

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LAMARK COMBS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The Eighth Circuit

APPENDIX

PARRISH KRUIDENIER DUNN GENTRY
BROWN BERGMANN MESSAMER & DONELS
L.L.P.

By: /s/ Alfredo Parrish
Alfredo Parrish
Counsel of Record
2910 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 284-5737
Facsimile: (515) 284-1704
Email: aparrish@parrishlaw.com

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA) JUDGMENT IN A CRIMINAL CASE
v.)
Lamark Armond Combs Jr.) Case Number: 3:20-cr-00030-001
) USM Number: 23536-021
) Alfredo G. Parrish and Margaret R. Stuart
) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) Four, Five, and Six of the Superseding Indictment filed on July 7, 2020.

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

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

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2252(a)(2), 2252(b)(1)	Receiving Child Pornography	6/16/2019	4S
18 U.S.C. § 2252(a)(2), 2252(b)(1)	Receiving Child Pornography	3/30/2019	5S
<input checked="" type="checkbox"/> See additional count(s) on page 2			

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

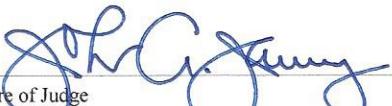
The defendant has been found not guilty on count(s)

Count(s) One, Two, and Three is are dismissed on the motion of the United States.

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

October 14, 2021

Date of Imposition of Judgment


Signature of Judge

John A. Jarvey, Chief U.S. District Judge

Name of Judge

Title of Judge

10/15/21

Date

DEFENDANT: Lamark Armond Combs Jr.
CASE NUMBER: 3:20-cr-00030-001

Judgment Page: 2 of 9

ADDITIONAL COUNTS OF CONVICTION

DEFENDANT: Lamark Armond Combs Jr.
CASE NUMBER: 3:20-cr-00030-001

IMPRISONMENT

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

210 months as to Counts Four, Five, and Six of the Superseding Indictment filed on July 7, 2020, consisting of 210 months as to each of Counts Four and Five, and 120 months as to Count Six, to be served concurrently.

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

The Court recommends the defendant be placed at a facility in proximity to the state of Georgia, to be close to family, if commensurate with his classification needs.

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

The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

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

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

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

before _____ on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Lamark Armond Combs Jr.
CASE NUMBER: 3:20-cr-00030-001

SUPERVISED RELEASE

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

Ten years as to each of Counts Four, Five, and Six of the Superseding Indictment filed on July 7, 2020, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: Lamark Armond Combs Jr.
CASE NUMBER: 3:20-cr-00030-001

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STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: Lamark Armond Combs Jr.
CASE NUMBER: 3:20-cr-00030-001

SPECIAL CONDITIONS OF SUPERVISION

You must participate and follow the rules of a sex offense-specific treatment program, as directed by the U.S. Probation Officer. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You must contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. Sex offense-specific treatment shall be conducted by therapists approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office.

You must submit to periodic polygraph testing, as directed by the U.S. Probation Office, to ensure that you are in compliance with the requirements of your supervision or treatment program. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. Polygraph testing will be conducted by polygraph examiners approved by the U.S. Probation Office, who will release all reports to the U.S. Probation Office. The results of polygraph examinations will not be used for the purpose of revocation of supervised release or probation. As used in this paragraph, "the results" that will not be used in a revocation hearing are the polygraph examiner's ultimate opinions or findings regarding whether deception or a significant response has been detected during the examination. Any statements made by you during the polygraph examination during pre-examination or post-examination interview(s) may be used in any manner, including to generate separate leads or investigations, at a revocation hearing. Failure to answer questions during the polygraph examination may be grounds for revocation, unless you choose not to answer any questions perceived or deemed incriminating, which may then be referred to the Court for resolution.

You must not go to, or remain at, any place for the primary purpose of observing children under the age of 18, or any place where you know children under the age of 18 are likely to be, including parks, schools, and playgrounds, without the prior approval of the U.S. Probation Officer.

You must not have any direct contact (personal, electronic, mail, or otherwise) with any child you know or reasonably should know to be under the age of 18, including in employment, without the prior approval of the U.S. Probation Officer. If contact is approved, you must comply with any conditions or limitations on this contact, as set forth by the U.S. Probation Officer. Any unapproved direct contact must be reported to the U.S. Probation Officer within 24 hours. Direct contact does not include incidental contact during ordinary daily activities in public places.

You must not contact the victim(s), nor the victim's family without prior permission from the U.S. Probation Officer.

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256), including any photograph, artwork, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" (as defined in 18 U.S.C. § 2256). You must not correspond with anyone in the business of providing such material, or enter adult entertainment venues where sexually explicit conduct is the primary product(s) for purchase or viewing.

You must not access the internet or possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media without the prior approval of the U.S. Probation Officer. If computer or internet use for employment is approved by the U.S. Probation Officer, you must permit third party disclosure to any employer or potential employer concerning any computer/internet related restrictions that are imposed upon you.

If approved by the U.S. Probation Officer to use or possess computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media, you must submit your devices to unannounced examinations/searches, and possible removal for a more thorough inspection. You must allow the installation of monitoring hardware and software on such equipment, abide by and cooperate in supplemental conditions of monitoring, and pay the costs associated with this service, as directed by the U.S. Probation Officer. You must notify third parties who use these devices that the devices are subject to monitoring and/or unannounced examinations.

DEFENDANT: Lamark Armond Combs Jr.
CASE NUMBER: 3:20-cr-00030-001

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ADDITIONAL SPECIAL CONDITIONS OF SUPERVISION

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Lamark Armond Combs Jr.
CASE NUMBER: 3:20-cr-00030-001

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CRIMINAL MONETARY PENALTIES

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

Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS \$ 300.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$0.00	\$0.00	

Restitution amount ordered pursuant to plea agreement \$ _____

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

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

the interest requirement is waived for the fine restitution.

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

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

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

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

DEFENDANT: Lamark Armond Combs Jr.
CASE NUMBER: 3:20-cr-00030-001

SCHEDULE OF PAYMENTS

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

A Lump sum payment of \$ 300.00 due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.

While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

The Special Assessment Penalty was paid on June 22, 2021 (Receipt Number IAS300001379).

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

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

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

The visual depictions, the iPhone 8 that was seized on June 6, 2018, and the iPhone 6 that was seized on May 31, 2019, as agreed upon by the parties in the defendant's plea agreement filed on June 9, 2021.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 21-3448

United States of America

Plaintiff - Appellee

v.

Lamark Armond Combs, Jr.

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: April 14, 2022
Filed: August 12, 2022
[Published]

Before SHEPHERD, ERICKSON, and STRAS, Circuit Judges.

PER CURIAM.

Lamark Combs objected to certain facts in the presentence investigation report. What usually happens next is that the government presents evidence and the district court makes findings. This process got short-circuited here, so we vacate and remand for resentencing.

I.

Police found hundreds of sexually explicit images and videos on Combs's cellphone. Combs, who was 19 at the time, solicited them from younger girls. His criminal behavior was not just limited to child pornography. He also talked several of them into having sex with him, including one that was just 13.

Facing five child-pornography counts and one for enticing a minor, Combs decided to enter into a plea agreement with the government. Of the six counts, he pleaded guilty to three of them: two for receiving child pornography, each from a separate victim, 18 U.S.C. § 2252(a)(2), (b)(1); and another for possessing it, *id.* § 2252(a)(4)(B), (b)(2).

Beyond those crimes, Combs maintained his innocence. When the presentence investigation report said he was responsible for receiving pornographic images from two others, Minor Victim 3 and H.P., he filed a written objection. The report noted the objection and stated that the fact dispute remained unresolved.

At sentencing, the fact dispute never came up. Combs did not renew his objection, the government did not present evidence that he had received sexually explicit material from Minor Victim 3 or H.P., and the district court never made any findings. Without ever resolving the factual dispute that the presentence investigation report had flagged, the court sentenced him to 210 months in prison.

II.

“It is well established that a district court commits procedural error . . . by basing a sentence on unproven, disputed allegations rather than facts.” *United States v. Richey*, 758 F.3d 999, 1002 (8th Cir. 2014). Everyone agrees that Combs specifically objected to receiving sexually explicit images from Minor Victim 3 and H.P., meaning that the district court could “not rely on those facts unless the government prove[d] them by a preponderance of the evidence.” *United States v.*

Bowers, 743 F.3d 1182, 1184 (8th Cir. 2014) (citation omitted). The government never did so, yet the district court sentenced Combs as if it had.

Despite the apparent error, the government asks us to affirm for two reasons. First, in its view, Combs waived the objection. Second, it believes any procedural error was harmless. It is wrong on both points.

A.

The transcript is clear that Combs never renewed his objection at sentencing. The question is whether his failure to do so was waiver or forfeiture. If it was waiver—“the *intentional* relinquishment or abandonment of a known right”—then the district court would have had no obligation to address the objection. *United States v. Olano*, 507 U.S. 725, 733 (1993) (emphasis added) (quotation marks omitted); *see Bowers*, 743 F.3d at 1185 (“Because the objections were withdrawn, . . . the district court did not err in relying on the factual statements set forth in the PSR.”). But if he merely forfeited it, then plain-error review applies. *See United States v. Cramer*, 962 F.3d 375, 380 (8th Cir. 2020); Fed. R. Crim. P. 52(b).

In our view, Combs forfeited it. A failure to renew an objection reflects “inaction[,] . . . not acquiescence or assent.” *Robinson v. Norling*, 25 F.4th 1061, 1063 (8th Cir. 2022) (emphasis omitted) (defining forfeiture). At no point did Combs withdraw his objection, either by directly saying so or through a blanket statement that he had no issues with the presentence investigation report. *See, e.g.*, *United States v. Hipolito-Sanchez*, 998 F.2d 594, 596 (8th Cir. 1993) (per curiam) (relying on an explicit withdrawal); *United States v. Replogle*, 628 F.3d 1026, 1030 (8th Cir. 2011) (involving a statement that there were no objections despite previously putting them in writing). Nor did he ever “acknowledg[e] that the facts set forth in [it] were correct.” *United States v. White*, 447 F.3d 1029, 1032 (8th Cir. 2006). All he did was “fail[] to . . . timely assert[]” the objection a second time,

which means that this is a classic case of forfeiture that calls for plain-error review. *Olano*, 507 U.S. at 733 (quotation marks omitted).

B.

Plain-error review places the ball in Combs's court. He must establish both that the error was “clear or obvious” and that it “affected [his] substantial rights.” *Molina-Martinez v. United States*, 578 U.S. 189, 194 (2016). If he can, we will “exercise [our] discretion to correct the forfeited error if [it] seriously affects the fairness, integrity[,] or public reputation of judicial proceedings.” *Id.* (quotation marks omitted).

The government does not dispute that the error here was “clear or obvious.” “It is well established that a district court commits procedural error” when it uses disputed facts to sentence someone. *Richey*, 758 F.3d at 1002. Instead, the focus is on the next step in the plain-error analysis: whether the procedural error affected Combs’s substantial rights. Although the government’s position is that it did not, we disagree.

Counting Minor Victim 3 and H.P. as exploited minors substantially increased the advisory range, from 210 to 262 months without the error to 262 to 327 months with it. *See U.S.S.G. § 2G2.1, cmt. n.7* (explaining that “each minor exploited is to be treated as a separate minor” regardless of whether he or she is “specifically cited in the count of conviction or not”). It is true that the district court varied downward to 210 months, the bottom of the no-error range. But we cannot rule out the possibility that the court might have reduced the sentence even further if it had not made the error. *See Molina-Martinez*, 578 U.S. at 201 (“Absent unusual circumstances, [a criminal defendant] will not be required to show more [than this possibility].”); *see also Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1907 (2018). We cannot speculate, in other words, about what “the district court *might* have done.” *United States v. Harris*, 908 F.3d 1151, 1156 (8th Cir. 2018) (emphasis added) (quoting *Molina-Martinez*, 578 U.S. at 201).

A “failure to correct” the error “will [also] seriously affect the fairness, integrity, and public reputation of judicial proceedings.” *Rosales-Mireles*, 138 S. Ct. at 1911. As the Supreme Court has explained, a plain error like this one “is precisely the type . . . that ordinarily warrants relief under Rule 52(b).” *Id.* at 1907. We send the case back for resentencing, but leave it up to the district court to determine whether to reopen the record for additional evidence on remand. *See United States v. Sorrells*, 432 F.3d 836, 839 (8th Cir. 2005) (allowing the government to present additional evidence “[b]ecause of the confusing context” of the “objections”).

III.

We accordingly vacate Combs’s sentence and remand for resentencing.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

V.

Lamark Armond Combs, Jr.

Date of Original Judgment: 10/15/2021
(Or Date of Last Amended Judgment)

Reason for Amendment:

Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
 Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
 Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
 Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

Case Number: 3:20-cr-00030-001

USM Number: 23536-021

Alfredo G. Parrish, *Jessica Donels, & Margaret R. Stuart
Defendant's Attorney

Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
 Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
 Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
 Direct Motion to District Court Pursuant 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
 Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

pleaded guilty to count(s) Four, Five, and Six of the Superseding Indictment filed on July 7, 2020.
 pleaded nolo contendere to count(s) _____ which was accepted by the court.
 was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2252(a)(2), 2252(b)(1)	Receiving Child Pornography	06/16/2019	4s
18 U.S.C. § 2252(a)(2), 2252(b)(1)	Receiving Child Pornography	03/30/2019	5s

See additional count(s) on page 2

The defendant is sentenced as provided in pages *3 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

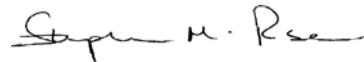
The defendant has been found not guilty on count(s)

Count(s) 1s, 2s and 3s is are dismissed on the motion of the United States.

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

November 29, 2022

Date of Imposition of Judgment



Signature of Judge

*Stephanie M. Rose, Chief U.S. District Judge

Name of Judge

Title of Judge

November 29, 2022

Date

DEFENDANT: Lamark Armond Combs, Jr.

CASE NUMBER: 3:20-cr-00030-001

ADDITIONAL COUNTS OF CONVICTION

DEFENDANT: Lamark Armond Combs, Jr.

CASE NUMBER: 3:20-cr-00030-001

IMPRISONMENT

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

*183 months, consisting of 183 months as to each of Counts Four and Five and 120 months as to Count Six of the Superseding Indictment filed on July 7, 2020, all counts to be served concurrently.

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

*The Court recommends the defendant be returned to FCI Marianna, if commensurate with his security and classification needs.

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

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

at _____ a m. p m. on _____

as notified by the United States Marshal.

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

before _____ on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Lamark Armond Combs, Jr.

Judgment Page: 4 of 9

CASE NUMBER: 3:20-cr-00030-001

SUPERVISED RELEASE

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

*Five years as to each of Counts Four, Five, and Six of the Superseding Indictment filed on July 7, 2020, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: Lamark Armond Combs, Jr.

CASE NUMBER: 3:20-cr-00030-001

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: Lamark Armond Combs, Jr.
CASE NUMBER: 3:20-cr-00030-001

SPECIAL CONDITIONS OF SUPERVISION

You must participate and follow the rules of a sex offense-specific treatment program, as directed by the U.S. Probation Officer. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You must contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. Sex offense-specific treatment shall be conducted by therapists approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office.

You must submit to periodic polygraph testing, as directed by the U.S. Probation Office, to ensure that you are in compliance with the requirements of your supervision or treatment program. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. Polygraph testing will be conducted by polygraph examiners approved by the U.S. Probation Office, who will release all reports to the U.S. Probation Office. The results of polygraph examinations will not be used for the purpose of revocation of supervised release or probation. As used in this paragraph, "the results" that will not be used in a revocation hearing are the polygraph examiner's ultimate opinions or findings regarding whether deception or a significant response has been detected during the examination. Any statements made by you during the polygraph examination during pre-examination or post-examination interview(s) may be used in any manner, including to generate separate leads or investigations, at a revocation hearing. Failure to answer questions during the polygraph examination may be grounds for revocation, unless you choose not to answer any questions perceived or deemed incriminating, which may then be referred to the Court for resolution.

You must not go to, or remain at, any place for the primary purpose of observing children under the age of 18, or any place where you know children under the age of 18 are likely to be, including parks, schools, and playgrounds, without the prior approval of the U.S. Probation Officer.

You must not have any direct contact (personal, electronic, mail, or otherwise) with any child you know or reasonably should know to be under the age of 18, including in employment, without the prior approval of the U.S. Probation Officer. If contact is approved, you must comply with any conditions or limitations on this contact, as set forth by the U.S. Probation Officer. Any unapproved direct contact must be reported to the U.S. Probation Officer within 24 hours. Direct contact does not include incidental contact during ordinary daily activities in public places.

*You must not contact the victims MV1, MV2, MV3, L.H., S.W., C.G., G.T., H.P., nor the victim's family without prior permission from the U.S. Probation Officer.

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256), including any photograph, artwork, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" (as defined in 18 U.S.C. § 2256). You must not correspond with anyone in the business of providing such material, or enter adult entertainment venues where sexually explicit conduct is the primary product(s) for purchase or viewing.

You must not access the internet or possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media without the prior approval of the U.S. Probation Officer. If computer or internet use for employment is approved by the U.S. Probation Officer, you must permit third party disclosure to any employer or potential employer concerning any computer/internet related restrictions that are imposed upon you.

If approved by the U.S. Probation Officer to use or possess computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media, you must submit your devices to unannounced examinations/searches, and possible removal for a more thorough inspection. You must allow the installation of monitoring hardware and software on such equipment, abide by and cooperate in supplemental conditions of monitoring, and pay the costs associated with this service, as directed by the U.S. Probation Officer. You must notify third parties who use these devices that the devices are subject to monitoring and/or unannounced examinations.

DEFENDANT: Lamark Armond Combs, Jr.
CASE NUMBER: 3:20-cr-00030-001

Judgment Page: 7 of 9

ADDITIONAL SPECIAL CONDITIONS OF SUPERVISION

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

*You must comply with all sex offender laws for the state in which you reside and must register with the local sheriff's office within the applicable time frame.

*You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

DEFENDANT: Lamark Armond Combs, Jr.

CASE NUMBER: 3:20-cr-00030-001

CRIMINAL MONETARY PENALTIES

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

Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS \$ 300.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ 0.00	\$ 0.00	\$ 0.00

Restitution amount ordered pursuant to plea agreement \$ _____

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

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

the interest requirement is waived for the fine restitution.

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

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

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

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

DEFENDANT: Lamark Armond Combs, Jr.
CASE NUMBER: 3:20-cr-00030-001

SCHEDULE OF PAYMENTS

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

A Lump sum payment of \$ 300.00 due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.

While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

The Special Assessment Penalty was paid on June 22, 2021 (Receipt Number IAS300001379).

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

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

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

The visual depictions, the iPhone 8 that was seized on June 6, 2018, and the iPhone 6 that was seized on May 31, 2019, as agreed upon by the parties in the defendant's plea agreement filed on June 9, 2021.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 22-3556

United States of America

Plaintiff - Appellee

v.

Lamark Armond Combs, Jr.

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: September 22, 2023

Filed: November 7, 2023

[Unpublished]

Before SHEPHERD, KELLY, and STRAS, Circuit Judges.

PER CURIAM.

