

No. \_\_\_\_\_

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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ZACHARY SPIEGEL,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**On Petition for Writ of Certiorari  
to the Eleventh Circuit Court of Appeals**

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**APPENDIX TO PETITION FOR WRIT OF  
CERTIORARI**

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[DO NOT PUBLISH]

**In the  
United States Court of Appeals  
for the Eleventh Circuit**

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No. 22-12097

Non-Argument Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

*versus*

ZACHARY S. SPIEGEL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Florida  
D.C. Docket No. 2:22-cr-14005-AMC-1

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(Filed Sep. 5, 2023)

Before WILSON, JORDAN, and LUCK, Circuit Judges.

PER CURIAM:

Zachary Spiegel, proceeding with counsel, appeals his conviction for attempted enticement of a minor to engage in sexual activity in violation of 18 U.S.C.

§ 2422(b). On appeal, he argues that the district court erred by denying his motion for a judgment of acquittal because there was insufficient evidence to show that he intended to entice a minor to engage in sexual activity and that he took a substantial step toward committing that offense. He contends that he lacked the requisite intent under § 2422(b) because he broached the topic of sex with the fictitious minor before learning she was a minor and initially indicated that he could not engage in sexual activity with her after learning her age. He also argues that he did not take a substantial step under § 2422(b) because he only had explicit sex talk with the minor and never traveled to meet her.

We review whether sufficient evidence supported a jury's guilty verdict *de novo*, resolving all reasonable inferences in favor of the verdict. *See United States v. Lee*, 603 F.3d 904, 912 (11th Cir. 2010). We will not disturb the verdict unless no trier of fact could have found guilt beyond a reasonable doubt. *See id.*

The statute at issue here, § 2422(b), makes it unlawful to knowingly attempt to entice a minor to engage in unlawful sexual activity. To secure a conviction under § 2422(b), the government must prove beyond a reasonable doubt that the defendant (1) had the specific intent to entice a minor to engage in unlawful sexual activity, and (2) took a substantial step toward the commission of that offense. *See Lee*, 603 F.3d at 913-14.

The government must prove that the defendant intended to cause assent on the part of the minor, not

that he acted with specific intent to engage in the sexual activity, and that he took a substantial step toward causing assent, not toward causing actual sexual contact. *See id.* at 914. To determine whether a defendant took a substantial step under § 2422(b), we consider the totality of the defendant's actions. *See id.* at 914, 916. We have held that a defendant's sexually solicitous communication can constitute a substantial step under § 2422(b) because the principal, if not exclusive, means of committing the offense require oral or written communications. *See United States v. Rothenberg*, 610 F.3d 621, 626-27 (11th Cir. 2010). A defendant takes a substantial step when his communication crosses the line from sexual banter to criminal enticement. *See id.* at 627. Evidence that the defendant traveled to meet the minor is not necessary to sustain an attempt conviction under § 2422(b). *See United States v. Yost*, 479 F.3d 815, 819-20 (11th Cir. 2007).

The district court did not err by denying the motion for a judgment of acquittal. The evidence was sufficient to convict under § 2422(b) because the jury could have reasonably found that Mr. Spiegel—despite not meeting with the minor—intended to cause the minor to assent to sexual activity and that he took a substantial step toward causing the minor's assent through his communications. *See* § 2422(b); *Lee*, 603 F.3d at 912-14. For example, after learning the minor's age, he continued to send the minor messages describing the sex acts he wanted to perform with her, sent the minor a picture of his penis, exchanged phone numbers with the minor, and made arrangements to meet

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her at a movie theatre. *See Lee*, 603 F.3d at 912-14; *Rothenberg*, 610 F.3d at 626-27. Indeed, the evidence here is very similar to that which we found sufficient in *Yost*, 479 F.3d at 819-20.

**AFFIRMED.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 22-CR-14005-CANNON-MAYNARD

UNITED STATES  
OF AMERICA,

vs.

ZACHARY S. SPIEGEL,  
Defendant.

/

**DEFENDANT'S MOTION FOR  
POST-VERDICT JUDGMENT OF ACQUITTAL**

(Filed Apr. 8, 2022)

Pursuant to Fed.R. Crim. Pro. 29(c) the Defendant moves for a judgment of acquittal on Count One of the Indictment.

**PROCEDURAL HISTORY**

The Defendant was indicted on two counts of attempting to induce, entice or persuade a minor to have sex in violation of 18 USC §2422(b). Jury trial commenced on March 28, 2022. At the close of the Government's case the defense moved for a judgment of acquittal as to both counts. That motion was denied. After more than five hours of deliberation, the jury returned a verdict on March 29, 2022. The Defendant was found Guilty of Count One and Not Guilty of Count Two.



FACTS

In a light most favorable to sustaining the verdict, the following facts were proven at trial:

On January 9, 2022, after watching YouTube videos of the television show “To Catch a Predator”, A.S., a sixteen-year-old boy, decided to place a post on an internet website known as Whisper. In that post he posed as a girl looking to “hangout”. The original post indicated the girl was between 18 and twenty years old.

There is no dispute as to what transpired between the Defendant and this “girl”. All of their discussions and texts were admitted into evidence at trial as Government Exhibit 14. The Defendant first contacted the girl at 4:19 p.m. (pg. 1, Gov. Ex. 14). Nearly two hours later, at 6:10 p.m., the girl texted that her name was Shayla. The Defendant responded with a selfie. He then asked what she liked to do for fun. Shayla responded that she liked to smoke. The Defendant followed up with, “You like to smoke and fuck?” and Shayla answered, “I do.” When Defendant suggested they get together sometime, Shayla revealed for the first time that she was fourteen years old. (pg. 3, Gov. Ex. 14). The Defendant immediately said, “Well that’s a problem.” He then asked Shayla the age of the oldest person she had had sex with and she responded 27. He asked, “How? Where?” and she replied “In their car. I met them on this app.” To which the Defendant responded, “I don’t think I could. Sorry.”

The two continued chatting and Spiegel asked for a photo. Shayla sent him one. He told her she was

pretty. She volunteered that she was banned from Snapchat for “sending”. Spiegel asked “show me what you mean” and she said “No, I’ve learned from my mistakes.”

At 8:30 Spiegel asked Shayla “How’s your evening?” and she responded “Good I’m at the movies.” Spiegel replied, “Nice. Should have said something. You could have met me in the back row.” Shayla immediately told Spiegel she was alone and invited him to join her. She gave him directions to the theater. He described sex acts he would do to her and she responded that “I want that so bad right now.” (pg. 7, Gov. Ex. 14). They continued to exchange graphic descriptions of what would happen when they met and Spiegel sent a photograph of his penis. Shayla responded to that photo with, “Looks so juicy” followed by three smiling emojis with hearts for eyes. (pg. 9, Gov. Ex. 14). Spiegel said it would take thirty minutes for him to get to the theater.

As it got later, Shayla increased her efforts to convince Spiegel to meet her, telling him: “Come pick me up its dark and I’m scared” and “The only open building is Wing Stop I went inside because I’m scared of being out here.” (pg. 14-15, Gov. Ex. 14).

Spiegel never showed. Ultimately, he told Shayla to go home, that he had been stopped by police. Agent Urgo testified at trial that he found no evidence that Spiegel had been stopped by any local police that night.

### LEGAL ARGUMENT

From the outset of this trial, the defense argued that the Government would be unable to prove two elements of the charge: 1) that Spiegel had the intent to persuade, induce or entice Shayla into consenting to have sex; and 2) that Spiegel took a substantial step to accomplish the crime. The Government has failed to do so.

### INTENT

A close look at both the setting and chronology of initial events is important. The setting was a computer application called Whisper which is designed to allow users to engage in online chats anonymously. It automatically generates pseudonyms for users. Zachary Spiegel was assigned a “name” of Bull Hancock. Despite Whisper’s promise of anonymity, in his first post, Spiegel revealed his true first name. In his second post he sent a selfie. Spiegel made no effort to disguise himself or remain anonymous. Whisper is not a website designed for, or catering to, adults seeking out children for sex.

A.S. testified that when he created the Shayla avatar on Whisper he described Shayla as 18-20 years old. Spiegel responded to that post. There is no evidence that Spiegel was actively seeking out minors for sex. (Compare to the chat rooms “Rent F Vry Yng” in *United States v. Murrell*, 368 F.3d 1283 (11th Cir. 2004) or “Young Girls and Older Men Loving Each Other”,

Dady's [sic] Favorite and "Family Love is Best" in *United States v. Lee*, 603 F.3d 904 (11th Cir. 2010.))

The chronology of events is also important to note. Spiegel broached the topic of sex *prior* to being informed that Shayla was fourteen. In response to his query, "Do you like to smoke and fuck?" Shayla immediately responded, "I do." (pg. 2, Gov. Ex. 14) That response certainly, at a minimum, implies an interest in sexual activity. Consistent with his stated purpose of "catching a predator", A.S. did not pretend to be coy or reluctant.

Spiegel obviously interpreted Shayla's response as expressing willingness to engage in sexual activity because he then suggested that they could get together sometime. It was only at that time that Shayla stated she was fourteen and Spiegel responded, 'Well that's a problem.' Later he told Shayla, "I don't think I could."

The Eleventh Circuit has joined many other circuits to hold that a defendant must act with the specific intent to persuade, induce, entice or coerce a minor to engage in criminal sexual conduct. The underlying criminal conduct is the persuasion, inducement, enticement or coercion of the minor rather than the sex act itself. See *United States v. Yost*, 479 F.3d 815 (11th Cir. 2007), *United States v. Murrell*, 368 F.3d 1283 (11th Cir. 2004). [emphasis added]

Two points are important here. First, when Spiegel initially asked about sex, he had no idea he was communicating with a minor. Shayla had not yet

revealed her age. When he found out, he immediately said, that's a problem.

The second important point: Shayla needed no convincing. She was trying to catch a predator. She (at least implicitly) agreed to sex immediately upon being asked if she liked to smoke and fuck: "I do." After she revealed her age, Spiegel said "I don't think I could sorry." She texted back that she would be fifteen in a month and "I'm mature for my age." (pg. 4, Gov. Ex. 14). Spiegel made no effort to persuade, induce or coerce Shayla into consenting to sexual activity. Shayla needed no convincing. ("Why don't you come thru?" [pg. 6] "I want that so bad right now" [pg. 7] "I'll show you what I can do" [pg. 7] "OMG yess I can't wait" "You got me so horny." [pg. 7] "Come pick me up its dark and I'm scared" [pg. 14] " . . . I'm scared of being out here alone." [pg. 15]) Shayla was trying to catch a predator and said whatever came into her head to bait the hook. Shayla was the one doing the persuading in this case. Despite her pleading, Spiegel never took the bait.

### SUBSTANTIAL STEP

In order to sustain a conviction, the Government must prove that the Defendant took a substantial step toward the intended goal of inducing fourteen-year-old Shayla to engage in sexual activity with him. "To find that a substantial step was taken, the court must determine that the defendant's *objective acts* mark his conduct as criminal such that *his acts as a whole strongly corroborate* the required culpability."

*Murrell* at 1288. [emphasis added]. “A ‘substantial step’ is ‘more than mere preparation’ but less than the last act necessary before’ the crime is in fact committed. This requirement ‘prevents the conviction of persons engaged in innocent acts on the basis of a mens rea proved through speculative inferences, unreliable forms of testimony, and past criminal conduct.’” *United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014) (internal citations omitted). The “defendant’s acts, taken as a whole, must strongly corroborate the required culpability; they must not be equivocal.” *United States v. McDowell*, 705 F.3d 426, 428 (11th Cir. 1983).

Spiegel’s own words are nothing if not equivocal. Upon learning Shayla’s age Spiegel immediately responded, “That’s a problem.” After being told Shayla was sexually active, Spiegel responded, “I don’t think I could. Sorry.” These words certainly do not strongly corroborate the required culpability.

As to this count, Spiegel and Shayla only communicated for a relatively brief period of time, off and on over the course of one evening. Spiegel exchanged explicit descriptions of sex acts he would perform on Shayla. But “[t]here must be more than just explicit sex talk to support a §2422(b) conviction.” *Howard*, at 421.

Spiegel sent Shayla a photograph of his penis. In *Howard*, the Fifth Circuit “disagree[d] with the district court’s conclusion that Howard took a substantial step toward enticing a minor to engage in illegal sex simply

by sending a sexually explicit photograph of himself and asking that it be shown to the girls.” *Id.* at 425. In so ruling the Court relied, in part, on *United States v. Lee*, 603 F.3d 904 (11th Cir. 2010) wherein the defendant sent a video of himself masturbating and that alone was not sufficient for a conviction.

Spiegel said he would come to the theater, but made no effort to do so. The Eleventh Circuit has held that travel to a meeting is unnecessary to sustain a conviction under 18 USC §2422(b). *Yost, supra*. However, in every reported case where the defendant agrees to meet, but does not, there is other overwhelming evidence that “strongly corroborates” the necessary mens rea.

For example, in *Yost*, the defendant was communicating with three different minors simultaneously, all of whom were played by one undercover officer. Over the course of approximately a week, Yost asked for photos of the girls, sent pictures of his penis, asked for descriptions of their bodies and graphically described what he would like to do with them. He agreed to meet “Lynn” at a McDonald’s but failed to show up. Eight days later he did arrive at a scheduled meeting with “Candi” and was immediately arrested.

In affirming the conviction, the Eleventh Circuit pointed to the above conduct as evidence of a substantial step and concluded Yost “crossed the line from mere ‘talk’ to inducement.” *Yost*, at 819. However, despite holding that “travel is not necessary to sustain such a conviction”, Yost did in fact travel to a meeting

with Candi and that travel was featured prominently in the opinion.

In *United States v. Lee*, 603 F.3d 904 (11th Cir. 2010) the defendant communicated with an undercover officer for approximately six months. During that time, he attempted to arrange sex with the agent's two daughters aged seven and twelve. Lee instructed the agent how to prepare the girls for sex, sent pictures and videos of his penis and requested nude photos of the children. He discussed with the agent traveling from his home in Georgia to California to meet with them. He never traveled.

A divided panel affirmed the conviction. The majority pointed to a laundry list of twenty-three items comprising the totality of Lee's conduct that they felt supported the conviction. *Id.* at 316. That list recited numerous conversations between Lee and the undercover agent, Lee sending photographs and videos of his own penis to be shown to the children and requesting explicit photographs of the children.

Although not stated in the opinion, given the lengthy time frame during which these conversations took place, it can be argued that Lee was using the agent to groom the children for Lee's future abuse. Lee (among other things) promised to send gifts to the girls; requested that they pose in explicit, obscene photos; inquired as to their menstrual cycles; and asked if they were on birth control. All of these things are consistent with grooming techniques and when considered



in total establish a “substantial step” towards completion of the crime.

The dissent felt otherwise. “It is true that Mr. Lee asked for pornography; sent photographs of his genitalia; and masturbated on a webcam for the purported mother. However, I see no fact in this case demonstrating that Mr. Lee ever took a step to extend the relationship to Candi Kane or her daughters beyond the boundaries of his property in Georgia. For that reason, I do not believe there was proof that Mr. Lee took a substantial step towards enticing a child to engage in illicit sexual conduct . . .” Judge Martin acknowledged that travel is not required for a conviction under §2422(b) but, despite the conduct described above, wrote “my review of the jurisprudence of this circuit does not reveal any defendant convicted under section §2422(b) after having made so little effort to consummate the crime.” at 920.

Zachary Spiegel made even less effort than Mr. Lee.

### CONCLUSION

Zachary Spiegel did not go onto Whisper looking for an underage girl to have sex with. The profile of Shayla he responded to stated she was eighteen to twenty years old. He made no effort to hide his identity when he contacted Shayla, although Whisper is designed for anonymity.

He turned the conversation to sex *before* learning that Shayla was fourteen. When he did learn her age, his immediate response was, "That's a problem." Shortly after that he informed Shayla, "I don't think I could. Sorry."

Shayla was actively trying to "catch a predator". She said things calculated to accomplish that end, including expressing how eager she was to have a sexual encounter and later expressing how frightened she was waiting for him alone in the dark.

Despite those efforts by Shayla, Zachary Spiegel made no effort to join her at the theater that night. He took no substantial step that would strongly corroborate the existence of an intention to induce, persuade or entice a minor to assent to sex. The motion should be granted.

Respectfully Submitted

*/s Donnie Murrell*

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on April 8, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

*/s Donnie Murrell*

**DONNIE MURRELL, ESQ.**

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**SERVICE LIST**

**U.S.A. vs. ZACHARY S. SPIEGEL  
CASE NO: 22-CR-14005-CANNON/MAYNARD  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 22-CR-14005-CANNON(HUCK)**

UNITED STATES  
OF AMERICA,

vs.

ZACHARY S. SPIEGEL,  
Defendant.

/

**ORDER ON MOTION FOR POST-VERDICT  
JUDGMENT OF ACQUITTAL**

(Filed Jun. 13, 2022)

**THIS MATTER** is before the Court upon Defendant Zachary S. Spiegel's Motion for Post-Verdict Judgment of Acquittal [ECF No. 56], filed April 8, 2022. The United States filed its Response in Opposition [ECF No. 57] on April 22, 2022. The Court held a telephonic hearing on the Motion on May 11, 2022. *See* [ECF No. 61].<sup>1</sup> The Court has carefully considered the parties' briefing, their arguments at the hearing, the record, and applicable law. For the reasons set forth below, the Court **DENIES** the Motion.

**BACKGROUND**

Spiegel was charged with two counts of attempting to induce, entice, or persuade a minor to engage

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<sup>1</sup> The Court adopts its analysis as stated at the hearing, and incorporates that analysis as part of this Order.

in unlawful sexual activity, in violation of 18 U.S.C. § 2422(b). *See* [ECF No. 13]. On March 29, 2022, a jury found Spiegel guilty as to Count One, but not guilty as to Count Two. *See* [ECF No. 47]. The Court entered a Judgment of Acquittal as to Count Two [ECF No. 52] on March 30, 2022. Pursuant to Fed. R. Crim. P. 29(c), Spiegel now moves for a Post-Verdict Judgement of Acquittal as to Count One. *See generally* Mot.

### **ANALYSIS**

At the outset, the Court notes that in analyzing a motion for post-verdict acquittal, the Court must “resolv[e] all reasonable inferences in favor of the verdict” and “cannot disturb the verdict ‘unless no trier of fact could have found guilt beyond a reasonable doubt.’” *United States v. Yost*, 479 F.3d 815, 818-19 (11th Cir. 2007) (quoting *United States v. Lyons*, 53 F.3d 1198, 1202 (11th Cir. 1995)). To support a conviction under section 2422(b), the Government must have proved (i) that Spiegel acted with the specific intent to persuade or induce a minor to engage in unlawful sex and (ii) that Spiegel took some substantial step toward the commission of the crime. *Yost*, 479 F.3d at 819; *see also* *United States v. Murrell*, 368 F.3d 1283, 1286 (11th Cir. 2004). Significantly, the “underlying proscribed criminal conduct” in section 2422(b) is the “persuasion, inducement, enticement, or coercion of the minor rather than the sex act itself.” *Yost*, 479 F.3d at 819 n.3. Thus, the Government need not prove that Spiegel acted with specific intent to engage in sexual activity. *See id.* (citing *Murrell*, 368 F.3d at 1286).

Spiegel first argues that he lacked the specific intent to induce a minor because he did not learn the minor's age until he had already asked about sex, and after finding out, Spiegel indicated that it "could be a problem." *See* Mot. at 5. Spiegel focuses too closely on the minor's age, however. As the court in *Murrell* made clear, the Government must show that Spiegel acted with specific intent only as to inducing the minor to engage in unlawful sex. 368 F.3d at 1286. Hence, it is the inducement of a minor, rather than the sex act itself, that is the underlying criminal conduct. *See id.* Said another way, the specific-intent requirement focuses only on the intent to induce the minor to commit a sexual act, not the intent of the defendant to actually commit the sexual act.

Moreover, Spiegel's argument is not supported by the record. After discovering the minor's age, Spiegel did not cease communications—rather, he sent sexually explicit messages, a photograph of his penis, and repeatedly asked the minor to send him more photos. Further, Spiegel made specific arrangements to pick the minor up at the theater to engage in sexual relations. Thus, although Spiegel did not physically engage with a minor, his conduct falls precisely within the meaning of attempted "inducement" as interpreted by the Eleventh Circuit. *See id.* at 1287 (defining "induce" as "to stimulate" or "cause" a minor to engage in sexual activity). Accordingly, there was sufficient evidence for a reasonable jury to find that Spiegel specifically intended to induce a minor to engage in prohibited sexual activity.

Spiegel second argues that because he did not physically travel to the theater to pick up the minor, he did not commit a substantial step in furtherance of the crime. *See* Mot. at 8. However, this argument lacks merit because not only is travel to meet with the minor unnecessary to support a conviction under section 2422(b), but the content of Spiegel's messages is nearly identical to cases where the Eleventh Circuit has held that the contents of a defendant's messages constituted a substantial step toward the sexual inducement of a minor.

While travel is not required, the defendant's actions must have crossed the line from "mere talk" to inducement. *See, e.g., Yost*, 479 F.3d at 820 (affirming the defendant's conviction because he chatted online with a 13-year-old girl, called her on the phone, made arrangements to meet her, and posted pictures of his genitalia online); *United States v. Lee*, 603 F.3d 904, 917 (11th Cir. 2010) (finding a substantial step was taken when the defendant sent graphic photographs to the girls, explicitly discussed how he would complete the sexual acts, and requested assistance from their mother). Likewise, in the present case, the content of Spiegel's messages unambiguously crosses the line from "mere talk" to inducement. After conveying graphic messages describing the sexual acts that he would perform on the minor, Spiegel sent a photograph of his penis. And Spiegel's conduct did not end there. He repeatedly requested photos of the minor, asked for her phone number, and made specific arrangements to pick her up at the theater that night. "[Spiegel] crossed



the line from harmless banter to inducement the moment he began making arrangements to meet the minor, notwithstanding the lack of evidence that he traveled to the supposed meeting place.” *Yost*, 479 F.3d at 820 (quoting *United States v. Thomas*, 410 F.3d 1235, 1246 (10th Cir. 2005)) (quotation and alteration omitted). At bottom, given the “totality of [Spiegel’s] actions,” *see Yost*, 479 F.3d at 820, a reasonable jury could have found—and did in fact find—that Spiegel took a substantial step toward inducing or persuading a minor to engage in prohibited sexual activity.

### **CONCLUSION**

There was sufficient evidence for a reasonable jury to convict Spiegel of Count One under 18 U.S.C. § 2422(b). Therefore, it is hereby **ORDERED and ADJUDGED** that the Motion [ECF No. 56] is **DENIED**.

**DONE and ORDERED** in Ft. Pierce, Florida, on June 13, 2022.

/s/ Paul C. Huck  
\_\_\_\_\_  
PAUL C. HUCK  
UNITED STATES DISTRICT JUDGE

### **Copies furnished to:**

The Honorable Aileen M. Cannon  
Counsel of Record

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT PIERCE DIVISION**

UNITED STATES  
OF AMERICA

v.

**ZACHARY S SPIEGEL**

§ **JUDGMENT IN A**  
§ **CRIMINAL CASE**  
§  
§ Case Number:  
§ **2:22-CR-14005-AMC(1)**  
§ USM Number: **82699-509**  
§  
§ Counsel for Defendant:  
§ **Andrew Buren Metcalf**  
§ Counsel for United States:  
§ **Stacey E. Bergstrom**

## THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count 1 of the Indictment after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<b><u>Title &amp; Section / Nature of Offense</u></b>	<b><u>Offense Ended</u></b>	<b><u>Count</u></b>
18:2422(B) – Coercion Or Enticement Of Female	02/04/2022	1

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

- ☒ The defendant has been found not guilty on count 2 of the Indictment.
- ☐ Count(s) ☐ 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.

**June 22, 2022**

Date of Imposition of Judgment

**Paul C. Huck**

Signature of Judge

**PAUL C. HUCK**

**SENIOR UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

**June 22, 2022**

Date

### **IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **120 months as to count 1.**

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

Defendant be designated to a facility as close to the Middle District of Tennessee as possible.

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

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

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **twenty five (25) years**.

### **MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.  
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (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 additional conditions on the attached page.

### **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. I understand additional information regarding these conditions is available at [www.flsp.uscourts.gov](http://www.flsp.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

**SPECIAL CONDITIONS OF SUPERVISION**

**Adam Walsh Act Search Condition:** The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the

defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

**Computer Modem Restriction:** The defendant shall not possess or use a computer that contains an internal, external, or wireless modem without the prior approval of the Court.

**Computer Possession Restriction:** The defendant shall not possess or use any computer; except that the defendant may, with the prior approval of the Court, use a computer in connection with authorized employment.

**Data Encryption Restriction:** The defendant shall not possess or use any data encryption technique or program.

**Employer Computer Restriction Disclosure:** The defendant shall permit third party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon the defendant.

**No Contact with Minors:** The defendant shall have no personal, mail, telephone, or computer contact with children/minors under the age of 18 or with the victim.

**No Involvement in Youth Organizations:** The defendant shall not be involved in any children's or youth organization.

**Permissible Computer Examination:** The defendant shall submit to the U.S. Probation Officer

conducting periodic unannounced examinations of the defendant's computer(s) equipment which may include retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with this condition and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

**Restricted from Possession of Sexual Materials:**

The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

**Sex Offender Registration:** The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

**Sex Offender Treatment:** The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment,

if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

**Home Detention with Electronic Monitoring:** The defendant shall participate in the Home Detention Electronic Monitoring Program for the first 24 months of supervision. During this time, the defendant shall remain at his place of residence except for employment and other activities approved in advance and provide the U.S. Probation Officer with requested documentation. The defendant shall maintain a telephone at his place of residence without ‘call forwarding’, ‘call waiting’, a modem, ‘caller ID’, or ‘call back/call block’ services for the above period. The defendant shall wear an electronic monitoring device and follow the electronic monitoring procedures as instructed by the U.S. Probation Officer. The defendant shall pay for the electronic monitoring equipment at the prevailing rate or in accordance with ability to pay.

**Unpaid Restitution, Fines, or Special Assessments:** If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant’s economic circumstances that might affect the defendant’s ability to pay.

The defendant can motion the Court for early termination of the Home Detention program after 12 months of full compliance of all terms and conditions of his supervised release.

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>
<b>TOTALS</b>	\$5,100.00	\$0.00	\$0.00

<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>

- ☐ The determination of restitution is deferred until  
*An Amended Judgment in a Criminal Case (A0245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

\*\* Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

\*\*\* 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.

- ☐ 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 the schedule of payments page 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:

Restitution with Imprisonment – It is further ordered that the defendant shall pay restitution in the amount of **\$.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the

interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

### **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 payments of \$5,100.00 due immediately, balance due

**It is ordered that the Defendant shall pay to the United States a special assessment of \$5,100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:**

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
400 NORTH MIAMI AVENUE, ROOM 8N09  
MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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

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

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

**FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.**

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.

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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
**FORT PIERCE**  
**CASE NO. 2:22-CR-14005-AMC-1**

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**UNITED STATES OF AMERICA,**

Plaintiff

**March 28, 2022**

**vs.**

**ZACHARY S. SPIEGEL,**

Defendant.

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**TRIAL DAY 1**

**BEFORE THE HONORABLE PAUL C. HUCK,  
UNITED STATES DISTRICT COURT JUDGE**

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**APPEARANCES**

FOR THE PLAINTIFF

UNITED STATES OF AMERICA:

**STACEY E. BERGSTROM, AUSA**

**JUSTIN L. HOOVER, AUSA**

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Also present:

Special Agent Eric Urgo

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Witness	Direct	Cross	Redirect	Recross
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[3] **GOVERNMENT EXHIBITS**

Exhibit	Marked	Admitted
1		111
2		111
3		111
4		111
5		111
6		111
7		111
8		111
9		111
10		111
11		111
12		111
13		111
14		111
15		111
16		111
17		111

**DEFENSE EXHIBITS**

(None)

[4] **PROCEEDINGS**

*(The following proceedings were held in open court.)*

THE COURT: Judge Huck here. I'm trying this case for Judge Cannon. You've got questionnaires. You're plowing through them now?

AUSA BERGSTROM: We are, Your Honor.  
Yes.

THE COURT: Good. All right.

AUSA BERGSTROM: Your Honor, would it be possible to get a list of the jurors so that we can take notes?

THE COURTROOM DEPUTY: Yes. I'm going to make you a copy.

THE COURT: That's not for me to answer. That's for the clerk to answer.

How many questionnaires do you have at this point?

MR. MURRELL: It's a pretty good stack, Judge.

THE COURT: Good. So you got most of them.

MR. MURRELL: I hope. We got a lot.

THE COURT: What's your current evaluation of the time? Two, two and a half days?

AUSA BERGSTROM: I think we'll probably have it to the jury by the end of the today, tomorrow, Your Honor, depending on how long it takes to get a jury.

[5] THE COURT: Did you guys have these questionnaires in a small group at a time?

AUSA BERGSTROM: No, Your Honor. We just got a big stack.

THE COURT: I told them I wanted them – every time they had a small bunch to bring them up. Sorry about that. Try as I may, I can't get. . . .

Give me some idea. How far have you gone through the questionnaires? Half? Two-thirds?

MR. MURRELL: Sorry, Judge?

THE COURT: How far have you gone through the questions?

MR. MURRELL: I don't think we're halfway through yet, Judge.

THE COURT: When did you first get them, by the way?

AUSA BERGSTROM: About five minutes before you took the bench, Your Honor.

THE COURT: Okay. What happened? I told them to bring them up. I showed you half dozen or so to bring up so that they could (inaud.). Go ahead. Didn't get the message?

THE COURTROOM DEPUTY: We got the message, Judge. We're just waiting for the questionnaires.

THE COURT: We defeat the whole purpose.

[6] THE COURTROOM DEPUTY: I'm sorry.

THE COURT: Who is in charge?

THE COURTROOM DEPUTY: I guess we're in charge of the jury.

THE COURT: Why didn't you do it, then? No, tell me why. Explain it. I know I had my law clerk call at least two times. I mentioned it when I first came in here and yet you didn't do it. Why didn't you do it? I hate to be starting like this, but this is really upsetting.

THE COURTROOM DEPUTY: I understand. I know.

THE COURT: So why didn't you do it?

THE COURTROOM DEPUTY: We were just waiting for the jury section to let us know that they – you know, that all the jurors were here and that –

THE COURT: No. Listen. When you get six or seven of them, bring them up so the lawyers can look at them. That was the whole idea of getting it here.

THE COURTROOM DEPUTY: Right. Right.

THE COURT: I mean, this is really upsetting.

THE COURTROOM DEPUTY: I'm sorry, Judge.

THE COURT: I mean, we spend a lot of time talking to everybody about (inaud.). A lot of time. This is the one thing I wanted to make sure [7] we got correct.

THE COURTROOM DEPUTY: Okay.

THE COURT: I want you to call Liz and tell her that none of the questionnaires were sent up until about ten minutes ago. They all came up in one batch and I want to find out who is responsible. All the time spent trying to get that squared away so we wouldn't have that exact problem. I'm really, really upset.

What time did the lawyers get here this morning?

AUSA BERGSTROM: Your Honor, I think everybody was in the courtroom by 8:15.

THE COURT: Thank you. I apologize. I had instructed these people to have them up here as soon as the first group were completed. They disregarded my instructions. I apologize to the lawyers for being here on time.

MR. MURRELL: We appreciate it.

THE COURT: Usually, I don't have this problem. First time I've been up here for years.

AUSA BERGSTROM: Your Honor, I do think there was some delay at the front door to get everybody in.

THE COURT: They didn't come in all at on [8] time.

MR. MURRELL: We couldn't get into the building until after 8:00 o'clock and there were jurors waiting out there with us.

THE COURT: Right. So they come in.

MR. MURRELL: Well, they were clearing –

THE COURT: Read your questionnaires.

MR. MURRELL: Yes, sir.

THE COURT SECURITY OFFICER:  
Clocked in until 7:30.

THE COURT: How does Judge Cannon handle witnesses with regards to masks?

THE COURTROOM DEPUTY: I believe she let's them take it off if they feel comfortable with it.

THE COURT: How about the lawyers?

THE COURTROOM DEPUTY: Same thing. When they come up to the podium, they can take it off when they're speaking.

THE COURT: I think after we bring the jury in, I have some preliminary questions and then you have 15 minutes each.

How are we doing out there?

MR. MURRELL: We're not through them yet.

THE COURT: How far along are we?

MR. MURRELL: Halfway.

[9] THE COURT: Halfway?

MR. MURRELL: Maybe a little more.



(Thereupon, there was a brief discussion off the record.)

MR. MURRELL: Judge, we have some cause challenges based on the questionnaire. Do you want to take those up now?

THE COURT: When you're finished viewing the questionnaires, we're going to do that.

What's your name?

THE COURT SECURITY OFFICER: Larry Blandford (ph.).

THE COURT: I was saying I know you from Miami.

(Thereupon, there was a brief discussion off the record.)

THE COURT: Okay. How are we doing?

MR. MURRELL: We just finished.

THE COURT: You finished?

MR. MURRELL: Yes, sir.

THE COURT: Government?

AUSA BERGSTROM: We have a couple to go through.

THE COURT: Let get them done. Hold off just one second. Do me a favor, when you bring the [10] jurors up – before you bring them up, see if anybody needs to use the restroom facilities.

THE COURT SECURITY OFFICER: Yes, Your Honor.

THE COURT: Same thing for you all. You may want to take a bathroom break. So what I'd like to is get the jury selected pronto.

MR. MURRELL: Judge, that brings up an interesting point. If I need to set up during the trial, as long as Mr. Metcalf is here –

THE COURT: I don't have a problem with that. I don't have a problem with it.

MR. MURRELL: Thank you.

THE COURT: Same for the government.

AUSA BERGSTROM: Thank you, Your Honor.

(Thereupon, there was a brief discussion off the record.)

THE COURT: Good morning, everyone. We're here in the United States of America versus Zachary Spiegel. May I have appearances.

First for the government.

AUSA BERGSTROM: Good morning, Your Honor. Stacy Bergstrom for the United States. I'm joined by my co-counsel Justin Hoover. And also at the counsel table is Special Agent Eric Urgo. He's the case agent on the matter.

[11] THE COURT: And for the defendant.

MR. MURRELL: Good morning, Judge. Donny Murrell and Andrew Metcalf on behalf of Zachary Spiegel.

THE COURT: Okay. We've provided you with jury questionnaires. And I think it's a good idea to see if there's some that are obviously a challenge for cause based on just the questionnaires. By the way, the panel is coming up so they should be hear pretty soon. Let me hear from the government first.

Any challenge for cause you believe based on the contents in the questionnaire?

MR. HOOVER: Yes, Your Honor. I'm going to – it is – if it's all right with the Court, I'll also say that probably the defense would move for that we're going to agree to. If that's all right with the Court. For instance, Ms. McKenzie, who wrote "everybody guilty" on question 15, we would –

THE COURT: Here is the problem.

MR. HOOVER: Yes, sir.

THE COURT: And you can't just take pick a name out because I've got a whole stack. Tell me what number they are. I don't think these are [12] numbered.

MR. HOOVER: I see. Here we go. So we have a list here. That would make juror number 4.

THE COURT: Okay. That's McKenzie. Wait a minute. These are not in order. Can you put them in order real quick? This is not what I planned on, folks.

(Thereupon, there was a brief discussion off the record.)

AUSA BERGSTROM: Does the Court or the courtroom deputy have anything on it with the jurors' birth dates associated with their names? There are two questionnaires that have birth dates but no names.

THE COURTROOM DEPUTY: No, we do not.

THE COURT: What?

AUSA BERGSTROM: In the name line they list their birth dates but there's no name associated. There's two questionnaires like that.

THE COURT: We can't figure out who?

AUSA BERGSTROM: We narrowed it down to two names, but we don't know which one is which.

THE COURT: Male or female?

AUSA BERGSTROM: They're both female.

THE COURT: I need to apologize. I've never [13] had this situation before. Usually we almost have the jury selected by this time.

Can you give me the numbers of the two that are unidentified, the possibilities.

AUSA BERGSTROM: One of them is juror number 23 and the other one I believe is juror number 27.

(Thereupon, there was a brief discussion off the record.)

AUSA BERGSTROM: Your Honor, number 27's date of birth is November 9th, 1991.

THE COURT: You can get those squared away, right? Got it?

AUSA BERGSTROM: Yes, sir.

THE COURT: Good. All right. Let's hear from the government.

MR. HOOVER: Your Honor, the first is juror number 4 wrote in answer to question 15: Everybody guilty. Your Honor, with the Court's permission, may I take my mask off while speaking?

THE COURT: Yes, please. And with regard to that, when you're examining as well. Just don't get close to the jurors.

MR. HOOVER: Yes, Your Honor. Thank you.

THE COURT: Everybody guilty. I might want to hear from that person a little bit.

[14] MR. HOOVER: Okay.

THE COURT: There's a question mark. Next?

MR. HOOVER: Along the same lines, juror number 8, question 15, wrote: Sex offenders are always guilty, crimes against children always guilty.

THE COURT: Defendant?

MR. MURRELL: We would join the government's request.

THE COURT: That was Lamana?

MR. MURRELL: Yes, Your Honor.

THE COURT: Lamana will be recused. Okay.

MR. HOOVER: Next is juror 10, who in response to question 15, wrote: I feel that you put yourself –

THE COURT: Give me a name.

MR. HOOVER: Yes, Your Honor. Shonda Boatright.

THE COURT: The first one with numbers and the question.

MR. HOOVER: 15. On the back wrote: I feel if you put yourself in a situation, you deserve the consequences.

THE COURT: We might have to follow up on that a little bit.

[15] MR. HOOVER: Yes, Your Honor.

THE COURT: I think most people, that's different than saying everybody is guilty. Next.

MR. HOOVER: The name is Colton Hester, juror 11.

THE COURT: Okay.

MR. HOOVER: To answer 15, If there's anything in your background that might effect your ability to be impartial, he wrote: Yes, personal feelings. And then to answer 17, Can you render a verdict based solely on the evidence, he wrote: No, I'm not confident I could do that.

THE COURT: We can talk about that in a little bit. That's –

MR. MURRELL: I couldn't hear you.

THE COURT: Okay. Anybody else?

MR. MURRELL: Judge, I'm sorry. Did you grant that? I couldn't hear you.

THE COURT: You can follow up on that. That's kind of vague –

MR. MURRELL: All right.

MR. HOOVER: The name Matthew Beddome, juror 29.

THE COURT: 29.

MR. HOOVER: Says he has trouble with memory.

[16] THE COURT: Well, I'm not going to grant that. We can follow up on that.

MR. HOOVER: Yes, sir.

THE COURT: All right. Now we've gone through 29. Rather than – let me hear from the defendants now. Do you have any between 1 and 29 that we haven't all ready discussed?

MR. MURRELL: I don't think we have any that we have not discussed, Judge.

THE COURT: So then go back to the government at the beginning of 29.

MR. HOOVER: Well –

MR. MURRELL: Judge, I apologize. Number 5 we would challenge for cause. It's juror Samantha –

THE COURT: Okay. 5. Go back to 5.

MR. MURRELL: Samantha Ekin.

THE COURT: 15 through 12. All right. See, I had a question about that, but this is not a crime of violence here.

MR. MURRELL: Well, Judge, I think –

THE COURT: She's talking about domestic violence.

MR. MURRELL: Well, she said –

THE COURT: Because I think somebody in her family –

[17] MR. MURRELL: Somebody in her family.



THE COURT: She's a victim of domestic violence. That's not what this case is about.

MR. MURRELL: Yes, sir.

THE COURT: At least, I don't believe it's about domestic violence. Go back to 29.

THE COURTROOM DEPUTY: I started marking them in and then you came in.

THE COURT: No, it's okay. Never mind. 29 on.

MR. HOOVER: Your Honor, it's Pandora Whiting.

THE COURT: What number?

MR. HOOVER: 38. Wrote to answer 15, Is there anything –

THE COURT: Hold on. Hold on a second. I don't have my numbering, unfortunately.

MR. HOOVER: It's towards the end.

THE COURTROOM DEPUTY: I can number them real quick.

THE COURT: Tell me what it is. I can't find it. I don't have mine numbered.

MR. HOOVER: Yes. To answer 15, Is there anything in your background or personal feelings which might affect your ability to be fair and impartial, she said: See 11 and 12, in which she [18] cited

multiple murders that have occurred apparently in her family, either –

THE COURT: (Inaud.)

MR. HOOVER: Correct. I'm just – the fact that she had personal feelings that might affect your ability to be fair and impartial.

MR. MURRELL: Judge, I've got to bring up juror number 12. I know you've already passed it, but it's Karen Zwemer. And in response –

THE COURT: I'm never going to do this again. I'm never going to do this again.

MR. MURRELL: I'm sorry.

