

No.

IN THE
SUPREME COURT OF THE UNITED STATES

RODNEY THOMAS TERNOVSKY,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida Fifth District Court of Appeal**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA
MONDAY, FEBRUARY 1, 2021

Case No. 5D23-0091
LT Case No. 2018-CF-212
CORRECTED

RODNEY THOMAS TERNOVSKY,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

On appeal from the Circuit Court for Clay County.
Steven B. Whittington, Judge.

Michael Ufferman, of Michael Ufferman Law Firm,
P.A., Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Virginia

Chester Harris, Senior Assistant Attorney General,
Tallahassee, for Appellee.

November 28, 2023

PER CURIAM.

AFFIRMED.

HARRIS, SOUD, and PRATT, JJ., concur

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

IN THE CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT, IN AND FOR CLAY
COUNTY, FLORIDA

CASE NO.: 2018CF000212

DIVISION: A

STATE OF FLORIDA

v.

RODNEY THOMAS TERNOVSKY,

Defendant.

JUDGMENT

[] Probation Violator/Revoked and Terminated

[] Retrial

[] Community Control Violator/Revoked and
Terminated

[] Resentence

The Defendant, RODNEY THOMAS TERNOVKSY, being personally before this Court represented by MITCHELL STONE, the attorney of record, and the state represented by TONYA PATTERSON-BARGE, and having:

[X] been tried and found guilty by jury/by the Court
of the following crime(s)

[] entered a plea of guilty to the following crime(s)
[] entered a plea of nolo contendere to the following crime(s)

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
1	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)
Degree of Crime	<u>Case Number</u>	OBTS <u>Number</u>
F2	2018CF000212	1005010335

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
2	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

<u>Degree</u>	<u>Case Number</u>	OBTS
<u>of Crime</u>		<u>Number</u>
F2	2018CF000212	1005010335

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
3	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

<u>Degree</u>	<u>Case Number</u>	OBTS
<u>of Crime</u>		<u>Number</u>
F2	2018CF000212	1005010335

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
4	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

<u>Degree</u>	<u>Case Number</u>	OBTS
<u>of Crime</u>		<u>Number</u>
F2	2018CF000212	1005010335

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
5	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

<u>Degree</u>	<u>Case Number</u>	OBTS
<u>of Crime</u>		<u>Number</u>
F2	2018CF000212	1005010335

[page 3]

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
6	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

<u>Degree</u>	<u>Case Number</u>	OBTS
<u>of Crime</u>		<u>Number</u>
F2	2018CF000212	1005010335

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
7	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

<u>Degree</u>	<u>Case Number</u>	OBTS
<u>of Crime</u>		<u>Number</u>
F2	2018CF000212	1005010335

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
8	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

<u>Degree</u>	<u>Case Number</u>	OBTS
<u>of Crime</u>		<u>Number</u>
F2	2018CF000212	1005010335

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
9	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

<u>Degree</u>	<u>Case Number</u>	OBTS
<u>of Crime</u>		<u>Number</u>
F2	2018CF000212	1005010335

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
10	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree <u>of Crime</u>	<u>Case Number</u>	OBTS <u>Number</u>
F2	2018CF000212	1005010335

<u>Count</u>	<u>Crime</u>	Offense Statute <u>Number(s)</u>
11	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree <u>of Crime</u>	<u>Case Number</u>
F2	2018CF000212

<u>Count</u>	<u>Crime</u>	Offense Statute <u>Number(s)</u>
12	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree Case Number
of Crime
F2 2018CF000212

<u>Count</u>	<u>Crime</u>	Offense Statute <u>Number(s)</u>
13	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree Case Number
of Crime
F2 2018CF000212

<u>Count</u>	<u>Crime</u>	Offense Statute <u>Number(s)</u>
14	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree Case Number
of Crime
F2 2018CF000212

<u>Count</u>	<u>Crime</u>	Offense Statute <u>Number(s)</u>
15	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree Case Number
of Crime
F2 2018CF000212

<u>Count</u>	<u>Crime</u>	Offense Statute <u>Number(s)</u>
16	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree Case Number
of Crime
F2 2018CF000212

[page 4]

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
17	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree Case Number
of Crime
F2 2018CF000212

