or leaves us in grave doubt as to whether the error affected the outcome. Henderson, 409 F.3d at 1300.

Here, we conclude that the district court's error in applying the rules regarding lay and expert witnesses to Agent Hyre's testimony was harmless. First, some of Agent Hyre's testimony Stahlman challenges was undoubtedly {934 F.3d 1223} proper lay opinion testimony under Rule 701. For example, Agent Hyre's estimate as to the age of the girl in the picture Stahlman posted required no specialized knowledge-any lay witness may properly estimate the age of a person in a photograph based solely on their perception. See Rule 701(a); cf. also United States v. Smith, 459 F.3d 1276, 1297 n.18 (11th Cir. 2006) (indicating that an officer's testimony that certain photographs depicted "very, very young girls" was not plainly based on specialized knowledge, as opposed to a mere lay opinion).11

Similarly, Agent Hyre's testimony that the "Personals, Casual Encounters" section of Craigslist, where Stahlman posted his ad, was "used as kind of like a hookup site" where "people go on to find other persons to meet up{2019 U.S. App. LEXIS 49} with and generally have sex with," was within the realm of proper lay testimony. Any person looking at that portion of the Craigslist website could, without having any specialized knowledge, perceive that its purpose was to facilitate casual sexual encounters. Furthermore, even some of Agent Hyre's interpretations of Stahlman's emails-such as his understanding of what word Stahlman meant to use when there were typographical errors in the emails-were based solely on his perceptions of the conversation and not on any specialized knowledge from his experience as a law enforcement officer.

Agent Hyre's other testimony-regarding what posts would be "flagged" on Craigslist and interpreting

what Stahlman meant in his ad and in his email communications-is perhaps closer to the line, but nevertheless falls within the permissible bounds of lay testimony under this Court's precedent. This Court has held that a law enforcement agent may properly testify as a lay witness about the meaning of code words used in intercepted calls based on what the agent learned during his five-year terrorism investigation. See United States v. Jayyousi, 657 F.3d 1085, 1104 (11th Cir. 2011). Similarly, this Court has concluded that law enforcement officers may offer lay testimony{**2019 U.S. App. LEXIS 50**} about the meaning of coded terms in a narcotics case based on both "their perceptions [in the instant case] and on their [past] experience as police officers," albeit under an earlier version of Rule 701 that did not contain the current version's restriction that testimony not be based on specialized knowledge. See United States v. Novaton, 271 F.3d 968, 1008-09 (11th Cir. 2001); see also Tampa Bay Shipbuilding & Repair Co. v. Cedar Shipping Co., 320 F.3d 1213, 1223 & n.17 (11th Cir. 2003) (approving lay witness testimony that was "based upon their particularized knowledge garnered from years of experience within the field" and "find[ing] no basis to determine that Novaton . . . require[d] a different finding after Rule 701's amendment").

Here, Agent Hyre's testimony about flagged posts on Craigslist and his interpretations of Stahlman's statements in his ad and in his email communications were based on Agent Hyre's perceptions as a participant in his conversations with Stahlman in this case and informed by his years of experience investigating child exploitation {**934 F.3d 1224**} and child pornography crimes. As explained above, this Court has held that testimony of that nature is a proper subject for a lay witness. See Jayyousi, 657 F.3d at 1104; Tampa Bay Shipbuilding, 320 F.3d at 1223; Novaton, 271 F.3d at 1008-09. Further, in the circumstances here, Agent Hyre in this case was testifying to give his side of the story as to what his messages meant. The district court{**2019 U.S. App. LEXIS 51**} did not clearly abuse its discretion in permitting Agent Hyre to testify as a lay witness. See Jayyousi, 657 F.3d at 1102.

Moreover, even if some of Agent Hyre's testimony veered into the realm of specialized knowledge that ought to have been disclosed and presented as expert testimony, any error in admitting that testimony as lay testimony was harmless. See Sarras, 575 F.3d at 1217. First, Stahlman has not demonstrated that the government's failure to disclose Agent Hyre as an expert prior to trial under Criminal Rule 16 prejudiced his substantial rights. See Hamaker, 455 F.3d at 1332; United States v. Tinoco, 304 F.3d 1088, 1119-20 (11th Cir. 2002). The government identified Agent Hyre as a witness before trial, and Stahlman was "aware of his role in the investigation," had copies of all the email and Kik messages between himself and Hyre, and knew that Hyre's testimony would be based on his communications with Stahlman. See Hamaker, 455 F.3d at 1332. Furthermore, the district court explicitly stated at trial that, had Agent Hyre been offered as an expert, the district court would have admitted him as such. So we know that any motion in limine Stahlman might have raised to exclude Agent Hyre's expert testimony would likely have failed. Finally, as explained below, ample evidence supported Stahlman's conviction, and Stahlman has not shown that the outcome{**2019 U.S. App. LEXIS 52**} of the trial would have been different absent Agent Hyre's allegedly improper lay testimony. See Sarras, 575 F.3d at 1217.

In sum, we conclude that the district court did not reversibly err in allowing Agent Hyre to testify as a lay witness or in denying Stahlman's motion for a mistrial on that basis.

IV. MOTIONS FOR JUDGMENT OF ACQUITTAL

Stahlman next argues that the district court erred in denying his motions for a judgment of acquittal because the evidence was insufficient to prove his intent or, relatedly, that he took a substantial step toward carrying out that intent.12 In essence, Stahlman submits that the trial evidence established two competing hypotheses of his intent-either, as Stahlman testified, he was seeking a fantasy with an adult posing as a minor, or, as Agent Hyre testified, he intended to engage in sex with an actual

minor. According to Stahlman, proof of his guilt beyond a reasonable doubt required that the government exclude every reasonable hypothesis but that of guilt, and the government failed to do so because there was a reasonable innocent explanation for his actions.

Here, the statute of conviction, § 2422(b), proscribes knowing attempts to induce or entice a minor to engage in sexual{**2019 U.S. App. LEXIS 53**} activity, stating:

> {**934 F.3d 1225**} Whoever, using the mail or any facility or means of interstate or foreign commerce, . . . knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.18 U.S.C. § 2422(b). To prove that a defendant violated § 2422(b) by attempting to induce a minor to engage in sexual activity, the government must show that the defendant (1) had the specific intent to induce a minor to engage in sexual activity, and (2) took a substantial step toward the commission of that offense. United States v. Lee, 603 F.3d 904, 913-14 (11th Cir. 2010); United States v. Yost, 479 F.3d 815, 819 (11th Cir. 2007).

A substantial step is an "objective act[]" that "mark[s the defendant's] conduct as criminal such that his acts as a whole strongly corroborate the required culpability." United States v. Murrell, 368 F.3d 1283, 1288, 95 Fed. Appx. 1283 (11th Cir. 2004). This Court has held that a defendant may be convicted under § 2422(b) even if he attempted to exploit only a fictitious minor and communicated only with an adult intermediary. See Lee, 603 F.3d at 912-13; see also Murrell, 368 F.3d at 1286-87.

Ample evidence supports Stahlman's conviction for attempting to entice a minor to engage in sexual activity. The trial evidence{**2019 U.S. App. LEXIS 54**} showed that Stahlman engaged in a monthslong conversation with a man he believed to be the parent of an 11-year-old daughter, during which he discussed in graphic detail plans to meet and engage in sexual activity with the daughter. This conversation began with Stahlman's own Craigslist post seeking a "daddy/daughter fantasy" with a "young 'looking' girl." Stahlman was the first to broach the possibility of engaging in sexual activity with Agent Hyre's fictional 11-year-old, stating that he would not violate his own daughter, but "would play with someone else's," and telling Agent Hyre "I just envisioned licking your daughter's pussy as she slept and you filming it."