THE COURTROOM DEPUTY: Judge, let me number them real quick. That way you have them in order.

THE COURT: I need 12. Tell me – do it. Do it.

THE COURTROOM DEPUTY: All right.

THE COURT: I apologize. I don't usually get this upset, but I've never had a situation remotely close to this. Remotely close to this. I give lawyers all the time they need to do all this stuff before we bring the jurors up and therefore things run smoothly. This is very unlike me. I am just. . . .

MR. MURRELL: Judge, in response to number 15, [19] she said: If there was someone who hurt or molested kids or a person –

THE COURT: I think so, too. 15 – 15 will be excused.

MR. MURRELL: It's juror number 12.

THE COURT: I'm sorry. 12. Karen Ward Zwemer. Okay. Next.

MR. MURRELL: Juror number 17. And this is not exactly – I mean, they didn't disqualify themselves, but what they – question number 14, they participate as a guardian ad litem volunteer as a child advocate. And I think given the nature of this case, that she probably will disqualify, then.

THE COURT: Why?

MR. MURRELL: Well, because I think they're going to be too much of a child advocate.

THE COURT: Why? I mean, the fact of the matter is you're not going to find anyone that doesn't like children.

MR. MURRELL: I understand that, Judge, but not everybody spends their time volunteering –

THE COURT: You may be able to develop it, but I don't think just based on that.

Anything before 38? Because that's where we [20] were last, right?

MR. HOOVER: The government does have anymore cause challenges. We're through the end.

THE COURT: For the defendant?

MR. MURRELL: I'm looking, Judge.

THE COURT: All right.

MR. MURRELL: Judge, I think you already excused number 34; is that right?

THE COURT: No.

MR. MURRELL: Then juror number 34, Virginia Petersson-Beck.

THE COURT: To number 15; is that right? Line 15 or question 15.

MR. MURRELL: Anybody with federal charges is guilty.

THE COURT: I think we have to get ready rid of her.

Government agrees?

MR. HOOVER: Yes, Your Honor.

THE COURT: 15 right?

MR. MURRELL: Juror number 34.

MR. HOOVER: Petersson-Beck, number 34.

THE COURT: What did I just say.

MR. MURRELL: I mispronounced it as Beel. It looked like an L.

[21] THE COURT: That's juror number 34.

MR. MURRELL: Yes, sir.

THE COURT: Okay. Any others?

MR. MURRELL: Judge, juror number 35, Julie Jacko. When asked in number 17 – question 17, if she could render a verdict based solely on the evidence and law, setting aside sympathies and biases, she said she wasn't sure.

THE COURT: You can develop that.

MR. MURRELL: All right. That's all we have for cause at this time.

THE COURT: You know, I'm going to excuse number 4, as well, to "everybody's guilty." Obviously, she doesn't want to be on the jury. I think that's the reason people answer that question. Most of the time. Not always.

So we have eliminated 4, 8, 12, 34; is that correct?

MR. MURRELL: Yes, sir.

THE COURT: Any other challenges for cause?

MR. MURRELL: Not at this time, Judge.

THE COURT: Okay. All right. I will bring the panel in. What we're going to do after we go

through the voir dire examination, we'll go side bar. And then we'll do it very simply. Remaining [22] jurors, government will go first. They'll do one of two things: accept or reject. And then if accepted, we go to the defendant. Second one up, we go to the defendant first. And then go back and forth until we have 12 jurors, then we'll pick one or two alternates.

Anything else we need to do before the panel comes in. Okay. Then we'll bring them in.

MR. HOOVER: Your Honor, with the Court's permission, is it all right if we can go to the other side of the table so we can face the jurors while we're questioning, or does the Court want us to stay there?

THE COURT: No. You got to move around. You got people way over there, too. However it works for you.

MR. HOOVER: Thank you.

THE COURT: What about these jurors?

MR. HOOVER: (Indicating.)

THE COURT: Okay. Good luck. You can come up here if you want. You decide what works best for you all.

MR. HOOVER: Okay. Thank you, Your Honor.

THE COURT: You don't have to stay at your tables is what I'm saying.

[23] MR. HOOVER: Oh, thank you.

(Thereupon, the venire panel entered the courtroom.)

THE COURT: All right. Everyone please be seated. The case set for trial this morning is United States of America versus Zachary Spiegel. Case number 22 Criminal 14005.

Counsel, are you ready to proceed?

MR. HOOVER: Yes, Your Honor.

THE COURT: Ladies and gentlemen, I want to welcome you to your courtroom. I'm United States of America District Judge Paul Huck. I'll be presiding over this case over the next couple of days. I want to first advise you that we're taking special precautions because of COVID. That we have added three air filters, which they tell me are the most effective way to combat COVID among vaccinations et cetera. Take comfort in that factor.

Welcome to the Court because you're here to see if you're going to be sitting as jurors in this case. The right to a trial by jury is one of the most important rights we have. It's embedded in our Constitution. Founders of our Constitution felt that trial by jury was one of the most important ways to protect citizens from people like [24] King George the Third, who was not only the judge but also the jury in all cases. It's one of the most important – and it's also one that requires people to participate in that process. We have a right to a jury trial and then we have the obligation to serve

on a jury as jurors. It's very important. Without you, obviously, we couldn't have a system in our country which is basically unique in the world. It wouldn't work without you. We're glad to have you here.

I suspect for some of you, this is your first call to jury duty. There's no reason to nervous or apprehensive. We'll take good care of you. I've been doing this for 22 years and I've yet to lose a juror. So sit back and relax. If you need anything with regard to your personal welfare, you can bring it to the Court's attention. And I'll tell you about the people you should talk to. You've already met Irene Ferrante. She's the courtroom deputy. She takes care of running the courtroom to make sure you have everything that you need. This gentleman over here is Larry Blanford. He is the court security officer. He's also here to see to your needs and also to enforce my orders.

Now, if you desire information regarding your [25] personal welfare, make those inquiries to those two people and they'll bring it to my attention. But do not discuss with anybody, court personnel included, anything about the case itself.

Would you please swear in our panel.

(Thereupon the venire panel was sworn in.)

THE VENIRE PANEL: I do.

THE COURTROOM DEPUTY: Please be seated.



THE COURT: All right. Ladies and gentlemen, you've all completed jury questionnaires and I'm going to ask you some follow-up questions, general questions to the panel as a group, and then the lawyers will have a chance to ask some questions. They know the case better than I do, so it's important that they have a chance to follow up with some questions, too. This is what we call – the fancy word is voir dire examination. It's jury selection examination. And the purpose is to find the jury – the best jury in this particular case without having personal knowledge about this case or any personal interest in this case. We're just trying to find the jury that's going to be the fairest and best case for both parties in this case. We're not trying to delve into your personal backgrounds for any purpose other than that.

[26] Now, some of you will not serve as jurors because, as you can see, we have far more people on the panel than could serve as jurors. Don't feel offended if you're not selected as a juror in this case. You can be excused or not selected for a number of reasons, including the fact we don't even get to you. So don't be offended, please, by that.

All right. Now I want to talk a little bit about the case. What I say now is not evidence in this case whatsoever. Based on our best estimate, we think this case is going to take maybe two, two and half days which means it's a fairly short trial. But does that create any serious scheduling problems for anyone? Okay. Good.

Now, the indictment in this case against Mr. Spiegel charges two crimes, we call them counts, against the defendant. Count 1 and Count 2 each charge that on or about – excuse me. Count 1 charges on or about January 9th, 2022 and Count 2 charges on January 18th, 2022. In each of those cases, the defendant used interstate commerce to knowingly attempt to entice a minor to engage in a sexual activity for which a person may be punished. Does anybody know about that case? Does anybody know about that particular case? I see no hands.

[27] Now I'm going to ask the lawyers to introduce themselves, and I want you to see if – and their client, and let me know if you know any of these people who are now going to introduce themselves to you.

MR. HOOVER: Good morning. My name is Justin Hoover and myself along with my co-counsel, Stacey Bergstrom, represent the United States of America. And seated at counsel table is Special Agent Eric Uργο of Homeland Security Investigations.

MR. MURRELL: Good morning. My name is Donny Murrell. I'm an attorney. And with me in this case is Andrew Metcalf. And it's our honor and privilege to be representing Mr. Zachary Spiegel.

THE COURT: Do you know any of these people who has just been introduced to you?

THE COURT SECURITY OFFICER: We have one.

THE COURT: We have two hands. Stand up. Tell us your name. And you can take your mask off.

JUROR 12: Karen Zwemer and I know Andy Metcalf. I'm a teacher and I taught both of his daughters at my school. I would say we're friendly. I know him. I know his wife. I know both of his daughters. I've had parent conferences with him.

[28] THE COURT: You have no personal relationship?

JUROR 12: No, sir.

THE COURT: Can you set aside that relationship if you're a juror in this case?

JUROR 12: I think I can.

THE COURT: Was there a hand back there? Hold on one second. And those of you with masks, if you put the mask on when you're not talking, if you would. Thank you.

JUROR 42: My name is Walter T. Jerkins, Jr. And I know Andy Metcalf kind of casually. Mostly because my wife is a court reporter and she works – has worked with him in the past.

THE COURT: But you don't personally have any professional relationship with him?

JUROR 42: No, I don't.

THE COURT: Can you set aside the fact that your wife is a court reporter and sometimes –

JUROR 42: Yes, I can.

THE COURT: Thank you, sir.

Now I'm going to ask the parties to read a list of potential witnesses. Not necessarily everybody is going to testify, but these are people who may testify. I'm going to ask the same question, if you recognize these people.

[29] MR. HOOVER: Yes, Your Honor. The following individuals may testify for the United States over the course of this trial: Special Agent Eric Urgo, who you just met. Special Agent Kenneth Cisneros, Department of Homeland Security and Homeland Security Investigations. Special Agent Brian Ray, also of Homeland Security Investigations. Detective Candice Kernan-Fullen, Fort Pierce Police Department. Sergeant Tyrone Campbell, Fort Pierce Police Department. And Allan Strachan, a Fort Pierce resident.

THE COURT: Any other potential witnesses? Does anybody recognize any of those people who have just been identified? We have one up here.

JUROR 4: Good morning. I'm Cherry McKenzie, and I know Allan Strachan, a former student of mine.

THE COURT: Former student?

JUROR 4: Yes.

THE COURT: You're a teacher?

JUROR 4: Yes.

THE COURT: What do you teach?

JUROR 4: In-school suspension.

THE COURT: When did you last see him?

JUROR 4: I just seen him this morning.

[30] THE COURT: Before that.

JUROR 4: Probably a month, two months ago.

THE COURT: Can you set aside the facts that you know him and treat him like any other witness?

JUROR 4: Yes.

THE COURT: Anybody else? All right. I want to talk to you about some legal principles that apply in a criminal case. As you know by now, this is a criminal case. And every criminal case, certain legal principles apply and the jurors must – in order to qualify must follow those principles. The first principles is this: An accused is presumed to be innocent and cannot be found guilty unless his guilt is proved beyond a reasonable doubt. Is there any one of you who is not willing to accept and apply that principle if you're a juror in this case?

Next principle. A defendant need not testify on his own behalf. If he does not, you can draw no inference of guilt from the fact that he or she may not have testified. Is there anyone who is not willing to apply that

principle if you are a juror in this case? Okay. I see no hands again.

Next, a defendant can be convicted only by evidence presented against him or her in open court [31] and not upon anything that you may hear or read outside the courtroom; in other words, only here in this courtroom. Is there anyone who's not willing to apply that principle if accepted as a juror in this case?

Next, a juror must accept and must apply the law as given to him or to her by the Court, even though the juror might think the law is or should be different. Is there any one of you who's not willing to accept and apply the law as I instruct you the law to be in this case? Again, I see no hands.

Now, you've all been called to jury duty. And it's based on our somewhat unique jury system. Is there any one of you who doesn't believe in the jury system; that is the right of citizens like yourselves, peers, come in and decide the facts in a case? Anyone who doesn't agree with that?

Other than anything you may have put in your questionnaire, any reason you can think of that you might in any way be partial for the government or against the government, for the defendant or against the defendant in this case? Anything in addition to anything in your questionnaire?

Okay. All right. Now we're going to turn the [32] questions over to the lawyers. Let me remind you or tell you for the first time and I'll tell you probably

throughout this case, what the lawyers say is not evidence. Nothing they say is evidence in this case.

**VOIR DIRE EXAMINATION**

MR. HOOVER: Good morning.

THE VENIRE PANEL: Good morning.

MR. HOOVER: First and foremost, just to let you all know, I have 15 minutes to try to get through a list of questions based on some of the responses that you indicated in your written responses; as well, some of the other things I'd like to talk about. I apologize. I'm going to move fast and I'm going to be asking some questions that you typically don't normally get from somebody that you just met. So I apologize in advance.

Thank you, first and foremost, for being willing to serve. As Judge Huck said earlier, this is a very important civic duty here. I am going to tell you that the first thing, I cannot go into any of the facts. I understand it's a little odd where I might ask you questions, but I can't tell you anything about what is going to happen at the [33] trial. That's one of the rules. So I apologize in advance.

The one thing that you will notice is that myself, my co-counsel, and Special Agent Urgo, we will very liable be on our cell phones, our computers, things like that. And the reason being is we want to make things efficient. We want to use your time efficiently, get people here when they're supposed to be here, that kind of thing. Coordinate. Is there anybody that's going to be

distracted or feel disrespected that we're going to be on our devices during the trial? All right. I see no hands.

The first question I want to ask, and this is to the whole group, is there anyone here who feels like that for an ethical, moral, religious reason, anything like that, that they could not sit in judgment for this case or about conduct that might be discussed here? I do not see any hands.

Is there anyone here who has no knowledge whatsoever of smart phones? And what I mean is you don't use e-mail, you don't use the internet, you don't text message, nothing of the sort. Is there anybody here who has absolutely no knowledge of smart phones or devices? I do not see any [34] hands.

The Court is going to later instruct you a little bit further, but the – Judge Huck just said that the burden of proof in this case is on the government. We have to prove our case beyond a reasonable doubt. And if you were selected to be part of the jury, you will be instructed that the standard is that the government must prove our case beyond a reasonable doubt and not beyond all possible doubt, beyond a shadow of a doubt, beyond all doubt. That is the standard that the government has. Is there anyone who believes that that is not high enough, that the government should have a higher burden of proof?

Anybody who would have trouble following the law as will be given to you by Judge Huck? I do not see any hands.



One thing that I'd like to cover, you will see that TV is not always accurate as far as what happens in a courtroom in many ways. And I want to ask something based on maybe what you've seen on TV or in movies, that kind of thing. But first I'd like to ask, law enforcement agents and officers are allowed to act undercover in that they're allowed to, for certain purposes, pretend to be [35] somebody else when they're investigating crime. Is there anyone here who has a problem with that? They think that law enforcement should not be able to act undercover or pretend to be somebody who they are not? For the record, I do not see any hands.

You also heard Judge Huck tell you what the offenses are that the government has charged, that we have the burden of proving in this trial. Does anyone here have a problem with the government investigating communications that are a hundred percent online or in a text message? I don't see any hands.

Does anybody have a strong opinion about the federal government in general and about the federal government's role in our country? No hands.

All right. I'm going to ask another question that some of you responded to in your written questionnaires, and I might follow up with individuals here shortly. But is there anyone who has had a particularly bad experience with law enforcement? It could be something serious or it could be, you know, I got a speeding ticket one time and I didn't think I should have gotten that speeding ticket. Any hands? No

hands? Nobody got [36] a speeding ticket they didn't think they deserved? No hands from the jury panel.

Is there anyone who thinks that either with law enforcement or through the – any kind of court system, court case, that they were not treated fairly? Okay.

If you can tell me your juror number.

JUROR 25: 25.

MR. HOOVER: All right. So juror 25, can you tell us if that was a civil or a criminal matter.

JUROR 25: It was civil.

MR. HOOVER: Civil. Now this is a criminal case. So it's a completely different type of law. And I'm not going to go into the details of how you were treated unfairly. But is there anything about the way you were treated in that civil case that you think might be affect you if you were asked to serve on the jury here?

JUROR 25: I don't think it will affect me in this case. I just was answering honestly. To that particular incident, I don't think it was fair, but I don't think it would affect anything here.

MR. HOOVER: All right. This is a different side or a different part of the justice system, different people involved, that kind of thing. [37] You'll be able to set that aside?

JUROR 25: Yes.

MR. HOOVER: Thank you very much. Anybody else felt like they were not treated fairly by the judicial system or by law enforcement? I do not see any hands.

What about a close friend or family member? And I don't mean, you know, a third cousin twice removed, you see them every five years at family reunions or something like that. But somebody who you're close with, that you speak frequently with, whether you're blood or friend. Anybody here who knows somebody like that who they did not think was treated fairly by law enforcement or by the judicial system? I do not see any hands. Okay.

I have one more general question before I'm going to start asking a few questions based on the questionnaires, and that is that you heard the offenses that the government has the burden of proving in this case that we're going to be discussing. Is there anyone here – well, there are many laws that prohibit sexual conduct, sexual interactions between adults and minors. Is there anyone here who believes that any of those laws are too strict or unfair? I do not see any hands.

[38] Is there anyone here who thinks that it is or should be acceptable for adults and minors to exchange sexually explicit messages online and who might disagree with the law? I don't see any hands.

Okay. Those are my general questions. I have a few that I'm going to follow up with folks. And again, I apologize, but these are going to be questions to

individuals. The first is to juror 15. If you can raise your hand. Okay.

Juror 15, you indicated in one of your responses that you – either you or a close friend or family member went through a judicial case in Canada.

JUROR 15: Yes.

MR. HOOVER: Was that you or someone you know?

JUROR 15: A relative of mine.

MR. HOOVER: How close were you to that person?

JUROR 15: It was my son.

MR. HOOVER: Did you and he speak about the case in Canada.

JUROR 15: No.

MR. HOOVER: No? Okay. Anything about that that you feel like would affect you if you were [39] asked to sit on this jury panel.

JUROR 15: No.

MR. HOOVER: Thank you very much. That is all.

And juror 11. Right here. You answered to one of your questions that you had personal feelings that you felt might affect your ability to be fair and impartial to

both sides. Is that based on a personal experience or what it is that based on?

JUROR 11: That's based on a personal belief with the case and what is going on with the case.

MR. HOOVER: Is that – and I'm trying not to pry too much. Is that something just a philosophical or something that happened in a family or to a loved one, a friend?

JUROR 11: To someone in the family.

MR. HOOVER: Okay. Do you feel like there's one party in particular that you would not be able to be fair to?

JUROR 11: Yes.

MR. HOOVER: Which side is that?

JUROR 11: That is the – I would be probably more partial to the side of the United States government.

[40] MR. HOOVER: All right. Thank you, sir.

JUROR 11: Thank you.

MR. HOOVER: And juror 13, similar question. You had said you were not sure if you could render a verdict based on the evidence and the law, and said, Not sure, it will depend. What did you mean by, It will depend?

JUROR 13: It just depends on the case. So every case, obviously, is different. Seen that enough in

enough shows, in movies, et cetera, and everybody is different. Both sides are different. We get a chance to have both sides tell their story. And it's up to us, the jurors, to take that information and dissect it and make a decision. But again, it just depends on the case. That why I go with maybe.

MR. HOOVER: Are you saying that it depends on the facts of the case and the evidence and testimony?

JUROR 13: That could be part of it, yes.

MR. HOOVER: Okay. What kinds of things are you thinking about that might arise that you think might make you unfair? Is there something like in your mind that you think –

JUROR 13: Well, in this case, what this case [41] is about, I watched an awful lot of the Chris Hansen reports on NBC over the years, probably ten years ago. They had a lot of those. And just makes me ill.

THE COURT: Let me see if I can jump in a little bit. As you're saying, every case is different.

JUROR 13: Every case is different.

THE COURT: And what the juror's job is, a very important job, is to listen to the evidence.

JUROR 13: Absolutely.

THE COURT: And then decide the facts based on what you hear and what you believe and may be reasonable, et cetera. And regardless of how those

facts come out, come up with a verdict that you think is fair to both sides based on the facts, on the evidence.

JUROR 13: Absolutely.

THE COURT: And there are all kinds of cases, including civil cases. This is a criminal case. Can you listen to the evidence and be the judge of the facts and then say, okay, here is what I think the evidence has been and has the government met their burden?

JUROR 13: Yes, Your Honor. Absolutely.

[42] MR. HOOVER: Thank you.

JUROR 13: You're welcome.

MR. HOOVER: We're going to go to juror 16. You indicated that you have served on one civil and one criminal jury. And does it say in Pennsylvania?

JUROR 16: Pennsylvania.

MR. HOOVER: Thank you for your service. And then you said once in Indian River County. Were you able in each of those situations, the jury – was the jury able to reach a verdict?

JUROR 16: They all pleaded before we could get to that point.

MR. HOOVER: Gotcha. Thank you. If we can go to juror 17. Similar question to earlier when asked if you could render a verdict based solely on the evidence. After hearing Judge Huck's description of your responsibilities and that we're supposed to make

the decisions as jurors based on facts and evidence presented at trial, do you think that you can render a verdict based solely on the evidence presented during trial or do you think there's going to be other factors that might influence you?

JUROR 17: No. I think I could based on the [43] facts.

MR. HOOVER: Thank you.

Juror number 19.

JUROR 19: Yes.

MR. HOOVER: Oh, I'm sorry.

JUROR 19: It's all right.

MR. HOOVER: The back side of the questionnaire, there was actually a page 2. So I think there was some questions we didn't get to. But just kind of in the same vein as the questions that we've been discussing thus far. Do you think that you would be able to render a verdict based on the evidence and testimony here today or do you think there's other factors that might make you – make it difficult to be fair?

JUROR 19: No. Whatever the evidence is, like the judge said.

MR. HOOVER: Thank you. If we can go to juror 30.

Good morning.

JUROR 30: Good morning.



MR. HOOVER: In response to if you can render a verdict based solely on the evidence and the facts, you had said that – you responded: I don't see how it's possible to separate these facets of [44] life. And so after hearing a little bit more about what the Court is asking you to do, which is to render a verdict based on the facts and evidence you hear at trial, do you think you'd be able to do that? Make the decision based just on what you hear at trial?

JUROR 30: I think I was answering based on a civil case that I was asked to be a juror on previously. But talking about a criminal case –

THE COURT: Let me just ask. I read that, too. We're not asking people to come in here with a blank slate. We all come in with our own background and experiences and our common sense. And we expect you to keep that with you as you're a juror in the case.

JUROR 30: Absolutely.

MR. HOOVER: Thank you, sir.

And juror 35, same question. You had indicated, Not sure. After hearing a little bit more from the judge about what is expected of jurors, do you think you would be able to render a verdict based solely on the facts and evidence here presented at trial?

JUROR 35: I think so.

MR. HOOVER: Okay. Thank you.

[45] THE COURT: One and a half minutes, Counsel.

MR. HOOVER: Thank you, Your Honor.

Juror 37, you indicated that you had or someone close to you had gone through the judicial process in Nashville. Was that you or somebody close to you?

JUROR 37: It was me.

MR. HOOVER: Anything about that that you felt like you were treated unfairly that might affect your – serve as a juror?

JUROR 37: No, I don't think so.

MR. HOOVER: Thank you, sir.

Juror number 39, there was a couple of blank parts on your second page. Same question. You think you would be able to render a verdict based on the facts and evidence that you are presented with at trial and treat both parties fairly?

JUROR 39: It's difficult to say. Again, each case is different. I'd have to listen to both parties and listen to what's presented before I could make a decision.

MR. HOOVER: Okay. Thank you.

THE COURT: And that's what we expect of jurors, to listen to the case and then make a determination.

[46] Counsel, your time is up.

MR. HOOVER: Thank you, Your Honor.

THE COURT: Mr. Murrell or Mr. Metcalf?

MR. MURRELL: Thank you.

THE COURT: You may proceed.

**VOIR DIRE EXAMINATION**

MR. MURRELL: As I said, my name is Donnie Murrell and we're here to pick a jury. It's the most important part of the trial for us because we help decide who is going to decide this case. So we need your honesty and we need your frankness. We need your candor. And if you're not going to be honest and straightforward – and I have no reason to think you're not – but don't worry about hurting our feelings, is what I'm trying to tell you. Tell us the truth. Tell us how you feel, because we need to know.

And obviously, the thing that concerns us the most is what you've heard. The nature of the charges. I mean, there are some things that are just topics that touch a raw nerve with everybody and people just can't be fair. And we know that you filled out these questionnaires downstairs before you knew anything about this case. And now [47] that you know, my question is simply, do you need to change any of your answers? Do you need to add anything to your answers? Do you need to let us know that you have some reservations about your ability to be as impartial in this case as you

would be on a shoplifting case? Does anybody feel that way?

Yes, ma'am. Your number, please?

JUROR 5: Juror number 5.

MR. MURRELL: Juror number 5. You're Ms. Ekin?

JUROR 5: Yes. I do believe in the jury process as well. But it's – honestly, it's a charge that personal level hits me that I can't honestly say that I could be fair.

THE COURT: Let me go back a little bit. The question is not whether you agree with the law. For example, I think everybody will agree that first-degree murder is a bad thing. And so in a first-degree murder case, the question is not whether you think murder is a bad thing or a horrible thing. The question is whether the government has carried its burden, proving beyond a reasonable doubt that the murder was committed.

The same is true in this case. It's not a [48] question of whether you agree that the law – that the crime charged is a bad or a particularly bad crime. The question is whether the government carried its burden to prove that the defendant has done that.

JUROR 5: No, I believe I could. In my heart I wanted to be honest and, you know, there is – it's just. . . .

THE COURT: Separate what you think about the law and the –

JUROR 5: I believe that the state – the government does need to present the facts and the evidence. And if he's innocent, then he's innocent and –

THE COURT: Would you listen to the facts and decide – regardless how you feel about the nature of the alleged crime, but you would decide the case solely on the facts –

JUROR 5: Yes.

THE COURT: And render a verdict that is fair based on facts?

JUROR 5: Yes, Your Honor.

MR. MURRELL: You look like you're struggling with this.

JUROR 25: I do, because when I standing up in [49] front of everybody. But I just wanted to be honest. You said was there any feelings or reservations, and I had to be honest and let you know.

MR. MURRELL: I appreciate it. Can you tell me specifically what your reservations are?

JUROR 5: It's just – it's a personal thing.

MR. MURRELL: Okay. And I understand that. And as the judge said, we've all had life experiences that impact on us and influence our decision-making. And because of that – for instance, if this were a DUI case and you had lost a loved one in a DUI accident, you probably could not be fair and objective, could you?

JUROR 5: I believe I could. I want to be as a juror and do my duty because I would want somebody to be fair with me.

MR. MURRELL: Everybody wants that. I know you do, sincerely. But sometimes we have these life experiences that may keep us from being able to do that. And that's what we're asking about. Do you think you can overcome those personal –

JUROR 25: I do. I do.

MR. MURRELL: Okay. All right. I appreciate that. Other people raised their hands. All right. [50] Right here in the front row.

JUROR 1: I feel the same as her. I hope I could be – I'm a teacher. I did have a student a few years ago that did have a situation where she was molested. And it – so it's –

MR. MURRELL: It's terrible.

JUROR 1: Yeah. My mind keeps going there to that kid and it just – I don't know. Like I said, I would hope I could hear both sides and be objective, but my mind does keep going to that.

MR. MURRELL: Do you think that you might be so protective of children that you could not listen to this case objectively?

JUROR 1: Probably.

MR. MURRELL: All right. Let me ask you this. Can you look at Zachary Spiegel right now and

presume that he's innocent, knowing that he's sitting here in a federal courtroom indicted for something like this?

JUROR 1: I don't know. Honestly, I don't know.

MR. MURRELL: Well, that's what we're looking for, is honesty. So you can't say that right now, that he's innocent?

JUROR 1: Right. I mean, I'm not saying he's [51] guilty either, but I can't say.

MR. MURRELL: I know. But you're sort of starting in the middle. And the law says we start with a presumption of innocence. That's a big difference. And you see that difference, right?

JUROR 1: I do.

MR. MURRELL: And what I heard you say is you don't trust yourself to be able to give him that benefit. Is that fair?

JUROR 1: Yes. I mean, I'd like to think I could, but I just – I'm not sure.

MR. MURRELL: And if you're not sure, I can't be sure, right?

JUROR 1: Right.

MR. MURRELL: Thank you for your honesty. Is there anyone else?

MR. METCALF: In the back.

JUROR 45: To be perfectly honest, I'm not sure that I could. I have a history of a predator in my family. My sister was abused by my father. There's a lot of abuse in my family, and I don't think I can set that aside.

MR. MURRELL: Thank you very much, ma'am. Would you tell us your number?

JUROR 45: 45.

[52] MR. MURRELL: Thank you.

And, ma'am, your number?

JUROR 1: One.

JUROR 45: There's another one here.

JUROR 39: Excuse me. Without getting too personal, my son's teacher was accused of molesting the child and he committed suicide and he was never granted the ability to go to trial. So I cannot say with a decent heart that I can stand to be a juror and I'm sorry. Number 39.

MR. MURRELL: Ma'am, I am sorry you had to go through that and I appreciate your honesty. But what you're saying is you just cannot sit on this jury. Is that fair?

JUROR 39: (Nodding.)

MR. MURRELL: Thank you. Anyone else? Anyone else? Let me dig a little deeper here. There is no question that if you sit on this jury, you're going to



hear graphic, crude descriptions of sex acts, and in the most vulgar terms. You're going to see pictures of penises. And there's nothing here that you're going to approve of or like. Knowing that, do you think you can sit on this case? Anybody? Okay. There's some hands up back there.

[53] JUROR 35: Number 35. I don't know that I could. Just depending on the age difference. So if you don't know what age the minor is and the age of the accused.

MR. MURRELL: Well, you can see that Zachary is not a minor.

JUROR 35: Oh, okay. But the other one is a minor.

MR. MURRELL: That's what that allegation is.

JUROR 35: So depending on what that age is, I don't know that I could sit on it.

MR. MURRELL: Can you give me some kind of a range of what you think you can do and what you can't do?

JUROR 35: Well, if you show evidence – I mean, if you can prove without a reasonable doubt that he is not guilty, then I could be impartial. But I don't know that I would want to sit for the jury through the trial and see everything.

MR. MURRELL: Yes, ma'am.

JUROR 35: I just don't – I won't know until it would probably be very –

THE COURT: Let me jump in here, because I think I heard you correctly. That you said if the defendant doesn't prove beyond a reasonable doubt [54] that he's not guilty. Is that what you said?

JUROR 35: If they can prove that he is beyond a reasonable doubt. But whether I can sit through the graphic, disturbing details if it's. . . .

THE COURT: But I thought you said – I'm looking at the monitor. That you said if the defendant can prove that he's not guilty. Did you mean to say that, or did you mean to say if the government proves beyond a reasonable doubt?

JUROR 35: If the government proves that he is guilty, then I mean –

THE COURT: I gotcha.

JUROR 35: – I might be able to.

THE COURT: The reason I said that, I think you misspoke. And the record suggests that you shifted the burden to the defendant to prove that he's not guilty, which clearly is not the law.

JUROR 35: Right. Yeah. If they can prove that he didn't do the crime, then I might be able be in – you know, I might be able – am I getting it out right? I don't think I am.

MR. MURRELL: You may be saying exactly what you mean. What I'm hearing you say is that if we can prove that he's innocent, you could be fair.

JUROR 35: Yes.

[55] MR. MURRELL: All right. And that scarce the dickens out of me, because as the judge just said, we don't have to prove anything.

JUROR 35: But then am I going to be able to sit through the gruesome details.

MR. MURRELL: I don't know.

JUROR 35: That's the thing. I don't know that I might be able to or not.

MR. MURRELL: Okay. Is it fair to say that you have some serious doubts about your ability to sit as a juror and be fair?

JUROR 35: On this case.

MR. MURRELL: Yes, ma'am.

JUROR 35: Yeah.

MR. MURRELL: Thank you for your honesty.

JUROR 34: I would have to agree with her, maybe, because of the nature of where I work. I'm at the sheriff's office and just – I know my mind, I see things and hear things every day at the jail. And honestly, I just – I don't think I can be impartial.

THE COURT: Can I get your number?

JUROR 34: Yes, sir. 34.

THE COURT: 34.

MR. MURRELL: Okay. Thank you, ma'am.  
And – [56] well, that's all right. Thank you.

THE COURT: Counsel, you have another minute.

MR. MURRELL: One minute?

Has anyone on the panel ever heard of a dating app known as Whisper? Okay. Has everyone on the panel heard the phrase sexting? Okay.

Thank you, Judge.

THE COURT: All right. Ladies and gentlemen, we're going to allow the lawyers some time to think about the information they've gathered both on your questionnaires as well as what we've just gone through. Sit back and relax. Those of you who may need to use the restroom facility, just tell the Court security officer, raise your hand. Don't everybody get up and walk out because we have to do it in a very orderly fashion as we only have so many facilities available. And come back as soon as you can.

THE COURT SECURITY OFFICER: Okay.  
Anyone have to use the restroom? Anyone on this side?

THE COURT: How many facilities – how many can we let go?

THE COURT SECURITY OFFICER: I think it's about six.

THE COURT: Okay. Get back as soon as you [57] can.

(Thereupon, there was a brief pause.)

THE COURT: Counsel ready to proceed?

AUSA BERGSTROM: Your Honor, can we request just a couple more minutes, please?

MR. MURRELL: We would join that request.

THE COURT: That's what you said all morning. Just a couple more minutes, then we're going to go. We're going to take a break, a morning break as soon as we finish this. It will be another ten minutes.

All right. Counsel, are you ready?

(Thereupon, there was a side-bar conference outside the presence and hearing of the jury.)

MR. HOOVER: Judge, I apologize. Does the Court allow back strikes?

THE COURT: No. I think we've got a number of challenges for cause, so let me go through this. Let me go through what I think. Juror number 1.

MR. HOOVER: Yes, Your Honor.

THE COURT: Juror number 11.

MR. METCALF: Yes, Your Honor.

MR. HOOVER: Agree.

THE COURT: Juror number 5.

MR. METCALF: Yes, Your Honor.

MR. HOOVER: Agree.

THE COURT: Juror number 39.

MR. HOOVER: Agree.

MR. METCALF: Yes, Your Honor.

THE COURT: Juror number 45.

MR. METCALF: Yes, Your Honor.

[58] MR. HOOVER: Agree.

THE COURT: Juror number 34.

MR. METCALF: Yes, Your Honor.

THE COURT: 35? I think it's 35. Two back to back. The person said she had a tough time listening.

AUSA BERGSTROM: Was that the one? She was confused about the burden?

MR. METCALF: Yes. Is that – 35 the right number? I think it was.

THE COURT: I thought it was 35. I have a question mark. Kristy Brooks, number 25. I can't – I don't have my numbers right. See. Oh, no, I don't think so. No. Okay. There's – these are the ones that are obvious. Any others from the government?

MR. HOOVER: No, Your Honor.

MR. METCALF: Judge, we have no other cause.

THE COURT: So we got that squared away. [59] Okay. Let's go now, and starting with the government, accept or reject and we'll go back and forth until we have 12 jurors. Juror number 1 – excuse me. Juror number 2.

MR. HOOVER: Government accepts.

MR. METCALF: Judge, defense strikes.

THE COURT: Okay. Juror number 3.

MR. METCALF: Accept.

MR. HOOVER: Accept.

THE COURT: That's our first juror. Juror number 4, McKenzie?

MR. METCALF: Accept, Judge.

THE COURT: Juror number 6.

MR. HOOVER: Government accepts.

MR. METCALF: Defense strikes.

THE COURT: Number 7.

MR. METCALF: Defense accepts.

MR. HOOVER: Government accepts.

THE COURT: We have got our second juror.  
Number 8.

MR. METCALF: He's been struck for cause,  
Judge.

THE COURT: 9.

MR. HOOVER: Government accepts.

MR. METCALF: Defense first – didn't you  
go [60] first last time?

MR. HOOVER: Sorry.

MR. METCALF: Defense accepts.

THE COURT: Government accepts?

MR. HOOVER: Yes, sir.

THE COURT: That's our third juror. Boat-  
right. Government?

MR. HOOVER: Government would strike.

THE COURT: Number 11 has been struck,  
so we go to number 12.

MR. METCALF: Also excused.

THE COURT: 12?

MR. HOOVER: Yeah.

THE COURT: David Scott, 13.

MR. METCALF: Defense strikes.

THE COURT: I'm sorry?



MR. METCALF: Strikes.

THE COURT: 14, Asim.

MR. HOOVER: Government accepts.

MR. METCALF: Defense accepts.

THE COURT: Is that number 4?

THE COURTROOM DEPUTY: Yes.

THE COURT: Dygas, 15.

MR. METCALF: Defense accepts.

MR. HOOVER: Government accepts.

[61] THE COURT: That's number 5. 16, government.

MR. HOOVER: Government accepts.

MR. METCALF: Defense strikes.

THE COURT: 17, Murphy. Defense.

MR. METCALF: Accepts.

MR. HOOVER: Government accepts.

THE COURT: Number 6. 18.

MR. HOOVER: Government accepts.

MR. METCALF: Defense accepts.

THE COURT: Number 7. 19, Parauka.

MR. METCALF: Defense strikes.

THE COURT: 20, Steaffens?

MR. HOOVER: Government accepts.

THE COURT: Is that number 8?

THE COURTROOM DEPUTY: Agreed.

THE COURT: Stick, 21?

MR. METCALF: Accepts.

MR. HOOVER: Government accepts.

THE COURT: Number 9. 22, Redington.

MR. HOOVER: Government strikes.

THE COURT: This time let's make sure we're on the same page with regard to number of strikes.

THE COURTROOM DEPUTY: How many strikes?

THE COURT: How many strikes does the government have?

[62] THE COURTROOM DEPUTY: Government has two, defense has five.

THE COURT: 23, Ferguson?

MR. METCALF: Defense strikes.

THE COURT: 24, King.

MR. HOOVER: Government accepts.

MR. METCALF: Defense strikes.

THE COURT: 25, Brooks? I wouldn't count for five.

MR. METCALF: It was not, Judge.

THE COURT: 25, Brooks?

MR. METCALF: Defense strikes.

THE COURT: 26, Smith.

MR. HOOVER: Government strikes.

THE COURT: 27, Suarez. Defense?

MR. METCALF: Defense strikes.

THE COURT: 28, Gonzalez. Government?

MR. HOOVER: Government strikes.

THE COURT: 29, Beddome?

MR. METCALF: Defendant accepts.

THE COURT: Government?

MR. HOOVER: Government accepts.

THE COURT: That's 10. Okay. 30. Government?

MR. HOOVER: Government accepts.

[63] THE COURT: Defense?

MR. METCALF: Strike.

THE COURT: How many does the defendant have left?

THE COURTROOM DEPUTY: That's number 10.

THE COURT: Two more strikes. 31, Guirand?

MR. HOOVER: Government strikes.

MR. METCALF: You said two more strikes, Madam Clerk?

THE COURTROOM DEPUTY: You used ten already.

THE COURT: Ten. How many does the government have?

THE COURTROOM DEPUTY: Government has five.

THE COURT: Back row. 32, Gallas?

MR. HOOVER: Government strikes.

THE COURT: 33, Bembry.

MR. METCALF: How many do we have left?

THE COURTROOM DEPUTY: You already did six.

THE COURT: So we have Bembry is 11, right?

THE COURTROOM DEPUTY: 11, uh-huh. (Nodding.)

THE COURT: 34 and 35 are out. Portocarrero is juror number 12. Everybody in agreement. Let's go through and make sure we're all on the same page.

Irene, can you just read.

[64] THE COURTROOM DEPUTY: Number 3, 7, 9, 14, 15, 17, 18, 20, 21, 29, 33 –

THE COURT: A little slower, please.

THE COURTROOM DEPUTY: 36. You need me to go over it again?

THE COURT: All in agreement?

MR. HOOVER: After 29.

THE COURTROOM DEPUTY: Then comes 33 and 36.

THE COURT: All right. Two alternates. I think we have two challenges left. Next one up is number 37, Colozzo.

MR. HOOVER: Government accepts.

MR. METCALF: Accepts.

THE COURT: Number 1. Then over to the 38. Defense?

MR. METCALF: Accepts.

MR. HOOVER: We're going to strike.

THE COURT: 40, Pena.

MR. HOOVER: Government accepts.

MR. METCALF: Accept, Your Honor.

THE COURT: Okay. That's alternate number 2. Okay. That's one final time to make sure we're all on the same page.

THE COURTROOM DEPUTY: You want me to do all the jurors? 3, 7, 9, 14, 15, 17, 18, 20, 21, 29, [65] 33, 36, first alternate 37, and second alternate 40.

THE COURT: We're all in agreement. Okay. We have a jury. Ten-minute break. We'll take a break until 1:30, come back for openings. How long do you all want?

AUSA BERGSTROM: 20 minutes.

