

NO. _____

In the
Supreme Court of the United States

JASON SHORTRIDGE, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

**APPENDIX A
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

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2025 WL 1218984

Only the Westlaw citation is currently available.
United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff – Appellee,
v.
Jason SHORTRIDGE, Defendant – Appellant.

No. 23-4684

|
Submitted: February 27, 2025

|
Decided: April 28, 2025

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley.
[Frank W. Volk](#), Chief District Judge.

Attorneys and Law Firms

ON BRIEF: [Wesley P. Page](#), Federal Public Defender, Jonathan D. Byrne, Appellate Counsel, [David R. Bungard](#), Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. [William S. Thompson](#), United States Attorney, [Francesca C. Rollo](#), Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Before GREGORY and HARRIS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Opinion

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

*1 Jason Shortridge was convicted in a jury trial of possessing child pornography and of attempting to distribute child pornography, in violation of [18 U.S.C. §§ 2252A\(a\)\(2\), \(b\)\(1\), \(a\)\(5\)\(B\)](#), and [\(b\)\(2\)](#).¹ The district court calculated Shortridge's sentencing guidelines range as 210 to 262 months in prison. After a sentencing hearing, the court varied downward and imposed a sentence of 168 months in prison and fifteen years of supervised release.

¹ The jury acquitted Shortridge of two counts of distribution of child pornography.

On appeal, Shortridge makes three arguments. Shortridge first challenges the district court's decision to admit into evidence the testimony of a certain government expert witness. Shortridge contends that the government failed to timely disclose that expert's testimony in violation of [Federal Rule of Criminal Procedure 16 \(Rule 16\)](#), and that, as a result, the testimony should have been excluded. Shortridge next challenges the sufficiency of the evidence to support his convictions. Finally, Shortridge contends that his sentence is both procedurally and substantively unreasonable. For the reasons that follow, we affirm Shortridge's convictions and sentence.

I.

A.

We first consider Shortridge's argument regarding [Rule 16](#) and the admission of expert testimony in a criminal case. [Rule 16\(a\)](#) sets forth the government's duty to disclose information to a criminal defendant. Subsection (a)(1)(G) of that Rule states: “At the defendant's request, the government must give to the defendant a written summary of any [expert witness] testimony that the government intends to use under [Rules 702](#), [703](#), or [705 of the Federal Rules of Evidence](#) during its case-in-chief at trial.” [Fed. R. Crim. P. 16\(a\)\(1\)\(G\)](#). [Rule 16](#) does not provide a specified time period for expert witness disclosures. But the advisory notes for [Rule 16](#) suggest that parties should make their disclosures “in a timely fashion.”² [Fed. R. Crim. P. 16](#) advisory committee note to 1993 Amendment.

² [Rule 16](#) was amended after Shortridge's trial. That amendment, among other things, “provide[d] that the court, by order or local rule, must set a time for the government to make its disclosures of expert testimony to the defendant, and for the defense to make its disclosures of expert testimony to the government.” *Id.* advisory committee note to 2022 Amendment. However, because that amendment was not in effect during the trial, we apply the former version of [Rule 16](#) as set forth above. See [Robinson v. Wix Filtration Corp. LLC](#), [599 F.3d 403](#), [407 n.6](#) (4th Cir. 2010) (“As a general rule, the Supreme Court has advised that amendments to the Federal Rules should not apply retroactively.” (citing [Landgraf v. USI Film Prods.](#), [511 U.S. 244](#), [275 n.29](#) (1994))).

Here, the record shows that about one month before trial, Shortridge filed a motion asking the government to disclose specific metadata concerning computer files that would be submitted as evidence at trial. The district court held a hearing on that motion and ordered the government to provide Shortridge with the requested disclosures by March 29, 2022.

*2 On March 28, 2022, the government met with its forensic expert witness regarding the requested disclosures. After that meeting raised questions about locating the metadata for certain files, the government's forensic expert contacted another colleague (the second forensic expert), who identified the metadata for the files in question. That expert also uncovered certain other information, including that Shortridge had installed on his computer software “designed to permanently delete, cover, or hide traces of activity such as ... having illicit material” (anti-forensic software).

On March 29, 2022, the government met with Shortridge to disclose the information ordered by the district court and, the next day, gave Shortridge the additional information discovered by the second forensic expert. On March 31, 2022, the government filed a formal notice with the district court disclosing the expected testimony of the second forensic expert. That same day, the government moved to continue the trial date based on another matter not at issue here.

Shortridge asked the district court to strike as untimely and prejudicial the expected testimony of the second forensic expert. After conducting a telephone conference with the parties, the district court denied Shortridge's motion to strike and continued the trial for two months.

On appeal, Shortridge contends that the government's failure to timely disclose the testimony of the second forensic expert violated [Rule 16](#) and should have resulted in the exclusion of that evidence from trial. Shortridge also asserts that the government's [Rule 16](#) violation prejudiced his ability to defend himself. We disagree with Shortridge's arguments.

The decision whether a disclosure is timely is a matter submitted to the district court's discretion. [United States v. Holmes](#), 670 F.3d 586, 599 (4th Cir. 2012). The purpose of [Rule 16](#) is to “minimize surprise” that may result from unexpected expert testimony and to provide the defendant with a fair opportunity to prepare for cross-examination. [United States v. Garcia-Lagunas](#), 835 F.3d 479, 494 (4th Cir. 2016) (citation omitted). A district court is not required to issue a sanction for non-compliance with [Rule 16](#), but, when it does, a continuance is the “preferred sanction.” [United States v. Sterling](#), 724 F.3d 482, 512 (4th Cir. 2013) (citations omitted). A defendant claiming that the district court abused its discretion under [Rule 16\(a\)\(1\)\(G\)](#) bears the burden of showing both a violation of that Rule and “prejudice resulting from the district court's decision to admit the contested testimony.” [United States v. Smith](#), 701 F.3d 1002, 1008 (4th Cir. 2012) (citation omitted).

In the present case, it is clear that the government's disclosure of the expected testimony of the second forensic expert witness occurred after the deadline for expert witness disclosures set by the district court. Nevertheless, we do not find a basis for concluding that the district court abused its discretion in granting a continuance instead of striking that witness' testimony. Shortridge does not contend that he was unable to prepare to cross-examine the witness during the two-month

continuance granted by the district court. Moreover, although the testimony of the second forensic expert about the presence of anti-forensic software bolstered the government's case, we conclude that there otherwise was sufficient evidence to support the jury's verdict. For these reasons, Shortridge has not made the required showing of prejudice. [*Garcia-Lagunas*, 835 F.3d at 494](#) (explaining that, to be prejudicial, a [Rule 16](#) violation must “have so changed the defense's ability to cross-examine [a witness] that the trial would have come out differently” (citation omitted)). Thus, we hold that the district court did not abuse its discretion when it allowed the testimony of the second forensic expert.

B.

