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STATE OF MICHIGAN

IN THE SUPREME COURT

People of the State of Michigan

Plaintiff-Appellee,

v.

Jayneel Ravindra Jade

Defendant-Appellant.

Supreme Court No. 167920

Court of Appeals No. 365951

Van Buren Circuit Court
LC No. 2022-023839-FH

Appendix to Criminal Defense Attorneys of Michigan's Amicus Curiae Brief

In support of Jayneel Ravindra Jade

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF NEWAYGO

THE PEOPLE OF THE
STATE OF MICHIGAN,

File No. 21-12849-FH

vs. JURY TRIAL

EVAN ANDREW-BARTELL LAKATOS,

Defendant.

VOLUME II
STENOGRAPHIC RECORD

of the proceedings had in the above-entitled cause on the 14th day of December, 2022, before HONORABLE ROBERT D. SPRINGSTEAD, CIRCUIT JUDGE, and a Jury.

APPEARANCES:

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EXHIBITS:

Number	Description	Marked	Admitted
PX#1	DVD of text messages	33	35
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PX#3	Log of text messages	39	40
PX#4	Photograph	43	44
PX#5	DVD of police interview	63	67
PX#6	Apology letter	69	74
DX#A	Photograph of Max Citro	50	51
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DX#C	Grindr agreement	119	120
DX#D	Grindr agreement	119	120
DX#E	Grindr agreement	119	120

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Wednesday, December 14, 2022

At 9:33:00 A.M..

White Cloud, Michigan

R E C O R D

THE COURT: All right. We're back on the record. And Mr. Holmes, anything for the record before we bring the jury in?

MR. HOLMES: No, sir, I have nothing.

THE COURT: Mr. Kortes, anything before we bring the jury in?

MR. KORTES: No, Your Honor.

THE COURT: All right.

(Whereupon, jury entered court-room at 9:34:24 A.M..)

THE COURT: Please be seated. Mr. Holmes, will you call your first witness?

MR. HOLMES: Detective Nicole Loomis.

THE COURT: Raise your right hand, please. Do you solemnly swear, oath or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

DETECTIVE NICOLE LOOMIS: I do.

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D E T E C T I V E N I C O L E L O O M I S, called as a witness at 9:34:42 A.M., testified as follows:

DIRECT EXAMINATION OF DETECTIVE NICOLE LOOMIS

BY MR. HOLMES:

Q. Would you please state your name, spell your last name for the record?

A. Yes. Excuse me. It's Nicole Loomis, spelled L-O-O-M-I-S.

MR. HOLMES: Okay. Are you able to hear back there?

(Whereupon, jury responded affirmatively.)

MR. HOLMES: Doesn't sound like the --

THE WITNESS: Is it on?

THE COURT: The mixer is not on, Jeff. There we go. Just took a minute to warm up.

THE WITNESS: Do you want me to go through that again?

BY MR. HOLMES:

Q. No. She has it. She has it. Detective, I'd like to draw your attention back to August 24th of 2021. What was your occupation back then?

A. I was a detective for the Newaygo County Sheriff's

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Department. I was assigned to the Central Michigan Enforcement Team.

Q. And in the capacity, did you have the occasion on that date to be involved with the human trafficking task force?

A. Yes. I was actually also assigned to the multi-jurisdictional task force team.

Q. And what were the goals or objectives of a human trafficking task force on August of '21?

A. Essentially what the human trafficking task force is, it's a human oppression strike team. We get together with multi-jurisdictional agencies and we set up different applications. We pose as undercover -- or I'm sorry, minor individuals in the extent of trying to lessen the or -- How do I say this? We get together so that way we can -- Sorry. I'm drawing a blank. -- so we get together to basically pose as undercover individuals in the event that there are adults who are seeking out minors for sexual relations.

Q. And what other agencies were involved, do you recall?

A. Yes. It was Mecosta County, Montcalm County, Isabella County, Osceola County, and Newaygo County.

Q. And what was your particular role on August 24th?

A. I held several goals within that task force. I was

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assigned to create the accounts. I was assigned to -- as an undercover decoy. I was also assigned as a chatter.

Q. And in looking for these people who would potentially solicit underage minors did you single out any one particular group?

A. No, we did not.

Q. Okay. First of all, let's go through the process of how you set up your accounts, as you call them.

A. Sure.

Q. Please describe that.

A. Okay. So there are different applications that are out there that are used as dating web sites or hookup sites. They're referred to those by a variety of names. We use several of these applications which you download from your app store onto your cell phone. You go through setting up an account. On all of these accounts, you have to acknowledge that you're at least 18 years old to be on the applications. And so when you go through those, you put in your data. There is no secondary verification process of that. You don't have to send in like a photograph of your driver's license or anything like that.

Q. Without the secondary verification does that allow

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for underage minors to go onto those web sites?
A. It does, and it happens more often than anyone would actually realize.
Q. And what kind of applications are we talking about for what web sites?
A. The ones that we specifically used on this date were Whisper, Grindr, Tinder, and there was also another one called Meet Me.
Q. And you said you weren't singling out any one particular group?
A. No, we were not.
Q. All right. And do these particular apps tend to I guess accommodate one particular group over another -- gays versus hetrosexuals versus just plain hookup sites?
A. Grindr is specific for male-on-male interactions. It's commonly known as a male interaction site.
Q. And was that one of the website applications that you set up?
A. Yes.
Q. All right. And as you said, you have to basically indicate that you're 18 year of age with a date of birth?
A. You do. So simple math puts you at 18 years old. You acknowledge by putting in a date of birth and

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then you're able to have access to the website as long as you have an e-mail address.

Q. And with the posting or putting in of the information being 18, are you able to disguise that or hide that from a person who might come onto your posting?

A. Yes, you are. On your profile, once you create the profile or the account, you're able to hide your age. It shows like that you're active or you're not active. And also like if you choose to, you can set your data, like your age out there so people could see that.

Q. All right. Now, you stated earlier in your testimony that you had posed yourself as a decoy for one of these apps?

A. I did. I was posed on several of the other applications as a female.

Q. And would that have been an underage female?

A. Yes, it was.

Q. And what age were you purporting yourself to be?

A. Anywhere -- On one, I said I was 13; one, I said I was 14; one, I said I was 15.

Q. All right. And again, going to the fact that we're not looking for any specific group, did you have hits on you as an under --

A. I did. Yep. So I set the accounts up. And just for

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numbers purposes, across the different applications, I had over 300 messages from people the following morning after I had set up the accounts.

Q. Okay. Looking for you as a minor?

A. For all of the accounts. So that could be the male accounts or female accounts that were set up.

Q. Now, you said you set up an account on Grindr?

A. I did.

Q. Okay. Did you use any specific person or photograph with regard to setting up the Grindr account?

A. I did. We had another male decoy who worked for the Mecosta County Sheriff's Office. He was posing. I was using his photos as an undercover minor.

Q. And who was that person?

A. His name was Max Citro.

Q. Max Citro, he didn't pose as the person communicating, did he?

A. No. He was not the chatter. He was merely -- His photos were merely used for the application.

Q. You used a term he was not the chatter. Is that the person who does the actual communications?

A. That's correct.

Q. And who was the chatter for the Grindr account?

A. It was Detective Dylan Wimmer.

Q. Now, you monitor these app sites for hits back to our

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decoys?
A. Yeah. So one of the rules that we have is that we cannot reach out to individuals on these sites. We can't click on their photos. It can only -- That can only be reciprocated as they reach out first. So when I say there were 300 messages, I didn't go out and communicate with 300 people. These people actually reached out to the accounts themselves.
Q. So you're not soliciting. You just put the account out there and then people come to you?
A. Yep. That's correct.
Q. And these are fictitious accounts? All the information there is fictitious?
A. Yes.
Q. That includes names, dates of birth, the whole ball of wax?
A. Yes. Names, birth dates. The only thing that is obviously of substance is the photographs of us individuals who are posing as decoys.
Q. Do you put any information in there with regard to a profile when you --
A. You do. You can set a profile name. There were two names that we had used on this date. It was Ricky and it was Taylor.
Q. Ricky, who was Ricky?

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A. Ricky Smith was my decoy and Taylor Smith was the decoy on Grindr.
Q. And that's the persona --
A. I'm sorry. Taylor Williams. I misspoke. It's Taylor Williams.
Q. Taylor Williams?
A. Yes.
Q. And that was Detective Wimmer?
A. That was Detective Wimmer.
Q. All right. Are you looking for any consenting adults during this --
A. No.
Q. -- sting operation?
A. We don't. Obviously, it's not the obligation or the direction or goal of the human oppression strike team to speak with consenting adults and meet with them. If you're consenting, obviously that's no crime. It's just merely we are underage and we have individuals who reach out seeking to groom and meet with underage individuals, whether that be their, you know, high level traffickers where they actually kidnap people and put them into a human trafficking ring that they may operate.
Q. With respect to the Grindr account, did you eventually have contact with the person that you

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later came to know as Evan Lakatos?
A. Yes.
Q. Would that have been telephone -- his telephone number of 231-903-3008?
A. Yes.
Q. When did you first have contact with Mr. Lakatos?
A. The evening that I had set up the account, which was the day before this operation, in the evening hours, I set up the accounts and almost immediately there were people who were sending messages to the accounts. So he had messaged the account on Grindr the evening before. And due to the influx of messages and it wasn't the day of the operation, I did not communicate with a lot of people that evening. There were a handful of messages that came into that I responded to on the applications themselves. It wasn't until the next morning that -- or next afternoon that the telephone numbers were exchanged where further communication happened and that was with Detective Dylan Wimmer.
Q. All right. So the initial contact by Mr. Lakatos with the strike or task force was with you initially?
A. It was me initially on the Grindr account after I created the account.
Q. Do you recall what message you received initially

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from him?
A. It was -- It was small banter, like, "hi, hello". And it wasn't until the next morning that there was actually a photo received on the Grindr account from Mr. Lakatos' profile.
Q. And at what point in time did you turn the situation with Mr. Lakatos over to Detective Wimmer?
A. It was the day of the operation, because we had multiple phones for the operation and we had that influx, like I said over 300 messages, I didn't have the capacity to communicate with everybody so I transferred the phone with the Grindr account over to Detective Dylan Wimmer.
Q. And he took over from there?
A. He did.
Q. Okay. And did you eventually come to meet Mr. Lakatos?
A. I never met him, per se, like, "hi, how you are".
Q. Right.
A. I have seen him on the day of the operation and then I also saw him in the preliminary hearing.
Q. And on the day of the operation and preliminary hearing, having seen him, would you recognize him if he saw him again?
A. Yes.

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Q. Is he here in the courtroom?
A. He is. He's sitting at the defense table in a blue shirt with a spotted tie and blue jacket.
MR. HOLMES: Ask the record reflect identification of Mr. Lakatos.
THE COURT: Yes.
BY MR. HOLMES:
Q. This sting operation, where was it set up to run from?
A. We were operating in Newaygo County. It was actually in the City of Fremont. Our specific location was at the Harrington Inn.
Q. And on the day that the task force was set up and that first communication on that day, August 24th, do you remember approximately the time of day that you got your first communications from Mr. Lakatos? If you do, that's fine.
A. I don't recall the specific times.
Q. Was that the last contact you had with the Grindr account and/or text messages involving Mr. Lakatos once you turned it over to Detective Wimmer?
A. That's correct.
Q. You didn't participate in any post-arrest interviews or anything of that nature?
A. No.

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Q. Okay. And you didn't do any seizing of any evidence. Is that correct?
A. No, I didn't. I had other obligations. Like I said, I was a decoy and I was also a chatter, so I was at the hotel. I remained at the hotel during this arrest. And interviewing all of the seizing of documents, all that, I was never that.

MR. HOLMES: All right. Thank you. I have no further questions at this point.

THE COURT: Mr. Kortes?

MR. KORTES: Thank you, Your Honor.

CROSS-EXAMINATION OF DETECTIVE NICOLE LOOMIS

BY MR. KORTES:

Q. Good morning, Detective Loomis.
A. Good morning.
Q. So when you set up this Grindr account that was sometime during the day on August 23rd?
A. It was in the evening hours on the 23rd. That's correct.
Q. Okay. Do you know approximately what time?
A. I don't recall the specific time. I know it was in -- during my shift, which my shift ran from 2:00 PM to 10:00 PM, so I know it was nighttime. It was dark out.

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Q. Okay. And how many accounts did you set up on the 23rd?
A. At least three, could have been more. We had three phones that we were operating off from. However, on each phone, I set up multiple accounts on multiple different applications. So it was at least three, but it could have been more than that.
Q. Okay. And you said the one specifically we're talking about today was set up on Grindr, which is a gay men meet-up site. Correct?
A. That's correct.
Q. Okay. And that's an adult dating site. Correct?
A. We have to be at least 18 to set up the account.
Q. Okay.
A. Or say you're at least 18 with the date of birth that you provide.
Q. Okay. So there are precautions that are on the web site for making sure people are adults that are on this site?
A. As far as the date of birth, I would say so.
Q. Okay. And did you review those rules?
A. No. When I was setting up multiple accounts, did I read through the fine print of each account? No, I didn't.
Q. Okay. So you didn't even scroll through any of

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the --
A. You just have to acknowledge, put your date of birth, and then you create the account.
Q. Okay. All right. And so when you created this account, you used a name, I think it was Tyler Williams?
A. Taylor Williams.
Q. Taylor Williams. And that was not a person's real name. Correct?
A. No. It was a fictitious account that I had set up that was, again, posing as an individual.
Q. Okay. Did you have to put an address down on this account when you signed up?
A. I don't believe so.
Q. Okay. Did you have to associate an e-mail address with it?
A. You do have to have an e-mail address.
Q. Okay. And you created an e-mail address that was fake?
A. I did.
Q. Okay. And when you came to the age restriction, you put in a fake birth date, also?
A. I did.
Q. And after you put in that fake birth date, was there any confirmation on the website that you had to check

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a box verifying this is my birth date?
A. There -- You just put in the birth date and it says an that you -- an acknowledgment. I believe that you have to select the box. I don't specifically remember to Grindr what that said or what was specific to Grindr. I don't recall that.
Q. Okay. So you put in a fake birth date to show that this person was over 18?
A. At least 18, yes.
Q. Okay. And then you affirmed that that birth date was correct?
A. Sure.
Q. Okay. And then you posted a profile picture of Max Citro who is an underage -- or an undercover officer posing as this underage individual. Correct?
A. Yes, sir.
Q. Okay. And Max Citro is 27 years old or was at the time?
A. I don't know how old he is.
Q. Did you contact Grindr to make them aware of this sting operation?
A. No, sir.
Q. And your only other involvement after setting up this Grindr account was passing off the responses to detective -- or Deputy Wimmer. Correct?

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A. He's a detective. And I set up the account. There was conversation on the account on the evening that I set it up like I previously mentioned. And then in the morning, I know that there was a photo sent to the account by Mr. Lakatos. I believe he was in the shower, but I didn't communicate after I transferred the phone off to Detective Wimmer.

Q. Okay. And when you say transfer the phone, did you actually transfer the phone you were using or transfer the account to mister -- to Detective Wimmer?

A. The actual physical phone. I had three phones with all these different accounts set up on each of the phones and I actually physically handed him the phone to continue the communications on those accounts.

Q. Okay. And where is that phone today?

A. I don't recall.

Q. Okay. What happened to the Grindr account?

A. I know at sometime the Grindr account was reported by an individual who had been in communication as an undercover profile and I know that the account on Grindr was actually shut down and they actually canceled that -- that application using -- with the INEI number on the phone that you can no longer, with any other e-mail address or any other date of birth,

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any other name, log into or create another account using that actual cell phone.

Q. Okay. And the whole purpose of this task force was to catch adults who were seeking to have sexual relations with minors?