THE COURT: Okay. Won't take that long. If you – if you can't do it in less than 20 minutes, you shouldn't be here. But okay, you got 20 minutes if you want.

(Thereupon, the side-bar conference was concluded.)

THE COURTROOM DEPUTY: As I call your name, you have been selected for the jury. Brian Williams. Please stand. Theodore Trojanoski. Ronnie Stokes. Felicia Asim. Joseph Dygas. Alice Murphy. Jesus Ramos. Ryan Steaffens. Edward Stick. Matthew Beddome. Dorothy Bembry. Allan Portocarrero. Cole Colozzo. And Marybeth Pena. Those of you that I did not call your name, you are excused. You may leave the courtroom and go back to the jury room. Okay. You may leave. Thank you.

(Thereupon, the venire panel exited the courtroom.)

[66] THE COURTROOM DEPUTY: Juror number 1, Mr. Brian Williams, can you take the first seat in the jury box, please. Juror number 2, Theodore Trojanoski, take the second seat, please. Juror number 3, Ronnie Stokes, third seat. Perfect. Juror 4, Felicia Asim, fourth seat, please. Juror number 5, Joseph Dygas, take the fifth seat, please. Juror number 6, Alice Murphy. Juror number 7, Jesus Ramos. Juror number 8, Ryan Steaffens. Juror number 9, Edward Stick. Juror number 10, Matthew Beddome. Juror 11, Dorothy Bemby. Juror 12, Portocarrero. Juror 13, Cole Colozzo. And juror 14, Marybeth Pena.

THE COURT: All right. Congratulations, you are our jury in this case. We're going to take a ten-minute break and then we'll come back and have opening statements from the parties. So remember where you're seated because this is your allotted spot for the next day or two. Do not discuss anything about this case whenever you're on break or any other time until the case is over.

THE COURTROOM DEPUTY: Please rise for the jury.

(Thereupon, the jury exited the courtroom.)

THE COURT: Okay. We'll see you in ten [67] minutes.

MR. HOOVER: Is there going to be a lunch break and if so, when –

THE COURT: Around 1:00. Quarter to 1:00, maybe. Depends where we are on the witnesses.

MR. HOOVER: Yes, sir.

THE COURT: Let me just give you an expectation. Things come up in the trial that may not have been anticipated beforehand but they now are something is obvious. When that comes up, I want you to anticipate those issues; whether it's scheduling, evidentiary issue, anything like that. Anything. Discuss with opposing counsel first. If he can resolve it, great. I don't have to know about it. If you can't resolve it, let me know before the jury comes in. I'm here in the morning before we start and I'll be here during all the breaks, including the lunch break. Just anticipate. If not, let me know ahead of time. I don't want to have too many side bars. Okay? Can we try to do that? Okay. See you in ten minutes.

(Thereupon, a brief recess was taken.)

THE COURT: I have a question about the jury instructions. I'm looking at the preliminary instructions (inaud.), just based on the – the [68] final instruction says, number 4: That the sexual activity had occurred – one or more of the individuals engaging in sexual activity could have been charged with a criminal offense under the law of Florida. And (inaud.) but don't you need something that says something that would be a criminal offense under the State of Florida?



AUSA BERGSTROM: Your Honor, we've listed the statute later. We've listed the statute – the Florida statute later in the instruction.

THE COURT: Okay. Where is that?

AUSA BERGSTROM: On page 2.

THE COURT: Page 2 of the final instructions?

AUSA BERGSTROM: It's page 2 of proposed jury instruction number 4 – or number 14. I apologize.

THE COURT: Of the final instruction, not the preliminary instructions?

AUSA BERGSTROM: Correct, Your Honor.

THE COURT: All right. I'm looking at – where is that?

AUSA BERGSTROM: Your Honor, it's on page 2 of instruction number 14. It starts with –

THE COURT: I have them. I apologize. I've taken away all the extraneous space. Let's see. Let's see. Let's see.

[69] AUSA BERGSTROM: If I can approach, I can hand you my copy.

THE COURT: Okay. Can I see it?

AUSA BERGSTROM: (Complies.) It'd be the paragraph that starts, So the government must prove.

THE COURT: That's left out in the preliminary instructions. Everybody ready?

AUSA BERGSTROM: Government's ready, Your Honor.

MR. MURRELL: The defense is ready.

THE COURTROOM DEPUTY: (Complies.)

THE COURT: You know, I've got this binder and in the front it says, Exhibit and Witness List. Is the witness list in the back?

AUSA BERGSTROM: It should be in the exhibit list. If it is not, Your Honor, during the break I can get a copy.

THE COURT: Yeah, I don't have it. The first thing I've got here is exhibit list. I don't seem to have a copy of the witnesses.

AUSA BERGSTROM: I'll provide the Court with a copy.

(Thereupon, the jury entered the courtroom.)

THE COURT: Please be seated. I'll tell you [70] what. Keep standing because we're going to swear you in.

(Thereupon, the jury was sworn in.)

THE COURTROOM DEPUTY: Please be seated.

THE COURT: Members of the jury, and now that you've been sworn, you are the jury of this trial. I need to explain some basic principles about a criminal trial and your duty as jurors in such trial.

### **INSTRUCTIONS**

THE COURT: These are what we call preliminary instructions. At the end of trial, I'll give you more detailed instructions and those that control. A little bit about the background of the trial.

In this case, the defendant was charged with two counts. I'll give you, as I said, some detailed instructions on the law at the end of this case and those instructions will control your deliberations as jurors in this case in your decision. But in order to help you follow the evidence and the significance of that evidence, I'll give you some brief summary of the evidence of the offenses that the government must prove beyond a reasonable doubt in order to prove its case.

[71] The defendant is charged with Counts 1 and 2 with attempting to entice a minor to engage in sexual activity for which a person may be punished. It's a federal crime for anyone using any facility or means of interstate or foreign commerce, including a cellular telephone or the internet, to attempt to persuade, induce, entice, or coerce a minor to engage in any sexual activity for which any person could be charged with a criminal offense, even if the attempt fails.

The defendant can be found guilty of this crime or each of these crimes only if all of the following facts are proved beyond a reasonable doubt: 1) that the defendant knowingly intended to persuade, to induce or to entice an individual to engage in sexual activity as charged. The defendant used a cellular telephone or the index – or the internet to do so. We talked about the individual. We talked about the minor individual to engage in these activities.

Next, at the time the defendant believed that such individual was less than 18 years old. 4) if the sexual activity had occurred, one or more of the individuals engaging in the sexual activity could have been charged with a criminal offense [72] under the laws of Florida. And finally, the defendant took a substantial step towards committing the offense.

So the government must prove that it is – if the intended sexual activity had occurred, one or more of the individuals engaging in the sexual activity could have been charged with a criminal offense under the laws of Florida. As a matter of law, lewd and lascivious battery under Florida law is defined in Florida Statute 800.04, subsection 4, as follows:

A person commits a lewd and lascivious battery by, 1) engaging in sexual activity with a person 12 years of age or older but less than 16 years of age. Under Florida law, sexual activity means oral, anal, or vaginal penetration by or union with the sexual organ of another, or the anal or vaginal penetration by another – of another by any other object. However, sexual activity

does not include any act that's done by bona fide medical purpose.

Now, with regard to your duty as jurors in this case. It will be your duty as jurors to find from the evidence what the facts are. You and you alone are the judges of the facts here. You must then apply those facts to the law as I instruct you [73] the law to be. And you must follow the law whether you agree with it or disagree with it. I want to advise you that nothing that the Court may say or do during the court of the trial is intended to indicate, nor should you take it as indication, as to what I think your verdict should be.

Now a few words about the evidence. The evidence from which you will find the facts will consist of the testimony of witnesses, of documents and other things received into the record as exhibits, and any facts the parties agree on or stipulate to, or the fact that the judge, the Court, instructs you to be a fact. Certain things are not evidence and must not be considered by you in any way. First, statements, arguments, and questions by the lawyers are not evidence. Next, objections to questions are not evidence.

You probably understand that lawyers have an obligation to their clients to object to evidence that's being offered when they think it doesn't comply with the rules of evidence. And I will make the rulings on those objections. If I sustain the objection and just – just disregard the question. If I overrule the objection, then treat the answer to that question like you would any other answer to [74] any other question.

Now, from time to time I may allow evidence in for a limited purpose. I will explain to you what that limited purpose is. You must only consider that evidence for the limited purpose as I describe it. Now, of course, testimony that the Court has excluded or told you to disregard is not evidence and may not be considered by you in any way. Anything you may have seen or heard outside the courtroom is not evidence and, of course, must be disregarded. And that's because you're here to decide this case – the facts of this case solely on the evidence presented to you in the courtroom.

Now, there are two kind of evidence: There's what we call direct evidence, which is a direct proof of a fact, such as the testimony of an eyewitness; and then there's circumstantial evidence. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I'll give you some further instructions on these two types of evidence at the end of the case as well. But keep in mind that you may consider both direct evidence and circumstantial evidence.

As jurors it will be up to you to decide which [75] witnesses to believe and which witnesses not to believe and how much of a witness' testimony you should accept or reject. Again, I'll give you some guidelines for determining the credibility of witnesses at the end of the case in those instructions.

Now, again, the rules for a criminal case. There are three basic rules about a criminal case that you must always keep in mind. First, the defendant's presumed innocent until proven guilty. The indictment brought

by the government against the defendant is only an accusation. It's nothing more. It's not proof of guilt or anything else. The defendant, therefore, starts for you with a clean slate.

Second, the burden of proof is on the government until the very end of the case. A defendant has no burden to prove his or her innocence or to present any evidence or to testify. So since a defendant has a right to remain silent, the law prohibits you from arriving at your verdict by considering the defendant may not have testified.

And finally, the government must prove the defendant's guilt beyond a reasonable doubt. I'll [76] give you some further instructions again at the end of the case about burden of proof. But bear in mind, in this respect, that burden of proof in a criminal case is different than that in a civil case. And some of you may have had the experience as jurors in a civil case. They're different burdens.

A few words about your conduct as jurors. Our law requires jurors follow certain instructions regarding their personal conduct in order to ensure a just and fair trial for all the parties concerned. I'm going to give you some brief instructions about that now. Do not talk either among yourselves or with anybody else about anything related to this case. You may tell your employers or your family or friends that you're hearing a case, you're on a jury, but you can't tell them anything about the details of the case until the verdict is finally rendered. And then, of course, you can.

Do not, of course, at any time during the trial request, accept, or agree to accept or discuss with any person any type of payment or benefit in terms for supplying information about the proceedings in this trial. And you must [77] promptly tell the Court or personnel about any incident that you know of about any attempt by any person to improperly influence you or any other member of the jury.

Of course, do not visit the premises of the alleged crime. Do not do any search for any internet maps, anything of that nature. Do not read, watch, or listen to any accounts or discussion related to this case which may be reported to the news media. Do not attempt to do any research on your own about any facts or any legal issue or anything related to this case whether by discussions with others or going on the internet, because you're only to consider the evidence here and the instructions you receive here.

Now, of course, we know this is the age of electronic communication research and everybody seems to want to communicate right away. As jurors you are prohibited from communicating in any form about this case. So don't go on the internet with your friends, say, I'm on this case and all that. Do not do any posting of any information, none of that. Because if you do so, that would be a violation of the oath as jurors.

[78] Now, the law does not allow you to discuss this case among yourselves until you go to the jury room after all the evidence is in, you've heard the closing arguments, and you've heard the Court's instructions.



That's the first time you can discuss this case, even among yourselves. Now, you've met the lawyers and maybe you see the witnesses. We're in fairly closed compound here. You may run into some of these people. Do not be offended if they don't say, Oh, good morning, how you doing, it's a lovely day today. They're not being discourteous to you. They're just following my instructions, which is not to have any communication with you outside the courtroom.

All right. Now, talk to you about taking notes. Even though is a relatively short trial, today and maybe a little bit tomorrow. But if you wish, you can take notes to help you remember what the witnesses said. If you take notes, keep in mind that – keep them to yourself. Do not share them with other jurors until the end of the case. Do not let the note-taking, however, get you so involved that you're not paying attention to what's going on and missing testimony or the other matters that are going on. When you leave the courtroom, [79] you can leave your notes here and we'll pick them up tonight and provide them to you the next morning.

And keep in mind that your notes are not – they're an aid to your memory. Your memory is a good account, but these are aids to your memory. And it's not – these notes are not entitled to any greater weight than your own memory or your impression about the testimony. You shouldn't be persuaded by someone else's notes either.

Now let's talk about the trial schedule. I think we're going to start at 8:40. You all got here early this morning. I assume 8:40 is not a problem. We'll start at 8:40 and we'll take a morning break, probably 15 minutes. Then we'll take a lunch break. Then we'll take an afternoon break. And my practice is to have those breaks later than midway through the section because my experience tells me, even going back to my days as a student, that we're more attentive and it's easier for us to sit for a longer period of time earlier rather than later. So we usually takes those breaks later. And we'll probably go to about 4:30 plus or minus, depending on where we are in the trial. If we're in the middle of a witness, [80] probably complete that witness. If we don't have a witness ready to go, we may let you go home early. That's generally the schedule we're going to follow. All right.

The trial is about to begin. First the government will make an opening statement, which is simply their outline of what they believe the evidence in this case is and the significance of that evidence. Next the defendant may – it's not required at this time – to make an opening statement. But let me remind you, as I said before, this is what the lawyers are saying, it's not evidence. So you shouldn't consider that as evidence. This is what they think the evidence is going to be.

After that, we'll probably take a lunch break. And then the government will then present its witnesses. The defendant, of course, will have the right to cross-examine the government's witnesses. Following the defendant's case, the government may, if it wishes, it's not

required to, present some witnesses. The government can cross-examine those witnesses. When all of the evidence is in, the lawyers will come back and make closing arguments. And again, what they say is not evidence. It's [81] just their belief or representation of what they think the evidence has been and any significance of that evidence for you.

And then I'll instruct you on the law that you need to apply in this case. And then you'll go back to your jury room among yourselves and deliberate and try to render a verdict.

Counsel, are you ready to proceed?

AUSA BERGSTROM: I am, Your Honor. Thank you. May I proceed, Your Honor?

THE COURT: Please.

### **OPENING STATEMENT**

AUSA BERGSTROM: Good morning. Good almost afternoon. My name is Stacy Bergstrom. You've already met my co-counsel, Justin Hoover. The judge has already instructed you that the case we're considering today involves two counts of attempting to entice a minor to engage in sexual activity. Now, these charges stem from communications that the defendant, Zachary S. Spiegel, had over social media and text messages with an individual whom he believed to be a 14-year-old girl named Shayla.

During these conversations, the defendant [82] attempted to get Shayla to meet with him for sex on two occasions. That first count relates to a conversation that occurred on January 9th, 20022. And the second count – I’m allergic to the entire State of Florida. The second count took place – or the second count relates to a conversation that took place on January 18th, 2022. And this case is charged as an attempt, an attempted enticement, only because the 14-year-old girl that the defendant thought he was talking to was actually a 16-year-old boy originally and then later, an undercover police officer. This 14-year-old girl was not real.

Shayla was originally created by a 16-year-old boy named Allan, who you will hear from shortly. Allan will tell you that on January 9th, 2022, he and his friend had been watching some YouTube videos in the nature of the To Catch a Predator series. He got an idea, as some 16-year-old boys do, that he was going to try that for himself. So his friend and he created the Shayla account on a social media app named Whisper. And they made a post on the app that was public for all the Whisper users, asking if anyone in the area wanted to hang out.

[83] While the boys were at the Sabal Palms Plaza movie theater down here in Fort Pierce, a Whisper user named Bull Hancock, who also used the name Zac, reached out in response to that post and start a sexual conversation with Shayla on Whisper almost immediately.

You will hear that there was no dispute that this Bull Hancock, this Zac individual, was the defendant, Zachary S. Spiegel. As soon as Zac suggested that the two meet for sex, Shayla told the defendant she was 14 years old. But the defendant continued chatting with her. And pretty shortly after learning her age, asked her to meet him in the parking lot of the theater to have sex in his car. In an effort to persuade Shayla to agree to this meeting, the defendant explicitly described the sex act he wanted to perform. He gave her a pet name, Baby Girl, and he sent her a photo of his erect penis.

He told her he was on his way to meet her and he gave her an ETA of about 30 minutes. At that point, as soon as the defendant told Shayla that he was on his way, Allan went and found a Fort Pierce police officer in the parking lot of the theater. He showed that officer the messages. He told the [84] officer what was going on. And then he stepped aside with his phone. That law-enforcement officer called for backup. One of the officers, you'll hear, that arrived was Fort Pierce Detective Candice Fullen.

Now, while Detective Fullen and the patrol officer were investigating the situation, Allan continued to text with the defendant off to the side as Shayla. At some point that night, Shayla received a text message from the defendant saying that he had gotten pulled over on U.S. 1. The police were there. He didn't know what was going on. He wasn't going to come to the meeting and that Shayla should go home. At this point, Allan's phone is almost dead, the battery has lost all

its charge. So goes and talks to the officers, let's them know what's going on. They take his information and they send him home.

That wasn't the end of the conversation with the defendant. The defendant continued to text with Shayla that night and the following morning, January 10th, 2022. On that same day, Detective Fullen and HSI Special Agent Eric Urgo went to Allan's house and met with his parents, met with him in the evening. They told him what a terrible [85] idea it was for a 16-year-old boy to be doing this. They cautioned him not to do it again. And they removed him from the situation by getting the consent of his parents and Allan to take his phone and for law enforcement to take over the case from there, to take over the Shayla account.

Special Agent Urgo took this phone and gave it to Special Agent Brian Ray, who would be acting as the undercover in this investigation. While Brian – Special Agent Brian Ray was communicating with the defendant as Shayla, Special Agent Eric Urgo took some steps to identify who this Bull Hancock or Zac individual was. You will hear Special Agent Eric Urgo tell you that through phone and IP subscriber records, he was able to trace or to connect that Zac individual to the defendant, Zachary S. Spiegel at his Jensen Beach apartment.

In the meantime, Special Agent Ray continued to communicate with Zac as Shayla. On January 18th, 2022, the defendant again raised the idea of meeting for sex. And in an attempt to get Shayla to meet with him, he gave Shayla graphic depictions of what he

wanted to do when they met. He told her what he would do to her if she met him. He promised her that she wouldn't get pregnant and [86] that he'd get her home before her mom came home. And he sent her several more photos of his erect penis. He also sent her more selfies of his face in an attempt to prove to her that he was real and that he was coming.

Special Agent Ray and Detective Fullen will read the entire conversation between the defendant and Shayla from beginning to end. And you'll have a copy of those message in front of you to read along yourselves. You will see and hear all the defendant's efforts to convince Shayla on January 9th, 2022 to have sex with him in the Sabal Palms Plaza parking lot and again on January 18th, 2022 to have oral sex with him in a car at Maravilla Park in Fort Pierce. You will see the defendant repeatedly bring up sexual topics. You will see the defendant describe various sex acts in graphic detail. You will see the explicit photos the defendant sent to Shayla. And you will see the defendant make concrete plans to meet with Shayla both times.

Once you've heard and seen all the evidence in this case, you will have no doubt that the defendant attempted to entice Shayla, whom he believed to be 14 years old, to engage in sexual [87] activity on January 9th, 2022 and again on January 18th, 2022. Thank you.

Thank you, Your Honor.

THE COURT: Mr. Murrell, you may proceed.

MR. MURRELL: Thank you, Judge.

**OPENING STATEMENT**

MR. MURRELL: As the prosecutor just said, Zachary Spiegel is charged with two counts of the same crime: Attempting to induce, entice, or persuade a minor to have sex using a computer or a cell phone device. This case is unusual in some respects, not the least of which is that there's very little dispute as to what happened here. All of the communications between Zachary and this fictional 14-year-old were done by text messages or, I guess the correct term on some of them, is social media. But everything they did and said was written down. Keep that in mind as you listen to this case, because I expect you're going to hear the lawyers and probably the witnesses saying, well, we said this or he said that and she said that. Nobody actually spoke directly to each other. It was all text messaging.

We expect that all the text messages are going [88] to be admitted into evidence, so you will get to read every single one of them. And we warn you now, there is vile, disgusting language in them. There are multiple photographs of penises or a penis. It's not pleasant stuff. It's not pretty stuff. It's not polite stuff. It's not stuff that's easy to discuss in a well-lit courtroom in front of strangers. But we would submit to you that it's not necessarily criminal. It's not – especially we insist that it's not the crime they have charged him with. You won't like it. You won't approve of it. You may think it's immoral. But it does not rise to the level of a crime.

During this trial we're going to be referring to a fictional character named Shayla. Shayla never



existed. Shayla is the online avatar of the 16-year-old boy who started this process in motion by copying something he saw on YouTube and pretending to be a 14-year-old girl. And what the government says is that Zachary Spiegel was trying to induce, entice, or persuade Shayla into meeting him for sex.

To convict him of this offense, as the judge told you, the government has to prove five things. First, that he knowingly intended to persuade, [89] induce, or entice a minor into engaging in sexual activity. And the sexual activity, by the way is what the judge described as the lewd battery; sexual contact between an adult of a certain age and a minor between the ages of 12 and 16. They have to show that he used the internet or a cellular device to do that, and that he believed the person was less than 18 years old, and that if the sexual activity had occurred, it would have been a crime.

And then the last thing they have to show is that Zachary Spiegel took a substantial step towards committing this offense. A substantial step. Now, we're going to make some of this easy for you. We're not denying that Zachary used a cellular device. He did all of this on his cell phone. We also don't deny that he knew Shayla was 14. That's what she said she was when they first spoke or exchanged text messages. And it's – obviously, it would have been a crime if this man had met with a 14-year-old girl and had sex with her.

What we deny, and what the government will not be able to prove, is that Zachary intended to induce, persuade, or entice Shayla into having sex.

[90] We also deny that he took a substantial step towards having sex with Shayla.

What you'll see as this case develops is that Zachary Spiegel has no interest at all in meeting this girl. He was sexually aroused and obtained his sexual gratification by simply texting dirty messages to somebody that was willing to read them and respond to them. And that's rude. It's certainly immoral, but it's not the crime he's charged with. That is all he wanted and that's all he did.

And how do you know that that was his intent? You'll know it by looking at what he did here, because actions speak louder than words. What he was doing is like an old-fashioned obscene phone call when we all had land lines and no caller ID and you'd get a random call from some anonymous person who would sit there and talk dirty until you hung up. It's also very similar to what some people nowadays call sexting; exchanging dirty messages back and forth for sexual thrills. But he had no intention of meeting this girl, and that's evident by the facts you're going to hear.

In Count 1, the case began on January the 9th with this 16-year-old boy. And he signed onto an [91] app called Whisper. I think you're going to hear about this app during the trial. And it's become a popular app for people who want to communicate with others and remain anonymous, because what it does if you sign up for this app, it generates a fictitious name for you. In this case, the app gave Zachary Spiegel the fictitious name of Bull Hancock. So he could go on this app and

communicate with whoever else was on there using the name Bull Hancock and no one need ever know his name.

The site also has become popular for people that want to remain anonymous but find other people for random acts of sex. One of the features of this app is that it will geo locate the users so you can tell how far away somebody is from you when you're talking to them. And if it's convenient, I guess people get together and have dates or even more than that. But Whisper's terms of service require that the users be 18 years old or under the supervision of an adult.

There's a phrase used on the internet by people, it's called cat fishing. Cat fishing is where someone pretends to be someone or something they're not. You're going to hear that phrase [92] during these text messages. The boy that started this went cat fishing. He went onto Whistler, and as the prosecutor just said, he posted that his name was Shayla and that he was bored and hanging out. What he did not post was Shayla's age.

And Zachary Spiegel sort of took the bait that was out there. He saw a female name posted near him and he responded to it. He responded to the post by saying, How's your day? What brings you to Whisper? And this boy pretending to be a girl said, I'm here to meet new people. And Zac responds – and it's funny because this app allowed him to remain anonymous, but he responded using his real name, Zac. And then a few minutes later, he sent a selfie of himself to this woman

that he thought he was talking to. He wasn't trying to hide anything. One of the ironies of this case is that the only person in it who used their real name and identity was Zachary Spiegel.

So he responds to this woman and asks, What do you like to do for fun? And her response is, Smoke, which apparently refers to smoking marijuana. And Zachary asked, Do you like to smoke and have sex? Only I'll tell you right now, he didn't say, Do you want – like to have sex, he [93] used the F word. And this girl, woman, whatever she was at that time, responded, I do. Making it clear that she was willing.

At that point, Zachary suggests, We should get together sometime. And it was at that point, it was at that point, that the boy pretending to be a girl said, By the way, I'm 14 years old. That's important because what you'll see is Zachary did not go onto Whisper trolling for children. He did not go on to Whistler looking for some young child to entice into having sex. He responded to an unidentified – to a woman named Shayla. But when she said, I'm 14 years old, he immediately responded, That's a problem. That's a problem.

Now, granted, he could have quit talking, he could have quit communicating, he could have walked away, but he didn't. He started to ask questions about her sex life and she willingly, quickly responded. But after some back and forth about her sex life and some of her experience, he said, I don't think I could. Sorry.

They continue to communicate and Shayla sent him a photograph of herself. I don't know where this

boy got it. I don't know if it's his sister. I don't know if it's cousin. I don't know if it's [94] somebody he goes to school with. But he sent a picture of a young girl, clearly young, clearly underage. There's no denying that. But she described herself as mature for her age.

About an hour later, Zachary contacted her with a text asking, How is your evening going? And Shayla responded that she was at the movie theater. And he said something along the lines, Well, I wish I had known, we could have met in the back row. And he graphically described fondling her in the back row of the theater. And her response was something along the lines of, Oh, my gosh, if you don't mean that, stop talking. If you don't mean that, stop talking. And their exchange became even more graphic as it went on, to the point where he eventually sent her a photograph of his penis that evening.

And her response was to send a – emojis, smiling-face emojis with hearts for eyes, like she was just totally taken away by this photograph. And then she says, I'm here by myself, why don't you come through? Listen to these texts, read them when you get the chance, and ask yourself, who's persuading who here? Who's persuading who here? The prosecutor just told you, the boys's trying to [95] play catch a predator. What would be more attractive to a predator than a child saying, I'm here alone, why don't you swing by?

And it gets worse after that, because Zachary said he'd come. He said, I'll be there. It's going to take me about half an hour to get there. And as the time got

close for his arrival, the boy Shayla started texting, Where are you? The movie is out, I'm standing out here in the dark and I'm afraid. Come get me. He's catfishing. And he's using the most powerful bait he can think of for somebody who wants to actually have sex with a child. I'm alone and afraid in the dark, come get me. Tell me who is persuading who?

But something interesting happens. Zachary texts this fictional young girl and says, I just got pulled over. I'm not going to make it. I can't get there. And the interesting – and later on he filled out the description of what happened to him with another text, where he says, I was driving down U.S. 1, the police pulled me over. They said my tag was no good, then they said my driver's license was no good. And then they searched my car for drugs. And that's why I couldn't make it.

[96] And here is the interesting part. None of that is true. We know that because the government proved it. Part of Agent Urgo's investigation right after he got involved in this case was to try to find out if Zachary had, in fact, made a move to get to that theater that night and was prevented from doing so by the police. Because if they could show that, well, then he clearly was attempting to have sex with a 14-year-old girl. Why else would an adult man go to meet with a 14-year-old girl?

But you know what? There are only about three or four police agencies in this area that would be enforcing traffic laws. The St. Lucie County Sheriff's Office, the Fort Pierce Police, the Port St. Lucie Police, maybe

the Highway Patrol. He contacted all of those and there is no record of Zachary Spiegel being stopped for any traffic offense on U.S. 1 that night; which means he never made any effort to get to that movie theater.

We would submit to you that the evidence is going to show that he made up these excuses for not appearing because he enjoyed Shayla's listening to his filth. He enjoyed listening to her responses. And you're going to see that he got sexual gratification from those exchanges. But he never [97] intended to do anything more than that. So that was all of the events of Count 1, January 9th. Happened one day. The police get involved –

THE COURT: Counsel, you're at 20 minutes. Go ahead.

MR. MURRELL: The federal agents got involved. They took over the phone and they started texting, pretending to be Shayla. There were at least three times that they set up meetings where Zachary was supposed to appear. Three times. And he said no. He came up with an excuse every time. Once he just – the first thing that Agent Ray did when he was Shayla, within about ten words, said, Why don't I come to your house? Why don't I come to your house? And Zac texted back, How would you get here? He said, I'll have a cousin drop me off. And you know what Zac did with that? He ignored it for over four hours. By that time the time had passed and they never met. So that was once.

And then he said, I'll come pick you up. And that went nowhere.

You're going to hear that Zac occasionally – not occasionally. He often asked this girl for pictures. He wanted her to send pictures, but he never ever asked her for nude pictures. He never [98] asked her for anything obscene. He said, Just send me pictures. I want to see your face.

The police quickly identified Zachary by his photograph, by his IP address, by his phone number. They knew who he was by January the 12th. They knew where he lived. They knew what he drove. But they kept investigating and trying to lure him into meetings. And he never did. It finally culminated – well, on January the 11th he was supposed to meet with Shayla and he didn't show up. And the agents apparently ran out of patience waiting for him and they said, I knew you were BS when you didn't show up the first time. Bye. That was January the 11th.

And you know what Zachary Spiegel did after that? Nothing. He did not try to communicate with this girl. He did not try to initiate any conversations. Nothing. He never reached out to her again. But a week later, the agents reached out to Zac and started again pretending to Shayla and again started to try to set up a meeting. And then this time, they went so far as to engage in a long conversation about sex acts that they would do to each other, about threesomes that either one of them had ever been a part of, about sex toys that [99] they might use or have. And it went on and on and



on until finally Zachary sent a photograph of his penis, where it was clear that he had masturbated.

And we would submit that that is probably the strongest – it's disgusting, but it's probably the strongest piece of evidence in this case that he was using these conversations for sexual gratification, the conversations alone. He had no intention of ever meeting with this girl. And when he failed to appear this last time, the agents went to his house where they already knew he lived and arrested him and charged him with these offenses.

The texts are disgusting, they're immoral, but they're not illegal. When this case is over, we're going to be asking you to return a verdict of not guilty on both counts. Thank you.

THE COURT: All right. Ladies and gentlemen, we're going to take our lunch break. Let's come back 20 minutes after 1:00 by that clock. It's an hour. That should be enough time for you. Remind you not to discuss the case while you're out. Just come back. You'll assemble at the jury room here on this floor, right next door. You're been there already once. Remember where you're seated. And to make it easier at the beginning, line up the way [100] you're seated. That way you don't have to stumble over each other. Enjoy your lunch. It's a beautiful day out there. And we'll see you at 20 after 1:00.

(Thereupon, the jury exited the courtroom.)

THE COURT: Okay. Have a seat. I have a copy of the witness list. It was separate from what I've got a copy of. And let's see. A couple of things. Jury instructions, what I've done is I've compressed the ones that were submitted. I understand there were two issues. One issue has been resolved. No entrapment, correct?

MR. MURRELL: Correct.

THE COURT: And the only one we have left over is the witness who may not be called, and we'll deal with that as we get along. There's a forfeiture claim in here. Is the government seeking forfeiture?

AUSA BERGSTROM: We are, Your Honor. I believe that it's being handled administratively.

THE COURT: Well, let me know, because I don't want to be surprised and all of a sudden we have to send the jury to go back and hear a forfeiture claim.

AUSA BERGSTROM: I will find out on the break, [101] Your Honor.

MR. MURRELL: I don't know, Judge. I know we got an administrative notice and we've responded to it.

THE COURT: I think we're talking about a computer.

AUSA BERGSTROM: The cell phone, Your Honor.

THE COURT: One or two cell phones?

AUSA BERGSTROM: Just one.

THE COURT: One cell phone. Is that going to be an issue? Are we going to have to have a jury decide that?

MR. MURRELL: No, sir. Well –

THE COURT: Talk to your client. If there's a guilt – a non-guilty verdict, it's irrelevant. If there's a guilty verdict, then, you know, the jury's – the defense is entitled to have a jury trial on the forfeiture claim, which means you got to bring – put the evidence back there. And I'm assuming it's going to be worked out. So let me know. I don't want any surprises. I think that's it. That's all I've got right now, so enjoy your lunch.

AUSA BERGSTROM: Thank you, Your Honor.

THE COURT: Let the defense know your first [102] witness.

AUSA BERGSTROM: Pursuant to your order at the calendar call, Your Honor, I've provided the defense with a list.

THE COURT: Perfect. Thank you.

MR. MURRELL: What time did you say to be back, Judge?

THE COURT: What time did I say?

AUSA BERGSTROM: 1:20, Your Honor.

MR. MURRELL: Thank you.

THE COURT: At least someone is listening.

AUSA BERGSTROM: It's probably the first answer I've gotten right.

MR. MURRELL: I just didn't hear you. I'm sorry.

THE COURT: I know. Can I just tease you a little bit? Okay.

Here we go. See you then. Enjoy your lunch. If anything comes up, you need me, I'll be in the back. Just let me know ahead of time before the jurors are back there.

(Thereupon, a luncheon recess was taken.)

\* \* \*

[103] **AFTERNOON SESSION**

THE COURT: First witness on the stand. Is the jury ready?

THE COURT SECURITY OFFICER: Yes, Your Honor.

AUSA BERGSTROM: Your Honor, before the jury gets out here, I don't think there's any dispute about the admissibility of the government's exhibits we plan to pre-admit.

THE COURT: When the jury comes in, you can just read them off. Okay.

AUSA BERGSTROM: And I've spoken to the forfeiture people and to defense counsel. I don't

think there's any dispute about the phone and they're just going to agree to forfeit the phone.

THE COURT: Is that correct?

MR. MURRELL: Yes, sir.

THE COURT: Thank you.

(Thereupon, there was a brief pause.)

THE COURT: I guess we'll sit for a while.

(Thereupon, the jury entered the courtroom.)

THE COURT: Welcome back. Please be seated, ladies and gentlemen. I hope you enjoyed a nice lunch. Relax. Now we start with the evidence. Government call its first witness.

AUSA BERGSTROM: Yes, Your Honor. The [104] government calls Allan Strachan.

Thereupon,

ALLAN STRACHAN,

having been duly sworn by the courtroom deputy, testified as follows:

A. Yes.

THE COURTROOM DEPUTY: Please state your name for the record and spell your name. You can get closer to the microphone, please.

A. Allan Strachan. A-L-L-A-N, S-T-R-A-C-H-A-N.

AUSA BERGSTROM: May I proceed, Your Honor?

THE COURT: Please.

AUSA BERGSTROM: Thank you.

**DIRECT EXAMINATION**

BY AUSA BERGSTROM:

Q. Good morning, sir.

A. Good morning.

Q. Can you tell us how old you are.

A. I'm 16.

Q. Are you currently or have you ever been employed as a law-enforcement officer?

A. No.

Q. Have you ever worked for the police in any capacity?

[105] A. No.

Q. I want to talk to you about the evening of January 9th, 2022. Do you remember what you were doing that day?

A. Yeah. I was watching a movie in the movies.

Q. When you say in the movies, what movie theater?

A. Sabal Palms in Fort Pierce.

Q. Was anyone there with you or were you alone?

A. I was with my friend Adrian.

Q. And how old is Adrian?

A. He's 17.

Q. And what were you and Adrian doing that day besides watching a movie?

A. We were watching videos of people watching online predators, and we did it ourselves.

Q. So you were watching videos. How were you watching those videos?

A. On YouTube.

Q. Watching it on your phone?

A. Yeah.

Q. And you said you decided to do it, too. Did there come a time that you two decided to create a social media account?

A. Yes.

Q. Was this a social media profile for yourselves [106] or was this one for a fictitious person?

A. For a fictitious person.

Q. What was the name of this fictitious person you created?

A. Shayla.

Q. Had you decided how old Shayla was going to be?

A. Yeah. 14.

Q. And was Shayla a boy or a girl?

A. She was a girl.

Q. You used the name Shayla. Is this somebody you know?

A. No. I saw a Shayla on TikTok.

Q. Is TikTok another social media app?

A. Yeah.

Q. What social media service did you create this Shayla account on?

A. On Whisper.

Q. Is Whisper a smartphone application?

A. Yeah.

Q. Would it be fair to call Whisper a social media service?

A. Yeah.

Q. Okay. Whose idea was it to create this account?

A. It was my idea.

Q. And why did you want to create this account?

[107] A. Nothing better to be doing.



Q. Okay. And did you – were you inspired by those YouTube videos that you watched?

A. Yeah. We watched a lot of those.

Q. You watched a lot of them?

A. Yeah.

Q. Did your parents know you were doing this?

A. No.

Q. Did anybody in law enforcement know you were doing this?

A. No.

Q. Did anyone in law enforcement ask you to do this or tell you to do this?

A. No.

Q. I want to take a minute to talk about Whisper. Why did you choose to use the Whisper app?

A. That's what they were using on the videos we were watching.

Q. Did you personally set up the Shayla account on Whisper?

A. Yeah.

Q. Can you explain to those of us who might not be as familiar with Whisper kind of how it works?

A. You make an account. You can make a post and then people reply to the post, like in the same

areas. [108] So if I pick Fort Pierce, everybody in Fort Pierce would see the post and they can reply to it.

Q. And when somebody replies to a post, is that conversation public or is there like a private chat?

A. No, it's a private chat.

Q. But the post itself would be public?

A. Yes.

Q. Okay. When you set up an account on Whisper, did you have to verify your identity in any way?

A. No.

Q. Is the account linked to the device you used to set it up?

A. Yeah.

Q. So in this case, it would be linked to your cell phone?

A. Yeah.

Q. Do you have a user name and password that you can enter with Whisper to access it?

A. No. Once you're logged in, you're logged in. Once you create the account, it's just on your phone.

Q. So you just navigate to the app and there it is?

A. Yeah.

Q. Do users have profile pictures on Whisper?

A. No.

Q. Is it like Facebook, that some of us might be [109] more familiar with, where you can like type somebody's user name in and there's the profile with all their information?

A. No. It's just the chats.

Q. So how do you go about interacting with people on Whisper?

A. Like, I guess you just look for the post in your area and if you see something interesting, you can reply to it.

Q. So I want to focus specifically now on the Whisper account that you created for Shayla. When you first set up this account, were you able to choose an account name?

A. Yeah.

Q. What account name did you choose?

A. Shayla.

Q. When you were creating the account, did you have the option of specifying a gender for Shayla?

A. Uh-huh. (Nodding.)

Q. And what did you select?

A. I said female.

Q. Were you given the option of specifying Shayla's age?

A. Yeah.

Q. Now, were you able to enter a specific age or [110] were there presets for age ranges in the Whisper app?

A. There were ranges.

Q. And what range did you select?

A. I put 18 to 20-something.

Q. And why did you do that?

A. That was the lowest age that it would let me put.

Q. Was there an option for 14?

A. No.

Q. Were you given the option of specifying Shayla's geographic location?

A. Yeah. I put Fort Pierce.

Q. And how you did go about setting that location?

A. It just gave me the option to select like a radius, so I put a 5-, 10-mile radius, you know, in Fort Pierce, where I was.

Q. So it was sort of based on your phone's GPS and the a radius around that?

A. Uh-huh. (Nodding.)

Q. Once you had the Shayla account set up, did you create a public post?

A. I did.

AUSA BERGSTROM: Your Honor, if could I have the witness' screen, please. Your Honor, I had forgotten to do this at the beginning. I don't [111] believe there's any objection, but at this time the government would move to admit Government's Exhibits 1 through 17, Your Honor.

THE COURT: 1 through 17? Any objection?

MR. MURRELL: No, sir.

THE COURT: It will be received without objection.

(Thereupon, the exhibits were admitted into evidence.)

AUSA BERGSTROM: Thank you, Your Honor.

BY AUSA BERGSTROM:

Q. Do you see something on your screen right now?

A. Yeah.

Q. I'm showing you what's been admitted as Government's Exhibit 4. Do you recognize Government's Exhibit 4?

A. I do.

Q. What is it?

A. That's the post I made.

Q. As Shayla?

A. Yep.

Q. What date did you make this post?

A. January – whatever the day was, you know, that –

Q. When you were at the theater?

A. Yeah.

[112] Q. Would that have been January 9th, 2022?

A. I don't remember, but if that's what's on the books, then yeah.

AUSA BERGSTROM: All right. Your Honor, I would move to publish Government's Exhibit 4 to the jury.

THE COURT: You may proceed. You can publish any of these that are in evidence.

AUSA BERGSTROM: Thank you, Your Honor. I think I have to ask for the screen.

THE COURTROOM DEPUTY: I'll just leave it on.

Can the jury see it?

BY AUSA BERGSTROM:

Q. So how did you create this post?

A. I picked a background. They have like a list of backgrounds that you can pick, so I picked that one. And then I just typed in, Anybody want to hang out on board.