*3 Shortridge next contends that the district court erred in denying his motion for acquittal because the evidence was insufficient as a matter of law to sustain his convictions for possession of child pornography and attempted distribution of child pornography. Shortridge maintains that his computer's hard drive did not contain “an active collection of child pornography files,” which was consistent with his testimony that he deleted any child pornography upon becoming aware of the nature of the downloaded files. Thus, Shortridge argues that a jury could not reasonably conclude that he knowingly possessed child pornography. Also, Shortridge argues that the record shows that he did not knowingly attempt to distribute child pornography. We disagree with these arguments.

In evaluating the sufficiency of the evidence, we do not review the credibility of the witnesses, and we assume that the factfinder resolved all contradictions in the testimony in favor of the government. [*United States v. Foster*, 507 F.3d 233, 245 \(4th Cir. 2007\)](#). We will not overturn a verdict if “ ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” [*United States v. Dinkins*, 691 F.3d 358, 387 \(4th Cir. 2012\)](#) (quoting [*United States v. Penniegraft*, 641 F.3d 566, 571-72 \(4th Cir. 2011\)](#)).

Here, there is ample evidence from which a jury reasonably could conclude that Shortridge possessed child pornography and attempted to distribute child pornography. At trial, Shortridge testified that he had downloaded and installed “Shareaza,” a peer-to-peer software program. The evidence showed that, to use the Shareaza program, Shortridge was required to acknowledge the software's user agreement, which explained that downloaded content was shared with other software users. While the software's installation process permitted Shortridge to opt-out of sharing files that he chose to download, Shortridge did not do so. Indeed, Shortridge expressly acknowledged that he understood that “Shareaza” was a peer-to-peer program “where you can share stuff.”

Shortridge testified at trial that he used “Shareaza” to search only for adult pornography and that he deleted any child pornography files once he realized the contents of any such files. But Shortridge

also acknowledged that the forensic evidence showed that he had entered numerous search terms within “Shareaza,” and the government presented evidence that many of the search terms used by Shortridge were associated exclusively with child pornography. The evidence further demonstrated that Shortridge “clicked on” and “viewed” some of the images and videos of child pornography multiple times. Moreover, one of the government's expert witnesses testified that more than one thousand images of child pornography were accessible in Shortridge's “downloads” and “recycling bin” folders as late as April 28, 2019.³

³ To the extent Shortridge argues that the record does not show that he possessed child pornography “on or about May 1, 2019,” we disagree. As we held in [United States v. Ward](#), 676 F.2d 94, 96 (4th Cir. 1982), the government was required to prove only that the crime occurred on a date “reasonably near that alleged” in the indictment. Here, the government's evidence satisfies that standard.

On this record, we conclude that a jury was entitled to discredit Shortridge's testimony that he did not knowingly download and possess child pornography and that he did not knowingly share those files using a peer-to-peer software program. Thus, we hold that a jury reasonably could find that Shortridge knowingly possessed child pornography and took a substantial step toward knowingly distributing child pornography. See [United States v. Neal](#), 78 F.3d 901, 906 (4th Cir. 1996) (explaining that a defendant can be convicted of attempt only when the government shows that the defendant has culpability to commit the crime charged and has taken “a substantial step towards the completion” of that crime).

C.

*4 Finally, Shortridge argues that his sentence is both procedurally and substantively unreasonable. Shortridge primarily challenges the district court's application of a two-level sentencing enhancement for knowingly engaging in the distribution of child pornography. See [U.S.S.G. § 2G2.2\(b\)\(3\)\(F\)](#). Similar to his arguments regarding the sufficiency of the evidence, Shortridge contends that the government failed to show that any completed distribution of child pornography was done knowingly. Shortridge also asserts that his sentence “overstates the seriousness” of his conduct and is greater than necessary to achieve the purpose of sentencing. We disagree.

We review a sentence for reasonableness, applying “a deferential abuse-of-discretion standard.” [Gall v. United States](#), 552 U.S. 38, 41 (2007). When considering a challenge to the reasonableness of a sentence imposed by the district court, “we consider both substantive reasonableness, considering the totality of the circumstances, and procedural reasonableness, ensuring that the district court committed no significant procedural error, such as miscalculating the sentencing

guidelines, failing to consider the § 3553(a) criminal and personal history factors, or selecting a sentence based on erroneous facts.” [United States v. Zelaya](#), 908 F.3d 920, 930 (4th Cir. 2018) (citation omitted).

We first review a defendant's sentence for procedural error, and we consider the substantive reasonableness of the sentence only when there has not been any procedural error. See [United States v. Bolton](#), 858 F.3d 905, 911 (4th Cir. 2017). A defendant's challenge to the district court's calculation of the Guidelines, including the court's application of any sentencing enhancements, raises an issue of procedural error. See [United States v. Pena](#), 952 F.3d 503, 512 (4th Cir. 2020) (citation omitted), *as amended* (Mar. 11, 2020). In addressing such an allegation of error, we review the district court's legal conclusions *de novo* and the court's factual findings for clear error. [United States v. Horton](#), 693 F.3d 463, 474 (4th Cir. 2012).

We do not discern any procedural error in the district court's calculation of the Sentencing Guidelines range for Shortridge. In particular, we reject Shortridge's contention that the district court erred when it applied the sentencing enhancement in [U.S.S.G. § 2G2.2\(b\)\(3\)\(F\)](#). To support imposition of that sentencing enhancement, the government bore the burden of proving by a preponderance of the evidence that Shortridge knowingly distributed child pornography.⁴ [United States v. Kokinda](#), 93 F.4th 635, 649 (4th Cir. 2024). We hold that the district court did not err in finding that the government met its burden.

⁴ We observe that although the jury acquitted Shortridge of two counts of distribution of child pornography, those acquittals do not preclude the enhancement. We note that the recent Guidelines amendment limiting the use of acquitted conduct at sentencing is not retroactive and, thus, does not apply here. See U.S.S.G. Supp. to App. C, Amend. 826 (Nov. 1, 2024).

As outlined above, the evidence was sufficient to demonstrate that Shortridge knowingly installed a peer-to-peer software program for sharing software onto his computer with the understanding that any files he downloaded could be accessed by other users. The record further showed that Shortridge searched for and downloaded child pornography using that software, and that, at one point, there were hundreds of images of child pornography that Shortridge made accessible to other Shareaza users in the “downloads” folder on Shortridge's computer. Indeed, the government presented evidence at trial that a law enforcement officer was able to use software to download child pornography images from Shortridge's device. These facts showed by a preponderance of the evidence that Shortridge engaged in the distribution of child pornography when he knowingly installed and used the Shareaza software. Thus, we conclude that the district court did not clearly err in applying the sentencing enhancement under [U.S.S.G. § 2G2.2\(b\)\(3\)\(F\)](#).