Lamark Combs pleaded guilty to receiving and possessing child pornography. *See* 18 U.S.C. § 2252(a)(2), (a)(4)(B), (b). After we sent the case back for resentencing, the district court¹ reopened the record and gave him a 183-month

¹The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.

sentence. Although Combs disagrees with the court’s approach on remand, we affirm.

I.

An unresolved factual dispute from the presentence investigation report required us to vacate Combs’s sentence in the first appeal. *See United States v. Combs*, 44 F.4th 815, 817 (8th Cir. 2022) (per curiam). The dispute was about whether he had received sexually explicit images from two minor victims. *See id.* We “le[ft] it up to the district court to determine whether to reopen the record for additional evidence on remand.” *Id.* at 819.

The district court made the discretionary call to consider additional evidence, including from a detective who testified that Combs requested images from both girls. The new evidence resolved the outstanding factual dispute. And after the court heard argument, it sentenced Combs to 183 months in prison, a downward variance of 52 months from the recommended range. *See* 18 U.S.C. § 3553(a)–(b).

II.

Combs’s procedural challenge is to the district court’s decision to reopen the record and allow the government to present additional evidence. Our review is for an abuse of discretion. *See United States v. Eason*, 907 F.3d 554, 558 (8th Cir. 2018).

The first time around, we made clear that the district court had discretion to reopen the record if it wished. *See Combs*, 44 F.4th at 819. The initial sentencing, after all, was “confusing”: Combs did not renew his objection, no one focused on it at the hearing, and it was unclear at the time whether it was factual or legal. *United States v. Sorrells*, 432 F.3d 836, 839 (8th Cir. 2005); *see Combs*, 44 F.4th at 819. Given that the court did exactly as we suggested on remand, there was no abuse of discretion. *See Eason*, 907 F.3d at 557–58 (holding that a district court may reopen

the record on remand unless directed otherwise); *cf. United States v. Arias*, 74 F.4th 544, 550 (8th Cir. 2023) (“Under the law-of-the-case doctrine, our role in this appeal does not encompass review or re-examination of an issue decided in a prior appeal.”).

III.

Nor is Combs’s 183-month sentence substantively unreasonable. *See United States v. Feemster*, 572 F.3d 455, 464 (8th Cir. 2009) (en banc) (reviewing the substantive reasonableness of a sentence for an abuse of discretion). The record establishes that the district court sufficiently considered the statutory sentencing factors, 18 U.S.C. § 3553(a), and did not rely on an improper factor or commit a clear error of judgment. *See United States v. Larison*, 432 F.3d 921, 923–24 (8th Cir. 2006). In its view, Combs’s requests for child pornography, some of it “hard core,” presented a serious “danger[] to the community,” despite the presence of several mitigating factors. It was within the district court’s discretion to weigh some factors more heavily than others. *See United States v. Bridges*, 569 F.3d 374, 379 (8th Cir. 2009).

IV.

We accordingly affirm the judgment of the district court.

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

2 THE COURT: Please be seated.

3 The record can reflect that we're here in the matter
4 of the United States versus LaMark Combs, Junior. It's Case
5 3:20-cr-30.6 Mr. Combs is before the Court for sentencing. He pled
7 guilty on June 9th of this year to Counts 4, 5, and 6 of the
8 July 7th, 2020, indictment. He is present. He's represented by
9 Al Parrish and Jessica Donels. The Government's represented by
10 Torrie Schneider.11 In preparation for sentencing, I have reviewed the
12 presentence report in its entirety. The Government and
13 Mr. Combs filed sentencing memoranda, and each replied to each
14 other's. Government's Exhibit 1 attached to its brief I
15 reviewed. There was one victim that submitted a victim impact
16 statement. In docket 262, there were a number of exhibits that
17 have been redesignated by the defendant A through G. Those are
18 received. There's also an Exhibit A that was attached to one of
19 the documents in these. Those are the things that I have
20 reviewed.

21 * * * Defense Exhibits A through G received. * * *

22 THE COURT: Mr. Parrish, you had an opportunity to
23 review the presentence report with your client?

24 MR. PARRISH: Yes, Your Honor.

25 THE COURT: Can you summarize, please, the objections

1 that remain and need to be resolved for sentence to be imposed
2 today?

3 MR. PARRISH: I will, Your Honor. Judge, let me
4 correct one thing on the record. It's actually Margaret Stuart
5 here today.

6 THE COURT: Sorry.

7 MR. PARRISH: Jess Donels --

8 THE COURT: Everybody's wearing masks.

9 MR. PARRISH: I know. Ms. Donels is on maternity
10 leave, just came back this week, Judge.

11 Judge, I think what remains to be resolved are as
12 follows:

13 It was one factual issue that one short witness may be
14 called -- or one brief witness may be called.

15 The -- if the amount of images attributed to the
16 defendant is correct, and it's not that they were not on his
17 phone; it's whether or not he accessed them, and you can look at
18 the exhibits to show that.

19 Whether or not the images should be considered due to
20 insufficient evidence, and, Judge, I don't think that has to be
21 argued out. I think you can make a call on our filings. I
22 mean, the Government can speak to it on their own.

23 Whether the Court should determine all victims in this
24 case to determine an appropriate sentence, or should some of
25 them be excluded?

1 And then the grouping, number 5, Judge, is the
2 grouping of the offense which you saw our objections to the
3 grouping. We think -- I think it's L.H. should be excluded from
4 that which would lower the number a little bit.

5 The sixth, Judge, is the enhancement involving the
6 computer. Again, I don't think that has to be argued out,
7 Judge. It's the same standard that we think technology has kind
8 of gotten ahead of the guidelines. There's an argument that I
9 think is well-founded in the law and I think both sides agree
10 to, but the Government can make their own position on that.

11 Then, lastly, whether the guidelines are calculated
12 appropriately. We think, Judge -- and I know there's an issue
13 the Government in their -- I think their reply brief or main
14 brief said they were holding out one count where probation says
15 we get the one point.

16 THE COURT: The Government has to move for that for
17 you to get it.

18 MR. PARRISH: I agree, Judge.

19 And then it's a mitigating point, Judge, but we would
20 call one witness very briefly on that point, whether S.W., which
21 was the 13-year-old, misrepresented her age to the defendant,
22 and that's in the exhibit, Judge, and we'll refer to that
23 exhibit.

24 And whether restitution should be imposed when some of
25 the people are not asking for it -- and, again, I don't think

1 those have to be vetted out -- vetted out.

2 I think a lot of the issues, Judge, are covered in our
3 briefs.

4 THE COURT: And I'm not sure I saw it in your brief.

5 What do you contend the guidelines should be scored as?

6 MR. PARRISH: Well, we didn't actually say, Judge, but
7 we think a 39. I think we did say -- I could be wrong, Judge,
8 but I think we argued 39 -- I think -- no, Judge. I think we
9 said 36 in our -- in our original brief.

10 THE COURT: Because -- because no computer and the
11 grouping?

12 MR. PARRISH: Right. The grouping was the main thing.
13 The computer obviously is an argument I'm sure you're
14 well-acquainted with.

15 THE COURT: Thank you.

16 Ms. Schneider, would you summarize what you believe to
17 be the issues for today?

18 MS. SCHNEIDER: Yes, Your Honor. Thank you.

19 First, as to, Your Honor, I did file Exhibits 1
20 through 4 with our sentencing memo. Did you only get Exhibit 1?

21 THE COURT: No, I did. I'm sorry.

22 MS. SCHNEIDER: That's -- okay.

23 THE COURT: They were just -- they were just -- they
24 were just all attached in one thing.

25 MS. SCHNEIDER: Yes. Okay.

1 THE COURT: I got 1 through 4.

2 * * * Government Exhibits 1 through 4 received. * * *

3 MS. SCHNEIDER: Thank you. Thank you.

4 As to what actually impacts sentencing, the issues
5 that impact the sentence to be imposed, Your Honor, the
6 Government believes that the grouping issue and the computer
7 issue are the only issues that actually impose this -- that
8 actually affect the sentence to be imposed. The other issues
9 that are listed on the PSR are either perhaps resolved between
10 the sentencing memoranda and the replies, or they just don't
11 impact the guidelines, and I would like to note -- I know
12 Mr. Parrish was just reading from the PSR, number 8. It is not
13 S.W. who they're alleging misrepresented her age. I did advise
14 probation that that was just a typo. It was L.H. So I just
15 want to make sure that that's clear.

16 MR. PARRISH: That's correct, Judge.

17 MS. SCHNEIDER: So it's the Government's understanding
18 that really the only issues that affect the sentencing
19 guidelines range is the grouping and the two-level enhancement
20 for the computer use.

21 THE COURT: Do you intend to offer any evidence?

22 MS. SCHNEIDER: I don't believe so, but I'm also not
23 aware of who they're calling for witnesses today, so it's been
24 hard to determine whether the Government needs to call anyone in
25 rebuttal.

1 so under the production guidelines and the 3D grouping
2 guidelines, we have four -- essentially four groups for
3 guidelines purposes, one for Minor Victim 1, one for Minor
4 Victim 2, one for Minor Victim 3, and one for H.P., and that is
5 true even though only Minor Victim 1 and 2 are related to the
6 counts of conviction, so as a result, the group -- probation's
7 groupings calculations in the PSR are accurate.

8 Then the use of the computer in *United States versus*
9 *Kramer* from the Eighth Circuit, the cell phone is considered a
10 computer, so it applies. Furthermore, the defendant agreed to
11 that this enhancement applies in the plea agreement. He
12 admitted that his cell phone contained these images and
13 messages, so the two-level use of a computer applies.

14 Given that, his adjusted -- given those two things,
15 his adjusted level is a 38. You add the 4 units for the 4
16 groups, and his combined adjusted level is 42. Thank you.

17 THE COURT: Are you moving for the third level off?

18 MS. SCHNEIDER: Yes, Your Honor.

19 THE COURT: So you think he has a 39, I?

20 MS. SCHNEIDER: Yeah.

21 THE COURT: Mr. Parrish, in the plea agreement did you
22 agree to the computer enhancement?

23 MR. PARRISH: Judge, I went back and reviewed that. I
24 think we did, Judge, under the context of the conference. And,
25 you know, Judge, it's a tough call, Judge, but I think it can be

1 at -- they're close to Florida and Georgia, so within a 3-hour
2 radius of Georgia or Florida, and I think, Your Honor, there are
3 about six institutions within that range. It's about a three
4 and a half hour drive from their home.

5 THE COURT: In fashioning an appropriate sentence, I
6 have considered each of the factors found in Title 18, United
7 States Code section 3553(a), which means I have considered the
8 nature and circumstances of these offenses as well as the
9 history and characteristics of Mr. Combs.

10 I have considered the seriousness of the offense -- of
11 the offenses. They arise out of the serial recruiting and
12 grooming of young girls for the production of child pornography
13 and for sex. It's not just a sexting case. It's not a mere
14 receipt or possession. The offense in its basic form is someone
15 in their basement getting child pornography off the internet,
16 and this for all the obvious reasons has so many more
17 aggravating factors. In all child pornography cases, we want to
18 know if there's hands-on victims. Here there's no question
19 about it. And from the victim impact testimony we've heard
20 today, we know something of the harm that has been done, and it
21 is enormous.

22 I've considered the question of just punishment. I've
23 considered the need for adequate deterrence to criminal conduct.
24 I've looked to the sentencing guidelines as an important, though
25 not in any way controlling, factor to be considered. And I have

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
EASTERN DIVISION

- - - - - X
UNITED STATES OF AMERICA, :
:
Plaintiff, :
:
vs. : Case No. 3:20-cr-00030
:
LAMARK ARMOND COMBS, JR., : RESENTENCING HEARING TRANSCRIPT
:
Defendant. :
- - - - - X

Courtroom, First Floor
U.S. Courthouse
131 East Fourth Street
Davenport, Iowa
Tuesday, November 29, 2022
9:00 a.m.

BEFORE: THE HONORABLE STEPHANIE M. ROSE, Chief Judge.

APPEARANCES:

For the Plaintiff: TORRIE J. SCHNEIDER, ESQ.
CLIFFORD R. CRONK, III, ESQ.
United States Attorney's Office
131 East Fourth Street, Suite 410
Davenport, Iowa 52801

For the Defendant: ALFREDO G. PARRISH, ESQ.
MARGARET R. STUART, ESQ.
Parrish Kruidenier Law Firm
2910 Grand Avenue
Des Moines, Iowa 50312

KELLI M. MULCAHY, CSR, RDR, CRR
United States Courthouse
123 East Walnut Street, Room 115
Des Moines, Iowa 50309

I N D E XWITNESSDIRECTCROSSREDIRECTRECROSSFor the Government:

Sean Johnson	17	49	71	73
	(Schneider)	(Parrish)	(Schneider)	(Parrish)

E X H I B I T SGOVERNMENT'S EXHIBITSOFFERED RECEIVED

1 - Messages	17	17
2 - Messages	17	17
3 - Facebook record	17	17
4 - Messages	17	17
5 - Photograph	24	24

DEFENDANT'S EXHIBITSOFFERED RECEIVED

A - Facebook posting	50	50
B - Search warrant	50	50
C - Rosell report	50	50
D - Rosell curriculum vitae	50	50
E - Sentencing dates in child pornography cases	50	50
F - Kasal report	50	50
G - Kasal curriculum vitae	50	50

OFFERS OF PROOFPAGE

For Defendant	59, 65
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P R O C E E D I N G S

2 (In open court, with the defendant present.)

3 THE COURT: Thank you. You can be seated.

4 We are here in the matter of United States vs. LaMark
5 Armond Cooks -- I'm sorry -- Combs, Jr. It's Case No.
6 3:20-cr-30. The United States Probation Office is represented
7 by Ashley Adams-Moon. The U.S. Attorney's Office is represented
8 by Torrie Schneider and Cliff Cronk, and they are joined by
9 Davenport Police Department Detective Sean Johnson. The
10 defendant is personally present and represented by his attorney,
11 Alfredo Parrish, and he's joined by Margaret Stuart.

12 Mr. Combs was originally sentenced on October 15th of
13 2021 by now-retired United States District Court Judge John A.
14 Jarvey. Judge Jarvey sentenced the defendant to 210 months'
15 imprisonment, to be followed by two years of supervised release.

16 Defendant appealed the sentence, arguing that the
17 district court had improperly relied upon contested information
18 in the presentence report which led to an erroneous sentencing
19 range. On April 14th of 2022, the United States Court of
20 Appeals for the Eighth Circuit reversed Defendant's sentence,
21 finding Judge Jarvey had improperly relied on contested matters
22 in imposing the sentence, and the case was remanded for
23 resentencing. The parties appear today for purposes of the
24 resentencing hearing.

25 Defendant pled guilty back on June 9th of 2021 to two

1 counts of receipt of child pornography and one count of
2 possession of child pornography.

3 Each count of receiving child pornography, which was
4 Counts 4 and 5 of the superseding indictment, carries a penalty
5 of at least 5 years and up to 20 years in prison, a fine of up
6 to \$250,000, at least 5 years and up to life on supervised
7 release, and a \$100 special assessment.

8 The possession of child pornography count, which is
9 Count 6, carries penalties of not more than ten years in prison,
10 a fine of up to \$250,000, at least five years and up to life on
11 supervised release, and another \$100 special assessment.

12 I have received and read the presentence report. The
13 most recent report is dated October 4th of 2021. I also
14 received and read all of the sentencing filings in this case,
15 both old and new. The more recent ones were filed at Dockets
16 308, 309, and 312. I've reviewed the plea agreement and the
17 indictment.

18 Let's start with just sort of some clarification of
19 where we're at as far as things go this morning.

20 Ms. Schneider, can you clarify for me which victims
21 relate to which counts of the indictment? As I understand it,
22 Counts 1 and 4 relate to Minor Victim 1. Is that right?

23 MS. SCHNEIDER: Yes, Your Honor.

24 THE COURT: And Counts 2 and 5 relate to Minor Victim
25 2?

1 MS. SCHNEIDER: Correct.

2 THE COURT: Count 3 relates to Minor Victim 3?

3 MS. SCHNEIDER: Correct.

4 THE COURT: Who does Count 6 relate to?

5 MS. SCHNEIDER: That is just possession of child
6 pornography generally. There isn't a charged victim for that.

7 THE COURT: What victims fall within Count 6?

8 MS. SCHNEIDER: There aren't identified victims in
9 Count 6, Your Honor.

10 THE COURT: So he had child pornography --

11 MS. SCHNEIDER: Yes.

12 THE COURT: -- with victims you cannot identify?

13 MS. SCHNEIDER: Correct.

14 THE COURT: Do you know that they're not the other
15 victims?

16 MS. SCHNEIDER: No.

17 THE COURT: Part of my concern is that Count 6
18 references a child under the age of 12. Who is that?

19 MS. SCHNEIDER: That would -- it would be -- if putting
20 on evidence, there would be -- may I have one moment?

21 THE COURT: Yes.

22 MS. SCHNEIDER: I don't think there are images or
23 videos that would support an individual under 12.

24 THE COURT: Okay. So that was an erroneous inclusion
25 in the indictment?

1 MS. SCHNEIDER: Yes. Yes. I think that's just our
2 standard language. That probably shouldn't have been included.

3 THE COURT: Okay. All right. Then I'll circle back to
4 you in a minute.

5 MS. SCHNEIDER: Okay.

6 THE COURT: Mr. Parrish, can you outline for me which
7 specific guidelines you're contesting as of today?

8 MR. PARRISH: Well, Judge, we believe that the
9 guidelines as laid out the way Judge Jarvey laid them out should
10 go to 3553(a) factors, should not go to any guideline factors on
11 any of the grouping.

12 We also think, Judge, that with regard to the grouping,
13 there should be only two at most; maybe three, but only two.
14 And we are still contesting the fact that the people who were
15 not the victims were calculated in the guideline sentencing,
16 giving it a range of 262 -- starting at 262 at least.

17 THE COURT: Okay. So at the time of the original
18 sentencing hearing, you argued there were three groups.

19 MR. PARRISH: Correct.

20 THE COURT: Are you now saying there aren't three
21 groups?

22 MR. PARRISH: Well, looking at the Eighth Circuit Court
23 of Appeals decision, they hinted that, intimated that there may
24 be only two groups. I think we could accept three, but I think
25 we're going to contest the fact that there are three at this

1 point, Judge, based upon the Eighth Circuit intimation of that.

2 THE COURT: Okay. So you're arguing that Minor Victim
3 is not a separate group or is not a victim or both?

4 MR. PARRISH: Is not a separate group and is not a
5 victim, so I would say both, Judge.

6 THE COURT: And you see H -- what's the -- and you're
7 arguing that H.P. is not a victim and is not a separate group?

8 MR. PARRISH: That is correct, Your Honor. And I think
9 that's what we lay out in our supplemental brief, Judge.

10 THE COURT: Okay. Here's part of the question I have,
11 then. The plea agreement in this case, and I'm looking at
12 Docket 255, in particular paragraph 11(e), which is on page 7,
13 says that the parties agree for relevant conduct that the
14 conduct supporting the dismissed charges, which would include
15 Count 3, which is Minor Victim 3, "constitutes relevant conduct
16 for the purposes of determining the offense level and the
17 advisory guideline range and that such evidence is admissible at
18 sentencing."