As the conversation progressed, Stahlman's responses demonstrated his strong sexual interest in the 11-year-old daughter, including his explicit descriptions of the types of sex acts he wanted to engage in with the girl. Stahlman's messages likewise evinced his intent to induce the daughter, through her father, to engage in sexual activity. For example, Stahlman asked Agent Hyre what he would have to do to "qualify" for the opportunity to meet the daughter, asked questions about what types of sex acts Agent Hyre would or{**2019 U.S. App. LEXIS 55**} would not consent to, and asked Agent Hyre what the daughter would enjoy.

And Stahlman's interest remained strong throughout the conversation-even when Stahlman's scheduling conflicts prevented him from carrying out the first planned meeting in November 2016, Stahlman told Agent Hyre he had not changed his mind and was still interested in sex with the daughter if he could find the time. Once the January 2017 meeting was set, Stahlman reiterated how much he was looking forward to meeting the daughter, and Stahlman took a substantial step toward doing so when he drove from his home in Longwood (wearing a child-friendly Ninja Turtles t-shirt) to meet Agent Hyre in Lake Mary.

Stahlman protests that there is an innocent explanation for all of this conduct-namely, that the entire thing was a big misunderstanding, as he believed he was conversing with an adult couple as part of a

fantasy role-playing scenario, and not with the father of an actual 11-year-old girl. The problem for Stahlman is that the {934 F.3d 1226} jury was not required to accept this innocent explanation. Indeed, because Stahlman testified in his own defense at trial, the jury was free to (and, based on their verdict, clearly did) disbelieve{2019 U.S. App. LEXIS 56} his testimony and consider it as substantive evidence of his guilt. See United States v. Bacon, 598 F.3d 772, 776 (11th Cir. 2010).

Contrary to Stahlman's contention, this Court is not required on appeal to rule out every hypothesis of innocence. Rather, in reviewing the sufficiency of the evidence supporting a jury's guilty verdict, we must review the evidence in the light most favorable to the government and draw all reasonable factual inferences in favor of the verdict. United States v. Henderson, 893 F.3d 1338, 1348 (11th Cir. 2018). And if there is "any reasonable construction of the evidence [that] would have allowed the jury to find the defendant guilty beyond a reasonable doubt," we will not overturn the jury's verdict. Id. (internal quotations omitted); see also United States v. Peters, 403 F.3d 1263, 1268 (11th Cir. 2005) (stating that the "jury is free to choose among reasonable constructions of the evidence," and the evidence need not "exclude every reasonable hypothesis of innocence" (internal quotations omitted)). Here, there is such a reasonable construction of the evidence. The jury reasonably could have concluded (and clearly did conclude) beyond a reasonable doubt that, despite Stahlman's testimony to the contrary, Stahlman meant what he said in his communications with Agent Hyre and traveled to the Gander Mountain in Lake Mary for the purpose{2019 U.S. App. LEXIS 57} of carrying out the sexual acts he had described with the 11-year-old girl.

Because sufficient evidence supported Stahlman's § 2422(b) conviction, the district court did not err in denying his motions for judgment of acquittal.13

V. OBSTRUCTION OF JUSTICE ENHANCEMENT

Stahlman next asserts that the district court erroneously applied a two-level obstruction of justice enhancement, rendering his 292-month sentence procedurally and substantively unreasonable.14 Stahlman contends that (1) the district court failed to make any particularized factual findings regarding his alleged perjury, and (2) this Court lacks a meaningful basis for appellate review.15

Under § 3C1.1 of the Sentencing Guidelines, a two-level enhancement applies if {934 F.3d 1227} the defendant obstructed justice. U.S.S.G. § 3C1.1. Specifically, § 3C1.1 provides:

> If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels.Id. The commentary to § 3C1.1 further provides{2019 U.S. App. LEXIS 58} that a defendant qualifies for the obstruction enhancement if he commits perjury. Id. § 3C1.1, comment. n.4(B).

The Supreme Court has defined perjury in this context as "false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." United States v. Dunnigan, 507 U.S. 87, 94, 113 S. Ct. 1111, 1116, 122 L. Ed. 2d 445 (1993). A "material" matter under § 3C1.1 is "evidence, fact, statement, or information that, if believed, would tend to influence or affect the issue under determination." U.S.S.G. § 3C1.1, comment. n.6.

In Dunnigan, the Supreme Court explained that "not every accused who testifies at trial and is convicted will incur an enhanced sentence under § 3C1.1 for committing perjury," noting that not all testimony that is inaccurate is perjurious. See Dunnigan, 507 U.S. at 95, 113 S. Ct. at 1117. The Supreme Court therefore explained that when a defendant objects to an obstruction enhancement

resulting from his trial testimony, "a district court must review the evidence and make independent findings necessary to establish a willful impediment to or obstruction of justice, or an attempt to do the same." Id. The Supreme Court further stated that, "[w]hen doing so, it is preferable for a district court to address each element of the alleged perjury in{2019 U.S. App. LEXIS 59} a separate and clear finding." Id. However, the Supreme Court also stated that a district court's determination that the obstruction enhancement applies is sufficient as long as "the court makes a finding of an obstruction of, or impediment to, justice that encompasses all of the factual predicates for a finding of perjury." Id.; see also United States v. Singh, 291 F.3d 756, 763 (11th Cir. 2002) ("[A] general finding that an enhancement is warranted suffices if it encompasses all of the factual predicates necessary for a perjury finding." (internal quotations omitted)).

Here, as an initial matter, we disagree with Stahlman's contention that there is no meaningful basis for appellate review. Certainly, Stahlman is correct that the district court did not, at the sentencing hearing, specifically "address each element of the alleged perjury in a separate and clear finding." Dunnigan, 507 U.S. at 95, 113 S. Ct. at 1117. But the district court did explicitly "adopt[] the position of the Probation Office as stated in the [PSR] addendum," which lays out the factual basis for applying the obstruction enhancement. Specifically, the PSR Addendum explains:

> The defendant, under oath, made materially false statements. According to the jury trial transcript, defense counsel asked Stahlman, "Have you{2019 U.S. App. LEXIS 60} ever had sexual thoughts about children?" Stahlman responded, "No, I have not." However, during the government's proffered cross-examination, the government questioned Stahlman about an author on a website known as asstr.org. Stahlman explained that asstr is a collection of erotic fantasies and erotic stories uploaded by anonymous authors. When asked what people do on asstr.org, he said, "They post sexually explicit stories generally engaging minors." He then acknowledged {934 F.3d 1228} having read several of these sexually explicit stories. The government then asked, "Mr. Stahlman, do you masturbate to those stories?" Stahlman responded, "Yes." Based on this information, it appears the defendant was not honest to the jury as this latter statement contradicts his statement that he has never had sexual thoughts about children.

Additionally, in pronouncing its sentence, the district court clearly indicated that it did not find Stahlman's trial testimony credible and that it was holding Stahlman "accountable for what [he said] at trial" because "what [he said] at trial simply wasn't true." While it may have been "preferable" for the district court to provide a more detailed discussion of its reasons{2019 U.S. App. LEXIS 61} for applying the obstruction enhancement at sentencing, we are not left without any meaningful basis for review here. See Dunnigan, 507 U.S. at 95, 113 S. Ct. at 1117; Singh, 291 F.3d at 763.

We also discern no clear error in the factual findings underlying the obstruction enhancement or any error in the district court's application of the guidelines to those facts. The district court's findings (as outlined in the PSR Addendum) support a finding of perjury. To show perjury, "(1) the testimony must be under oath or affirmation; (2) the testimony must be false; (3) the testimony must be material; and (4) the testimony must be given with the willful intent to provide false testimony and not as a result of mistake, confusion, or faulty memory." United States v. Ellisor, 522 F.3d 1255, 1277 n.34 (11th Cir. 2008) (internal quotations omitted). Here, Stahlman's testimony that he never had sexual thoughts about children (1) was made under oath at trial and (2) undoubtedly was material to whether Stahlman actually intended to engage in sexual activity with an 11-year-old. See id.; U.S.S.G. § 3C1.1, comment. n.6.