***5** We next consider the substantive reasonableness of the sentence imposed. To be substantively reasonable, a sentence must be “sufficient, but not greater than necessary,” to accomplish the §

3553(a) sentencing goals. [18 U.S.C. § 3553\(a\)](#); see [United States v. Rose](#), 3 F.4th 722, 731 (4th Cir. 2021). When, as here, a sentence is within or below a properly calculated Guidelines range, we presume that the sentence is substantively reasonable. [United States v. Gutierrez](#), 963 F.3d 320, 344 (4th Cir. 2020) (citation omitted). That presumption “can only be rebutted by showing that the sentence is unreasonable when measured against the [18 U.S.C. § 3553\(a\)](#) factors.” *Id.* (citation omitted).

We conclude that Shortridge has not shown that his term of imprisonment is unreasonable when measured against the factors in [18 U.S.C. § 3553\(a\)](#). Accordingly, Shortridge has failed to rebut the presumption of reasonableness accorded his below-Guidelines sentence. See [Gutierrez](#), 963 F.3d at 344. We therefore hold that Shortridge has failed to demonstrate that his sentence is substantively unreasonable.

II.

For these reasons, we affirm the district court's judgment with respect to Shortridge's convictions and sentence.

AFFIRMED

All Citations

Not Reported in Fed. Rptr., 2025 WL 1218984

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In the
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JASON SHORTRIDGE, *Petitioner*,

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APPENDIX B
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

AT BECKLEY

UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO. 5:21-cr-00223

JASON SHORTRIDGE,

ORDER

Pending is the Defendant's Motion for Continuance of Trial in the Event this Court Denies Defendant's Motion to Preclude [Doc. 74]. The Court held a telephonic hearing in this matter on April 1, 2022. For reasons more fully stated on the record, the Court **DENIED** Defendant's Motion to Preclude [Doc. 73] and **GRANTED** Defendant's Motion for Continuance [Doc. 74]. In Defendant's Motion for Continuance, counsel asserts a continuance is needed to allow sufficient time for the defense expert, Naaman Dunn, to evaluate Mr. Pickering's opinions and work product in order to prepare for trial.

The Court **FINDS** that the interests of the public and the Defendant in a speedy trial are outweighed by the ends of justice served by granting a continuance. Accordingly, for good cause shown, the Court **GRANTS** the Motion for Continuance [Doc. 74]. The trial, previously scheduled for April 5, 2022, is **CONTINUED** to **June 7, 2022**, at **9:00 a.m.** The Court additionally **ORDERS** as follows:

1. That counsel must be prepared to select a jury on the Friday immediately preceding trial if so ordered;


2. That the deadline for filing superseding indictments, if any, shall be thirty (30) days prior to the trial date;
3. That the parties must submit their respective proposed witness lists, voir dire, jury instructions and verdict forms no later than May 30, 2022. The proposed witness lists, voir dire, jury instructions and verdict forms must be submitted in Microsoft Word format via email to Sydney_Whittington@wvsd.uscourts.gov;
4. That pretrial motions will be heard **May 19, 2022, at 11:00 a.m.**, before the Honorable Omar J. Aboulhosn, United States Magistrate Judge, at the United States District Court in Beckley and that any motions to be addressed at the pretrial motions hearing, as well as any motions in limine, shall be filed no later than **May 12, 2022**;
5. That the parties must notify the Court of any proposed plea agreement so that a plea hearing may be scheduled a week before trial. Should a scheduled plea hearing not be completed, the Court is unlikely to consider that event to support a continuance of the trial.

The Court **FINDS** that the time between **April 5, 2022**, and **June 7, 2022**, is excludable from the computation of time within which trial must commence, pursuant to 18 U.S.C. § 3161(h)(7).

The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Aboulhosn, to the Defendant and counsel, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTERED: April 4, 2022




Frank W. Volk
United States District Judge

NO. _____

In the
Supreme Court of the United States

JASON SHORTRIDGE, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

APPENDIX C
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TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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Counsel for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

	X	
	:	
UNITED STATES OF AMERICA,	:	Criminal Action
	:	
Plaintiff,	:	No. 5:21-cr-00223
	:	
v.	:	
	:	Date: April 1, 2022
JASON SHORTRIDGE,	:	
	:	
Defendant.	:	
	X	

TRANSCRIPT OF TELEPHONIC CONFERENCE HELD
BEFORE THE HONORABLE FRANK W. VOLK, JUDGE
UNITED STATES DISTRICT COURT
IN BECKLEY, WEST VIRGINIA

APPEARANCES:

For the Government:	AUSA MATTHEW RYAN BLACKWELL United States Attorney's Office Suite 4000 300 Virginia Street East Charleston, WV 25301
	AUSA TIMOTHY D. BOGGESE United States Attorney's Office United States Courthouse & IRS Complex 110 North Heber Street, Room 261 Beckley, WV 25801
For the Defendant:	AFPD DAVID R. BUNGARD Federal Public Defender's Office Room 3400 300 Virginia Street East Charleston, WV 25301

Court Reporter: Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 PROCEEDINGS had before The Honorable Frank W. Volk,
2 Judge, United States District Court, Southern District of
3 West Virginia, in Beckley, West Virginia, on April 1, 2022,
4 at 3:38 p.m., as follows:

5 THE COURT: Good afternoon, counsel. This is
6 Judge Volk and we're ready to go forward in the Shortridge
7 matter.

8 Will counsel please note their appearances?

9 MR. BLACKWELL: Ryan Blackwell on behalf of the
10 United States.

11 MR. BUNGARD: David Bungard, Your Honor, here and
12 Mr. Shortridge is also participating by his -- by telephone
13 at his address, also.

14 THE COURT: Well, thank you very much.

15 I would tell you, Mr. Shortridge, that ordinarily we
16 would have these proceedings in person. To the extent you
17 are entitled to a right to appear in person or by video
18 teleconference, I need to make sure that that is something,
19 a right you are willing to waive. If you would like to
20 speak privately with your counsel about that, you're welcome
21 to do so, but I would ask you if you are willing to waive
22 your right to an in-person hearing for a remote hearing by
23 video teleconference.

24 THE DEFENDANT: I mean, I don't have a problem
25 doing it over the phone, no, sir.

1 THE COURT: Understood. Do you feel like you need
2 time to further consult with your client, Mr. Bungard, or
3 are you satisfied with that decision?

4 MR. BUNGARD: I'm satisfied with Mr. Shortridge's
5 decision, Your Honor.

6 THE COURT: Very good. I would additionally tell
7 counsel that this matter is being transcribed. We do have a
8 court reporter available in the event that you would like
9 the official record at a later point.

10 So, we have the Government's disclosure of forensic
11 evidence and I have read the briefing on the matter. I
12 suppose I don't understand at this point why this analysis
13 wasn't undertaken earlier. Can you shed any light on that,
14 counsel?

15 MR. BLACKWELL: Certainly, Your Honor. I
16 attempted to chronologically outline this in the briefing,
17 but to the extent it wasn't clear, I hope I can clarify that
18 and certainly would be happy to answer any further questions
19 that the Court has.