Q. So the photo was sort of a preset Whisper option?

A. Yes.

Q. And then that text is what you created?

A. Yup.

Q. Did a user with the account name Bull Hancock respond to this post?

[113] A. Yes, he did.

Q. Was that on the same evening that you created the post?

A. Yep.

Q. Did Bull Hancock ever give you another name?

A. Yeah. He said his name was Zac.

Q. And did Zac send Shayla a photo of himself?

A. Zac did.

Q. I'm going to show you what's been admitted as Government's Exhibit 5. Do you recognize Government's Exhibit 5?

A. Yeah.

Q. What is that?

A. That's the photo he sent me.

Q. While you were pretending to be Shayla, did you and Zac communicate in the chat function of the Whisper app?

A. Yeah.

Q. Did you tell Zac how old Shayla was?

A. Yeah. I said Shayla was 14.

Q. Did that end the conversation after learning Shayla was only 14?

A. No.

Q. After learning that Shayla was 14, did Zac ask Shayla for a photo of herself?

[114] A. Yes.

Q. Did you send him a photo?

A. Yeah. I found one on Google images that I sent.

Q. Did you know the girl whose photo you selected?

A. No.

Q. Why did you send a photo at all?

A. Just to make it believable, you know.



Q. Did there come a time that same evening that Zac and Shayla decided to meet up in person?

A. Yeah.

Q. Did Zac give Shayla an estimated time of arrival?

A. Yep.

Q. About how much notice did that give you that Zac was on his way?

A. 30 minutes.

Q. Did you two exchange cell phone numbers?

A. Yeah.

Q. And did the conversation shift over to text message at some point?

A. Yes.

Q. What did you do after you learned that Zac was on his way to meet you?

A. Well, I saw a – a patrol officer. I saw a [115] police car in the – in the parking lot, so I went up to him and I showed him my phone. And he read through the messages and I guess he called people, because then people showed up at the movie theater.

Q. And after you showed the officer the conversation that you had been having with Zac, did you stick around where the police were or did you kind of step aside?

A. No. I went to Wingstop.

Q. How was your cell phone battery at this point?

A. It was low. It was like 7 percent.

Q. Were you still texting with Zac?

A. Yeah.

Q. Did there come a time that Zac told you he wasn't going to cop?

A. Yeah. He said he got pulled over.

Q. Did you tell the police about this message?

A. Yeah. When I was walking out of the Wingstop, that's when I saw all the agents sitting at the movies. So then I ran over there and I showed them my phone and I said, Oh, he got pulled over because – you know, in case they could call the police officers that pulled him over and let them know what's going on.

Q. Do you remember who you spoke with?

A. Yeah, it was Deputy Fullen.

[116] Q. Candice Fullen?

A. Candice Fullen.

Q. Did Detective Fullen ask you to send her screenshots of the conversation that you had with Zac?

A. Yeah.

Q. Were you able to do it right that moment?

A. No. I had to charge my phone first.

Q. Did you subsequently send her screenshots of your –

A. Yeah, once I got home.

Q. Did there come a time that you left Sabal Palms Plaza and returned home?

A. Yup.

Q. Did you still have your phone with you?

A. Uh-huh. (Nodding.)

Q. So let's talk about the next day, January 10th. Did you receive any messages from Zac on January 10th?

A. Yeah.

Q. Were they Whisper chats or text messages?

A. It was on text.

Q. Did you meet with law enforcement at some point on January 10th?

A. Yeah.

Q. Approximately, what time of day?

A. It was late in the evening.

[117] Q. Who did you meet with, do you remember?

A. I can't remember the names, you know, but it was – Candice Fullen was there, Eric was there, and then there's two others.

Q. When you say Eric, do you mean Special Agent Eric Uργο?

A. Yes, Special Agent Eric.

Q. Were your parents also present for this meeting?

A. My dad was there and my mom was on the phone.

Q. Where did this meeting happen?

A. In my kitchen.

Q. Did you and your parents give Special Agent Uργο permission for law enforcement to take your phone at that point?

A. Yes.

Q. And was it your understanding that they were going to also take over the Shayla account?

A. Yes.

Q. Prior to giving your phone over to Special Agent Uργο, had anyone else used or possessed your cell phone since the previous evening?

A. No.

Q. Once you gave your phone over to Special Agent Urgo on January 10th, did you have any other involvement in the investigation?

[118] A. No.

Q. While law enforcement was there talking with you and your parents in your kitchen, did Special Agent Urgo talk to you about how dangerous and inadvisable your actions were?

A. Yeah, he did.

Q. And do you now understand that criminal investigations should be left to law enforcement?

A. I do.

AUSA BERGSTROM: Thank you, Your Honor. Those are all the questions I have of this witness.

THE COURT: Cross-examination?

MR. METCALF: May I, Your Honor?

THE COURT: Please.

**CROSS-EXAMINATION**

BY MR. METCALF:

Q. Good morning Allan – or afternoon.

A. Good afternoon.

Q. Allan, did an adult instruct you on Whisper, anything about Whisper, or you're saying you just

heard from it – about it from watching YouTube videos?

A. Yeah.

Q. Had you been on Whisper before?

A. No.

[119] Q. So you've never created at any other time in your life an account on Whisper?

A. Nope.

Q. That was your first day on Whisper, January 9th?

A. First day.

Q. When you signed on Whisper, did you go through the initial setup stage where they asked you to agree to an end user agreement?

A. Yeah. Probably.

Q. And it instructed you that unless you were 18, you weren't to be on Whisper?

A. I don't read those.

Q. Don't read those?

A. No.

Q. Let me finish. Without adult supervision?

A. I don't know.

Q. And did it ask you when you signed on to agree that you were over the age of 18?

A. Don't remember.

Q. But your account that you set up, you advertised that you were 18?

A. Yeah, because that was the only option.

Q. Because people, if they saw your profile, they would believe that – they would think you were 18 to 20-some years old?

[120] A. Yeah, until I tell them I was 14.

Q. Okay. And initially, Zac told you that that was a problem?

A. Yeah, he understood the problem.

Q. And this ruse that you created, was it something you had seen exactly done online or –

A. Yeah, I did it the same way.

Q. You did it the same way?

A. Uh-huh. (Nodding.)

Q. So you were actually at the movies?

A. Yeah, I was watching Spiderman.

Q. And you actually told this person to come to where you were?

A. Yep.

Q. But he never came there?

A. No.

Q. Were you – from watching the videos, were you aware of what kind of activity takes place on Whisper?

A. Yeah, I was.

Q. And you knew that a lot of times, people go on there and they pretend to be someone they're not?

A. Yeah, that's what a lot of it is on anonymous chats.

Q. Okay. A lot of it is just malarky, people fantasizing, making stuff up that's just not true?

[121] AUSA BERGSTROM: Objection, Your Honor. Calls for speculation as to what other people's Whisper motivations are.

THE COURT: You can ask what he understands.

MR. METCALF: I'll rephrase it.

BY MR. METCALF:

Q. Well, that's what you were doing, making stuff up that wasn't true? You were being a fictional person?

A. No, I was pretending to an 14-year-old girl.

Q. Okay. And people pretend to be things. Do you know, do people pretend to be things on there? Have you come across that? Did you come across that?



A. I came across a lot of child predators on this app.

Q. And did it tell you that the Whisper was designed for that? I mean –

A. No. I don't think they created it for that.

Q. But that's what you saw on the YouTube channel you were on?

A. Yeah.

Q. And this was something that interested you, to get involved with stuff like that?

A. Well, it interests me, but no. Something to do. I enjoy watching the videos. They're entertaining.

Q. And your testimony was you did it because you [122] had nothing better to do?

A. Yeah.

Q. Now, the photo that you sent to try to convince people that you were underage, that was just some photo you found, a random image of some girl online?

A. Yeah. It was on Google.

Q. And you said that you had a friend there with you who was 17?

A. Yeah. Adrian.

Q. Who was coming up with what to say?

A. I was.

Q. All right. What was Adrian doing?

A. He was sitting next to me. He was involved. He was giving me some things to say, but it was mainly me.

Q. He was in the movie theater with you?

A. Yeah.

Q. And do you know what the term catfishing means?

A. Yeah.

Q. What do you think that word means?

A. Like making something (inaud.) that you're not.

Q. Luring someone?

A. Yeah.

Q. And that's what you were doing, you were luring [123] somebody to think you were 14?

A. Well, yeah. I told this guy I was a 14-year-old girl and he was texting me about it.

Q. And you made it very clear that you wanted to smoke and have sex?

A. I don't recall who said what first. It was a while ago.

Q. Okay. Do you recall you saying, I like to smoke and have sex?

A. Yeah, I recall that.

Q. Do you recall you inviting this person to the movies?

A. Yeah.

Q. So you were the one doing the enticing, the luring?

AUSA BERGSTROM: Objection, Your Honor. Argumentative.

THE COURT: Just ask the question what he did.

BY MR. METCALF:

Q. You were en enticing him?

A. I don't know what that word means.

AUSA BERGSTROM: Same objection, Your Honor.

BY MR. METCALF:

Q. You're trying to lure this man to come meet you?

A. I was trying to make him come meet me.

[124] Q. And your persona Shayla was more than willing to meet with him?

A. Yeah.

Q. Now, you never obviously disclosed your real name?

A. No.

Q. But you gave out your real cell phone number?

A. Yes.

Q. And you began texting this Zac?

A. Yes.

Q. Did he give you a time when he would meet you there; do you recall?

A. He came right away. He said 30 minutes.

Q. Did he ever show up?

A. No. He said he got pulled over.

Q. Okay. And you went – you were at Wingstop at that point?

A. Yeah, I believe so. That's when I went to Wingstop.

Q. Now, before you went to Wingstop, once you were told there was going to be a meet, that they were going to meet, okay, you turned – that's when you turned it over to law enforcement?

A. Yeah, that's when I showed the police officer.

Q. And did the police tell you to keep on texting [125] him?

A. No. He didn't say nothing. He kind of said, Okay, and drove away.

Q. Did he take down your name?

A. No.

Q. So the officer, you showed him everything you had written?

A. Uh-huh. (Nodding.)

Q. And what was responded?

A. He said, Okay. I didn't know what his intentions were. To be honest, I thought he was about to drop it and go home. But then I saw the other police officers come to the movies, so I seen that he take it serious.

Q. At that point, they didn't have any of your information, did they?

A. No.

Q. He didn't know your name?

A. No.

Q. And you had left?

A. I mean, I was just in Wingstop.

Q. Did they know where you were?

A. I know the police officer, he seen me walking around because we were hanging about.

Q. So they let you walk away from them without [126] taking down your name or any of that information?

A. No.

Q. No, they did or –

A. No, they never took my information.

Q. And you kept on texting?

A. Yes.

Q. Asking him to come?

A. Yes.

Q. And then once you realized that he's not coming – because he tells you, I'm not coming, right?

A. Uh-huh. (Nodding.)

Q. Is that a yes?

A. Yeah.

Q. You go back out and tell the officers, He's not coming?

A. Yeah. I showed him everything that was going on in my phone.

Q. And did you that so they would go to that scene and see if he got pulled over if he actually came to see you?

A. Sorry. What?

Q. You told them – you went out to tell them that he told you that he got pulled over, right?

A. Yeah.

Q. And you did that so if he did get pulled over, [127] they could go there?

A. Yes, so they can let them know that the officers had pulled him over.

Q. Okay. Now, did that conclude your involvement that night after you did that?

A. No, it didn't. The next day when they came, and they came to my house and they took my phone. And that's when I was out of it. That's when I was all to the police.

Q. Now, the next morning, though, you woke up, you texted some more, right?

A. I don't remember, but probably.

Q. Had they told you after you left Wingstop, Hey, listen, you need to stop doing this?

A. She said to send all the photos when I left Wingstop, like all the screenshots of the texts.

Q. I understand. But did she tell you to stop communicating that night? Don't do this anymore?

A. I don't remember.

Q. The next morning you kept it going?

A. Yeah.

Q. And you wanted to arrange another meeting?

A. I don't remember.

Q. Now, to get him to come to that movie theater, you even wrote, I'm scared and I'm alone; is that, right?

[128] A. Yeah.

Q. At any point after meeting with law enforcement, did they give you any kind of a script and tell you what to say for the next morning?

A. No.

Q. When you met finally with Agent Urgo, you said it was in the evening when you finally met with him?

A. Yes.

Q. And he told you to stop?

A. Yep.

Q. Had you stopped?

A. Yep.

Q. And you don't recall what you did text that morning of January 10th?

A. Na.

MR. METCALF: Nothing further.

THE COURT: Redirect?

AUSA BERGSTROM: No redirect, Your Honor. Thank you.

THE COURT: Thank you, sir. You can step down. Have a good day. You can go now.



AUSA BERGSTROM: Your Honor, may this witness be excused –

THE COURT: Yes.

AUSA BERGSTROM: – for the remainder of the [129] trial? Thank you.

MR. HOOVER: May the government call its next witness?

THE COURT: Call your next witness.

MR. HOOVER: Thank you. The government calls Detective Candice Fullen.

Thereupon,

CANDICE KERNAN-FULLEN,

having been duly sworn by the courtroom deputy, testified as follows:

A. I do.

THE COURTROOM DEPUTY: Please take a seat and state your full name and spell your name. You can take your mask off if you'd like.

A. Candice Kernan-Fullen. C-A-N-D-I-C-E. Last name K-E-R-N-A-N, hyphen, F-U-L-L-E-N.

MR. HOOVER: Thank you. May I proceed, Your Honor?

THE COURT: Please.

MR. HOOVER: Thank you, Judge.

**DIRECT EXAMINATION**

BY MR. HOOVER:

Q. Good afternoon.

A. Good afternoon.

[130] Q. Are you currently employed?

A. Yes.

Q. How so?

A. With the Fort Pierce Police Department.

Q. What is your current position with that department?

A. I'm a detective with the crime suppression unit.

Q. Can you please tell us what your duties and responsibilities are in that position.

A. Yes. I investigate major crimes, such as shootings, homicides, narcotics, and then child exploitation cases.

Q. Do you have any other positions other than your position as a detective?

A. Yes. I'm a task force officer with Homeland Security Investigations.

Q. What does that mean?

A. I typically work part time to assist Homeland Security with various investigations that they may have.

Q. Are you the lead federal case agent on this case?

A. No.

Q. How long have you been a task force officer with HSI?

[131] A. Less than a year.

Q. I'm sorry. I call it HSI. Is HSI the abbreviation for Homeland Security Investigations?

A. Yes.

Q. How long have you been with the Fort Pierce Police Department?

A. Five years.

Q. Prior to your law enforcement career beginning, did you attend a police academy?

A. Yes.

Q. Was that the extent of your training or has your training continued over the course of your career?

A. It has continued.

Q. I'd like to direct your attention to January 20th, 2022. Did you have an occasion to come into contact with a Zachary Spiegel?

A. Yes.

Q. Do you see Mr. Spiegel in the courtroom today?

A. Yes.

Q. Can you please identify him using an article of clothing?

A. He's wearing a blue blazer and a black mask.

MR. HOOVER: Your Honor, may the record reflect the witness has identified the defendant?

THE COURT: Yes.

[132] BY MR. HOOVER:

Q. Did this incident take place in St. Lucie in Martin County in the Southern District of Florida?

A. Yes.

Q. Now, I'd like to start with January 9th of 2022. Were you called in to assist in a potential child exploitation investigation?

A. Yes.

Q. Who called you?

A. Sergeant Tyrone Campbell with the Fort Pierce Police Department.

Q. What is Sergeant Campbell's role?

A. He is a road patrol sergeant.

Q. What is road patrol?

A. It's typically a role that you play as far as, you know, if an officer is responding to a call for service.

Q. So they're in marked units on the street, responding to – if somebody calls 911, they respond? That kind of thing?

A. That's correct.

Q. Is it normal for a road patrol sergeant to call in a detective like yourself in a situation like this?

A. Yes.

Q. When Sergeant Campbell called you, where did you [133] respond?

A. To the Sabal Palms Plaza at the intersection of U.S. 1 and Virginia Avenue in Fort Pierce.

Q. Was Sergeant Campbell present when you arrived?

A. Yes, he was.

Q. After you arrived, were other individuals on scene?

A. Yes.

Q. Was one of those people Allan Strachan?

A. Yes.

Q. Was there also another juvenile there?

A. Yes.

Q. Did you speak to those juveniles?

A. I did.

Q. Were you briefed on what was going on?

A. I was, yes.

Q. After being brought up to speed on what was happening, what did you do?

A. I asked Mr. Strachan to send me the text messages so I can investigate them further. And once I did, I later contacted Special Agent Eric Uργο from Homeland Security Investigations.

Q. So Allan actually sent you the screenshots of the conversation?

A. Yes.

[134] Q. And you reviewed them?

A. Yes.

Q. And then you said that you contacted Special Agent Uργο. Is that normal, to work with other federal agencies in a case like this?

A. Yes.

Q. Did Special Agent Uργο join the investigation?

A. Yes.

Q. After he did so, what did you all do?

A. We made contact with Allan Strachan and his parents the follow day. And at that point –

Q. Where was that?

A. In Fort Pierce.

Q. Was that in Allan's residence?

A. Yes.

Q. Did you speak with his parents?

A. I did, yes.

Q. Did you ask them permission to do anything?

A. Yes, we did.

Q. What did you ask?

A. I believe to actually take over Allan Strachan's online identity.

Q. Did you also ask to be able to search his phone?

A. Yes.

Q. The screenshots of the conversations that Allan [135] sent to you, did you forward those to Special Agent Uργο?

A. Yes.

MR. HOOVER: Your Honor, I have no further questions at this time. Thank you.

THE COURT: Cross-examination?

**CROSS-EXAMINATION**

BY MR. METCALF:

Q. Good afternoon.

A. Hello.

Q. That night when you first came into contact with Allan, he – had he been talking to law enforcement already?

A. Yes. He had spoken to Sergeant Campbell.

Q. Okay. Had Sergeant Campbell taken down his information and everyone was aware of who Allan Strachan was?

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

Q. And when you concluded – you saw these texts that very night?

A. Yes, I did.

Q. And you had asked him to forward them to you?

A. That's correct.

Q. Just screenshots?

A. That's correct.



[136] Q. But you didn't see his phone at that time or ask him to give you his phone?

A. No, I did not.

Q. Did you instruct Allan to stop what he was doing?

A. No, I did not.

Q. Did you tell him to keep doing what he was doing?

A. No, I did not.

MR. METCALF: Nothing further.

THE COURT: Redirect.

MR. HOOVER: No redirect, Your Honor. May this witness be excused?

THE COURT: They may be excused.

MR. HOOVER: Your Honor, at this time the government calls Special Agent Eric Urgo. Thereupon,

ERIC URGO,

having been duly sworn by the courtroom deputy, testified as follows:

A. I do.

THE COURTROOM DEPUTY: Please take a seat. State your full name and spell your name for the record.

A. Yes. My name is Eric Urgo. E-R-I-C, U-R-G-O.

[137] **DIRECT EXAMINATION**

BY MR. HOOVER:

Q. Good afternoon.

A. Good afternoon.

Q. Are you currently employed?

A. I am.

Q. How so?

A. I am a special agent with Homeland Security Investigations.

Q. Can you please tell us, is that sometimes to referred as HSI?

A. It is.

Q. Can you please tell us, what is HSI?

A. Yes. HSI is the main investigative component of the Department of Homeland Security. We investigate a multitude of crimes. One of the major, more common ones are terrorism, human smuggling and trafficking, narcotic smuggling, narcotic trafficking, and also child exploitation.

Q. What kind of crimes are you typically investigating?

A. All the previously mentioned, but predominantly child exploitation.

Q. What's your current position with HSI?

A. Special agent.

[138] Q. How long have you been with that agency?

A. Since 2019.

Q. Prior to 2019 and joining HSI, did you have any prior law enforcement experience?

A. Yes.

Q. Can you tell us about that?

A. Yes. In 2008 I was with the U.S. Customs and Border Protection. I held a variety of positions: officer, supervisor, Special Response Team, and instructor.

Q. How long did you have that position?

A. From 2008 to 2019.

Q. Before you began your law enforcement career with Customs and Border Protection, did you attend a law enforcement academy?

A. Yes.

Q. Which one?

A. I was at the federal law enforcement training academy in Brunswick, Georgia.

Q. Was that the extent of your training or has your training continued over the course of your career?

A. It has continued and will continue.

Q. Have you ever been in a training or instructor position?

A. Yes.

[139] Q. Have you ever been trained in child exploitation cases?

A. Yes.

Q. This particular case, are you the lead agent?

A. I am.

Q. I'd like to direct your attention to January 20th of 2022. Did you have an occasion to come into contact with a Zachary Spiegel?

A. I do.

Q. Do you see him in the courtroom today?

A. I do.

Q. Can you please identify him using an article of clothing.

A. Yes. He's wearing a blue suit coat and a black mask.

MR. HOOVER: Your Honor, may the record reflect the witness has identified the defendant.

THE COURT: Yes.

BY MR. HOOVER:

Q. Did this incident take place in Saint Lucie and Martin Counties in the Southern District of Florida?

A. Yes.

Q. I'd like to start at January 10th of 2022. Were you requested to assist in a child exploitation investigation?

[140] A. I was.

Q. What agency requested your assistance?

A. That was the Fort Pierce Police Department.

Q. After they requested your assistance, did you join the investigation?

A. I did.

Q. Is it common for your agency to join active investigations with state and local agencies?

A. It is.

Q. When you joined the investigation, were you briefed on what had happened thus far?

A. Yes.

Q. On January 10th, the day that you were brought in, did you meet with Allan Strachan and his parents?

A. I did.

Q. Where was that?

A. That was in Fort Pierce.

Q. Was that at his residence?

A. Yes.

Q. At that meeting, did you request permission to look at Allan's phone?

A. I did.

Q. What did you observe?

A. It was a brief observation, but it was a discussion of a meet-up.

[141] Q. Within the conversations of the – on the phone, there was a discussion of a meet-up?

A. Correct.

Q. Where were they in the conversation, about?

A. Basically talking about a cousin, I believe, picking him up and taking him to a – his house.

Q. During that meeting, did you obtain the parents' consent to assume control of Allan's online identity?

A. I did.

Q. I'd like to ask you a few questions about how these kinds of investigations are typically conducted. Is it common to use actual children to investigate online predators?

A. No.

Q. What – or who does these kinds of investigations, typically.

A. Those that are – receive the training, and the undercover law-enforcement officers specifically.

Q. Is it safer to have undercover law-enforcement officers conducting investigations versus civilian children?

A. Much safer.

Q. The undercover agents, are they trained in having these kinds of conversations?

A. They are.

[142] Q. Did you or any other agents or officers instruct, encourage, request, anything like that, Allan to engage with this or any other suspect?

A. No.

Q. Did Allan receive any kind of compensation or reward for his conduct?

A. No.

Q. Did you tell Allan and his family anything regarding his communication with the suspect in this case?

A. Yes. I told him that he needed to stop and it's a very dangerous thing. You should leave it up to law enforcement.

Q. Did you personally assume Allan's online identity?

A. No.

Q. Who did?

A. Special Agent Brian Ray.

Q. Why?

A. Because he's certified to conduct such investigations.

Q. And when you say "conduct certain – such investigations," you're – you would investigate offenses like this; is that right?

A. I investigate these offense, but specifically the undercover portion of this investigation.

[143] Q. Okay. So Special Agent Ray did the undercover portion?

A. That is correct.

Q. Were you involved in the portion of the investigation that led to identifying the defendant?

A. Yes.

Q. All right. So let's discuss the steps that you took to do that. The number that the suspect was using to text Allan and then Special Agent Ray, was that 772-200-2444?

A. Yes.



Q. Were you able to determine the carrier for that number?

A. I was.

Q. Who was that?

A. Textplus.

Q. Are you familiar with Textplus?

A. Yes.

Q. What is it?

A. Textplus is a internet-based mobile application service. So basically, when you use their service, you can create an account. And say you have your phone, it can have a different phone number assigned to it by your picking or one assigned to it, and you can utilize WiFi to send messages, video, chats.

[144] Q. So you said that it's an internet application?

A. An Internet application.

Q. So it's not a cellular provider like Verizon, AT&T, or T-Mobile or anything like that?

A. No, it is not.

Q. All right. So you learned that this phone number belongs to Textplus. Did you subpoena Textplus for the subscriber information associated with that number?

A. I did.

MR. HOOVER: Your Honor, the following exhibits the Court has already admitted into evidence. Can we publish Government's Exhibit 2 for the jury.

Your Honor, Government's Exhibit 2 is a stipulation of the parties. And at this time, with the Court's permission, I'm going to read the first line in the stipulation.

THE COURT: You may.

Ladies and gentlemen of the jury, you may recall in my preliminary instructions I said, Sometimes lawyers agree or stipulate to facts. This is an example of that.

MR. HOOVER: Thank you, Your Honor.

The following is a stipulation between the parties. The United States of America, by and [145] through the undersigned Assistant United States attorneys, and Defendant Zachary S. Spiegel, by and through his attorneys, hereby agree and stipulate as follows: Textplus is a service that allows subscribers to make and receive voice calls and text messages from any WiFi-enabled device using a telephone number supplied by Textplus.

At all times relevant to the indictment, the telephone number 772-200-2444 was assigned to the Textplus account with the following user information.

BY MR. HOOVER:

Q. Now, Special Agent Urgo, we're just going to walk through some of this. I'm not going to read

through the entire three-page document. Did Textplus, when you subpoenaed them, provide you with information in response?

A. Yes.

Q. For instance, there's a handle there. Can you please tell us what the handle is?

A. Yes. Zac (inaud.) 719-1.

Q. Did they provide you with IP address records?

A. Yes.

Q. What's an IP address?

A. So an IP address is short for internet protocol address. So a computer is – it's connected to [146] the internet, has a numerical number assigned to it. An that ensures things leaving that assigned number gets to where it needs to go and vice – in return, things go to where you – similar to your address on your house in sending and receiving mail.

Q. We're going to go to page 2. It states as follows: Between January 9th, 2022 at 0:42:42 GMT and January 11th, 2022 at 19:59:04 GMT, the Textplus telephone number 772-200-2444 was used to make and receive mobile communications, including text messages and voice calls, from the following IP addresses.

And are these the IP addresses that were provided to you by Textplus?

A. Yes, they were.

Q. And were these IP addresses used by the Text-plus account around the time that the user was communicating with Shayla?

A. Correct.

Q. What might an IP address tell you? What might you be able to learn from an IP address?

A. A physical location where it's registered to. Sometimes you have the name. Sometimes a phone number. It's not all inclusive reach (inaud.) another provider, but that's most of the things that are provided.

Q. Now, in this initial response from Textplus, [147] they weren't able to provide you where that IP was assigned to; is that right?

A. That's correct.

Q. All right. Were you able to determine what internet company maintains the IP address?

A. Yes.

Q. And who was that?

A. Comcast.

Q. Did you subsequently subpoena Comcast for the information about this IP address?

A. I did.

MR. HOOVER: Your Honor, at this time the government's publishing Government's Exhibit 6.

BY MR. HOOVER:

Q. Special Agent Uργο, did Comcast provide you with the information?

A. Yes.

Q. How did they do so at first?

A. Initially through a verbal communication over the phone, followed up by this.

Q. Did you later obtain formal records?

A. Yes.

Q. Is that what we're looking at here?

A. It is.

Q. So I'm going to ask you a question. Based on [148] this record, between January 9th and January 11th, the IP address that you got from Textplus, where was that assigned to?

A. As far as the address?

Q. Yes.

A. The address was – the service address of 950 Northwest Fresco Way, Apartment 208, Jensen Beach, Florida 34957.

Q. And who was the subscriber for this account?

A. Zachary Spiegel.

Q. If you go down to the bottom, is there an e-mail user ID?

A. Yes. It is ZSpiege1719.

Q. All right. So based on these two records, does this mean that the person communicating with Shayla was doing so during those dates from this residence?

A. Yes.

Q. Based on the information that you received from Textplus and then Comcast, did you later get certified records from the Florida Department of Highway Safety and Motor Vehicles?

A. I did.

Q. Is that sometimes referred to as the DMV?

A. It is.

Q. Did you search for this address that you got [149] from Comcast?

A. Yes.

MR. HOOVER: Your Honor, at this time the government is going to publish United States Exhibit 7.

BY MR. HOOVER:

Q. Is this the certified record that you got from the DMV?

A. Yes.

Q. Can you tell us the name that's listed in this DMV record?

A. Zachary S. Spiegel.

Q. Can you tell us the address that was listed?

A. 950 Northwest Fresco Way, 208, Jensen Beach, Florida 34957.

Q. The photograph – were there any photographs sent from the suspect's account to Shayla?

A. Yes.

Q. During the text communications?

A. Yes?

Q. Did you view those photographs?

A. Yes.

Q. The photographs that depicted a face, did they appear to you to resemble the individual in this DMV record?

[150] A. They do.

Q. So to summarize, you have the phone number communicating with Shayla or Allan. You get the IP address for that phone number. You get the Comcast record telling you where that IP address is assigned. And then you get the DMV record showing who lives at that address.

A. Correct.

Q. Is that the process that you followed?

A. Yes.

Q. All right. So subsequent to getting all these records, did you later obtain a federal arrest warrant for Zachary Spiegel?

A. Yes.

Q. Did you also obtain a federal search warrant for his address and his digital devices?

A. Yes.

Q. Does that include computers, phones, that kind of thing?

A. It does.

Q. When did you execute those warrants?

A. January 20th, 2022.

Q. Did you locate the defendant?

A. I did.

Q. Where?

A. He was in the driver's seat of a gray Jeep [151] Wrangler.

Q. Where was that vehicle located when you found him?

A. Right outside his residence, where he lives.

Q. When you say his residence, do you mean the one referenced in the Comcast records and the DMV records?

A. Yes.



Q. When you located him, did you take him into custody?

A. I did.

Q. Did agents search his residency?

A. They did.

MR. HOOVER: Your Honor, at this time, the government is going to publish United States Exhibit 8.

BY MR. HOOVER:

Q. What are we looking at here?

A. This is the outside of the residence for Mr. Spiegel.

Q. All right. It looks like we're seeing four doors. And you can use the screen up there to indicate which door was the defendant's.

A. (Complies.)

Q. So it's the top right door; is that right?

A. That is correct.

[152] MR. HOOVER: Your Honor, if I may have one moment, please.

THE COURT: Certainly.

MR. HOOVER: Your Honor, I have no further questions at this time.

THE COURT: Cross-examination?

**CROSS-EXAMINATION**

BY MR. MURRELL:

Q. Agent Urgo, I understand you were the lead officer in this case; is that right?

A. That's correct, sir.

Q. And you've been a federal law-enforcement agent for more than ten years?

A. Yes.

Q. And as I understood your testimony, during this time period, you have investigated crimes involving the use of computers and cell phones to entice children into having sex?

A. Correct.

Q. You've got experience with this?

A. Yes.

Q. All right. And you've received special training on how to investigate these type cases?

A. As far as special, it's the universal training [153] for all agents. Specifically, child exploitation is included in that.

Q. So it was Agent Ray who received the specific training on how to go online as a federal – male federal law-enforcement agent to pretend to be a 14-year-old girl?

A. Correct. He's certified to do undercover chats.

Q. All right. But your training, at least, taught you and made you aware of the evidence that you need to gather to successfully put together a prosecution on a charge like this, right?

A. Yes.

Q. Okay. That training includes teaching you the evidence that you need to gather, right?

A. Correct, yes.

Q. And it also teaches you some of the things you need to stay away from, right? Lines you don't cross, things you don't say, things you don't do, right?

A. Yes.

Q. All right. Had you ever worked a case where a 16-year-old boy had initiated the contact?

A. This is the first.

Q. All right. Did you look at the text messages that he sent on the January 9th interaction?

A. I did.

[154] Q. All right. Would you agree with me that your department or you – well, let's just start with you. You would have never sent some of those messages, would you?

A. You's have be more specific which ones.

Q. The ones like, I'm afraid, I'm in the dark, I'm alone, come get me?

A. I can't say I would, because I haven't received the training on how to do undercover chats.

Q. Have you ever seen an HSI agent in an undercover capacity tell any suspect, I'm alone, I'm afraid, come get me?

A. I personally have not.

Q. In your ten-years experience, you've never seen that, have you?

A. Just shy of three years with HSI, though, sir.

Q. But you've never seen it, right?

A. Correct.

Q. You met with Mr. Strachan – is that how you say it?

A. I think it's Strachan.

Q. You met with Mr. Strachan on January the 10th?

A. Correct.

Q. What time of day was that?

A. It was in the evening. Can't give a specific time, but it was probably around 6:00, I want to say. I [155] don't know verbatim.

Q. Okay. So if there are interchanges between Shayla and Zachary earlier in the day, those are all still Mr. Allan responding?

A. Correct.

Q. Or Mr. Strachan responding. I'm sorry. Right?

A. Yes.

Q. All right. So if he's on the 10th having a conversation with Zachary where he's saying, I could come to your house, that was Allan's doing?

A. Correct.

Q. That was after law enforcement had told him to turn – had he been told at that time to kind of knock this off?

A. No.

Q. Nobody told him to stop?

A. No.

Q. Did anybody –

A. When he was told to stop was when I went to the house and told him in front of his parents.

Q. Did anybody tell him to invite himself to Zachary's house?

A. No.

Q. All right. If you're a child molester and a child says, I can come to your house, that would be pretty [156] tempting bait, wouldn't it?

A. For me, no.

Q. But you're not a child molester.

A. Right. But a child can't make an adult (in-aud.).

Q. I'm not saying it's anything correct or proper. But if a child said to an online predator, I can come to your house today, what would you expect that predator to do?

MR. HOOVER: Objection. Speculation.

THE COURT: I'll allow that.

BY MR. MURRELL:

Q. You'd expect him to say, Come on over, right, or, Let's meet somewhere else, right?

A. I hope he wouldn't, but I can see the expectation.

Q. That's why it's dangerous for children to be involved in these conversations, right?

A. That's correct, sir.

Q. That's why you told the jury, We'd prefer not to have kids involved, right?

A. Correct.

Q. Because they might do something stupid, like get themselves invited to a molester's house, right?

A. Correct.

[157] Q. Which is what Allan actually tried to do, apparently, right?

A. Yes.

Q. And Zachary did not take him up on that offer, did he?

A. No.

Q. So you met with him later – oh, by the way. By the time you got involved, Zachary had already sent this elaborate explanation for why he wasn't at the movie theater, right?

A. Yes.

Q. He told Shayla that he had been stopped by the police on U.S. 1, right?

A. Correct.

Q. That they had accused him of having the wrong tag, the wrong driver's license, and then searched his car for drugs, right?

A. Yes.

Q. Pretty extensive traffic stop?

A. Yes.

Q. Okay. We'll come back to that. So you met with Allan and his parents. Was anyone else with you from law enforcement?

A. Yes.

Q. Who?

[158] A. Detective Fullen, who you just saw, and she had two other partners with her.

Q. Who were they?

A. Justin Gullet and John – I don't have his name right now, but they ride together all the time on a daily basis.

Q. Are they local police or are they task force?

A. They're detectives with the Fort Pierce Police Department.

Q. All right. So you had at least four or five law-enforcement officers at that meeting with Allan?

A. Correct. But Candace and I were conducting the conversation with the parents. They were just basically standing by.

Q. And at that meeting, that's when you were given permission to take control of the phone and follow this investigation through your agency?

A. Yes, sir.

Q. And that's what you did?

A. I did.

Q. And as the lead officer, at that point you appointed Agent Ray, Brian Ray, to be the Shayla?

A. Correct. I personally didn't appoint him, but he is the one who is certified.



Q. Okay. So now we've got an adult male playing [159] the role of a 14-year-old girl, right?

A. Correct.

Q. On January the 11th, Agent Ray has the phone?

A. Correct.

Q. And at some point during that day, Zachary sends a text saying, Maybe I should come pick you up?

A. I believe so.

Q. And Agent Shayla at that point says, Come on, right? Readily agreed to that meeting?

A. Yes.

Q. All right. And let me ask you. The goal of your investigation when Agent Ray took over, the whole goal was to set up a meeting, right?

A. No. I mean, that's an added benefit. But as far as the charges and the elements, it's not something that's needed.

Q. It's something you wanted, right?

A. If there's somebody out there that does these type of things, of course we'd like them to come to law enforcement as opposed to a child.

Q. And a meeting is absolute certain proof that the guy intended to do something with this child?

A. It's additional proof, yes.

Q. Okay. Additional proof. So Agent Ray agrees to this meeting readily, right? I mean, he didn't hesitate. [160] He said, Sure, come on over, right?

A. I believe that's the context of the conversation, yes.

Q. Yeah. I mean, I'm paraphrasing –

A. I just don't have it in front of me.

Q. Okay. At 9:45 on the morning of January 11th, Zachary said, I'll be there around noon. Do you remember that?

A. I do.

Q. Okay. And he never arrived, did he?

A. No.

Q. And at 12:40, I guess Agent Shayla was tired of waiting. He sent a text to Zachary and he said, I knew you were BS when you didn't come before. Bye. Capital letters. Bye. Do you remember that?

A. I do.

Q. And after that text at 12:40 p.m. on January the 11th, Zachary Spiegel did not initiate any further contact with this girl known as Shayla, right?

A. Correct.

Q. And while Agent Ray was communicating or Agent Zachary – whatever – I mean Shayla law was communicating with Zachary, you were investigating

the other leads that you just talked about with the prosecutor, right?

A. Correct.

[161] Q. And by January the 12th, which is the day after, the day after you took over the phone, you knew –

A. We took over the phone, sir, on the 10th.

Q. I'm sorry.

A. The 9th was the – Allan. The 10th was when we showed up later in that evening when we took over.

Q. Let me slow down and be more precise.

A. Understood.

Q. But you started your investigation basically with a phone number and a selfie, right?

A. My –

Q. Yes. When you were following up on the other meeting.

A. Yes.

Q. And you got that information essentially when you took over the phone, right?

A. Yes. Just the phone number itself and the context of the conversation that Allan did.

Q. But by January the 12th, you knew who the account belonged to?

A. Yes.

Q. You knew that it was Zachary Spiegel, right?

A. Yes.

Q. You had the selfie that Zachary had sent on January the 9th, and you were able to compare that to the [162] DMV driver's license photo. So you knew you had the right guy, right? You need to answer out loud.

A. Yes, sir. That's correct.

Q. You knew that Comcast was his IP service provider and he was the subscriber, right?

A. Correct.

Q. You knew where he lived, right?

A. Yes.

Q. And you knew what he drove?

A. Yes.

Q. And by that time, you knew every text message and social app exchange that had taken place between Shayla and Zachary Spiegel up until that point in time, right?

A. Correct.

Q. There was another piece of evidence that you were following up on, and that was Zachary's story about being stopped by the local police, right?

A. Yes, sir.

Q. And you knew that Zachary lived in Port St. Lucy, right?

A. Well, initially I did. That's when I got the information of Port St. Lucie, but later on, it was not correct. It's in Jensen Beach.

Q. I'm sorry. That's right. He lived in Jensen [163] Beach.

A. Correct.

Q. And he was allegedly supposed to meet Shayla in Fort Pierce?

A. Yes.

Q. And his story was that he got stopped on U.S. 1?

A. Yes, sir.

Q. So there's only a few law-enforcement agencies that would really be involved in that, right?

A. Correct.

Q. It would either be Florida Highway Patrol, maybe, but they don't spend a lot of time on U.S. 1. Fort Pierce Police, Port St. Lucie Police, and the St. Lucie County Sheriff's Office, right?

A. Yes, sir.

Q. And when you heard – became aware that that was his reason for not being there, you set out to find out if there had been a traffic stop like that?

A. That is correct.

Q. Because that would have been proof that he intended to go to the movie theater and was prevented from doing it by law enforcement, right?

A. Correct.

Q. That would be powerful evidence for you, wouldn't it?

[164] A. Yes, sir.

Q. Okay. And you wanted to find out if that happened, right?

A. Of course.

Q. And of course, a stop that involves a driver's license check, a tag check, and a search for drugs, that's going to result in some radio traffic from the police department, right?

A. Yes, sir.

Q. And you know that modern law-enforcement agencies have what are called CAD reports, right?

A. Yes, sir.

Q. Where they monitor their radio traffic. And if some stop like that had happened, one of these agencies would have had a record of it?

A. Correct.

Q. And you could not find a record of that anywhere, could you?

A. That's correct.

Q. So by January the 12th, you knew all of the things we just discussed about Zachary?

A. Correct.

Q. And Zachary had stopped communicating with Shayla?

A. Yes.

[165] Q. At her request, basically. I mean, Bye, correct?