Stahlman disputes that his testimony about his lack of sexual interest in children was false and thus, likewise, disputes that it was given with the willful intent to provide false testimony. But given

Stahlman's later proffered{2019 U.S. App. LEXIS 62} testimony that he had masturbated to erotic stories about adults engaging in sex with children, it was not clearly erroneous for the district court to find that Stahlman's earlier testimony before the jury was not truthful. Stahlman asserts that the Asstr.org stories were mere fantasies that do not reflect his real-life desires. Importantly though, these were not stories describing adults engaged in fantasy role-playing, in which one adult was portraying a minor, but rather were stories describing sexual encounters between adults and children. In other words, the Asstr.org stories may have been fantasies, but they are fantasies about children, not adults acting as children, and Stahlman's interest in those stories belies his statement that he never had sexual thoughts about children. In this context, too, we "accord great deference to the district court's credibility determinations," and here the district court explicitly found Stahlman's testimony to be "implausible" and "incredible." Singh, 291 F.3d at 763 (internal quotations omitted).

In short, the district court did not err in finding Stahlman had perjured himself at trial and, having so found, properly applied the two-level obstruction of justice enhancement{2019 U.S. App. LEXIS 63} under § 3C1.1. See U.S.S.G. § 3C1.1 & comment. n.4(B); Dunnigan, 507 U.S. at 94-95, 113 S. Ct. at 1116-17. We therefore affirm Stahlman's 292-month sentence.

VI. MOTION FOR NEW TRIAL

Stahlman's final argument is that the district court erred in denying his "Motion for New Trial, Request for an Indicative Ruling, and Prayer for an Evidentiary {934 F.3d 1229} Hearing."16 Specifically, Stahlman frames the issue as both a Brady claim and a Rule 16 discovery violation.

We agree with the government's concession that, because Stahlman's new trial motion was based on the non-disclosure of Agent Hyre's prior discipline, the district court erred by using the "against the weight of the evidence" standard. But we also agree with the government that Stahlman's claims fail under the correct legal standards and that any error was harmless.

A. Brady Claim

To establish a Brady violation, the defendant must show: (1) the government possessed evidence that was favorable to him; (2) he did not possess the evidence and could not have obtained it with reasonable diligence; (3) the prosecution suppressed the favorable evidence; and (4) if the evidence had been disclosed, there is a reasonable probability that the outcome of his trial would have been different. United States v. Vallejo, 297 F.3d 1154, 1164 (11th Cir. 2002). Evidence is "favorable" under Brady if{2019 U.S. App. LEXIS 64} it is exculpatory or impeaching. See United States v. Naranjo, 634 F.3d 1198, 1212 (11th Cir. 2011). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." United States v. Hano, 922 F.3d 1272, 1292 (11th Cir. 2019) (internal quotations omitted).

Stahlman contends that Agent Hyre's prior discipline constitutes favorable evidence under Brady because it is impeachment evidence that could have undermined the jury's confidence in Agent Hyre's testimony. The government disagrees, arguing, inter alia, that: (1) the November 2, 2017 notice indicates that Agent Hyre admitted his policy violation during the disciplinary investigation, and "[t]here were no allegations or findings of lack of candor or untruthfulness on his part"; (2) that Stahlman failed to establish any inconsistency in Agent Hyre's trial testimony and his assertions to the FBI investigators; and (3) Stahlman failed to show evidence of the suspension was material under Brady.

We need not delve into those matters because, even assuming Agent Hyre's prior discipline does carry some impeachment value, we see no reasonable probability that, had this evidence been disclosed, the outcome of Stahlman's trial would have been different. Vallejo, 297 F.3d at 1164. As we explained above in discussing Stahlman's motions for judgment of acquittal,{2019 U.S. App.

LEXIS 65} ample evidence-primarily in the form of Stahlman's own emails to Agent Hyre graphically describing the sex acts he wished to perform on the 11-year-old daughter-supported Stahlman's conviction in this case. None of the content of Stahlman's online communications with Agent Hyre was disputed. The only contested issue was whether Stahlman intended to entice a minor or whether he, as he testified, believed he was only acting out a sexual role-playing fantatsy with consenting adults. We simply fail to see how evidence of Agent Hyre's prior discipline, which was wholly unrelated to this case and had but little, if any, bearing on the credibility of his testimony, would have tipped the balance in this case so significantly as to undermine our confidence in the jury's guilty verdict. Hano, 922 F.3d at 1292. The district court's error in failing to properly analyze Stahlman's Brady claim was therefore harmless. See United States v. Hernandez, 433 F.3d 1328, 1335-37 (11th Cir. {934 F.3d 1230} 2005) (concluding that the district court's error in employing the wrong legal standard to evaluate a motion for new trial was harmless).

B. Rule 16 Violation

Under Federal Rule of Criminal Procedure 16, the government must disclose to the defendant any evidence that "is material to preparing the defense." Fed. R. Crim. P. 16(a)(1)(E)(i). This Court will not reverse a conviction based{2019 U.S. App. LEXIS 66} on a Rule 16 discovery violation unless the defendant demonstrates that the violation prejudiced his substantial rights. United States v. Chastain, 198 F.3d 1338, 1348 (11th Cir. 1999); United States v. Camargo-Vergara, 57 F.3d 993, 998 (11th Cir. 1995).

To obtain a new trial based on newly discovered evidence, a defendant must show that: (1) the evidence was discovered after trial; (2) his failure to discover the evidence was not due to a lack of diligence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that a new trial would probably produce a different result. United States v. Barsoum, 763 F.3d 1321, 1341 (11th Cir. 2014). This Court has repeatedly stated that motions for new trial based on newly discovered evidence are "highly disfavored" and should be granted only with "great caution." See United States v. Scrushy, 721 F.3d 1288, 1304 (11th Cir. 2013); United States v. Campa, 459 F.3d 1121, 1151 (11th Cir. 2006); United States v. Jernigan, 341 F.3d 1273, 1287 (11th Cir. 2003).

Stahlman's Rule 16 violation/newly discovered evidence claim fails for much the same reasons as his Brady claim. As explained above, Agent Hyre's prior discipline is, at best, merely impeaching evidence, as it has no bearing on Stahlman's guilt or innocence in this case. See Barsoum, 763 F.3d at 1341. And, as also explained above, given the ample evidence supporting Stahlman's guilt, evidence of Agent Hyre's prior discipline would not probably produce a different outcome. See id. In short, we see no reason here to throw "great caution" to the wind{2019 U.S. App. LEXIS 67} and take the "highly disfavored" step of granting Stahlman a new trial on this basis. See Scrushy, 721 F.3d at 1304. Again, the district court's error in applying the wrong standard to Stahlman's claim was harmless.

Given our conclusions regarding the merits of Stahlman's motion for new trial, we also conclude that the district court did not err in declining to conduct discovery, hold an evidentiary hearing, or hold oral argument on Stahlman's motion. See Jernigan, 341 F.3d at 1289 (indicating that a district court does not err in denying an evidentiary hearing on a motion for new trial where the defendant's claim was properly denied).

VII. CONCLUSION

For the foregoing reasons, we affirm Stahlman's § 2422 child enticement conviction and 292-month sentence.

AFFIRMED.

Footnotes

1

After he arrested Stahlman, Agent Hyre discovered that Stahlman in fact did not have a nine-year-old daughter.