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
18	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree Case Number
of Crime
F2 2018CF000212

<u>Count</u>	<u>Crime</u>	Offense Statute <u>Number(s)</u>
19	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree Case Number
of Crime
F2 2018CF000212

<u>Count</u>	<u>Crime</u>	Offense Statute <u>Number(s)</u>
20	OBSCENE MATERIAL- POSSESS - POSS CONTROL VIEW DEPICTION CHILD SEX CONDUCT	827.07(5)

Degree Case Number
of Crime
F2 2018CF000212

<u>Count</u>	<u>Crime</u>	Offense Statute
		<u>Number(s)</u>
21	TRANSMISSION OF CHILD PORNOGRAPHY BY ELECTRONIC DEVICE	847.015

Degree Case Number
of Crime
F3 2018CF000212

[X] and no cause being shown why the Defendant should not be adjudicated guilty, IT IS ORDERED that the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

[] and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to any other offense included in this Statute sentence you will have a DNA blood draw or Swab for DNA database.

[] and good cause being shown; IT IS ORDERED
THAT ADJUDICATION BE WITHHELD

[page 6]

Defendant: RODNEY THOMAS TERNOVSKY

Case Number: 2018CF000212

As to Count: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, 20 and 21

SENTENCE

The defendant, being personally before this court, accompanied by the Defendant's attorney of record, MITCHELL A STONE, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defendant should not be sentenced by law, and no cause being shown

(Check one if applicable)

- [] and the Court having on deferred imposition of sentence until this date
- [] and the Court having previously entered a judgment in this case on now resentences the

Defendant

[] and the Court having placed the Defendant on
[] probation [] community control and having
subsequently revoked the Defendant's
[] probation [] community control

It is the Sentence of the Court that:

[] The Defendant pay a fine of \$ ___, pursuant to
section 775.083, Florida Statutes, plus \$ ___ as
the 5% surcharge required by section 938.04,
Florida Statutes

[X] The Defendant is hereby committed to the
custody of the Department of Corrections

[] The Defendant is hereby committed to the
custody of the Sheriff of Clay County, Florida

[] The Defendant is sentenced as a youthful
offender in accordance with section 958.04,
Florida Statutes

**To Be Imprisoned (Check One; unmarked
sections are inapplicable.):**

[] For a term of natural life.

[X] For a term of 266.55 MONTHS

[] Said SENTENCE SUSPENDED for a period of
subject to conditions set forth in this order.

If “split” sentence, complete the appropriate paragraph

[] Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

[] However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on [] probation [] community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of [] Probation [] Community Control set forth in a separate order entered herein.

In the event the Defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

[page 7]

Defendant: RODNEY THOMAS TERNOVSKY

Case Number: 2018CF000212

As to Counts: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, 20 and 21

SPECIAL PROVISION

By appropriate notation, the following provisions apply
to the sentence imposed.

Firearm [] It is further ordered that the 3-year
 minimum imprisonment provisions of
 section 775.087(2), Florida Statutes, is
 hereby imposed for the sentence
 specified in this count.

Drug [] It is further ordered that the
Trafficking mandatory minimum imprisonment
 provisions of section 893.135(1), Florida
 Statutes, is hereby imposed for the
 sentence specified in this count

Controlled [] It is further ordered that the 3-year
Substance minimum feet of School imprisonment
With 1,000 provisions of section 893.13(1)c1, &
 893.135(1)e1, Florida Statutes, is
 hereby imposed for the

	sentence specified in this count
Habitual	[] The Defendant is adjudicated
Felony	a habitual felony offender
Offender	and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in open court
Habitual	[] The Defendant is adjudicated
Violent	a habitual felony offender
Felony	and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of Year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order or stated on the record in open court
Law	It is further ordered that the Defendant
Enforce-	[] shall serve a minimum of years before
ment	Protection Release in accordance
Act	with section 775.0823, Florida Statutes

Capital Offense [] It is further ordered that the Defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes

Short- [] It is further ordered that the 5-year
Barreled minimum provisions of section 790.221
Rifle (2), Florida Statutes are hereby
Machine imposed for the sentence specified in
Gun this count

Continuing [] It is further ordered that the 25-year minimum sentence provisions of section 893 .20, Florida Statutes, are hereby imposed for the sentenced specified in this count