A. Correct.

Q. He honored that bye, right?

A. Yes.

Q. Okay. It was a week later, January the 18th, when Agent Ray initiated contact with Zachary?

A. Yes. I think it was just a hi.

Q. I'm sorry?

A. It was a conversation – it was a greeting of some sorts.

Q. That's initiating contact, right?

A. Yes.

Q. Zachary had never sent her a "hi" or a "how are you" or anything else in the intervening week, had he?

A. No.

Q. And he responded to that hi, right? He responded?

A. He did.

Q. Okay. And from there, a conversation ensued?

A. Yes.

Q. First off, I want to ask you, the purpose of that contact was to try to arrange a meeting, wasn't it?

A. I can't speak for what Special Agent Ray was trying to do because I did not do the chats and I'm not [166] certified to do such.

Q. Well, you were the lead officer?

A. Sure.

Q. You told him what you wanted to get, and you left him to get it, right?

A. Not – he does the chats and whatever he transpires during those events. I'm kind of responding to that. So if some element or new crime comes up, I'm the one that's basically doing what a trained officer should do, a proper investigation to include it all.

Q. A week goes by with no contact from Zachary Spiegel. You're the lead investigating officer. You have all the evidence gathered identifying who he is, where he is, where he lives, everything tying him to what you claim is a crime, right?



A. Yes.

Q. But you did not arrest him, did you?

A. No.

Q. What you did is you instructed your undercover agent to re-initiate contact with him?

A. No, I did not instruct him to re-initiate contact.

Q. So he did this on his own?

A. Correct. I cannot do the undercover chats (in-aud.). That's left up to Special Agent Ray. So he [167] initiated the conversation.

Q. Without your approval?

A. He's the senior agent. And I'm actually – he has 20 years in child exploitation investigations, multiple undercover chats similar to this.

Q. So explain to us what the title lead officer means. Who is in charge of this investigation?

A. A lead agent is myself, and I'm in charge of the totality of the case itself. But there's also many other agents or officers within that, that have specific responsibilities.

Q. Let in me ask you this. Did Agent Ray talk to you before re-initiating contact a week later?

A. Yes.

Q. He got your permission?

A. I was not objecting to it at all.

Q. What was the purpose of re-initiating this contact?

A. To see if this person is still out there.

Q. Well, you know he didn't evaporate, right?

A. I didn't know that.

Q. Well, you could have driven by his apartment to see whether he was home or not, right?

A. I can't see into a structure such as that. And he's in a gated community that you have to have a [168] code to get into.

Q. Did you have any reason to believe that Zachary Spiegel had disappeared?

A. No.

Q. Did you have any reason to believe he had left town?

A. I did have any reason to be (inaud.) at that point, sir.

Q. So what was the purpose of re-initiating this contact?

A. Again, because the nature of the crimes and there's a danger to the community. We want to ensure that somebody is willing to go meet the minor, that they meet with law enforcement instead of a child.

Q. He had already demonstrated that he was not meeting with anyone. He had done that at least three times, right?

A. Yes.

Q. Okay. You didn't need anymore proof that he was not meeting. So you're telling this jury that the purpose of Agent Ray reaching out to Zachary on the 18th of January was not to try to persuade him to have a meeting?

A. No. That's an added benefit to the investigation.

Q. That's exactly what you were up to, right?

[169] A. Part of it, yes.

Q. Well, what else were you going to find out by talking?

A. You don't know. Any investigation can bring up things you have no clue what's going on –

Q. Well, at that point in your case, you could not learn the identity of this perpetrator because you already knew that, right?

A. Yes.

Q. You couldn't learn the address of this alleged perpetrator because you already had that, right?

A. Yes.

Q. You couldn't learn his IP address or his phone provider because you already had that, right?

A. Yes.

Q. So there was nothing else that you could possibly learn from simply talking to Zachary Spiegel, was there?

A. Not specific to his identity.

Q. So this conversation that started on the 18th at the initiation of your undercover agent was a pretty lengthy conversation, wasn't it?

A. Yes.

Q. Especially compared to the other exchanges that had taken place?

[170] A. Yes, sir.

Q. And they talked about all manner of things during this particular exchange, didn't they?

A. Yes.

Q. They talked about sex acts that they would do to each other?

A. Yes. And that started with Mr. Spiegel.

Q. Yeah, but your agent responded in kind, right?

A. As a greeting, they say, Hey, how you doing type thing, and then he turned it sexual.

Q. Well, their whole history of two conversations together had been sexual, right?

A. Yes.

Q. So there was no surprise when it became sexual on the 18th, right?

A. But not surprised when Mr. Spiegel re-initiated the sex conversations.

Q. All right. Well, you say Mr. Spiegel initiated the sex conversation. Your agent participated in talking about sexual things too, did he not?

A. After the fact of the initiation by Mr. Spiegel, yes.

Q. Okay. And he went out of – he tried to get Zachary to agree to a meeting?

A. Correct.

[171] Q. And he suggested – Agent Shayla suggested that Zachary should bring wine coolers to that meeting?

A. Yes, he did.

Q. Wine coolers make her feel frisky, I think – that wasn't the word.

A. Yeah, I understand what you're saying. I can't verbatim speak to it, but yes, something along those lines.

Q. Well, you read it.

A. I did, but it's –

Q. Okay. And even after they had those conversations about the meeting, they went on and discussed sex toys, right?

A. Yes.

Q. Sex acts they would do?

A. Yes.

Q. All of those things. And at some point during that conversation, Zachary sent a photograph of his penis again?

A. Yes.

Q. And it was obvious that he had ejaculated?

A. Yes.

Q. All right. So it looked like he was getting sexual gratification from the very conversation, right?

A. Yes.

[172] Q. There was an agreement that they would meet the following day?

A. Yes.

Q. They never specified exactly where, did they?

A. They did.

Q. They did?

A. They did.

Q. Where was it?

A. I believe it was Maravilla Park.

Q. Maravilla Park?

A. A park in Fort Pierce.

Q. Well, I thought Agent Shayla said, We could meet there or at the –

A. Sabal Palms Plaza.

Q. One or the other, but I don't think they ever specified exactly, did they?

A. They did.

Q. Okay.

A. From my recollection, it was Maravilla Park was the specified location to meet up. In addition to like what to wear and bring the wine coolers.

Q. And your agency likes to have the suspects bring something, right?

A. I believe so. Again, I don't do the chats, but that's what I'm seeing, yes.

[173] Q. Yeah. Bring me a rose. Bring some condoms. Bring some wine coolers. Because if they bring the object they're told to bring, it's obvious that they were listening and following instructions and what their intent is, right?

A. Yes.

Q. It's a little cherry on top of everything if they show up with the red rose that your undercover agent told them to bring, correct?

A. Yes, sir.

Q. So she wanted wine coolers?

A. Yes.

Q. All right. Zachary Spiegel never went to the park, did he?

A. No.

Q. And, in fact, the next morning, the day that he was supposed to meet, January the 19th, he texted her and said, I'm not going to be able to make it?

A. Correct.

Q. I forgot I had physical therapy?

A. Yes.

Q. And the physical therapy is in Hollywood?

A. I can't remember the exact location. I think something along those lines. In addition to I think I'm still naked in bed.

[174] Q. That was later. At first he said, I have physical therapy in Hollywood, right?

A. Again, sir, I don't have it in front of me. I don't recall that right now.



Q. Just assume it's Hollywood for a second just so I can ask you this question. All right? Play along.

A. Okay.

Q. Do you know where Hollywood, Florida is?

A. I'm kind of naive. I'm still new to the area, but I'm assuming it's south.

Q. It's down near Fort Lauderdale. Okay? And he said his appointment was at 1:00 o'clock, I believe.

A. Possibly.

Q. And Agent Shayla tried to get to work around that physical therapy. How about, you know, coming over? When can you or when you wanna. Something like that, right?

A. Yes, sir.

Q. All right. He was doing everything he could to make that meeting go through, right?

A. Yes.

Q. Agent Shayla was?

A. Shayla was. Yes, sir.

Q. Okay. And Zac responded later: Physical therapy took too much out of me; I can't do it; I'm home [175] in bed naked; I'm on meds. Do you remember that?

A. Yes.

Q. He never showed up?

A. He did not.

Q. So you went to his house and arrested him.

A. Correct.

Q. And – oh, by the way, when he wrote that text about being home in bed, that went through at like at 1:30 in the afternoon, right?

A. Again, I can't specify. There's so –

Q. You don't remember?

A. I want to say it was probably around that time.

Q. And would you agree with me that if Hollywood, Florida is down near Fort Lauderdale, and he had a 1:00 o'clock physical therapy session down there, there is no way he made it back to his apartment in Jensen Beach by 1:30?

A. Highly unlikely.

Q. Highly unlikely. And do I understand that you actually had agents surveilling him at that time?

A. Not him. We had agents outside of the residence.

Q. And they saw him there around that time?

A. No.

[176] Q. Okay. Bottom line is you know good and well he was not in Hollywood, right?

A. When we were in the parking lot, staged and ready for the execution of the arrest warrant, search warrant, he pulled into the gate and was driving at that time and he parked.

Q. All right. It was obvious he had never been to Hollywood that day?

A. Possibly. I can't say where he was, but he was driving at that point and he was returning home.

Q. He wasn't home in bed?

A. No, he was not.

Q. On meds?

A. He was not.

Q. Or in pain, from what you saw. He might have been in pain when you arrested him, but he wasn't in pain when he was talking on the – whatever they call it, right?

A. Yes.

Q. Okay. He never came to a single meeting with Shayla, did he?

A. No.

MR. MURRELL: I don't have any other questions, Judge.

THE COURT: Redirect?

[177] **REDIRECT EXAMINATION**

BY MR. HOOVER:

Q. Just to clarify. There was a lot of back and forth about the conversation. Were you actually conducting the conversation at that point?

A. No.

Q. That was Special Agent Ray?

A. Yes, sir.

Q. And the best place to look for what was actually in the conversation would be the document itself?

A. That's correct.

MR. HOOVER: Your Honor, I don't have any further questions.

THE COURT: Thank you, sir. Call your next witness, please.

Thereupon,

KENNETH CISNEROS,

having been duly sworn by the courtroom deputy, testified as follows:

A. Yes, I do.

THE COURTROOM DEPUTY: Please take a seat. State your full name and spell your name.

A. Sure. Full name is Kenneth Cisneros. K-E-N-N-E-T-H, C-I-S-N-E-R-O-S.

[178] **DIRECT EXAMINATION**

BY MR. HOOVER:

Q. Thank you, sir. Good afternoon, sir.

A. Good afternoon.

Q. Are you currently employed?

A. I am.

Q. How so?

A. I'm a special agent with Homeland Security Investigations.

Q. Would you please tell us your current duties and responsibilities.

A. Sure. My current duties and responsibilities are to conduct criminal investigations that pertain to Title 8, Title 18, Title 19, Title 21, and Title 31 of the United States Code.

Q. Do your duties sometimes call for you to assist other agents on their investigations?

A. Yes, sir, they do.

Q. On this case, are you the case agent?

A. I am not.

Q. What role did you play in this investigation?

A. I was simply assisting with the execution of the search warrant.

Q. How long have you been with HSI?

A. Since 2003.

[179] Q. Do you have any prior law enforcement experience?

A. I do. Two years prior. And from 2001 to 2003 I worked as a U.S. Customs inspector. And five years prior to that, I was a corrections officer for the State of Florida.

Q. Prior to beginning your law enforcement career, did you attend a law enforcement academy?

A. I did. Yes, sir.

Q. Prior to joining HSI and/or Customs, which academy did you attend?

A. The federal law enforcement training center provided me with academy training for U.S. Customs. And then I had to go back when I attained the position of a special agent.

Q. Have you been trained in proper evidence search and preservation techniques?

A. Yes, I have.

Q. I'd like to direct your attention to January 20th of 2022. Did you have occasion to come into contact with a Zachary Spiegel?

A. I did, sir.

Q. Do you see Mr. Spiegel in the courtroom today?

A. I do.

Q. Can you please identify him using an article of [180] clothing?

A. He's wearing a – it appears to be a blue jacket.

MR. MURRELL: Judge, we'll stipulate to the identity.

MR. HOOVER: Thank you.

BY MR. HOOVER:

Q. This incident take place in Martin County in the Southern District of Florida?

A. It did.

Q. All right. Now, you said that your role in the investigation was limited to assisting on the search warrant in this case. So you were not involved in the investigation prior to January 20th of 2022; is that right?

A. That is correct.

Q. Were you present when Mr. Spiegel was apprehended?

A. I was.

Q. Where was he?

A. He was in the driver's seat of the gray Jeep Wrangler that's on the picture that's in front of me.

Q. Where was that vehicle located at the time?

A. In front of garage door number 3.

Q. How did you assist during the execution of the [181] search warrant? What task did you complete?

A. Mine were to take photographs and to log in evidence.

Q. Did you also help search the vehicle?

A. I did.

Q. In between the time that the defendant was placed in custody and the time that you searched the Jeep, was there any manipulation of the contents of that vehicle?

A. No, sir.

Q. Did you find anything of note inside the vehicle?

A. I did.

Q. What did you find?

A. There were two cellular telephones and an Apple iPad.

Q. Where were the phones found?

A. One of the phones was on the steering column and the second cellular was on the dashboard.

Q. What about the iPad?

A. It was on the passenger compartment.

Q. Was there anything in the back seats?



A. There were two car seats.

Q. When you say car seats, do you mean like –

A. Like child restraint-type seats.

[182] MR. HOOVER: For the record, I am going to be requesting permission – Madam Clerk, if we can publish to the jury in Government's Exhibit 9. It's up?

BY MR. HOOVER:

Q. Special Agent Cisneros, do you recognize this photograph?

A. I do.

Q. Who took it?

A. I did.

Q. Does it contain the vehicle you were describing a minute ago?

A. Yes, sir.

Q. So this is the one that you searched?

A. Correct.

Q. I'm now publishing Government's Exhibit 10. Do you recognize this photograph?

A. I do.

Q. Who took this photograph?

A. I did.

Q. Can you tell us what it contains?

A. It is the front passenger compartment of the Jeep Wrangler.

Q. Now, you said that you found two cell phones in this vehicle. Can you show us where those are located? [183] And if you touch your finger to the screen, it will actually make a mark.

A. Correct. One cell phone is located right there. And the second cell phone is located right there (indicating).

Q. Where did you – the – specifically the cell phone that is on the steering column, when you found it, what did you do with it?

A. I went ahead and placed that into an evidence bag.

Q. Did you give it to anyone after that?

A. After searching the vehicle, I took both cell phones and the iPad. They were both placed – all three items were placed in the evidence bag and they were turned over to the forensic agent that was onsite.

Q. I'm now publishing Government's 11. Do you recognize this photograph?

A. I do.

Q. Did you take it as well?

A. I did.

Q. What does it contain?

A. That's the picture of the steering column with the cellular telephone on the column.

Q. Is that item right there?

A. Yes, sir.

[184] Q. Now publishing Government's 12. Did you also take this photograph?

A. I did.

Q. What does it contain?

A. Those are the child restraint seats that were located in the back of the vehicle.

MR. HOOVER: Your Honor, if I may have one moment, please.

THE COURT: Certainly.

BY MR. HOOVER:

Q. Sorry. I missed something there. You said that you turned it over to the forensic agent on scene. Is that Special Agent Brian Ray?

A. Yes, it is.

MR. HOOVER: Your Honor, I have no further questions.

THE COURT: Cross-examination?

MR. MURRELL: No questions, Judge.

THE COURT: Thank you, sir. You may step down.

A. Thank you, sir.

AUSA BERGSTROM: Your Honor, before the government calls its next witness, if we can approach for a logistical matter.

THE COURT: All right. When we have these [185] little side bars, feel free to stand up and stretch out a little bit.

(Thereupon, there was a side-bar conference outside the presence and hearing of the jury.)

THE COURT: Yes?

AUSA BERGSTROM: We've got one more witness. I anticipate that his testimony will take about an hour and then we're going to ask him to read the chats. We have timed that and that takes about an hour as well. So I just wanted to bring that to the Court's attention as far as scheduling breaks.

THE COURT: So.

AUSA BERGSTROM: We probably could finish today.

THE COURT: Why don't we take a ten-minute break, then.

(Thereupon, the side-bar conference was concluded.)

THE COURT: We're going to take a little break. I would say take a 15-minute break. How's that? I remind you not to discuss this case while you're on break.

(Thereupon, the jury exited the courtroom.)

THE COURT: We're going to finalize the jury instructions. What I've done is I've taken both [186] jury instructions, taken out all the space and all the citations and made it just continuous. We continue to keep in there failure to cause the witness – is that going to – I haven't heard anything about that.

AUSA BERGSTROM: I don't think that's going to be an issue, Your Honor. The government included as an abundance of caution.

THE COURT: I haven't heard anything about that.

MR. MURRELL: I don't even know what witness it refers to.

THE COURT: I'm assuming it's going to be A.T.

AUSA BERGSTROM: That was what the government –

MR. MURRELL: Oh, I missed that.

THE COURT: No problem?

MR. MURRELL: No problem.

THE COURT: Would you do me a favor? Would you take that one out?

THE COURTROOM DEPUTY: It's just one paragraph. On the on-call witnesses?

THE COURT: I'll show you where it is. It's only one witness. Take that whole thing out. And then finalize –

[187] THE COURTROOM DEPUTY: And then print it out?

THE COURT: What we're going to do is we're going to finalize the jury instructions. Give them to you. Ask you sometime tonight to look at them carefully in terms of pronouns and things like that, little things that we overlook. We think things are there that are not there and vice versa. We'll do a little nitpicking there and then we'll be ready to go with jury instructions. All right. Jury break.

(Thereupon, a brief recess was taken.)

(Thereupon, the jury entered the courtroom.)

THE COURT: Please be seated, everyone. Welcome back.

Okay. Call your next witness, please.

AUSA BERGSTROM: Your Honor, the government calls Special Agent Bryan Ray.

Thereupon,

BRIAN RAY,

having been duly sworn by the courtroom deputy, testified as follows:

A. I do.

THE COURTROOM DEPUTY: Please take a seat. State your full name and spell your name.

A. Brian Ray. B-R-I-A-N, R-A-Y.

[188] **DIRECT EXAMINATION**

BY AUSA BERGSTROM:

Q. Good afternoon, sir. How are you employed?

A. I'm a special agent for Homeland Security Investigations.

Q. How long have you been employed as a special agent with Homeland Security Investigations?

A. Since the agency was founded in 2003. Prior to that I was a customs special agent beginning in 2001. Prior to that I was a deputy sheriff in Pasco County for seven years. And then prior to that, I was a military law-enforcement officer.

Q. In your current position with HSI, is there a particular type of crime that you tend to investigate more often than others?

A. Mainly child exploitation crimes.

Q. Are you also a computer and cellphone forensic examiner?

A. I am.

Q. What does that mean?

A. It means that when digital evidence is collected related to crimes we'll be investigating, that evidence is turned over to me and I go through it in order to examine the data.

Q. Have you received any kind of specialized [189] training in the field of computer and mobile forensics?

A. Yes. I initially started under another computer examiner here in the Fort Pierce office in 2002. In 2010 I took the Treasury computer forensic training programs, basic evidence recovery training. In 2011 I attended the advanced computer evidence training – advanced evidence computer evidence recovery training. And in 2015 I received my mobile device training.

Q. Do you keep current with forensic examination techniques as the technology advances?

A. Yes.

Q. Approximately, how many forensic examinations have you performed over the course of your career?

A. Over a thousand.



Q. Does this include both computers and cell-phones and other external media devices?

A. That's correct.

Q. When you investigate child exploitation offenses, do you ever operate in an undercover capacity?

A. Yes.

Q. Have you ever had to pose as a minor in an undercover capacity?

A. Yes.

Q. In what kind of scenarios are you posing as a [190] minor?

A. The typical one is where I'm posing as a minor online to see if anybody wants to contact me and where those conversations will lead.

Q. Does HSI provide with you specialized training in undercover child exploitation investigation techniques?

A. Yes.

Q. Does that training include training about how to conduct chats with suspects?

A. It does.

Q. Have you received this training?

A. I received that training in 2006, I believe it was, and I've been involved in the field continuously since that time.

Q. When you're posing as a minor in an undercover investigation, do you alter the way you speak as far as maybe your word choice or your grammar?

A. From the way I normally speak?

Q. Yes.

A. Absolutely.

Q. Why do you do that?

A. Because I'm a 57-year-old male and I don't communicate like a teenage girl, typically.

Q. Do you tend to use emojis when texting undercover as a minor?

[191] A. Yes.

Q. And for those of us who may not be familiar with what an emoji is, what's an emoji?

A. It's just a graphical representation of – you know, it could be like a smile. Just a graphical representation of a smile. There are a bunch of different types of emojis for a bunch of different types of emotions.

Q. And why do you use emojis when you're texting in an undercover capacity as a minor?

A. Because it's a shorthand that younger people tend to use.

Q. Do you try to keep current with internet slang and pop culture references?

A. It's a hazard of my job. I'm immersed in it all the time.

Q. Do you use the same personality every time you pose as a minor in an investigation, or do you alter your undercover persona's personality based on the circumstances and based on the individual you're speaking with?

A. When you're using the same undercover profile, you tend to keep that consistent and when you're communicating with a bunch of different people, because it's not very common to have a suspect contact you as [192] another person. So you want to be consistent when you're doing that. But the different profiles that you use from time to time, they will vary in age and temperament.

Q. Can you give us an example of how you might change your undercover personality to suit the individual that you're speaking with in an undercover capacity?

A. Well, one of the biggest ones is age, age and the personality that goes along with it, because people that are in their later teen years will tend to be a little more communicative, a little more forward if they start talking about sexual subjects than younger profiles.

Q. And are you basing these different things on the chats that you've seen in your – over your career of investigating online child exploitation?

A. That's correct.

Q. The target of an investigation is overly sexual in his conversation with you. How do you typically respond?

A. Based on the profile. I tend to be – if I'm portraying somebody who is in later teen years would be overly sexual as well.

Q. And why is that?

A. That's what I've seen through my experience [193] and training when people willingly get involved in these chats. When teenagers get involved in these chats, they can get very rough.

Q. Were you asked to take over the online persona of a minor in the case that's presently before the jury?

A. Yes.

Q. What was the persona you took over?

A. That of a 14-year-old girl.

Q. Did that 14-year-old girl have a name?

A. Shayla.

Q. Can you explain the logistics of how you took over the Shayla persona?

A. I was contacted by the case agent who asked me to get involved because I was the only one in the office that had undercover training and experience. And he provided me the cellphone that had been used

by a third party to initially communicate with the suspect.

Q. While you were posing as Shayla and continuing the communications in this case, where were you physically located?

A. In St. Lucie County. With the exception of the last couple of text messages, which were in Martin County.

Q. And when you say the last couple of text messages, would those be the ones that you sent near in [194] time to the execution of the search warrant on the defendant's residence?

A. That's correct.

Q. Prior to sending any messages of Shayla, what did you do after you received the phone?

A. I reviewed the messages that had been sent up to that point.

Q. Why would you do that?

A. Because I was going to need to kind of track the way that the third party had been communicating with the suspect. And I was – it couldn't be obvious that somebody new had taken over the profile.

Q. Based on your reading of the conversation that had occurred prior to you taking over the phone, what kind of personality did Shayla seem to have?

A. She was outgoing, and sexually active 14-year-old girl.

Q. When you took over as Shayla, was there a conversation ongoing between Shayla and the defendant?

A. Yes.

Q. And when you were communicating with the defendant as Shayla, did you use the Whisper app at all?

A. Yes.

Q. Did you notice anything odd about how the Whisper app displayed your chats as you were sending them?

[195] A. Yes. There were moments – and this was kind of unique to the Whisper app. I haven't seen this before in any other applications that I've used. But sometimes I would type a message and that message that I would type would populate above something else that I typed, which was an odd behavior.

Q. Did this happen all the time or was it just more occasional?

A. It was occasional. Most of the messages were in line, but there were a few that looked – that I saw go out of order when I typed a response.

Q. Have you reviewed the Whisper chats since you sent them originally?

A. Yes.

Q. And is it fairly obvious when reading back the chats where this little glitch happens?

A. Yes.

Q. And is it fair to say that there will be situations where an answer to a question populates before the question?

A. That's correct.

Q. Did you also exchange text messages with the defendant as Shayla?

A. I did.

Q. During your communications with the defendant, [196] did he ever ask you for photos of yourself?

A. Yes.

Q. Is this a one-time thing or was this more of a frequent request?

A. It was a frequent request.

Q. Did you send him any photos of Shayla?

A. No.

Q. Why not?

A. The third party who was communicating with the suspect before had already sent photos of a teenage girl who we were unfamiliar with at the time.

Q. And when you say the third party, are you referring to the 16-year-old boy, Allan?

A. Yes.

Q. While you had possession of Allan's cellphone, did you do any kind of forensic analysis on it?

A. Yes.

Q. What did you do?

A. I extracted data from the phone in order to preserve it and provide a report for the chats that I had with the suspect.

Q. What does it mean to extract data from a cellphone?

A. It's simply connecting the device to my forensic computer. Using a forensic software tool to [197] remove data without changing any of the data that's on the phone or output.

Q. Is there a specific forensic program that you use to extract data from cellphones?

A. I use the CelleBrite universal forensic extraction device for PC software for this extraction.

Q. Have you received training on the use of that CelleBrite tool?

A. Yes.

Q. When you use CelleBrite to extract text messages from a cellphone, does it also extract the time



and date information associated with when the message is sent or received?

A. Yes.

Q. What is that called?

A. Meta data.

Q. When you extract text messages from a phone, where exactly do you extract them to?

A. The actual files are written onto my forensic computer.

Q. Does that generate a report?

A. A report can be generated from that extraction, yes.

Q. And would that report just be the contents of the text messages with their associated meta data?

[198] A. Yes. That's what I produced in this case.

Q. Is the content of the text messages or the time and date information associated with the messages altered in any way during the forensic extraction process?

A. No.

Q. Did you make any changes to the text bubbles in your extraction report?

A. The only change I made was after the report had been produced by my tool, I went in and removed

the 16-year-old's identifying information from it and replaced it with the word redacted.

Q. Did you alter the content or the time and dates in any way?

A. No.

Q. Were you able to extract any messages or other information from the Whisper app on Allan's phone?

A. I was not.

Q. Why not?

A. It wasn't supported by the CelleBrite software, removing that particular database from the phone, because it's a third-party application.

Q. So how did you document the messages that you sent to the defendant through the Whisper app?

A. I'm sorry. Did you say how?

Q. How did you document them?

[199] A. I took photographs of them.

Q. I want to jump ahead a little bit. Did you participate in a search of the defendant's residence in Jensen Beach on January 20th, 2022?

A. Yes.

Q. When you were assisting with the search, did another HSI agent bring you a cellphone that was found in the defendant's vehicle?

A. He did.

Q. Was that Special Agent Cisneros?

A. That correct.

Q. What kind of phone was it?

A. An iPhone 11.

Q. Was that phone locked and password protected?

A. It was.

Q. Could you examine the contents of that phone?

A. I could not.

Q. Have you been able to since?

A. To date, no, we've not been able to get access to his phone – to the data on the phone, rather.

Q. While you had this iPhone in front of you, did you call the phone number that Zac had been using to text with Shayla?

A. Yes.

Q. Was that that 772-200-2444 number?

[200] A. That's correct.

Q. What happened when you called that number?

A. A Text Now notification popped up on the phone that I was calling, indicating it was the phone that I had been communicating with.

AUSA BERGSTROM: If I could publish what's been admitted previously as Government's Exhibit 13.

BY AUSA BERGSTROM:

Q. Do you see Government's Exhibit 13?

A. I do.

Q. What is that?

A. That's a picture of the undercover phone calling the suspect phone. You can see the call has been going on for nine seconds when I took that. And you can see the Textplus notification on the defendant's phone.

Q. You can just use your finger and draw on the screen. Would you put a little X on what was your cell-phone?

A. This was the one that I was using (indicating).

Q. And the defendant's phone or the phone that was found in the defendant's possession would be the one next to it?

[201] A. That's correct.

Q. And could you draw a little arrow or circle or somehow indicate where that Textplus notification is?

A. It's right at the top and indicating that the notification was occurring now at the time the photo was taken.

AUSA BERGSTROM: Your Honor, at this time I would like to publish to the jury what has previously been admitted as Government's Exhibit 1. It's a stipulation. And that stipulation reads: The United States of America, by and through the undersigned Assistant United States attorneys, and Defendant Zachary S. Spiegel, by and through his attorneys, hereby agree and stipulate as follows: 1) Defendant Zachary S. Spiegel is the individual identified as the defendant in Counts 1 and 2 of the indictment; and 2) between on or about January 9th, 2022 through on or about January 20th, 2022, Defendant Zachary S. Spiegel used the Bull Hancock Whisper account to communicate with Shayla on the Whisper smartphone application; and number 3) between on or about January 9th, 2022 through on or about January 20th, 2022, Defendant Zachary S. Spiegel used the Textplus telephone number 772-200-2444 to send text messages and photographs [202] to Shayla.

BY AUSA BERGSTROM:

Q. Special Agent Ray, I'm now going to show you what has been admitted by stipulation as Government's Exhibit 14. Do you see Government's Exhibit 14 in front of you?

A. Yes.

Q. I'm going to – for your convenience, rather than scrolling on the screen, I'll hand you a printed-out copy.

A. Thank you.

Q. Just let me know, what is Government's Exhibit 14?

A. It is a copy of the complete communication with the defendant.

Q. Does it include the Whisper chats and the text messages that were exchanged with the defendant while Allan was still in control of the Shayla account?

A. Yes.

Q. Does it also include the Whisper chats and text messages that you exchanged with the defendant once you took over the Shayla account?

A. Yes.

Q. As far as – to the best of your knowledge, is that the complete conversation that you had with the [203] defendant?

A. Yes.

AUSA BERGSTROM: Your Honor, at this time we would move to publish Government's Exhibit 14 to the jury.

THE COURT: Anything that has been –

AUSA BERGSTROM: The way I anticipated, I can approach if Your Honor would prefer. But the way that we anticipated publishing this to the jury would be to have Special Agent Ray and Detective Fullen read the chats. We have copies of the chats for everyone in the jury and we would like to do that now with Your Honor's permission.

THE COURT: Do you have a copy?

MR. MURRELL: I have, Judge, and we have agreed that they can.

THE COURT: Okay. You may proceed.

AUSA BERGSTROM: Thank you, Your Honor. Your Honor, we have numbered binders for the jury. Is there a way that Your Honor would prefer that we pass them out.

THE COURT: No.

AUSA BERGSTROM: We just hand them to the jurors? Thank you.

Detective Fullen, if I could have you step up [204] to the microphone. Now, Detective Fullen, I'm going to ask you to read the Shayla messages as the female voice.

BY AUSA BERGSTROM:

Q. And Special Agent Ray, I'm going to ask you to read the messages from the defendant as the male voice.

Whenever you're ready, if you could please proceed.

(Reading from the exhibit.)

ZAC: Hey.

SHAYLA: Hey.

ZAC: How was your day?

SHAYLA: Good. How was yours?

ZAC: It's been going. Correction. It's going. Been slow. Kind of boring. So what brings you to Whisper?

SHAYLA: Just trying to meet new people.

ZAC: Hi, I'm Zac.

SHAYLA: I'm Shayla. (Smiley face emoji.)

ZAC: Nice to meet you. This is me.

(Followed by a photo.)

BY AUSA BERGSTROM:

Q. I'll stop you right there. Special Agent Ray, is that the same photograph that's been previously admitted as Government's Exhibit 5?

[205] A. Yes, ma'am.

Q. Please continue.

(Continued reading from exhibit.)

SHAYLA: You look good.



ZAC: Thank you. What do you like to do for fun?

SHAYLA: Smoke.

ZAC: You like to smoke and fuck?

SHAYLA: I do.

ZAC: Maybe we can get together sometime?

SHAYLA: Maybe. I'm 14 BTW.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does BTW stand for?

A. By the way.

Q. So that sentence should read, I'm 14 by the way?

A. Yes.

Q. Please continue.

(Continued reading from exhibit.)

SHAYLA: I mean, only if you care.

ZAC: Well, that's a problem. (Laughing while crying emoji.) What's the oldest you fucked?

SHAYLA: I only like older guys. 27.

ZAC: How? Where?

SHAYLA: In their car. I met them on this app.

[206] ZAC: Interesting. I don't think I could. Sorry.

SHAYLA: Damn. Okay. It's cool.

ZAC: If you were 17, I'd be okay with it.

SHAYLA: I mean, I'm 15 in a month and I'm mature for my age.

ZAC: Let's see the pic.

SHAYLA: (Picture sent.)

BY AUSA BERGSTROM:

Q. Special Agent Ray, is that the photo that you indicated had been previously sent by Allan and that was the reason that you could not send any other photos to the defendant when he requested them?

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

ZAC: You are very pretty.

SHAYLA: Thank you. (Smiley face emoji.) I'm banned from Snapchat.

ZAC: Would you want to talk on Snapchat?

BY AUSA BERGSTROM:

Q. Special Agent Ray, we previously discussed a little glitch in the Whisper chat function. Is this a situation where you believe that glitch occurred?

A. Yes.

[207] Q. So the conversation would actually read, Would you want to talk on Snapchat some more? And then Shayla responds, I'm banned from Snapchat?

A. That's correct.

Q. Please continue.

(Continue to read from exhibit.)

ZAC: Make a new one. (Laughing while crying emoji.) LOL.

SHAYLA: I wish. It banned my device. Won't let me make any accounts. That's why I'm on here.

ZAC: LOL. What did you do to get banned?

SHAYLA: Sending. (Rolling eyes emoji.)

ZAC: Sending what?

SHAYLA: You know.

ZAC: Show me what you mean.

SHAYLA: Nope. I've learned from my mistakes. (Smiley face emoji.)

ZAC: LOL. How is your evening?

SHAYLA: Good. I'm at the movies.

ZAC: What movie?

SHAYLA: Spiderman.

ZAC: Nice. Should have said something. You could have met me in the back row. (Smirking emoji.)

SHAYLA: I'm here by myself. Why don't you [208] come through?

ZAC: What theater?

SHAYLA: You know the one in Sabal Palms Plaza?

ZAC: I do not.

SHAYLA: In Fort Pierce by Publix.

ZAC: Why are you alone? You didn't ask me. (Sad face emoji.)

SHAYLA: Nobody wanted to watch it with me. (Sad face emoji.) Sorry. I asked you now, though. (Smiley face emoji.) It started like 15 minutes ago.

ZAC: When does the movie start?

BY AUSA BERGSTROM:

Q. Special Agent Ray, is that another instance where you believe that Whisper glitch in the population of the messages occurred?

A. That's correct.

Q. And so the conversation would have been the defendant's message, When does the movie start, followed by Shayla's response, It started like 15 minutes ago?

A. That's correct.

Q. Thank you. Please continue.

(Continued to read from exhibit.)

ZAC: Boo.

[209] SHAYLA: Boo. OMG. Now you're making me mad. Just come.

ZAC: Enjoy the movie. Would have been fun to finger you during it. Why am I making you mad?

SHAYLA: Because I want that so bad RN.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does RN mean?

A. Right now.

Q. So that sentence would say, Because I want that so bad right now?

A. That's correct.

Q. Please continue.

(Continued to read from exhibit.)

SHAYLA: Stop.

ZAC: Fingers sliding in and out of that tight little wet pussy pressing against your clit.

SHAYLA: Unless you're really going to do it.

ZAC: And what if I don't stop and what if I actually will do it?

SHAYLA: Then we'll see what happens from there. (Smiley face emoji.) And I'll show you what I can do.

ZAC: You're going to slide that tight little pussy down on my thick cock in the theater?

SHAYLA: No. Maybe in your car, though. [210] (Winky face emoji.)

ZAC: You got to show me what you can do with those lips and your tongue.

SHAYLA: Yes, Daddy.

ZAC: Oh, Baby Girl.

SHAYLA: Oh, what?

ZAC: I'll definitely be your daddy.

SHAYLA: Come here then.

ZAC: You're going to make Daddy cum.

SHAYLA: Yes.

ZAC: (Picture transmitted.)

BY AUSA BERGSTROM:

Q. Special Agent Ray, what's the subject of that photo that's transmitted?

A. The defendant's penis.

Q. Please continue.

(Continued to read from exhibit.)

SHAYLA: Looks so juicy. (Heart face – or heart eyes emoji.)

ZAC: Thick and hard, just begging to be stroked, sucked, fucked.

SHAYLA: Come pick me up. I'll leave the movies right now, Daddy.

ZAC: Text you when I get there. Can I see another pic of you?

[211] SHAYLA: OMG. Yes. I can't wait. How far are you, Daddy?

ZAC: 30 minutes. Send me another pic.

SHAYLA: You got me so horny.

ZAC: Need to get gas. Good girl.

SHAYLA: Please be safe driving.

ZAC: I will, Baby Girl. Please send me another pic so I know who I'm looking for when I get there. What's your number so we can text?

BY AUSA BERGSTROM:

Q. Special Agent Ray, at this point does the conversation switch to text message?

A. It does.

Q. And is that what's reflected on page 10 of Government's Exhibit 14?

A. Yes.

Q. And at the top, the CelleBrite extraction report, does that indicate that it comes from the report that you created after you extracted the text messages from Allan's phone?

A. That's correct.

Q. Please continue.

(Continued to read from exhibit.)

ZAC: Hey Shayla, it's Bull from Whisper.

SHAYLA: Hey, Daddy.

[212] ZAC: Headed to the theater. Need to stop for gas first. Let you know when I get there.

SHAYLA: Okay. OMG. Can't wait.

ZAC: You too, Baby Girl. Send me a pic, please.

SHAYLA: Of what? I'm in the movie, Daddy. Should I come out yet? Are you really coming?

ZAC: Of you, baby girl. And no, ETA is 10:19, but I haven't stopped for gas yet.

SHAYLA: Daddy, my phone is at 7 percent. If it dies, just meet me at the benches in front of the movies.

ZAC: Okie doke.

SHAYLA: Daddy, do you drive a nice car? Go to Beal's Outlet instead. The movie is closed. I'm standing out the front waiting for you, Daddy. Come pick me up. It's dark and I'm scared. The only open building is Wingstop. I went inside because I'm scared of being out



here alone. Are you still coming? Please tell me. I don't want to be waiting out here for nothing.

ZAC: I just got pulled over on U.S. 1.

SHAYLA: OMG. What happened? Are you still coming? Should I go home?

ZAC: You need to go home. I don't know [213] what's going on. I'll text you as soon as I can.

SHAYLA: Okay.

ZAC: I'm sorry, baby girl.

SHAYLA: It's okay. What happened?

ZAC: The police pulled me over for speeding. Then tried to tell me my plates were stolen. Then actually told me they're not registered to my car. Then tried saying my car was stolen. Then proceeded to ask me where I was hiding the drugs. Then searched my vehicle. None of which is true. And they finally let me go with a warning at 11:45.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what is the time and date associated with that message from the defendant?

A. That was January 10th at 6:13 a.m.

Q. At this point, had you taken over as Shayla or was it still in the control of the boy, Allan?

A. This was still in the control of the boy.

Q. Okay. Please continue.

(Continued to read from exhibit.)

ZAC: I hope you made it home okay.

SHAYLA: Yes, I did. Wow. That's crazy.

ZAC: I was so pissed off.

SHAYLA: OMG. I bet. Maybe I can just come over to your place instead.

[214] ZAC: How would you get there?

SHAYLA: I can tell my cousin to drop me at my friend's house. She doesn't work today.

ZAC: What you doing tomorrow around 10:00 a.m.?

BY AUSA BERGSTROM:

Q. Special Agent Ray, at – what's the time and date stamp of that message, What you doing tomorrow around 10:00 a.m.?

A. That is January 10th at 6:50 p.m.

Q. And at this point is the cellphone still in the control of Allan?

A. I'm not sure whose control it was in. I know law enforcement was involved around that time period. It wasn't in my possession yet.

Q. And on the next page, page 22, is that a Whisper chat?

A. Yes.

Q. And that first message there that says Zac with a question mark, appears to be sent by Shayla, did you send that message or did Allan?

A. I sent that.

Q. So at this point going forward, you were in control of the Shayla account?

A. That's correct.

[215] Q. I'm going to ask you to continue reading again. Special Agent Brian Ray, even though you were operating as Shayla in the conversations, I'm going to ask you to read the defendant's messages and Detective Fullen, I'm going to ask you to continue reading the Shayla messages as the female voice. Please continue.

(Continued to read from exhibit.)

ZAC: Let's go.

SHAYLA: Zac?

ZAC: Yes, Baby Girl?

SHAYLA: OMG. My Whisper blew TF up.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does TF mean?

A. It means, the fuck.

Q. So that message should read, OMG. My Whisper blew the fuck up?

A. That's correct.

Q. Thank you. Please continue.

(Continued to read from exhibit.)

ZAC: How many messages do you have?

SHAYLA: I don't even know. LOL. Try. Lots.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what happened there?

A. That was an autocorrect. Where I was attempting to type LOL true, it autocorrected to try. [216] And then when I was re-doing the message, his message came in and it took me a moment to send a correction for the lots to true.