A. Identify individuals who were adults who were seeking out individuals who have less than the consent age in the State of Michigan and they wanted to have sexual relations, that's correct.

Q. And what is the age of consent in Michigan?

A. 16.

Q. Okay. And in this Grindr account, there was no indication of age on the profile. Correct?

A. No. Outside of the acknowledgment or the -- that's what you call it, the acknowledgment or the date of birth that I put in indicating I was 18 years old or the account user was 18 years old, there is a way that you can hide the age on the actual profile itself, which I did, because obviously there's a whole slew of individuals who download these application, put in fake birth dates, and log in and create accounts. We know this because it happens with all accounts on the application, they want to have -- the account itself wants to have an authentication that they're at least 18.

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Q. Okay. So I guess my point, then, is when somebody is scrolling Grindr and looking at people in their area, people matches that may come up, all they see is a picture and a name?
A. A picture and a name, yep.
Q. Okay. So there's no indication of age. Correct?
A. Not that I had set up. You can have your age out there. I put it in a ghost mode, per se. I hid the age.
Q. But, again, if I'm looking for a hookup and I see Taylor, I'm not going to see Taylor, age 18?
A. Not necessarily, but you can. People can have their age on there.
Q. Okay. All right. So it -- If somebody is scrolling then I could see an age that says 18, 19, 20?
A. 25, 80, 90, yeah. You can have an age on there.
Q. And do you remember what birth date you put in for Taylor?
A. I don't recall the specific date of birth. It was at least 18.
Q. Okay. Do you remember what age it would have been for Taylor?
A. I believe that I used the 18, a simple math of an 18 year old.
Q. Okay. And again, that accompanied a photograph of

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who was Max Citro?
A. It was Max Citro, yes.
Q. And you said that Mr. Lakatos responded that very night to this account?
A. Yes, he did.
Q. Okay. And his response was just banter, "hi, hello"?
A. I believe so. I don't specifically recall the conversation. Like I said, there were over an influx of 300 messages that had come in. And while setting those up, it wasn't my intent to have communications that evening. There were a couple that I responded to, but it wasn't anything more than, "hey, hi, hello".
Q. Okay. So Mr. Lakatos didn't reach out and say, "you look like you're under 16, I like that", anything like that?
A. Not that evening.
Q. Okay.
A. Not to me.
Q. Okay. You can't recall anything else he said other than, "hi, hello"?
A. I don't recall the specifics from the Grindr account. Like I said, that account was shut down and I did not have access to review that material.
Q. Okay. And then did you have any response with Mr.

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Lakatos that night?
A. Yeah. I exchanged, "hi, hello".
Q. Okay.
A. Just simple things.
Q. Okay.
A. We didn't discuss age or anything that of that, if that's the question that you're trying to get to.
Q. I just wanted to know what you recall and you exchanged --
A. It was just --
Q. -- conversation with?
A. Simple casual conversation of, "hi, hello".

MR. KORTES: Okay. Okay. Thank you.

THE WITNESS: Thank you.

THE COURT: Any redirect, Mr. Holmes?

MR. HOLMES: I have none, sir.

THE COURT: All right. May this witness be excused?

MR. HOLMES: No objection.

MR. KORTES: She may.

THE COURT: All right. Thank you.

THE WITNESS: Thank you.

(Whereupon, witness excused at 9:58:19 A.M..)

MR. HOLMES: Detective Wimmer.

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THE COURT: Raise your right hand, please. Do you solemnly swear, oath or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

DETECTIVE DYLAN WIMMER: I do.

D E T E C T I V E D Y L A N W I M M E R, called as a witness at 9:59:27 A.M., testified as follows:

DIRECT EXAMINATION OF DETECTIVE DYLAN WIMMER

BY MR. HOLMES:

Q. Would you please state your name, spell your last name for the record.

A. Dylan Wimmer, W-I-M-M-E-R.

Q. And you're a detective with the Newaygo County Sheriff's Department?

A. I am.

Q. And in that capacity, did you have occasion to assist in the human trafficking task force back on August 24th, 2021?

A. I did.

Q. How did you become involved in that?

A. Became involved with that, helped set it up, and during the operation I was chatter or one of the

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people that communicated with other subjects.
Q. Okay. And what other -- was this a multi-jurisdictional task force?
A. Yes, it was.
Q. Okay. Several different counties involved?
A. Yes.
Q. Newaygo County being one of them?
A. Yes.
Q. You said your specific role was to help set up a situation?
A. Yes.
Q. Where was that done?
A. It was at the Harrington Inn in the City of Fremont in Newaygo County.
Q. And what was the purpose as you understood it for the task force that evening or that day?
A. It was to identify and eventually make contact with anyone that was trying to communicate with minor children for immoral purposes.
Q. Did you work with a multitude of other people?
A. Yes.
Q. Approximately how many people besides yourself were involved, just a number wise?
A. Approximately 25.
Q. And was Detective Nicole Loomis one of those people?

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A. She was.
Q. Now, did she set up the fictitious accounts for your underage minors?
A. Yes.
Q. You didn't have anything to do with that?
A. I -- I made some fake e-mail accounts and provided them to her and then she made the actual accounts.
Q. Okay. But all the accounts were fictitious in nature?
A. Yes.
Q. And what was the name that was assigned to you for the fictitious person you were representing?
A. I was representing a person named Taylor Williams.
Q. On August 24th, were you eventually handed a communication involving a person later to become known as Evan Lakatos?
A. I was.
Q. All right. When did you first receive that?
A. At approximately 10:00, 11:00 o'clock in the morning, I met up with Detective Loomis. She gave me a phone that she had already made an account on and was communicating with some people, and in those people was Evan Lakatos.
Q. And that phone that she gave you, do you recall the phone number?

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A. I would have to check my report for that.
Q. Would it be 231-262-6271?
A. Yes, that is correct.
Q. Now, that's not your personal phone, is it?
A. No, that is not.
Q. Was that a phone set up specifically to use during the task force or through the task force?
A. Yes, it was.
Q. All right. So that phone didn't belong to anybody, either, other than Taylor Williams?
A. Correct.
Q. All right. Now when you first had contact with this person Mr. Lakatos, was that through a particular app?
A. Yes. It was through the application called Grindr.
Q. And what do you understand Grindr to be?
A. Grindr is a homosexual dating website application.
Q. Okay. And that's done online?
A. Yes.
Q. Okay. So computer internet?
A. Correct.
Q. And eventually, did you have -- through your investigation have face-to-face contact with Mr. Lakatos?
A. I did.

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Q. And would you recognize him if you saw him again?
A. Yes.
Q. Is he here in the courtroom?
A. He is.
Q. Would you point to him, identify where he is seated and what he is wearing, please?
A. Sitting to my far right wearing a blue suit jacket with a lighter blue shirt.
Q. To the left of his attorney, your right of Mr. Kortes?
A. Correct.

MR. HOLMES: Ask the record reflect identification of Mr. Lakatos.

THE COURT: Yes.

BY MR. HOLMES:

Q. You said it was set up at the Harrington Inn. Any particular reason why we set it up at the Harrington Inn? Convenience?
A. Just that's where we picked.
Q. All right. And why was the Grindr web page selected, do you know?
A. We select -- We use multiple different applications. Grindr was just the one that I was assigned that day.
Q. All right. Did you use applications for heterosexual

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web sites, too?
A. Yes, we did.
Q. So you weren't -- you weren't singling out the gay community, were you?
A. No.
Q. Was your efforts exclusive to singling out individuals who were seeking sex with underage minors?
A. Yes.
Q. When you went into the situation as a chatter person, what were the parameters or limitations that you were given by way of communication?
A. As to how we communicated?
Q. Correct.
A. So we first started communicating on the application Grindr itself and then eventually we would try to move that over to text messaging.
Q. Why is that?
A. Because our goal is to tell the person on Grindr that we're communicating with that we're less than the age of 16. Once we tell them that, they can block us on their end and then we lose all access to Grindr. So we -- we don't want them to block us, because then we're done for the whole entire evening and we have, you know, 2, 300 other people trying to

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get ahold of us. If one person finds out and we tell them that we're under 16 and they block us then we're done.

Q. So what then is your thought process in switching to text messaging on your phone?

A. Once we switch text messaging, if somebody blocks us we still are able to communicate with that person via telephone, regular cell phone numbers, texting back and forth. If somebody else blocks us throughout the evening on Grindr, we're not -- we're still communicating with that original person that --

Q. All right. Now, you said -- you stated earlier that while on the Grindr app you specifically tried to achieve the task of telling that individual you're under the age of 16. Is that correct?

A. Correct.

Q. And were you able to accomplish that with Mr. Lakatos?

A. We were.

Q. And what did you tell Mr. Lakatos?

A. I explained to him that I was going to get a hotel room at Harrington Inn and that apparently you have to be over 15 years old to get that so I had my cousin do it for me.

Q. Obviously, the cousin is fictitious?

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A. Correct.
Q. And with that notation, you sent that e-mail or text message back to Mr. Lakatos? You sent that to Mr. Lakatos?
A. Yes.
Q. Did he respond?
A. Yes, he did.
Q. And what was his response?
A. His response was: How rude.
Q. Okay. And when you saw that, what did that register in your mind?
A. His response to me saying that I was under 15 and that you got to be, you know, older than 15 to get a hotel room, he said, "how rude", I took that as acknowledgment that he knew I was less than 16 years of age and he processed that in his mind.
Q. And the response of "how rude", was that appropriate in your mind of a response to their comment of being under 16?

MR. KORTES: Objection, calls for speculation.

THE COURT: Sustained.

BY MR. HOLMES:

Q. Did you see anything abnormal about the response of "how rude"?

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A. I did not.
Q. All right. Now, this communication with Mr. Lakatos, do you recall approximately when that started?
A. Right around noon that day.
Q. Okay. And the communication back and forth on Grindr lasted for how long, just approximately?
A. A couple of hours.
Q. At that point, you switched over to text messaging as opposed to Grindr?
A. Correct.
Q. As your investigation developed, did you lose your Grindr account for that particular phone?
A. We did.
Q. What did that involve, losing the account?
A. Like I said, we were communicating with several hundred people. And at some point when we told one person were under the age of 16, they reported us to Grindr and Grindr disabled our account and erased all of our documentation of who we were communicating with all day long.
Q. With respect to the erasure of the communications that you'd been using or having with these other individuals, did you lose the communications with Mr. Lakatos?
A. We did.

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Q. Prior to that happening, were you able to record the communications off of Mr. Lakatos' phone?
A. Yes.

(Whereupon, PX#1 and PX#2 marked for identification at 10:09:21 A.M..)

BY MR. HOLMES:

Q. I'm going to hand you what has been marked as Exhibit Number 1 for identification purposes, as well as Number 2 for identification purposes. Let's take Number 1, first. Ask you to take a look at that, tell me if you recognize it (indicating)?
A. I do.
Q. What do you recognize Item Number 1 as?
A. It's a DVD. It's a video of us scrolling through the Grindr messages.
Q. Okay. Same messages that were later erased?
A. Correct.
Q. All right. And did you review this?
A. Yes.
Q. And how do we know that?
A. I initialed the DVD.
Q. All right. And it was complete and accurate with regard to the text messaging you had with Mr. Lakatos on that night?

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A. The Grindr messaging.
Q. Grindr messaging?
A. Yes.
Q. Okay. Not the text messaging using a phone?
A. Correct.
Q. All right. I'm going to hand you Exhibit Number 2, ask you to take a look at that. Tell me if you recognize it (indicating)?
A. I do.
Q. What do you recognize Number 2 as?
A. They're pictures or still -- still pictures of the DVD of scrolling through the Grindr messages.
Q. Okay. Prior to today's hearing, we made these still shots of the DVD?
A. Correct.
Q. And still shots are complete and accurate representations of what's contained on the DVD?
A. Yes.
Q. And the reason we made the still shots is why?
A. Just so it's easier to view.
Q. And both are full and complete accurate representations of the scrolling of Mr. Lakatos' phone on August 24th --
A. Yes.
Q. -- 2021?

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MR. HOLMES: Move for the introduction of Exhibits Number 1 and 2 for identification.

MR. KORTES: No objection, Your Honor.

THE COURT: 1 and 2 would be admitted.

(Whereupon, PX#1 and PX#2 admitted at 10:11:35 A.M..)

MR. HOLMES: With this, Your Honor, I'd like to play Exhibit Number 1. We have the screen set up. I will acknowledge to Your Honor and to the jury that the quality of the picture is poor. That's why we have the still shots made so they could get closer to that in order to review it --

THE COURT: Okay.

MR. HOLMES: -- should they need to, but don't be disappointed if you can't read it.

MS. MICHELLE McKEE: Is there sound with it?

MR. HOLMES: There is, but it's just garbled background chatter, so I plan on muting.

(Whereupon, video played at 10:12:17 A.M.; video stopped at 10:13:50 A.M..)

BY MR. HOLMES:

Q. I've stopped the video, Detective. Is that the transmission you sent to Mr. Lakatos there, the blue

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one at the top of the screen?
A. Yes, it is.
Q. And can you read for the record what that says?
A. "My cousin finally got the room for me. I guess you have to be older than 15 to get a room."
Q. And what was his response?
A. "How rude of them."
Q. Okay. Going to continue to play it.

(Whereupon, video played at 10:13:35 A.M.; video stopped at 10:14:28 A.M..)

BY MR. HOLMES:

Q. The yellow tabs to the right there, is that Mr. Lakatos responding to you?
A. Yes, it is.
Q. And what had you asked Mr. Lakatos immediately prior to that? Hang on a second. Back up a little bit0. Would you read that into the record?
A. "I want the dominant man to tell me what he wants." He then replied: "Love to get head and massages, play with your cute booty, show me more of you."
Q. I'm going to resume playing.

(Whereupon, video played at 10:14:54 A.M.; video stopped at 10:15:19 A.M..)

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BY MR. HOLMES:

Q. The message about the massage, what was that about? Do you see that blue tab there to the left?

A. Yes.

Q. Is that you?

A. Yes.

Q. What did you say?

A. I said: "Just a massage, though?"

Q. What was his response?

A. He said: "That leads into making out and sucking your cock and rimming that tight hole."

Q. Cock is street slang for?

A. Penis.

Q. And tight hole?

A. Be buttocks, asshole.

Q. Asshole. Anus?

A. Anus.

Q. And then at the very end, we see a telephone number. Where did that -- Where did that come from?

A. That -- On the bottom left blue box is me providing him my telephone number so we can move it off of Grindr onto the text messages.

Q. All right.

(Whereupon, colloquy off the record.)

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BY MR. HOLMES:

Q. Was it at that point in time at the end of this Grindr messaging that you switched to the texting?

A. Yes.

Q. In sending that message to Mr. Lakatos, did you see yourself as being clear with regard to your age?

A. Yes.

Q. And you said the -- Was there additional texting involving age later on in your communications with him?

A. Not that I recall.

Q. All right. Nothing about young boys?

A. There was younger mentioned, but not a numerical age after that point.

Q. Was there any point in your Grindr exchange our your text messaging exchange that Mr. Lakatos or Mr. Lakatos indicated that he was confused as to what your age was?

A. No.

Q. Did he ever express at either the Grindr exchange or the texting exchange what he believed your age to be, that being over 16?

A. No.

Q. Did he ever accuse you or ask you if you were 22 or 20s or anything of that nature?

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A. No.
Q. All right, everything that you exchanged with him was centered on being under 16?
A. Correct.
MR. HOLMES: Could I have this marked, please (indicating)?
(Whereupon, PX#3 marked for identification at 10:18:01 A.M..)
BY MR. HOLMES:
Q. I'm going to hand you what's been marked as Exhibit Number 3 for identification purposes, ask you to take a look at that. Tell me if you recognize it (indicating).
A. I do.
Q. Okay. What do you recognize it as?
A. It's a copy of the text message exchange between me and Mr. Lakatos.
Q. And the number at the top we identified earlier is the cell phone you were using during this sting?
A. Correct.
Q. And the transmissions or the e-mail exchange -- I'm sorry, text messaging exchange is a full and accurate representation of your conversations with Mr. Lakatos?