19 So are you now saying that Minor Victim 3 is not
20 relevant conduct?

21 MR. PARRISH: Well, Judge, I think Minor Victim 3 could
22 go to 3553(a) as to characteristics of Mr. Combs. We're arguing
23 it cannot go to determining of the guideline range.

24 THE COURT: Okay. But you stipulate in the plea
25 agreement it could, so --

1 MR. PARRISH: I understand that.

2 THE COURT: Okay. You understand that if you breach
3 the plea agreement, it's an issue, right?

4 MR. PARRISH: It could be an issue, Judge, but I think
5 there are some other issues tied to this that we want to argue
6 also that might be mitigating factors. I understand the Court's
7 question on that, though.

8 THE COURT: Okay. And are you still making the same
9 objections to the factual allegations contained within the
10 presentence report?

11 MR. PARRISH: We are, Judge. And as I stated in our
12 reply brief in one of the paragraphs, Judge, I tend to disagree
13 that there was some confusion about it. And if you want me to
14 state the reasons at some point, I'm happy to do that.

15 THE COURT: And I certainly read the brief. You can go
16 ahead with your argument on why you think it was clear.

17 MR. PARRISH: Well, first of all, as I told the Eighth
18 Circuit, I don't know how many of them have ever done a
19 sentencing in front of Judge Jarvey, but they are -- they speed
20 along at a fairly rapid rate.

21 Second of all, we never withdrew the objection that was
22 in place. The Government never presented any documents
23 indicating they had any exhibits. As a matter of fact, their
24 argument that it was just a legal argument, I'm not sure, Judge,
25 is accurate in terms of how they respond to the judge on this

1 matter.

2 They did not indicate they had any evidence. We told
3 them we had some witnesses. We presented our witnesses. The
4 Government chose to go with a straightforward argument on this
5 matter. They did not go with any evidence, which they could
6 have presented, knowing that that objection was still out there.

7 Their argument that it was not addressed in the brief
8 doesn't carry much weight because it does not have to be
9 addressed in the brief, and I think that the Eighth Circuit was
10 clear on that that the objection had never been addressed.

11 THE COURT: Okay. I agree Judge Jarvey did not address
12 your objections. The entire hearing is quite truncated. It's
13 quite confusing. The question is whether or not, I think, it
14 was clear to everyone or that everyone was on the same page. I
15 don't think everyone was on the same page. I don't think either
16 party got a full and fair opportunity to present their case or
17 their arguments. I think, frankly, it was -- well, it was not
18 ideal, let's say that.

19 So in my view, I think we need an evidentiary hearing
20 on a number of the issues that were raised previously and not
21 addressed. I think both parties need an opportunity to present
22 their cases more fully. The parties agreed that the relevant
23 conduct information would be admissible at the time of
24 sentencing, and so I'm going to give the parties a chance to
25 present whatever their evidence is.

1 I do caution the defendant that if he objects to,
2 frivolously contests, falsely denies conduct that I ultimately
3 find to be relevant conduct that he's going to lose acceptance.
4 That's a concern I have for him.

5 MR. PARRISH: Well, Judge, I will tell you this now:
6 If you look at his original allocution, if you also look at our
7 briefs, we've not denied any -- a single item of relevant
8 conduct. He's admitted everything he's done. The only thing
9 he's disagreed about, Your Honor, is whether or not some of the
10 conduct was consensual or whether or not the conduct was an
11 agreement between the parties.

12 THE COURT: He's objected to many, many paragraphs of
13 the presentence report that are, in my view, relevant conduct.
14 Whether or not this child pornography was created under duress,
15 under pressure; whether or not the sexual encounters he had with
16 these girls were voluntary or coerced or forced is relevant
17 conduct to me. And so if I hear testimony about that and I find
18 that the defendant has falsely denied conduct here or
19 frivolously contested conduct here, I am going to deny him
20 acceptance of responsibility, so I just want all of us on the
21 same page before we go down that path.

22 He has made very bare bones admissions. And maybe
23 that's what the evidence shows, and maybe I'll hear the
24 testimony and I'll agree that he isn't falsely denying or
25 frivolously contesting. But the opposite might happen too, and

1 I just want to make sure we all understand the risks here if we
2 proceed in this manner.

3 MR. PARRISH: Your Honor, I want to point one thing
4 out. I think there are two things operating along the same
5 track here. First of all was an admission that this was what we
6 call statutory rape under state law. He's admitted that because
7 of the difference in the age.

8 The question is -- they did not proceed with those, and
9 there was evidence presented that they went to the state offices
10 of the prosecutors and they declined to go forward with that.
11 He's made all of his admissions regarding that matter.

12 The only thing Mr. Combs has contested, which is clear,
13 is whether or not the underlying conduct regarding the sexual
14 interaction, was that forced or was it consensual, realizing
15 that there was an age difference. And I think, Judge, a clear
16 reading of all of our filings would demonstrate that. He's
17 never once denied that he's had -- he had sex with these
18 individuals.

19 THE COURT: I'm not talking -- well, I'm talking a
20 little bit about the sex and whether it was consensual or not,
21 but he's denying all of the conduct related to the creation of
22 the child pornography. That's absolutely relevant conduct.

23 MR. PARRISH: Judge, I don't believe he's denying that
24 at all.

25 THE COURT: Well, so let's just take an example.

1 MR. PARRISH: Sure. Absolutely.

2 THE COURT: So let's look at paragraph 32. This
3 relates to Minor Victim 2, and Defendant denies all of her
4 description of how she created that child pornography, why she
5 created that child pornography, that he pressured her into
6 creating that child pornography. You know, and similar on
7 paragraphs 33, 34, 35, 36, 37. I mean, he's denied all of that
8 and has denied all of paragraphs 93 through 98, which I think
9 are also relevant conduct in this case.

10 So I'm trying to understand what -- again, I don't know
11 whether I'll believe those girls or not, but if they're here and
12 they testify and I believe them, I think he's got problems.

13 MR. PARRISH: Well, I think, Judge, again, we have the
14 train running along the same track with some divergence. And I
15 think we've been so deeply involved in this case for so long --
16 the aspect of the defendant indicating that, yes, these girls
17 did send him some photographs, he entered a guilty plea with
18 regard to these matters. He entered a guilty plea.

19 THE COURT: But --

20 MR. PARRISH: Oh, go ahead.

21 THE COURT: But relevant conduct extends beyond what
22 the guilty plea is.

23 MR. PARRISH: Oh, absolutely. But then when you
24 ultimately have to make the decision, the question is does it go
25 to guidelines or does it go to what I would term as 3553(a)

1 factors, and I think you have to make that distinction once you
2 make your ruling on this.

3 THE COURT: Okay. All right. I think we're on the
4 same page here.

5 MR. PARRISH: I do. I think so.

6 THE COURT: So let's go ahead and see where we're at,
7 then.

8 MR. PARRISH: Thank you.

9 THE COURT: Ms. Schneider, would you like to present
10 evidence?

11 MR. PARRISH: Oh --

12 MS. SCHNEIDER: Did you have something?

13 MR. PARRISH: I did want to add one other point, Judge,
14 so I can make it clear for the record. With regard -- and I
15 understand that the Eighth Circuit said that the Court had
16 discretion as to whether or not it wanted to conduct an
17 evidentiary hearing. We would still want to stand on our
18 record, Judge, that the Government should not have a second bite
19 at the apple.

20 And I think we briefed that fairly thoroughly that they
21 should not be able to present any evidence, and one of the
22 reasons you've already outlined, but the other reason, Judge, it
23 was clear, whether or not we made an objection or not, that the
24 Government had no right to present a non-victim and basically
25 lay this person out as a victim before the Court.

1 And I don't agree with the Government's position that
2 the Eighth Circuit in its argument just says we have the straw
3 case. The reason that the Eighth Circuit sent this case back
4 was that they wanted the district court to take a look at the
5 conduct of the prosecutor in putting evidence on.

6 And what is significant about that evidence, Judge, is
7 what Judge Jarvey says on page 82 of the transcript. And look
8 what he says, Judge, and we put it in our brief too: "And from
9 the victim impact testimony we've heard today, we know something
10 of the harm that has been done, and it is enormous."

11 You weren't there, Judge, but to see the palpable
12 change in the courtroom when this person got up on the witness
13 stand and the Government presented that person as a victim in
14 this case, that the presentence report didn't even outline as a
15 victim, was an act that was not fair to the Court, that was not
16 fair to the defendant.

17 And there were two Samantas, Judge, in this case, and
18 the Government had to know, it had to know, the impact that that
19 person would have had on Judge Jarvey. And there was a palpable
20 change in Judge Jarvey's expression, his action, and he
21 proceeded with this conduct saying, "This is the impact that
22 your conduct has had," knowing full well this was not a victim.

23 So, Judge, I say that to emphasize this point: The
24 Government should not be allowed at this time to have an
25 evidentiary hearing on that point. I agree with you if that was

1 the only issue that was outstanding, and that is the one issue
2 dealing with whether it's relevant conduct or not -- and, of
3 course, we think we have acknowledged that -- but the second
4 reason that the Eighth Circuit did not deal with it, Judge
5 Jarvey did not deal with it in our Rule 52 argument, and the
6 Government has never denied -- if you look at how they
7 responded, Judge, to these things, they kind of obfuscate the
8 issue.

9 It's a serious issue, Your Honor, that they put on a
10 victim who was not a victim and the impact statement. And then
11 this victim got up before Judge Jarvey and told all of these
12 false statements that we've supplemented with our evidence in
13 this case that you should take a look at it. There was no
14 reason they should have done that, and, Judge, for that reason,
15 they should not be allowed to put any evidence that would
16 enhance their penalty.

17 THE COURT: Okay. I disagree. But we're going to go
18 ahead with evidence here. I don't think the nature of all of
19 the objections was sufficiently clear, nor do I think the judge
20 allowed either party enough time to present relevant evidence at
21 the time of the original sentencing hearing, so we are going to
22 go forward with an evidentiary hearing at this time.

23 Ms. Schneider, you may call your first witness.

24 MS. SCHNEIDER: Thank you. May I have one moment?

25 THE COURT: Yes.

1 MR. PARRISH: Judge, one other thing, we have not
2 received any evidence from the Government, nor did we get any at
3 the first hearing, with regard to any documentation, any
4 witness -- list of witnesses or any evidence that they plan to
5 present at an evidentiary hearing. They did not present it at
6 the first hearing, and so far at the second hearing, they have
7 not given it to us. Matter of fact, they never gave us a victim
8 impact statement before the first hearing.

9 MS. SCHNEIDER: Your Honor, I'm sorry, I was speaking
10 to Mr. Cronk. I didn't hear what Mr. Parrish was objecting to
11 now.

12 THE COURT: I think his concern was that you haven't
13 identified who your witnesses might be or provided him with
14 discovery related to them or provided him with a victim impact
15 statement.

16 MS. SCHNEIDER: Oh, I don't have any victim impact
17 statements, Your Honor. And the Government calls Detective Sean
18 Johnson.

19 SEAN JOHNSON, GOVERNMENT'S WITNESS, SWORN

20 THE DEPUTY CLERK: Thank you. Please have a seat.

21 MS. SCHNEIDER: The Government also reoffers Exhibits 1
22 through 4 that had been offered and admitted at the original
23 sentencing hearing, if it's necessary to readmit them at this
24 time.

25 THE COURT: Government Exhibits 1 through 4 are

1 readmitted.

2 (Government Exhibit Nos. 1 - 4 was
3 offered and received in evidence.)

4 MS. SCHNEIDER: May I proceed?

5 THE COURT: You may.

6 DIRECT EXAMINATION

7 BY MS. SCHNEIDER:

8 Q. Good morning, Detective Johnson.

9 A. Good morning.

10 Q. How are you employed?

11 A. I am a detective with the Davenport Police Department.

12 Q. In what capacity?

13 A. I work in the special victims unit.

14 Q. How long have you been a police officer?

15 A. Eight and a half years.

16 Q. And how long have you been a detective with the special
17 victims unit?

18 A. A little over five years.

19 Q. What are some of your responsibilities as a detective in the
20 special victims unit?

21 A. We investigate child sex abuse, adult sex abuse, child
22 endangerment charges, and also child sex abuse material
23 investigations.

24 Q. In June of 2018, did the Davenport Police Department receive
25 a report of a sexual assault?

1 A. Yes, we did.

2 Q. Who was the alleged suspect?

3 A. The alleged suspect is the defendant in this case.

4 Q. LaMark Combs, Jr.?

5 A. Correct.

6 Q. Who filed that report?

7 A. The minor victim and, I believe, a family member.

8 Q. And what?

9 A. I believe a family member accompanied her.

10 Q. And the minor victim, what are her initials?

11 A. L.H.

12 Q. And how old was she?

13 A. She was 13 years of age.

14 Q. Just generally, what was reported?

15 A. L.H. reported that her and a family member were picked up by
16 the defendant, attempted to go to a movie at the cinemas here in
17 Davenport but were rejected because of her age. They then went
18 to a park here in Davenport where he pulled out a blanket from
19 the back of his car and put it down on a slide and had sex with
20 L.H.

21 Q. And you say "he."

22 A. Meaning the defendant.

23 Q. Thank you. And you said that was a blanket?

24 A. Correct.

25 Q. In response -- I'm sorry. How old was the defendant at that

1 time?

2 A. He was 18 years of age.

3 Q. In response to receiving this report, did DPD execute
4 warrants at the defendant's residence?

5 A. Yes. Days later, search warrants were executed on the
6 vehicle of the defendant, I believe his person, as well as to
7 seize his cell phone and possibly DNA.

8 Q. Why the vehicle?

9 A. That is where the blanket was said to be located at.

10 Q. Why did you seize the blanket?

11 A. This blanket -- was told to the victim that this is the
12 blanket he likes to take girls' virginities on.

13 Q. And what, if anything, was done with that blanket after it
14 was seized?

15 A. That blanket was then sent to the DCI crime lab here in the
16 state of Iowa, where it was further examined for DNA evidence
17 resulting from this investigation.

18 Q. Who is the lead detective assigned to that investigation?

19 A. That was Detective Douglas.

20 Q. And were charges brought at that time?

21 A. No, they were not.

22 Q. Why not?

23 A. We did not have the evidence to move forward with that case
24 pending the, usually, 12- to 16-month wait time from the DCI
25 crime lab for the results.

1 Q. Of the DNA testing?

2 A. Of the DNA testing, correct.

3 Q. Did DPD eventually get a DNA report from the DCI lab?

4 A. Yes, we did.

5 Q. When did you receive that report?

6 A. That was mid-June of 2019.

7 Q. So over a year later?

8 A. Correct.

9 Q. What was the result of that DNA report?

10 A. L.H. and the defendant's DNA were located on that blanket,
11 along with unknown females.

12 Q. Were charges then brought at that time?

13 A. No, they were not.

14 Q. Why not?

15 A. That had -- after that, after we got that DCI report back,
16 this investigation into child sex abuse material had already
17 started.

18 Q. So you were investigating other matters concerning the
19 defendant?

20 A. Correct.

21 Q. In fact, in November of 2018, did DPD receive a report of a
22 sexual assault in early December that -- in early December, did
23 you receive another report?

24 A. Yes. We received another sexual assault report where the
25 defendant was the accused.

1 Q. And who was the lead detective assigned to that
2 investigation?

3 A. I was that detective.

4 Q. Who filed that report?

5 A. That report was filed by, if I remember correctly, the
6 mother of the victim and the victim herself.

7 Q. Was it or was it just the victim?

8 A. I believe it was just the victim, yes.

9 Q. And how old was she?

10 A. She was 15 years of age.

11 Q. What were her initials?

12 A. S.W.

13 Q. How old was the defendant at that time?

14 A. He was 18, going on to 19, because his birthday was right
15 around that time frame when the assault happened.

16 Q. And, forgive me, did you say how old S.W. was at that time?

17 A. She was 15.

18 Q. Generally, what did S.W. report occurred?

19 A. S.W. stated that she was at work and the defendant and one
20 of his friends came, started talking to them. They ended up
21 going with the defendant and his friend, drove around for a
22 while. The defendant then dropped off his friend and her
23 co-worker and then proceeded to take S.W. to his sister's house.

24 Q. Who is "his"? Who is "his"?

25 A. Sorry. The defendant's sister's house.

1 Q. And then what happened when the defendant and S.W. were at
2 the defendant's sister's house?

3 A. S.W. stated that the defendant began to forcefully touch her
4 and kiss her. S.W. stated that she was on her period at that
5 time. Then the defendant forcefully put his hand down her pants
6 to check to see if she was bleeding. When he realized that she
7 was not, he became more aggressive with her.

8 Q. What do you mean "he became more aggressive"?

9 A. He ended up pulling her pants down and turning her over and
10 penetrating her.

11 Q. What happened after the defendant forcibly sexually
12 assaulted S.W.?

13 A. The defendant took her back to either her friend's house or
14 her house.

15 Q. And did S.W. --

16 A. Sorry.

17 Q. Do you need some water?

18 A. No. I'm good. Thank you.

19 Q. Did S.W. report to you whether she disclosed this to anyone
20 else?

21 A. S.W. did state that she disclosed to a mutual friend between
22 her and the defendant.

23 Q. A mutual friend of her and the defendant?

24 A. Yes. Correct.

25 Q. Okay. And did S.W. state whether there was any electronic

1 communications about this event?

2 A. S.W. stated that the defendant and this mutual friend had
3 Snapchat conversations where he said --

4 Q. Sorry. That's all. There were electronic communications?

5 A. There were, yes.

6 MS. SCHNEIDER: Your Honor, may I approach?

7 THE COURT: You may.

8 MS. SCHNEIDER: May I approach the witness?

9 THE COURT: Yes.

10 BY MS. SCHNEIDER:

11 Q. Detective Johnson, showing you what has been marked as
12 Government's Exhibit 5, do you recognize that?

13 A. Yes, I do.

14 Q. What is it?

15 A. This is the Snapchat conversation between S.W. and the
16 mutual friend.

17 Q. Did you take those pictures?

18 A. Yes, I did.

19 MS. SCHNEIDER: Your Honor, Government moves to admit
20 Exhibit 5.

21 MR. PARRISH: Once the Government, Judge, makes an
22 offer and makes a statement that they were part of the
23 discovery, we're going to object to them. They were not -- I'm
24 seeing -- looking at them today. As you know, there was a
25 substantial amount of discovery, and so we'd want to know if

1 they were in the original discovery file.

2 MS. SCHNEIDER: They were in the original discovery
3 file.

4 THE COURT: All right. Government Exhibit 5 is
5 admitted.

6 (Government Exhibit No. 5 was
7 offered and received in evidence.)

8 BY MS. SCHNEIDER:

9 Q. Detective Johnson, I know this can be kind of hard to see.
10 I have redacted the name of the mutual friend as that person was
11 also a minor; is that correct?