Q. Thank you. Please continue.

(Continued to read from exhibit.)

ZAC: Lots of thirsty man?

SHAYLA: (Asterisk) True.

ZAC: (Crying face emoji, laughing while crying emoji.

SHAYLA: Did you text me? I deleted a bunch of stuff. Mom's on my ass.

ZAC: I did, yes. 772-200-2444 is my number.

BY AUSA BERGSTROM:

Q. Special Agent Ray, at this point did the conversation briefly switched back over to text message?

A. Yes.

Q. And is that what's depicted starting at the bottom of page 23 of Government's Exhibit 14?

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

ZAC: Hey, Shay.

SHAYLA: Hey Boo.

ZAC: Everything okay?

SHAYLA: Yeah. Everything okay with you?

[217] ZAC: Better now.

BY AUSA BERGSTROM:

Q. Special Agent Ray, at this point did you switch back to the Whisper chat function?

A. Yes.

Q. Is that what's reflected on page 26 of Government's Exhibit 14?

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

SHAYLA: That's nothing. I got to delete this Whisper. I'm getting blown up.

ZAC: All right, Baby Girl.

SHAYLA: Done.

ZAC: I bet you got a ton of offers.

SHAYLA: It was crazy, but so many just want to jack off.

ZAC: Get a lot of nice dick pics?

SHAYLA: IDK about nice. If you want it is – if you want it, it's okay.

ZAC: (Laughing while crying emoji) Any girls?

SHAYLA: But when they just start sending dick, dick, dick, it gets old. No girls. (Sad face emoji) But I got friends. (Double face [218] emoji.)

ZAC: Oh, yeah?

SHAYLA: Yeah.

ZAC: Ever had a threesome?

SHAYLA: Kind of, but not really. Have you?

ZAC: What do you mean, kind of, a few?

SHAYLA: I was with a friend and we were kissing and things, and a guy I like came over and I got with him, but she just kind of watched.

ZAC: Did she play with herself while she watched you two fuck?

SHAYLA: I didn't fuck him. Just a BJ. She did but with her clothes on.

ZAC: Oh. Last threesome I had was very involved. At one point one girl was riding my face while the other was riding my cock.

SHAYLA: AF. That's hot. AF.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does AF stand for?

A. It stands for, as fuck.

Q. So that message would read, That's hot as fuck?

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

ZAC: Maybe we can get a friend of yours and [219] make it happen.

SHAYLA: Um.

ZAC: Yes?

SHAYLA: Maybe after I know you're not a creep or anything.

ZAC: Well, of course. I wasn't implying tonight.

SHAYLA: LOL. Okie.

ZAC: (Smiling emoji.)

SHAYLA: IDK if anyone would just be DTF anyway.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does DTF stand for?

A. It stands for, down to fuck.

Q. And what does IDK stand for?

A. I don't know.

Q. So that message would read, I don't know if anyone would just be down to fuck anyway, right?

A. That's correct.

Q. Please continue.

(Continued to read exhibit.)

ZAC: Well, that's for another time anyway.

SHAYLA: Are you Zac or Bull? What's up with that?

ZAC: Zac. The screen name was autogenerated. [220] Just never changed it.

SHAYLA: You gangsta. Oh, like your rapper name?

ZAC: Ha, ha. Oh, yeah. You know it.



SHAYLA: I'm Shaydalicious P according to the rapper name generator.

ZAC: Nice.

SHAYLA: You smoke, right, Boo?

ZAC: Yeah.

SHAYLA: I thought you went to sleep or was ghosting me.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does ghosting mean?

A. That would be to stop communicating with somebody.

Q. And what happens in that conversation that led you to ask if he was ghosting you?

A. There was just a period of time that occurred before I sent that message.

Q. Please continue.

(Continued to read from exhibit.)

SHAYLA: Well, let's go smoke. Heris, heros. Stupid autocorrect.

ZAC: I would never ghost you. Just fell asleep.

[221] SHAYLA: Okie.

ZAC: Good morning, Baby Girl.

SHAYLA: Morning, Daddy.

ZAC: What are your plans for today?

SHAYLA: Just doing school. (Throwing up emoji.)

ZAC: Unfortunate necessity.

SHAYLA: Uh. I'd rather KMS.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does KMS stand for?

A. Kill myself.

Q. So that message would read, I'd rather kill myself.

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

ZAC: Don't say that. It's not that bad.

SHAYLA: I'm just not a morning person. I know.

ZAC: (Crying while laughing emoji.) Maybe I should come pick you up.

SHAYLA: For real? I mean, are you serious? (Smilingly face emoji.)

ZAC: Kind of. Not sure how that would work or if you'd get in trouble with the school or your [222] parents.

SHAYLA: I'm doing remote, so I can do what I want. (Smily face emoji.)

ZAC: (Laughing while crying emoji.)

SHAYLA: I'll see when mom's leaving for work. She's going to leave in a couple of hours. When could you come get me. (Wink face emoji.) (Question marks.)

ZAC: Getting in the shower now. Then I have a few things I need to do. Maybe around noon.

SHAYLA: Yes. (Heart face emoji, wide-eyed face emoji.) Are you going to come? I know you were bullshit when you didn't come before. Bye.

BY AUSA BERGSTROM:

Q. Special Agent Ray, can you explain why you had this response at 12:40 p.m. on January 11th, 2022?

A. The suspect had been talking about meeting me at noon. Noon had gone by. I hadn't heard from him, so I started getting the conversation going again. He didn't reply. The original chat when the suspect wasn't responded in the way that Shayla expected, she got – or she didn't like it. She got mad, so I decided to emulate that.

Q. Is it fair to say that you based this response on what you had inherited from Allan, the personality that [223] you inherited from Allan's depiction of Shayla?

A. Yes.

Q. When the – was there a break in the conversation at this point?

A. Yes.

Q. Okay. And so that last message appears to be sent around 12:40 p.m. on January 11, 2022. Does that comport with your recollection of the text?

A. Correct.

Q. And then when you reinitiated contact at some point, do you remember what day you reinitiated contact?

A. On January 18th.

Q. How did you reinitiate contact?

A. By a text message.

Q. Is that what's reflected there on page 33?

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

SHAYLA: So much for never ghosting me.

ZAC: You know, I was actually thinking about you today. The last message you left me pretty much told me to fuck off. I didn't think you wanted to talk to me anymore.

BY AUSA BERGSTROM:

Q. Special Agent Ray, when did you send that? What [224] is the time stamp associated with the “So much for never ghosting me” message that you sent to the defendant as Shayla?

A. This is January 18th of this year at 2:09 p.m.

Q. And when did the defendant respond to your message?

A. The same day, two minutes later. 2:11 p.m.

Q. Thank you. Please continue.

(Continued reading from exhibit.)

SHAYLA: Well, you stopped talking to me when you was going to come see me, so I got mad. (Mad face emoji.)

ZAC: Do you still want to see me?

BY AUSA BERGSTROM:

Q. Special Agent Ray, what’s the time stamp associated with that message from the defendant, Do you want to see me?

A. At 2:14 p.m.

Q. Is it on the same day, January 18, 2022?

A. That’s correct.

Q. So approximately five minutes after you had reached out to him the first time on that day?

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

[225] SHAYLA: Are you really going to come or am I going to be standing around like a stemp again?

BY AUSA BERGSTROM:

Q. Special Agent Ray, what's a stemp?

A. That would be somebody who does something to try to get somebody else happy and gets nothing in return.

Q. Is that some teen lingo you picked up in your investigations?

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

SHAYLA: You've got smoke, right?

ZAC: I got THC/CBD vape.

SHAYLA: (Sad face emoji.) Could you get me some wine coolers?

ZAC: What do you want?

SHAYLA: Jencks. You owe me now.

ZAC: Sure. Is that all you want from me?

SHAYLA: What do you want, Daddy?

ZAC: Take care of my needs, Baby Girl. Show Daddy how good you can suck dick.

SHAYLA: If I get buzzed, I'm going to get all horny. Why didn't you come last time?

ZAC: When?

[226] SHAYLA: IDK. Last week, I think. You said noon and then stopped talking to me.

ZAC: I don't remember. (Sad face emoji.)

SHAYLA: OMG. How old are you?

ZAC: You don't remember?

SHAYLA: I'm JK, Boo.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does JK stand for?

A. Just kidding.

Q. So that message reads, I'm just kidding, Boo?

A. That's correct.

Q. And is Boo a common term of endearment between teenagers, usually?

A. Yes.

Q. Thank you. Please continue.

(Continued reading from exhibit.)

ZAC: Last week I thought you asked what you were doing – excuse me. Last week I thought I asked you what you were doing around 10:00 a.m. and you never responded.

SHAYLA: No.

ZAC: It doesn't matter anymore. If you want to move on, we can.

SHAYLA: It's okay. We can.

ZAC: Yay.

[227] SHAYLA: LOL. So when do you want to?

ZAC: Can I see your beautiful face?

SHAYLA: When you come get me, yeah.

ZAC: Send me a pic.

SHAYLA: I'm just a little sus because you didn't come before.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does sus mean?

A. Suspicious.

Q. Is that more teen lingo that you picked up?

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

SHAYLA: And I already sent picture.



ZAC: I complete understand. I won't do it again. You only sent me one. I'd like to see more.

SHAYLA: You only sent me one.

ZAC: I'll send you whatever you send me.

SHAYLA: I'm just nervous about being catfished again.

ZAC: I get that. And I am a scared too.

SHAYLA: Of what? Catfish?

ZAC: Being catfished, yes.

SHAYLA: Because I had chats with pics being [228] reposted and it sucked.

BY AUSA BERGSTROM:

Q. Special Agent Ray, there's a discussion of catfish, being catfished, being afraid of being catfished. What does catfish mean?

A. Catfishing is when somebody portrays themselves as somebody different online. Just faking their identity online.

Q. So why would you bring that up in the conversation, that you were afraid of being catfished again?

A. I was having to come up with a reason why I wasn't doing something which is pretty common, which is sharing photos.

Q. Thank you. Please continue.

(Continued reading from exhibit.)

SHAYLA: Well, if we meet, we will know.

ZAC: I won't repost your pics, Baby Girl. I'll just use them to – I'll just use them when I jerk off.

SHAYLA: That's kind of hot.

ZAC: Send me something good and I'll show you.

SHAYLA: But on the same note so I know you're real.

[229] ZAC: Do you have Snapchat?

SHAYLA: I'm banned.

ZAC: Hi. (There's a photo attachment.)

BY AUSA BERGSTROM:

Q. Special Agent Ray, did you have an opportunity to view the photo that was sent in that message there from the defendant?

A. Yes.

Q. Up on the screen what's been admitted as Government's Exhibit 15. Is that a full-sized version of that picture?

A. It is.

Q. Thank you. Please continue.

(Continued reading from exhibit.)

SHAYLA: Hi, Boo.

A-264

ZAC: I'm really, Baby Girl.

SHAYLA: Are you married?

ZAC: Would it be hotter if I was?

SHAYLA: IDK. I just saw the baby seats.

ZAC: LOL. I told you I have kids.

SHAYLA: I don't remember that.

ZAC: 3 and 6.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what's the time stamp associated with that message, 3 and 6, from the defendant?

[230] A. January 18th at 2:48 p.m.

Q. Please continue.

(Continued reading from exhibit.)

SHAYLA: But IDC really. It's kind of better if it's just a sex thing.

ZAC: You want this? (With a photo attached.)

BY AUSA BERGSTROM:

Q. Special Agent Ray, did you have an opportunity to view that photo that was sent in the message from the defendant?

A. Yes.

Q. I'll show you what's been admitted as Government's Exhibit 16. Is that that photo that was sent by the defendant?

A. It is.

Q. And what's the time stamp associated with that photo message?

A. It's January 18th at 2:50 p.m.

Q. That would be approximately two minutes later?

A. That's correct.

Q. Please continue.

(Continued reading from exhibit.)

SHAYLA: Um. So thick.

ZAC: Uh-huh. Do you want to suck it or ride it?

[231] SHAYLA: I don't want to get pregnant.

ZAC: Okay, Baby Girl.

SHAYLA: Is that okay?

ZAC: I promise.

SHAYLA: Plies. Okie. OMG. Autocorrect is stupid AF.

ZAC: That's okay. Can I see more pics of you?

SHAYLA: What kind of pics?

ZAC: Pics of you. Whatever you'd like to show me.

SHAYLA: I just don't want my face in them until after, then I'll be comfy.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what is comfy?

A. Comfortable.

Q. Please continue.

(Continued to read from exhibit.)

ZAC: I understand. I'd still love to see more of you?

SHAYLA: I'm just scared to send nudes because I got caught before.

ZAC: I'm not going to do that to you, Baby Girl.

SHAYLA: You said that. But you said you were [232] coming too.

ZAC: I promise.

SHAYLA: Twice.

ZAC: I can't help that I was pulled over by the cops. And we never agreed on where the second time.

SHAYLA: I know, but I'm just nervous.

ZAC: And I've apologized. You've seen me. You know I'm real. I'm genuine. You don't have to send me nudes. I just want to see you.

A-267

SHAYLA: I want to be seen. LOL. But I got burned real bad before and it fucked up my life.

ZAC: I'm here for you.

SHAYLA: So?

ZAC: Show me.

SHAYLA: OMG, Boo. Can't we just talk?

ZAC: I would like to see more than one pic of you to know you're real.

SHAYLA: Don't you know I'm real from talking? And it's not like pics can't be fake.

ZAC: Exactly.

SHAYLA: Do you could be fake too, Boo.

ZAC: How do I know it's really you?

SHAYLA: Cause you be talking to me. (Rolled-eyes emoji.)

[233] ZAC: Except I'll keep sending pics to you to prove it's me.

SHAYLA: That's not proof. You could be anybody.

ZAC: How can I prove it?

SHAYLA: I don't think we can until we meet, Daddy.

ZAC: Okay, Baby Girl. I guess we'll see you then. What are you doing tomorrow?

SHAYLA: When? Like what time, I mean? Because I'm just doing school, so I can do whatever if mom's not here.

ZAC: Okay. Cool. So just pick you up at your place?

SHAYLA: Not my house. Crazy.

ZAC: Where would we meet?

SHAYLA: At the plaza with the theater or the park near my house. Both are close. The park is Maravilla Park.

ZAC: Oh, okay.

SHAYLA: So yeah?

ZAC: Yeah.

SHAYLA: I'm so excited. Can I ask you something else?

ZAC: In your pants? (Sticking tongue out [234] emoji.)

SHAYLA: Huh?

ZAC: You said you were excited.

SHAYLA: Oh. LOL. Do you have like a legit vibe?

ZAC: I am legit, Baby Girl.

SHAYLA: (Rolling eyes emoji.) Vibrator.

ZAC: No. I have a man sex toy. It's called the magsu by bosens (ph.). it's app controlled. So like you

can control it from there while I have it here. Why do you ask?

BY AUSA BERGSTROM:

Q. Special Agent Ray, I'm going to reiterate the defendant's question there. Why were you asking about vibrators and sex toys at this point?

A. I was anticipating that we would be able to bring us to a meet. And it's not uncommon for people to show up at meet locations and claim they were there for some other purpose. Oh, I'm just shopping at this grocery store. I was going to see a movie, if he showed up at a movie theater. When they have specific items with them, like a vibrator, it goes to help identify the suspect and their intentions.

Q. And is that also why you asked the defendant to bring you wine coolers earlier in the conversation?

[235] A. Yes.

Q. Please continue.

(Continued reading from exhibit.)

ZAC: Why did you ask?

SHAYLA: I just have never used a real one before.

ZAC: You've never used a vibrator on yourself? What about a dildo?

SHAYLA: Not a real one.



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ZAC: What have you used?

SHAYLA: I don't want to say.

ZAC: It's okay. You won't shock me.

SHAYLA: It's embarrassing. (Blushing face emoji.)

ZAC: I'm sure I've heard it before.

SHAYLA: Really? Can I just not, please? It's so stupid.

ZAC: Hair brush? Remote control? Vase?

SHAYLA: STFU.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does STFU stand for?

A. Shut the fuck up.

Q. Please continue.

(Continued to read from exhibit.)

ZAC: Dog toy?

[236] SHAYLA: Vase? OMG. Stop.

ZAC: (Laughing emoji.)

SHAYLA: You don't think it's freaky?

ZAC: No. It's kinky.

SHAYLA: Well, you're missing one. Wait.

ZAC: What?

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SHAYLA: I didn't use all those. Just the hair-brush and one more thing.

ZAC: What's the other thing?

SHAYLA: A cuke.

ZAC: A what?

SHAYLA: Cucumber.

ZAC: That's normal. Do you want to know how Daddy's dick feels inside you?

SHAYLA: Can we just do oral first?

ZAC: Of course.

SHAYLA: Thank you, Daddy.

ZAC: Not a problem, Baby Girl.

SHAYLA: Mom is going to leave between 10:30 and 11:00 and I have to be back before 6:00.

ZAC: That won't be a problem.

SHAYLA: (Smily face emoji.)

ZAC: Maybe we can meet at the park tomorrow around noon and just check, make sure we click. See where things go. If we end up in my car [237] fooling around, then okay. How badly do you want to suck my cock?

SHAYLA: That sounds good. But if you look as good as your pic and you're nice and I have some wine coolers, then I'm gonna wanna.

ZAC: Wipe coolers at noon, huh?

SHAYLA: Yeah. (Sticking tongue out face emoji.)

ZAC: And you're going to be (inaud.).

SHAYLA: Yeah, probably.

ZAC: Do you want me to finger you or eat it?

SHAYLA: Yes. (Tongue sticking out emoji.)

BY AUSA BERGSTROM:

Q. Special Agent Ray, based on your experience with these types of investigations, what did you believe the defendant was talking about when he asked you if you wanted him to finger you or eat it?

A. He's talking about penetrating Shayla with digital penetration (inaud.) or performing oral sex on him.

Q. Thank you. Please continue.

(Continued reading from exhibit.)

ZAC: Okay, Baby Girl. You're going to wear a skirt with no panties tomorrow?

SHAYLA: That's a good idea.

[238] ZAC: You're welcome.

SHAYLA: Thank you, Daddy. (Smily face emoji.)

ZAC: Of course, Baby Girl. Slowly stroking it thinking about you.

SHAYLA: You won't have to think about it long.  
(Kissy face emoji.)

ZAC: Mmm. Fuck. (And a picture attachment.)

BY AUSA BERGSTROM:

Q. Did you view that photo that was attached to that message, Special Agent Ray?

A. I did.

Q. Showing you what's been marked and admitted as Government's Exhibit 17. Is that the photo?

A. It is.

Q. Please continue.

(Continued reading from exhibit.)

SHAYLA: OMG.

ZAC: You like?

SHAYLA: Yes, Daddy. It looks frosted.

ZAC: Lick it clean.

SHAYLA: I won't even have to. It will already be in my mouth. You have such a cute dick.

ZAC: I can't wait to feel your mouth around it.

[239] SHAYLA: How did you get it to do that?

ZAC: Do what?

SHAYLA: Like just flow out.

ZAC: It just did. Sometimes it comes out slow, other times it shoots all over the place. Depends on how long I go without getting off.

SHAYLA: I only seen it shoot. That looks hot AF.

ZAC: I think I have a video of it shooting.

SHAYLA: Uh-huh. Everybody's got that.

ZAC: LOL. Filmed it in slow mo.

SHAYLA: Interesting. (Snow face emoji.)

ZAC: Uh-huh.

SHAYLA: Good night, Boo. I can't wait for tomorrow. (Kissy face emoji.)

ZAC: Good night, Baby Girl.

SHAYLA: Good morning, Daddy.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what is the time and date associated with that text that you sent posing as Shayla, Good morning, Daddy?

A. It was sent on January 19th at 8:14 a.m.

Q. Please continue.

(Continued to read from exhibit.)

ZAC: I'm so sorry, Baby Girl. I can't meet [240] you today. I forgot I have physical therapy today.

SHAYLA: OMG. When?

ZAC: It's at 1:00 p.m. in Hollywood.

SHAYLA: So when you wanna?

ZAC: Sorry. PT took a lot out of me. I've been in pain all day. Been in bed medicated. Still in bed. Naked. Haven't showered. Haven't eaten.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what's the time stamp associated with that message from the defendant to Shayla?

A. It's at 1:34 p.m.

Q. And what's the –

A. On the 20th.

Q. And that would be the following day, correct?

A. That's correct.

Q. Please continue.

(Continued to read from exhibit.)

SHAYLA: OMG. I hope you feel better.

ZAC: Thank you, Baby Girl.

And then blank.

BY AUSA BERGSTROM:

Q. So we've seen a couple of these blank message bubbles. Do you have any reason why those would pop up in your extraction report?

[241] A. Yes. Because text messaging is constantly evolving and they keep adding new emojis. So it's not uncommon that this will happen. The program doesn't understand what the emoji is or hasn't loaded it in its database yet, so it doesn't populate anything there. But there's no text associated with those.

Q. So what we're missing in that chat bubble is an emoji that wasn't supported by your forensic software at that point?

A. That's correct.

Q. Please continue.

(Continued to read from exhibit.)

SHAYLA: Just let me know when you're feeling better.

ZAC: Definitely.

SHAYLA: (Kissy face emoji.)

ZAC: What are the chances of you sending me a picture of your beautiful face to make my day better?

SHAYLA: Seriously?

ZAC: (Laughing crying emoji.)

SHAYLA: I'm pretty much wishing I hadn't sent you the first one. I mean, maybe everything is just what you said and it's bad luck. But it's super sus.

[242] ZAC: It's okay. You're just suspicious. I understand why. But I'm not asking for nude pics. Seeing that in person makes it so much better.

SHAYLA: No cap.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what does no cap mean?

A. It's slang for no lie.

Q. Thank you. Please continue.

(Continued to read from exhibit.)

ZAC: (Kissy face emoji.)

SHAYLA: I hate the rain. (Sad face emoji.)

ZAC: Why?

SHAYLA: Cause I walk pretty much everywhere I go.

BY AUSA BERGSTROM:

Q. Special Agent Ray, what's the point of that last few text messages that you sent to the defendant as Shayla?

A. At that point we were waiting in his apartment complex. The vehicle was not there, so I just wanted to see if the phone might still be on him, if he was still willing to communicate.

Q. And what was the time stamp of the last message that you sent, the text?



A. 6:06 p.m.

[243] Q. And that was on January 20th, 2022?

A. That's correct.

AUSA BERGSTROM: Thank you very much, Special Agent Ray.

Your Honor, those are all the questions I have for this witness.

THE COURT: You may proceed.

AUSA BERGSTROM: Your Honor, before I pass the witness, I believe that that is all the government intends for Directive Fullen. May she be excused.

MR. MURRELL: We have no objection.

THE COURT: Yes.

AUSA BERGSTROM: Thank you, Your Honor.

**CROSS-EXAMINATION**

BY MR. MURRELL:

Q. Agent Ray, you testified that you have received essentially special training to pretend to be a teenage girl online?

A. Yes, sir. Teenage girl, boy.

Q. All right. I would assume that being trained to be a girl took a little extra work?

A. Not really.

Q. Okay.

A. They're equally alien.

[244] Q. All right. And a segment of that training included things you should or should not say; is that right?

A. That's correct.

Q. Because you don't want to be accused of entrapping somebody, right?

A. That's correct.

Q. So you try to stay back a little bit, but let them know that you're interested?

A. That's correct.

Q. A hard line to walk sometimes?

A. It's not terribly difficult, no, sir.

Q. Not for you?

A. No, sir.

Q. Okay. All right. You took over the phone on the 11th of or the 10th?

A. On the 10th.

Q. And –

A. The evening of the 10th.

Q. Okay. So it was you talking at about 9:42 p.m. when you were talking about deleting the Whisper app, right?

A. That's correct.

Q. It's blowing up and I'm getting all these pictures of penises?

[245] A. I wasn't talking about deleting the app. I was talking about deleting Whisper.

Q. All right. But that's – because what you said was because you were getting all these pictures of penises?

A. Well, I said I was getting a lot of messages, yes.

Q. Well, I thought you said, pardon my wording, but you said dick, dick, dick, dick, dick, right?

A. After the defendant asked me if I was getting that, yes.

Q. Well, that's what you said you were getting that you were going to delete. Is that right or wrong? Am I misunderstanding?

A. Well, it's just the order in which things occurred that I don't want people to be confused about. But the text messages are there and they are what they are.

Q. Well, were you getting a lot of those types of pictures from other people responding to this Whisper post?

A. No.

Q. Okay. You just said that as a way to explain why you were getting off of Whisper?

A. Getting rid of that Whisper. I didn't want it [246] out there publically anymore.

Q. Okay. One of the things you said when you were explaining that was so many guys just want to jerk off. Do you remember saying that?

A. Yes, sir.

Q. And I'm sorry to use that crude language, but that's what you wrote, right?

A. Yes, sir.

Q. And that means guys like to get involved in these conversations and masturbate, right?

A. Some do, yes, sir.

Q. Okay. January the 11th, that's the first full day that you were controlling the phone; is that right?

A. That's correct.

Q. All right. And at 9:45 in the morning – well, earlier in the morning he said, Maybe I should come pick you up, right?

A. Yes.

Q. And you enthusiastically responded to that?

A. I responded positive. Yes, sir.

Q. Yes. Because you wanted to arrange a meeting with Zachary Spiegel, right?

A. Yes. I wanted the person who was communicating with a minor to be in custody, yes, sir.

Q. Right. And one of the surest ways to get them [247] in custody is to get them to come to a meeting, right?

A. That's correct.

Q. And it's usually compelling evidence when they come to a meeting after having these conversations, right?

A. It goes to show intent. Yes, sir.

Q. Yes. Exactly. It goes to show intent. And that's why you mentioned before to the jury, you liked to have them bring a vibrator, you like to have them bring a rose, something to show that they are there for the specific purpose of having sex, right?

A. Correct. And to show that they're the person who was actually engaged in the chat.

Q. Okay. And at 9:45 on the 11th, he told you, I'm in the shower now, I'm getting ready, I've got some things to do, I'll be there around noon, right?

A. Yes, sir.

Q. And at 12:45 you were still waiting for him to show up?

A. Waiting for him to respond, yes. I don't think we set a meet location on that one.

Q. Well, he said, I knew you were BS when you didn't come before, bye – or you said, I knew you were BS when you didn't come before. You must have told him where you were going to meet?

AUSA BERGSTROM: Objection, Your Honor. The [248] conversation has been admitted in its entirety in evidence. The conversation speaks for itself.

THE COURT: Overruled. It's cross-examination. He can ask for his version.

BY MR. MURRELL:

Q. If you didn't set a place, how were you going to have a meeting?

A. There was a general agreement to meet. It hadn't gone that far yet.

Q. Okay. So if you generally agreed to meet at noon, you expected him to either text you again or even call you again, right?

A. Correct.

Q. And I guess you were hoping for a text because you didn't want to be trying to sound like a 14-year-old, right?

A. No, we were prepared for that eventuality.

Q. Okay. You had all your bases covered. So you were setting up a meeting for noon that day?

A. That was the plan.

Q. And he did not appear?

A. That is correct.

Q. All right. Were you instructed to give him that response, I knew you were bullshit when you didn't come the last time?

[249] A. No, sir.

Q. You did that on your own?

A. Yes, sir.

Q. All right. And you said bye in capital letters?

A. Yes, sir.

Q. And at no time after you said bye did Zachary Spiegel try to initiate contact with Shayla, did he?

A. No.

Q. A week later on the 18th, you reached out to him again?

A. That is correct.

Q. Were you instructed to do that?

A. There was strategy being discussed between myself and the case agent. I don't remember if I was instructed to do it.

Q. Well, the case agent is the lead detective here or lead investigator here?

A. That's correct.

Q. It's his case?

A. That's correct.

Q. He makes the calls?

A. Yes.

Q. He calls the shots on what we do, when we do it, how we do it?

A. Yes, to the extent that – and he's not – [250] he's relying on my expertise in having done these types of investigations in the past.

Q. Well, he's not going to look over your shoulder and say, Tell him this, tell him this, tell him this, because that's what you're trained for, right?

A. Correct.

Q. But it was his decision for you to initiate contact again on the 18th?

A. Yes. It's my recollection.

Q. Well, you wouldn't do that on your own, would you?

A. No, sir.

Q. Yeah. All right. So he told you to do it?



A. I don't – like I'm saying, I'm not trying to mince words or anything. He may very well have asked me to go ahead and resume communication with him. I don't specifically recall.

Q. And the purpose of resuming communication was to set up a meeting and get Zachary Spiegel to come to the meeting, right?

A. Well, at least to give him that opportunity.

Q. Right. Because it's such compelling evidence of intent, right?

A. Yes, sir.

Q. So you went through – that conversation on the [251] 18th, was it the 18th or the 19th? I'm sorry. I think it was the 18th, right?

A. The 18th is when the conversation resumed, yes, sir.

Q. Okay. And that became a rather lengthy and intense conversation, right?

A. Probably not by chat standards, no, sir.

Q. Well –

A. I wouldn't call it particularly lengthy.

Q. All right. Well, then let me rephrase it. Compared to the conversations that Zachary had been involved with Shayla in the past, this was about as lengthy a one has ever occurred, right?

A. That's true.

Q. OKAY. And this was sort of your last-ditch effort to get him to come to a meeting, right?

A. It wasn't – I wouldn't categorize it as a last-ditch effort –

Q. Because if it failed, you might have tried again?

A. We would have given him another opportunity, yes, sir.

Q. All right. So you had an extensive conversation, including things about whether he's married, how many kids he has, what he likes to do as far as sex [252] activity. I mean, you exchanged "I'm going to do this to you, you're going to do this to me" kind of messages, right?

A. That's true, yes, sir.

Q. All right. And it escalated from there to where you asked if he had a vibrator?

A. Correct.

Q. All right. And then you talked about things you had used as pretend Shayla to masturbate in the past with, right?

A. Yes.

Q. Okay. And he explained some sex toy that had?

A. Yes, sir.

Q. All right. So I mean, we were getting extremely graphic and extremely detailed about sexual activities?

AUSA BERGSTROM: Objection, Your Honor. At this point this is commentary, not a question.

THE COURT: Overruled.

BY MR. MURRELL:

Q. Yes or no?

A. It's all relative. When you say extremely graphic, some people might find that graphic –

Q. If that's graphic to you – or not graphic to you, you live in a different world than I do. And I know you do this every day. But for those of us that don't, [253] would you agree that that's explicit sexual conversation?

A. Absolutely.

Q. Okay. And at some point during this explicit sexual conversation, you received a photograph of a penis that clearly had ejaculated?

A. Yes, sir.

Q. And you, I assume – and I'm not trying to put words in your mouth. Did you conclude that – you told the jury, I think on direct, that that was Zachary's penis?

A. Yes, sir.

Q. And that's what you assumed it was, right?

A. I didn't make an assumption at the time. It was based on the stipulations that occurred.

Q. Okay. All right. So was it obvious to you that Zachary had just ejaculated?

A. No, sir. It wasn't necessarily that he had just ejaculated. He sent a shot of an erect penis prior to that one that was actually a screenshot from the camera roll. So it's a picture that was at least already on his device. So I don't know that – how –

Q. You don't know whether he had or not?

A. Correct.

Q. Fair enough. But shortly after that picture arrived, the conversation petered out, right?

[254] A. Yes, sir.

Q. Okay. One more thing. During these conversation, he never asked Shayla for nude photographs, did he?

A. Not explicitly.

Q. Well, he explicitly said, I'm not asking for nude photos, you don't have to send me nude photos.

A. That was later in the conversation when we were getting to what's typical of a security requirement that people have before they'll meet with

somebody that they are suspected – or suspicious of their identity.

Q. If they're suspicious of their identity, they will insist on nude photos, won't they?

A. No, sir. Not necessarily.

Q. Well, did he insist on nude photos here?

A. He did not insist, no, sir.

Q. And what he explicitly said during this conversation was, You don't have to send me nude photos.

A. He did say that. Yes, sir.

Q. Now, when you said he implicitly asked for them, you're talking about the first conversation back on January the 9th, right?

A. No, sir. There were some chats that occurred around the 18th, 19th time frame where there was a back and forth about, you know, send me something good and [255] I'll show you.

Q. Yeah, send me something good. But he never said, Send me something naked, did he?

A. No. He was just saying that he'd use them to masturbate to.

Q. Right. And he said that when he said you don't have to send me this nudes. He didn't care what the photographs were as long as it was whoever was talking to him sent him photographs, right?

A. Yes.

MR. MURRELL: Judge, I don't have any other questions.

THE COURT: Redirect?

AUSA BERGSTROM: Just briefly, Your Honor.

**REDIRECT EXAMINATION**

BY AUSA BERGSTROM:

Q. Special Agent Ray, are you the sole decision-maker in any criminal investigation?

A. No.

Q. Are there other parties that you consult before you decide who to charge, when to charge, when the investigation is complete to the satisfaction of the prosecutor involved in the case?

A. Yes.

[256] Q. Does it make your life easier when a suspect meets you in a place that isn't his home?

A. Sure.

Q. So would it be easier to arrest an individual at a location that you have had time in advance to stake out and set up?

MR. MURRELL: Judge, objection to relevance.

THE COURT: Overruled.

BY AUSA BERGSTROM:

Q. Does it make your life easier to set up in a location prior to an individual coming?

A. Yes.

Q. Why is that?

A. Because typically you get everything that you want there. Usually you'll have the device that the suspect was using to communicate with you. You'll have him bring the things that you asked him to bring at that location. And you don't have to go through your requirements that we have to in order to get a search warrant for somebody's residence which we'd need to obtain.

Q. And is there a certain danger involved in arresting somebody in their own home?

A. Yes. Executing a search warrant in people's homes is about the most dangerous thing we do.

[257] Q. And is that, in part as least, because you don't know what that person has in their home or who's present in the home?

A. Particularly in an investigation like this where you didn't have an undercover like in a drive-by or somebody that goes in the house and gives you information about what's in there. In this, we have absolutely no information about who or what is in the home.

Q. So once you've determined in speaking with all of the partners in the investigation that a crime has been committed, would it benefit you to arrange a meeting with the individual you intend to arrest in a public location?

A. Yes.

Q. As opposed to his home?

A. Yes.

Q. I just want to clarify a few points with the chats and some timing because there was a little bit of confusion. Do you still have the binder in front of you so I don't have to log into my computer?

A. Yes, ma'am.

Q. If I can direct you to page 48 of Government's Exhibit 14.

A. Yes, ma'am.

Q. The defendant at the top says, I won't repost [258] your pics, Baby Girl. Do you see that?

A. I do.

Q. What had you just been talking about prior to him saying that?

A. About him -- about photos going back and forth and about being catfished.

Q. Okay. And when you had discussed being catfished, did your story about being catfished involve



nude images of yourself being posted without your consent?

A. Yes.

Q. And had you previously expressed that much to the defendant in the conversation?

A. Yes.

Q. And so when he's saying he won't repost your pics, he's referencing nude pics, very likely?

A. That was my reading of it.

Q. Is it common in your experience investigating these types of crimes and chatting with offenders in an undercover capacity for them to masturbate to non-sexual images?

MR. MURRELL: Judge, again, what's common, what happens a lot is irrelevant here.

THE COURT: I think you opened up the subject in cross-examination. Overruled.

AUSA BERGSTROM: Thank you, Your Honor.

[259] BY AUSA BERGSTROM:

Q. You can answer the question.

A. I'm sorry. Would you repeat the question.

Q. In your experience investigating these types of conversations and these types of investigations with individuals online, is it common for offenders to

masturbate to images of, say, a child's face as opposed a nude image?

A. Not in my experience, no.

Q. Do you get more requests for nude images of yourself when posing as a minor?

A. Yes.

Q. And then after you had that conversation, did the defendant send you a message then on page 49 that said, Send me something good and I'll show you?

A. Yes.

Q. What did you take that to mean?

A. I took it to mean he meant for me to send him something sexual.

Q. And is that based on the context of the conversation that came before?

A. That's correct.

Q. The defendant asked you later on that same page, Do you have Snapchat. Do you see that?

A. Yes.

[260] Q. What's so significant about Snapchat?

A. Snapchat is an application where you can send an image and then it's deleted from the person's device after a period of time, assuming that somebody doesn't do a screenshot.

Q. Have you investigated cases involving Snapchat before?

A. Yes.

Q. Were you operating as a minor in an undercover capacity?

A. Yes.

Q. Do the messages that you send on Snapchat tend to be sexually explicit?

A. You have to – yes, they have encouraged that type of behavior because the sender has some level of comfort thinking that the images will go away.

Q. If I could draw your attention to page 60 of Government's Exhibit 14. Could you read the message the defendant sent there at the top, the first message on that page.

A. I'd still love to see more of you.

Q. And how did you respond?

A. I had told him I was just scared to send nudes because I's gotten caught before.

Q. What does the defendant say to that?

[261] A. I'm not going to do that to you, Baby Girl.

Q. At that moment does he say that he wasn't asking for nudes?

A. No.

Q. And, in fact, does there come a point in the conversation that the defendant told you why he didn't want nudes from you?

A. He was wanting to prove that I was real – or wanted me to prove that I was real, rather.

Q. If could I draw your attention to page 108 of Government's Exhibit 14. Could you please read the message from the defendant that's at the bottom of that page, the very last message?

A. It's okay. You're just suspicious and I understand why. But I'm not asking for nude pics. Seeing that in person makes it so much better.

Q. Thank you.

THE COURT: Anything else?

AUSA BERGSTROM: No, Your Honor. Thank you.

THE COURT: Please step down.

A. Should I leave the exhibit here or –

AUSA BERGSTROM: With the Court's permission, I'll collect it.

THE COURT: You have no other witness, right?

AUSA BERGSTROM: No, Your Honor.

[262] THE COURT: We're going to take a brief break. Give you five minutes or so. Remind you

not to discuss this case. Go back and relax. Going to take five, ten minutes max.

(Thereupon, the jury exited the courtroom.)

THE COURT: Have a seat. The government has no more witnesses; is that correct?

AUSA BERGSTROM: That's correct, Your Honor.

THE COURT: And when the jury comes back, you're going to announce rest?

AUSA BERGSTROM: Your Honor, there's one issue. Not an issue, but there's one stipulation. Stipulation number 3, admissibility of 14.

THE COURT: Okay. Let's assume the evidence is all in and the government has announced it's rested. Okay? At that point, I suspect – do you have a motion?

MR. MURRELL: Yes, sir.

THE COURT: Can we agree that we can kind of take it a little out of order here, that they can make the motion now while the jury is out for a few minutes?

AUSA BERGSTROM: That's fine.

THE COURT: As if you had rested?

AUSA BERGSTROM: (Nodding.)

[263] THE COURT: Okay. Go ahead.

MR. MURRELL: Judge, essentially our argument is the same as I made in opening statement.

THE COURT: Let me – tell me with regard – I think it's element number 5, took a substantial step towards committing the offense. Is that –

MR. MURRELL: Well, that – yes, sir. I mean, that's –

THE COURT: What's the government's point?

MR. MURRELL: And I don't know what the government's point –

THE COURT: Is that the essence of your argument?

MR. MURRELL: Yes, sir.

THE COURT: Why don't we just go right to that. Make your motion. Formally, make your motion.

MR. MURRELL: Judge, I would move for a motion of acquittal under Rule 29. I think the government has failed to present a prime facie case on the first element, which is his intent to persuade, induce, or coerce a minor into having sex, because I don't think he ever intended that. And the fifth element of substantial step. I think those are both missing on both counts.

[264] THE COURT: Let talk about those.

AUSA BERGSTROM: Your Honor, I think it's important to point out –

THE COURT: I think I'm more concerned about 5 than 1.

AUSA BERGSTROM: Then I'll start with 5, Your Honor. The Eleventh Circuit has stated that a defendant takes a substantial step when his objective act marks his conduct as criminal and as a whole strongly corroborates the required culpability. That's United States versus –

THE COURT: That's a general proposition.

AUSA BERGSTROM: That's correct, Your Honor.

THE COURT: My question is, following that proposition, what is the evidence of substantial step taken here?

AUSA BERGSTROM: Your Honor, the substantial step evidence in this case are the concrete plans that were being made to meet. This wasn't just some far off, some day we'll meet. This is a I am 30 minutes away, here is my ETA. We're going to meet in the parking lot of the Sabal Palms Plaza. We're going to meet in my car and we're going to have sex.

THE COURT: But he didn't get in his car.

[265] AUSA BERGSTROM: He didn't, Your Honor. And traveling is not an element of the offense.

THE COURT: He didn't show up at the Plaza.

AUSA BERGSTROM: Correct.

THE COURT: He said he just talked.

AUSA BERGSTROM: That's correct, Your Honor, and –

THE COURT: – suggest that that is a substantial step.