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A. Yes.
Q. All right. These text messages and Grindr exchanges, later on in your investigation did you confront Mr. Lakatos with those?
A. Yes, we did.
Q. And both the Grindr and the text messaging, did he acknowledge having been the one that did that?
A. Yes.

MR. HOLMES: I'm going to move for the introduction of Exhibit Number 3 for identification purposes.

MR. KORTES: No objection.

THE COURT: Exhibit 3 would be admitted.

(Whereupon, PX#3 admitted at 10:18:13 A.M..)

BY MR. HOLMES:

Q. Detective, one quick thing here. On Exhibit Number 3, I want to draw your attention to Page 3 of 6. I asked you earlier about the reference to little boys. Ask you to take a look at that page and see if that is the reference you were referring to (indicating)?

Let me rephrase my question. Is there an exchange there involving what Mr. Lakatos wants to do with you once he gets to the room?

A. Yes.

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Q. And what does he say?
A. He explains he loves a boy free balling and making out.
Q. A boy?
A. Yes.
Q. Okay. Not man?
A. Nope.
Q. And what is free balling, please?
A. Not wearing boxers or underwear.
Q. At all?
A. At all.
Q. So free balling is just letting your genitals hang loose?
A. Correct.
Q. And what was your response to that?
A. What else?
Q. And did he give you anything else?
A. Yep. He said getting head and watching you get hard.
Q. And getting head is that oral sex being performed?
A. Yes.
Q. On him?
A. Yes.
Q. Okay. Because he says "getting head"?
A. Correct.
Q. And then he wants to watch you achieve an erection

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during that?
A. Correct.
Q. Now, you stated that during these exchanges, you put out your information, personal fictitious information. Is that correct?
A. Correct.
Q. Did you ever solicit sex from Mr. Lakatos during any of these exchanges, be it Grindr or text messaging?
A. No.
Q. Did you ever suggest anything?
A. No.
Q. Is it the practice of the task force to let the suspect come to them --
A. Yes.
Q. -- with regard to sexual acts?
A. Yes, it is.
Q. And during your exchange with Mr. Lakatos, was it Mr. Lakatos who suggested oral sex, rimming, playing with booties and the like?
A. Yes.
Q. Did you try to trick Mr. Lakatos into saying these things?
A. No, I did not.
Q. Other than fictitious age of -- I'm sorry, 16, being under 16?

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A. Correct.
Q. Did he ever challenge you on that?
A. No.
Q. Now as the exchange continues, do you ask Mr. Lakatos to do you any favors with regard to his arrival?
A. Yes, we did.
Q. All right.
A. Or I did.
Q. What was that?
A. I asked him to pick up a case of black cherry White Claw and then bring it to the hotel room with him.
Q. Did he acknowledge that request?
A. Yes, and he said he would -- he said he'd go get it.

(Whereupon, PX#4 marked for identification at 10:22:50 A.M..)

BY MR. HOLMES:

Q. I'm going to hand you what has been marked as Exhibit Number 4 for identification purposes, ask you to take a look at that. Tell me if you recognize that (indicating).
A. Yes, I do.
Q. What do you recognize it as?
A. Six pack of White Claw hard seltzer, black cherry flavor.

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Q. And would this have been the item that Mr. Lakatos brought to the room that evening?
A. Yes, it was.
Q. And that's the brand name and flavor that you asked for?
A. Correct.
Q. And by way of text message exchange, you're still 15 years old?
A. Correct.
Q. This is an accurate representation of the item brought to the room?
A. Yes.

MR. HOLMES: Move for the introduction of Exhibit Number 4 for identification purposes.

MR. KORTES: No objection.

THE COURT: Exhibit 4 would be admitted.

(Whereupon, PX#4 admitted at 10:23:35 A.M..)

BY MR. HOLMES:

Q. From the time that you first started your interaction with Mr. Lakatos on the Grindr app -- Let me back up. Did Mr. Lakatos eventually show up at your location at the Harrington Inn?
A. Yes, he did.
Q. Did you give him specific directions on where you

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were located in the hotel?
A. Yes. We told him we were in Room 19 at the Harrington Inn.
Q. And were there people involved in surveillance of the parking lot?
A. Yes, there was.
Q. Okay. Were you alerted to the arrival of Mr. Lakatos?
A. We were.
Q. Did he show up at Room Number 19?
A. He did.
Q. And did he have the White Claw with him at that point in time?
A. Yes, he did.
Q. Now at that point, was Mr. Lakatos taken into custody?
A. He was.
Q. And were you involved in a post-arrest interview with Mr. Lakatos and Detective Kolk?
A. Yes, I was.
Q. And do you recall whether or not Mr. Lakatos was read his Miranda rights?
A. He was.
Q. Were you in the room and involved in the interaction between Mr. Lakatos and Detective Kolk?

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A. I was.
Q. You sat through the whole interview?
A. Yes.
Q. At any point in time during the interview after he's been read his Miranda rights, do you recall Mr. Lakatos ever indicating that this was a big mistake in the sense of who he was dealing with, the 15 year old?
A. No.
Q. All right. Did he ever tell you or Detective Kolk that he thought he was dealing with somebody that was of the age of consent?
A. No.
Q. Now, your exchanges with Mr. Lakatos on the internet, what was your goal once you had made contact with Mr. Lakatos and had indication he was going to follow through on this, what were you trying to achieve with him by maintaining communications?
A. Just maintain communications with him logistically so we know about what time he is going to arrive, if he does arrive to the hotel room, because there was other people that were potentially arriving, as well.
Q. Again, other than using the fictitious age of 15 that you put out there, any trickery or any promises or threats or anything to get Mr. Lakatos to show up at

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your location?
A. No.
Q. All right. And the same question during the interview, any threats or coercion or anything to get Mr. Lakatos to say the things that he said?
A. No.
Q. Was Mr. Lakatos offered the opportunity to end the questioning at any point in time and ask for an -- to end it at any point in time?
A. Yes, he was.
Q. All right. Did he ever take you up on that?
A. No.
Q. All right. Did you see any coercive activities or threats on the part of Detective Kolk?
A. No, I did not.

MR. HOLMES: I am finished with my line of questioning. At this point, Your Honor, with your permission, I'd like to publish Exhibits 2, 3 and 4 to the jury at this point.

THE COURT: All right.

MR. HOLMES: Thank you. No further questions at this time.

MR. KORTES: Thank you, Your Honor.

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CROSS-EXAMINATION OF DETECTIVE DYLAN WIMMER

BY MR. KORTES:

Q. Good morning, Detective Wimmer.

A. Good morning.

Q. So you started picking up this conversation sometime on August 24th. Correct?

A. Correct.

Q. And you testified earlier that you started the conversation sometime around noon?

A. Correct.

Q. Is that when you got the phone?

A. Around that time, yes.

Q. Okay. Because the scrolling that we went through, it actually starts at 8:15 that morning, so that would not have been you doing those conversations?

A. No.

Q. And you weren't in here when Detective Loomis testified, but she mentioned that there was actually conversations the night before with Mr. Lakatos with this Taylor Williams and you were not a part of those, either?

A. I was not.

Q. Okay. And again, this phone that you were using with the number of 231-262-6271, that was a department phone?

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A. Yes.
Q. Okay. Where is that phone now?
A. I do not know what department's phone it was. So that phone number, the 6271 phone number, doesn't belong to any phone. It's through an under -- the undercover -- It's an undercover phone number that's assigned to a phone that we can record all messages, text messages and/or phone calls that are associated with that phone number.
Q. Okay. Is that the same phone you were using for the Grindr app?
A. I'm not sure.
Q. At some point, you went from the Grindr app to texting on a cellular phone?
A. Correct.
Q. Do you remember if it was the same phone you were using for both of those?
A. I do not.
Q. And you have neither of those phones today?
A. I don't.
Q. And when you made these messages back and forth with Mr. Lakatos on the Grindr and on text messaging, these were only messaging. Correct?
A. Correct.
Q. Okay. So you never had a phone call with him?

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A. I did not.
Q. You never had FaceTime with him?
A. I did not.
Q. You did exchange some pictures of Max Citro who was the decoy in this matter, didn't you?
A. Yes.
MR. KORTES: Okay. May I approach the witness, Your Honor.
THE COURT: Yes.
(Whereupon, DX#A and DX#B marked for identification at 10:31:12 A.M..)
BY MR. KORTES:
Q. Detective Wimmer, I'm handing you two exhibits that have been marked as Defendant's Exhibit A and Defendant's Exhibit B. Do you recognize those (indicating)?
A. I do.
Q. And what are those?
A. Photographs of Max Citro.
Q. These would have been photographs that you sent in these text exchanges?
A. Correct.
MR. KORTES: Your Honor, at this point, I would move to admit Defendant's Exhibit A and B into

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evidence.

MR. HOLMES: No objections.

THE COURT: A and B would be admitted.

(Whereupon, DX#A and DX#B admitted at 10:31:42 A.M..)

BY MR. KORTES:

Q. So as far as knowing what Taylor Williams looked like, the only things that Mr. Lakatos had to rely on were these photographs and the profile picture on Grindr. Correct?

A. Correct.

Q. Okay. Now, you also said that the goal of your task force was to make contact with anyone who was contacting and trying to meet underage individuals. Correct?

A. Correct.

Q. Yet Mr. Lakatos never brought up any mention of age or looking for a child, did he?

A. He continued to communicate with us after we told him we were less than the age of 16.

Q. But you never specifically came out and said, "I'm under the age of 16", did you?

A. I made it well aware that I was under the age of 16.

Q. And by your admission, when you said, "my cousin finally got the room for me. I guess you have to be

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older than 15 to get a room", that's where you say you specifically let him know that you were under 16?

A. Correct. And he acknowledged it by saying, "how rude of them".

Q. And he also asked if you had other pics. Correct?

A. Correct.

Q. And your conversa -- that conversation happened at 4:03 PM on August 24th. Correct?

A. Sounds about right, yes.

Q. Okay. And I know it was tough to see when Mr. Holmes was scrolling through there, but all of those messages which are on the photographs have a time when they were exchanged, don't they?

A. They should, yes.

Q. Okay. And it was at 3:37 when you responded to Mr. Lakatos with, "hey, I'm getting a hotel room tonight, too". Does that sound right?

A. That sounds right, yes.

Q. And in there, you also -- and you'll see on those photographs, you included several jovial emojis, didn't you?

A. I included emojis, yes.

Q. Okay. Well, one was the laughing emoji. Correct?

A. I believe so.

Q. And the second or -- Well, the laughing emoji so

much that you're crying emoji, the one with the tears coming down your eyes?
A. It's likely in there.
Q. Okay. And then the second one was the thinking emoji?
A. It's likely in there.
Q. And the third one is a shrug emoji?
A. Yes.
Q. And those were all in those specific Grindr messages?
A. Yes.
Q. To Mr. Lakatos?
A. Yes.
Q. And he responded to those at 3:37, also, "nice, Big Rapids here", didn't he?
A. Yes.
Q. Okay. Your response, and the jury will see this, was: "I'm in Fremont, but I don't have wheels." Correct?
A. Yes.
Q. Didn't say you didn't have wheels because you don't have a driver's license. Right?
A. I said: I do not have wheels.
Q. Okay. And there's any number of reasons why somebody doesn't have a vehicle. Correct?

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A. Correct.
Q. Couldn't afford a car. Right?
A. Correct.
Q. Could have multiple drunk drivings and don't have a driver's license. Correct?
A. You could still have a car.
Q. Well, you wouldn't be able to drive it legally. Right?
A. Legally, yes.
Q. Okay. So there are more reasons why somebody would not have a vehicle than just being without a driver's license?
A. Correct.
Q. Because even as far as your logic just goes, I could be 12 and own a car. Right?
A. Yes.
Q. Okay. And then Mr. Lakatos responds with you, "not too far" and "would be fun to hang out"?
A. Correct.
Q. Okay. And then you respond: "I hope you like younger boys." Right?
A. Yes.
Q. And he says yes?
A. Correct.
Q. And that's at 3:55 PM when that exchange ends.

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Correct?

A. It sounds about right, yes.

Q. Okay. And then a minute later, you send him another message that says: "Send me more pics. I'm excited." Right?

A. It sounds correct, yes.

Q. Okay. So at 3:56, and then he sends you two photos at 3:59. Right?

A. Yes.

Q. And your response to that is, "I love mature men", and you include the sweating emoji?

A. Correct.

Q. And that's at 4:01?

A. Yes.

Q. Okay. And then on that Grindr messaging, which you'll see, two minutes later is when you tell him that your cousin had to finally get you the room because you're because you have to be older than 15 to get a room. You don't say, "I'm only 15 and can't get a room." Correct?

A. I -- Whatever the message said is what I sent to him.

Q. Well, it says: "My cousin finally got the room for me. I guess you have to be older than 15 to get a room"?

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A. Correct.
Q. Okay. You don't say: "I'm not old enough to get a room"?
A. I did not say those words exactly, no.
Q. Well, you didn't say those words at all. You didn't say you were denied getting a room, did you?
A. No, I did not.
Q. You didn't say you were at the hotel and they turned you away because you were only 15, did you?
A. No, I did not.
Q. Mr. Lakatos responds to that with: "How rude of them." Right?
A. Correct.
Q. And he responds to that a minute later, so almost immediately?
A. Correct.
Q. Okay. So in that 30-minute exchange of laughing, thinking, shrugging emojis, banter back and forth, that's where you are firm that you made it 100 percent clear that Mr. Lakatos knew you were under age?
A. Yes.
Q. And that's the only mention of age in this entire day's-long conversation?
A. With the numerical number, yes.

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Q. Well, and, I mean, I guess that's another one. You -- you point to the message that says, "love a boy free balling" as being an indication that Mr. Lakatos knew you were underage. Right?
A. That's what he said. I --
Q. Okay. Because -- So if -- if Mr. Lakatos or somebody said, "I'm going out with the boys", does that mean they're going out with underage kids?
A. Nope.
Q. Boys can be your friends?
A. Correct.
Q. Can be adult males?
A. Correct.
Q. And I'm sorry, I've got correct myself because I said that was the only mention of age in this day-long conversation. It actually started the night before. Correct?
A. I believe it did, yes.
Q. Okay. And this phone that you were using that we saw taken by the body cam on the screen, that had the entire Grindr messaging on it. Is that correct?
A. The phone on the screen is Lakatos' phone.
Q. Okay. So on that, there should have been the messaging from the night before, shouldn't there?
A. I don't know if he deleted it from the night before

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or what.
Q. And it was only after prodding from you that Mr. Lakatos actually said what he wanted to do, wasn't it?
A. I asked him what he wanted to do, yes.
Q. And even a couple of times there, he responded with: You tell me. What do you want to do? So it was still kind of back and forth, wasn't it?
A. Yes.
Q. And then you finally prodded it out of him what he wanted to do with you?
A. He finally told me what he wanted to do with me.
Q. Thinking he was talking to the individual in these photographs (indicating)?
A. Yes.
Q. Okay. And when you asked him to bring White Claw, you never said: "Bring White Claw because I'm not 21." Right?
A. Nope.
Q. He also asked you several times in the text messaging to send a face pic, didn't he?
A. He did ask that, yes.
Q. Made mention about too many fakes on here?
A. Yes.
MR. KORTES: Okay. Thank you, Detective.

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Your Honor, may I publish these to the jury?

THE COURT: Yes. Any redirect, Mr. Holmes?

MR. HOLMES: Yes, sir, just a few questions.

THE COURT: All right.