12 A. That is correct, yes.

13 Q. And whose phone did you take these pictures off of?

14 A. This was from S.W.'s phone.

15 Q. So when it says "Me," that's S.W.?

16 A. Correct.

17 Q. All right. What does the top message here say?

18 A. It says, "What all did he say."

19 Q. And then the next message is from the mutual friend; is that
20 right?

21 A. Correct.

22 Q. What does the mutual friend say?

23 A. "Just that you was saying no and he has what was coming for
24 him."

25 Q. What did S.W. respond?

1 A. "His scary ass."

2 Q. And then there are some emojis?

3 A. Correct.

4 Q. What does S.W. then say?

5 A. "I'm fr," for real, "he can't get pussy so he has to try and
6 force himself on mfs," which is motherfuckers, "knowing damn
7 well I would never fuck him a day in my life. Did he admit to
8 it or did he only say that cause I told you."

9 Q. What did the mutual friend respond?

10 A. She said, "Yesterday I asked him and that's not what he said
11 but he told me right after you left what happened."

12 Q. What did S.W. say?

13 A. "Lame ass mf."

14 Q. And the mutual friend?

15 A. "Smh," which is shake my head.

16 Q. And then what did S.W. say?

17 A. "I didn't think he was that type a person."

18 Q. On the second page, what did the mutual friend say?

19 A. "I didn't think he was that type a person" --

20 Q. Oh, sorry. That --

21 A. Oh, "Me either."

22 Q. Thank you. And then the next message from S.W.?

23 A. "Ts sick."

24 Q. What is "ts"?

25 A. I believe "that shit."

1 MR. PARRISH: Objection if he doesn't know. Calling
2 for opinion and conclusion without proper foundation.

3 THE COURT: He can testify to what he understands it to
4 me.

5 A. I believe "ts" to mean "that shit."

6 BY MS. SCHNEIDER:

7 Q. And what did the mutual friend say?

8 A. "All the girls he's fucked they've all went along with it."

9 Q. What did S.W. say?

10 A. "That's what he says tho you never know the true story tbh."

11 Q. What is "tbh"?

12 A. That, I'm not 100 percent sure of.

13 Q. Okay. What does the mutual friend say?

14 A. "You're right, he could have lied to me like he did
15 yesterday."

16 Q. During this investigation, did you seek to interview the
17 defendant?

18 A. Yes, I did.

19 Q. And do you recall how you sought to arrange that interview?

20 A. I believe I called his father.

21 Q. Did you eventually meet with the defendant?

22 A. Yes, I did.

23 Q. Did he make any statements about this sexual assault?

24 A. No, he did not.

25 Q. Was he arrested?

1 A. No, he was not.

2 Q. Were charges brought about for this incident?

3 A. No, they were not.

4 Q. Why not?

5 A. At the time of the ongoing investigation, I think at the
6 time I did not have enough to move forward with charges, so it
7 was eventually closed, but with the quote of saying that no
8 sexual assault cases are ever really closed.

9 Q. So at the time that you met with the defendant, what kinds
10 of things were you doing to investigate this offense?

11 A. I attempted to -- I got a search warrant for his cell phone,
12 I believe I did other social media accounts as well, to obtain
13 conversations regarding this interaction.

14 Q. Snapchat?

15 A. Yes.

16 Q. Facebook?

17 A. Yes.

18 Q. Location data?

19 A. Correct.

20 Q. So were those things still pending?

21 A. A lot of them were, yes.

22 Q. Does it take a while to get evidence from electronic sources
23 of data?

24 A. It can take a good amount of time, correct.

25 Q. Okay. But then you said eventually this investigation was

1 closed. Do you recall when that was closed within the police
2 department?

3 A. Not right off the top of my head, no.

4 Q. But you testified that no sexual assault investigation's
5 ever really closed, and why is that?

6 A. Because there's always evidence that could come forth at a
7 later time that would reopen the case and be able to prosecute
8 the case.

9 Q. Then in May of 2019, did DPD receive yet another report
10 regarding the defendant?

11 A. Yes, we did.

12 Q. Who was the lead detective assigned to that investigation?

13 A. I was.

14 Q. And who filed that report?

15 A. That was the mother and father of the victim.

16 Q. What was the victim's initials?

17 A. H.P. And she was 15 years of age.

18 Q. What did the parents report?

19 A. The parents reported that H.P. had been spending a long time
20 in the shower so the mother went into the bathroom and found
21 H.P. taking nude images of herself while in the shower.

22 Q. And what did the mother indicate that she did?

23 A. The mother ended up taking her phone and saw a video that
24 H.P. had sent to the defendant.

25 Q. And once she found that video that was sent to the

1 defendant, what did the mother do?

2 MR. PARRISH: Your Honor, I'm going to object to this
3 line of questioning. This is material that's in the PSIR and in
4 detail.

5 THE COURT: I think the problem is you've denied that
6 H.P. is part of a group that should be considered relevant
7 conduct, and so that makes it relevant for purposes of --

8 MR. PARRISH: It's the same information, Your Honor.

9 THE COURT: All right. Can you point where in the
10 presentence report it is?

11 MR. PARRISH: I don't have it right here.

12 MS. SCHNEIDER: And, Your Honor, may I respond?

13 THE COURT: You may.

14 MS. SCHNEIDER: It may be exactly the same information,
15 and it's all objected to factually by the defendant, and in
16 order to use this information, both for grouping and for
17 3553(a), it is my belief that I need to prove this up, so I am
18 going to go through all of this with this witness.

19 MR. PARRISH: I don't think he's denied it, though,
20 Your Honor. I think that's where we -- the train has kind of
21 slipped away from it. He's acknowledged his conduct. It's in
22 the PSIR report, and he's acknowledged it.

23 MS. SCHNEIDER: Your Honor, I have paragraphs 16 and 17
24 are outrightly denied or objected by the defendant. Both of
25 those relate to H.P.

1 MR. PARRISH: He's denying the fact that it -- as I
2 said earlier, Judge, that it was non-consensual. And it doesn't
3 change him repeating what's in the PSIR, and it's directly from
4 his reports.

5 MS. SCHNEIDER: Your Honor, in the --

6 THE COURT: Stop. Defendant objected to paragraphs 16,
7 17, and 48, which relates to the grouping of the H.P. material.
8 This is admissible testimony.

9 Go ahead.

10 MS. SCHNEIDER: Thank you.

11 BY MS. SCHNEIDER:

12 Q. What did the mother indicate she did after she found the
13 video that H.P. had sent to the defendant?

14 MR. PARRISH: And, Your Honor, may I have a standing
15 objection, please? Thank you.

16 THE COURT: Okay.

17 MR. PARRISH: Thank you.

18 THE COURT: Go ahead.

19 A. The mother deleted all videos, images, and contact
20 information, along with text threads, with the defendant.

21 BY MS. SCHNEIDER:

22 Q. Did she tell you why she did that?

23 A. She did not want her daughter contacting the defendant any
24 longer.

25 THE COURT: Just to be clear, she found a video that

1 was of what?

2 THE WITNESS: It was a video of H.P. masturbating.

3 THE COURT: Okay. Thank you.

4 BY MS. SCHNEIDER:

5 Q. Did H.P.'s mother indicate who had requested that video?

6 A. The defendant.

7 Q. And H.P. had sent the video, not just taken it?

8 A. That is correct, yes.

9 Q. When H.P.'s mother and father were at the police
10 department --

11 MR. PARRISH: I'm going to object to that, Judge, move
12 to strike, ask my objection precede that. It's a leading
13 question with the answer contained in the question that he had
14 sent it with no electronic evidence supporting the fact that
15 this document had been sent.

16 THE COURT: The mother reviewed the phone. This is
17 what she reported to the police finding in the phone. The
18 objection is overruled.

19 BY MS. SCHNEIDER:

20 Q. When the mother and father were making this report to you,
21 did they give you H.P.'s cell phone?

22 A. Yes, they did.

23 Q. What did you do with it?

24 A. I had the phone downloaded via consent search, I believe
25 through our Cellebrite machine.

1 Q. What, if anything, did you find?

2 A. There was no videos or contact information located of the
3 defendant.

4 Q. So even when things are sometimes deleted off cell phones,
5 are you able to sometimes recover it?

6 MR. PARRISH: Objection, Your Honor. He's not an
7 expert in this area and never been proffered as an expert in
8 this area.

9 THE COURT: He doesn't have to be an expert to know the
10 answer to this particular question as it relates to law
11 enforcement investigations.

12 You may answer.

13 A. It is in my experience that there are times when stuff is
14 recovered and there's times when there's stuff that is not
15 recovered.

16 BY MS. SCHNEIDER:

17 Q. So is that why you attempted this?

18 A. Correct.

19 Q. What did you do after receiving this report from H.P.'s
20 parents?

21 A. I applied for a search warrant for the person of the
22 defendant.

23 Q. Why for --

24 A. To seize his cell phone.

25 Q. Did you execute that warrant?

1 A. Yes, I did.

2 Q. When did you do that?

3 A. I believe it was the end of May at his employment.

4 Q. And did you speak with the defendant --

5 A. Yes, I did.

6 Q. -- when you seized his phone?

7 A. Correct. Yes.

8 Q. What did you advise him generally as to why you were seizing
9 his phone this time?

10 A. That he was receiving inappropriate videos of minors doing
11 sexually explicit things.

12 Q. So this report from H.P.'s mother came just before DPD
13 received that DNA report from L.H.'s case; is that right?

14 A. That is correct, yes.

15 Q. And you now have these three reports regarding the
16 defendant. What did you decide to do from an investigatory
17 standpoint at that time?

18 A. At this time, I obtained search warrants to download his
19 cell phone, his iCloud account, and multiple social media
20 identities that he had.

21 Q. Is it fair to say you were kind of consolidating everything
22 and moving forward at that time?

23 A. Correct. Yes.

24 Q. In your review of all of that data that you just mentioned,
25 did you locate images or videos depicting child pornography?

1 A. Yes, I did.

2 Q. Were you able to identify all of the minors depicted?

3 A. No.

4 Q. Why not?

5 A. There were images of what I would believe to be a minor's
6 genitalia or body that did not show their face, so identity
7 couldn't be made of them.

8 Q. And you have training and experience as a detective in the
9 special victims unit, and so you know how to determine the age
10 of, for instance, just genitalia?

11 A. It's -- I mean, it's not that I've been trained, but it's --
12 after looking at images and images over the past five years, you
13 kind of get a clue of what a minor's genitalia would look like.

14 Q. So not necessarily training, but your experience?

15 A. Correct. Yes.

16 Q. Did you locate chats or communications between the defendant
17 and minor females?

18 A. Yes, I did.

19 Q. Can you describe the nature of those communications?

20 A. A lot of these communications were of the defendant asking
21 females to send nudes or booty pics or videos of them in a state
22 of nudity.

23 Q. Were you able to identify each of the minor females with
24 whom the defendant engaged in these sexual conversations with?

25 A. A majority of them, yes.

1 Q. How?

2 A. I ended up doing a subpoena for usernames to get basic
3 contact subscriber information for those individuals.

4 Q. So you said most of them. Were you not able to identify all
5 of them?

6 A. Yes. If I remember correctly, some of the usernames did not
7 have that basic information contained in their accounts.

8 Q. Of the girls and the minors that you did identify, did you
9 interview them?

10 A. Yes, I did.

11 Q. Approximately how many girls would you estimate you
12 interviewed during this investigation?

13 A. I believe it was between 7 to 10 females.

14 Q. What was your purpose of those interviews?

15 A. To establish a connection with the defendant and any
16 relationships that they may or may not have had with him.

17 Q. And what, generally, was reported in these interviews?

18 A. That the defendant was a pushy individual that would get
19 upset and volatile when he did not get what he wanted from these
20 females.

21 Q. And what did he want from these females?

22 A. Nude images of them.

23 Q. Is it fair to say that these girls were independently
24 reporting the same general pattern or modus operandi?

25 A. Yes, they were.

1 Q. Did they all comply with his requests for nude images?

2 A. The majority of them did, yes.

3 Q. Did they comply all of the time?

4 A. No, they did not.

5 Q. Did they report to you what happened if they refused?

6 A. They said that the defendant would get angry with them,
7 frustrated, and would not respond to them or even sometimes
8 block them.

9 Q. Were all of these girls that you interviewed classmates of
10 the defendant?

11 A. Not at -- not that I'm aware of.

12 Q. Were they all friends with him in real life?

13 A. Not that I'm aware of.

14 Q. Generally, how did he meet them?

15 A. Via Snapchat or some other social media platform.

16 Q. Did he meet all of them in real life?

17 A. I believe eventually he met most of them in real life, yes.

18 Q. Did you review all of those conversations?

19 A. No.

20 Q. Why not?

21 A. It is my understanding that when a person is blocked on
22 Snapchat or most other social medias, from my experience, that
23 the conversations are usually then fully deleted.

24 Q. And on Snapchat, are all of the messages saved all the time
25 anyway?

1 A. No, they are not.

2 Q. Can you describe that?

3 A. Snapchat is used so you have to, I believe, long press on a
4 conversation to save that message to your chat thread. If not,
5 it will go away.

6 Q. So at the time that you were interviewing these girls, were
7 they all still connected to the defendant on social media?

8 A. I don't believe so, no.

9 Q. Were any of them?

10 A. That, I do not believe either.

11 Q. Was Minor Victim 1?

12 A. Yes.

13 Q. Did you review her Snapchat conversations with the
14 defendant?

15 A. Yes, I did.

16 Q. And did that conversation -- was that corroborative of what
17 had been reported to you of this behavior?

18 A. That is correct.

19 Q. So let's talk about Minor Victim 1. How did she meet the
20 defendant?

21 A. Via Snapchat.

22 Q. Did she report to you, how old was the defendant -- strike
23 that.

24 How old did she tell you the defendant represented
25 himself to be?

1 A. She told me that he was 17 years of age at the time.

2 Q. So the defendant told her he was 17?

3 A. Correct. Yes.

4 Q. How old was he when the defendant and Minor Victim 1 first
5 started interacting online?

6 A. 19.

7 Q. How old was Minor Victim 1?

8 A. She was 15 years of age.

9 Q. Did they ever meet in person?

10 A. Yes, they did.

11 Q. Can you tell us about their initial meeting?

12 A. Their initial meeting, he had drove up to Clinton, where
13 Minor Victim 1 was living. They hung out in, I believe, a
14 sunroom on the front porch of that residence, where Minor Victim
15 1 reported that she sat -- initially sat across the room from
16 the defendant because, as she put it, she called him a stranger.

17 The defendant goes on to say that they are not
18 strangers because they've been talking online -- online for some
19 time and ended up coaxing her to come over and sitting on her
20 lap -- on his lap. Sorry.

21 Q. And did they engage in sexual intercourse that day?

22 A. Yes, they did.

23 Q. What did Minor Victim 1 report to you was -- she believed
24 was his motivation that day?

25 A. She believed his motivation for coming to Clinton that day

1 was to have sexual intercourse with her.

2 Q. In your interview that day, was Minor Victim 1 completely
3 honest with you throughout the interview?

4 A. No, she was not.

5 Q. Who was all present in the room with you during her
6 interview?

7 A. During that interview, it began with me, Minor Victim 1, and
8 her mother. At some point during the interview, my sergeant at
9 the time entered the interview room and established himself as
10 almost the main interviewer.

11 Q. So would you characterize from that point on it being your
12 interview or your sergeant's interview?

13 A. It would probably be my sergeant's because I was in and out
14 of the room from that point on, I believe now trying to download
15 a phone.

16 Q. So also, in your experience of having done this work for
17 five years, is it ideal to have a minor's parents with you in
18 the room during an interview like this?

19 A. No, it's not.

20 Q. Why not?

21 A. Typically, with minor females, when they are in the company
22 of a parental or -- a parent or guardian, they will not fully
23 disclose what had been going on with them in fear of retaliation
24 at home with their parents.

25 Q. So it's more of they're afraid of getting in trouble at

1 home?

2 A. Correct.

3 Q. By the end of the interview, had you gotten kind of to the
4 bottom of things with Minor Victim 1?

5 A. Yes.

6 Q. In your review of the defendant's material, did you find a
7 video of Minor Victim 1 masturbating with a Sharpie marker?

8 A. Yes, I did.

9 Q. Did you ask her about it?

10 A. Yes, I did.

11 Q. What did she say?

12 A. She said she was asked to do that and then, upon sending
13 that video to the defendant, he then asked her to use a thicker
14 marker.

15 Q. Did she state that she -- that she sent the defendant
16 additional sexually explicit images and videos of herself?

17 A. Yes, she did.

18 Q. Were you able to identify her in some of the material --
19 some of the defendant's material?

20 A. Yes, I was.

21 Q. And what did she report about how the defendant would ask
22 for this material?

23 A. He would become -- he would ask, and if she denied him that
24 request, he would become pushy, beg, stop talking to her for a
25 certain amount of time, the same modus operandi that he's been

1 using with all the females.

2 Q. Do you know whether the defendant distributed any of her
3 images?

4 A. He did send a picture of her bare chest to, I believe, his
5 sister asking if what her nipples looked like are that of a
6 pregnant female's.

7 Q. Was that a theme for the defendant and Minor Victim 1?

8 A. Nude images?

9 Q. Her being pregnant.

10 A. Her being pregnant? Yes.

11 Q. All right. Let's move on to Minor Victim 2. What did you
12 learn through reviewing the evidence and interviewing her about
13 her relationship with the defendant? How did they meet?

14 A. Minor Victim 2 was a 16-year-old female, and they had their
15 first communication via Facebook and had, quote-unquote, dated
16 for about a month during that time.

17 Q. How old was the defendant at that time?

18 A. He was 19 years of age.

19 Q. Did they engage in sexual intercourse?

20 A. Minor Victim 2 stated they had sex approximately eight
21 times.

22 Q. And did she indicate whether she sent the defendant any
23 sexually explicit images or videos of herself?

24 A. She stated she sent around 20 altogether videos and images
25 of her -- of herself to the defendant.

1 Q. Were you able to locate any of those?

2 A. Yes, I was.

3 Q. And you were able to identify her then?

4 A. I was, correct.

5 Q. Did she report a similar -- this similar pattern or MO
6 regarding how the defendant solicited those images?

7 A. Yes, she did.

8 Q. And his reaction if she refused?

9 A. Correct. Same.

10 Q. Minor Victim 3, what did you learn reviewing that material
11 and interviewing her?

12 A. Minor Victim 3 was a 14-year-old freshman at the time of the
13 communication with the defendant. Minor Victim 3 stated that
14 she had a friend over at her residence and they were FaceTime --
15 they were FaceTiming the defendant. During this FaceTime call,
16 the defendant said that he wanted to come over and have sex with
17 them.

18 Minor Victim 3 did send the defendant a nude image of
19 herself. When the defendant arrived at her house through an
20 invitation, Minor Victim 3 and the defendant engaged in sexual
21 intercourse.

22 Q. Had Minor Victim 3 ever met the defendant before that night?

23 A. No, she had not. And she stated that she was a virgin prior
24 to being with the defendant.

25 Q. How old was the defendant that night?

1 A. He was 18, 19 years of age -- 18 years old.

2 Q. How many times did Minor Victim 3 report that she had sex
3 with the defendant?

4 A. She reported after the initial time they had sex two more
5 times.

6 Q. And was she 14 the whole time?

7 A. Correct.

8 Q. Was the defendant 18 the whole time?

9 A. No. He had turned 19.

10 Q. And you indicated that she sent a sexually explicit image of
11 herself that night. Did she send additional images?