20 In preparing for trial and attempting to identify the
21 ten computer files that the United States was going to
22 limit, the computer files that were going to be introduced
23 during the trial, we met with witnesses and attempted to
24 comply with the Court's order to specifically identify --

25 THE COURT: I'm familiar with all -- counsel, I'm

1 familiar with all that. It's in your brief.

2 MR. BLACKWELL: Okay.

3 THE COURT: But you really did hit the high points
4 when it came to describing how this new gentleman somehow
5 undertook this additional investigation and a search for
6 file names and more files and then happened upon, I suppose,
7 this hidden program that is designed to scrub data from a
8 hard drive and this previously unknown file folder. That's
9 what I'd like you to center on and hone in on.

10 MR. BLACKWELL: I'm sorry. I didn't hear that
11 last part, Your Honor. I think something is messed up over
12 here.

13 THE COURT: Are you able to hear me clearly?

14 MR. BLACKWELL: I can -- I can hear you, Your
15 Honor.

16 THE COURT: So, what I am asking is for you to
17 hone in on why precisely this newly disclosed expert decided
18 to undertake a search at this late date on what I presume is
19 the mirror image, perhaps the actual drive, for a program
20 that is designed to scrub data from a hard drive and then
21 also this additional untitled folder which is mentioned by
22 Mr. Bungard. Why is this happening so late and what
23 prompted him to do this?

24 MR. BLACKWELL: When we were unable to find
25 specific information about certain files that are documented

1 in the report Mr. Mosley in our meeting --

2 THE COURT: Okay. I'm already confused. What
3 report are we speaking of and what information were you
4 lacking? I need you to speak with absolute precision.

5 MR. BLACKWELL: Yes. Yes, Your Honor. In this
6 case there is a forensic report that was completed by Dale
7 Mosley, who is the Government's originally designated
8 expert. That information was disclosed to the defendant in
9 the initial discovery disclosure and Mr. Mosley was noticed
10 in the United States' filing.

11 As we were narrowing down the computer files that were
12 going to be introduced we asked about the location of
13 certain computer files that are mentioned in that report.
14 Because of the contents of -- of the charge we don't have
15 access to all of that information at our computer here in
16 our office and Mr. Bungard does not, as well, so we had to
17 sit down and review the actual evidence again and the
18 un-redacted report.

19 There were computer files that we did not have an
20 adequate explanation about where they were within that
21 report. We asked Mr. Mosley about that. He did not have
22 the answer at that time. So, he went to go speak to Mr.
23 Pickering, who is a colleague in the area of forensic
24 examinations and works for the Department of Homeland
25 Security.

1 THE COURT: Okay. One moment there. Why is
2 Mosley going to talk to Pickering? If Mosley was the
3 individual who prepared the original forensic report as to
4 the contents of the drive how did Mr. Pickering get
5 involved?

6 MR. BLACKWELL: Mr. Mosley went to Mr. Pickering's
7 office to ask for assistance in identifying information
8 about computer files and we did not have adequate
9 explanations for where they were.

10 THE COURT: Why? Why did he go to Mr. Pickering?
11 I presume that Mosley has the capability, necessary IT
12 capability, to make the inquiry. Why is it that he went to
13 Mr. Pickering?

14 MR. BLACKWELL: Your Honor, he was simply
15 consulting a colleague in the field for assistance.

16 THE COURT: Was he unable to do it himself, him
17 being Mr. Mosley?

18 MR. BLACKWELL: At that time, yes, Your Honor.
19 And if I may expand for just a moment on that --

20 THE COURT: I would appreciate it.

21 MR. BLACKWELL: Since meeting with -- since
22 meeting with Mr. Pickering, Mr. Mosley has re-ran the Axiom
23 software that generated the original report and done a
24 specific search for what are known as shadow copies. He has
25 been able to locate the same information, or what appears to

1 be the same information, that Mr. Pickering had. I learned
2 the contents of that this afternoon and I immediately
3 contacted Mr. Bungard and sent him the information that I
4 have about that. We do intend to file a supplemental notice
5 about Mr. Mosley's findings that are independent from Mr.
6 Pickering's findings, but Mr. Pickering is the one who
7 flagged this issue and got -- got Mr. Mosley -- was the
8 reason that Mr. Mosley continued his investigation.

9 THE COURT: So, is it the case that you simply
10 started preparing for trial a few days ago and realized that
11 there was this vacuum with respect to the evidence to be
12 introduced and then we set about to involve this other
13 individual; and then, based on those new consultations with
14 that other individual, Mr. Pickering, then there's a new
15 plan forward on how the drive is going to be examined
16 forensically? Is that what occurred?

17 MR. BLACKWELL: That is basically what occurred,
18 Your Honor.

19 THE COURT: Well, the trouble I have with that,
20 and I think it's probably evident to you, is that the
21 Government has had possession of this evidence for months
22 and months, perhaps years, and here we are on the eve of a
23 trial. And you may be able to detect that I'm very
24 dissatisfied with how this situation has arisen and I know
25 that lawyers often think in terms of, you know, a case

1 simply being able to be continued and then getting the
2 perfect case and then being ready to try it.

3 The difficulty right now with the pandemic is that we
4 have jurors who, once they find out they may be called for
5 trial, fret about it and worry about it every waking moment,
6 perhaps because of child care responsibilities, perhaps
7 because they're going to be unwittingly exposed to the
8 virus, or any number of things.

9 And I have jurors, I have letters from jurors, and
10 explanations from jurors, on that very point. And here we
11 are late Friday afternoon. Jurors have been mentally
12 preparing themselves for trial next Tuesday and it -- it
13 just honest to goodness confounds me how we've found
14 ourselves at this point.

15 So, why is it that it has taken so long to prepare this
16 matter?

17 MR. BLACKWELL: Your Honor, we -- we received the
18 information on I believe it was Tuesday that Mr. Pickering
19 may have found additional information. I disclosed the
20 possibility of that to Mr. Bungard that evening. The
21 following day when I received concrete information I
22 disclosed that immediately. This is a situation where I am
23 reacting in realtime to new information.

24 The other point that I would make is that this -- this
25 is new information, but it's not new evidence. It is the

1 same mirror image hard drive that the defendant already had
2 access to and has already employed an expert to review.

3 THE COURT: Understood. But the reason we have
4 the disclosure rules, as you know, you may know, counsel, is
5 that we're done with mind reading, okay? That ended in the
6 1930s with the advent of the rules. And that's why we have
7 your disclosure obligations, and I might say timely
8 disclosure obligations.

9 Now, Mr. Pickering didn't materialize out of thin air.
10 He was contacted by Mr. Mosley and then all of this
11 developed. So, to try to fashion that into newly discovered
12 evidence is a stretch, at best.

13 The question that naturally arises and the point that
14 is left off of your timeline is why did Mr. Mosley not make
15 the inquiry months ago? Why did you, or your predecessor,
16 not make the inquiry of Mr. Mosley months ago?