REDIRECT EXAMINATION OF DETECTIVE DYLAN WIMMER

BY MR. HOLMES:

Q. At least my interpretation of a few. You indicated that the scrolling of the text on Grindr messaging that we saw that came from Mr. Lakatos' phone?

A. Yes. Correct.

Q. And was that phone given to you voluntarily by Mr. Lakatos?

A. Yes.

Q. Did he eventually sign a release for the search of that phone?

A. Yes, he did.

Q. The tenor -- I mean, we're not there. We don't know the tenor and the context of the situation going on at the time that you're texting Mr. Lakatos. You mentioned that you were under the age of 16 because you had to be over 16 -- over 15 to get a room. Correct?

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A. Yes.
Q. All right. And then Mr. Kortes indicated that things became jovial at that point. There was emojis and laughing and crying and shrugging shoulders, so on and so forth. Is that correct?
A. Yes.
Q. That was done by you and both Mr. Lakatos?
A. Yes.
Q. Did you get a sense based on your training, your experience and having done this, what was going on between you and Mr. Lakatos, him understanding you to be a minor?

MR. KORTES: Objection, calls for speculation.

THE COURT: Sustained.

BY MR. HOLMES:

Q. The jovialness that was put forth, that was done by both you and Mr. Lakatos?
A. Yes.
Q. You indicated earlier that you were trying to keep Mr. Lakatos on a line. You had switched over to texting. Is that correct?
A. Correct.
Q. All right. Then you also arrested him and took him into an interview?

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A. Yes.
Q. Mr. Kortes indicated that you never told him specifically you were under the age of 16. Is that correct?
A. Yes.
Q. During the interview process, did Mr. Kortes acknowledge knowing that you were under the age of 16?
A. Not mister --

THE COURT: Mr. Lakatos. I think you misspoke.

MR. HOLMES: I'm sorry.

THE COURT: You said Mr. Kortes.

BY MR. HOLMES:

Q. Did Mr. Lakatos indicate that he knew you were under the age of 16 during the interview?
A. Yes, he did.
Q. And did he, again, ever indicate that he was mistaken or thought he was dealing with somebody of the age of consent?
A. No, he did not.
Q. All right. Knowing all that and looking back at your text messaging involving getting the room and being over the age of 15, what does that tell you with regard to Mr. Lakatos and your age being 15?

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MR. KORTES: Objection, calls for a conclusion that I don't think this witness can testify to.

THE COURT: Sustained.

BY MR. HOLMES:

Q. A couple different times during your texting, Mr. Kortes indicates that you talk about boys and boys can be adult friends. Is that correct?

A. Correct.

Q. Did Mr. Lakatos ever indicate at any point in time that he thought he was speaking to an adult male?

A. No, he did not.

Q. You indicated on direct examination that one of the purposes of the task force was to try to find and, I guess, prevent people from looking for people for underage sex. Is that correct?

A. Correct.

Q. All right. Why did you ask Mr. Lakatos what he wanted to do while you were on the internet at that point in time?

A. I wanted to know what his intentions were. Because if he just wanted to hang out and like watch a movie or do nothing at all, I don't want to talk to him because he's not there for immoral purposes.

Q. And is that a response you got from Mr. Lakatos?

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A. I --
Q. Let me put it this way. What text messaging did you receive from Mr. Lakatos that made you believe that he wanted immoral acts or sex with you?
A. That he said that he wanted to rim, get head, and watch me get an erection.
Q. Did you understand that, based on your parameters of your investigation, to be a violation of under 16?
A. Yes.
Q. And did that qualify in your mind for a sex act or an immoral act?
A. Yes.
Q. Is that why you arrested Mr. Lakatos?
A. Yes.

MR. HOLMES: Thank you.

THE COURT: Any recross, Mr. Kortes?

MR. KORTES: No, Your Honor.

THE COURT: All right. You can step down, sir.

(Whereupon, witness excused at 10:47:01 A.M..)

(Whereupon, PX#5 marked for identification at 10:47:01 A.M..)

MR. HOLMES: Call Detective Kevin Kolk.

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THE COURT: Raise your right hand, please. Sir, do you solemnly swear, oath or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

DETECTIVE KEVIN KOLK: Yes, I do.

D E T E C T I V E K E V I N K O L K,

called as a witness at 10:47:57 A.M., testified as follows:

DIRECT EXAMINATION OF DETECTIVE KEVIN KOLK

BY MR. HOLMES:

Q. Please state your name and spell your last name for the record.

A. Detective Kevin Kolk, K-O-L-K.

Q. And which police agency are you a detective with?

A. The Fremont Police Department.

Q. And how long have you been operating in that capacity?

A. As a detective since 2019.

Q. And were you operating in that capacity on August 24th, 2021?

A. Yes, I was.

Q. Did you have occasion to assist with the multi-county human trafficking task force that was taking place in

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Fremont?
A. Yes, I did.
Q. And what was your role specifically with regard to the task force?
A. My role was the post-arrest interview.
Q. The location of the task force was that at the Harrington Inn?
A. That's correct.
Q. That's in Fremont in Newaygo County?
A. That's correct.
Q. All right. And what preparation, if any, did you do in leading up to the initiation of this task force?
A. I didn't have any preparation. I was not involved in the apps or the text messaging. Just strictly I was at the hotel. I was observing during the contacts and then I did the post-arrest interview.
Q. So you didn't do any texting. You didn't set up any accounts. You didn't do any of that?
A. I did not.
Q. All right. The scrolling of the text messaging or the Grindr account messaging, did you assist in that?
A. The only way I assisted is I provided Detective Wimmer with my department issued cell phone and he recorded the Grindr messages from Mr. Lakatos'

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phone.

Q. Were you there when Detective Wimmer did that?

A. I was.

Q. What you saw here today is an accurate representation of what was recorded?

A. Yes, it was.

Q. So were you sort of looking over Detective Wimmer's shoulder while this was going on?

A. Correct. Correct.

Q. You say you only participated in the post-arrest interview. Is that correct?

A. That's correct.

Q. And that was of Mr. Lakatos?

A. That's correct.

Q. Would you recognize him if you saw him again?

A. Yes, I do.

Q. Would you point to where he is seated and identify what he is wearing for the record?

A. He is seated to my right, your left, wearing a blue suit coat and a light blue shirt.

MR. HOLMES: Ask the record reflect identification of Mr. Lakatos.

THE COURT: Yes.

BY MR. HOLMES:

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Q. Had you ever seen Mr. Lakatos before?
A. Not before the 24th.
Q. You didn't have any prior knowledge of him or background or anything of that nature?
A. I had no idea who he was.
Q. All right. Going to hand you what has been marked as Exhibit Number 5 for identification purposes. Ask you to take a look that (indicating). Tell me if you recognize it.
A. This is a DVD of the interview at the Fremont Police Department following the arrest.
Q. You've had occasion to review that?
A. I did.
Q. And in reviewing it, what did you do?
A. I initialed it and dated the date that I had reviewed it and provided it to the prosecutor's office.
Q. It is a full and accurate representation of the interview with you and Mr. Lakatos?
A. That is correct.

MR. HOLMES: Ask for the introduction of Exhibit Number 5.

MR. KORTES: No objection.

THE COURT: Exhibit 5 is admitted.

(Whereupon, PX#5 admitted

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at 10:50:52 A.M..)

MR. HOLMES: With your permission, Your Honor, I'd like to play this at this point in time.

THE COURT: Any objection, Mr. Kortes?

MR. KORTES: No, Your Honor.

THE COURT: All right.

MS. MICHELLE McKEE: Do you want this recorded?

MR. HOLMES: If you have the ability. I was going to -- The whole thing is going to be introduced, so it will be there for the record, so I don't know what your requirements are.

(Whereupon, video played at 10:51:26 A.M.; video stopped at 10:51:28 A.M..)

MR. HOLMES: I'm going to back it up.

(Whereupon, video played at 10:52:08 A.M..)

UNIDENTIFIED SPEAKER: Just have a seat. Right here is fine, I guess. Give me a second and --

UNIDENTIFIED SPEAKER: My binder is there, so I --

UNIDENTIFIED SPEAKER: Okay.

UNIDENTIFIED SPEAKER: -- so I don't have --

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(Whereupon, video stopped at 10:52:47 A.M..)

THE COURT: Can you stop?

MR. HOLMES: I'm sorry.

THE COURT: I just want you to stop real quick. I think it's real hard to take a transcript of something that's going to be admitted. Any objection if we just -- the transcript will indicate that the exhibit was played without trying to make a transcript of what is on there?

MR. HOLMES: I have no objections to that.

MR. KORTES: Yeah. I have no objection, either.

THE COURT: Okay.

(Whereupon, video started at 10:53:09 A.M., not recorded by the court reporter; video stopped at 11:32:14 A.M..)

(Whereupon, PX#6 marked for identification 15 11:32:15 A.M..)

BY MR. HOLMES:

Q. Detective, we just watched the basically 38-minute video of your interview of Mr. Lakatos. Is there anything outside that video that we should be made

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aware of?
A. Outside of the video, no.
Q. You didn't make any threats or coercive statements to Mr. Lakatos to get him to do that?
A. Absolutely not.
Q. Okay. Say about around the 14-minute mark, there seemed to be a break in the conversation. The initial 14 minutes was tell us what happened and then you sort of said: Be honest with us.
A. That's correct.
Q. Do you remember that --
A. Yes.
Q. -- split? What was it that was going on with you that you saw that needed some more, I guess, assertion of your position?
A. When we were talking, he started to avoid questions that I was asking, so I just wanted him to be honest about the age that he knew the minor was.
Q. Minor was what?
A. The age that the minor was.
Q. And what age was that?
A. Under 16 years old.
Q. In fact, did you tell him the minor was under the age of 16?
A. I told him that I knew that we had all the

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communication, all the documentation, and that I knew that the minor had told him how old he was and the minor had told him that he was almost 16.

Q. Did he acknowledge knowing that?

A. Yes, he did.

Q. So at that point in time, you knew that he knew the minor was under the age of 16 --

A. That's correct.

Q. -- during the exchange on Grindr --

A. That's correct.

Q. -- and text messaging? All right. Now prior to that, though, he had said that he thought the person he was communicating was younger, 18 or 19 years old. Do you remember that?

A. I do remember that.

Q. And it was subsequent to that that you pressured him and said, "that's not right"?

A. Pressured him?

Q. Not pressured him but confronted him?

A. That's when I said I just wanted him to be honest with us.

Q. You didn't threaten him?

A. No, not at all.

Q. I used the word pressure. That wasn't your intent?

A. No, not at all.

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Q. Did you ever feel that you made or were making him saying something that he didn't want to say?
A. No. I always tried to give him the opportunity to say -- to tell the truth.
Q. Okay. And now you had him make some acknowledgments, also, with regard to the terminology that he used?
A. Correct.
Q. One of them was receiving head?
A. That's correct.
Q. What was your thought process there on requesting that?
A. Well, I don't want to make an assumption. And to some people that could mean one thing, to some people that could mean another, so I like to get those terms used in laymen's terms so that way everybody can understand it.
Q. And going into that line of questioning, did you -- were you aware of what was required by way of violating the law as far as sexual acts between a minor and an adult?
A. Correct.
Q. Okay. And when he gave you that explanation of performing head or fellatio on the minor, did that qualify in your mind?
A. Yes, it did.

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Q. Now, you had him write this apology letter that we saw at the end. Is that correct?
A. Correct.
Q. All right. Is there any information on that apology letter that you didn't already know about or talk to Mr. Lakatos about prior to the writing of that letter?
A. No. Everything in the letter was what we had talked about.
Q. All right. I noticed at the beginning of the letter, you said, here's the apologize letter talk about the person being underage and the sex acts and so on and so forth, that had already been discussed?
A. Correct.
Q. All right. You weren't pressuring him into writing something he didn't already admit to, did you?
A. No. As you heard in there, he said: I gave him the opportunity to.
Q. Opportunity to?
A. To apologize.
Q. To apologize?
A. Correct.
Q. All right. In the letter, I'm going to show you what has been marked as Exhibit Number 6 for identification purposes. Ask you to take a look at

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that (indicating). Do you recognize that?
A. That's correct. This is the letter that he wrote on the 24th.
Q. It's not the letter?
A. It's a copy of the letter. I apologize.
Q. It's a full and accurate presentation of the letter that Mr. Lakatos wrote that day?
A. Yes, it is.

MR. HOLMES: Move for the introduction of Exhibit Number 6.

MR. KORTES: No objection.

THE COURT: 6 would be admitted.

(Whereupon, PX#6 admitted at 11:36:36 A.M..)

BY MR. HOLMES:

Q. The letter took a couple different stages. Is that correct?
A. That's correct.
Q. You left him -- You gave him a brief oversight of what it was you were looking for in the letter. Okay. First of all, what was your process -- thought process in making him write this letter or asking him to write this letter, I should say?
A. For him to apologize for -- for what he had done.
Q. Sort of a confession type situation?

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A. Correct.
Q. My fault?
A. To --
Q. Mea culpa?
A. To admit to what he had done and to put it down on paper.
Q. All right. Is that an interview technique that you use?
A. That's correct.
Q. Okay. And what's the thought process behind that? Just to --
A. It's not just something that people have said or agreed to, it's something that they actually wrote down and put in their own words.
Q. Okay. Initially, you left him alone in a room and then came back in?
A. That's correct.
Q. At that point that time, you had him read the letter we saw?
A. Yeah. He -- he -- I was gonna read it and then he -- he offered to read it to me.
Q. Okay. You added some stuff after his initial writing. Is that correct?
A. That's correct.
Q. And why did you ask him to do that?

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A. Because he was just kind of skating around what actually happened and just kind of giving a broad I guess spectrum of the incident but didn't really put details or didn't really show remorse for what he had done.
Q. All right. You wanted him to do that?
A. I believe that an apology letter that's what you are doing is showing remorse for what you had done.
Q. All right. Again, this stuff that -- the material that he added after you came back into the room was nothing that you had already not discussed already. Correct?
A. We had talked about those things during our interview.
Q. So you're just asking him to include that in there?
A. That's correct.
Q. All right. And this is an interview technique that you have learned over the course of years?
A. That's correct.
Q. You didn't -- Anything, again outside of what we saw in the interview, that you feel caused him to be coerced into making this statement?
A. No. I believe he made this on his own free will as he stated in the video.
Q. All right. Did he ever at any point in time say

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something that in the letter was not accurate or is being skewed or anything of that nature?

A. He never said anything in the letter was not accurate, no.

Q. Now, I noticed a number of times during the interview you made mention that, hey, you know, we're -- want to make sure that people aren't out there being killed, raped, and murdered, and you seem like an okay guy and we just want to take care of the bad guys and we're going to get through this with you, so on and so forth. You seem to be cozying up to Mr. Lakatos. Is that an interview technique?

A. Yes, it's an interview technique to kind of belittle what was done so that way they're more comfortable talking about it.

Q. To minimize what they --

A. Minimize, yes.

Q. And you find that effective?

A. It's very effective, yes.

Q. Is that what your goal was in saying these things about Mr. Lakatos?

A. Is to have him admit to them and have him appear to be minimized so that way he was willing to talk to us about them, yes.

Q. You weren't condoning his activity?

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A. Not at all, no.
Q. Based on your knowledge of the investigation, your knowledge of your conversation with him in this letter, he was arrested for accosting a minor for immoral purposes?
A. That's correct.
Q. As well as using a computer to commit a crime?
A. That's correct. He admitted that he had used his phone to communicate with the minor.
Q. And you feel justified in those arrests?
A. Yes, I do.

MR. HOLMES: All right. At this time, Your Honor, I'd ask to publish this letter to the jury.

MR. KORTES: No objection.

THE COURT: All right.