12 A. Minor Victim 3 stated she sent approximately 12 images to
13 the defendant.

14 Q. Were those at the defendant's request?

15 A. Yes.

16 Q. And did you locate any of those images?

17 A. I was not able to, no.

18 Q. You could not identify her in any of the images?

19 A. That's correct.

20 Q. Would you show Minor Victim 3, "Here's a picture of a
21 vagina. Is it yours?"

22 A. No, I would not.

23 Q. So there's no way to determine if these -- any of these
24 people are in the unidentifiable images or videos in the
25 defendant's materials; is that right?

1 A. That is correct, yes.

2 Q. Did she report a similar pattern regarding the defendant's
3 solicitation of images?

4 A. Yes, she did.

5 Q. Let's talk about M.S. How did M.S. meet the defendant?

6 A. M.S. was a 16-year-old female when she first began
7 communicating with the defendant, who was 18 at the time.
8 During this communication, the defendant would ask for boob,
9 butt, and everything pictures from M.S. M.S. stated that if she
10 would not comply, he would get angry and beg and, again, not
11 talk to her for an extended period of time.

12 Q. How did they meet?

13 A. I believe it was through social media.

14 Q. Did she indicate whether she sent any images?

15 A. She did send images to him, yes.

16 Q. Did you locate those?

17 A. Yes, I did.

18 Q. You did?

19 A. I believe so, yes.

20 Q. What about G.T.? Who is G.T.?

21 A. G.T. was a 15-year-old female, who at the time was
22 communicating with -- the defendant was 18 years old. They
23 dated during the winter of 2018. She was a freshman and he was
24 a senior. G.T. stated that her and the defendant did have
25 sexual intercourse and he did request nude images of her, but

1 she refused to send any to him.

2 Q. So you said they went to the same school, she was a
3 freshman. How old was she?

4 A. She was 15 years old.

5 Q. And he was a senior. How old was he?

6 A. He was 18.

7 Q. So they weren't classmates; is that right?

8 A. That is correct, yes.

9 Q. You said they engaged in sexual intercourse. How did G.T.
10 characterize that?

11 A. Pressured.

12 Q. And what about C.G.? Who is C.G.?

13 A. C.G. was a 15-year-old freshman at the time as well. She
14 was a friend of G.T., who stated when she first met the
15 defendant, it took about a week later until he started coming on
16 to her, asking for nudes and being pushy with her.

17 Q. Even though she was G.T.'s friend?

18 A. Correct.

19 Q. So was she also 15?

20 A. Yes, she was.

21 Q. And he was also 18?

22 A. Correct.

23 Q. Did they engage in any sexual activity?

24 A. Yes, they did.

25 Q. Can you describe that?

1 A. C.G. stated she had told the defendant her unwillingness to
2 have sexual intercourse with him. Prior to that, she was in a
3 car with him where he forcefully digitally penetrated her along
4 with kissing and touching of her.

5 When it comes to the sex part -- portion of it, she
6 stated that the defendant would go around school telling others
7 about what was being said. C.G. then seeked therapy and
8 eventually gave in to the defendant, hoping that he would leave
9 her alone.

10 Q. That it would get better for her at school?

11 A. Yes.

12 Q. Did the defendant ask C.G. for any sexually explicit images
13 of herself?

14 A. Yes, he did.

15 Q. Did she send any?

16 A. Yes, she did.

17 Q. Did she report a similar pattern from the defendant of how
18 he requested those?

19 A. Yes, she did.

20 Q. All right. So after you seized the defendant's cell phone
21 in May of 2019, did he remain in Davenport?

22 A. No, he did not.

23 Q. Where did he go?

24 A. I believe he moved to Georgia.

25 Q. With his family?

1 A. Correct. Yes.

2 Q. Did he finally stop engaging in this conduct?

3 A. No, he did not.

4 Q. How do you know?

5 A. We received a Facebook return back while he was in Georgia
6 and located messages between him and another minor female living
7 here in Davenport containing the same modus operandi that he had
8 with all these other females.

9 Q. So this minor female was in Davenport?

10 A. Correct.

11 Q. How old was she?

12 A. I believe she was 15.

13 Q. And this was while he was in Georgia?

14 A. Correct.

15 Q. How old was he?

16 A. He would have been 19, 20 years old.

17 Q. 20 or 21, maybe?

18 A. Yeah. 20 or 21, yeah.

19 Q. And in these messages, which is in evidence as Exhibit 3,
20 did the defendant solicit sexually explicit images and videos of
21 her?

22 A. Yes, he did.

23 Q. And is that pattern of how the defendant solicited these
24 images, again, corroborative of what these other minors reported
25 to you during your interviews?

1 A. Yes, it is.

2 Q. And so the defendant was also still engaged in the
3 production of child pornography while in Georgia?

4 A. Correct.

5 Q. Despite three contacts with law enforcement?

6 A. Correct.

7 Q. And his awareness of these ongoing investigations?

8 A. That is correct.

9 Q. These females, minor girls that we've talked about, did they
10 all go to the same school as one another?

11 A. No, they did not.

12 Q. Did you interview them all together?

13 A. No, I did not.

14 Q. Detective Johnson, through your investigation, in these
15 interviews, did you learn of a moniker that the defendant called
16 himself in high school?

17 A. Yes, I did.

18 Q. What was it?

19 A. The Freshman Slayer.

20 Q. Did some of these -- in these interviews, did some of these
21 girls know the defendant by that name?

22 A. Yes, they did.

23 MS. SCHNEIDER: One moment.

24 BY MS. SCHNEIDER:

25 Q. Detective Johnson, returning to S.W., you know, we talked

1 about how she disclosed to the mutual friend of her and the
2 defendant. Did she also eventually disclose to her mother?

3 A. Yes, she did.

4 MS. SCHNEIDER: Thank you.

5 May I approach to tender evidence?

6 THE COURT: You may.

7 Are you done, Ms. Schneider?

8 MS. SCHNEIDER: Oh, yes. I'm sorry. I apologize.

9 THE COURT: Mr. Parrish, cross-examination.

10 MR. PARRISH: Thank you, Your Honor. May it please the
11 Court and counsel.

12 CROSS-EXAMINATION

13 BY MR. PARRISH:

14 Q. Let's start with L.H.

15 MR. PARRISH: And, Judge, do you have a key to follow
16 each of those folks?

17 THE COURT: I think so. I created it myself.

18 MR. PARRISH: All right. I think a key might be
19 significant, Your Honor. And if not, I know this is not a
20 closed session, but we could perhaps -- and I could also
21 identify by age, et cetera. That may help you get to your key.

22 I'm going to start, Judge, with --

23 THE COURT: Go ahead.

24 MR. PARRISH: -- L.H.

25

1 BY MR. PARRISH:

2 Q. Does L.H. ring a bell with you, Detective?

3 A. It wasn't my case, but I'm aware of it, yes.

4 Q. L.H., as you know --

5 MR. PARRISH: And, Judge, we would move to reintroduce
6 our exhibits from the sentencing hearing.

7 BY MR. PARRISH:

8 Q. L.H., you indicated, sir --

9 THE COURT: I think those were 1 through 4; is that
10 right?

11 MR. PARRISH: I think A.

12 THE COURT: I'm sorry. A.

13 MR. PARRISH: We used A, Judge, alphabet.

14 THE COURT: And I'm trying to remember if there were
15 four of them. Correct?

16 MR. PARRISH: I think so, Judge. I don't have that
17 number in front of me, but whichever ones they were, Judge, we
18 would move to readmit those.

19 THE COURT: And they are readmitted.

20 (Defendant's Exhibits A - G were
21 offered and received in evidence.)

22 MR. PARRISH: Thank you, Judge.

23 BY MR. PARRISH:

24 Q. You said it was not your case?

25 A. Correct.

1 Q. So you never got verification of her age?

2 A. It was in the case file.

3 Q. Other than that, you never -- I asked you did you get
4 verification by speaking with her.

5 A. It was not my case.

6 Q. Okay. So you did not talk to her?

7 A. Correct.

8 Q. Okay. So if you didn't talk to her, did you look up her
9 Facebook or Myspace account?

10 A. This was not my case.

11 Q. Well, I'm just asking you, did you look it up? You've told
12 me it was not your case. I get that.

13 A. No, I did not.

14 Q. Okay. Were you aware that she represented herself to be age
15?

16 A. No, I did not.

17 Q. All right. I'm going to show you what is marked --

18 MR. PARRISH: Your Honor, may I approach a second?

19 THE COURT: You may.

20 MR. PARRISH: Thank you, Judge. I think it's our
21 Exhibit A.

22 BY MR. PARRISH:

23 Q. This is L.H.'s Myspace page. Take a look at this.

24 Is this Myspace on the young lady that is described as
25 L.H.?

1 A. No. This is Facebook.

2 Q. I mean Facebook. Described as L.H.?

3 A. There's no name on it.

4 Q. So you don't know if that's the same person or not?

5 A. I know that she lived in DeWitt, so Central High School in
6 DeWitt would --

7 Q. All right. Let's go with that, then. When this was
8 published, does it show what date she was born?

9 A. It says January 27th, 2000.

10 Q. And that would have made her how old when your investigation
11 started?

12 A. I did not investigate this case.

13 Q. But when your investigation started of Mr. Combs.

14 A. Again, I did not investigate this case.

15 Q. When your investigation started of Mr. Combs, what age would
16 that have made her, if she was born in 2000?

17 A. My investigation personally?

18 Q. Yes.

19 A. Would have been in 2000 --

20 Q. Be 15, is that correct?

21 A. No. My investigation began in 2018 with Mr. Combs.

22 Q. Okay. Well, if she represented herself to be born in 2000
23 on her Facebook account, would you agree she would have been 15
24 at the time and Mr. Combs would have been 18?

25 A. No.

1 Q. Okay. And also, you said this young lady who you -- who you
2 did not investigate but read the report, that she went to
3 Central High School. In the report that you saw, did this young
4 lady identified as L.H. go to Central High School?

5 A. I knew she was from DeWitt. I did not know she went to
6 Central High School in DeWitt.

7 Q. So you did not know one way or the other; is that correct?

8 A. Correct.

9 Q. And you had not seen this Facebook document prior to today's
10 date; is that right?

11 A. I don't recall.

12 Q. Okay. And would you say you did not know the young lady you
13 identified as being age 13 represented herself on Facebook to
14 the public and to Mr. Combs as being 15?

15 MS. SCHNEIDER: Objection; asked and answered.

16 THE COURT: Sustained.

17 THE WITNESS: Can you repeat the question?

18 MR. PARRISH: I think the Judge has sustained that
19 question.

20 BY MR. PARRISH:

21 Q. Now let's go through. You did not do what we call the
22 digital review in this case, did you, of the cell phones, et
23 cetera?

24 A. Are we still speaking of L.H.?

25 Q. Of all of the cases. We're now moving on.

1 A. I would look through social media returns and the returns of
2 his cell phone, yes.

3 Q. Okay. But you did not do the digital download or the
4 Cellebrite or anything like that yourself; is that correct?

5 A. Not on all of them, no.

6 Q. Matter of fact, are you qualified to do that?

7 A. No.

8 Q. Okay. And you never presented yourself to be qualified to
9 do this type of work; is that correct?

10 A. A digital forensic download?

11 Q. Correct.

12 A. No.

13 Q. Okay. But once you get the download, is your job to take
14 this information and match it up with the people who are
15 potential victims in this case? Is that right?

16 A. Correct.

17 Q. And that would have been the people who you would match
18 up -- you'd have a list of people, and these list of people you
19 would have, you'd want to see, since this was a pornography
20 case, to see if, in fact, there were photographs of those
21 individuals in either Snapchat, as you said, Facebook exchange,
22 on the telephone of Mr. Combs, or in some other venue that you
23 could verify? That would be your job; is that correct?

24 A. To verify the identities of the nude images of minor
25 females, yes.

1 Q. Right. And you did that? That was your job as part of this
2 investigation, as you've outlined in your direct examination?

3 A. Correct.

4 Q. All right. Now, with that information, can you tell the
5 Court how many photographs of the alleged victim did you
6 identify as being in LaMark Combs' cell phones? I know you got
7 two of them. In both of his cell phones, how many did you
8 identify?

9 A. Which victim are we talking about?

10 Q. Well, we're talking about all of them.

11 A. Off the top of my head, I don't have an exact number of the
12 amount of images that I had. I roughly think it was
13 somewhere -- probably a hundred images in total.

14 Q. No. I'm sorry if I didn't make myself clear. Let me try to
15 clear it up. We talked about what your job was once you got the
16 forensic download; to take the forensic download, take the
17 images, and try to match them up with the alleged victims.

18 Do you understand that question so far?

19 A. Yeah.

20 Q. All right. You said that was your job and you did that. My
21 question, how many of the images did you match up with the
22 alleged victims -- with the victims, not alleged victims, with
23 the victims in this case?

24 A. Again, what victim are you specifically talking about?

25 Q. Well, we're talking about the list of -- one, two, three,

1 four, five, six, seven, eight -- nine potential victims. How
2 many did you match up with the nine?

3 A. Do you want me to go through each victim and tell you how
4 many images I located on those? Is that what you're asking?

5 Q. Can you tell us off the top of your head how many?

6 MS. SCHNEIDER: Objection. Your Honor, the witness
7 doesn't understand the question. He's asking for clarification,
8 and counsel's not providing it.

9 THE COURT: I think he's trying.

10 As I understand the question, of all the child
11 pornography images you found, how many of those child
12 pornography images could you match to a person, and who was that
13 person?

14 Is that fair?

15 MR. PARRISH: That is exactly right, Judge.

16 THE COURT: Okay.

17 MR. PARRISH: Thank you.

18 A. Minor Victim 2, I believe there was 20 in total. Minor
19 Victim 1, I believe there were -- I honestly couldn't tell you
20 how many there were of Minor Victim 1, but it was quite a few.

21 BY MR. PARRISH:

22 Q. So Minor Victim 1, there was how many?

23 A. Quite a few. I told you I couldn't right off the top of my
24 head --

25 Q. So you didn't count them up and outline those?

1 A. Yes. But I do not have it in front of me.

2 Q. How many of Minor Victim 2?

3 A. I believe it was 15 videos and 5 images.

4 Q. And they were in Mr. Combs' phone?

5 A. The phone, devices, or accounts, yes.

6 Q. But you don't know if all of those were on his phone -- his
7 two phones is what my question was.

8 A. It's my understanding that the applications that he used are
9 phone-based, so eventually they would be on his phone.

10 Q. Let me try this one more time. On Mr. -- LaMark's two
11 phones that you got, one was an iPhone 8 and one was an iPhone
12 6, how many images of Minor Victim 1 did you find on Mr. Combs'
13 cell phone?

14 A. Like I just said, off the top of my head, I don't know.

15 Q. Okay. How many of Minor Victim 2 did you find on Mr. Combs'
16 cell phone?

17 A. Specifically on his cell phone, I do not know.

18 Q. Okay. Could you go to the next minor victim and show what
19 you found on Mr. Combs' cell phone, Apple 6 or his Apple 8?

20 A. Which minor victim are we talking about?

21 Q. Well, you have the list. Read those, please.

22 A. I don't have a list of minor victims. Are we talking about
23 Minor Victim 3?

24 Q. Well, you so far -- yes. Go to Minor Victim 3.

25 A. I was not able to identify any images of Minor Victim 3, but

1 she stated that she sent --

2 Q. No.

3 A. -- 12 images to him.

4 Q. I asked you, sir, what you could identify. Would you listen
5 to my question and respond to my question, if you don't mind.

6 So on Minor Victim 3, you found zero; is that correct?

7 A. I was not able to identify anything of Minor Victim 3 on his
8 devices.

9 Q. On Mr. Combs' devices, other than what you've mentioned as
10 to Minor Victim 1 and Minor Victim 2, which you said you weren't
11 sure about, did you find any of the other victims' photographs
12 on Mr. Combs' cell phone, either his 6 or his 8?

13 A. It's possible, yes.

14 Q. Which ones?

15 A. Probably all of them.

16 Q. But you couldn't identify them. You didn't match up any in
17 a single report that you prepared; would that be true?

18 A. If that's what my report states, then yes.

19 Q. You have interviewed Minor Victim 3, and you heard the
20 questions asked of you by Ms. Schneider; is that correct? You
21 interviewed Minor Victim 3?

22 A. Correct.

23 Q. And in interviewing Minor Victim 3, you found that she was
24 involved with another person older than Mr. Combs, did you not?

25 MS. SCHNEIDER: Objection. That's not relevant to this

1 hearing.

2 MR. PARRISH: We believe it is, Judge.

3 THE COURT: I agree it's not relevant.

4 MR. PARRISH: Judge, may I make just a brief offer of
5 proof as to what that would be? And I can state it myself.

6 THE COURT: Go ahead.

7 MR. PARRISH: Thank you, Judge.

8 With regard to Minor Victim 3, we believe an offer of
9 proof that would be relevant is that she was involved in a
10 relationship with a William Michael Elliott, who was older than
11 Mr. Combs; who was, in fact, a sex offender; and that she had
12 sent similar images to him. Mr. Elliott was a white individual,
13 was a Caucasian, and the Government and Mr. Johnson were fully
14 aware of that at the time he conducted that interview.

15 This issue goes to the disparity, Judge, in how
16 Detective Johnson reviewed this case with Mr. Combs as opposed
17 to how he treated Mr. Elliott.

18 And that would be the end of our offer of proof, Judge.

19 THE COURT: Go ahead.

20 MR. PARRISH: Thank you.

21 And we would ask, Judge, that that offer of proof would
22 be allowed in your evaluation of the case.

23 THE COURT: I'm aware of that allegation.

24 MR. PARRISH: Thank you.

25

1 BY MR. PARRISH:

2 Q. In the interview, would you tell us whether or not you
3 interviewed S.W.? Does that ring a bell?

4 A. Yes.

5 Q. You conducted that interview, did you not?

6 A. It was either myself or a forensic interviewer.

7 Q. And her mother was present in that interview?

8 A. Possibly.

9 Q. Is that the interview where you answered Ms. Schneider by
10 saying you're not sure she told the complete truth?

11 A. No, I don't believe so.

12 Q. That was not that same interview?

13 A. No.

14 Q. Was there an interview when -- you conducted with S.W. where
15 you indicated to her comments about Mr. Combs that were
16 derogatory?

17 A. Not that I'm aware of, no.

18 Q. Did you conduct any interview with any of the victims in
19 this case where you indicated that Mr. -- referred to Mr. Combs
20 in a derogatory manner?

21 MS. SCHNEIDER: Your Honor, I'm going to object again.

22 Counsel has been told repeatedly for 2 1/2 years that these
23 comments, number one, are not relevant to this hearing. This is
24 another race-baiting argument being made by Defendant, and he
25 has been told repeatedly in writing and verbally that these

1 comments, number one, are not racially motivated and, number
2 two, were not made by this witness.

3 The Government is tired of the defendant continually
4 accusing this witness of being racist and putting words in this
5 witness' mouth when he knows full well they were not made by
6 this witness. The Government objects.

7 THE COURT: If the witness didn't make the comments,
8 then the witness can say he didn't make any comments.

9 Go ahead.

10 BY MR. PARRISH:

11 Q. So, Detective Thompson [sic], is it your testimony that you
12 never made any derogatory comments during an interview about
13 Mr. Combs? And that's an interview with S.W.