17 MR. BLACKWELL: Your Honor, we simply did not know
18 that we didn't have that information. We --

19 MR. BOGGESS: If I can interject, Your Honor, this
20 is Timm Boggess. I'm also on here with Mr. Blackwell.

21 As the Court's well aware, we're not able to maintain
22 any of these images of child pornography of any such thing
23 within our office. We cannot maintain it on any of our
24 government computers within our office. We cannot maintain
25 images within our office. We rely solely upon the experts,

1 as well as the law enforcement agents that were
2 investigating this matter.

3 As we were preparing and, again, going through these
4 items the report lists certain items that appeared to be
5 there and available. As we were going through those items,
6 as Mr. Blackwell said, to finalize what images we would use
7 we could not find those file paths or the direct locations
8 of these items. That's wherein Mr. Mosley inquired the
9 assistance of another, as Mr. Blackwell said, a colleague
10 that could maybe help him track those file paths. It was in
11 a matter of us doing our trial preparation and getting these
12 finalized images for defense counsel to be able to review
13 when we noticed that.

14 When the computer was sent to Mr. Pickering it was not
15 sent under the premise of, hey, just see what you can find
16 on this computer. They were directly trying to locate these
17 certain images that we had had in the report indicating that
18 they were there.

19 When Mr. Pickering did his analysis is when he noted
20 the differences of the shadow images and that just -- as
21 soon as we found that out we relayed that to defense
22 counsel.

23 MR. BUNGARD: Your Honor, this is David Bungard.
24 Can I interject a point here at this point?

25 THE COURT: One moment, Mr. Bungard.

1 Mr. Boggess said -- I will allow you to elaborate
2 further, but I would again come back to my initial inquiry.
3 It had to have become evident to all concerned that this
4 case was going to trial and that became evident before
5 Tuesday of last week.

6 I simply am still at sea and cannot understand why we
7 have a forensic report that has existed for quite sometime
8 and then an entirely new root of investigational fruit is
9 developed in the days preceding trial. I just can't wipe my
10 mind around that.

11 Is it the case that, you know, the United States came
12 to the conclusion it was definitely going to have to try
13 this case last week, or this week, and then it set about to
14 further develop discovery? I mean, that's what it sounds
15 like to the Court, and that's troubling, frankly.

16 MR. BOGGESS: And I -- I do not think that that's
17 an accurate representation of our actions in that I can
18 understand the Court's frustration, and I can see that, but
19 as we were developing, again, Mr. Blackwell was preparing
20 for this case for quite sometime. I came into this case
21 later assisting Mr. Blackwell but, again, Mr. Blackwell has
22 been through many of those images with the other case agents
23 in preparation for this, but when it came time to finalize
24 what images we were going to use, which is a different
25 animal in and of itself, is when we started noticing these

1 other issues.

2 Now, I can only speak for myself on that, and I was not
3 in this case from the beginning and that is, as the Court's
4 -- following the Court's directive, or the Court's
5 contention, that's no excuse, and I'm not making that an
6 excuse. I'm saying that I believe that Mr. Blackwell was
7 engaged in this matter and was doing the activity that
8 should be done and it's not a matter of, oh, gosh, this is
9 going to go to trial. We had better prepare and try to find
10 new evidence this week. It was a matter of trying to locate
11 those images that were in the report and getting the
12 locations of those images when this other information was
13 discovered.

14 And, again, it's the same evidence that defense counsel
15 has had access to with their expert actually running the
16 same programs that were being run by Mr. Mosley.

17 THE COURT: So, what is your suggestion then, Mr.
18 Boggess, that somehow -- well, we'll leave it at that.

19 MR. BOGGESS: Okay.

20 THE COURT: I think I understand your position.

21 Mr. Bungard, please go ahead.

22 MR. BUNGARD: Thank you, Your Honor. I dispute
23 the Government's contention that this was somehow done in a
24 vacuum and that's because Mr. Mosley's Axiom Report was
25 generated back in August of 2019. We were provided with a

1 redacted copy of that report with the Government's initial
2 discovery disclosures. So, it's redacted to the extent that
3 we have all the data that he generated in the report, but I
4 can't look at the pictures.

5 I'll represent to the Court that in his digital Axiom
6 Report there was a bookmark labeled as pictures. That file
7 -- that folder had bookmarked over 500 -- approximately 530
8 image files and I read and my expert read as information
9 that this expert was going to testify about as to what
10 images were found on the computer.

11 Now, interestingly enough probably, I would say, at
12 least 500 of those images were found in a thumbcache folder.
13 Now, that is a Windows-generated folder that the computer
14 automatically creates, and it's not the exact original size,
15 but I'll represent to you that in the bookmark that Mr.
16 Mosley created it showed the pathway for every one of those
17 images and it showed the pathway where that file could be
18 located. So, it's not like they had to go search for it.
19 It was in the directory that's listed in his report.

20 Now, there were probably -- I'm going from memory -- I
21 would say maybe 30 files that were filed and that were found
22 in unallocated space and all that means is that is evidences
23 of a file that was deleted that is no longer in a folder on
24 a computer, but it's in that area of the computer that if
25 you went out and got another program and loaded it, that's

1 where it was found at. So, they knew where this was at.
2 So, how -- why -- for them saying that they had to go to Mr.
3 Pickering to find out where it was at, it was listed in the
4 pathways.

5 Now, if they're running a search for something in an
6 allocated space they don't really need to do that because
7 the program pulls the image up. If I had the full version
8 of a program and I was looking at it I could look at each
9 picture and decide what it was.

10 So, to the idea -- the notion that it took somebody
11 else to look at the pictures to decide what they were going
12 to do, I don't think that was necessary. I think this was
13 clearly another search meant to use another forensic tool
14 that Mr. Mosley didn't run to see what else they could find
15 and, this being at the last minute, I think it should be
16 excluded.

17 THE COURT: I understand.

18 I'll be willing to hear the Government's reply. You
19 can choose between you who delivers that report.

20 MR. BLACKWELL: I'll defer.

21 MR. BOGGESS: It was not our intent to just do --
22 I understand Mr. Bungard's frustration and his stance, but
23 it was not our intention to just do an additional search on
24 that computer. There were also photos listed in other
25 locations on that computer that we were trying to find

1 during the extraction as listed in that report.

2 When we were trying to get those photos we were not able to
3 get to those photos for whatever reason.

4 That was with our expert. That's when the expert says,
5 well, I can refer to or talk to my colleague at HSI. He may
6 be able to help me to get these photos.

7 Now, it was not done, and I can say with -- I'm trying
8 to be completely candid to the Court. When Mr. Pickering
9 ran that, it was not our intent to say, hey, let's see what
10 we can find. It was a matter of we were specifically trying
11 to find certain images that were not being located when we
12 were trying to get the finalization of those images that we
13 would use for trial.

14 Now, I will let Mr. Blackwell finish and make sure that
15 that was the understanding, but it was not provided to Mr.
16 Pickering for the purpose of just running a completely new
17 analysis.