BY MR. HOLMES:

Q. Later on, about the 29-minute mark of the interview, you confront Mr. Lakatos with the fact that he knew he was communicating with a person under the age of 16. Do you remember that?
A. Correct.
Q. All right. And did he, in fact, acknowledge that again a third time?
A. That's correct.

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Q. All right. Did you browbeat him? Were you giving him evil stares or anything to make him say that?
A. Not at all. We all watched the video.
MR. HOLMES: All right. Thank you very much. I have no further questions at this point.
THE COURT: Mr. Kortes?
MR. KORTES: Thank you, Your Honor.

CROSS-EXAMINATION OF DETECTIVE KEVIN KOLK

BY MR. KORTES:

Q. Good morning, Detective Kolk.
A. Good morning.
Q. So with the numerous people that were involved in this sting operation, you were solely doing the post-arrest interview of suspects. Correct?
A. That's correct. That's -- It was held in the City of Fremont. I was the only City of Fremont officer that was involved in the investigations.
Q. Okay. And Mr. Holmes just made some mention that you thought you had enough to arrest Mr. Lakatos after this interview and reviewing these exchanges. Correct?
A. Yes.
Q. And you only need probable cause to arrest. Correct?
A. That's correct.

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Q. Here, the standard is beyond a reasonable doubt?
A. Yes.
Q. Okay. Now when you were doing this post-arrest interview and I think you admitted several times on direct that there are numerous techniques you use when you're interviewing a suspect?
A. That's correct.
Q. And one of those is could be known as good cop/bad cop. Correct?
A. Yes.
Q. It appeared you were both playing both good cop in this episode?
A. We always try to be, yes.
Q. Okay. And that's to gain trust of somebody you're interviewing?
A. Correct.
Q. Try to get them to open up more?
A. Correct.
Q. Okay. And when you interviewed Mr. Lakatos, was this at the Fremont Police Department?
A. Yes, it was.
Q. Okay. And I saw you were inside of an interview room. Is that interview room located right at an exit of the building? Where in the building is that room located?

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A. So it's in between two exits -- actually, three exits. It's -- There's a main hallway that goes up to the front lobby office of the Fremont Police Department, and then there's a squad room that's in the back. So it's in between the front lobby and the back squad room where the officers do their reports and have computer stations back there.

Q. Okay. So this room is located within the post where there are officers doing work on both sides near exits. Correct?

A. So at this time, no, there wouldn't be people on both sides. The officers have their squad room on the back side where at this time -- point in time at night, after 9:00 o'clock, there's no office staff. The secretary, the chief, the detective office, it's all closed at that time.

Q. Okay. So your office was closed. And I saw that when you brought Mr. Lakatos into the interview room, you closed the door?

A. We brought him -- Well, Detective Wimmer brought him into the room, set him down, left the door open, went and got handcuff key, took the handcuffs off Mr. Lakatos. I then -- When I walked into the room, I did shut the door behind me when I walked into the room.

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Q. And I should have clarified that question. It was when you were doing the interview, the two of you were in the room with Mr. Lakatos with the door closed?
A. That's correct.
Q. Okay. And Mr. Lakatos was cooperative?
A. He was, yes.
Q. Okay. At one point, you even mentioned to him he appeared nervous?
A. He did appear a little nervous based on the way he was just -- just tense.
Q. Okay. And the goal of this interview was to get some -- some type of confession from Mr. Lakatos. Correct?
A. Correct.
Q. And you specifically asked him one question near the beginning is how he knew to get to this hotel. Do you remember that?
A. Can you repeat that?
Q. Well, you asked a series of questions to Mr. Lakatos on how he arrived at the hotel?
A. That's correct.
Q. And he told you that he was specifically told the name of the hotel. Correct?
A. He told me the name of the hotel was the Harrington

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Inn.
Q. Yep. And then he told you that he was also directed to go to a specific room?
A. Room 19, yes.
Q. And one of the things, he kept leaning over and cupping his ear. Did you ever ask him if he was hard of hearing or anything like that?
A. Every time I repeated myself, he always acknowledged the question that I was asking and appropriately answered it.
Q. Okay. And there was a series of questions where you asked him about what was specifically said in these chats we're talking about and he couldn't recall those, could he?
A. Right. He said he didn't recall.
Q. Okay. He also said he had five or six different chats going on with other people throughout the day?
A. Yes, he did.
Q. And when you asked him, he couldn't remember if he initiated the Grindr contact or if this other person initiated the Grindr contact?
A. That's correct. That's what he told me.
Q. Okay. And did you have a chance to review the Grindr conversation that night?
A. Just -- just on the recording from my department

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issued cell phone that Detective Wimmer had recorded from Mr. Lakatos' cell phone.

Q. Okay. And now there was also another cell phone that was being used by Detective Wimmer. Do you know whatever happened to that cell phone?

A. Yes. That one belonged -- belonged to another sheriff's office that they provided for this operation.

Q. Okay. And you turned that cell phone over to that other jurisdiction?

A. I didn't. I never had that cell phone. The only cell phone that I ever possessed was Mr. Lakatos' cell phone that was turned over to another county to have the data extraction from it.

Q. And he voluntarily gave you his cell phone?

A. Yes, he did. And he signed a permission to search form, as well.

Q. Yep. So you didn't have to get a search warrant?

A. Did not, no.

Q. Okay. In fact, he told you that he had nothing to hide?

A. He did say that, yes.

Q. And in fact, throughout this interview several times you confronted him with: We're not going to find child porn on here. Right?

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A. That's correct.
Q. And every time, he denied it, we're not going to?
A. That's correct.
Q. Okay. And then he gave you the consent to go through every inch of his phone?
A. He did, yes.
Q. Okay. He even offered to bring in his work computer and the thumb drives if you wanted those?
A. Yes, he did.
Q. During this interview, he mentioned to you that he had I guess had occasion to turn in a couple of individuals to Grindr that he thought were under the age of 16?
A. Yes. I believe he said a couple over the course of years.
Q. Okay. And I guess even with Grindr, because with Grindr you have to be 18 years old to use the app. Do you know that?
A. I do know that, yes.
Q. Okay. And do you also know that in some jurisdictions you have to be over 21 to use the Grindr app?
A. I did not know that.
Q. Okay. But at least 18?
A. Yes.

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Q. And Mr. Lakatos told you that he reported at least a couple, two or three, individuals over his years on Grindr as being underage?
A. That's correct.
Q. And he also followed that up with saying -- because you asked him about that, and he said there would be specific parts of the conversation where they would identify they were in high school, they were younger, clearly making it something known to him that they were under 16 -- under 18?
A. Correct.
Q. And when he finally -- And it's kind of funny, because in my notes I have written down here in the interview pressured by Kolk. And the prosecutor used that same word, pressured, while you were trying to get him to admit to knowing he was talking to somebody under 16. When he admitted to talking to somebody under 16, you also asked him some follow-up questions on that, didn't you?
A. I believe so.
Q. And he told you that people on Grindr like to role play?
A. He did.
Q. He told you in the past he's shown up and it's not been the same person on the app?

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A. I don't specifically recall if he said he did or if that's an occasion of something that could happen.
Q. Okay.
A. One or the other, yes.
Q. Okay. Well, I think specifically he said he's shown up expecting someone younger and it's been an old dude?
A. He did say something about that, yes.
Q. You remember that?
A. Yes.
Q. Kind of like cat fishing?
A. That's correct.
Q. You familiar with that term?
A. Yes, I am.
Q. Okay. That's where somebody portrays them self to be something they're not?
A. That's correct.
Q. And then when you show up, they're a completely different person?
A. That's correct.
Q. Did you do any other follow up after Mr. Lakatos -- after the interview was concluded?
A. I did, yes.
Q. Okay. Before we get to that, I want to talk about the apology letter.

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A. Okay.
Q. Because on there, you ask Mr. Lakatos several times that if he feels like he was forced to write that?
A. That's correct.
Q. And he said he wasn't?
A. That's correct.
Q. That he was given the opportunity to write that apology letter. Right?
A. That's correct.
Q. And he was given that opportunity after you suggested he write it. Correct?
A. That's correct.
Q. He didn't offer to write that?
A. He did not, no.
Q. He didn't offer to write out a confession?
A. No.
Q. And in this apology letter, let's say it breaks down into three segments. The first one is --

MR. KORTES: And the jury has it. Right?

MR. HOLMES: Yes.

BY MR. KORTES:

Q. Okay. The jury will see it. The first block under To Whom It May Concern, before he writes this, you tell him specifically to write an apology letter saying that you know it was wrong to communicate with

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someone under the age of 16?
A. That's correct.
Q. You suggested that to him?
A. I did, yes.
Q. Okay. And in this first part of the letter, he wrote: Having had communicated with someone who is under the age of 16?
A. That's correct.
Q. You also said that it's good if he asks for some type of forgiveness?
A. That's correct.
Q. And in that first section of the letter, he wrote: "I am truly sorry for having had communicated with someone who is under the age of 16." And then near the end, "I am truly sorry and will regret and have regrets for the rest of my life." That was after your suggestion?
A. That's correct.
Q. Okay. And you also said, "talk about the things you talked about", which was prior in the interview?
A. That's correct.
Q. These sexual nature contacts?
A. Yes.
Q. And so you gave him time and he wrote that section down that we just talked about?

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A. That's correct.
Q. And when he came back in, I think he read that to you?
A. Yes, he did.
Q. And you testified under direct that you didn't think it showed remorse, he didn't take acceptance of it?
A. That's correct.
Q. Okay. Even though he said "I am truly sorry" twice in that paragraph?
A. That's correct.
Q. Okay. Because it was lacking the sexual conversations, things that you needed for a conviction?
A. Correct.
Q. So you had him write a second part?
A. Yes, I did.
Q. Okay. And in that, you told him to apologize for what, you know, wasn't right that we talked about. You said you knew it was wrong that you were talking to a 15 year old about having sex. And he wrote that second part down basically reciting the text messages that you and Detective Wimmer went over regarding making out and the rest of it?
A. That's correct.
Q. Okay. And so at that point, you were satisfied you

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had a confession on him?
A. Yes, I was.
Q. So you told him to sign it and date it?
A. I said --
Q. Correct?
A. Well, I didn't tell him to sign it, but I said what makes it his is if he signed it and dated it.
Q. And he even needed help with the date, didn't he?
A. I think Detective Wimmer showed him the date on the phone.
Q. Okay. Yep. Okay. So you were about to say that you had some more follow up after the interview?
A. That's correct.
Q. What was that follow up?
A. Well, after the phone was sent to -- to have the data analysis done, we found out that there were some things that were missing from Mr. Lakatos' phone. Some messages had been removed, so we wanted to figure out how that had happened.
Q. And did you figure out how it happened?
A. I do not have a definite answer of how it happened, no.
Q. Mr. Lakatos didn't remove those?
A. I don't have any information of how they were removed, so --

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Q. You don't know --
A. We can assume that.
Q. You don't know if Grindr removed them?
A. So in my -- I can't give an opinion.
Q. Okay. Let me ask you this. Let me strike that question. That was a bad question anyway.

So you have this interview, you take the phone?

A. Correct.
Q. You take the phone and give it to an officer in Mt. Pleasant?
A. I believe he worked for the Isabella County Sheriff's Office.
Q. Okay. Isabella/Mt. Pleasant?
A. Yes.
Q. They have the phone?
A. That's correct.
Q. They download the phone onto a hard drive?
A. That's correct.
Q. Okay. So everything on the phone is on that hard drive?
A. Everything was on the phone, yes.
Q. Okay. And then the phone goes back to Mr. Lakatos?
A. Eventually, yes.
Q. Okay. You keep the hard drive?

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A. Yes.
Q. That has everything on that cell phone?
A. Yes, at the time of the download.
Q. Okay. And all that time, it was in the possession of either --
A. Law enforcement.
Q. -- your police department -- Yep. Law enforcement. Thank you. Okay. And did you search photographs on the phone?
A. I -- I looked through the data analysis of the phone, yes.
Q. Okay. Are you trained in data analysis?
A. Not at all. It's very confusing.
Q. Okay. Did you read any reports regarding the data analysis?
A. I did, yes.
Q. Okay. And did those reports say how many images were on the phone?
A. Yes, but I do not know that answer.
Q. Okay. And did it also say how many videos were on the phone?
A. So with these reports they -- yes, they do say those things, yes.
Q. Okay. All right. But you did not look into any of these?

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A. What do you mean by that?
Q. As far as opening up the file, looking at photographs?
A. I do not recall doing that.
Q. Okay. As far as opening up messaging and reading messages?
A. I attempted to through the data analysis not on the phone.
Q. Okay. All right. And the data analysis which was a replica of what was on the phone?
A. Correct.
Q. Okay. And there was no images of underage individuals. Correct?
A. Not that I found, no.
Q. Okay. No conversations with underage individuals?
A. Not that I found, no.

MR. KORTES: All right. Thank you.

THE WITNESS: Yep. You're welcome.

THE COURT: Any brief redirect? We do have -- The jury is getting warm food from us and it should be here any minute, so we don't want to go too long.

MR. HOLMES: A couple questions, Your Honor --

THE COURT: All right.

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MR. HOLMES: -- if you would indulge me.

REDIRECT EXAMINATION OF DETECTIVE KEVIN KOLK

BY MR. HOLMES:

Q. As we mentioned several -- or a couple different times through the course of your interview, Mr. Lakatos acknowledged knowing the person he was communicating with was under 16?

A. Correct.

Q. Okay. And when you asked him what was your intentions what was going to happen once you learned he was 16 and showed up at the Harrington Inn, what did he say?

A. He said he would show up and see how it went or how it would go.

Q. Okay. At any point in his conversation with you did he ever say he expected to find somebody role playing when he got to the Harrington Inn?

A. He did not.

Q. Did he ever say that he expected the person to be not the person he was communicating with when he showed up at the Harrington Inn?

A. He did not say that, no.

Q. And did he ever say I was cat fished on this event?

A. He did not.

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Q. All right. In context, the whole conversation that you had with him, is there any indication that he did not know he was communicating with somebody under 15?
A. He never indicated that he thought it was somebody else, no, until he said that he realized that it was Detective Wimmer during the interview.
Q. You at the very end ask him if you forced him to write this?
A. Correct.
Q. Do you remember that? And his response was what?
A. No.
Q. Okay. Did you ever get the indication or impression from Mr. Lakatos that his apology letter was insincere?
A. When he didn't include the details, somewhat.
Q. Okay. All right. Mr. Kortes asked you about the missing messages. Do you remember that question?
A. That's correct.
Q. All right. Is there a way to remove messages remotely from a phone?
A. I believe there is, yes.
Q. Okay. And you don't know anything about that, though?
A. I do not know anything about that, no.
Q. All right. So a person could use a third phone, go

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into their own phone and remove stuff or you have no idea?

A. I know there's some apps. I'm not familiar with this app at all. I know there are some apps that you can access from different devices.

Q. In fairness to Mr. Lakatos, you don't have any information that would indicate that he did something like that, do you?

A. I have no information to indicate that he did, no.

Q. All right. Do you have suspicions as to where that went?

MR. KORTES: Objection, calls for speculation.

THE COURT: Sustained.

MR. HOLMES: I'll withdraw the question.

BY MR. HOLMES:

Q. One of the questions you asked during the interview Mr. Kortes touched on was that he had indicated he had turned minors in before?

A. That's correct.

Q. Do you recall what you asked him when he told you that?

A. I had asked him how old the person he was talking to was.

Q. Did you ask him if he had done that in this instance?

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A. I did ask him if he had done that in this instance and he said no.
Q. Does that indicate to you that he knew he was under 16?
A. That did, yes.
MR. HOLMES: All right. Thank you.
THE COURT: Anything else, Mr. Kortes?
MR. KORTES: No, Your Honor.
THE COURT: All right. You can step down, sir.
THE WITNESS: Thank you.
(Whereupon, witness excused at 12:01:22 P.M..)
THE COURT: All right. So we'll take our lunch break now. Again, don't discuss the case amongst yourselves, or do any research, investigations, anything like that. We're moving along fairly well, so we'll be working on some final instructions for you. I'll let the attorneys eat a little bit of lunch and then I'll probably meet with them, so why don't we plan on starting back up about 1:15 or so.
Yes, sir?
JUROR BEATY: As a juror, I never done this before. The information that we were given, do

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we just set that in the room until everything is done before we make our decision or do we go over that stuff?