[page 8]

Defendant: RODNEY THOMAS TERNOVSKY

Case Number: 2018CF000212

As to Counts: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21

Other Provisions

Retention [] The Court retains

of jurisdiction over the Defendant
Jurisdiction pursuant to section 947. 16(3), Florida
Statutes

Jail Credit [X] It is further ordered that the
Defendant shall be allowed a total of 43
DAYS as credit for time incarcerated
before imposition of this sentence

Consecutive [X] It is further ordered
/Concurrent that the sentence imposed for this
as to Other count shall run [] consecutive

Counts [X] concurrent with the sentence set
forth in As to Counts: 1, 2, 3, 4, 5, 6, 7,
8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,
19, 20 and 21.

Consecutive [] It is further ordered
/Concurrent that the composite term as to of all
Other sentences imposed for the counts
Convictions specified in this order shall run []
consecutive [] concurrent with the
following:
[] any active sentence being served
[] specified sentences:

In the event the above sentence is to the

Department of Corrections, the Sheriff of Clay County, Florida, is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the Department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The Defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the Clerk of the Court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the Court further recommends ____:

DONE AND ORDERED in open court at Green Cover Springs, Clay County, Florida, April 6, 2022.

[signature of Judge Steven B. Whittington]

JUDGE STEVEN B. WHITTINGTON

Excerpts from the transcript of the
February 24, 2022, trial, pages 70,
145-146, & 149-152:

IN THE CIRCUIT COURT FOR THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR CLAY COUNTY, FLORIDA.
CASE NO.: 10-2018-CF-0212
DIVISION: A

STATE OF FLORIDA,

-vs -

RODNEY THOMAS TERNOVSKY.

Defendant.

STATE OF FLORIDA)

COUNTY OF CLAY)

Proceedings before the Honorable Steven
Whittington, Judge of the Circuit Court, Division A,
as cause in this matter came to be heard on
Wednesday, February 23, Thursday, February 24,
and Friday, February 25, 2022, before Angela M.
Mathis, Registered Professional Reporter, Florida
Professional Reporter, and Notary Public in and for

the State of Florida at Large.
OFFICIAL REPORTERS, INC.
10950-60 SAN JOSE BLVD, SUITE 185
JACKSONVILLE, FL 32223
(904) 358-2090
Official Reporters, Inc.

APPEARANCES

TONYA PATTERSON-BARGE and RANDI
DAUGUSTINIS,
Esquires, Attorney at Law
Assistant State Attorneys
Appearing on behalf of the State of Florida

MITCHELL STONE, Esquire, Attorney at
Law
Privately Retained Attorney
Appearing on behalf of the Defendant.

* * *

LESLIE BRITT

Redirect Examination by Ms. Deaugustinis (page) 64

[page 70] -----

PROCEEDINGS

I think the nature of the first three pictures – two pictures, I'm sorry, are reflected that there's some sexual engagement going on and I would object on the basis that that's the prejudicial effect outweighs any probative value. The probative value is to identify that this is identified to Rodney Ternovsky and this was on the same flash drive that we discovered child porn, and that's fair game. But having four screenshots, number one is overkill; and number two, is – especially the photographs that are suggestive that sexual activity is occurring in them, is unnecessary and irrelevant and prejudicial. 403 and Rule 404 – 90.403 and 90.404 I would object.

* * *

R. M. ELLIS

Direct Examination by Ms. Barge (page) 73

[page 145] -----

PROCEEDINGS

Q [by the prosecutor] And what additional files were commingled on the thumb drive found inside the safe?

A They were multiple files that we later discovered through forensics and through the simple viewing of it, they were GoPro videos, brands – specific brands, which was the same brand that we recovered. And they are intimate sexual nature videos depicting the Defendant and Leslie Britt.

Q And Leslie Britt. Did you recognize her from encountering her at the search warrant that day?

A Yes.

Q So when you saw those videos you recognized her inside those videos.

A I did. Yes.

Q And as it relates to the driveway, the USB thumb [page 146] drive found in the computer bag in the driveway, were there commingled GoPro videos on that as well?

A Yes. They were.

Q And what did those GoPro videos depict?

A They depicted the same intimate sexual acts involving the Defendant and Leslie Britt.