2

The Static-99 test is an assessment tool used for sex offender risk assessment in adult male sex offenders.

3

After testifying before the jury, Stahlman proffered testimony, outside the presence of the jury, regarding the absence of child pornography on his phone. Stahlman testified that he had 87 videos and over 2,000 still images on his phone, and none of those videos or images depicted children in the nude or in sexually explicit positions.

On cross-examination during this proffer, Stahlman admitted that his phone did contain an email with a link to ASSTR.org, which is "a collection of erotic fantasies and erotic stories uploaded by anonymous authors." Stahlman further acknowledged that authors post sexually explicit stories about minors on ASSTR.org, including stories about children aged 10 to 12. Stahlman stated that he had read, and masturbated to, three such stories.

4

This disclosure was made in a different case in the Middle District of Florida, but as that defendant and Stahlman were both represented by the Federal Public Defender's Office in that district, Stahlman's counsel also learned of the disclosure.

5

Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

6

After filing his motion for new trial in the district court, Stahlman filed a motion with this Court requesting that Case No. 17-14387 be stayed pending the district court's ruling on his new trial motion. This Court granted Stahlman's motion for a stay until the district court ruled on Stahlman's post-trial motion.

7

Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993).

8

"We review for abuse of discretion the district court's decisions regarding the admissibility of expert testimony and the reliability of an expert opinion." United States v. Frazier, 387 F.3d 1244, 1258 (11th Cir. 2004) (en banc). "Indeed, the deference that is the hallmark of abuse-of-discretion review requires that we not reverse an evidentiary decision of a district court unless the ruling is manifestly erroneous." Id. (internal quotations and citation omitted). "Thus, it is by now axiomatic that a district court enjoys considerable leeway in making these determinations." Id. (internal quotations omitted). "[W]e must affirm unless we find that the district court has made a clear error of judgment, or has applied the wrong legal standard." Id. at 1259.

9

We note that Stahlman does not argue on appeal that the district court should have more narrowly circumscribed its ruling, excluding only those opinions that it found violated Rule 704(b), while allowing Dr. Carr to provide more general testimony akin to that at issue in Hite. See also United States v. Joseph, 542 F.3d 13, 21-22 (2d Cir. 2008) (urging the district court to "give a more thorough consideration" on retrial to the defendant's proposed expert testimony "about role-playing in the context of sexually explicit conversations on the Internet"), abrogated in part on other grounds as recognized in United States v. Ferguson, 676 F.3d 260, 276 n.14 (2d Cir. 2011); United States v. Gladish, 536 F.3d 646, 650-51 (7th Cir. 2008) (concluding district court should have allowed expert to testify regarding the defendant's use of the internet "to gratify his sexual desires" and preference for "emotional and physical distance" in interpersonal relationships, making it "unlikely, given the defendant's psychology, that he would act on his intent"). Accordingly, we express no opinion as to whether a more limited version of Dr. Carr's testimony might have been permissible.
10

We review a district court's ruling regarding the admissibility of lay opinion testimony under Rule 701 for a clear abuse of discretion. United States v. Jayyousi, 657 F.3d 1085, 1102 (11th Cir. 2011). Errors in admitting opinion testimony as lay testimony are subject to harmless error review. See United States v. Sarras, 575 F.3d 1191, 1217 (11th Cir. 2009). Additionally, we will not reverse a conviction based on a Rule 16 expert disclosure violation unless the violation prejudiced the defendant's substantial rights. See Hamaker, 455 F.3d at 1332; United States v. Tinoco, 304 F.3d 1088, 1119-20 (11th Cir. 2002).
11

We note that courts in this Circuit have at times admitted expert testimony concerning the age of a child depicted in a videotape. See United States v. Anderton, 136 F.3d 747, 750 (11th Cir. 1998) (discussing competing expert testimony presented at trial regarding age of children in a video). In Anderton, however, the Court did not address whether such age estimate testimony must come from an expert or requires specialized knowledge. See id. In other words, it certainly may be permissible for an expert to testify regarding a person's estimated age, but that does not necessarily mean that only an expert can give such testimony.
12

We review de novo the district court's denial of a motion for judgment of acquittal on sufficiency of the evidence grounds. United States v. Keen, 676 F.3d 981, 994 (11th Cir. 2012). In doing so, we review the trial evidence in the light most favorable to the government, drawing all reasonable factual inferences in favor of the verdict. United States v. Henderson, 893 F.3d 1338, 1348 (11th Cir. 2018). If there is "any reasonable construction of the evidence [that] would have allowed the jury to find the defendant guilty beyond a reasonable doubt," we will not overturn the jury's verdict. Id. (internal quotation omitted).
13

Stahlman also contends that the cumulative effect of the trial errors requires reversal of his conviction. Under the cumulative error doctrine, an aggregation of otherwise nonreversible errors can warrant reversal where the combined effect of the errors denied the defendant his constitutional right to a fair trial. See United States v. Mosquera, 886 F.3d 1032, 1052 (11th Cir. 2018). As explained above, the district court committed no trial error, and thus Stahlman's cumulative error claim fails. See United States v. King, 751 F.3d 1268, 1277-78 (11th Cir. 2014) (stating "where there is no error or only a single error, there can be no cumulative error" (internal quotations omitted)).
14

We review a district court's factual findings supporting an obstruction of justice enhancement for

clear error and its application of the guidelines to those facts de novo. United States v. Perkins, 787 F.3d 1329, 1341 (11th Cir. 2015). In doing so, we "accord great deference to the district court's credibility determinations," and also "give due deference to the district court's application of the guidelines to the facts." United States v. Singh, 291 F.3d 756, 763 (11th Cir. 2002) (internal quotations omitted).

15

Contrary to the government's contention, we conclude that Stahlman properly preserved his challenge to the obstruction enhancement by including it in his objections to the PSR and by objecting to his sentence's procedural reasonableness after the district court pronounced his sentence.

16

We review for an abuse of discretion the denial of a motion for new trial (1) based on newly discovered evidence, United States v. Barsoum, 763 F.3d 1321, 1341 (11th Cir. 2014), and (2) based on an alleged Brady violation, United States v. Naranjo, 634 F.3d 1198, 1206 (11th Cir. 2011).

APPENDIX B

Criminal Trial Case No. 6:17-cr-00045-CEM-DCI
Docket Entry 116
Direct Examination of Lay Witness Rodney James Hyre
Pages 1-12, 17-20, 29-32, 53-56, 65-72
Examined May 23, 2017; Filed November 8, 2017

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,	
Plaintiff,	Case Number
v.	6:17-cr-45-Orl-41DCI
JOHN DAVID STAHLMAN,	
Defendant.	

Transcript of the jury trial

before the Honorable Carlos E. Mendoza

May 23, 2017; 1:27 p.m. (afternoon session)

Orlando, Florida

Appearances:

Counsel for Plaintiff: Alejandro J. Salicrup
Karen Gable

Counsel for Defendant: Karla Mariel Reyes

Proceedings recorded by mechanical stenography, transcript produced by computer.

Diane Peede, RMR, CRR
Federal Official Court Reporter
401 West Central Boulevard, Suite 4600
Orlando, Florida 32801

Index of transcript

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PROCEEDINGS

THE COURT: For the record, we have had some computer issues. The jury came in previously and indicated that they had not had any issues while they were on lunch in terms of the Court's orders.

The government was then asked to call their first witness and they called F.B.I. Special Agent Rodney Hyre.

As soon as Mr. Salicrup returns, then we will get started.

All right. So is the government ready to proceed?

MR. SALICRUP: We are, Your Honor.

THE COURT: Defense?

MS. REYES: Yes, Your Honor.

THE COURT: All right. Let's go.

(Jury present at 1:27 p.m.)