THE COURT: So the exhibits and the pictures and things that you have seen, we'll keep those. And then when you -- after the closing arguments and final instructions then you'll go to the jury room to deliberate.

JUROR BEATY: Okay.

THE COURT: And then if we know that you want them, we'll send them in right then, but that's when you'd have a chance to go over them.

JUROR BEATY: What do we do with these now?

THE COURT: Just leave them right where they are. We'll gather them up.

JUROR BEATY: Okay.

THE COURT: Anything else before we break for lunch?

MR. HOLMES: Not by the People.

MR. KORTES: No, Your Honor.

THE COURT: All right.

(Whereupon, jury left the court-room at 12:02:46 P.M..)

THE COURT: All right. We'll go off the

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record.

(Whereupon, proceedings recessed for noon lunch break at 12:03:29 P.M.; proceedings resumed at 1:17:05 P.M., out of the hearing of the jury.)

THE COURT: All right. We'll go back on the record here. I met with the attorneys in chambers. We went over the first draft of final instructions. We'll have an opportunity to do a final review of those probably after we're done with the testimony, a few minor modifications.

It was also brought to my attention by Prosecutor Holmes that -- that Nicholas Davis, which is seated in Juror Seat Number 3, may know Detective Kolk. The information that I received was that perhaps Mr. Kolk sold him a firearm through your business. Is that correct?

DETECTIVE KEVIN KOLK: He looks very familiar, I believe, so --

THE COURT: So you're not for sure?

DETECTIVE KEVIN KOLK: I'm not positive, no.

THE COURT: All right. Okay. I'm just going back through my initial notes and I didn't remember him saying that he -- that he knew Detective

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Kolk. So what we'll do is we'll bring Mr. Davis in and I'll just ask him questions. Okay? So could you let Ms. May know that I need to speak with Nicholas Davis?

MR. HOLMES: With regard to the jury instruction, Your Honor, I had listed the area of expertise for Deputy Davis. I'm not sure I gave you the right description or title. It's digital forensic analyst.

THE COURT: Okay.

MR. HOLMES: So we don't have to redo that later on.

(Whereupon, Juror Davis entered courtroom at 1:19:44 P.M..)

THE COURT: You can just have a seat in your seat, Mr. Davis. Mr. Davis, you're not in trouble, although it may feel like it. After the morning's testimony, the prosecutor indicated that Detective Kolk -- that you looked familiar to Mr. Kolk and that you -- that he may have sold you a firearm through his business on Main Street.

JUROR DAVIS: No.

THE COURT: Okay. Fine. I went through my notes and I didn't -- you didn't say that you knew Detective Kolk, but he thought that you looked

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familiar and it was possible but it was just possible. And that didn't occur?

JUROR DAVIS: (Whereupon, shaking head.)

THE COURT: No?

JUROR DAVIS: I don't own a firearm at all.

THE COURT: Okay. All right. Thank you. I'll send you back. You can just -- Well, actually, why don't you just stay right there.

JUROR DAVIS: Yeah, might as well.

THE COURT: Instead of coming in and out, we'll bring the rest out. And so we'll go off the record real quick.

(Whereupon, proceedings recessed at 1:20:38 P.M.; proceedings resumed at 1:20:55 P.M..)

THE COURT: We can bring the jury in.

(Whereupon, jury returned to court-room at 1:22:10 P.M..)

THE COURT: Looks like we have everybody. Please be seated. And Mr. Holmes, would you call your next witness, please?

MR. HOLMES: Levi Davis.

THE COURT: Would you raise your right hand, please, sir? Do you solemnly swear, oath or

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affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

DEPUTY LEVI DAVIS: I do.

D E P U T Y L E V I D A V I S,

called as a witness at 1:22:38 P.M., testified as follows:

DIRECT EXAMINATION OF DEPUTY LEVI DAVIS

BY MR. HOLMES:

Q. Would you please state your name, spell your last name for the record?

A. Levi Davis, last name D-A-V-I-S.

Q. And back in August of 2021, were you employed by the Isabella County Sheriff's Department?

A. I was.

Q. And what was your duties there?

A. I was a sheriff's deputy. I worked the road and I was a digital forensic analyst.

Q. And do you have training with regard to being a digital forensic analyst?

A. I do.

Q. And what did that entail?

A. That training is a two-week course with Cellebrite. It's certification in the use of their program.

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Q. And do you have any other prior experience with digital forensic analysis?

A. Just through the department. I did work a little bit with military when it came to digital evidence and my masters degree is in information systems.

MR. HOLMES: I've spoken to Mr. Kortes earlier, Your Honor, and I believe we have a stipulation as to his expertise in digital forensic analysis.

MR. KORTES: That's correct.

THE COURT: All right. He will be so qualified.

MR. HOLMES: Thank you, sir.

BY MR. HOLMES:

Q. Are you familiar with the case of Evan Lakatos?

A. Yeah.

Q. How did you become involved?

A. I was informed by my detective that there was a phone sitting in our forensics lab that needed to be examined. He stated that it came from the ghost that they did. And he said just to examine the phone, get it back to him so he could get back to the detective to do the analysis.

Q. Okay. When you say ghost, are you talking about the human trafficking detail?

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A. Yes, sir.
Q. Multi-jurisdictional here in Newaygo County?
A. Yes, sir.
Q. And that phone when it came to you, did it have indication as to belonging to Mr. Lakatos?
A. The only indication I had of the phone belonging to him was the consent form that was -- that came with it stating that he consented to the examination.
Q. And that cell phone, was that number 231-903-3008?
A. Yes, sir.
Q. All right. And what did you do by way of analyzing that phone?
A. For the phone, when I got it, I received it. I plugged it into the Celebrite program. It's a program that's specifically used to be able to take all the data off a phone, create a perfect copy of everything that exists on the phone. From there, I took that copy that was saved onto a hard drive of our computer after it was done its job and used Celebrite Physical Analyzer. And that program, what is does is it takes all the data that it retrieved from the phone and it generates a very large report to allow us to see the data as you see it when you open your cell phone every day. Instead of seeing ones and zeros, which most data comes in, it allows

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you to see photos, texts, and everything that we see on our cell phones.

Q. All right. Now were you asked to look for anything in specific?

A. I was told to look to see if there was any messages between Mr. Lakatos and the person who he was messaging with from the team, and then also to see if there's any information from Grindr that came up.

Q. All right. I'm going to hand you what is marked as Exhibit 3 for an exhibit, ask you to take a look at that. Tell me -- tell me if you recognize the information there (indicating)?

A. Yes.

Q. All right.

A. These are the messages that came from my report.

Q. Okay. And it appears to be a full and accurate copy of your report --

A. Yes.

Q. -- with regard to the text messaging?

A. Yes, sir.

Q. All right. And you turned -- You said you downloaded that information onto a hard drive?

A. Yes. That was the original data that I pulled from the phone when I generated the report. That was saved to a flash drive that I turned back over to my

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detective to give back to Newaygo County.
Q. All right. So that takes care of the text messages?
A. Yes, sir.
Q. What about Grindr, what did you find?
A. So based on what I saw from the information that came up from the report is that Grindr was at -- on the phone and it had been accessed; however, there is nothing else that came up from the report in relation to Grindr.
Q. It was missing?
A. Yes.
Q. Where, how, when, you don't know?
A. I can speculate, but I couldn't give a definitive on why the information was not on there.
Q. Now this phone that you were doing the download on, could you describe that, please, just briefly?
A. Yep. It was an Android phone. If I remember correctly, it was a Galaxy Note. Civil phone. It appeared everything fine. There was a password on it that was given. I used it to undo the lock.
Q. That particular cell phone is that, in essence, a handheld computer?
A. Yes.
Q. All right. Describe for the jury what it can and can't do by way of computer? Does it have access to

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the internet?
A. Yes. Most of us, I believe, use cell phone here. Pretty much anything you can do on a laptop or computer, you can do in some way, shape, or form on a cell phone.
Q. That includes e-mails?
A. Yes, sir.
Q. Text messaging?
A. Yes, sir.
Q. Internet access of all sorts?
A. Yes, sir.
Q. Apps of all sorts?
A. Yes, sir.
Q. All right. So we're talking basically a handheld computer?
A. Absolutely.
Q. That was the Lakatos phone that you dealt with?
A. Yes, sir.
Q. Other than noting that the Grindr connection -- messages connected with the Grindr app were missing, no effort was made to try to retrieve those beyond the download that you did?
A. No.
Q. That's correct?
A. From me, yes.

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MR. HOLMES: Okay. Thank you.

THE COURT: Any questions, Mr. Kortes?

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

CROSS-EXAMINATION OF DEPUTY LEVI DAVIS

BY MR. KORTES:

Q. When you downloaded this phone, Deputy Davis, it was in possession of your agency. Correct?

A. Yes, sir.

Q. And that came from the agency over here in Fremont that had ceased that phone?

A. That's what I was told, yes, sir.

Q. Okay. And when you downloaded all of this information that was on the phone, it contained a numerous amount of pictures. Correct?

A. I believe so. The document was 140,000-plus pages. I don't know everything that was on it.

Q. Okay. If your cell phone analysis worksheet said there was 219,541 images, would that be accurate?

A. If that's what my report says, yes.

Q. If it said there were 2453 videos, would that be accurate?

A. Yes, sir.

Q. In your analysis, there are a number of data fields, auto field, calendar, call log. Would those be

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routine things on the phone?
A. Yeah. Those come up with almost any phone that I've done. It would be anything that came with the call logs, anything that's calendar related. It could be just specific events, that would also come up there.
Q. Okay. And in applications, apparently there's 10,376. What would that be?
A. Applications could be anything that the phone uses to apps that we use, Facebook, Twitter, or anything like that, but it also could be, you know, in core of the phone that we don't typically see that runs in the background to continue to ensure your phone runs at its most optimum speed.
Q. And then there are archives. What would be found on archives?
A. Archives are anything that has been on the phone for a long period of time or anything that a specific program has decided to be archived at that time. It could be any number of different items.
Q. Okay. And you ran an analyzer program on this?
A. Yes.
Q. Is that what you said?
A. Yes, sir.
Q. What's the analyzer program?
A. It's the Celebrite Physical Analyser. It's the

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sister program to the UFED 4PC, which is the site that takes the data off the phone. So more or less what it does is it takes the data that I had, it takes it and uploads it and then it reads the data so that we can understand it, because I imagine most of us can't read one and zeros and get photos or words out of it, but that's what it does so we can understand it.

Q. Okay. And when you were asked to look at these messages, were they only these specific text and Grindr messages or were you instructed to look at all the messages on Mr. Lakatos's phone?

A. I was asked to look at those specific messages to see if there was anything there. As far as everything else, I didn't know the case well enough to speak to it so I left that for the investigating officer.

Q. Okay. So you didn't do any deep dive into the phone?

A. No, sir, I did not.

MR. KORTES: Okay. Thank you.

THE COURT: Anything else, Mr. Holmes?

MR. HOLMES: No, sir.

THE COURT: May this witnesses be excused?

MR. HOLMES: He may, sir.

MR. KORTES: Yes.

THE COURT: Okay. Thank you, sir.

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(Whereupon, witness excused at 1:31:44 P.M..)

THE COURT: Any other witnesses, Mr. Holmes?

MR. HOLMES: No other witnesses or exhibits, Your Honor. People rest.

THE COURT: To you, Mr. Kortes.

MR. KORTES: Thank you, Your Honor. If we may take a brief recess, before we start our case?

THE COURT: Yes, sir. All right. I'll ask you to go back to the jury room. Again, caution you not to discuss this case, or do any experiments, or find any information about the case. And we'll have you back here just in a few minutes.

(Whereupon, jury left the court-room at 1:32:12 P.M..)

THE COURT: Yes, Mr. Kortes?

MR. KORTES: Thank you, Your Honor. First, I would like to make a motion for directed verdict based upon the evidence and testimony we have heard. Even viewing it in the light most favorable to the prosecutor, I don't believe it has met the burden to move forward to send this case to the jury. Specifically, there have been several references to this message where Dylan Wimmer is alleging that he

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made it 100 percent certain that he told the age of the decoy as 15 to Mr. Lakatos. I believe after viewing the interview afterwards and reviewing those messages that there was not a meeting of the minds, so to speak, and Mr. Lakatos' intent was not to meet somebody underage. It was simply to meet an individual. He did not know what age it was and I don't believe there was enough evidence to support that.

So based upon that information, we would ask for a directed verdict on both counts.

THE COURT: Mr. Holmes?

MR. HOLMES: Yes, sir. Thank you. As Your Honor is aware, the motion is to be viewed in a light most favorable to the prosecution. That being the case, I don't think we need to go to that standard. I think there's ample evidence with regard to notice to Mr. Lakatos with regard to the age of the person. The interview is replete with at least two, if not three, different instances of him acknowledging having known the person was under the age of 16 at the time he was communicating with him. So I think at the very least, it's a question of fact for the jury and I'd ask Your Honor to deny the motion. Thank you.

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THE COURT: I need to see I think it's Exhibit 3, which is the texts.

All right. We'll go off the record quick.

(Whereupon, proceedings recessed at 1:36:06 P.M.; proceedings resumed at 1:39:19 P.M., out of the presence of the jury.)

THE COURT: Okay. We can go back on the record. So the Court is ready to rule on the defense motion for directed verdict. And the Court is going to deny that motion. The Court understands that the standard of review is whether the evidence taken in the light most favorable to the prosecution would be insufficient to sustain a conviction. I find in this case that, given that standard, there is sufficient evidence to put this case to the jury. From the Grindr account, which is Exhibit Number 2, at 4:01, the decoy, Detective Wimmer, states: "My cousin finally got the room for me. I guess you have to be older than 15 to rent a room." The defendant then responds, "how rude of them", and asks for additional pictures.

Then at about 4:22, then the defendant indicates that he would be interested in getting some head and massages, played with the decoy's cute

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booty, asked for more pictures. There was discussion between the party about the defendant liking younger men, the decoy saying he liked more mature men. And there were more discussions about what the two would do if they were to get together.

So the statement that -- again, taken in the light most favorable to the prosecution would establish that he put the defendant on notice, this person is saying that they were 15 years of age. When you combine that with the statements that he made in the interview after being Mirandized to the detectives that -- that he had the information that the person was under age, may not have fully believed it and maybe there was some role playing that was going on, maybe someone was posing, cat fishing, that sort of thing, but there was an I'll call it confession, not necessarily an apology letter. But in the apology letter, he acknowledges he was chatting in a sexual manner with someone who he thought was under 16 years of age.

So that would establish the elements of accosting a minor for an immoral purpose. There is no question that this was done through a cell phone, Samsung Galaxy Note is what the testimony was. There was data extraction from it. There was information

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that this cell phone could access the internet and was essentially a personal computer, so those would satisfy the elements of Count I, using a computer to commit a specified crime.

And for those reasons the Court is denying the defendant's motion for directed verdict of acquittal.

MR. KORTES: Thank you, Your Honor. Based upon that, I have discussed with my client that he has a legal right not to testify. We discussed this matter at length. Based upon those discussions, he has made the decision that he would like to testify today before we close.

THE COURT: All right. And Mr. Lakatos, is that correct, you've discussed this matter with Mr. Kortes?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that the decision whether to testify or not is yours. You would be well-advised to consult with Mr. Kortes about it, but the decision is yours?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Do you understand if you chose not to testify that the Court would give a jury instruction that they should not consider that fact

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that you chose not testify in any way?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And after discussing that with your attorney, it's your decision that you wish to take the witness stand. Is that correct?