14 THE COURT: You're going to need to be more specific by
15 what you mean by "derogatory." He was doing an interview into
16 somebody who's admittedly had the sexual abuse of a number of
17 girls. "Derogatory" is a pretty broad term. You're going to
18 need to ask him specific terms.

19 MR. PARRISH: Let me find the specific comments, Judge.

20 BY MR. PARRISH:

21 Q. Did you make the comment at all that, "You're lucky" -- to
22 the mother, that, "You're lucky you're not dead"? This is the
23 interview with MV1. "He's a 200-pound man. He's a terrible
24 person. He is terrible.

25 "Strange-ass guy...who's to say that he doesn't come

1 back and sexually assault your mom or come back there and rape
2 you?

3 "Your naked vagina is on the Internet.

4 "Do you think he didn't share this video with anybody?
5 He's an asshole."

6 Are you saying you did not make those comments?

7 A. Can I clarify who we're talking about? You had --

8 Q. MV1. I think I asked the question about MV1.

9 A. You initially asked about S.W., and now you're -- are we
10 changing victims?

11 Q. I think if you go back to my orientation of this question, I
12 said MV1.

13 A. I did not, in my recall, make those statements. Again,
14 during that interview, I was in and out of that interview, and
15 my sergeant conducted the majority of that interview.

16 Q. Who was that?

17 A. Sergeant Peiffer.

18 Q. Now, we've had the video of this interview, and we've run it
19 back and forth several times. Are you telling -- is your
20 testimony here today that you were not part of that interview?

21 MS. SCHNEIDER: Objection; misstates the witness'
22 testimony.

23 THE COURT: Agreed.

24 Your question to him, which was cued towards S.W.'s
25 interview, not Minor Victim 1's interview, was whether he made

1 those statements.

2 MR. PARRISH: Correct.

3 THE COURT: If he didn't make those statements, then
4 this line of questioning is over.

5 MR. PARRISH: Judge, what I'd like to do is at least
6 present as an offer of proof the fact that he was present during
7 that interview and that -- and also part of the interview that
8 led to her responses.

9 THE COURT: Was --

10 MR. PARRISH: And this would be the two --

11 THE COURT: You're talking about S.W. or MV1?

12 MR. PARRISH: MV1, Judge.

13 THE COURT: All right. That's different questions than
14 you asked him. But if we're talking about MV1, was he present
15 in the room when those statements you've alleged were made?

16 MR. PARRISH: That's fine.

17 THE COURT: Was he?

18 MR. PARRISH: I don't know. He has not responded.

19 THE COURT: Well, you said you watched the video
20 multiple times. Is he present in the room when the statements
21 you've talked about were actually being made?

22 MR. PARRISH: Yes. He was in and out of the room.

23 THE COURT: Was he present in the room --

24 MR. PARRISH: Judge, you know --

25 THE COURT: -- when those particular statements --

1 MR. PARRISH: -- this was a year and a half ago. I
2 listened to it, the interview.

3 THE COURT: Okay.

4 MR. PARRISH: As you know from the discovery, we had a
5 tough time even getting the video to play.

6 THE COURT: Okay. All of this is irrelevant as near as
7 I can tell, so let's move on to questioning that relates to what
8 his direct examination was.

9 MR. PARRISH: All right. Well, Judge, may I make an
10 offer of proof on this, please?

11 THE COURT: As long as you can actually make the offer
12 of proof.

13 MR. PARRISH: I will.

14 THE COURT: You need to be able to articulate and have
15 the proof that supports it that he was present in the room when
16 those statements were made by somebody else in an interview
17 different than you asked him about. If that's your offer of
18 proof, go ahead.

19 MR. PARRISH: Thank you, Judge.

20 On page 16 of the transcript, Judge, that we took from
21 June 18th of 2019, there was an interview where both Mr. Johnson
22 and Detective Peiffer were in the room and MV1.

23 THE COURT: Who created the transcript?

24 MR. PARRISH: That's a good question. It comes from
25 Petersen Court Reporters, Judge, because we had a tough time

1 getting the material prepared. It came from Petersen Court
2 Reporters that prepared it from, I believe, an audio and video
3 recording that we were given in discovery.

4 THE COURT: And it notes who's coming in and out of the
5 room?

6 MR. PARRISH: Judge, it says Detective Johnson, and it
7 says, "How is Clinton?"

8 And then it's a redacted. "Stinky sometimes."

9 And I can't say whether we had this prepared or the
10 Government had it prepared.

11 THE COURT: But does the transcript note when this
12 witness was in the room or not in the room?

13 MR. PARRISH: Judge, I have it in front of me now. I'm
14 looking at the interview as it flows, page 1 through page 8, and
15 I'm going on through page 13.

16 I see -- this is Detective Johnson's questions on page
17 12. "So this is a video that I took a screenshot of."

18 Sergeant Peiffer right after that: "We sanitized that
19 and took a picture of that...that's the only decent shot in that
20 video clip that we have" -- "that could show you," Sergeant
21 Peiffer.

22 And then Ms. redacted.

23 Johnson says: "Where was that at."

24 If you keep going, Judge, to page 14 and page 18, we
25 have -- and we can furnish a copy of this to the Court.

1 Detective Johnson is still participating in the interview where
2 he's accusing her of not being completely honest.

3 He says, Detective Johnson: "When I go back and look
4 at your guys' iMessage and your Snapchat conversation, it's
5 going to be to the end of April."

6 There is this exchange that continually goes on, Judge.
7 It does not show him -- to answer your question specifically,
8 does not show him being out of the room, but it does show on
9 page 28, Judge, where Detective Johnson is talking, and Sergeant
10 Peiffer comes in right after that and continues to talk.

11 THE COURT: Okay. I'll take that as an offer of proof.
12 Let's move on.

13 MR. PARRISH: Thank you, Judge.

14 And we would ask, Judge, to be considered as an offer
15 of proof through page -- through page 67, Judge.

16 THE COURT: Somebody's going to have to provide a copy
17 to the Court. I don't have that document.

18 MR. PARRISH: And there's that exchange, Judge, between
19 Sergeant Peiffer and Detective Johnson right behind each other
20 where he makes an allegation of her lying.

21 THE COURT: Okay. But we weren't talking about her
22 lying. We were talking about derogatory comments about the
23 defendant, so --

24 MR. PARRISH: It's in that page.

25 THE COURT: Again, somebody will have to provide the

1 transcript to me, but let's move on.

2 MR. PARRISH: It's in that page span, Judge, that I
3 just mentioned.

4 THE COURT: Okay. Let's move on.

5 MR. PARRISH: Thank you.

6 BY MR. PARRISH:

7 Q. I want to make sure that I clearly understand this. You
8 said you had a few photographs with, I believe, Victim -- Minor
9 Victim 1, Minor Victim 2, and then Minor Victim 3. Let me just
10 ask you, with regard to L.H., did you find any digital
11 photographs of L.H. on Mr. Combs' cell phone, iPhone 6 or iPhone
12 8?

13 A. It is my understanding of that case that nothing like that
14 was reported.

15 Q. Okay. And let's go to S.W., if you don't mind. On S.W.,
16 did you find any photographs of S.W., what we would call --

17 A. Again, I don't believe that was reported in that case.

18 Q. Okay. And you found none when you matched it up; is that
19 correct?

20 A. Nothing identifiable, correct.

21 Q. Okay. Now, there were what you call several other videos on
22 his phone. And I understand technically, you may not be able to
23 answer this, but of the other videos that were on Mr. Combs'
24 cell phone, were you able to determine whether he had accessed
25 those videos or that digital material that was pornographic?

1 MS. SCHNEIDER: Objection, Your Honor. That's not
2 relevant. He's pled guilty to these offenses, and if we are
3 going to now be challenging whether the defendant has accessed
4 them, I will raise the issue of a breach of the plea agreement.

5 MR. PARRISH: It goes to mitigation, Judge. I think
6 he's admitted they were on his phone. I think we are on the
7 same path that we were before. It's a mitigating factor. No
8 one is disputing they were not on his phone.

9 THE COURT: The witness can answer, if he knows the
10 answer.

11 A. That is out of my scope of that.

12 BY MR. PARRISH:

13 Q. And so you don't know one way or the other?

14 A. No.

15 Q. Okay. With regard to S.W., after you interviewed her with
16 regard to her allegations against Mr. Combs, did you follow up
17 with any additional interviews or background with regard to
18 S.W.?

19 A. Interviews in regards to her character or --

20 Q. Yes.

21 A. Not that I'm aware of, no.

22 Q. Did you determine whether or not she had married a different
23 individual?

24 MS. SCHNEIDER: Objection; relevance.

25 MR. PARRISH: Well, I'm going to show you the

1 relevance, Judge. It ties in to the telephone messages that
2 were introduced as the Government's Exhibit --

3 THE COURT: 5?

4 MR. PARRISH: Yes, Exhibit 5. And if you need me to
5 lay a foundation for that, I'm happy to do that.

6 THE COURT: I don't know whether it's relevant or not.
7 Go ahead and offer it, and I'll decide whether it's relevant.

8 MR. PARRISH: Thank you, Judge.

9 BY MR. PARRISH:

10 Q. You said in regard to your answers to Government's Exhibit 5
11 that S.W. was exchanging text messages with someone else.

12 A. Correct.

13 Q. And who is that on the other individual?

14 A. She's a minor. I am not going to disclose her name at this
15 time.

16 Q. It was a minor --

17 A. Correct.

18 Q. -- is that correct?

19 And you would agree that in exchange of this
20 information that there was other information related to her
21 relationship with another party? S.W.'s relationship with
22 another party. This is just a portion of it?

23 A. Conversation in regards to what?

24 Q. To the person she eventually married.

25 A. I'm not aware that S.W. is married, and at the time she was

1 15, 16 years of age.

2 Q. Okay. You were not aware that she was married; is that
3 correct?

4 A. At age 15?

5 Q. No. That she eventually got married to a person.

6 A. It's possible.

7 Q. Okay. And you did not do any follow-up; is that right?

8 A. Into what?

9 Q. To S.W.

10 A. No.

11 MR. PARRISH: Judge, at this point we're going to ask
12 that the other exhibits that we filed in the Rule 52 be
13 introduced for this Court to consider. I think Judge Jarvey
14 used a straw case for his analysis. We believe that they are
15 directly relevant to S.W. and also goes to our argument with
16 regard to whether S.W. was a victim for this Court to consider.

17 THE COURT: Whether -- okay. I'll accept those
18 exhibits.

19 MR. PARRISH: Thank you.

20 MS. SCHNEIDER: Your Honor, may I just make a record on
21 that?

22 THE COURT: Go ahead.

23 MS. SCHNEIDER: Government objects to that. The,
24 quote-unquote, exhibits that were filed, particularly in the
25 motion to reconsider, they are not relevant. They are several

1 years -- from my recollection, this was a year ago, they were
2 many years post this offense.

3 Whether she subsequently was married, whether she
4 subsequently had a child has nothing to do with the offense that
5 occurred four years ago today or tomorrow, and so the
6 defendant's attempt to besmirch S.W.'s character with things
7 found in a newspaper to say, well, because she did well in
8 school, she couldn't have been a victim and she couldn't have
9 been sad about being raped by the defendant is just absolutely
10 not relevant, and the Government would object to receiving those
11 exhibits.

12 That's my record. Thank you.

13 THE COURT: Okay. Ms. Schneider, any redirect?

14 MS. SCHNEIDER: Thank you. Briefly.

15 REDIRECT EXAMINATION

16 BY MS. SCHNEIDER:

17 Q. Detective Johnson, just returning to the L.H. investigation,
18 while you were not the lead investigator, did you participate in
19 the investigation?

20 A. Yeah. I assisted with a search warrant at the residence.

21 Q. And you've reviewed the report?

22 A. Correct.

23 Q. You've also met with her since then, particularly during
24 trial prep here in this case; is that right?

25 A. That is correct, yes.

1 Q. So you've seen her, you've met with her, you've seen her
2 tell her story?

3 A. Correct.

4 Q. Does it matter whether images or videos are contained on a
5 cell phone or in someone's social media account?

6 A. No, it does not.

7 Q. Is it legally relevant?

8 A. No.

9 Q. And to that end, though, in your investigation, did you
10 locate occasions in which the defendant would screen-record with
11 his cell phone off of Snapchat?

12 A. Yes, I did.

13 Q. Can you describe that?

14 A. So a screen recording is, from my understanding, particular
15 to iPhones where you can record what is on your screen. There
16 are many instances of the defendant screen-recording his gallery
17 of photos, which disclosed fully nude, partially nude, and
18 females doing sexually explicit conduct in his photo gallery.

19 Q. Also from his Snapchat account at times?

20 A. Yes. And it was from his Snapchat account as well.

21 Q. Because not everything is saved in Snapchat; is that right?

22 A. Correct.

23 MS. SCHNEIDER: Thank you. Nothing further.

24 THE COURT: Mr. Parrish, you can recross, if you want
25 to. I'm also having trouble finding the exhibits you were

1 referencing. Can you --

2 MR. PARRISH: They would have been filed, Judge, at the
3 sentencing.

4 THE COURT: No. I found your sentencing exhibits. You
5 were talking about a Rule 52.

6 MR. PARRISH: Oh, they were filed, Judge, after the
7 sentencing, and they would be --

8 THE COURT: Oh, okay.

9 MR. PARRISH: -- part of the documents that went up to
10 the Eighth Circuit.

11 THE COURT: Okay. I wanted to make sure they weren't
12 filed --

13 MR. PARRISH: Right.

14 THE COURT: -- at the time of another hearing.

15 MR. PARRISH: Thank you.

16 THE COURT: Go ahead.

17 RECROSS-EXAMINATION

18 BY MR. PARRISH:

19 Q. I have just a couple of brief questions for you. You said
20 you did follow up and you talked to L.H., is that correct, and
21 also got a search warrant; is that right?

22 A. That was --

23 Q. L.H.

24 A. -- during the initial case back in 2018.

25 Q. Exactly. So you went to the judge and helped get the search

1 warrant in this case?

2 A. No, I did not.

3 Q. You do know a search warrant was obtained in this case,
4 though, right?

5 A. As I explained, yes, we executed a search warrant at his
6 house for his car and his person.

7 Q. But also, in order to get that search warrant, various
8 representations had to be made to the district court judge or
9 the magistrate; is that right?

10 A. I did not get that search warrant.

11 Q. I understand. But you know and you are aware that a
12 representation was made to the district court judge or the
13 magistrate that LaMark Combs and L.H. had communicated by cell
14 phone; is that correct?

15 MS. SCHNEIDER: Objection. He just said he's not the
16 one who got that search warrant, and this exceeds the scope of
17 redirect.

18 MR. PARRISH: It talks about his conversations with the
19 judge, and it also goes to whether or not he's aware of those
20 reports. This is a sentencing hearing.

21 THE COURT: It does go beyond the scope of redirect,
22 unless you've got it linked somehow to the redirect questions
23 that were asked.

24 MR. PARRISH: This is my question, Judge.

25

1 BY MR. PARRISH:

2 Q. It's true you found out, Detective Johnson, that your fellow
3 officers indicated to the district court judge that LaMark Combs
4 and L.H. had communicated by cell phone and L.H. did not have a
5 phone to communicate with him by?

6 MS. SCHNEIDER: Objection. Same objection.

7 THE COURT: This is so convoluted at this point. If
8 the witness knows the answer to that question, he can answer
9 that question. We're pretty far afield of anything that's
10 relevant at this point.

11 But go ahead.

12 A. I did not write that search warrant. I do not know what was
13 contained in the affidavit of that search warrant.

14 BY MR. PARRISH:

15 Q. That's fine.

16 MR. PARRISH: And, Judge, I think the search warrant is
17 part of an exhibit that we introduced earlier --

18 THE COURT: Okay.

19 MR. PARRISH: -- to show they communicated by cell
20 phone, and there was no evidence of any cell phone communication
21 between L.H. and Mr. Combs.

22 MS. SCHNEIDER: Your Honor, the Government objects.
23 Counsel's testifying. Move to strike.

24 MR. PARRISH: It's an exhibit, Judge.

25 THE COURT: Let's move on.

1 Ms. Schneider, any additional evidence you wish to
2 offer?

3 You can step down.

4 (Witness excused.)

5 MS. SCHNEIDER: No, Your Honor. Government rests.

6 THE COURT: Mr. Parrish, any evidence you'd like to
7 offer?

8 MR. PARRISH: No, Your Honor.

9 THE COURT: All right. Argument as far as whether or
10 not MV3 and H.P. should be established as relevant conduct and
11 should receive a grouping adjustment.

12 Ms. Schneider.

13 MS. SCHNEIDER: Thank you, Your Honor.

14 As outlined in our resentencing memorandum, the
15 Government does take a bit of a different approach here due to
16 some other cases that have come in the interim since last
17 October.

18 Because of the interplay between the expanded relevant
19 conduct in 1B1.3 and the fact that this case -- even though the
20 defendant pled to receipt and possession, because he's
21 cross-referenced to the production guideline in 2G2.1, the
22 Government believes that Minor Victim 3 and H.P. can be
23 considered in a group only under Count 6 as possession, not the
24 way the PSR currently has it outlined as four groups. And
25 that's because expanded relevant conduct can't be considered

1 because the production guideline doesn't allow for grouping
2 unless it's a count of conviction.

3 So the Government believes that there is appropriately
4 three groups; MV1, MV2, and then Count 6, possession, and that
5 would be for any images or videos that the defendant was
6 possessing. And that can include Minor Victim 3 and H.P. and
7 anyone else that he was possessing on that day -- or was
8 possessing separate from Minor Victim 1 and Minor Victim 2.

9 The Government has now proven that up through Detective
10 Johnson's testimony regarding any number of the minor females
11 who testified -- or who reported to Detective Johnson that the
12 defendant requested sexually explicit images and videos of
13 themselves and that they complied.

14 And so because of that, the Government does believe
15 that the grouping is properly -- the grouping is properly
16 grouped as three units, as indicated in our memorandum, which
17 then he would have the adjusted offense level of 38.

18 Those three groups, he would get three units for that,
19 and so then he would have an adjusted -- a combined adjusted
20 level of 41, and then that would give the range of 235 to 293
21 after any reduction for acceptance of responsibility.

22 Thank you.

23 THE COURT: Mr. Parrish.

24 MR. PARRISH: Thank you, Your Honor.

25 Your Honor, first of all, Judge, I note the Government

1 and I have fought vigorously about this case, and it's been a
2 hard-fought battle for numerous reasons, but we appreciate the
3 fact that the Government has agreed that the PSIR, the first
4 time it was calculated, was incorrect and it should start at a
5 235 to a 293.

6 The second thing we want to point out to the Court is
7 that there is no doubt Mr. Combs' conduct was wrong, and he
8 acknowledged that. His difference was that whether or not this
9 conduct was consensual or nonconsensual. That's the only thing
10 that Mr. Combs has consistently defended against.

11 But he understands, as he acknowledged in his response,
12 Your Honor, that these young ladies were much younger than him,
13 he should have known better, and he should have acted
14 differently. And this was not what his parents expected of him,
15 they brought him up to be, or that he was engaged in.