THE COURT: Ladies and gentlemen of the jury, feel free to be seated in your chairs once you return. We're back online and ready to start as soon as you're comfortable.

All right. Please be seated in the courtroom.

Special Agent Hyre, please state your full name into the microphone, spelling your last name for the record.

THE WITNESS: Yes, sir. Rodney James Hyre, H-y-r-e.

THE COURT: Mr. Salicrup, your witness.

MR. SALICRUP: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SALICRUP:

Q Agent Hyre, where do you presently work?

A I'm a special agent with the F.B.I., assigned to the Tampa division, and I work out of the Orlando resident agency. Our headquarters is in Maitland, Florida.

Q And how long have you worked there?

A I'm in my 16th year as an agent.

Q And what is your current assignment?

A I'm the coordinator for the Violent Crimes Against Children Task Force.

Q Can you please tell me what the Violent Crimes Against Children Task Force is?

A Yes, sir. We investigate the sexual exploitation of children, matters to include child pornography, solicitation and enticement matters predominantly.

Q And prior to your assignment with the Violent Crimes Against Children Task Force, were you assigned somewhere else in the F.B.I.?

A Yes, sir. For my first seven, seven and a half years or so I worked mostly counterterrorism issues.

Q And what did you do before the F.B.I., sir?

A I -- after graduating from college, I joined the Navy. I was a Navy aviator, naval officer for eleven years. I left the Navy in the summer, June of 2001, went to fly for the

commercial airlines, was flying for the commercial airlines when 9/11/2001 happened, and shortly after 9/11/2001 I joined the F.B.I.

Q What are your current duties with the Violent Crimes Against Children Task Force?

A I'm an investigator. I investigate the sexual exploitation of children for the F.B.I. Also, as the coordinator, I work with the other two investigators on my -- full-time investigators on my task force, and we work together on these cases.

Q What kind of investigations do you conduct, sir?

A Like I said before, predominantly child pornography investigations as well as solicitation and enticement investigations.

Q Have you received training to conduct these investigations?

A I have. I've been certified by the F.B.I., both basic and advanced undercover training, and a lot of other training to go with that.

Q Can you describe what additional training you've received, sir?

A There's week-long symposiums that have been put on. They put them on in Dallas and Atlanta. I've been to five total. I don't know if it's three in Dallas or three in Atlanta and two in the other place, but these are week-long

classes or week-long symposiums where classes are made available to help us get better at what we do and just showing us different techniques.

Q Do you also present at conference, sir?

A I do. Myself and the other two investigators on our task force, we do presentations for middle schools, high schools, and also for the parents of children, teaching them about the dangers of sexual exploitation on the Internet and hopefully how to avoid that.

Q And through all the training you've described, what kind of information have you learned?

A That --

MS. REYES: Objection to vague, Your Honor.

THE COURT: Sustained.

BY MR. SALICRUP:

Q What type of information have you learned through your training, sir?

MS. REYES: Objection, Your Honor. The same objection.

THE COURT: You need to tighten up that question. That's so broad, I'm sustaining that objection.

BY MR. SALICRUP:

Q Does your training include how to identify common websites used?

A Yes, sir. Part of my training was discussions of

different websites that are used by sexual predators to target and exploit children.

Q Does your training also include terminology?

A Yes, sir.

Q What were you doing on November 16, 2016?

A On November 16, 2016, working out of the office here in Maitland, Florida. I was working in an undercover capacity. I went onto the Craigslist website in order to look for persons who may be trying to sexually exploit children.

Q What computer were you using, sir?

A My F.B.I. undercover computer.

Q And what e-mail, if any, were you using at that point?

A I have several undercover e-mails. The one I was using in this particular instance was Flydad1013@gmail.

Q And did you begin an investigation that day, sir?

A I did.

Q How did that investigation begin?

A I was looking through the Craigslist ads in the Personals, Casual Encounter section of Craigslist, and I saw an ad that said "Daddy-Daughter Fantasy," and had a picture of a very young-looking girl. I estimated her age to be ten to twelve years of age. It was --

MS. REYES: Objection, Your Honor; non-responsive.

THE COURT: Overruled on that objection.

A I saw a picture of a very young girl accompanying the

ad. I estimated her to be ten years -- ten to twelve years of age, and she was in her panties. And because of the nature of the advertisement, I thought that this very well might be a person that was attempting to find a child to sexually exploit.

Q Did you preserve the ad as evidence in this case?

A I did. I printed it out and kept a copy.

Q Okay. Can you please turn to what has been marked for identification purposes as Government Exhibit 1 in front of you.

A Yes, sir.

Q Do you recognize that?

A Yes, sir.

Q What is it?

A This is the ad I was just alluding to, the Daddy-Daughter Fantasy ad.

Q How do you recognize it?

A This is -- this is the ad that I printed out from the computer.

Q Okay. And is it a true and accurate copy of the advertisement that was posted on Craigslist on November 16, 2016?

A Yes, sir, it is.

MR. SALICRUP: Your Honor, we move to admit it as Government Exhibit Number 1.

THE COURT: All right.

The government's moving in Government 1. Any objection, Ms. Reyes?

MS. REYES: No, Your Honor.

THE COURT: What's been previously marked as Government's Exhibit 1 will be admitted and marked as such. Without objection from the defense, you may publish.

MR. SALICRUP: If we could, publish that, please.

BY MR. SALICRUP:

Q Sir, what is Craigslist?

A Craigslist is a website where it can be used for lots of different things. There's a forum section to Craigslist, community sections where people can go on and talk about issues of the day.

I think a lot of people know Craigslist as a place where you can buy and sell things. You can also look for jobs via Craigslist. But there's also a part of Craigslist which has the Personals section, which is used as kind of like a hookup site. I wouldn't say a dating site, because based on what I have seen there --

MS. REYES: Objection as non-responsive.

THE COURT: All right. Follow up with some questions. You're saying, "What is Craigslist?" We could go on for a couple of days with that.

So I'm going to sustain the objection and allow you

to ask more specific questions, but go on ahead.

BY MR. SALICRUP:

Q And where on Craigslist was this advertisement placed?

A It was in the Personals, Casual Encounters section.

Q Okay. And what is the Personals/Encounters section?

A That's a section where people go on to find other persons to meet up with and generally have sex with.

Q And, sir, what does this ad say? "Longwood" up top?

A Yes, sir. "Longwood" is in parentheses. That would indicate that the person posting the ad is in the Longwood, Florida, area.

Q And you stated that it was in the Personals section. Can you explain if it was in the M4W section?

A There's not an M4W section. The "M4W" signifies that it's a man looking for a woman. This is under the Casual Encounters section under Personals.

Q And what type of ads are posted in the Casual Encounters section?

A Advertisements, people looking to hook up with other folks for sexual liaison.

Q What about this ad caught your attention as an undercover investigator?

A Several things. The title itself caught my attention, Daddy-Daughter Fantasy. And then the picture, which to me appears to be a ten- to twelve-year-old little girl with

her -- you know, obviously just wearing panties and posed in a sexual manner.

If you look to the right of the ad -- it's not on the screen here.

MR. SALICRUP: Can we expand that a little bit?

A It says age of 32. That indicates that the person posting the ad is 32 years of age. The way I interpreted this is, by definition, a 32-year-old couldn't have more than a 14-year-old daughter. So this was a person definitely looking to have -- looking to meet up with a child.

Then when I read down into the body of the ad, I continued to see signs that told me that the person was looking to meet up with a child.

Q And what were those signs that indicated to you?

A Yes, sir. He says, "I'm a married white guy looking for a young-looking" -- and he has "looking" in quotation marks -- "girl to play out some fantasies with me."

And I took the quotation marks to be a way of nullifying the word "looking." Kind of like someone would say, "I really enjoy paying my taxes," it nullifies that word.