18 MR. BLACKWELL: I believe you've laid it out well,
19 Timm.

20 THE COURT: Well, is Mr. Boggess' recitation
21 correct? Was there any instruction given to Mr. Pickering
22 that he might check further on any matter related to the
23 data that had not been covered by Mr. Mosley?

24 MR. BLACKWELL: I did not -- this is Mr. Blackwell
25 speaking. I did not speak to Mr. Pickering, Your Honor.

1 THE COURT: I understand. Did you give
2 instructions to Mr. Mosley?

3 MR. BLACKWELL: Give instructions for him to do a
4 complete different search?

5 THE COURT: To have him make further inquiry of
6 Mr. Pickering about further investigative actions that might
7 be taken? If you believe that's work product, then we'll
8 hear it in-camera.

9 MR. BLACKWELL: Your Honor, we were simply trying
10 to identify the location of photographs that were documented
11 in Mr. Mosley's report. That was the conversation with Mr.
12 Mosley.

13 I can't represent what Mr. Mosley said to Mr. Pickering
14 whenever he went to Mr. Pickering's office. The
15 conversation at our office, in reviewing everything, was we
16 need to know exactly where these photographs are.

17 THE COURT: One moment, please.

18 (Pause)

19 THE COURT: Well, I have to say that I'm still not
20 entirely satisfied with the timeline and the contents of it.
21 I do believe I know more about it now than I did previously.
22 The Court --

23 And Mr. Bungard, I'll give you the final word before I
24 rule.

25 MR. BUNGARD: Your Honor, I don't see how taking a

1 computer to Mr. Pickering that ends up looking for images
2 and he ends up finding a shadow version of what Mr.
3 Shortridge's computer looked like before they seized it.
4 And that's what I understand this search did. It recovered
5 information pertaining to search terms that were
6 specifically being used. It uncovered additional files that
7 were supposedly present on a computer on an earlier date.
8 That, to me, sounds like a search. It doesn't sound like
9 looking to see where images are located on a hard drive.

10 THE COURT: Understood.

11 As all of you know, the governing discovery provisions
12 under the criminal rules are decidedly different than under
13 the civil rules from both what is considered a timely
14 disclosure and also from the standpoint of the sanctions
15 that accompany defaults in the discovery process.

16 Under the circumstances I am going to deny the motion
17 to strike and I will permit additional time for the
18 defendant to undertake whatever investigation or further
19 examination is necessary.

20 I would say that on Page 2 of the defendant's motion to
21 preclude that there is listed information that's lacking at
22 this point in the Government's disclosure or information
23 respecting Mr. Pickering's opinion.

24 I would expect there to be full compliance with the
25 discovery rules to the extent there have not been already

1 and, if it's necessary to further develop that matter in the
2 coming days or weeks, it will be your obligation to file a
3 motion in that regard, Mr. Bungard.

4 But my foremost concern right now is to get word to a
5 number of very concerned and worried jurors that they now
6 need not report next week and I will re-set the trial,
7 taking note of counsels' other obligations, and we will get
8 that set just as quickly as we can, but it does seem like
9 it's going to be along the lines of the defendant's request,
10 30 days, at a minimum.

11 In light of that, is there anything further from the
12 Government?

13 MR. BLACKWELL: No, Your Honor.

14 THE COURT: Anything from the defendant?

15 MR. BUNGARD: No, Your Honor.

16 THE COURT: Thank you, counsel.

17 Court is adjourned.

18 MR. BOGGESS: Thank you, Your Honor.

19 (Proceedings concluded at 4:08 p.m., April 1, 2022.)
20

21 CERTIFICATION:

22
23 I, Ayme A. Cochran, Official Court Reporter, certify
24 that the foregoing is a correct transcript from the record
25 of proceedings in the above-entitled matters as reported on

1 April 1, 2022.

2
3 s/Ayme A. Cochran, RMR, CRR

January 3, 2024

4 Ayme A. Cochran, RMR, CRR

DATE

NO. _____

In the
Supreme Court of the United States

JASON SHORTRIDGE, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

APPENDIX D
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Wesley P. Page
Federal Public Defender

Jonathan D. Byrne
Appellate Counsel
Counsel of Record

David R. Bungard
Assistant Federal Public Defender

OFFICE OF THE FEDERAL PUBLIC DEFENDER
Southern District of West Virginia
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304/347-3350
jonathan_byrne@fd.org

Counsel for Petitioner

1 Are there any motions?

2 MR. BUNGARD: Your Honor, I'm going to renew my
3 judgment for acquittal under Rule 29. I just wanted to
4 reincorporate the same reasons I previously said to the
5 Court why the Court should proceed to dismiss Counts 1
6 through 4.

7 THE COURT: Understood.

8 Does the United States wish to be heard further?

9 MR. BLACKWELL: Your Honor --

10 THE COURT: One moment, please.

11 MR. BLACKWELL: I apologize. I didn't hear that,
12 Your Honor.

13 THE COURT: Does the United States wish to offer
14 any response?

15 MR. BLACKWELL: I would like to incorporate the
16 arguments that I made at the first motion made by the
17 defendant with the added argument that Mr. Shortridge
18 himself admitted to downloading and possessing and
19 subsequently deleting all of the images that were on his
20 computer.

21 THE COURT: Understood.

22 Well, the Court denies the motion to the extent the
23 motion is renewed, if necessary. Following the rendering of
24 the verdict by the jury, the Court will issue an expanded
25 opinion on the matter, but I do believe under the governing

1 standards that the evidence submitted, taken in the light
2 most favorable to the United States, along with accompanying
3 reasonable inferences, is sufficient to get the case to the
4 jury. So, again, the motion is denied with the Rule 29
5 option of renewal.

6 Anything further with respect to motions?

7 MR. BLACKWELL: None from the United States, Your
8 Honor.

9 MR. BUNGARD: No, Your Honor.

10 THE COURT: And so, we're at the point of having a
11 charge conference. I typically do those back in chambers in
12 the conference room where you were for jury selection
13 without a court reporter. And we'll move through those
14 next.

15 And what I would ask you, also, I'll have a proposed
16 verdict form for you at that time, as well. It's relatively
17 simple. But how long do you expect for closing arguments?
18 I think, given the nature of the evidence, it wouldn't take
19 any more than 15 to 20 minutes.

20 MR. BLACKWELL: Your Honor, with rebuttal can we
21 have 25 minutes combined, Your Honor? That's 25 between the
22 two of us?

23 THE COURT: I just don't think that's necessary.
24 I think -- can you give me some indication --

25 MR. BLACKWELL: My --

NO. _____

In the
Supreme Court of the United States

JASON SHORTRIDGE, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

APPENDIX E
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Wesley P. Page
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Counsel for Petitioner

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA

v.

JASON SHORTRIDGE

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:21-cr-223

USM Number: 72933-509

David Bungard

Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☒ was found guilty on count(s) Three and Four of Superseding Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 2252A(a)(2) and 2252A(b)(1)	Activities re: material constituting/containing child pornography	3/28/2019	Three
18 U.S.C. §§ 2252A(a)(5)(B) and 2252A(b)(2)	Activities re: material constituting/containing child pornography	5/1/2019	Four

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☒ The defendant has been found not guilty on count(s) One and Two☐ 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.