Q Were shots of the video images prepared in preparation for trial here today?

A Yes. They were.

Q And did those screenshots depict the Defendant's face to represent he is the person on those sexual videos?

A Yes. They do.

.....

[page 149]

Q Okay. In those GoPro videos you testified that they were of the Defendant engaged in sexual activity with Leslie Britt. Is that correct?

A Yes.

Q I asked you if you took screenshots of those videos.

A Yes.

Q Okay. And have you previously reviewed the State's O, P, and R in this case?

A I have.

Q Okay. And do they fairly and accurately represent just one capture of the video of the Defendant in engaged in sexual activity with his girlfriend?

A Yes. They do.

MS. BARGE: Your Honor, at this time I'd like to move into evidence State's O, P, and R, based on the Court's previous ruling.

THE COURT: Okay.
[page 150]
MR. STONE [defense counsel]: Subject to the same objection I raised earlier.

THE COURT: Understood. All right. It would be overruled and be admitted as State's Exhibit 3, I believe.

MS. BARGE: Three, four, and five.

THE COURT: Three, four, and five. Very

well.

(State's Exhibit O, P, and R for Identification received into Evidence as State's Exhibits 3, 4, and 5.)

BY MS. BARGE:

Q And Detective Ellis, we're not going to play those videos, just the screenshots from them. I would like to put on the screen, State's Exhibit O, Your Honor.

THE COURT: You may publish.

BY MS. BARGE:

Q Thank you. State's O into evidence now as State's 3. Do you recognize the person on the screen?

A I do.

Q And who is that?

A That's the Defendant, Mr. Ternovsky.

Q To the right of State's 3 we see a leg. Does that depict the leg of Leslie Britt?

[page 151]

A Yes. It does.

Q And is this, State's 3, a still shot of the video that you reviewed?

A It is a still from the GoPro video.

Q State's 4. Who is that on the screen?

A The same. The Defendant, Mr. Ternovsky.

Q And is this a still shot from the video that you reviewed related to this case?

A Yes.

Q Specifically a video of the Defendant and

his girlfriend engaged in sexual activity.

A Yes.

Q We see his hand in a downward motion.
What was he doing?

A He actually had the GoPro and was
arranging it, setting it up.

Q In State's 5 here, who is depicted in that
screenshot?

A The Defendant.

Q Same thing. Is this a screenshot from one
of the videos – GoPro videos commingled on the
thumb drives?

A Yes.

Q The Defendant's hand is seen reaching in a
downward motion. What is he doing – what was he

doing in the [page 152] video at this time?

A Adjusting, positioning.

Q The GoPro?

A Yes. The GoPro.

Excerpts from the transcript of the
February 23, 2022, jury selection proceedings,
pages 16-21:

IN THE CIRCUIT COURT FOR THE
FOURTH JUDICIAL CIRCUIT, IN
AND FOR CLAY COUNTY, FLORIDA.
CASE NO.: 10-2018-CF-0212
DIVISION: A

STATE OF FLORIDA,

-vs -

RODNEY THOMAS TERNOVSKY.

Defendant.

STATE OF FLORIDA)
COUNTY OF CLAY)

Proceedings before the Honorable Steven
Whittington, Judge of the Circuit Court, Division A,
as cause in this matter came to be heard on
Wednesday, February 23, 2022, before Angela M.
Mathis, Registered Professional Reporter, Florida
Professional Reporter, and Notary Public in and for
the State of Florida at Large.

OFFICIAL REPORTERS, INC.
10950-60 SAN JOSE BLVD, SUITE 185
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APPEARANCES

TONYA PATTERSON-BARGE and RANDI
DAUGUSTINIS,
Esquires, Attorney at Law
Assistant State Attorneys
Appearing on behalf of the State of Florida

MITCHELL STONE, Esquire, Attorney at
Law
Privately Retained Attorney
Appearing on behalf of the Defendant.