To my experience, this ad would be flagged. It was so --

MS. REYES: Objection, Your Honor; non-responsive.

THE COURT: I'm going overrule. He can answer.

A This was so -- with the picture -- in my experience,

with the picture, this ad was so over the top targeting a child, that the word "looking" is put in there to keep it from being flagged.

In other words, Craigslist users, when they see an ad that they see to be illegal --

MS. REYES: Objection, Your Honor. I'm going to object to 701.

THE COURT: All right. The entire 701 or something specific out of 701?

MS. REYES: He's not qualified as an expert on Craigslist postings.

THE COURT: All right. Why don't you both approach, please.

(Bench conference as follows.)

THE COURT: All right. Ms. Reyes, go ahead and restate your objection.

MS. REYES: Yes, Your Honor. I'm objecting to this as improper expert testimony.

THE COURT: All right.

So she's saying that you're asking for opinion testimony on someone who hasn't been qualified as an expert. What's your response to that?

MR. SALICRUP: Your Honor, under 701, he's talking reliably about the information that was in front of him in the context of that, which is what Cano, which I believe is

THE COURT: Any objection?

MS. REYES: No, Your Honor.

THE COURT: All right. What's been previously marked as Government's 2 will be admitted and marked as such. You may publish.

MR. SALICRUP: Thank you.

BY MR. SALICRUP:

Q Can you please turn now to Government Exhibit Number 3?

A Yes, sir.

Q Did you preserve the Kik communications between yourself and the defendant in this case?

A I did.

Q What did you do to preserve them?

A I printed them out from my undercover phone and made copies.

Q Do you recognize the text included in that exhibit?

A Yes, sir. These are the Kik messages between myself and Mr. Stahlman.

Q And are they a true and accurate printout of all the communications you exchanged with the defendant between November 2016 and January 2017?

A Yes, sir.

Q Did you modify or edit those messages in any way?

A No, sir.

MR. SALICRUP: Your Honor, at this point we move to

exhibit -- move to admit Government Exhibit 3.

THE COURT: Any objection?

MS. REYES: No, Your Honor.

THE COURT: Government Exhibit 3 will be admitted and marked as such without objection. You may publish.

MR. SALICRUP: Thank you.

If we could, please publish Government Exhibit 2, starting at e-mail one, Bates number three.

BY MR. SALICRUP:

Q Sir, what did you write in response to the defendant's Craigslist ad?

A I responded, "Hi. I'm the SWM," for single white male. "Straight dad of my own eleven YO," for year old, "daughter.

"Feel the same way you do, I think. HMU," for hit me up, "if this interests you."

Q And at what time did you send that e-mail?

A That was sent at 9:37 in the morning.

Q Is that Eastern Time?

A Yes, sir.

Q And did you receive a response?

A I did. Five minutes later Mr. Stahlman wrote back, "Definitely interested. Depends on what you want to do."

Q And when did you receive that response, sir?

A That was five minutes after I e-mailed Mr. Stahlman. I'm sorry. At 9:42 a.m.

Q Thank you. Did you write him back?
A I did. I said, "I appreciated your statement about not defiling your daughter. How old is she, if you don't mind me asking?"
Q Now, did Mr. Stahlman respond?
A Yes, sir. He responded, "She is nine."
Q And what did you say to that, sir?
A I said, "Sweet. Love that age. So cute and innocent.
"Does her mom know about your secret thoughts?"
Q Did you receive a response to your question?
A Yes, sir. Mr. Stahlman responded, "Hell, no. LOL," for laugh out loud. "No I wouldn't defile my little girl, but I think I would play with someone else's, but I am selfish. I wouldn't give mine up in exchange. Just getting that out there."
I think that's a typo. He meant to write, "that out there."
Q Now, in the context of this conversation, what did you interpret, "I am selfish. I wouldn't give mine up in exchange. Just getting that out there," to mean?
MS. REYES: Objection, Your Honor, to improper opinion and speculation.
THE COURT: What's your response to that?
MR. SALICRUP: Your Honor, this is admissible under Rule 701 as it's in the context of the conversation. It's

relevant.
THE COURT: 701(a), the Court's finding is that this is rationally based, this witness's perception, this particular answer. The objection is overruled. He may respond.
A Could you ask me again, please.
Q Yes, sir. In the context of this e-mail conversation, what did you -- how did you interpret the terms, "I am selfish. I wouldn't give mine up in exchange. Just getting that out there"?
A He was telling me that he would have sex with my little girl, but he wasn't going to trade me his nine-year-old for me to have sex with.
Q And what did you say back, sir?
A I said, "No. That's very cool. I figured she didn't know.
"I'm a voyeur and a bit twisted, I guess," in parenthesis. "My wife left several years ago, so my situation is a little different from yours."
Q What is a "voyeur"?
A A voyeur is someone that likes to watch things, in this case sex acts.
Q And why did you state that your wife had left several years ago?
A Just building any female out of the equation, that

A Yes, sir. I said, "No. I mean that -- what you said earlier, that with the right person, I would let her play as long as I get to watch."

Q And how did Mr. Stahlman respond to that e-mail?

A Mr. Stahlman wrote back, "Ah. So what have you watched her play with others before? So what would I have to do to. . .qualify," in quotations, "myself the opportunity to meet your lovely little lady?"

Q Now, in the context of this conversation, how did you interpret what he -- when he said, "qualify myself the opportunity"?

A What does he have to do to be able to meet my eleven-year-old.

MS. REYES: Objection, Your Honor. Again, I'm going to renew my previous objections to 701. (A) through (c) are conjunction. They're all required in order to be admitted, and I'm objecting as improper expert testimony.

THE COURT: Okay. Under 701, I hereby find that this testimony is rationally based on this witness's perception; that it is helpful to clearly understanding the witness's testimony or to determining a fact in issue; and based on the predicate that the government laid, there is specialized knowledge within the scope of this testimony.

So based on that finding, and that finding is applicable retroactively, I'm going to allow this testimony.

Your objection, though, is noted for the record.

BY MR. SALICRUP:

Q Please continue, sir.

A That he wanted to know what he had to do so that he could meet and have sex with my eleven-year-old daughter.

Q And what did you tell him?

A I wrote, "Yes, a couple of times before. Found it to be incredible.

"Can you describe yourself? Is there a chance you would back out? Had that happen, too, and it was very uncomfortable and not something I would want to repeat for me or her. Better to let me know now."

Q Why did you ask him if there was a chance he would back out?

A I wanted to know if he was serious about this, if -- if he was playing or if he intended on seeing this all the way through and having sex and showing up to have sex with my child. I was giving him a chance to stop, break the chain and walk away from this.

Q Turning now to e-mail number 28 on Bates ten, what did Mr. Stahlman tell you in response?

A Mr. Stahlman wrote back, "Obviously there is fear associated, but I think my desire will easily outweigh that. I'm five nine, 200 pounds, military, so I'm somewhat muscular but not really. I'm white, trimmed downstairs. I could send

a pic.

"Anything in particular you'd want to know?"

Q Now, again, in the context of this conversation, what did you interpret "trimmed downstairs" to mean?

A He was letting me know --

MS. REYES: Objection, Your Honor. I'm going to renew my previous objections and would ask to approach.

THE COURT: Yes, approach.

(Bench conference as follows.)

MS. REYES: Your Honor, again, this is specialized knowledge and he hasn't been disclosed as an expert to me, and I don't know how this Court is finding that it's --

THE COURT: Just let me ask you this.

MS. REYES: Yes, Your Honor.

THE COURT: They laid a predicate on him of all the training he did, all the presentations he did, the fact that he's been doing this for eight years, leading investigations, testifying in Court many times with regard to solicitation, child exploitation, and child pornography.