16 However, Judge, we think that this is -- I just want to
17 read you one portion -- and I realize this is not the sentencing
18 argument. You don't want me to combine this and make this my
19 full argument, do you, because --

20 THE COURT: No. Let's stick to the grouping issue
21 first.

22 MR. PARRISH: Right.

23 THE COURT: As I understand it, you're no longer
24 objecting to the guideline range the Government's proposing of
25 235 to 293.

1 MR. PARRISH: It's more in line of what we argued the
2 first time, Judge. I agree that we are not objecting to it, and
3 I thank the Government for at least conceding the fact that it
4 was incorrectly calculated the first time.

5 THE COURT: Then let me have Ms. Schneider --

6 MR. PARRISH: Sure.

7 THE COURT: -- make her 3553(a) argument, and then I'll
8 let you have the floor to --

9 MR. PARRISH: And I can do the whole thing in one time?

10 THE COURT: Yes.

11 Ms. Schneider, are there any victims who wish to be
12 heard -- no. Well, let me go ahead and do the calculation,
13 then.

14 Based upon the agreement of the parties, I then
15 recompute the guideline calculation contained within the final
16 presentence report as follows:

17 For Group 1, which is MV1, we have a starting base
18 offense level of 32. There's a two-level increase because the
19 offense involved a minor who was over the age of 12 but under
20 the age of 16. There's a two-level increase because the offense
21 involved commission of a sex act or sexual contact. There's a
22 two-level increase because the offense involved a computer.

23 For Group 2, which is MV2, we then have a two-level
24 upward adjustment -- starting from a Base Offense Level 32, we
25 have the two-level upward adjustment for commission of a sex act

1 or sexual conduct. We have the two-level increase based on the
2 use of a computer.

3 Then we have Group 3, which is going to contain sort of
4 MV3, any other girls who were involved in sending pornography,
5 child pornography, to the defendant. That starts at a Base
6 Offense Level 32. There's a two-level increase because the
7 offense, again, involved a minor who was at least 12 but not 16.
8 There's a two-level increase for sexual act or contact, and
9 there's a two-level increase for use of a computer.

10 We no longer have a fourth group, so we now have an
11 initial Adjusted Offense Level 38. There's then a three-level
12 increase under 3D1.4. That's the multi-count adjustment.
13 There's then, as I understand it, a three-level decrease -- is
14 that correct, Ms. Schneider, you're moving for that third
15 level --

16 MS. SCHNEIDER: Yes, Your Honor.

17 THE COURT: -- for acceptance of responsibility.

18 So that leaves us at a Total Offense Level 38.
19 Defendant is a Criminal History Category I. That gives us an
20 advisory guideline range of 235 to 293 on Counts 4 and 5,
21 although there's a 240 max on Counts 4 and 5, and Count 6 would
22 have a 120-month maximum. So to get to that guideline range, at
23 least to the mid- and upper ranges, you'd have to stack counts
24 here.

25 Supervised release of five years to life is applicable

1 on each of the counts of conviction. The suggested fine range
2 here would be, I think -- is it 50,000 -- yeah, 50,000 to
3 250,000 dollars on each count, although, as Judge Jarvey did, I
4 don't intend to impose a fine.

5 We need to talk about restitution, and then there's the
6 \$100 special assessment per count.

7 A couple questions for the Government. First, are
8 there any victims who wish to be heard; and, second, I know
9 restitution was not specifically requested by MV1 or MV2. It is
10 mandatory under the law, and so I am not sure how or if the
11 parties want to address that because there is a \$3,000 minimum
12 amount that has to be imposed under the law, and so I'm not sure
13 how that was avoided at the first sentencing.

14 So, Ms. Schneider, you want to tackle those issues and
15 then I'll get to your 3553(a) analysis?

16 MS. SCHNEIDER: Yes, Your Honor. There are no victims
17 present who wish to be heard.

18 And as for restitution, while the 3,000 per victim is
19 mandatory, it's my understanding that the Government still has
20 to prove loss, and in this case, there was no request from the
21 Minor Victim 1 or Minor Victim 2, and so without that request,
22 the Government would not have been able to prove a loss, any
23 loss, that would justify the mandatory minimum of 3,000, and so
24 that's why nothing was ordered originally.

25 THE COURT: Okay. If restitution isn't argued, then

1 what about the assessment under the Amy, Vicki, and Andy Child
2 Pornography Victim Assistance Act?

3 MS. SCHNEIDER: I think that's separate.

4 THE COURT: Okay. That wasn't imposed either, so --

5 MS. SCHNEIDER: It wasn't.

6 THE COURT: What are we doing about that? Because
7 that's also mandatory.

8 MS. SCHNEIDER: That, we'll leave that up to the
9 Court's discretion.

10 THE COURT: Okay. 3553(a) analysis.

11 MS. SCHNEIDER: Thank you.

12 Your Honor, as Judge Jarvey stated last October, the
13 defendant is a predator, and he has groomed pubescent and
14 post-pubescent females, both for the production of child
15 pornography and for sexual activities. He finds these girls on
16 social media, and he uses them to suit his needs. And you see
17 that in some of the exhibits, particularly Exhibits 1 and 2, as
18 to how he would try to go about that.

19 He would -- if these girls would be receptive to his
20 come-ons and his sexually themed conversations, he would then
21 try to move that into meeting in real life and moving to having
22 sexual intercourse or sexual activities with them, just as he
23 did with Minor Victim 1.

24 Several of the times that he had sexual intercourse
25 with these girls, as it sounds like the defense concedes, he was

1 committing crimes. Whether that's statutory rape or forcible
2 rape, the Government has proven that -- both of those through
3 Detective Johnson's testimony.

4 He interviewed a lot of these girls through -- himself
5 through two separate investigations. L.H., although that wasn't
6 Detective Johnson's investigation, she was 13 when she had,
7 quote-unquote, consensual sex with the defendant, who was an
8 adult. Of course, 13-year-olds cannot consent, and that was a
9 crime.

10 Minor Victim 3 was 14 years old when the defendant was
11 18 and 19. That was a crime.

12 And then there's S.W., who the defendant forcibly
13 raped, and even went so far when she was trying to say no, she
14 was trying to -- she told him she had her period, and he stuck
15 his hand down her pants to see if that was true.

16 THE COURT: But, Ms. Schneider, I can't rely on any of
17 that because it's been objected to in the presentence report.

18 MS. SCHNEIDER: Well, that's why I called Detective
19 Johnson, Your Honor.

20 THE COURT: Okay.

21 MS. SCHNEIDER: If Your Honor chooses not to use that,
22 that's fine, but that was the purpose of that, Your Honor.

23 THE COURT: Okay.

24 MS. SCHNEIDER: The defendant exhibited his -- and
25 actually, Your Honor, Exhibit 5, which then was S.W. and their

1 mutual friend talking about how the defendant admitted that she
2 had said no is further evidence of that, Your Honor.

3 But regarding the child pornography, the defendant
4 clearly exhibited this same pattern of requesting these images
5 and videos and his reaction when the girls would refuse. This
6 was his manipulation and his grooming. And that also is
7 evidenced in Exhibit 1 and Exhibit 2.

8 And I know in both the original sentencing memo, which
9 is sort of incorporated by reference, and Defendant's
10 supplemental memorandum, they say, well, he didn't distribute --
11 he only distributed Minor Victim 1's images of her breasts just
12 to his sister. Well, no.

13 If you look at Exhibit 4, he was seeking out and trying
14 to distribute or seek distribution of additional images from
15 another male on Snapchat of additional child pornography. This
16 is what the defendant was doing. He was doing it repeatedly.

17 And then when he moved to Georgia, in Exhibit 3, he was
18 continuing this conduct, despite having three contacts with law
19 enforcement, knowing these investigations were ongoing.
20 Absolutely nothing stopped this man except this federal
21 indictment.

22 He just absolutely is a predator. As Judge Jarvey
23 said, any person who seeks out 13-year-olds or 16-year-olds for
24 sexual activity is a predator, and that is the defendant. And
25 to characterize his conduct as sexting, whether it's merely

1 sexting or sexting and rape, I guess is irrelevant.

2 There's nothing about the defendant's conduct that fits
3 the definition of sexting, as the defendant will have you
4 believe. What the defendant refers to when he says that this is
5 sexting is two minors who are engaged in a relationship and
6 exchanging nude images to one another. That's something that,
7 yes, courts and legislatures across the country are grappling
8 with, because when they're both minors, it is still child
9 pornography, but that's not really what the child pornography
10 laws are designed to target. What the child pornography laws
11 are designed to target is LaMark Combs.

12 He also -- this is some of his previous claims. I
13 don't know exactly what he's going to argue here today; however,
14 he has previously argued that, for instance, his age is a
15 mitigating factor or the fact that he knew these females is a
16 mitigating factor. However, the United States Sentencing
17 Commission actually found that having these proximity to victims
18 actually increased violent -- dangerousness because of his
19 ability -- or defendants' abilities to manipulate and groom.

20 And the closeness in age, by the time this defendant
21 was 20 years old, he had left in his wake just a trail of
22 victims. And the fact that he wasn't some 40-year-old man on
23 the Internet is what allowed him to commit these crimes.

24 Therefore, after considering all of the sentencing
25 factors, particularly the need to protect the public and the

1 victims and to deter future criminal conduct, the Government
2 respectfully requests a guideline sentence or, in the
3 alternative, the same 210-month sentence previously imposed,
4 either of which would be sufficient, but not greater than
5 necessary.

6 Thank you.

7 THE COURT: Thank you.

8 Mr. Parrish.

9 MR. PARRISH: Thank you, Your Honor. May it please the
10 Court and counsel.

11 I'm sure, as I said earlier, the Court, in reviewing
12 this case, saw the enormous difficulties and complexities of
13 this case. And I think Judge Jarvey, even though there was one
14 error he made, I have nothing but great respect for him, as I
15 shared with him about a week ago when we were both up at the
16 Supreme Court at the swearing in of Justice May. We were
17 chatting a little bit about this.

18 And this is what he said, Judge, at the sentencing, and
19 I think it hits the nail on the head. And he says -- I'll begin
20 on page 82 of the transcript: "And I have, over my 15 year...or
21 14 year...as a district court judge, been critical of the
22 sentencing guidelines relating to child pornography simply
23 because the enhancements seem to all apply in every case and can
24 easily ratchet up a first-time offender to the statutory
25 maximum, so I've talked about this time after time."

1 And then he says, "As it relates to the receipt of
2 child pornography, the difference in age here is a somewhat
3 mitigating factor; however, the young age of the victims is an
4 aggravating factor, and every adult who seeks out a 13-year-old
5 or 16-year-old for sex are predators." And he says, "Every
6 one."

7 And I think that paragraph sums up, Judge, much of the
8 controversy surrounding Ketanji Jackson's probation -- or home
9 detention at her Supreme Court hearing from some of the
10 senators, point out the complexities of sentences in cases like
11 this. And I know, Judge, from your experience, both as a trial
12 lawyer and as a judge, you fully understand these complexities.

13 When the judge reduced his sentence, as the Eighth
14 Circuit referred to it as, right below the error point of 100
15 months, that's something that judges tend to do to let other
16 lawyers who come up to argue or other defendants who come up and
17 argue in similar-type cases -- what they're looking at.

18 Today, Judge, I think we kind of got off on the -- not
19 necessarily the wrong foot, but the idea that Mr. Combs has
20 not -- had not accepted responsibility. In his first
21 allocution, even though it was lengthy, he does accept his
22 responsibility, and I think when he makes his allocution today,
23 what he's learned in these three years, you'll have an
24 opportunity to hear directly from him and his experience. What
25 he has said he's done and what I have reviewed with regard to

1 representing him shows that he understands his conduct was
2 wrong.

3 His parents, who live in Georgia, were here at his
4 first sentencing. They're back here today for his sentencing,
5 along with other family members, to show their support for him.
6 So he does have a strong family, which is part of a 3553
7 analysis that this Court has to give.

8 When we talk about his young age, Judge, we don't put
9 that in a vacuum. At age 19 -- you've had the exhibits, I
10 believe, with regard to his grades, his school, and other
11 factors that shows that -- not to demean him or anything like
12 that, but he was not a super rocket scientist and someone who
13 had matured.

14 And as Judge Pratt has often said in his cases, when we
15 look at young men and their development, we know at 25, 26, that
16 frontal lobe does not kick in at the same level that it should.
17 So we ask the Court to consider that as a factor when it does
18 its analysis and determines what may be the best sentence in
19 this case.

20 Of course, we don't go, Judge, without acknowledging
21 the victims in this case, L.H. particularly. I think -- even
22 though I think the record would support that she was 13 at the
23 time, the Eighth Circuit refers to that, but I think everyone
24 overlooks the fact that these young ladies oftentimes represent
25 themselves to be older. Not that it makes Mr. Combs' conduct

1 properly -- proper or minimizes his conduct, but it does give an
2 explanation, to some extent. Even at 15, no doubt, she would be
3 too young, but he was 18 at the time as opposed to 19, Judge.
4 We ask you to consider those factors.

5 In H.P., Judge, all we're asking the Court to do in
6 that case is to consider it not denies relevant conduct, but to
7 show that it falls within the characteristics of his 3553(a)
8 factors; that when you take a look at this case, you look at it
9 within that context as opposed to a way to increase his penalty
10 or not allow him to have what we would call some mitigating
11 factors.

12 And this is not the end of my argument, Judge, but you
13 also know, as we argued the other day in front of you on a
14 separate case, there are the *Pepper* factors that the Court would
15 have to consider in this case. We are asking the Court to at
16 least give some consideration to that. And let me just outline
17 briefly, Judge, how that would apply in this case.

18 For the three years that he has been incarcerated, his
19 infractions, if any, have been minor. I think there was one
20 incident where a roommate of his in Marianna, Florida, had an
21 incident, and he was sanctioned for 30 days, but in those 30
22 days, no sanctions were imposed on him, but his roommate was
23 released. And that was when they were supposed to be back in
24 their cell after going to get water, and he was back on time,
25 but his roommate was not back in time.

1 And there was another incident recently at the
2 Muscatine correctional facility where -- now he's on a kosher
3 diet for a couple of reasons, Judge. As you know, he has the
4 pancreatic issue, but the other issue was for religious purposes
5 he was on that diet. They took him off the diet. They found
6 him with an item of food that was not on the kosher diet. They
7 sanctioned him for it.

8 I did send a letter down to the Muscatine County
9 Sheriff's Office, and they then directed that they allowed him
10 to get back on the kosher diet, and they allowed him to finish.

11 But other than those incidents, Judge, for three years,
12 even though he's been in, I think, a total of maybe ten
13 different BOP or BOP contract facilities, he's never had any
14 serious incident that would lead to a disciplinary action so
15 substantial that he would be sanctioned for.

16 Additionally, Judge, he started this prayer group that
17 we talked about, where he's the actual leader of that prayer
18 group.

19 COVID has -- and I know you've recognized that in other
20 cases, Your Honor -- struck hard within the prisons. I'm sure
21 we all followed the lockdowns, for those of us who have clients
22 there in the different facilities.

23 Marianna was no different. It went into an off-and-on
24 lockdown, so he was unable to get into any classes that would
25 have allowed him to prepare for rehabilitation or punishment for

1 treatment of his issues. And not just him, but a lot of
2 inmates -- I'm sure you've heard the stories more than I have --
3 have been unable to complete those, so we ask the Court to give
4 some consideration for that.

5 Additionally to that, he's been unable, except for two
6 occasions, to visit in person with his family, even though they
7 now live in Georgia and he's incarcerated in Florida and will go
8 back to that facility.

9 Judge, one thing we want to point out, and I started
10 earlier when I said this, and that was there is no dispute, and,
11 as Detective Thompson said -- Johnson said, he did not have a
12 good case. He went there and didn't have the evidence to
13 support it.

14 But we all know, I believe, the legislature in Iowa now
15 has increased the age by one year the last time I reviewed the
16 statute. I think it goes into -- maybe went into effect July
17 1st, but I think it's increased one year for that protective
18 age.

19 There's a reason for the protective age, Judge. We all
20 recognize that. Everyone, if they are above an adult, should
21 respect that age. But the mitigating factors, we believe, would
22 be the lack of guidance, the lack of treatment, the lack of
23 attention to those matters. And, clearly, Mr. Combs should have
24 abided by those standards. So we're not using that as an
25 excuse, and we acknowledge, I believe, in our objection that in

1 some of these instances that would be considered a statutory
2 rape.

3 The thing that I think is troubling and may cause you
4 to not agree with my argument, Judge, and that is the idea that
5 if it's connected -- and I think the Government, to some extent,
6 tends to say that the conduct doesn't go to that. The big
7 argument, I think, and the big dispute that we may have is
8 whether or not -- if it's a pornography case and this conduct is
9 not directly associated with that particular act or that
10 particular violation, is the person punished for that or is that
11 punishment too great.

12 The Government, in its argument -- and I think I'm not
13 necessarily disputing the Government's argument, but what the
14 Government says in its argument, well, the pornography statutes
15 were created for people like Mr. Combs, and I think that's where
16 we part ways.

17 There's no doubt what his conduct was, and that's not
18 to be disputed. But I think what is important, Judge, we all
19 know that the pornography statutes were basically created for
20 the people who were abusing young kids. And I don't mean 13.
21 We've had these cases before. I've argued them in front of you.
22 But they were passed for the profiteers, for the people who
23 abuse, who physically get in, grab, and take hold of these
24 people.

25 I think where our pornography laws kind of depart from

1 what the legislators have tried to do and why the law has not
2 caught up with certain aspects of pornography is that there is a
3 middle ground here. And I'm not saying it applies 100 percent
4 in this case, but there is some application of the mitigation
5 factors. And that is when you have a group of teenagers who
6 hang out, who go to school together, who interact. And I'm not
7 saying they have to interact for the purposes of having sex or
8 anything like that. But when they interact, there are cases
9 that we know and we've laid out in our brief, Judge, that shows
10 they make a difference.

11 And this is where the difference comes: When they send
12 them to state court, and that's where this case probably would
13 have been, had they had the evidence for it, and you have to
14 look at what that penalty would have been. And, Judge, I have
15 to, in all fairness, say that I have read some decisions where
16 there have been arguments in front of you about what the state
17 courts apply and what the federal courts apply, but I think this
18 is one case, Judge, where you will have to take that into
19 consideration as a factor.

20 I understand this is in federal court. I don't make
21 any mistake about that. This is in federal court. I get that.
22 I get the severity of the penalty. And I tell all my clients
23 once they are in federal court, it's a whole different ball
24 game. And I think Mr. Combs gets that too.

25 So we're not asking you to, all right, substitute the

1 state for the federal. We're not asking you to do that. But
2 this is the one case where we believe, Judge, you can balance
3 out what Mr. Combs would have gotten in state court had he
4 originally been charged and had Mr. Johnson been successful --
5 Detective Johnson been successful in getting this case charged,
6 which he tried to do.

7 I believe he indicated he'd gone to meet with them, he
8 didn't have the evidence, and then it became a pornography case.
9 That's a factor, Judge, presented by the Government which we
10 think you can consider in your analysis.

11 Finally, Judge, I want to talk a little bit about
12 Mr. Combs' family, his folks who have testified. And as the
13 magistrate said, Judge Jackson said, with regard to this case,
14 when Mr. Combs was up for detention, because both his parents
15 had government security clearances, that it was a close case for
16 him, but they were in Georgia and he was living in -- he was
17 charged here in Iowa.