THE DEFENDANT: Yes.

THE COURT: All right. All right. We'll bring the jury back in and we'll hear from Mr. Lakatos.

(Whereupon, jury returned to court-room at 1:44:09 P.M..)

THE COURT: All right. Please be seated. And Mr. Kortes, the People have rested their case. Do you wish to call any witnesses or present any evidence?

MR. KORTES: Yes. I would call Mr. Evan Lakatos.

THE COURT: Come on up here, sir. Would you raise your right hand, please, sir? Do you solemnly swear, oath, or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

MR. EVAN LAKATOS: I do, Your Honor.

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E V A N A N D R E W - B U R T E L L L A K A T O S, called as a witness at 1:46:00 P.M., testified as follows:

THE COURT: Have a seat, sir.

MR. KORTES: Thank you.

DIRECT EXAMINATION OF EVAN ANDREW-BURTELL LAKATOS

BY MR. KORTES:

Q. Mr. Lakatos, can you state and spell your name for the record?

A. Evan, E-V-A-N, Lakatos, L-A-K-A-T-O-S.

Q. And you are a gay man?

A. Yes, I am.

Q. Do you have a current relationship right now?

A. I do not.

Q. Are you -- At one point, were you using applications on a cell phone to meet up with other gay men?

A. Yes, I was.

Q. What were some of the applications that you used?

A. I've used Grindr. I have used one called Scuff. And I have used one called Tinder.

Q. Okay. And how do you primarily meet other men to date in today's day and age?

A. In this day and age? Online. It's generally safer -- safer space for gay men. Our bars are limited and

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not always just gay men. You never know who you might talk to and it's an unsafe world to be out in.

Q. Okay. And you are a member of Grindr or were a member of Grindr?

A. Yes, I was.

Q. Okay. And when you signed up, did you have some terms of service you had to review?

A. Absolutely.

MR. KORTES: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

(Whereupon, DX#C, DX#D and DX#E marked for identification at 1:48:15 P.M..)

BY MR. KORTES:

Q. Mr. Lakatos, I'm going to hand you what's been marked as Defendant's Proposed Exhibits C, D, and E. Can you take a look at those (indicating)? Do you recognize those?

A. Yes, I do.

Q. And what are those?

A. Those are the requirements for -- that you agree to signing up for Grindr.

Q. And are these the entire list of agreements?

A. Yes.

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Q. Are these the entire terms and services or is this just a portion of that agreement?
A. It looks to be the entire terms and services for the Grindr sign on.
MR. KORTES: Okay. At this point, I'd like to move to enter Exhibits C, D, and E.
(Whereupon, colloquy off the record.)
THE COURT: Any objection, Mr. Holmes?
MR. HOLMES: No, sir.
THE COURT: All right. C, D, and E will be admitted.
(Whereupon, DX#C, DX#D and DX#E admitted at 1:49:37 P.M..)
MR. KORTES: Thank you.
BY MR. KORTES:
Q. And how long were you a member of Grindr?
A. For at least five years.
Q. And can you tell the jury what's the intent of being a member of Grindr?
A. To find fellow gay members to become friends with, to date, and, quite possibly, to hookup at times.
Q. And you have to set up a profile when you set up a Grindr account?
A. Yes, you do.
Q. And what was your name in your Grindr profile?

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A. I believe it was -- on the profile itself was just my name Evan. In the back side of it, you have to put your full name in there.
Q. Okay. But for the profile that might be something everybody does not --
A. Correct.
Q. -- see? And you had to also agree to abide by the terms of Grindr?
A. That is correct.
Q. You also had to put a birth date in?
A. Yes, I did.
Q. And do you also put in preferences of what type of people you'd like to meet?
A. That is correct.
Q. What were your preferences?
A. My preferences are more attached to like body type, so I like slimmer guys, guys who are shorter. It's a large -- You can put in a large selection. It doesn't mean you're going to get that.
Q. Okay.
A. But that -- People can see your preferences and maybe -- and then they allow you to see theirs, maybe you can match.
Q. Okay. And how do you get notified of potential matches on Grindr?

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A. It comes up as a text message if you allow your phone to do that. You don't -- It can be a silent notification or it can be -- come up as like you got a new message.
Q. So on this date, August 23rd, as you heard detectives testify to, you had a match with somebody named Taylor. How did that come about?
A. I viewed his profile, liked the profile pic, and started a conversation with that person.
Q. Why did you start a conversation with that person?
A. It was a picture of an adult fit male with abs on their profile and that's what I'm attracted to.
Q. And that conversation turned sexual at some point?
A. Yes, it did.
Q. And at some point, you've seen your conversation, communication with this individual where they made a comment about having to be older than 15 to get a room. Do you remember that?
A. I do remember that.
Q. And didn't that raise a red flag to you?
A. No. It wasn't a direct statement of age. You have to be 18 to be on there. The pictures of a well-built man and then adult language, at least at my age at 15 -- I don't know. I can't speak for others. -- I didn't know the things that they were

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talking about.
Q. Okay. And did you believe that that individual was 15?
A. Absolutely not.
Q. You continued to converse with that individual, though?
A. I did.
Q. And we heard a lot of those exchanges. Did you expect to do those things with a 15 year old?
A. No, I did not.
Q. Now, you mentioned to Detective Kolk when he was interviewing you that there's, for lack of a better word, I guess, dishonesty role playing in the gay community. Can you explain that?
A. I believe there's dishonesty in all online dating, because you can be anybody who you want to be. You can put any profile picture up there. You can state you're a hundred pounds less or more than what you are. There's no verifying way until you get multiple pictures or you meet the person to decide if that person is actually telling the truth.
Q. And did you get multiple pictures from this individual?
A. I believe I got two pictures.
Q. Okay. And what did you -- How did you view those

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pictures?
A. As a very fit adult male, somebody who looks like they go to the gym all the time, possibly plays sports.
Q. And that was before and after this passing mention of being 15?
A. I believe there was one prior.
Q. Okay. One prior and one after?
A. Correct.
Q. Or two after? Okay. And was there also -- There was also a profile picture for this individual?
A. That is correct.
Q. And it was based upon that that you didn't believe you were communicating with a 15 year old?
A. That is correct.
Q. And have you ever had an incident before where you've been communicating with somebody and it's been a completely different than what they've put themself out to be?
A. Yes, I have. The people will send pictures and then you'll talk the next day and the pictures will be of somebody with now all of the sudden they have tattoos or they look completely different. It's cat -- quote/unquote: Cat fishing is quite a thing on online dating. It's hugely dishonest.

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Q. And anytime during this conversation -- I guess the conversation that started the evening of August 23rd and finished at around 8:00, 8:30 on August 24th, did you ever believe you were communicating with a 15 year old?
A. No, I did not.
Q. At any point during that time were you looking to hook up with a 15 year old?
A. No, I was not.

MR. KORTES: Okay. Thank you..

THE COURT: Any questions, Mr. Holmes?

MR. HOLMES: Yes, sir.

CROSS-EXAMINATION OF EVAN ANDREW-BURTELL LAKATOS

BY MR. HOLMES:

Q. Mr. Lakatos --
A. Yes, sir.
Q. - you watched the video of your interview with Detective Kolk. Is that correct?
A. Mr. Holmes, will you please speak up? I'm hard of hearing and I have a hard time hearing you. I'm sorry.
Q. You watched a video of your interview with Detective Kolk?
A. Yes, I did.

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Q. And that was an honest interview?
A. Pardon me?
Q. That was an honest interview?
A. An honest interview, what do you mean?
Q. Honest.
A. What do you mean by honest interview?
Q. You didn't lie to the detective, did you?
A. I followed what they told me to say.
Q. Oh, so you only told them what they wanted you to say?
A. They asked -- They said they had proof of this in their text, so I wasn't able to verify that.
Q. You saw on the video the detective showed you your own text messages, both in Grindr --
A. Scrolling through and --

THE COURT: Hang on. Hang on. You got to let him finish asking the question before you answer.

THE WITNESS: I apologize.

BY MR. HOLMES:

Q. You saw that on the video. Correct?
A. No, I did not.
Q. You did not watch the video where you were shown your own phone to answer questions put to you by the detectives?
A. Yes, I watched the video. I did not see him show me

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-- I -- I can't rectify what happened that night. I was hugely nervous. The first time I'd ever had interaction with the police outside of a friendly manner.

Q. Well, let's go to you being nervous. You told the detective on that video that you were nervous after having contacted the 15 year old the entire time that you were driving there. In fact, I think your words were "I should have known better". Do you remember that statement, sir?

A. I apologize, I do not.

Q. Okay. Even though you watched the video. Correct?

A. That is correct.

Q. All right. You're no longer a member of Grindr?

A. I am not.

Q. You got kicked off that evening?

A. I was ordered to stop using the internet as part of my, I guess, terms of bail.

Q. Do you know whether or not your account on Grindr has been deactivated?

A. I do not know.

Q. All right. You were the one that had first contact with this decoy. Is that correct?

A. I do believe I initiated the conversation. That is correct.

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Q. All right. When you received the text message of you have to be more than 15 years old in order to get a room at the hotel, you didn't challenge the person sending you that text as being over 15 or over 16, did you?

A. I did not. It was an off statement. It didn't even -- That's why I said "how rude". It was just thrown out there. I was like, well, this doesn't follow any lines with what we were talking about, but okay.

Q. You never challenged that person to say: You're not telling me the truth?

A. That's why I rely on pictures and you -- and the site being 18 years or older.

Q. So one of your pet peeves on these dating apps is everybody is lying. Correct?

A. That is correct.

Q. And despite you today saying that you didn't believe that person was 15 years old, you didn't challenge him about being -- you being lied to?

A. It was an off statement. I didn't feel like it was a lie. The pictures and the adult conversation that happened and the fact that you agreed to being on Grindr and 18 years of age is what I was basing my thoughts off of.

Q. That is a pretty big leap of faith considering the

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situation you're in now, isn't it?
A. I agree.
Q. All right. So you never challenged him on his age?
A. I did not ask for a direct statement of age, no, I did not.
Q. Wouldn't that have been the smart thing to do?
A. Yes, it would.
Q. You didn't do that, did you?
A. I did not direct -- direct statement of age.
Q. Which goes to Detective Kolk's question during your interview of you didn't -- you knew that person was 16 years of age and you acknowledged -- or under 16 years of age and you acknowledged yes?
A. No.
Q. You did not say that?
A. I did not say yes. I didn't know they were under 15 years of age.
Q. So the detective is lying and the video is lying?
A. They showed me the video. They said: We've got it right here. It's right here. You got to agree to it.
Q. You did not see that conversation in that video?
A. I did see the conversation.
Q. And you're saying that's incorrect?
A. No. I saw the conversation and I was basing my

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comment -- my response off of what the detectives were telling me were okay.

Q. We're not supposed to believing our lying eyes when we watch that video and you admit two different, three different times doing that?

MR. KORTES: Objection, Your Honor, argumentative.

THE COURT: Sustained.

BY MR. HOLMES:

Q. How many times did you tell the detectives that you knew the person was under the age of 16?

A. I do not recall.

Q. Once? Do you recall doing it once?

A. The detective asked, he said, "we've got it right here", and I said, "okay".

Q. He said to be honest, you knew the person was under the age of 16 and you said yes, didn't you, sir?

A. He said: "We've got it right here. We can show you, just be honest with us." I said, "okay".

Q. So you disagree with what we saw on the video?

A. No, I do not disagree with what you saw.

Q. So you're not telling the truth here or the video is mistaken?

A. I did not know the person was under the age of 16 years old.

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Q. Okay. You will acknowledge that the cell phone that you used, it accessed the internet in order to go into the Grindr account and access the decoy account. Correct?
A. Pardon me?
Q. Your cell phone, sir?
A. Yes.
Q. It accessed the internet in order for you to use the Grindr account. Correct?
A. Yes.
Q. All right. You would admit that your cell phone is basically a handheld computer?
A. Yes.
Q. All right. You saw all the text messaging that we have in Exhibit 2 and the video with regard to the Grindr account. Correct?
A. Correct.
Q. And you saw -- You've viewed those images and those --
A. That's the Grindr video you're referring to?
Q. Correct.
A. Okay.
Q. And you've seen those in preparation for today's trial?
A. Yes.

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Q. All right. You had the text messages saying the person was under 16, you disbelieved that and you went into extraordinary lengths about what you wanted to do to that person. Correct?
A. I did tell the person about what I wanted to do, yes.
Q. So you wanted to receive fellatio from that person?
A. Yes.
Q. You wanted to do anilingus to that person?
A. Pardon?
Q. You wanted to rim that person?
A. Yes.
Q. And you wanted to watch that person get erect and you wanted to massage their muscles. Correct?
A. Correct.
Q. All right. That was your full intent with the person you were communicating with?
A. Correct.
Q. All right. So your only distinction here is that you intended to have sex with a person you didn't know online, you say you didn't know they were 15 and your text messages and the videos indicate otherwise. Correct?
A. No, I did not know they were 15. I thought I was --
Q. Right.
A. -- talking to --

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Q. I understand that.
A. Okay.
Q. The text messages indicate that, the video you say a couple different times you knew they were under 16. You're saying here today now you didn't believe they were under 16?
A. I did not believe they were under 16.
Q. Today as you sit here?
A. The whole time.
Q. The whole time?
A. From the pictures and the adult language used, I did not believe they were under 16.
Q. Why didn't you tell the detectives that during your interview? You were there for almost 40 minutes.
A. They told me they had it. They said -- I had never been in that situation. They told me they had that conversation. They had it in there. It's in here, it's a definite statement of age, just be honest with us. Tell us. Tell us this, tell us this. That's exactly what I went off of.
Q. So your will to resist was overridden by the detectives?
A. Being in a situation like that that I had never been in, never had trouble with the law ever, yes, I had never -- I -- We were told to always believe what

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the police say.
Q. Who is we?
A. Growing up, I was taught to believe the police.
Q. All right.
A. I apologize.
Q. Then growing up, I'm assuming you've been accused of things you didn't do before. Correct?
A. At times, yes.
Q. And you stood up for yourself and said that's not true, didn't you?
A. Correct.
Q. All right. But in this one instance where you're being accused of soliciting sex from an underage minor, that's the only time in your life you chose not to defend yourself?
A. I was sitting in there and felt pressured and was incredibly nervous and had never been in that situation before.
Q. So that's a yes, then?
A. That is a no.
Q. You did defend yourself?
A. I did not defend myself in that situation.
Q. And this is the only time you haven't done it?
A. There could have been other times growing up that I didn't defend myself, yes.

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Q. You stated on multiple times, at any point in time during this exchange on Grindr and texting did you ever believe that person was only 15 years of age?
A. No, I did not.
Q. You didn't just say that on direct examination?
A. That I believed they were not 15 years of age?
Q. Correct?
A. That is correct, I did say that. I apologize. I didn't hear you.
Q. So and you understand that that's the whole crux of the issue here today?
A. Correct.
Q. And even with that in mind, you chose not to tell the detectives that at any point in time, either through texting on Grindr, texting on your own phone, or during the interview?
A. Texting and on Grindr, I did not believe they were that age. And the interview, like I previously stated.
Q. Your will was overridden?
A. Correct.
Q. Can you tell me what you saw in the video of your interview that was so horrific that it overrode your will?
A. Just the fact of -- I had never have been in

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trouble. I had never -- I've never been in a situation like that. And --

Q. Well, based on what you're telling us here today, you weren't in trouble then?

A. I was told I was in trouble. I was told that I was talking to somebody that was underage.

Q. Would you agree with me that it would have been extremely simple even once to say during the interview: I never believed the kid to be a minor. I thought he was an adult?