AUSA BERGSTROM: There is, Your Honor. There are several out of the 11th Circuit. The lead case that I cited has a situation in which the defendant did not meet but made substantial steps such as setting up a concrete location, sending pictures of his erect genitalia, having explicit sexual discussions with the intended victim. The Eleventh Circuit in Yost (ph.) – and I have copies that I'll pass up for the Court – they upheld two attempt convictions; one of those was based solely on communications. And there I'm quoting the evidence, so that – the review of the evidence. Quote, The evidence at trial showed Yost committed the following objective acts towards the minor.

Yost repeatedly sent sexually explicit messages and asked if her body was mature and if [266] she had breasts and a, quote, nice little bubble butt, end quote. He described how to perform oral sex and asked the minor to, quote, suck it, end quote. He posted a picture –



THE COURT: These are all considered by the Eleventh Circuit?

AUSA BERGSTROM: That was by the Eleventh Circuit, Your Honor.

THE COURT: And they considered it to be a step in the direction of committing the act?

AUSA BERGSTROM: Yes, Your Honor. They found that those acts taken as a whole corroborated Yost's culpability –

THE COURT: Let shift to the intent. I'm asking to talk about intent. I have to say I'm less concerned about that because I think the jury could reasonably infer from his own words what his intent was. He may say that wasn't my intent or make argument that wasn't my intent, but it seems to me that the jury has a basis for making that determination – a reasonable basis for making that determination based on what he said. That's why it's an intent rather than a commission of the act.

So let me hear from defendant on the intent issue.

[267] MR. MURRELL: Judge, intent is always – and absent some statement, intent is always determined by actions. And it's circumstantial evidence. And we've got at least three different times when Zachary Spiegel agreed to a meeting and cancelled and never appeared. And if he's not – if he's got intent to persuade a child to have sex with him and that child agrees to a meeting, you would think he would be there. But every time, he never appeared.

And tellingly, he made an excuse every time. And we would submit that the reason he made that excuse is because he wanted to continue to engage the Shayla. And if he just cut off conversation and did not appear at a meeting, he knew that conversation was going to end.

So I think the circumstantial evidence here supports a finding that there was no intent.

THE COURT: You want to respond?

AUSA BERGSTROM: Yes, Your Honor. Your Honor, it's important to distinguish here that the intent that matters is the intent to entice the minor, the intent to get the minor to agree to meet for sex. It's not the intent to complete the sex act. And that is referenced in the Yost decision. It is referenced by the Eleventh Circuit in the Mural [268] (ph.) decision. The travel, while evidence of intent, is not a required element.

So here we have – just as we have the substantial steps, we have plenty of proof from which the jury could reasonably conclude that the defendant intended to entice Shayla, to meet her for sex.

THE COURT: I tend to agree with that. I mean, you got some good argument, obviously, but I think they're arguments for closing arguments as opposed to a matter of law. It's a fairly close case, and I think the defendant has some ammunition or a good argument. I don't think it rises to the level of granting that motion. I think there's enough evidence here for

the jury, based on your client's own words to reasonably convince the jury that they reasonable could find that he intended for that act to occur.

So I am going to deny the motion. Leave it up to closing arguments and let the jury resolve.

I'm going to bring them in. You can rest and we'll send them home. Then we've going to talk about one item on the jury instructions and then send you home. I didn't think this case was going to take three days.

[269] AUSA BERGSTROM: We always plan for the worst-case scenario, Your Honor.

(Thereupon, the jury entered the courtroom.)

THE COURT: Please be seated, but don't get too comfortable. I got some good news and bad news. The bad news is we won't be spending as much time together as we originally thought we would. The lawyers have been very efficient in moving this case quite along, so it's not going to be two full days going into a third day. That's the bad days. We won't have time to see each other.

The good news is we're not going to see each other that much because it's a shorter trial. But we're going to send you home now with just a few instructions. We're going to start tomorrow at 8:50. I'll ask you to do these things. One) do not the discuss the case with anybody, not your family, your boss, friend, whatever. And don't discuss it even among yourselves. Go home. Relax in time so we can start at 8:50. We have to have everybody here before we start, which means if the judge

doesn't show up or one of the lawyers didn't show up, God forbid the lawyers, they'd get in trouble, or one of the jurors show up, we have to wait for that.

[270] So put some extra time, some wiggle room in your travel time because it may take longer, traffic maybe worse than you anticipate. So we can start at 10 or 9:00 o'clock tomorrow morning. And the last thing I'll ask you is to go home, have a good meal, relax, and forget about this case until 8:45 tomorrow morning. Until then, have a good night.

(Thereupon, the jury exited the courtroom.)

THE COURT: Have a seat. Okay. I forgot to ask if you rest.

AUSA BERGSTROM: Your Honor, I'll make a note and do it first thing tomorrow.

MR. MURRELL: And I'll remind them to quit tomorrow. And then we'll rest.

THE COURT: You're not going to put on your guy?

MR. MURRELL: Right.

THE COURT: You can change your mind tonight, but right now the intent is not to have your client testify?

MR. MURRELL: That's correct, Judge.

THE COURT: Mr. Spiegel, you know you have the right to testify or not testify. That's your

choice. But obviously, you want to consult with [271] your lawyers on that. If you don't testify, as I've already told the jury and I'll tell them again, they can draw no inference of guilt from the fact that you do not take the stand and testify.

THE DEFENDANT: Yes, Your Honor.

THE COURT: But we'll finalize that tomorrow morning. But right now, we'll go on the assumption that there's not going to be any further testimony. In that regard, then we need to change the jury instructions. And just one. Can you do this? Do it tomorrow, maybe. I'm trying to find my current version. Page 5. You could – see page 5? The first whole paragraph where it says, The defendant has a right not to testify?

THE COURTROOM DEPUTY: Okay.

THE COURT: Take that paragraph out. It's one sentence, two lines long.

THE COURTROOM DEPUTY: Yes. The defendant has the right not to testify, but since the defendant did – okay. Take that whole thing out. So the next line is, When scientific, technical –

THE COURT: Yeah. Take out two lines above that. The defendant and any other witness.

THE COURTROOM DEPUTY: Yes.

THE COURT: That's the change we'll make. And [272] tomorrow you'll have that available for closing arguments.

AUSA BERGSTROM: Your Honor, I don't know if the Court wants to take this up now, but on page 4 –

THE COURT: I was going to say, is there anything else that you've seen to figure out any issues concerning either objections to them, additions you want, or any little typographical errors?

AUSA BERGSTROM: Your Honor, on page 4 it appears that there are two duplicate paragraphs starting with, You should also ask yourself. That appears twice on the page. And the "But keep in mind" paragraph –

THE COURT: There's two paragraphs that are to care, right?

AUSA BERGSTROM: Correct, Your Honor. It's the last two paragraphs on page 4.

THE COURT: Do you see that? The second one that begins, you should also ask. And the next one, But also keep in mind. Right?

AUSA BERGSTROM: Correct.

THE COURTROOM DEPUTY: Okay. I'll take that out.

[273] THE COURT: Those two paragraphs come out.

AUSA BERGSTROM: And the other one that I see might be able to come out is on page 5. It's the expert witness instruction, Your Honor. We

included that out of an abundance of caution in case we qualified Special Agent Ray as an expert. We didn't end of having to do so.

THE COURT: Yeah, I was thinking about that. It was kind of a gray area.

AUSA BERGSTROM: He did kind of talk about his experience.

THE COURT: Mr. Murrell?

MR. MURRELL: I don't think that's going to be what swings it here. So if you don't want to give it, I understand. I'm not asking for it.

THE COURT: So you don't care if it comes out?

MR. MURRELL: It's one less thing you have to read.

THE COURT: Okay. Let's take it out.

THE COURTROOM DEPUTY: I need more information than that.

THE COURT: It's right above what we just took out. I mean right below what we just took out.

THE COURTROOM DEPUTY: What does it start with?

[274] THE COURT: When scientific technical –

THE COURTROOM DEPUTY: Oh. When scientific technical – okay. Just that line out?

THE COURT: Those two lines, one sentence. I'm sorry. Then the next sentence.

THE COURTROOM DEPUTY: The one that starts with but?

THE COURT: Yes.

THE COURTROOM DEPUTY: Take that out?

THE COURT: Yes. Take out four lines.

THE COURTROOM DEPUTY: Okay. So the next line is, You've been permitted to take notes.

THE COURT: Anything else?

MR. MURRELL: Judge, the instruction about the defendant not testifying. I think we need to put that in here.

THE COURT: Well, it's in here. I'm trying to think where it is. The part where it says you can draw no inference?

AUSA BERGSTROM: Your Honor, it's on page 2.

THE COURT: Yeah, it's in here.

MR. MURRELL: Oh, I'm sorry.

THE COURT: The defendant does not have to testify and if he does –



MR. MURRELL: Yes, sir.

[275] THE COURT: Anything else?

MR. MURRELL: I don't believe so.

THE COURT: Okay. Let's talk about closing arguments because we're going to go right to it tomorrow. What do the parties want to have in terms of (in-aud.)?

AUSA BERGSTROM: Your Honor, if we could have 45 minutes to split between the two of us for first close and rebuttal.

THE COURT: All right.

AUSA BERGSTROM: 25 for first close, 15 reserved for rebuttal.

THE COURT: I don't think your math is right.

AUSA BERGSTROM: Oh, 25 and 20. Sorry. It's been a long day.

THE COURT: No, that's not the explanation. That's why you went to law school. 30 and 15?

AUSA BERGSTROM: How about 25 and 20. Is that okay?

THE COURT: However you want to do it. And I'll leave it to your co-counsel to keep time to give you a warning when you get close to it.

Is that sufficient time for the defendant?

MR. METCALF: I think so. Yes, sir.

THE COURT: And I'll leave it to your [276] co-counsel to kind of give you the hook when you get close. You decide how much warning you want. That's one less thing I have to do. Anything else?

AUSA BERGSTROM: Nothing from the government, Your Honor.

MR. MURRELL: Nothing from the defense.

THE COURT: I would give you the same instructions I gave to the jury, except I know it doesn't apply to you all. Go home, have a nice meal, don't worry about the case, because I know you're going to be working tonight. Anyway, we'll see you bright and early tomorrow. Come a few minutes early. We're going to have the jury back there at ten to 9:00. Unless something come up tonight. I don't anticipate anything, but if it does, communicate with each other and just let me know and I'll be here before – I'll be out in the back. Have a good night. And look at the instructions, make sure the changes were made.

(Thereupon, the above portion of the trial was concluded.)

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[277] CERTIFICATE

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

08/18/2022	/s/ GBProulx
DATE COMPLETED	<u>GIZELLA BAAN-PROULX,</u> RPR, FCRR

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A-313

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
**FORT PIERCE**  
CASE NO. **2:22-CR-14005-AMC-1**

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**UNITED STATES  
OF AMERICA,**

Plaintiff

**March 29, 2022**

vs.

**ZACHARY S. SPIEGEL,**

Defendant.

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**TRIAL DAY 2**

BEFORE THE HONORABLE **PAUL C. HUCK,**  
UNITED STATES DISTRICT COURT JUDGE

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**APPEARANCES**

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Also present:

Special Agent Eric Uργο

[3] PROCEEDINGS

*(The following proceedings were held in open court.)*

THE COURT: We're back in the matter of  
United States of America versus Spiegel. Counsel,  
everybody ready to proceed?

AUSA BERGSTROM: Government's ready,  
Your Honor.

MR. MURRELL: Yes, Your Honor.

THE COURT: And the government is going to rest as soon as the jury comes in. Tell you what. Tell the jury we're ready to proceed, but see if anyone needs to use the restroom facility before we get started.

Checking to make sure the instructions are as we agreed to. Hopefully, that's the last version. No more corrections.

And just for the record, Mr. Murrell, your client, Mr. Spiegel, is not going to be testifying; is that correct?

MR. MURRELL: That's correct, Judge.

THE COURT: And you discussed it with him?

MR. MURRELL: I've discussed it with him. I've explained to him that it's his option. I've explained to him that it's his decision to make, not mine. And I think he's in agreement that we're [4] going to rest.

THE COURT: I see Mr. Spiegel is shaking his head yes.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Thank you. Okay. You got – don't forget, your co-counsel is responsible for keeping time for you all. We got plenty of time today, so I still think that's the appropriate time. Was it 45 minutes?

AUSA BERGSTROM: I think so, Your Honor, yes.

MR. MURRELL: Give or take.

THE COURT: Close enough for government work. Is that what you're saying?

MR. MURRELL: Yes, sir.

(Thereupon, there was a brief pause.)

THE COURT: Are we all squared away in the instructions now?

MR. MURRELL: I'm going through it now, but it looks good so far, Judge.

(Thereupon, there was a brief pause.)

THE COURT: They are ready.

THE COURT SECURITY OFFICER: They're using the restroom.

MR. HOOVER: Judge, do they take a copy of the written instructions?

[5] THE COURT: Yes. And a copy of the indictment and copy of – and all the exhibits and, of course, the verdict form.

AUSA BERGSTROM: This may be a question for the courtroom deputy. Do we know if the jury room has a computer?

THE COURT: Correct, it's a question for the courtroom deputy. Probably not, but I don't know.

AUSA BERGSTROM: I think Judge Cannon has one for the jury, but I'm not sure if she's got it –

THE COURT: If they don't, you have one that's clean, right?

AUSA BERGSTROM: I think they would have one that's clean.

THE COURT: If they don't, you've got one?

AUSA BERGSTROM: If they don't, I have paper copies of our exhibits that we can send.

THE COURT: If you have paper copies, maybe that's even better.

MR. MURRELL: Yeah, I've got no objection to sending one of those notebooks back.

THE COURT: A little easier to handle, I think.

AUSA BERGSTROM: Thank you.

(Thereupon, the jury entered the courtroom.)

[6] THE COURT: Good morning, everyone. Please be seated. I hope you all had a nice, restful evening and ready to go this morning. I appreciate everybody being on time. I figured we got here at ten of 9:00 by the time we got you back upstairs and here we are, on time.

Counsel?

AUSA BERGSTROM: Your Honor, at this point the government rests.



MR. MURRELL: Your Honor, the defense rests.

THE COURT: All right. You just heard both sides have rested the case, which means all of the evidence is in the case right now. So all the evidence that you're going to hear and consider has already been provided to you. We're now going to go to the next phase, which is closing arguments. Again, this is not evidence. This is what the lawyers say. It's not evidence, but it's their opportunity to discuss with you what they think the evidence has been and the significance of that evidence. So it's a very important part, but it's not evidence in and of itself.

You may proceed.

AUSA BERGSTROM: Thank you, Your Honor. May I proceed, Your Honor?

[7] THE COURT: Please.

### CLOSING ARGUMENT

AUSA BERGSTROM: Ladies and gentlemen, good morning. Welcome back. I want to spend a few minutes today talking to you about the crime that the defendant is charged with today. He's charged with committing on January 9th and 18th – January 9th and 18th of 2022. He's charged with attempted enticement of a minor. He is not charged with traveling to meet a minor. He is not charged with lewd and lascivious battery of a minor. He is charged with an attempt to entice a person whom he believed to be a 14-year-old

girl. He's not charged with receiving child pornography. He's charged with asking a girl, attempting to convince a girl to come meet him for sex. That's the crime.

In a few moments I anticipate that the judge is going to instruct you on, among other things, the elements of the offense of attempted enticement of a minor. I anticipate that the judge will instruct you that the following are the elements of the offense that you must find. First, that the defendant knowingly intended to persuade, induce, or entice an individual to engage in sexual [8] activity. Second, that the defendant used a cellular telephone or the internet to do so. And third, at the time of the enticement, the defendant believed that such individual was less than 18 years old. If the sexual activity had occurred, one or more of the individuals engaging in the sexual activity could have been charged with a criminal offense under the laws of Florida. And fifth, that the defendant took a substantial step toward committing the offense.

As you heard yesterday, there is no dispute that the defendant used a cell phone and the internet to commit these acts. And there's no dispute that it was the defendant who was doing these communications. There's no dispute that at the time these chats were happening, the defendant believed that Shayla was a 14-year-old girl. You've seen and heard that Allan, while posing as Shayla, told the defendant that she was 14. You saw the photo of Allan that Shayla – that the photo of Shayla that Allan sent to the defendant that's contained on page 4 of Government's Exhibit 14,

which you have in front of you. That is clearly a 14-year-old girl.

There's also no dispute that the defendant – [9] that if the defendant had succeeded in meeting with Shayla, as he intended for the sex acts he proposed, his conduct would have violated Florida's lewd and lascivious battery statute, which you will also have included in your instructions.

So what does that leave us with? Intent and a substantial step. So let's talk about intent. What is the intent that matters for this offense? The conduct that this statute seeks to prohibit is the persuasion, inducement, or enticement of a minor. Not the sex act itself. Those are different statutes. Nowhere in the instructions that the judge is about to give you does it say that the government is required to prove that the defendant had the intent to engage in sexual activity, because that's not the crime. There are other statutes that deal with that scenario.

In this case, the only intent that matters is whether the defendant intended to convince Shayla to agree to meet with him for sexual activity. The crime is in the ask. It's right there in the name of the statute. Enticement of a minor. So did the defendant intend to entice Shayla to engage in sex acts with him on January 9th, 2022? Of course he did. How do we know? Let's start at the beginning [10] of the conversation.

The defendant responded to Shayla's post asking if anyone in the area wants to hang out. Doesn't say, Let's chat. Doesn't say, Anybody want to talk. It says,

Does anybody want to hang out? He's clearly trying to meet somebody. Once he connects with Shayla, the defendant wastes no time trying to set up a meeting. He says, What brings you to Whisper? Trying to meet new people. He introduces himself. Sends her a picture. He says, What do you like to do for fun? Shayla says, I like to smoke. The defendant immediately turns it sexual. Do you like to smoke and fuck? We know what's on the defendant's mind right now. Shayla didn't bring that up.

And he says, Maybe we can get together sometime. The defendant wants to meet this person for sex. Now, does his intent change at all when Shayla tells him that she's 14? No, it doesn't. What's the oldest you've fucked? Have you done this before? Are you actually going to go through with this? He wants to know how and where she's done this before. What are the logistics? How can we make this happen? And he asks her for a photo. Is she worth it? Is she worth the risk? Is he [11] attracted to this person? He says, You're very pretty. He's flirting with her now.

And he asks how are evening's going. He keeps the conversation going. He knows she's 14. He knows she wants to meet. She's open to meeting. He says, How's your evening going? She says, I'm at the movies. And he says, You should have invited me. We could have met in the back row. You don't even have to speculate what that means, because the defendant tells Shayla explicitly what he wants to do. It would have been fun to finger you during the movie. And then he gets even more explicit. And Shayla tells him to stop teasing her

unless he's really going to do this. And his response isn't, I just like to talk. I'm not really trying to meet. Let's just keep playing this dirty talk game.

He says, What if I don't stop? What if I actually will do it? Right there he's saying, if I will actually come meet you, will you have sex with me? That's enticement. On the next page he tells her, I'll definitely be your daddy. There's no hesitation. He's ready to go. He then sends her a photo of his erect penis. He tells her that it's begging to be stroked and sucked and for her to [12] have sex with it. He tells her that he'll be there in 30 minutes. He gives her a concrete ETA. He says, I'm on my way. Right there, the defendant has enticed Shayla, whom he believes to be a 14-year-old girl, to engage in sexual activity with him.

Remember I told you yesterday when I came up here the first time that the only reason this case is charged as an attempt is because no matter what the defendant did, he couldn't actually entice a real 14-year-old girl. That 14-year-old girl was at this point 16-year-old Allan and later 57-year-old Brian Ray. That's the only reason this is charged as an attempt.

So forget a substantial step. By the time the defendant sent Shayla his ETA on January 9th, he had already taken all the steps in his power to complete the offense. He started the conversation with sexual undertones. He asked Shayla about her sexual experience with older men. He all but invited himself to the theater to meet her. He describes the sex acts he wanted to perform with her. He gave her the nickname Baby Girl.

He told her she was pretty. He assured her that he was serious about the meeting and sent a photo of [13] himself to prove that he was real. Why did he do this? Because he wanted Shayla to agree to meet with him. That's attempted enticement of a minor.

So let talk about Count 2, the conversation that took place on January 18th, 2022. At this point Shayla's being controlled by Special Agent Ray within the confines of the personality and the physical appearance that had already been established by Allan as Shayla. You heard that about a week went by during which the defendant didn't message Shayla. Did the defendant's intent change during this week? Let's look at the chats. So much for never ghosting me. Sent at 2:09 p.m. on January 18th, 2022 by Special Agent Ray. The defendant responds two minutes later. And within five minutes, the defendant suggests meeting up again. At 2:14 p.m. on January 18th, 2022, Do you still want to see me? Special Agent Ray had not said, Hey, are we still good to meet? Do we still want to meet? No. The defendant brought that back up.

When Shayla asks the defendant what he wants from her, the defendant tells her, Take care of my needs, Baby Girl. Show Daddy how good you can suck dick. We know what the defendant wants to do with [14] Shayla. He's telling her what he wants to do. When Shayla expresses a fear that the defendant is pretending to someone he's not, that she's been catfished, that he's not legit, he sends her another selfie to prove that he's real. He offers to show her anything she wants to

see to convince her that he's real, because he is trying to convince her to meet him for sex.

Less than one hour after Special Agent Ray reached out to the defendant, he sends Shayla another photo of his erect penis and asks her if she wants it and what she wants to do with it and whether she wants to perform oral sex on him or whether she want to have vaginal sex with him. When Shayla expresses concerns about getting pregnant, he promised her, That's okay, that can just have oral sex. And when he asks her if he should come pick her up the following day. When Shayla says he can't come to the house, the defendant asks, Where would we meet? How can we make this happen? How can I make you comfortable to meet me? And they settle on a park.

Then they discuss Shayla's masturbation habits. And the defendant asks her, Do you want to know how Daddy's dick feels inside you? And again [15] promises her that they will just have oral sex at first which she expresses reservations about full-blown vaginal sex. He's trying to make her comfortable. He's trying to respect her boundaries so that she will meet him. Right there on page 87 of Government's Exhibit's 14, he tells you exactly what he intends to happen at this meeting. Maybe we can meet at the park tomorrow around noon and just chat. Make sure we click. See where things go. If we end up in my car fooling around, then okay. He's trying to ease her into it. He says, We'll just meet, we'll just talk, it's okay. We'll get comfortable and then we'll do all those things that we just talked about and then we'll be fine.

And he keeps going. He asks her what she wants him to do to her in response. Do you want me to stimulate you manually or do you want me to perform oral sex on you? What can I do for you in return? He doesn't ask – oh, h tells her exactly what to wear to make these sex acts easier for them to perform in his car. And he doesn't ask for a photo of her in a short skirt with no underwear because he already knows that Shayla is shy about sending photos and having had her nudes leaked before. Again, he's respecting her boundaries. [16] He's trying not to be too pushy. He tells her it would be so much better to see all that in person.

Again, the defendant at this point has done everything in his control to get Shayla to agree to this meeting. The only thing outside his control and the only reason that this count, like count 1, is charged as an attempt is because the defendant was not communicating with a real 14-year-old girl, as he believed. There is no reasonable doubt, based on the evidence that you've heard and seen in this case, that the defendant is guilty of Count 1 and Count 2 of the indictment. Thank you.

Thank you, Your Honor.

THE COURT: Mr. Metcalf, you may proceed.

MR. METCALF: Thank you, Your Honor.

### **CLOSING ARGUMENT**

MR. METCALF: Good morning. I haven't had much time to talk you in this trial, but I hope, first



of all, you did what the judge instructed and got home and forgot about this for the night and got some sleep. But I want to start by thanking you. I know that if I was able to pull down your masks as your number was called, some of you would not have been happy. You wouldn't have been happy [17] to have been chosen. But we like to thank you for being here. Covid did a number on the judicial system. It stopped what we're doing right now. It stopped justice from happening. It stopped defendants from defending themselves, prosecutors from prosecuting cases and trials. And I know it's tough to live through that and then come here and do this now, but we have to do it. This is important.

This is an important day for Zachary Spiegel. A very important day. The government has charged him with something terrible. But he's here defending himself because we don't agree with those charges. Mr. Murrell started out by telling you, this is a unique trial. This is a unique case because most of the facts are completely agreed upon. In fact, you had it re-enacted and read to you. It was stipulated to. What we don't agree on is the interpretation of those facts and that a crime was actually committed, because if we did, we wouldn't be here. That's the dispute. That's why we need you. That's why I thank you for being here.

Mr. Murrell gave you the theme to this case, that actions speak louder than words. And the [18] bottom line in this case is that there was no action. This was pure fantasy chat. That's all it was. That's all it was meant to be. The government did a good job of proving that Zachary Spiegel conducting vile, offensive,

distasteful chats. They proved that. But they didn't prove number 5 in your elements; that a substantial step was taken to further the crime. And ladies and gentlemen, I'm going to talk about it a lot. But that is why the government kept trying to set a meeting. Without the meeting, there is no intent.

And you will remember the most important moment of this trial, and that is when Agent Ray sat on that stand and admitted that the purpose of the meeting is to prove intent. It was a reluctant admission. It was a reluctant admission. But that is when reasonable doubt came roaring into this case. That is when we knew that there was doubt, that the government couldn't prove case. Because without that meeting, there is no intent.

This a equivalent, ladies and gentlemen, to those 900 numbers. You know, back in the old days before the internet, men, women, whoever it was, they did this by looking at magazines. There was no connectivity. You bought a magazine. And in [19] the back of those magazines were advertisements for 900 numbers. And men would call them and they'd be charged. And they would have these sexually fantasy chats. And it still goes on today. That's what this was. The offer of a meeting by Zachary Spiegel was to keep the chat going because he was being accused of catfishing. He was being accused that this wasn't real. So the specific offer to meet kept it going.

And let me tell you something. This all started because a young man who told you on the stand that he

had nothing better to do had been watching To Catch a Predator videos. And those videos all have one thing in common. And I hope that maybe most of you have seen them on television, these shows. There is a meeting. There is an arrest at the meeting. Even young Allan Strachan knew, I need to get him to meet, because then it leaves the world of fantasy and it becomes reality. If you don't have the meeting, it's not reality. It's fantasy. Allan Strachan, that young man who just watched these videos, knew that. And you know what? So did Agent Urgo and so did Agent Ray.

Why do we know that? Because the first thing [20] Agent Urgo did was he ran to go get evidence that there was a traffic stop. So let's talk about January 9th. Allan Strachan is sending -communicating on Whisper and it goes into text messaging. And he's trying to fulfill his fantasy. His fantasy, I'm going to catch a predator. I'm going to get him to come meet me at the theater. And he's actually there. He shows law enforcement his communications. Law enforcement looks at it. And what do they do? They don't even take down this young man's name. They don't even take down any of his information, and they let him walk away. He goes into the Wingstop because there wasn't reality yet. There was no meeting. There was nothing. It was just fantasy chat.

But what does young Allan do? He comes outside and goes, Wait, he's been pulled over. He was coming. Now the investigation begins because, wait, we might have evidence that someone's actually doing something. They rush and they go to the Florida Highway

Patrol, the St. Lucie County Sheriff, the Port St. Lucie Police, the Fort Pierce Police Department and pull records and cad sheets and try to find out, did this guy actually do this. Now they take Allan's name down. Now they take his [21] phone. Now they contact Homeland Security.

But guess what? It was still just fantasy. Zachary Spiegel never went anywhere. It was a ruse to keep the chat going. And he never intended to go anywhere. He never intended to induce, coerce any sexual act. He intended to chat for sexual gratification, like men do on 900 numbers. Why is this all important? And the government is going to downplay the fact that they went after those records. They're going to downplay that it was not that important. That it was just additional proof.

Well, the moment Agent Urgo went after those records and discovered that there weren't any, reasonable doubt entered this case because there was no travel. And I submit to you, the government has charged January 9th as a crime. If they believed, if they didn't have doubt and hesitation in their own case, they would have arrested Zachary Spiegel on January 9th. They did not. They needed a meeting. They know they need that meeting, because you don't catch a predator unless there is a predator. You don't do it. If it wasn't important, they wouldn't have kept it going. Because now they're telling you just that talk alone, even though he never left his house, that's [22] a crime.

Well, why not arrest him that night? If he's a true predator, you're going let him wander around for nine more days if he's a true predator? Not being surveilled. Make the arrest if there's a crime. They didn't because they knew they didn't have evidence of a real crime yet. And that is why Agent Ray got brought into the case in the first place. That is why they went to him, because he's the closer. He's a trained closer. He's going to get what he needs, and that is that meeting. And he was seductive. And he was trained. And Zachary Spiegel enjoyed that chat.

And let's talk about that. I'm not asking you to think good things about Zac Spiegel today. You may even think the guy needs to get some therapy. But ladies and gentlemen, he didn't commit a criminal act. He didn't. They wanted to prove that, but they can't. And that is why this went on for nine days and there wasn't an arrest the night of January 9th.

You know, we're running out of generations that lived without the internet. The internet has done wondrous things. It's made us efficient. That's where – we all depend upon it. Most of [23] you, I see, are at least in my age bracket. I'm a little older. You've lived without the internet. You remember what it was like. But it has desensitized us. It has made us able to talk about things in an anonymous forum without any consequence. And some people take it a little far. But I would tell you, we all have impure thoughts. We all do. And none of us would want it talked about in a big forum. But the ability to be anonymous and the ability to be loud and the ability to talk about depraved things, well,

that's what the internet has done. It's allowed it. And I'm not saying it's right. But it's desensitized some people. And Zachary Spiegel took part in some of that.

But he didn't go out to meet and have sex with a minor because if that was his intent, he would have done it. No predator would resist a young girl saying, I'm scared, I'm alone, come get me. Instead, he lied about it. I'm not going to that. Because guess what? He had his sexual gratification for that night and it terminated. The next day it starts back up. He has his sexual gratification. It terminates without a meeting. She suggests, I'll come to your house. I can come [24] pick you up. That never happened. Always an excuse why Zac wouldn't show up.

And then there's silence for seven days because Shayla, which is now Agent Uργο, said, I knew you were BS. I knew you were bullshit. Bye. Seven days goes by. Nothing. The government, because they knew we need that meeting, we need that meeting, reaches back out. They reach back out. They've got to get that meeting. And it fails for the fourth time. And I submit to you, that's when they make the arrest because they're not going to watch this unravel anymore than it already has. We can't get the meeting, we got to go with what we have. And what they have is vial texts and images, and Zac sending pictures of an erect penis. And that's going to get you mad. I guarantee it will.

But ladies and gentlemen, I want you to focus – and you're going to get them – these instructions. This is the key to the case. This is where the power goes to

you. Not the Court. Not the lawyers. To you. It's your decision to make. And I need you, I'm asking you, I'm begging you, to read these instructions. Because number 5 says that the government must prove beyond a [25] reasonable doubt without hesitation that Zachary took a substantial step towards committing the offense. And the offense they're reference is the sexual activity, that had it occurred, it would have been a crime, a lewd battery. He had to take a substantial step towards committing that offense. That is getting in a car, driving. I mean, the government even told you they asked him to bring wine cooler because, boy, if he shows up with wine coolers and in a car, well, we know his intent. And Agent Ray said, That's why we do it, to prove intent. The moment he told you that, what he really said is, we haven't proven intent. It didn't happen.

You're being asked to render a verdict on vile texts, on graphic images. You were read these texts out loud. I've seen that. It happened. You know, it was reenacted for you. You got to see it all. No one has hidden a thing from you. We invited you to look at it. We stipulated to you, because we know you will make a just decision in this case and hold the government to its burden of proof.

Let's talk about that. Ladies and gentlemen, in any case – any criminal case, you're going to [26] be given instructions about – general instructions, we call them. The first is the presumption of innocence. These aren't just fancy words that cloak people. This is what makes us the United States. This is what makes us the

United States, is that when you walk into a courtroom accused by – of something by your government, you are presumed to be innocent until they meet every single element beyond a reasonable doubt.

And in this case, actions speak louder than words. There were no actions. Zachary Spiegel sits there presumed innocent. You must believe that. That is what we stand for. That's what we have fought for for hundreds of years. That's what we're about. And that reasonable doubt, that burden that they must overcome, that's the highest burden in all the judicial systems. That is the ultimate burden. And you will be told that proof beyond a reasonable doubt must be so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. That you would not – you would act without hesitation without any doubt. You must feel that to render a guilty verdict in this case. You must believe that a substantial step was taken, [27] that he had intent.

And I just don't know how you do that when Agent Ray admitted that the proof of intent is the meeting and it never occurred. Had it occurred, they would have charged him with others charges. The government just admitted to you. We would have charged him with travelling to meet a minor. That doesn't mean it's not important. They admitted it's important. And their admission is on the stand in the form of Agent Ray admitting it and their actions going after it four times. But every time Zachary Spiegel found a reason not to do it. Because in his world, he didn't care who he was talking to. He just knew someone was on the other end, another end user, another anonymous person that



would engage in this talk with him. And when he sexually gratified himself, the conversation ended and he didn't meet anybody. And the government wants you to convict him for that, despite knowing that they must prove that a substantial step was taken.

You may not like Zac, but another instruction you're going to get is about prejudice. You must not be influenced by either sympathy or prejudice against the defendant or the government. Again, [28] you may not like it. You may hate what Zac was doing. You may hate it, but you can't use that. That's not enough. You must find that he took a substantial step and had intent to induce, entice, and lure this supposed 14-year-old.

Finally, in the instructions you'll be told that you must not consider the fact that Zachary Spiegel did not take the stand. You must not use that against him. I've been doing this a long time. That's very common. When the government puts on a case and they march forward and the case unravels, or there's doubt that they didn't see coming, you will never see a defendant testify because they have no burden of proof. We don't have to prove anything. The proof and the doubt that exists in this case was created by the government's own witnesses and by the fact that Zachary never met anybody. That's the doubt that was created. He didn't have to prove, and he has no reason to sit up there and allow trained attorneys to cross-examine him about anything. He has nothing to tell you. You've heard his words. You've heard what he was doing. You've seen it. And you've seen that actions speak louder than words. And there were no actions.

[29] Please, please look at those elements, those five elements, and ask yourselves, why did the United States government add element number 5? If that – he must have taken a substantial step towards committing the offense. Why add that if not to protect people from stupid speech, from fantasy, from this makes it real. When you take a substantial step, we now know what's in that person's mind. We now know what's in his mind. That's why they wrote it in there. He didn't take the substantial step. He had no, in Agent Ray's word, intent. They can't prove that. And that's why your government wrote the statute the way it did, your lawmakers.

Zachary Spiegel was interested in one thing, and that was talking about sex. And he didn't care who was listening. And he's going to rectify that. I hope. But that's not a crime. It's not a crime. We may not like it, but it's not a crime. These were not meetings that he – also, I anticipate the government may try to argue, well – well, he was going to try to make the meetings, he just always had something pop up. No. We know they were just bold-faced lies why he didn't pop up. The last meeting, this one on January 18th, where the [30] government reinitiated contact because, as Agent Ray admitted, he was told, You need to do this, we got to get this meeting.

Zachary told a good whopper. I'm going to be down in Hollywood. I'm down there. I'm in bed laid up. None of that was true. He pulled up. They saw him pull up. He was in his Jeep. He had been in his car. He had never been to Hollywood. That's just sheerly

impossible. But he had to come up with an excuse so maybe the chat, his partner, would chat it with him again. Again, the meeting was essential. Has to be shown.

Ladies and gentlemen, the government is very powerful. And the strength of their case is this technology and showing you those texts and invoking your passion, getting you upset. That's the strength of their case today. It's not that a substantial step was taken. That certainly isn't the strength of their case. These graphics are hard to look at and we warned of that to begin with. But that's all they were. Sexual fantasies to gratify Zachary Spiegel. There was no crime here. Ladies and gentlemen, I want you to please again consider this case carefully. I want you to read every element. It's a very important day for [31] Mr. Spiegel. But I want you to hold the government to the burden that they agreed. They agreed to it when they walked in this door and when they indicted Mr. Spiegel, when they brought these charges. They agreed to that burden. To prove each and every element without hesitation beyond a reasonable doubt. And if you're hesitant, that is doubt and you can't convict this man with doubt.

I'm asking you to render a verdict of not guilty in this case because the government has created their own doubt through their actions, through their admissions, and through their own testimony on the stand, and the fact that what they were after, they never got. They never got that meeting. They never proved intent. They never proved a substantial step. Thank you.

THE COURT: Thank you.

MR. HOOVER: May I proceed, Your Honor?

THE COURT: Please.

**CLOSING ARGUMENT (REBUTTAL)**

MR. HOOVER: I am aware that I'm primarily what remains between you and the case being in your hands and in your eventual freedom, so I'm going to try to be brief. As defense counsel said, most of [32] what we have gone over over the course of this trial has been agreed. And I especially agree with the first thing that defense counsel started off with, which is thank you. He's exactly right. Without you, without this process, without this system, the wheels of justice cease to turn. And I know that it was a burden on you to take a couple days out of your personal lives, your work lives, coming here and sit with masks on to be a part of this. But as defense counsel said, it's an important day. It's an important today day for everyone involved. And I truly thank you on behalf of everyone here.

The first thing that I want to remind everyone is what the judge told us previously, which is, what I say is not evidence. What I say is not the law in this case. Please remember that. When you go back into the deliberation room, what I say, what the lawyers say, is not fact. It is not written in red. What we rely on in this courtroom is what comes from that witness stand and what you see in the form of exhibits. So when the

lawyers are summarizing or paraphrasing the evidence, please remember, go back to what was said, your recollection of what the witnesses testified to and [33] what the words on the page say.

Defense counsel is also correct in that this is somewhat unique in that almost the entirety of the offense is on paper for us to look at. We can go right back to the communications as they originally occurred. And we're going to do that in a second, but I want to touch on a couple things. Defense counsel said that, you know, you look at actions and not the words. Excuse me. Something along the lines that this was all words but not action. And I don't remember the exact phrasing he said.

First, I want to point out words can absolutely be illegal. You can't threaten to kill somebody. You can't go into a crowded movie theater and shout fire and cause a stampede. Words can absolutely be criminal and endanger people. And we had a lot of words in this case, but we also had actions. Sending lewd photographs to a person that the defendant believed to be 14, that is an action. Taking those photographs is an action. And words themselves can be actions. Called to actions. Causing another person to take an action. So we have a lot more here than, quote/unquote, just words, but it's important to remember that [34] words can absolutely be criminal.

The first thing I want to talk about is some of the things that defense counsel said, that the travel is the intent of the crime. In fact, he said that Special Agent

Ray admitted the proof of intent is the travel. First and foremost, Special Agent Ray never said that. Is that proof of intent? Sure. Absolutely. And you remember the moment that Special Agent Uργο was on the stand and asked about, well, the travel, the meeting is the proof of the intent. And Special Agent Uργο correctly said, it's additional proof, sure. Absolutely. Had the defendant actually gotten in his car and driven to a meeting, would that be a crime? Absolutely. A serious crime? You bet. A different crime. Not this crime. It would be a different crime, but that's not the one he's charged with. The one he's charged with is attempting to entice a minor, not traveling to meet a minor, not attempting to sexually batter a minor. Not those crimes. The crimes that he's here for today is attempting to entice a minor.

And I submit that much of what the defense counsel just argued about was a defense for a crime that the defendant is not charged with. So we have [35] to stay latched to the crime that the defendant is charged with and the elements that the government has to prove to establish that crime.

Fantasy versus reality. Defense counsel said several times this was fantasy, it wasn't real. Except for everything that the defendant said and sent was real. It was his name. It was his picture. He talked about his kids, all of that was real. That was him. And I'm not going to go through the 110 pages of texts again. I'm going to point a couple things out. He repeatedly attempted to assure the person on the other end of that

phone that he's real, he's legit, that he's here for her. I do want to – if I can get the ELMO please.

I want to point out one thing. It is on – if you have your binders, it's on page – we're going to start at page 103. This has been discussed multiple times, so I want to talk about it briefly. This is the physical therapy meeting. This is one example about why it is important to rely on the evidence and not on what the lawyers say. Defense counsel argued, and I believe during cross-examination yesterday, they pointed it out or at least made the assertion that it would have been impossible for the defendant to have actually gone [36] to this physical therapy meeting. It was a lie. It was made up. It's fantasy. Because the date of the search warrant, law enforcement saw him pull in. And the timing, he couldn't have made it to Hollywood and back in that time. There's one problem with that. On January 19th, the defendant says, I forgot I have physical therapy today. Oh, my God. When? The defendant says, it's at 1:00 p.m. in Hollywood. That is on January 19th. That message is at 9:51 a.m. It's at 1 p.m. in Hollywood.

The search warrant is the next day, not that day. The next day. Is it possible that the defendant drove to Hollywood for a 1:00 p.m. appointment the day before the search warrant, when law enforcement saw him pull back in the parking lot? Absolutely. Of course. Does it matter? No. The crime has already occurred.