Now, they haven't asked that he be qualified as an expert, but, quite frankly, if they did, I would.

But why doesn't he have specialized knowledge in this area, based on the predicate that he laid?

MS. REYES: If he did, Your Honor, I would have asked for a Daubert hearing and I would have filed my own

motion in limine. I don't think he's an expert, Your Honor.

THE COURT: Well, every single trial he's testified in these types of cases, he's either been able to testify under 702 or qualified as an expert.

So your position is he's not an expert and, further, he has no specialized knowledge per 702?

MS. REYES: Yes, Your Honor.

THE COURT: Okay.

MS. REYES: And if Your Honor does find that he's an expert, then I would move to strike him as they did not disclose him.

THE COURT: I'm not making that finding. They haven't requested it.

But their position as that under 702, he meets the criteria and has specialized knowledge that would assist the jury in the context of that ruling. You disagree with that, correct?

MS. REYES: Yes, Your Honor.

THE COURT: All right.

What's your position on that?

MR. SALICRUP: Your Honor, under 701, he's talking about the context of the conversation.

The question was is he trimmed downstairs in the context of what they're discussing. That's both rationally based on his perception and helpful to understanding what --

just a crazy fucking day. Looking forward to it."

Q Did Mr. Stahlman e-mail you back?

A Yes, sir. He wrote, "It's okay. Life happens.

"So photo? Shower?"

Q Now, what time was that e-mail sent?

A That was at 6:20 in the morning on the 26th of January.

Q And how did you respond to Mr. Stahlman's questions?

A Told him, "I've sent pics. Not comfortable sending more until we meet.

Then I wrote, "Shower???" with three question marks.

Q Did he respond to your question?

A He did. He says, "Okay on the pic. I had asked her -- I had asked if her and I could shower together to help break the ice, if it's an option.

"I asked for the pic of her in action. Just ease my mind.

"Yes -- yes, you have sent two pics, but I don't want -- but I don't want to look like a pic collector."

Q Now, what did you say in response to that e-mail?

A I said, "Shower actually sounds like a cool idea. My master bath has a glass door I can watch through."

Q Okay. And why did you agree to the idea of the shower?

A Mr. Stahlman had told me that he wanted to start off by molesting my daughter in the shower, and I was saying no to him about the pictures. So I said yes to him about the

shower.

Q Did Mr. Stahlman write you back?

A He wrote back, "Wonderful. We could each explore each other's bodies and it not be all that sexual, then be all clean for the fun part.

"Does she like kissing? Does she like talking?"

Q Did he e-mail you again?

A He did. He followed that up with, "Also, I don't think I got a response about condoms. Are we worried about pregnancy or disease?"

Q Did you answer his question?

A I answered the first question. I said, "She likes gentle kissing. On Sunday I mentioned I might have a friend coming over to meet her next week, and she said, 'I hope he kisses soft and is slow with me.'"

Q How did Mr. Stahlman respond to that e-mail?

A He wrote, "Gentle kissing and slow, I can definitely do that."

Q Did you say anything back?

A I said, "She likes that. I will love watching."

Q Turning to e-mail number 103 of Bates 28, at what time was this e-mail sent, sir?

A This is at 6:29 in the morning on the 27th of January.

Q And who sent that e-mail?

A From Mr. Stahlman.

Q To whom?
A To me.
Q And what does it say?
A So I won't have time to get on my e-mail this weekend. So today we need to solidify a place and time.
Also, will I need to wear condoms?
Q Did you respond to that question?
A I did. I said, "Okay. I live in the area of Lake Mary and Lake Emma. How about we meet in the area of Gander Mountain parking lot around 8:30 a.m. Monday morning?
"Yes, you can bring condoms."
Q What did Mr. Stahlman say next?
A He said, "Okay. Sounds good. I'm not a new favorite of condoms nor do I have any." I took that to mean he wasn't a favorite of condoms.
MS. REYES: Objection; improper opinion.
THE COURT: Response?
MR. SALICRUP: Your Honor --
THE COURT: He can just read it and you can argue whatever you --
MR. SALICRUP: Okay.
THE COURT: -- want with regard to it. That's fine.
MR. SALICRUP: I don't think he finished reading the e-mail, Your Honor.

A Yes, sir. "I'm not a new favorite of condoms nor do I have any. Are they a requirement?"
Q Did you say anything back?
A I wrote back, "Who is a fan of condoms?
She is too young to get pregnant. It's just the DDF thing."
"DDF" stands for drug and disease free.
"It's just the DDF thing. I can't explain a disease. Are you DDF?"
Q Why did you say, "She's too young to get pregnant"?
A One more chance of pointing out that this girl is eleven years old. She's too young to get pregnant.
Q And why did you say, "I can't explain a disease? Are you DDF"?
A Because as a deviant dad of an eleven-year-old, I can't explain why she would have a sexually transmitted disease.
Q Did Mr. Stahlman say anything back?
A He said, "Yes. I am DDF. Only had two partners in the last year, and there is still no guarantee on intercourse."
Q Turning to e-mail number 108 at Bates 29, what did you say in response to Mr. Stahlman?
A "It's good you're clean. So are we."
Q And did Mr. Stahlman write you back?
A Yes, sir. On the 29th he wrote back -- this is at 1:07 in the morning. He wrote back, "I am really looking forward

THE COURT: Yes.

(Discussion off the record between Mr. Salicrup and Ms. Gable.)

MR. SALICRUP: Your Honor, we need a brief break to get the grand jury transcript to ensure that the defense has that. If we could have that?

THE COURT: Have you not handed them over yet?

MS. REYES: No, Your Honor, he hasn't.

THE COURT: Okay.

And you need a few minutes to gather that up?

MR. SALICRUP: We have it. I just need someone to walk it over.

THE COURT: All right. Let's get moving on that.

MR. SALICRUP: Absolutely.

THE COURT: Just let Miss Darleen know when you have it.

And are you going to be asking for a break to review that?

MS. REYES: Yes, Your Honor.

THE COURT: What kind of break are you asking for?

MS. REYES: I don't know how long his transcript is, Your Honor.

MR. SALICRUP: It's not long.

THE COURT: What's "not long"?

MR. SALICRUP: The transcript itself.

THE COURT: No. What's "not long"? I don't know what "not long" is. I know what pages are.

MR. SALICRUP: In the vicinity of 30, 35 pages, if I recall correctly.

THE COURT: All right. Let's hurry up with that.

MR. SALICRUP: Yes, Your Honor.

Sir, I have one more matter I would like to bring up.

THE COURT: Yes.

MR. SALICRUP: As an oversight, I had neglected to admit the phone during my direct of Agent Hyre.

THE COURT: All right.

Is there any objection to the admission of the phone based on the predicate laid?

MS. REYES: No, Your Honor.

THE COURT: All right.

What's been previously marked as Government's 7 will be admitted and marked as such without objection, and you can publish at the appropriate time.

So let's -- can you call over there and have someone bring it on over? You don't have it with you?

MR. SALICRUP: No, I don't, but I can definitely call. I'm getting on that now.

THE COURT: Okay. I'm going to, by the way, tell our security officer that it's going to be more like a 20- to

25-minute break now. Okay?

MR. SALICRUP: Understood.

THE COURT: And, Ms. Reyes, if you need more time than that, you'll get it. Okay?

MS. REYES: Yes, Your Honor.

THE COURT: Let them know that, please.

Court's in recess.

(Recess taken at 2:42 p.m.)

(Jury not present at 3:08 p.m.)

THE COURT: All right. Please be seated, everyone.

Ms. Reyes, have you had enough time to review the material you requested?

MS. REYES: Yes, Your Honor.

THE COURT: Is there any further matter we need to take up before you start your cross-examination?