September 29, 2023

Date of Imposition of Judgment



Frank W. Volk
 Frank W. Volk
 United States District Judge

November 6, 2023

Date

DEFENDANT: JASON SHORTRIDGE
CASE NUMBER: 5:21-cr-223

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
168 months as to Counts Three and Four to run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:
The Defendant should be incarcerated at FCI Elkton.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JASON SHORTRIDGE

CASE NUMBER: 5:21-cr-223

SUPERVISED RELEASE

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

Fifteen (15) years on Counts Three and Four to run concurrently.

MANDATORY CONDITIONS

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

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

DEFENDANT: JASON SHORTRIDGE
CASE NUMBER: 5:21-cr-223**STANDARD CONDITIONS OF SUPERVISION**

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: JASON SHORTRIDGE
CASE NUMBER: 5:21-cr-223

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

85. In addition to the above Standard Conditions of supervised release (National Form AO 245B), the defendant is subject to the following six Additional Standard Conditions pursuant to Local Rule of Criminal Procedure 32.3.

86. If the defendant is unemployed, the probation office may direct the defendant to register and remain active with Workforce West Virginia.

STRICKEN by the Court. 87. Defendants shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Defendants shall not use any method or device to evade a drug screen.

88. As directed by the probation officer, the defendant will make co-payments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.

89. A term of community service is imposed on every defendant on supervised release or probation. Fifty hours of community service is imposed on every defendant for each year the defendant is on supervised release or probation. The obligation for community service is waived if the defendant remains fully employed or actively seeks such employment throughout the year.

90. The defendant shall not possess a firearm, ammunition, destructive device, or any other 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), and shall reside in a residence free from such items.

91. The defendant shall not purchase, possess, or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids, or other designer stimulants.

Sex Offender Conditions

92. In addition to the above conditions in this District, it is respectfully recommended that the defendant be subject to the following Standard and Optional Conditions of supervision for sex offenders.

Standard Conditions

93. The defendant shall have no direct or indirect contact, at any time, for any reason, with the victim(s) identified in the presentence report or the victim's family.

Justification: The instant offense is of a sexual nature involving images and a videos of child pornography. The defendant possessed at least 600 images and six videos involving prepubescent minors, some of whom have been identified as known children through NCMEC, engaged in sexual acts. This special condition is recommended to protect any children who the defendant may come in contact, and to provide added supervision and accountability by ensuring the parent of said children are aware of the danger posed by the defendant.

94. The defendant shall submit to an evaluation by a qualified mental health professional, approved by the probation officer, who is experienced in treatment of sexual offenders. The defendant shall take all medications reasonably related to treatment of his condition, complete all treatment recommendations, and abide by all rules, requirements and conditions imposed by the professional. The defendant must do so until discharged from treatment by the professional. Prior to being required to submit any proposed course of treatment, the defendant or the United States may seek review by the presiding district judge of any facet of the prescribed course of treatment. The United States and the defendant shall also have the right to seek review by the presiding district judge of any continuation or discontinuation of such treatment.

Justification: The instant offense is of a sexual nature involving images and a video of child pornography. This condition will help guide the probation officer in adequate supervision of the defendant and to make necessary treatment and other referrals for the defendant.

95. The defendant shall submit to risk assessments, psychological and physiological testing, which may include, but is not limited to, a polygraph examination or other specific tests to monitor the defendant's compliance with probation or supervised release treatment conditions, at the direction of the probation officer.

DEFENDANT: JASON SHORTRIDGE
CASE NUMBER: 5:21-cr-223

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

Justification: The instant offense is of a sexual nature involving images and a videos of child pornography. The defendant possessed at least 600 images and six videos of prepubescent minors, some of whom have been identified as known children through NCMEC, engaged in sexual acts. This condition will help guide the probation officer in adequate supervision of the defendant and to make necessary treatment and other referrals for the defendant.

96. The defendant's residence and employment shall be approved by the probation officer. Such approval shall not be unreasonably withheld. Any proposed change in residence or employment must be provided to the probation officer at least 10 days prior to the change and pre-approved before the change may take place. If such notification is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of the change or expected change.

Justification: The instant offense is of a sexual nature involving images and a videos of child pornography, which were downloaded using the Internet. The defendant possessed at least 600 images and six videos of prepubescent minors, some of whom have been identified as known children through NCMEC, engaged in sexual acts*. This condition will help guide the probation officer in adequate supervision of the defendant and to ensure compliance with the court-ordered conditions of release.

97. The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) and/or register as directed by the probation officer. The defendant shall register with any local and/or State Sex Offender Registration agency in any state or federal territory where the defendant resides, is employed, carries on a vocation, or is a student, or was convicted of a qualifying offense, pursuant to state law.

Justification: The instant offense is of a sexual nature involving children, and the registration is required. The special condition is recommended to ensure compliance with supervision and to protect potential victims from further crimes of the defendant.

Optional Conditions

98. The term "minor" with respect to any condition of supervised release refers to one who is under the age of eighteen (18) years.

99. The defendant shall not associate or have verbal, written, telephonic or electronic communications with any minor except: 1) in the presence of the parent or legal guardian of said minor; 2) on the condition that the defendant notifies the parent or legal guardian of the defendant's sex offender conviction(s); and 3) with written approval from the probation officer, which shall not be unreasonably withheld. This provision does not encompass associating or communicating with minors working as waiters, cashiers, ticket vendors, and similar service personnel with whom the defendant must associate or communicate in order to obtain ordinary and usual commercial services, so long as such associations or communications are limited exclusively to those which are necessary and proper for obtaining the aforementioned services.

Justification: The instant offense is of a sexual nature involving images and videos of children. The special condition is recommended to protect any children with whom the defendant may come in contact, and to provide added supervision and accountability by ensuring the parent of said child(ren) are aware of the danger posed by the defendant.

100. The defendant must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256) including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" (as defined in 18 U.S.C. § 2256), for the purpose of sexual gratification and would compromise any sex-offense specific treatment.

Justification: The instant offense is of a sexual nature involving images and videos of prepubescent children engaged in sexual acts and lascivious exhibition. In this case, the defendant possessed the videos and images of child pornography on his computer. The special condition is recommended to ensure that the defendant is unable to obtain any images or videos of child pornography.

101. The defendant must not possess or use a computer or other device (as defined in 18 U.S.C. § 1030(e)(1)) capable of Internet access until a Computer Use Agreement is developed and approved by the sex offender treatment provider and/or probation officer. Such approval will not be unreasonably withheld. Such computers, computer hardware or software possessed solely by the defendant is subject to searches and/or seizures by the probation office.

Justification: The instant offense is of a sexual nature involving images and videos of children. In this case, the defendant possessed images and videos of child pornography on his computer, which were downloaded via the Internet. The special condition is recommended to ensure that the defendant is unable to obtain any images or videos of child pornography.