* * *

[page 16] -----

PROCEEDINGS

[MR. STONE:] The concern I have is just from a standpoint of the necessity of explaining that video. It was of a sexual nature and I don't believe that that is of any value to the point of the trial, and it would simply be either prejudicial to Mr. Ternovsky or embarrassing to the witness. So I don't know that it's necessary to talk about the nature and substance of that video or even to show that video, other than to say – and I imagine that the point of it is to say: This was a file commingled into the flash drive [page 17] with the child pornography, and this file is of Mr. Ternovsky and his girlfriend Leslie Britt. And I don't think they need to go any further. I don't know if they intended to go any further in describing that video or discussing that video other than the salient fact is that they're trying to place Mr. Ternovsky – or use that file as though it was a file that Mr. Ternovsky created and put it onto the flash drive. And I think that could be done without discussing the nature of the actual video.

THE COURT: All right. Ms. Barge?

MS. BARGE: Your Honor, I brought this issue up multiple times prior to today for counsel to advise the State if he had objection so we could litigate it.

The case law that I previously provided to the Court about the Williams Rule evidence did touch on this. I don't have the argument ready right now as I sit here today for the Court, but this is a case of possession. The Court obviously understands what that requires to prove. And the videos are of the Defendant engaging in sexual activity which is a personal and intimate act, and possessing that in conjunction with child pornography helps strengthen the State's argument that this defendant's personal [page 18] videos of his intimate act with his girlfriend with the CP shows that this is his thumb drive. That he possessed it. And that ties it all to him, what we have to prove beyond a reasonable doubt.

Now, does the State intend to play these videos in their entirety? No. The way we intend to present it is to have the witness testify that these are

the videos and what exactly they show. Because, again, the intimacy of the act in which is recorded and the presence of it is there, gives the weight that we need to argue for possession.

And so we intend to have the witness testify that this is the act engaged on in these GoPro videos. That they are on the State's evidence that we are introducing into evidence, but we intend to show the still shots, which is what I've already told counsel. He's seen the still shots we intend to use from the videos. And the witness will testify these are still shots from the videos. They only particularly show this Defendant's face. Granted, we are putting in sexual battery of a child and it wouldn't be as prejudicial to show an adult female's vagina, but we do not intend to do so or to show the actual acts on that video.

But I do think it's relevant and I think the [page 19] value to the State outweighs any prejudicial value, given the nature of what we're here today about, the child sexual abuse material.

So I have the case law and if the Court needs anything more, but I would need time to just find

those points in that case. And I think I have two cases related to this very issue of showing this because it often comes up.

THE COURT: All right. So to make sure I'm clear. There's a video. You don't plan on playing the video. You do plan on asking Ms. Britt about the video and about what the video contains, the two of them having sex. And then publishing still photographs from that video, those photographs being of the Defendant's face.

MS. BARGE: Yes, Judge. But I intend to ask the detectives about that. And there's more than one video. So those are the two corrections I wanted to make to the Court.

THE COURT: So asking the detectives about the video, but only showing still photographs of the Defendant's face.

MS. BARGE: That is correct.

THE COURT: Mr. Stone?

MR. STONE: Again, I still don't see the [page 20] relevance of suggesting that the video – I mean, obviously, if there's a video and it contains Mr. Ternovsky's face, the purpose of that, from what I gather, is to demonstrate that this is a video of him that was created and placed on this thumb drive and so it would, from my observation of the evidence, link Mr. Ternovsky to the thumb drive that contains the child pornography. I think that's the point.

Whether or not he's on vacation and buying an ice cream cone and he's on the video, or whether he's engaging in sexual activity with an adult girlfriend, is of no value or consequence and would, again, I think be overly prejudicial and also embarrassing to the witness. It's just not a necessity to say: And by the way, here's a video of you and Mr. Ternovsky having sex. You remember that? Was that something that was created – I mean, it's suggestive that there's some other bad act. There's no other bad act. It's not a Williams Rule because it's not a similar fact. It's simply a reference to tie Mr.

Ternovsky to the flash drive.

And so to get into the nature of the video or to even discuss what is going on in the video, I think is irrelevant and prejudicial and should be excluded.

THE COURT: All right. I do think it's – the [page 21] way it's been presented by the State, it's a probative material fact of dispute that is whether or not Mr. Ternovsky is in possession of child pornography. That child pornography being found on a thumb drive that also contained this video of an intimate nature, I don't think it's overly prejudicial, especially in the light of the fact that the State is not going to play the video. They're just gonna discuss its contents and show a photograph of the Defendant's face.

So I'm going to overrule the defense's objection and allow that evidence to come in as it has been described to me this morning.