MS. REYES: Yes, Your Honor. Based on the Court's rulings, specifically on Special Agent Hyre's improper opinion testimony, I would move for a mistrial.

THE COURT: Did I say he gave improper opinion testimony?

MS. REYES: No. I'm saying it.

THE COURT: Okay. You're arguing that?

MS. REYES: Yes, Your Honor.

THE COURT: Okay.

MS. REYES: He -- in the commentary to the Statute

701, they're quoting Joseph emerging expert issues under the 1993 disclosure amendments to the Florida Rules of Civil Procedure and discussing the disclosure requirements. And I'm on the 2017 edition, Your Honor.

Rule 701, which is page 307, they're quoting and they're saying noting that there's no good reason to allow what is essentially surprise expert testimony, and that the Court should be vigilant to preclude manipulative conduct designed to thwart the expert disclosure and discovery process.

Special Agent Hyre was allowed to testify to his opinion regarding what would constitute terms that a sexual predator would use, his interpretation of what my client was saying, of what my client meant, numerous -- prior to the last objection, where they weren't soliciting his opinion anymore, the first part of it included lots of questions which began in the context of this e-mail conversation.

The Court found that this was specialized knowledge, and that had there been a 702 disclosure, that this Court would have found him to be an expert.

There was no disclosure of Special Agent Hyre giving opinion testimony as an expert. So I renew my objections based on lack of proper disclosure pursuant to 702 and then improper opinion testimony.

THE COURT: All right. Thank you, Ms. Reyes.

Would the government like to respond to the argument?

MR. SALICRUP: Yes, Your Honor. I think this Court, what it found was that it qualified both under Rule 701, and had we qualified Agent Hyre as an expert under 702, that we could have proceeded that way, not that we were limited to 702.

Also, I believe this Court properly considered as stated in the Cano decision of 2002, I believe, that Mr. Hyre's testimony was both rationally based on the witness's perception, that is, that it was circumscribed to the ballpark of the e-mail communications that they were having and that's how the questions were framed specifically for that reason, and, further, that they were helpful to clearly understanding the witness's testimony or determining a fact in issue.

So Agent Hyre's testimony was really about what was happening within -- it's all contextual. It wasn't a manipulative attempt at bringing in expert testimony, as sister counsel is representing to the Court.

THE COURT: All right.

Anything else, Ms. Reyes?

MS. REYES: No, Your Honor.

THE COURT: All right. He's been an F.B.I. agent for 16 years. For approximately half of that, he's been a

coordinator for Violent Crimes Against Children Task Force, where he received specialized training on child pornography, child solicitation, child enticement.

He's also testified that he has had basic and advanced undercover training, ongoing week-long trainings, has also presented numerous times at conferences, and has been specially trained in sex terminology and identifying child pornography websites and communications of that sort. That's the predicate that the government laid.

I understand what the defense's objections are. I don't think that the defense was ambushed by this testimony. The government obviously could have noticed him as an expert. They made a decision not to. But if I'm not mistaken, these e-mails were turned over, Mr. Salicrup, prior to trial to defense counsel.

MR. SALICRUP: Yes, Your Honor.

THE COURT: When was Special Agent Hyre turned over to the defense as a witness in this case? Early on; is that correct?

MR. SALICRUP: Fairly early on. At least -- I would venture a guess at least a month before trial, Your Honor.

THE COURT: Okay. I understand.

In the context of the items that have been provided to defense, they knew or reasonably knew that Special Agent

Hyre, considering his background, was going to be testifying about these particular e-mails.

I don't think this rises to the level of a mistrial, but certainly, Ms. Reyes, your request for a mistrial has now been preserved and that'll be reviewed, I'm sure.

So is there anything else from the defense before we continue?

MS. REYES: No, Your Honor.

THE COURT: All right. Let's go on ahead and bring the jury back.

MR. SALICRUP: Your Honor, before we do that, the United States does have a point that they would like to bring up to the Court.

THE COURT: Sure.

MR. SALICRUP: We would like to seek clarification from the Court. I cannot speak for Ms. Reyes or what she intends to do during her cross. However, we want to confirm that this Court's orders regarding the lack of child pornography on the phone are still in place.

THE COURT: I mean, my order is pretty clear, and she's been instructed that if she believes a door has been opened, that she's to approach sidebar.

So other than rereading my order into the record, I mean, I stand behind what my ruling was. And I know Ms.

Reyes is going to follow the rules in here.

If you want to go through a door that you believe is opened, just approach sidebar and we'll go there. But I thought the entire discussion on this particular point and her attempt to call one of her experts was something that was going to happen after the government rested in their case in chief.

So you're worried about her cross-examining these witnesses on otherwise inadmissible matters?

MR. SALICRUP: Correct.

THE COURT: All I can give you is my ruling. And if you think that she's crossed the line, you're certainly welcome to object to it.

MR. SALICRUP: Thank you, Your Honor.

THE COURT: All right. Let's go on ahead and bring the jury back.

And for the purposes of the record, the motion for mistrial is denied.

Thank you, Darleen.

MR. SALICRUP: Your Honor, we've already moved the phone into evidence; is that accurate?

THE COURT: That's correct. Without objection, it was moved in before the break.

MR. SALICRUP: Could we do it again before the jury, once they come in?

Certificate of Service

I HEREBY CERTIFY that, on the date printed below, a true and correct copy of the foregoing Extraordinary Writ, Motion Requesting Appointment of Counsel, and Application to Proceed In Forma Pauperis, were mailed, via the United States Postal Service, pre-paid, to the Clerk of Court and to no other party as this habeas corpus petition is filed ex parte.

I certify under penalty of perjury tha the foregoing is ture and correct.
Executed on October 17, , 2022.
28 U.S.C. § 1746

John Stahlman
Petitioner
Pro Se

John Stahlman #68280-018
Unit A-2
Federal Correctional Complex - Low
P.O. BOx 1031
Coleman, FL 33521

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. Case No. 6:17-mj-1074 DCI

JOHN DAVID STAHLMAN

AUSA: Emily Chang
Defense Attorney: Alisha Marie Scott

JUDGE:	DANIEL C. IRICK United States Magistrate Judge	DATE AND TIME:	January 30, 2017 3:15-4:52PM 1hr 37 minutes
DEPUTY CLERK:	Natividis Rodriguez	REPORTER:	digital
INTERPRETER:	None	PRETRIAL/PROB:	Sonya Williams

CLERK'S MINUTES
INITIAL APPEARANCE (PC ARREST)

DEFENDANT TAKEN INTO FEDERAL CUSTODY TODAY

Case called, appearances made, procedural setting by the Court.
No issue as to competency.
Court summarizes the charge in the Complaint and advises defendant of his rights.
Government advises of the potential penalties.
Defendant requests court appointed counsel; Court appoints FPD; Order to enter.
Government seeks detention.
Special Agent Rod Hyre sworn for the government.
Cross examination.
Heidy Stahlman sworn for Defendant.
Cross examination.
Testimony concluded.
Court finds probable cause to believe offenses charged have been committed; Order to enter.
Court DENIES bond and defendant will remain in custody pending trial; Order to enter.
Court adjourned.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. Case No. 6:17-mj-1074 DCI

JOHN DAVID STAHLMAN

ORDER APPOINTING
FEDERAL PUBLIC DEFENDER

Because the above named defendant has testified under oath or has otherwise satisfied this Court that he: (1) is unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, it is

ORDERED that the Federal Public Defender is appointed to represent the above named defendant in this case. The defendant may be required to contribute to the cost of this representation depending on circumstances to be determined at a later date.

DONE and **ORDERED** in Orlando, Florida on January 30, 2017.

DANIEL C. IRICK
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Assistant U.S. Attorney
Federal Public Defender