18 I say that, Judge, because in those analyses, and it
19 follows all the way through, Mr. Combs has worked his entire
20 life. His parents have taught him to work hard. At the time
21 this happened, you know, there were some interviews that took
22 place at Arby's, where he was working.

23 He got moved to Georgia, and even though his conduct
24 was not appropriate during that time, he was working at a -- it
25 was not a Home Depot, but the other place similar to a Home

1 Depot, and had signed up to go to school and start his junior
2 college. He was still living at home. He was going to church.

3 And if you look at these calls and when they were made,
4 Judge, they were made in the midst of a night, and I believe
5 Detective Johnson, I could be wrong, indicated there were no
6 photographs exchanged on those instances.

7 But, clearly, this young man needs some treatment. He
8 can get that treatment within the BOP program, Marianna. It's
9 why he's down there. That's where he can get the treatment.

10 The bottom question, Judge, and -- the bottom-line
11 question that, obviously, you have to answer, then, that Judge
12 Jarvey struggled with, and I think the Eighth Circuit kind of
13 noted, they said, well, would he have gotten this sentence had
14 the judge started out with the correct guideline. I think in
15 that instance, the Government concedes in its brief that it was
16 not the correct guideline. So where do we go from there?

17 Judge, that's actually in your hands, and we have
18 nothing to do with it, but we ask you to consider the mitigating
19 factors that Judge Jarvey used, that you go below what Judge
20 Jarvey did with regard to his sentencing and you calculate in
21 the factors that Judge Jarvey already calculated in with his 100
22 months and reduce Mr. Combs' sentence to that point, Judge.

23 And I believe that's all I have to say, unless the
24 Court has some questions on it. And Mr. Combs is going to make
25 an allocution, Your Honor.

1 THE COURT: What would you propose we do about the
2 restitution and the AVAA assessment?

3 MR. PARRISH: Judge, I agree with your analysis of
4 that. You're right, it's something we missed. I think, Judge,
5 it's appropriate -- if it's mandatory, it's appropriate, unless
6 there's some resistance that we could file to it. I have not
7 thought of any. I was happy he didn't have it, obviously, and I
8 believe he's paid his \$100.

9 But I would agree, Judge, that I would leave it in your
10 hands, Your Honor.

11 THE COURT: I think on the AVAA, you can make an
12 assessment that they can't pay. That is the one out that
13 exists.

14 Ms. Schneider, would you agree he doesn't have the
15 ability to pay that restitution amount or that -- I'm sorry --
16 assessment amount?

17 MS. SCHNEIDER: Yes, Your Honor. I guess it depends --
18 what I have argued before you previously is largely dependent on
19 a number of factors, such as the sentence, and so not knowing
20 what that is yet; however, you know, those factors are age, his
21 ability to work, his other debts. And so assuming he gets a
22 high sentence, then probably he does not have the ability to
23 pay, Your Honor.

24 THE COURT: Okay. All right. Thank you, Mr. Parrish.

25 MR. PARRISH: I would just say if he gets a low

1 sentence, he would have the ability to pay, Judge.

2 THE COURT: Any program or placement requests?

3 MR. PARRISH: I think Marianna was where he was, Judge.
4 I think he'd like to go back there. And also, in my research on
5 it, it's one of the facilities that excels, I believe, of the
6 treatment of the kind that Mr. Combs would benefit from.

7 THE COURT: Thank you.

8 MR. PARRISH: Thank you, Your Honor.

9 THE COURT: Mr. Combs, this is the time in the hearing
10 where you can say what you might want to say. Is there anything
11 you'd like to say at this time?

12 THE DEFENDANT: Yes, Your Honor.

13 MR. PARRISH: Do you want him to stand up, Judge?

14 THE COURT: He can sit or stand, whichever is most
15 comfortable for him.

16 MR. PARRISH: Thank you, Your Honor.

17 THE DEFENDANT: Your Honor, Judge Rose, I'm not very
18 good at speaking in front of crowds of people, so I ask that you
19 pardon me if I stammer a few times, and I thank you for this
20 time to speak.

21 At my last sentencing, I took full accountability for
22 my actions, and here today, I do again. I also ask that justice
23 and only justice be served here today and that you have mercy on
24 me for mercy's sake.

25 On top of taking full accountability for my actions,

1 the last time I stood before a judge I also spoke a little bit
2 about my personal background years before the incidents occurred
3 and some months after. Today, though, I feel that it isn't
4 necessary to dwell on the days of my childhood and youth.

5 There are no excuses and no justifications for my
6 actions, and that is the truth. I apologized then, and I do so
7 now again, to the young ladies who are a part of the incidents
8 we spoke of today.

9 I have been told that due to court procedures, I am not
10 allowed to mention your names, so I ask that you all please do
11 not take it as disrespect in not using them.

12 I was a 19-year-old young man, and you all were 15- and
13 16-year-old young ladies, but I considered myself more
14 experienced, and I thought I was a player. I used you all for
15 my own emotional and sexual needs without a full understanding
16 or consideration of how my actions would affect you all.

17 I now know what I did was wrong and that it was against
18 the law. It was spiritually and morally unacceptable. If there
19 was any way I could go back and stop myself from being so
20 ignorant, I would do it. I pray that my actions do not stop you
21 all from having healthy and happy future relationships. Again,
22 I apologize for what I did to you all.

23 I would also like to apologize to my whole family.

24 To my parents, I would like to say I know that was not
25 how you all raised me to be. I am sorry for the pain, anger,

1 stress, and any shame I have caused the both of you.

2 To my whole family, I want to thank you all for
3 standing by me, helping me, and continuing to support me.

4 To my immediate family -- my parents, sisters and
5 brother -- I want you all to know that you all mean everything
6 to me, and I am sorry that you all have had to deal with
7 everything that has happened. I thank those who have stood by
8 me all this time and have shown me what real love is.

9 I want to apologize to the young ladies' families,
10 knowing that what I took from you all -- from all of you is
11 something that money can't give back. Time is not something
12 that can ever be given back. I understand that better than I
13 ever have. The stress and any pain I have caused you all isn't
14 something I can make up for either, and for that I am sorry.

15 I have had the time to mature these past few years, and
16 I know I still have more changing and growing to do. I had just
17 turned 20 when I was arrested. Tomorrow, I turn 23, and I
18 believe I have had a substantial amount of time in jail and
19 prison to contemplate about who I was, what I did, and who it is
20 and what it is I want to do and be.

21 Since I was arrested, my conduct at Muscatine County
22 Jail, Marianna Correctional Institution, and during the times of
23 transport has been good. The length of my sentence has
24 unfortunately prohibited me from getting into any rehabilitation
25 classes. Due to COVID, I have also been on lockdown and had

1 many activity restrictions during portions of my incarceration
2 and unable to speak to or visit my family at these times.

3 I have had plenty of time to get to know Hashem, my
4 God, and to do what I have learned to be called to teshuvah,
5 which means feel contrite about something you've done wrong and
6 resolve to reform one's life.

7 While in prison, I was presented with the opportunity
8 to start and lead a scripture study group where a part of what
9 we did was speak of our wrongdoings truthfully and help each
10 other learn and grow from these mistakes we made. We also
11 talked about the hope that there still is. And not only do we
12 talk, but we put our words into action.

13 I'm continuing to do that, and I do believe it has made
14 me a better man, better than the young man I was at 19 years old
15 and better than the man I was at 20 years old when I was
16 arrested. And now, only a day before I turn 23, I will continue
17 to strive in becoming a better man and to complete the
18 transformation I am currently in, taking advantage of any other
19 rehabilitating processes that become available to me.

20 When I am released and reunited with my family,
21 whenever that is, I will lead the life I am learning to live, a
22 life in truth, an honorable one that in part will have to do
23 with the honest to God justice that is served here today.

24 I know that's an easy thing to say and that this Court
25 will make its own calculation based off the truth and the risk I

1 pose, but I am not the same person I was as a young man of 19,
2 and I know with all my heart that it is part of Hashem's will.
3 I will be an even better person upon my release in the years to
4 come than I am today.

5 I wanted to end this by saying again to the young
6 ladies and their families that I am sorry.

7 Thank you, Your Honor.

8 THE COURT: Thank you.

9 In this case, I have considered all of the factors
10 under 3553(a), the advisory guidelines, and the statutory
11 penalties.

12 I want to be clear because this is a resentencing
13 hearing and there has been a lot of, I think, litigation
14 surrounding this case from its very beginning, as near as I can
15 tell in weeding through all of the old materials, that I'm not
16 relying on anything that's been contested. I am not relying on
17 the old transcript where S.W. testified as a victim and that's
18 been objected to.

19 I am here relying on the unobjection to portions of the
20 presentence report, the stipulations that are contained within
21 the plea agreement, the testimony of Detective Johnson that I
22 found to be credible, and I find that that establishes those --
23 that combination of things: that between January of 2018 and
24 April of 2019, when the defendant was an adult, he had sexual
25 intercourse with Minor Victim 1, who was 15; Minor Victim 2, who

1 was 16; Minor Victim 3, who was 14; L.H., who was 13; S.W., who
2 was 15; C.G., who was 15; and G.T., who was 15.

3 Under Iowa law, his sex with MV3 and L.H. constitutes
4 sexual abuse in the third degree. Whether that was or wasn't
5 consensual, the State of Iowa says that when somebody of the
6 defendant's age at the time those events happened has sex with
7 somebody of the age that MV3 and L.H. were at the time that
8 happened, that it constitutes sexual abuse, because under Iowa
9 law, children of that age, whether boys or girls, can't consent
10 to have sex with adults.

11 The second half of the case is that Defendant then
12 urged MV1 and MV2, MV3, and H.P. to send him child pornography
13 images of themselves and they did so. He knew at the time those
14 girls created that child pornography that they were children.
15 He was the person who induced them to create that child
16 pornography, and that's what ultimately led to his indictment in
17 federal court.

18 Defendant also created child pornography while having
19 sex with MV1, and he distributed at least some of the images of
20 MV1 to another person, the nude images of her.

21 When law enforcement ultimately searched the
22 defendant's phones, they found seven still images of child
23 pornography and 23 video images of child pornography. Those
24 feature at least MV1 and MV2, as well as a number of other
25 images that, because they do not show these girls' faces, it's

1 hard to tell whose, essentially, genitalia is being displayed in
2 those images, but they constitute child pornography.

3 During the course of the investigation of these
4 matters, law enforcement had contact with the defendant on
5 multiple occasions, and yet this conduct, this having sex with
6 young girls and creating child pornography, continued. It
7 persisted despite those frequent contacts with law enforcement.
8 It even continued after he moved out of state.

9 That would all indicate to me that the defendant is
10 suffering from some kind of sexual disorder that requires him to
11 have some treatment and that does make him dangerous to the
12 community. Now, that's the offense. It's a serious offense.
13 It's one that requires context and thoughtfulness.

14 When you look at everything else about the defendant,
15 it is all mitigating. He is -- as he said, he's turning 23
16 tomorrow. He was born and raised here in Davenport. He was
17 raised by his father and stepmother in a middle class
18 environment that, by all accounts, was loving and supportive.
19 Defendant has never married. He has no children.

20 He's generally in good physical health, although he's
21 got some issues with pancreatitis. He has no history of any
22 kind of mental health problems. His substance abuse history
23 generally includes alcohol consumption starting back at age 12
24 and marijuana use starting at page 14, but no more serious
25 history than that.

1 He graduated high school. He's attended at least one
2 online college course in Bible and theological study. He has
3 been employed, generally, throughout both his teen years and his
4 adulthood in a variety of jobs. He has no criminal history
5 aside from what happened here.

6 So it presents a complex package of issues. This is
7 not a mere sexting case, and I think everybody acknowledges
8 that. This is not two young kids sending relatively PG-13-rated
9 images to one another. This is, you know, the creation of hard
10 core pornography and sending it from a child to an adult at the
11 request of the adult.

12 I've heard no evidence and am aware of no evidence that
13 any of these girls initiated the creation of materials and sent
14 them to the defendant. All of this, as near as I can tell,
15 based on the facts before me, indicates that the defendant
16 started it with all of these girls, and that's of concern. The
17 fact that it persisted despite law enforcement interventions is
18 of concern.

19 Now, I think time is going to tell us whether this is
20 an issue that irons out with maturity and treatment or whether
21 this is a problem that's going to persist even as the defendant
22 ages. But certainly there are a number of red flags here in the
23 conduct itself.

24 There's also a number of green flags, such as they
25 might be called, in the fact that Defendant has all the things

1 he might need, all the tools he might need, to resolve this
2 issue such that it never repeats. He has good family support.
3 He has the intelligence and the health, both mentally and
4 physically, to address these issues successfully.

5 When I consider all of those factors, I think what is
6 appropriate here is to start at the bottom of the now stipulated
7 guideline range and give, proportionately speaking, the same
8 downward variance that Judge Jarvey gave and for a number of the
9 same reasons that Judge Jarvey articulated, at least those that
10 weren't objected to by the parties.

11 Doing so results in a sentence of 183 months'
12 imprisonment. That is the sentence that I choose to impose.
13 That's on each of the Counts 4, 5, and 6, with all of those --
14 I'm sorry -- 4 and 5, with 120 months on Count 6. All of those
15 sentences are to run concurrently to one another.

16 I will recommend to the Bureau of Prisons that
17 Defendant be placed back at Marianna for the service of his
18 sentence. When the defendant completes his term of
19 imprisonment, he'll be on supervised release for five years on
20 each of Counts 4, 5, and 6. Those terms will run concurrently
21 to one another.

22 I find the defendant does not have the ability to pay a
23 fine, and so no fine will be imposed. There has been no
24 restitution requested, and I find that Defendant does not have
25 the ability to pay any assessment under the Amy, Vicky, and Andy

1 Child Pornography Victim Assistance Act, so no assessment is
2 applied there.

3 I order forfeiture consistent with the agreement of the
4 parties and the plea agreement filed at Docket 255. Defendant
5 does have to pay the special assessment of \$100 per count.

6 I want to talk about supervised release conditions.
7 Judge Jarvey imposed a number of conditions. I'm going to
8 reimpose those. I want to clarify a couple areas.

9 Defendant will have sex offense-specific treatment
10 programming. He'll have periodic polygraph testing. These are
11 as set forth previously by Judge Jarvey and again in the
12 presentence report.

13 Defendant can't go to or remain at any place for the
14 primary purpose of observing children, that is, people under the
15 age of 18, so that's going to be places like parks, schools,
16 playgrounds, pools, things like that, without approval of the
17 probation office.

18 He can't have any direct contact, whether it's
19 personal, electronic, mail, or otherwise, with any child or
20 somebody he should reasonably know to be a child, without
21 permission of the probation office.

22 He cannot have any contact with the victims or their
23 families, and I include as victims for our purposes here MV1,
24 MV2, MV3, L.H., S.W., C.G., G.T., and H.P.

25 Defendant may not view or possess any, essentially,

1 pornography. That's more explicitly defined by the order here.

2 Defendant can't have access to or possess any kind of
3 Internet-capable device, including computers, cell phones, or
4 other items, without the permission of the probation office. If
5 he's allowed to use such devices, he'll have to agree that those
6 devices or items can be seized and searched periodically and
7 that monitoring software can be installed to allow the probation
8 office to keep track of what he's viewing on those devices.

9 Defendant has to register as a sex offender in any
10 state in which he lives, and Defendant has our standard search
11 condition.

12 Judge Jarvey did not impose a substance abuse testing
13 and treatment condition, but given the defendant's history of
14 alcohol and marijuana use, I think that condition does need to
15 be added, so I am adding that at this time. Otherwise, it is
16 the same conditions previously imposed and not objected to at
17 the time of the original sentencing.

18 Mr. Combs, you have 14 days from today to appeal. If
19 you decide you want to appeal, just let Mr. Parrish know. He'll
20 take care of the paperwork for you.

21 Mr. Parrish, were you appointed in this case?

22 MR. PARRISH: Judge, it started out as a private case.
23 Before the Eighth Circuit, it became a CJA. And I don't know --
24 I told my office to check on the way down here -- if it was
25 reappointed as a CJA. I think it might be.

1 THE COURT: Okay. We can certainly -- Defendant
2 qualifies for court-appointed counsel. We can certainly switch
3 you over to court-appointed counsel if you would like to do
4 that. And I imagine the Eighth Circuit would do the same.

5 So I'll just -- it's easier than having him complete a
6 new financial affidavit. I assume nothing about his finances
7 has improved since the presentence report was created.

8 MR. PARRISH: That's correct, Your Honor. Yes.

9 THE COURT: Okay. Then I will find that he qualifies
10 for court-appointed counsel. We'll appoint you for purposes of
11 preparing for and representing him at this hearing, so you can
12 submit through CJA voucher your information.

13 MR. PARRISH: Thank you, Judge.

14 THE COURT: And I'll let the Eighth Circuit handle it
15 if an appeal is filed.

16 Mr. Combs, what that means is that if you decide you
17 want to appeal, that appeal will be free for you. Mr. Parrish,
18 or another attorney if the Eighth Circuit decides not to
19 reappoint Mr. Parrish, would handle that case on your behalf.
20 It wouldn't cost you anything.

21 If a notice of appeal is not filed in the next two
22 weeks, or 14 days, from today, you forever give up your chance
23 to challenge this sentence.

24 Do you have any questions about your new sentence?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Mr. Parrish, anything we need to clarify?

2 MR. PARRISH: Yes, Judge. On the *Pepper* factor, you
3 did not separate it out. Is there a way we could get that
4 carved out?

5 THE COURT: I can. In deciding to regrant,
6 essentially, the downward variance that Judge Jarvey gave at the
7 same proportional rate that Judge Jarvey gave, I did consider
8 the *Pepper* factors. I would not have given the variance the way
9 he did as much as he did.

10 So I think I probably would have been higher in his
11 range to start with than Judge Jarvey was because I do see that
12 pattern of sexual abuse as highly problematic, but, again, I
13 wanted to give some continuity to the defendant, and so I
14 started at the bottom of the range and included *Pepper* into that
15 mix.

16 MR. PARRISH: Thank you. That's all I needed to
17 clarify, Judge. Thank you.

18 THE COURT: Ms. Schneider, I think still Counts 1
19 through 3 are dismissed.

20 MS. SCHNEIDER: Yes, Your Honor.

21 THE COURT: Anything else for the Government?

22 MS. SCHNEIDER: No, Your Honor.

23 THE COURT: Ms. Ashley Adams-Moon, anything to clarify
24 for Probation?

25 THE PROBATION OFFICER: No, Your Honor.

1 THE COURT: All right. Good luck to everybody.

2 We are dismissed.

3 (Proceedings concluded at 11:23 a.m.)

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C E R T I F I C A T E

2 I, Kelli M. Mulcahy, a Certified Shorthand Reporter of
3 the State of Iowa and Federal Official Realtime Court Reporter
4 in and for the United States District Court for the Southern
5 District of Iowa, do hereby certify, pursuant to Title 28,
6 United States Code, Section 753, that the foregoing is a true
7 and correct transcript of the stenographically reported
8 proceedings held in the above-entitled matter and that the
9 transcript page format is in conformance with the regulations of
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