Defense counsel also asked, why didn't they arrest him on January 9th when Allan approached law enforcement and said, Hey, he's traveling over here, he

just got stopped by the police. Why didn't they go arrest him right then? Well, the reason is they didn't identify him for a few more days. It took a while for them to figure out who [37] it was. And then, yes, there was a week that went by. And defense counsel asks, why didn't law enforcement go and arrest him right then, as soon as they found out who he was? You heard Special Agent Ray tell you several reasons.

One, first they're doing a thorough investigation. That's to be credited. Second, you heard him say that executing a search warrant and an arrest in somebody's home is just about the most dangerous thing that they do, especially at a place where there are children. And they knew that at the time. And he told you. That's about the most dangerous thing we could do. Why would law enforcement want to get him out of that environment and meet him in a controlled public place? There are many reasons. But again, folks, for our purposes, it doesn't matter. The crime had already occurred. The defendant is not charged with travelling to meet a minor. It already – he already committed the offense before this happened.

Why didn't the defendant show up to the meeting? Who knows? Now, remember, there was really only one meeting that was actually set in stone and the defendant said he was on his way and didn't cancel ahead of time, and that was the first [38] day. Why didn't he go? Who knows? Maybe he had something come up with his kids. Maybe his wife was around. Who knows? But the bottom line is, it doesn't matter. The crime had



already occurred. Now, how do we know that the crime had already occurred?

Again, I'm going to remind you that what I say is not evidence. What defense counsel says is not evidence. What we say also is not the law. The law comes from Judge Huck. And shortly, Judge Huck is going to instruct you on what the law is. I don't get to change that. The law is what it is. It was decided by people who are not me, who are not prosecutors. This is what we are required to follow. So let's look at the law. I'm not paraphrasing it. I'm not summarizing it. This is exactly what you're going to get shortly.

What you see here are these five elements. The government is required to prove beyond a reasonable doubt each one of those elements in order for you to find the defendant guilty. So what do we have to establish? These five things are the things that we have to prove and nothing more. The law is if a person does these five things, they are guilty. I'm going to read it to [39] you. The defendant can be found guilty of this crime only if all of the following facts are proved beyond a reasonable doubt. Fortunately, we can take care of three of those. The part you've heard from both sides. Everyone agrees the defendant used a cell phone or the internet in the course of this crime.

The third element, at the time the defendant believed that such individual was less than 18, we're all in agreement on that. Fourth, if the sexual activity had occurred, one or more of the individuals engaging in sexual activity could have been charged with a criminal

offense under the law of Florida. Everybody agrees. If the actual sexual activity had taken place, the one he was enticing her to commit, that sexual activity, which is a person over 18 having sexual intercourse or oral sex or digital penetration, any of those acts that he was trying to get her to commit, if those had actually taken place, that would be an offense because she's 14.

So the parts where we disagree are the first and fifth element. The first is that the defendant knowingly intended to persuade, induce, or entice an individual to engage in sexual activity. The [40] defendant knowingly intended to persuade, induce, or entice an individual to engage in sexual activity. What does that not say? It does not say that the defendant knowingly intended another person to have sex with him or that he intended to have sex with that person or that he intended to travel to meet that person. The element is that he intended to persuade or induce or entice a 14-year-old to engage in sexual activity. The persuasion is the crime. The enticement is the crime. Not the traveling. That's the part that is the crime.

Had the defendant got in the car and traveled to the meeting, the crime had already been committed. He would just be committing an additional crime. You can read the chats. He asked her several times about meeting up. They discussed where to do it. He said in pretty direct and vile terms exactly what he wanted her to do. He was enticing this person.

Fifth, the defendant took a substantial step towards committing the offense. Now, we also have a

little bit of help here because we have further instruction from the Court about what that means. And I'm going to read it here. I'm going to start [41] right here. Also, it is not necessary for the government to prove that the individual was actually persuaded, induced, or enticed to engage in sexual activity. But it is necessary for the government to prove that the defendant intended to cause agreement on the part of the individual to engage in some form of unlawful sexual activity and knowingly took some action that was a substantial step toward causing agreement on the part of the individual to engage in some form of unlawful sexual activity.

A substantial step is an important action leading up to committing an offense, not just an inconsequential act, it must be more than simply preparing. It must be an act that would normally result in the persuasion, inducement, or enticement. Knowingly took some action that was a substantial step towards causing agreement on the part of the individual to engage in some form of unlawful sexual activity. Defense counsel stated that we have to show a substantial step towards sexual activity. No. Again, I can't be clearer. We are not charging him with attempting to sexually batter a 14-year-old. He's charged with attempting to entice the 14-year-old. The substantial step [42] has to be towards getting that person, that 14-year-old to agree to meet. That's the substantial step.

What did he do? What are the substantial steps that he took towards getting that 14-year-old to agreeing to meet him? Sending the lewd photographs.

Asking where they can meet up. You can read through. I'm not going to do it again. 110 messages. He's trying to make her feel comfortable with him. He repeatedly asks about, maybe I should pick you up from school. Can we do this? Can we do that? The substantial steps are all in there. He doesn't have to actually travel to be there. Again, had he done that, yeah, it would have been crime. A different crime. Not this one.

These are the elements that he the government has to prove. And it makes sense, right? Doesn't it make sense? Isn't the law common sense in this case? We don't want these conversations to occur between grown folks and 14-year-olds. We don't want these conversations to occur. It's incredibly important when considering the facts of this case to remember the evidence that actually came in either in the form of exhibits or through the [43] testimony of the witnesses. And when considering the law, what the government is required to prove, don't take my word for it. Go by what the judge provides you as the law, because that is what we're all required to follow. All of us have come in here saying, we will follow the law. And that is the law.

Soon the case is going to be in your hands. Please take the information that you've learned here, the law that you have. Don't leave it in here. Take it back there with you. Consider it. Go over it. Because at this point, it is in your hands. When you review the facts of this case and review the law, there is only one verdict that is supported by the facts, supported by the evidence, and consistent with the law of the United States. And

that is the verdict that the United States is asking you to render in this case. Guilty. Thank you.

THE COURT: All right. Ladies and gentlemen, before I instruct you on the law to be applied to the facts you find, let's stand up, stretch out a little bit. Shake out the cobwebs, whatever. And then we'll get to the instructions.

[44] **INSTRUCTIONS**

THE COURT: Members of the jury, it's now my duty – we're going to have the instructions on your monitors so you can follow along as I discuss the instructions of the law. You also have a copy of these instructions with you to bring to the deliberations back in the jury room. So take a little comfort in that.

It's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions, you will then go to the jury room and begin your discussions, what we call your deliberations. You must decide whether the government has proved the specific facts necessary to find the defendant guilty beyond a reasonable doubt. Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against the defendant or the government. You must follow the law as I explain it even if you do not agree with the law. And you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a [45] defendant isn't evidence of guilt. The law presumes every defendant is innocent. The defendant does not have to prove his innocence or produce any evidence at all. The government's prove guilty on a reasonable doubt. If it fails to do so, you must the defendant not guilty. Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or against the defendant or the government.

I'll skip the next paragraph. The indictment or formal charge –

THE COURTROOM DEPUTY: Judge, are you on page 2?

THE COURT: I must have the – skip the next paragraph. Okay.

MR. MURRELL: Judge.

THE COURT: I have the former version that had some repetition in it.

THE COURTROOM DEPUTY: Judge, let me give you a clean copy.

THE COURT: I think from here on out is fine.

THE COURTROOM DEPUTY: I have an extra copy.

MR. MURRELL: Judge, may we approach? I apologize for interrupting but –

[46] THE COURT: What's up?

MR. MURRELL: You missed a part there and I don't know if –

THE COURT: Okay. I apologize.

(Thereupon, there was a side-bar conference outside the presence and hearing of the jury.)

MR. MURRELL: Maybe I've got a different copy. Don't tell me I picked up the wrong – it's further down. Judge, I must have picked up an earlier copy.

THE COURT: Where is it in the current copy?

AUSA BERGSTROM: Judge, you're on page 2. The defendant.

THE COURT: Yeah.

MR. MURRELL: I'm sorry. Show me again.

AUSA BERGSTROM: It's right here in the middle of the second – it's the third paragraph.

THE COURT: Didn't I say that?

MR. MURRELL: You did not say it here.

THE COURT: I didn't?

MR. MURRELL: No, sir.

AUSA BERGSTROM: We have correct –

THE COURT: I apologize. I have to go back because I left out something. There's been so many variations.

[47] (Thereupon, there was a side-bar conference outside the presence and hearing of the jury.)

(Thereupon, the side-bar conference was concluded.)

THE COURT: I'm going to go back with regard to the indictment or the formal charge.

The indictment or formal charge against the defendant isn't evidence of guilt. The law presumes every defendant is innocent. The defendant does not have to prove his innocence or produce any evidence at all. A defendant does not have to testify. And if the defendant closes not to testify, you cannot consider that in any way while making your decision. The government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the defendant not guilty. The government's burden of proof is heavy, but it doesn't have to prove a defendant's guilt beyond all possible doubt. The government's proof only has to exclude any reasonable doubt concerning the defendant's guilt.

A reasonable doubt is a real doubt based on your reason and common sense after you've carefully and impartially considered all of the evidence in this case. Proof beyond a reasonable doubt is proof so convincing that you would be willing to [48] rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the defendant has



been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As I said before, you must consider only the evidence that I have admitted in this case. Evidence includes the testimony of witnesses and exhibits admitted. But anything the lawyers say is not evidence and is not binding upon you. And you shouldn't assume from anything that I've said that I have any opinion about any factual issue in this case. Except for my instructions on the law, you should disregard anything that I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters. In considering the evidence, you may use reason and common sense to make deductions and reach conclusions. You should be concerned about whether the evidence is direct evidence or circumstantial evidence. Direct evidence is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof [49] of a chain of facts and circumstances that tend to prove or disprove a fact. There is no legal difference in the weight you may give to either direct or circumstantial evidence.

When I say you must consider all of the evidence, I do not mean you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say and how important that testimony was. In making that decision, you may believe or disbelieve any witness in whole or in part.

And the number of witnesses testifying concerning a particular point doesn't necessarily matter. To decide whether you believe any witness, I suggest that you ask yourself a few questions.

Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and the ability to actively observe the things he or she testified about? Did the witness appear to understand the question clearly and answer them directly? Did the witness' testimony differ from [50] other testimony or other witnesses? You should also ask yourselves whether there was evidence that a witness testified falsely about an important fact, and ask whether there was evidence that at some other time a witness said or did something or didn't say or do something that was different from the testimony the witness gave during the trial.

But keep in mind that a simple mistake doesn't necessarily mean that the witness was not telling the truth as she or she remembers it. People naturally tend to forget some things or remember them inaccurately. So if a witness misstated something, you must decide whether it was because of an innocent lapse of memory or an intentional deception. The significance of your decision may depend upon whether the misstatement was about an important fact or about an unimportant detail.

Now, you've been permitted to take notes during the trial. And I know you have notebooks and most of you, perhaps all of you, have taken advantage of the opportunity to take notes. You must use your notes only as a memory aid during your deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be [51] unduly influenced by the notes of other jurors. I emphasize, the notes are not entitled to any greater weight than your memories or impressions about the testimony.

The indictment charges two separate crimes called counts against the defendant. Each count has a number. You've been given a copy of the indictment to refer to during your deliberations. Count 1, Count 2 each charge the defendant with attempted enticement of a minor to engage in sexual activity. I will explain the law governing those offenses in a moment. When a statute specifies multiple alternative ways in which an offense may be committed, the indictment may allege multiple ways in the conjunctive, that is, by using the word "and." If only one of the alternate methods, alternatives, is proved beyond a reasonable doubt, that is sufficient for conviction so long as you agree unanimously as to that alternate – or alternative.

It's a federal crime for anyone using any facility or means of interstate or foreign commerce, including cellular telephone or internet, to attempt to persuade, induce, or entice a minor to engage in any sexual activity for which any [52] person could be charged with a criminal offense even if the attempt fails. The defendant's

been charged in Counts 1 and 2 with attempting to commit the offense of enticement of a minor. The defendant can be found guilty of this crime only if all of the following facts are proved beyond a reasonable doubt:

1) the defendant knowingly intended to persuade, induce, or entice an individual to engage in sexual activity as charged. 2) the defendant used a cellular telephone or the internet to do so. 3) at the time the defendant believed that such individual was less than 18 years old. 4) if the sexual activity had occurred, one or more of the individuals engaging in the sexual activity could have been charged with the criminal offense under the law – of the law of Florida. And finally, the defendant took a substantial step towards committing the offense.

It is not necessary for the government to prove that the intended victim was, in fact, less than 18 years of age, but it is necessary for the government to prove that the defendant believed such individual to be under that age. Also, it is not necessary for the government to prove that the [53] individual was actually persuaded, induced, or enticed to engage in sexual activity. But it is necessary for the government to prove that the defendant intended to cause agreement on the part of the individual to engage in some form of unlawful sexual activity and knowingly took some action that was a substantial step towards causing agreement on the part of the individual to engage in some form of unlawful sexual activity.

A substantial step is an important action leading up to the committing an offense, not just an inconsequential act. It must be more than simply preparing. It must be an act that would normally result in the persuasion, inducement, or enticement. So the government's proved that if the intended sexual activity had occurred, one or more of the individual engaging in the sexual activity could have been charged with a criminal offense under the laws of Florida. As a matter of law, lewd and lascivious behavior under Florida law is defined in chapter – in Florida Statute 800.04 sub part 4 as follows:

A person commits lewd and lascivious battery by 1) engaging in sexual activity with a person 12 years of age or older but less than 16 years of [54] age. Under Florida law, sexual activity means the oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object. However, sexual activity does not include an act done for a bona fide medical purpose. As used in this instruction, induce means to stimulate the occurrence of or to cause.

A cellular telephone and internet are facilities of interstate commerce. You'll see that the indictment charged that the crime was committed on or about certain dates. The defendant doesn't have to prove that he events occurred on an exact date. The defendant (sic) only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged. The word knowingly –

AUSA BERGSTROM: Your Honor, I'm sorry to interrupt you. I might have misheard you, but I believe you said the defendant only has to prove. The instruction reads the government.

THE COURT: I did. Let me go back.

The government only has to prove beyond a reasonable doubt that the crime was committed on an a date reasonably close to the date alleged. Thank [55] you. The word knowingly means that the act was done voluntarily and intentionally and not because of a mistake or by accident.

Your verdict, whether guilty or not guilty, must be unanimous; in other words, you must all agree. Your deliberations will be secret and you'll never have to explain your verdict to anyone. Each of you must decide the case for yourself but only after fully considering the evidence with the other jurors. So you must discuss this case with one another and try to reach an agreement. While discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest belief just because others think differently or because you simply want to get the case over with.

Remember that in a very real way, you are the judges here, judges of the facts. Your only interest is to seek the truth from the evidence in the case. Each count in the indictment charges a separate crime. You must consider each crime and the evidence relating to it separately. If you find the defendant guilty or not

guilty on one crime – of one crime, that must not affect your [56] verdict for any other crime. I caution you that the defendant is on trial only for the specific crimes charged in the indictment. You are here to determine from the evidence in this case whether the defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether the defendant is guilty. If you find the defendant guilty, the punishment is for the judge alone to decide later. When you go to the jury room, choose one of your members to act as your foreperson. The foreperson will direct your deliberations and speak for you in court. You will have a verdict form which has been prepared for your convenience. It's pretty straightforward. I would suggest the person – after you select a foreperson, look at the verdict form and see what those questions are.

You'll take your verdict form with you to the jury room. You also have access to the exhibits, again, these jury instructions and a copy of the indictment. Take all of those with yourself to the jury room. And when you all agree on a verdict, your foreperson will fill out the verdict form, sign it and date it and carry it back to the [57] courtroom. And then you'll return to the courtroom to announce the verdict.

If you wish to communicate with me at any time, please write down your message or your question and give it to the Court security officer who will be waiting outside the jury room. He will then bring it to me and I will respond as promptly as possible, either in writing

or bringing you back into the courtroom where I can talk to you directly in the courtroom. But I caution you, members of the jury, if you send back a question or a note, do not tell us how many jurors have voted one way or the other at that time.

All right. Now, as I say, you'll have all the evidence as soon as we finish some of it. Provide it to you back in the jury room, a copy of the jury instructions, a copy of the indictment and a copy of the verdict form. You may now retire to the jury room. I'm going to ask Ms. Colozzo and Ms. Pena to remain seated, please. The rest of you go back to the jury room.

(Thereupon, the jury exited the courtroom.)

THE COURT: Have a seat. You haven't done anything wrong. In a criminal case in federal court only 12 jurors actually deliberate and render [58] a verdict. If you were counting, you noticed you were the 13th and 14th jurors. You're what we call alternate jurors. And we always have alternate jurors because during a trial, things happen. Sometimes when one of the first 12 jurors becomes ill, conflict arises, a number of things can happen which require that juror to leave the jury. And then you would take that juror's place. That didn't happen in this case. So I don't know how you feel about sitting here for almost a day and a half listening to the evidence and not having the opportunity to decide the verdict, but it's very important we have alternates because you can imagine how many times we have to call an alternate.



So even though you're not going to deliberate, your service here was greatly appreciated. As a small token of our appreciation, we have these certificates. And it's only a piece of paper, but if you've seen as many jury trials as I have, you really become a big fan of our system. The fact that we have chosen people like yourselves, peers, whether it's criminal or civil cases, to come in and decide the case, be the judge of the facts in this case. It really is unique in the world. Some [59] other countries have jury trials, but not to the extent that we have jury trials. Much, much more limited.

So anyway, a small token of our appreciation is these certificates. I hope some day maybe you'll find someplace among your other documents and remember back in March of 2022 your experience here. I hope you find it was a positive one. I'm going to ask you to do a couple of things before you leave. One is leave your contact information, if you have a cell phone, with the clerk so we can contact you in the unlikely event we have to call you back. And that may occur. So do not discuss this case for a reasonable period of time. It's just in the event that we do have to call you back, in which case you would begin deliberations from the beginning as the other would. Thank you.

JUROR: So should we call the number that was given to us with our juror number?

THE COURTROOM DEPUTY: Next week, yes. You're still on duty.

JUROR: Like up until next week?

THE COURTROOM DEPUTY: Yes, you're on duty, so we do call every day.

THE COURT: I don't know what the process is.

[60] THE COURTROOM DEPUTY: Okay.

THE COURT: That you all. Have a good day.

THE COURTROOM DEPUTY: You can leave your books there. And do you need anything from the jury room, anything personal?

(Thereupon, the jurors left the room.)

THE COURT: Thank you for picking it up. I've got so many copies of these jury instructions, I picked up the wrong version of it.

MR. MURRELL: Well, I was afraid that's what I had done, but I'm glad it was you and not me.

THE COURT: You're sharper than I am. Have a seat. I'm going to ask the parties to get together all the evidence, and then make sure it's all the evidence that was admitted, nothing more. And as I said, we're going to give them a copy of the instructions, verdict form. Send that in a minute.

Do you have a clean copy of the jury instructions? I want to make sure – I can probably give them mine.

(Thereupon, there was a brief discussion off the record.)

THE COURT: Counsel, do you care whether the forfeiture counts in that or not, in the indictment? It goes back?

[61] AUSA BERGSTROM: I think we have an agreement as to the cell phone.

THE COURT: But anybody want us to redact the indictment part?

MR. MURRELL: It might save some confusion.

THE COURT: Okay. We'll do that.

(Thereupon, there was a brief discussion off the record.)

THE COURT: Do you have the exhibits?

AUSA BERGSTROM: We have the exhibits. They're in agreement. They're in order.

THE COURT: Just leave them there.

THE COURTROOM DEPUTY: I will take out the forfeiture allegations. I'll be right back.

(Thereupon, there was a brief pause.)

THE COURT: I think it's appropriate to comment about this case and the way it was handled by the lawyers. I must say I was impressed by both sides. I think both sides worked extremely well represented by legal counsel. I really do. Both the government and Mr. Spiegel. I'm very impressed with the way the lawyers represented their clients in a very

competent – extremely competent way, also in a very professional way, which makes my job a lot easier. And I appreciate that. And I think [62] both sides – you know, it's in the jury's hands right now, both sides. You know, good representation. I appreciate that and it reflects on our profession. So I'd love to have you try a case before me again.

MR. MURRELL: Thank you, Judge.

AUSA BERGSTROM: Thank you, Judge.

THE COURTROOM DEPUTY: Where is the evidence? Did it go back already? I took out the forfeiture. You want to look at the indictment.

AUSA BERGSTROM: That's fine.

THE COURT: Now, where is your office?

AUSA BERGSTROM: Just downstairs.

THE COURT: Oh, you're in here. That's right.

(Thereupon, there was a brief discussion off the record.)

MR. MURRELL: I assume they're going to deliberate through lunch?

THE COURT: I assume that'll provide lunch. Miami, they provide lunch. I assume that's the case here. Sometimes I send them out for lunch and tell them not to discuss it just because they need to get outside. But I don't think that's the case here. Okay. Thank you again for a really good trial.

[63] AUSA BERGSTROM: Thank you, Your Honor.

MR. MURRELL: Thank you, Your Honor.

(Thereupon, a brief recess was taken.)

THE COURT: You've seen the note? We're back in session. Counsel?

MR. METCALF: Yes, sir, we have.

THE COURT: Okay. Your client's not here. Is he going to be here?

MR. METCALF: No, sir. I called him. He's on his way. I mean, this seems to be a legal issue.

THE COURT: You have no problem proceeding with that?

MR. METCALF: No problem.

THE COURT: I didn't think so. Question: Please provide a definition of entice.

Defense, do you have a suggestion?

MR. METCALF: Judge, we were all – we're quickly looking at our cellular devices and there's quite a range of definitions there. I think our inclination is to ask them to rely on their common understanding of the word.

THE COURT: Government?

AUSA BERGSTROM: Your Honor, I'd be interested to see what the Eleventh Circuit has used as

a definition. I don't think it's come up before. I [64] know that they have used in the past the common definition of inducement, the common definition of persuasion, but I don't know that there's been a case that deals with the common definition of enticement.

THE COURT: It's not one that the pattern instructions define. And I coming over here when I was walking back, I was thinking that there's been a suggestion, better to say no, there is no legal – no specific legal definition. Use your common sense and understanding of the definition that's – or the meaning – or the meaning of that term, or just say – even briefer than that, say, rather than provide you with a definition, we ask you to rely on your common understanding of the meaning of that term.

MR. METCALF: That would be fine with us, Judge.

THE COURT: Okay.

THE COURTROOM DEPUTY: You want to say that again, Judge?

THE COURT: Rather than providing you with a definition of the term, quote, entice, closed quote, the Court suggests that you rely on your common understanding of the meaning of that word. [65] Is that all right?

MR. METCALF: Yes, sir.

THE COURT: Defense?

MR. METCALF: Yes, sir.

THE COURT: Government?

AUSA BERGSTROM: That's fine, Your Honor. Your Honor, just before the jury comes in, just a logistical question. Does the Court know what they're going to do as far as juror lunch?

THE COURT: Yes.

AUSA BERGSTROM: Are they going to be here eating?

THE COURT: Yes. I think they've already put in the order.

You've put the order to the restaurant?

THE COURTROOM DEPUTY: Yes.

THE COURT: It's in the works.

AUSA BERGSTROM: Okay. Thank you.

THE COURT: Okay. Can you send this back?

THE COURTROOM DEPUTY: I usually send them both back to the jury unless you want different.

THE COURT: No, that's fine.

THE COURTROOM DEPUTY: So this is okay to go back? Okay.

THE COURT: I talked to Judge Cannon and she [66] is pretty much available all this afternoon and tomorrow, if I head south, to take the verdict. As I said,

I'll be available by telephone if there are any questions that need my participation. I think you all agreed to that and proceeded, correct?

MR. METCALF: We did. Yes, sir.

AUSA BERGSTROM: That's fine, Your Honor.

THE COURT: All right. We're in recess. And if there's nothing else, we'll in recess.

(Thereupon, a brief recess was taken.)

THE COURT: Okay. Everybody is back. I understand the defendant is not here, but you waive his appearance?

MR. METCALF: Yes, Judge.

THE COURT: All right. We got a second question from the jury. Quote: We would like to see Title 18, United States Code Section 2422, subsection B. I want to hear from the defendant first.

MR. METCALF: Judge, I'm frankly at a loss. I've never seen this request ever. Isn't it contained in the instructions verbatim?

THE COURT: Do you have a copy of the instructions?

THE COURT REPORTER: Here, Judge.

[67] AUSA BERGSTROM: Your Honor, the relevant portion begins on page 4.



THE COURT: I'm trying to see where it's even cited. Oh, it's in the indictment.

MR. METCALF: Yes, sir.

THE COURT: It's not in the jury instructions themselves. See, I don't want to do that for a number of reasons, not the least of which has the sentencing there.

MR. METCALF: Right.

AUSA BERGSTROM: Your Honor, I think it would be a fair response to say that the law that the jurors are to apply in this case are contained wholly and completely in the Court's instructions to the jury.

MR. METCALF: We concur in that.

THE COURT: Maybe we should say – use that exact language, but say including the relevant provisions of Section 2422. Okay?

AUSA BERGSTROM: Your Honor, yeah. What I said was the law that the jurors are to apply in this case is contained wholly and completely in the Court's instructions to the jury. We can say –

THE COURT: Please refer to those instructions.

[68] AUSA BERGSTROM: Sure.

THE COURT: What I would say, including the relevant provisions of Section 2442 (sic). Comma, including the relevant portions of Section 2442 –

AUSA BERGSTROM: 2422.

THE COURT: – contained in the instructions. Did you get that?

THE COURTROOM DEPUTY: Okay. You want to say, The law that the jurors are to apply in this case is contained wholly and completely in the jury instructions, including the relevant portions of 2422?

AUSA BERGSTROM: The law that the jurors are to apply in this case, including the relevant provisions of 2422 B, are contained in the Court's instructions to the jury.

THE COURT: And there should be commas between – before including.

THE COURTROOM DEPUTY: Do you want provisions or portions?

THE COURT: The relevant provisions. 2422 B. Comma.

THE COURTROOM DEPUTY: The law that the jurors are to apply in this case, comma, including the relevant provisions of 2422 (B), comma, are [69] contained in the court's instructions to the jury, period.

THE COURT: Fully contained. Add fully contained.

THE COURTROOM DEPUTY: Are fully contained in the Court's instructions to the jury. Period.

THE COURT: The Court – therefore, the Court refers you to the Court’s jury instructions. That should do it. Everybody in agreement?

MR. METCALF: Yes, sir.

AUSA BERGSTROM: Yes, Your Honor.

THE COURT: Show it to counsel and if they approve it, we’ll send it back.

THE COURTROOM DEPUTY: (Complies.)

THE COURT: Okay. We’ll send it back.

(Thereupon, a brief recess was taken.)

THE COURT: Please be seated. Y’all have seen the question?

MR. METCALF: Yes, Your Honor.

AUSA BERGSTROM: Yes, Your Honor.

THE COURT: I’ll read it for the record. The question is, quote, Right now we are hung up on one count. We are making very slow progress. Would you like us to continue, closed quote?

MR. METCALF: We would like them to continue.

[70] THE COURT: The answer is yes. Should I say yes? Anything other than that?

MR. METCALF: I don’t think we need to.

AUSA BERGSTROM: I don’t think so.

THE COURTROOM DEPUTY: So just say yes.

THE COURT: Please do so. I am going to leave soon.

MR. METCALF: I can't believe you would do that to us.

THE COURT: I've enjoyed it as much as I've been saying. That's a great line and the end of a comment that – anyway. Judge Cannon next door is available to answer questions. I will be on the road with my phone with me. Make sure I have my silencer on, but right now it's open again. So it shouldn't be a problem. This jury is relatively active with regards to its questions. So you might consider how late you want them to go tonight.

AUSA BERGSTROM: I would think that would be up to Judge Cannon.

THE COURT: And what about you all?

MR. METCALF: Judge, I've cleared my calendar so I'll stay here as long as I need to. But it does look like they have a verdict on at least one count. So maybe we can – if they announce they're [71] hung, I think we should take the verdict they have, right?

THE COURT: Well, see – but I think there needs to be some determination of how long you want to stay. I guess, part of it do they think it would be productive to stay up to 5:00 or even after 5:00, Daylight

Savings time permits. Just think about it. You got plenty of time to think about it.

MR. METCALF: Just come back tomorrow, not just ending – no, if they work until 5:00 and they haven't reached a verdict, I guess we send them home and come back tomorrow.

THE COURT: That's what I would think. I won't be here – you all and Judge Cannon. All right. Probably won't see you all, so you have a –

AUSA BERGSTROM: While we're all here, would it be beneficial to let the jury know that we're thinking 5:00 o'clock or –

THE COURT: No, I don't think so. I think we just let it kind of play out to see how things are going. Yeah. So take it back and then see where they go from here. At least making progress if nothing else. You all have a good day. And maybe [72] we'll see you again. I really do appreciate the way you've handled this case. You all did a really, really fine job. I was very proud of you guys.

AUSA BERGSTROM: Thank you, Your Honor.

MR. METCALF: Thank you, Your Honor.

(Thereupon, a brief recess was taken.)

THE COURT: You may be seated. Good afternoon. As you know, Judge Huck has left for the evening so I'll be receiving the verdict. We have been

advised the jury reached a verdict. Let's call in the jurors.

I'll note for the record the defendant is present represented by counsel.

(Thereupon, the jury entered the courtroom.)

THE COURT: You may be seated. Ladies and gentlemen of the jury, good afternoon. My name is Ilene Cannon. I'm also a district judge in this district. For scheduling reasons I will be receiving the verdict. I understand the jury has reached a verdict?

FOREPERSON: Yes, ma'am.

THE COURT: And who speaks for the jury as foreperson?

FOREPERSON: Edward Stick.

[73] THE COURT: Thank you, sir. Is the verdict unanimous?

FOREPERSON: Yes, ma'am.

THE COURT: Please hand the verdict to Ms. Verante (ph.).

FOREPERSON: (Complies.)

THE COURT: All right. The verdict will now be published.

**VERDICT**

THE COURTROOM DEPUTY: United States District Court Southern District of Florida, Case Number 22-14005, criminal, Cannon. United States of America versus Zachary S. Spiegel. Verdict: We the jury unanimously find the defendant, Zachary S. Spiegel as to Count 1, attempted enticement of a minor to engage in sexual activity, guilty. Count 2, attempted enticement of a minor to engage in sexual activity, not guilty. So say we all, signed by the foreperson, Edward Stick, dated March 29th, 2022.

THE COURT: Thank you. I'm now going to poll each and every one of you to ask you whether the verdict as read is your true verdict, starting with juror number 1.

[74] Juror number 1, is the verdict as read your true verdict?

JUROR 1: Yes, Your Honor.

THE COURT: Juror number 2, is the verdict as read your true verdict?

JUROR 2: Yes, Your Honor.

THE COURT: Juror number 3, is the verdict as read your true verdict?

JUROR 3: Yes, Your Honor.

THE COURT: Juror number 4, is the verdict as read your true verdict?

JUROR 4: Yes, Your Honor.

THE COURT: Juror number 5, is the verdict as read your true verdict?

JUROR 5: Yes, Your Honor.

THE COURT: Juror number 6, is the verdict as read your true verdict?

JUROR 6: Yes, Your Honor.

THE COURT: Juror number 7, is the verdict as read your true verdict?

JUROR 7: Yes, Your Honor.

THE COURT: Juror number 8, is the verdict as read your true verdict?

JUROR 8: Yes, Your Honor.

THE COURT: Juror number 9, is the verdict as [75] read your true verdict?

JUROR 9: Yes, Your Honor.

THE COURT: Juror number 10, is the verdict as read your true verdict?

JUROR 10: Yes, Your Honor.

THE COURT: Juror number 11, is the verdict as read your true verdict?

JUROR 11: Yes, Your Honor.

THE COURT: And juror number 12, is the verdict as read your true verdict?

JUROR 12: Yes, Your Honor.



THE COURT: All right. Thank you very much. Ladies and gentlemen of the jury, I want to thank you very much for your service in this case. Jury service is fundamental to our system of justice. As a small token of the Court's appreciation, you will each be receiving a certificate signed just noting the Court's gratitude. So with that, let's rise for the jury. Thank you again.

(Thereupon, the jury exited the courtroom.)

THE COURT: Thank you. You may be seated. All right.

Mr. Spiegel, in light of the jury's verdict, you are now adjudicated guilty of Count 1, attempted enticement of a minor to engage in sexual [76] activity. You have been found not guilty on Count 2. What is the defense's position on remand?

MR. METCALF: Judge, he has abided by all of the conditions that were imposed on him to date. He has a wife and two children. We do not think that he is a flight risk and we would ask the Court to leave him out pending sentencing.

THE COURT: All right. Let me hear from the government.

AUSA BERGSTROM: Your Honor, prior to just a few minutes ago, the defendant enjoyed a presumption of innocence. That presumption of innocence does not exist. He is a convicted felon. We will be seeking remand.

THE COURT: All right. I don't find there to be a clear and convincing showing that the defendant should not be remanded. So pursuant to the law, sir, you will be remanded into the custody of the U.S. marshals at this time. Is there anything further from the government?

AUSA BERGSTROM: No, Your Honor. Thank you.

THE COURT: Is there anything further from the defense?

MR. METCALF: No, ma'am.

THE COURT: All right. Sentencing in this [77] matter is currently scheduled for when?

THE COURTROOM DEPUTY: I believe it was Thursday, May – Judge, I'm sorry. Let me –

THE COURT: Oh, I have it here. Thursday, May 26th at 10:00 in the morning. I understand the parties have requested that Judge Huck handle the sentencing. I think that will ultimately happen. We just need to straighten out the schedule, but that is a high likelihood. Judge Huck will be revisiting the matter of scheduling in the particular date if it needs to be amended from the current date of Thursday, May 26th at 10:00 a.m. I have nothing further.

THE COURT SECURITY OFFICER: They're coming down.

THE COURT: All right. Mr. Spiegel, what's going to happen at this time is U.S. Probation will

reach out to you to conduct a very important and exhaustive interview of you to permit either myself or Judge Huck to make an appropriate and reasonable sentence in your case. You, of course, will have the opportunity to be represented by counsel during that meeting. I encourage you to be fully candid with the U.S. Probation office to permit the Court's fullest consideration of your case.

[78] As we await the marshals, any post-trial motions to be filed would be due in accordance with the deadlines set forth in the criminal rules. As far as the exhibits to be filed, the parties are aware of their obligation to do so within ten days of this proceeding. Any other matters we can address at this time as we await the marshals arrival? No? We'll just wait a few minutes.

Sir, if you want to –

MR. METCALF: May he say good-bye to his family?

THE COURT: Yes, he may.

AUSA BERGSTROM: Your Honor, there are a couple of the exhibits that are explicit images. They're not child pornography but they're explicit images. My intention was just to redact the photographs when I file and then note on the exhibit list that they have been redacted.

THE COURT: That's acceptable.

AUSA BERGSTROM: Thank you.

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THE COURT: Officer, what's the ETA?

THE COURT SECURITY OFFICER: They said about three minutes.

THE COURT: All right. Three minutes or so. All right. The defendant has been remanded [79] into the custody of the U.S. marshals. The Court is in recess.

(Thereupon, the above portion of the trial was concluded.)

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[80] CERTIFICATE

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

08/18/2022      /s/ GBProulx  
DATE COMPLETED      GIZELLA BAAN-PROULX,  
RPR, FCRR

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 22-14005-CR-CANNON

UNITED STATES  
OF AMERICA,

Plaintiff,

vs.

ZACHARY SPIEGEL,

Defendant.

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JUNE 22, 2022

FORT PIERCE, FLORIDA

Pages 1 – 16

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE AILEEN CANNON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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FOR THE                    DONNIE MURRELL, ESQ.  
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REPORTED BY: DIANE MILLER, RMR, CRR  
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[2] P-R-O-C-E-E-D-I-N-G-S

THE COURT: Good afternoon. Please be seated.

We are little bit early. I think we can start now, everyone seems to be assembled here.

We are here in United States of America versus Zachary Spiegel. Counsel, may I have your appearances, beginning with the Government.

MS. BERGSTROM: Good afternoon, Your Honor; Stacey Bergstrom for the United States. I'm joined at counsel table by HSI Special Agent Eric Uργο.

THE COURT: Good afternoon.

For the defendant.

MR. MURRELL: Good afternoon, Judge; Donnie Murrell Andy Metcalf on behalf of Mr. Spiegel, who is present.

THE COURT: All right.

Good to see you all again.

All right. We are here for sentencing.

First of all, Mr. Murrell, have you discussed with your client the contents of the presentence investigation report and advised him he can file objections?

MR. MURRELL: Yes, I did.

THE COURT: I understand there was one objection filed.

MR. MURRELL: Yes, sir.

THE COURT: Before we get to the objection – oh, [3] Probation.

PROBATION OFFICER: Good afternoon; Mike Santucci on behalf of U.S. Probation.

THE COURT: Good afternoon, Mr. Santucci.

Before we get to the objection, let's see if we can at least agree upon the starting point for advisory guidelines. As reported by the report, we have an offense level of 35, criminal history category one which gives us a guideline range of 168 months to 210 months. Are we all in agreement as a starting point?

MS. BERGSTROM: The Government agrees with those calculations, Your Honor.

MR. MURRELL: Actually, Judge, I think the gist of my objection is that five-point bump.

THE COURT: I'm not sure you understood what I'm saying. We haven't gotten to the objection yet. I'm saying it is a starting point. We start off with 168 to 210, correct?

MR. MURRELL: I agree that's where the Probation Office wound up, yes, sir.

THE COURT: We have to start someplace. May I do it my way?

MR. MURRELL: Yes, sir.

THE COURT: Thank you.

Okay, I know where you are going, we'll get there. I said "before we get to the objection."

[4] Now, we are going to get to the objection. I think there was only one objection, and that is the classified levels that was given because more than one event – or I'll try to categorize it, and so the report – basically, the report gives us a 35 as opposed to level 30.

Government, you haven't filed a response, have you? I have Probation's response.

MS. BERGSTROM: I have, Your Honor. It is docket entry 63.

THE COURT: And your view is – you're right, I take that back. You did file it, I just didn't bring it with me.

I think we can all agree that whether I agree with the additional five levels, which is a matter of the Court's discretion, it is neither mandatory or prohibited, correct?

MS. BERGSTROM: That's the Government's understanding, yes, Your Honor.



THE COURT: Mr. Murrell, let me tell you my inclination is not to allow the additional five levels, even though, you know, I'm sitting through the trial. I think it may have been apparent that there were two occasions, two different events or conversations, but I'm not frankly a big fan of taking conduct which was rejected by the jury and adding it up – even though I'm – by law, I can do it. I just think, philosophically, I don't like doing it. So why should I vary from my general feelings about that?

[5] MS. BERGSTROM: Well, Your Honor, I think the Eleventh Circuit has recognized that there are reasons other than a lack of proof that a jury may acquit a defendant. It could very well may have been in this case, Your Honor, that the jury just didn't like that the victim in the second instance was an undercover officer.

THE COURT: Well, I think there is no question about that.

MS. BERGSTROM: But that doesn't take away, Your Honor, from the defendant's conduct.

THE COURT: I shouldn't say "no question." That's my assumption, as well. But you know, I just – you know, I looked at the overall circumstances here. It certainly wasn't clear that Mr. Spiegel really ever meant to act out on this, and he is facing a minimum mandatory of ten years anyway, which is a long time, so I just – frankly, I can't seem to justify in these facts. Now, maybe if the facts were a little different, maybe if the conduct were more egregious maybe or

long-standing, I may feel differently. Knowing what I know now, based on the evidence I heard, I think it is very clear that he did have that second interaction with what he thought was a minor child, I just don't think it justifies the plus five, so I'm – unless Mr. Murrell is going to argue me out of it.

MR. MURRELL: Judge, I'm going to sit down and shut [6] up.

THE COURT: All right.

Well, now, we are at an offense level 30, criminal history category of one, and I believe that equates to a guideline range of 120 months – 120 to 121 months. Are we all in agreement on that?

MS. BERGSTROM: The Government agrees.

MR. MURRELL: Yes, sir.

THE COURT: What is the Government's recommendation?

MS. BERGSTROM: Well, Your Honor, our recommendation would be for a high end sentence. The defendant's conduct in this case was pretty egregious. This is a sex offense against a child, a child whom the defendant believed to be 14. There was no ambiguity that the defendant was talking to a 14-year-old child. This wasn't a case where the child pretended to be an adult for an extended period of time or a bait and switch situation with an undercover. The defendant knew right away that he was talking to a 14-year-old.

THE COURT: Okay, I recall the case. It was a pretty – to just say “dramatic” is a gross understatement. It was a pretty egregious case, I agree with you on that.

You say high end of the guidelines, right?

MS. BERGSTROM: Correct, Your Honor.

THE COURT: What is that?

MS. BERGSTROM: In this case, as the Court calculated

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