102. The defendant shall not be employed in any position or participate as a volunteer in any activity that involves contact with minors without written permission from the probation officer, which shall not be unreasonably withheld. The defendant may not engage in an activity that involves being in a position of trust or authority over any minor.

Justification: The instant offense is of a sexual nature involving images and videos of prepubescent children engaged in sexual acts and lascivious exhibition. The special condition is recommended to prevent the defendant from having any contact with children.

DEFENDANT: JASON SHORTRIDGE
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ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

103. The defendant shall provide the probation officer access to any requested financial records and authorize the release of any financial information.

Justification: Should the Court impose the \$5,000 special assessment and restitution in this case, this condition is necessary for the probation office to oversee the payments.

104. The defendant shall not engage in any forms of exhibitionism, voyeurism, obscene phone calls or other lewd or lascivious behavior toward a minor, nor engage in “grooming” behavior that is apt to attract, seduce reduce sexual resistance or inhibitions of a minor.

Justification: The instant offense is of a sexual nature involving images and videos of prepubescent children engaged in sexual acts and lascivious exhibition. The special condition is recommended to prevent the defendant from having any inappropriate contact with children.

105. The defendant shall allow the U.S. Probation Officer, or other designee, to install software designed to monitor computer activities on any computer the defendant is authorized to use. This may include, but is not limited to, software that may record any and all activity on computers (as defined in 18 U.S.C. § 1030(e)(1)) the defendant may use, including the capture of keystrokes, application information, internet use history, email correspondence, and chat conversations. The defendant shall pay any costs related to the monitoring of computer usage at the direction of the probation officer.

Justification: The instant offense is of a sexual nature. The defendant downloaded and stored numerous child pornography images using the Internet. The special condition is recommended to facilitate the supervision of the defendant and to deter him from engaging in similar conduct in the future.

106. The defendant shall not possess pictures of minors for the purpose of sexual gratification.

Justification: The instant offense is of a sexual nature involving images and videos of children. In this case, the defendant possessed images and videos of child pornography on his computer, which were downloaded via the Internet. The special condition is recommended to ensure that the defendant is unable to obtain any images or videos of child pornography.

107. The defendant shall submit his or her person, property, house, residence, vehicle, papers, or office to a search conducted by a United States probation officer when there is reasonable suspicion that the defendant has violated a condition of supervision. Prior to the search, the Probation Officer must obtain approval for the search from the Court. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation of release. The defendant shall inform other occupants that the premises may be subject to searches pursuant to this condition.

Justification: The instant offense is of a sexual nature involving images videos of a child engaged in sexual acts. In this case, the defendant possessed and distributed images and videos of child pornography utilizing his computer. This condition allows the probation officer to promote public safety through effective oversight of higher-risk defendants and by assisting with rehabilitation efforts. The condition may also deter criminal conduct and permit a probation officer to intervene quickly when reasonable suspicion exists that a defendant has engaged in criminal conduct or otherwise violated a condition of supervision.

NOTE: This condition has been approved by the Judicial Conference of the United States; approved by the Administrative Office of U.S. Courts and incorporated in the model condition language; appears as a condition of supervised release that the Court may explicitly order pursuant to 18 U.S.C. § 3583(d); and is recommended by the U.S. Sentencing Commission at U.S.S.G. § 5D1.3(d)(7)(C).

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SPECIAL CONDITIONS OF SUPERVISION

108. In addition to the above Mandatory and Standard Conditions of supervised release, the probation officer recommends that the defendant be subject to the following Special Conditions of supervised release.

109. ***STRICKEN*** The defendant shall pay an additional special assessment of \$5,000. If not paid immediately, the defendant shall pay the assessment in payments not less than \$25 per quarter through participation in the Bureau of Prisons' Inmate Financial Responsibility Program. Any remaining balance shall be paid during the term of supervised release. ***Per the Court, as stated on the record, the Defendant will not pay the \$5,000 assessment.

110. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

Justification: Should the Court impose the \$5,000 special assessment in this case, this condition is necessary for the probation office to oversee the special assessment payments.

111. You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

Justification: Should the Court impose the \$5,000 special assessment in this case, this condition is necessary for the probation office to oversee the special assessment payments.

112. You shall apply all monies received from income tax refunds, lottery winnings, judgments, and any other anticipated or unanticipated financial gains to any outstanding Court imposed monetary obligations.

Justification: Should the Court impose the \$5,000 special assessment in this case, this condition is necessary for the probation office to oversee the special assessment payments.

113. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

Justification: The defendant's conviction is a sex offense, and restitution is appropriate. This condition is necessary for the probation office to effect restitution.

114. You shall apply all monies received from income tax refunds, lottery winnings, judgments, and any other anticipated or unanticipated financial gains to any outstanding Court imposed monetary obligations.

Justification: The defendant's conviction is a sex offense, and restitution is appropriate. This condition is necessary for the probation office to effect restitution.

115. ***AMENDED*** You shall pay restitution totaling \$186,671.27 (*AMENDED* to \$24,500.00) as described in paragraph 128, with interest as allowed by law, to the fullest extent financially feasible. The defendant shall pay restitution during any term of incarceration through participation in the Bureau of Prisons' Inmate Financial Responsibility Program in quarterly installments of \$25, with any balance to be paid through monthly installments of no less than \$100 during a term of supervised release with the first installment to be paid within 30 days of release from incarceration, until the full amount has been paid. Payments shall be paid to the Clerk of the Court at the following address: United States District Clerk's Office, Robert C. Byrd Federal Building, United States Courthouse, 300 Virginia Street East, Charleston, West Virginia, 25301. ***As stated and agreed upon by the parties on the record, the total restitution amount is \$24,500.00, without interest.

Justification: The defendant's conviction is a sex offense, and restitution is appropriate. This condition is necessary for the probation office to effect restitution.

DEFENDANT: JASON SHORTRIDGE
CASE NUMBER: 5:21-cr-223**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00	\$ 24,500.00	\$ 0.00	\$ 0.00	\$ 0.00

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
John Does 4 and 5 of 8kids series		\$6,000.00	
April - Aprilbonds series		\$3,000.00	
Maria - Best Necklace series		\$3,000.00	
Jenny series		\$3,500.00	
Sarah - Marineland1 series		\$3,000.00	
Pia - Sweet White Sugar series		\$3,000.00	
Tara - Tara series		\$3,000.00	

TOTALS	\$	<u>0.00</u>	\$	<u>24,500.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

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

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

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

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

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

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SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 24,700.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
If not paid immediately, the defendant shall pay the special assessment while incarcerated through participation in the Inmate Financial Responsibility Program by paying quarterly installments of \$25.00 each. Further, while incarcerated, the defendant must pay \$25.00 per quarter toward his restitution obligation. Upon release from incarceration, the Defendant shall pay \$100 per month toward his restitution obligation until paid in full. First payment must commence within thirty (30) days of his release from incarceration.

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.