A. Yes, it would have. And hindsight is 20/20.

Q. And isn't it true, sir, you're just making this up to save yourself here today?

A. I am not.

MR. HOLMES: Thank you.

THE COURT: Any redirect, Mr. Kortes?

MR. KORTES: No. Thank you, Your Honor.

THE COURT: All right. You can step down, sir.

(Whereupon, witness excused at 2:06:55 P.M..)

THE COURT: Any other witnesses you wish to call?

MR. KORTES: No. The defense would rest, Your Honor.

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THE COURT: All right. All right. Mr. Holmes, any rebuttal witnesses?

MR. HOLMES: No, sir.

THE COURT: So jury, you've heard all the evidence that you're going to hear in this case. The next steps will be the closing arguments from the attorneys and the final instructions. I need to go over the final draft of those instructions with the attorneys. We went over them during the lunch break. We had a few corrections, some changes, but we just want to do one final go through to make sure we got all those right, and we'll come back out and do the closings and the final instructions. And it's going to be probably 15, 20 minutes. We'll have you right back out and get the case to you.

(Whereupon, jury left the court-room at 2:07:58 P.M..)

THE COURT: Let's start out with -- all right. We'll be in recess. Why don't the attorneys come back and we'll go over the instructions.

(Whereupon, proceedings recessed at 2:08:35 P.M.; proceedings resumed at 2:30:20 P.M. out of the presence of the jury.)

THE COURT: All right. Mr. Holmes and

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Mr. Kortes, we've had a chance to go over the final draft of the jury instructions. Are you satisfied with the final version?

MR. HOLMES: Yes, sir.

MR. KORTES: I am, Your Honor.

THE COURT: All right. Are we ready to bring the jury back in?

MR. HOLMES: Yes, sir.

MR. KORTES: We are.

(Whereupon, jury returned to court-room at 2:31:48 P.M..)

THE COURT: Please be seated. You can go ahead with your closing argument, Mr. Holmes.

MR. HOLMES: Thank you, sir. Good afternoon, Ladies and Gentlemen. We're at the conclusion of this trial. Now is my opportunity to talk to you about the evidence I believe has been shown throughout this case. I get a second opportunity to speak with you, that's after Mr. Kortes does his closing argument. I get to do a rebuttal argument to his comments. There's nothing unfair about this. This is the way the system has been set up and it's been going on for centuries.

The other thing I would point out is that my comments here and those that you may hear from Mr.

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Kortes are not evidence. As the Judge told you at the very beginning, it's just to help you understand what we believe the evidence has shown and how the case has developed. So if we misspeak, rely on your own individual recollection or the exhibits. You have the video tapes, you have the photo shots of the videos, you got the documents that we've submitted. All of those will be going with you, if you ask, back into the jury room, so rely on that. If I misspeak or Mr. Kortes misspeaks with regard to one of the elements, listen to the Judge. He is the ultimate say so on what is or what is not the law in this case, and you have to follow him and not what we say should we be mistaken.

So this is a relatively short trial, Ladies and Gentlemen. I think I mentioned right at the very beginning, there's not a whole lot to it with regard to evidence. We have two counts. We have one, using computer to commit a crime. The crime that it was used in committing was the second count, accosting a minor for immoral purposes.

The elements of the using a computer to commit a crime is first that the defendant used the internet or a computer to communicate with another person. I think that's been established. Mr. Kortes

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-- I'm sorry. Mr. Lakatos, in the use of his cell phone, you heard the testimony from Levi Davis with regard to they are computer. They have internet access. And Mr. Lakatos himself acknowledged having used that in the communications with the person at the Harrington Inn, so that's pretty well-established.

The communication was done for the committing of the offense of accosting a child for immoral purposes. That's our contention, our allegation. You heard from Mr. Lakatos, he says never had any such intent. Even though I was told the person was 15, even though I admitted the person was under the age of 16, even though I thought I was going to meet this person and see where it led me, I'm here today to tell you that that's not the case. Yes, I did not defend myself at the interview. Yes, I did not stand up for myself, but today I'm telling you that wasn't the case. I think the evidence proves to the contrary, Ladies and Gentlemen, and I'll get to that.

The third element is that the intended victim was an individual that the defendant believed was a minor. Again, he denies that. I think the evidence is replete with evidence -- or with showings

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of that.

And then the underlying crime of accosting a minor for immoral purposes, what does that crime entail? That crime entails is that the defendant accosted, enticed, or solicited an individual. We have that. We have Detective Wimmer talking about having sent out the text, having sent out the text that he was under the age of 16, "you have to be more than 15 in order to get a room here", and then Detective Wimmer stepping back, allowing Mr. Lakatos to come to him with regard to what was going to happen and what they were going to do to each other.

Number two, that the defendant believed this individual was less than 16 years of age. Again, Mr. Lakatos, you heard his statement that he did not believe that person was under 16 years of age the entire time but never once mentions it in a text message, Grindr message back to the person he was dealing with, a text message back to the person he was dealing with, didn't mention anything to Detective Kolk, didn't mention anything to Detective Wimmer about not believing the person was under the age of 16. In fact Mr. Lakatos did just the opposite.

It doesn't matter that if the individual

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was older, so it doesn't matter that the person typing, Detective Wimmer, is, you know, early 30s and he's on there typing. It doesn't have to be that. Just that Mr. Lakatos believed the person he was communicating with was under the age of 16.

The second element is that when the defendant accosted, enticed, or solicited the individual, that being this Taylor Williams, which was a picture of Max Citro, which was actually Detective Wimmer doing the communications, he intended to induce or force the individual to commit an act of immoral -- an immoral act, to submit to an act of sexual intercourse or to act -- an act of gross indecency or other act of depravity or delinquency or encourage the individual to engage in one of those acts. You have the text messages, you have the Grindr messages back and forth what Mr. Lakatos wanted to do. And he acknowledged -- Granted, he did say he thought today that the individual was not 15 years of age, but he wanted to perform oral sex on that person, he wanted to receive oral sex from that person. He wanted to give that person a rim job, lick his rear end. He wanted to do a number of other things, touch his booty, so on and so forth. These are all immoral acts with a person

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under the age of 16. Again, it was testified to, the age of consent is 16. He's dealing with what we say he believes is a person that is under the age of 16, and that's where that fits in.

It doesn't matter -- You're going to get an instruction from the Judge, it doesn't matter whether the act was consummated, whether they actually went through with it or not. It doesn't have to go that far, just that he believes the person is under 16 and he believes he's going to have sex or some other immoral interaction with that person in that exchange.

So what do we have testimony wise? You heard first from Detective Loomis. Detective Loomis was the one that sent up the accounts. And she acknowledge that, yes, in order to get into the account on Grindr that you have to go ahead and put in your age. Yep. Don't deny it. It wouldn't have happened. It wouldn't have gotten into Grindr if it didn't happen, but she hid it. And you have to ask yourself -- These are the common sense questions we talked about during my questioning of you. -- if you go onto an internet site, Grindr, and you're looking for somebody to hook up with and that person doesn't post their age, what would you do? How old are you?

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Mr. Lakatos says: I saw the pictures. I didn't believe he was 15. Who wouldn't ask the question? Think about it. Common sense, your everyday lives, who wouldn't ask the question? I'm looking at this picture, what age are you? You're not 15. Mr. Lakatos didn't do that. Mr. Lakatos again does just the opposite, he acknowledges to the officers that he was, in fact, aware of the fact that the person was under the age of 16 and that he was going to look and see what happened after that.

But the detective, Detective Loomis, tells us that she puts the photograph of Max Citro onto the posting in Grindr and then Detective Wimmer does the texting and that he is, in fact, the decoy that is communicating with Mr. Lakatos. The account was set up on August 23rd. There's a -- I believe she said by the next morning, there was over 300 contacts of people looking to meet Max Citro or the picture of Max Citro. And then on the 24th, they have actual first contact with Mr. Lakatos and it was some sort of shower picture that was sent of Mr. Lakatos in the shower. She immediately turned the situation over to Detective Wimmer, at which time he took over.

What does Detective Wimmer tell us? Detective Wimmer tells us that he took over the

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texting from Detective Loomis and it started out on Grindr, that that's where they started most of their initial contacts, but they switched over to texting so to avoid hopefully being booted off of Grindr and not being -- ruining the established connection that they have with the suspect.

What does he tell us? He tells us that he goes on for several hours and he establishes where to meet. And he says to him specifically, and the officer testified: I thought I was clear that you need to be over the age of 15 in order to get a room. That's why I had my cousin do it for me. So what happens? He sends that to Mr. Lakatos and Mr. Lakatos responds: Oh, that's rude. Detective Wimmer, what did you understand that to mean? I understood that to mean that he read my message, he understood my message, and he thought it was rude for the people at the hotel to make me be 16 in order to get a room.

Mr. Lakatos in his interview with the detectives said just that, I thought he was under the age of 16. I was nervous as hell going all the way there and decided I was going to go ahead and see what happened once I got there. Those were his words as spoken to the detectives on the videotape. You

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saw it with your own eyes. You heard it with your own ears. Not what we heard here today. You didn't hear anything on that video what we heard here today from Mr. Lakatos about not believing the person was 15, not believing that they were going to have sex, not believing any of this, but never said a word to the detectives.

Common sense, Ladies and Gentlemen. Common sense. If you were being accused of accosting a minor for immoral purposes and you were trying to -- being accused of trying to hook up and have sex with a minor 15 years old, what would be the first words out of your mouth, Ladies and Gentlemen? That's a bunch of BS. I never did anything of the sort.

Wouldn't it have been easy, Mr. Lakatos, if you would have just said at that point in time: I thought the guy was over 16. I never believed those pictures. I never believed what he told me. This is all a big misunderstanding. Not a word. You want to know why, Ladies and Gentlemen? It's because what he told the detectives at that interview was correct and was the truth.

Now that he's seen everything, he saw the testimony, he's listened to it, he's changed his

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story that I never believed that for a minute. I thought the entire time I was dealing with a person who was over the age of 18 and I was dealing with a consenting adult.

Detective Wimmer goes on to talk about again what it was that Mr. Lakatos wanted to do to him once they got together at this room, the room being the Harrington Inn in Fremont. He wanted to play with his booty, give him a rim job, watch him get an erection. He was going to supply the 15 year old, as he believed it, with alcohol. He went out and he bought black cherry White Claw and was going to supply that to the person, also.

Then we have the post interview with -- post-arrest interview with Detective Kolk. This is the most telling, Ladies and Gentlemen. Even if you put the best spin possible on that message about being over -- have to be over 15 in order to get a hotel room, Mr. Lakatos says: I never gave it a second though. I just thought that, you know, hey, he was, you know, not being honest with me and I just kept on marching. Well, that's not what he told the detectives. What did he tell the detectives? He told them that I knew the person was under the age of 15. Now you can spin that any way you want to again,

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but it comes out the same in every cycle of wash that you have. I knew it. He said it not once, not twice, but I don't believe it was three times he told the detectives that I knew he was under 16, was nervous as hell, was going to see what happens, so on and so forth. Never once, not once. This is all a big mistake. I thought he was over the age of majority. He could have consented to this. Never once. Because you saw the detectives, they're mean. They were nasty. They were overbearing. No, they weren't. I would submit to you and I think most of you would agree that they were about as nice as you can be in a police investigation.

All right. The apology letter that came at the end, that apology letter was all stuff that they had already covered through their interview. So the detective telling him you're writing a letter of apology, put this, this, this and this in there. Is that forcing him to do anything that he hasn't already disclosed and admitted to? No. He's already done that. There is no coercion.

Again, I would submit to you that the viewing of the videotape, looking at how the officers conducted themselves in the presence of Mr. Lakatos was everything and as civilized as you could possibly

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be for a police investigation. Does that mean the police can't challenge him on information? Does that men that police are not able to question his motives, question why are you leaving this information out? No. They can. The question to you, Ladies and Gentlemen, is that so overbearing, so condescending to Mr. Lakatos that he was wrought with indecision and admitted to things that he never did and admitted things he never intended to do? No. I think the video speaks for itself.

He admitted in a letter of apology when he wrote the first large paragraph himself that: I knew the person I was dealing with was under the age of 16. The detectives weren't in the room. Had they given -- Detective Kolk given him ideas on what to write? Sure, he did, but nobody twisted his arm. In fact, did we do anything to force you to write this letter? No, you did not. In fact, you gave me the opportunity to apologize and explain. That was his comment. That's not a person who is being overwrought with pressure and forbearance by the detectives. That's a person who's telling you the truth and that letter has the truth in it.

He also put in the letter he wanted to engage in making out, he wanted to engage in oral

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sex. Again, all these things that he's already admitted to to the detectives during their oral interview, that he was going to take and get with the booty -- get with the decoy and play with their booty or their rear end.

Detective Levi Davis, our final witness, indicates that, yes -- He's a digital forensic analyst. -- telephones are essentially handheld computers. They are handheld computers. That meets with our first criteria that we spoke about earlier that it has access to the internet and you can do everything you can on a handheld device that you can on a lap -- or I'm sorry, desktop computer, just in a smaller capacity.

I would encourage you, Ladies and Gentlemen, that when you go back into the deliberations, if you manage to not be the one selected to be pulled off, take a look at these messages. They speak for themselves. You just can't look at them in isolation. You have to look at them in the context of the interview itself, because this information is what they go back into the interview room with and they talk to Mr. Lakatos, who admits to doing everything that he's being charged with here today. The only thing different between the date of

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this interview and today's date is that Mr. Lakatos took the stand and acknowledged or told us -- tried to tell us that when he had contact with this person under the age of 16 and when he talked to the detectives, he never once believed that that was the case. He wants you to believe, Ladies and Gentlemen, that at this late stage at today's trial because he no longer believes that the person he was communicating with back on August 24th, 2021, or talked about to the detectives on that same date that that's not true, I'm absolved from all wrongdoing. I couldn't possibly have wanted to accost a person because here on the 14th of December, 2022, over a year and a half later, now I'm telling people for the first time I never believed it.

Ladies and Gentlemen, it just doesn't add up, it doesn't, not in any way, shape, or form. What he did is what he admitted to and what he admitted to was a violation of two separate laws, accosting a minor that he believed was under the age of 16 for immoral purposes and then using a computer in order to commit that crime.

I would submit to you, Ladies and Gentlemen, that the People have proven their case beyond a reasonable doubt and I would ask you to find

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Mr. Lakatos guilty of both Count I, using a computer to commit a crime; and Count II, accosting a minor for immoral purposes. Thank you.

THE COURT: Mr. Kortes?

MR. KORTES: Thank you, Your Honor. Thank you. Good afternoon, Ladies and Gentlemen. I want to touch on something the Prosecutor just finished up on and that is we can't view this as one item. We have to look at the entire text messages, the entire Grindr messages, the photos that were submitted, everything under that umbrella and look at the totality of the circumstances to determine if Mr. Lakatos believed this decoy was under 16 years old.

Accosting a child for immoral purposes, you're going to get a copy of this jury instruction. And you heard the Prosecutor go over the elements. The big things are highlighted. Specifically, Evan Lakatos believed Dylan Wimmer, or Max Citro, or Taylor, who was the profile, was less than 16 years old. If they don't prove that then you must find Mr. Lakatos not guilty.

You also have to find out he accosted, enticed, or solicited Dylan Wimmer, Max Citro, Taylor to do these things. And again, you're -- you've got the Grindr messages. You've got the Grindr scroll,

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if you want to watch that life. You've got the text messages. Looking at all those, those are what you can base the foundation on. And I'm going to remind you again that there are over 100 Grindr messages, text messages, communications between these 2, and 1 passing reference to being 15 in that whole time.

Use of a computer to commit a specific crime, specified crime, you actually -- you have to find that he committed the accosting a child for immoral purposes, that's the fourth element. And yes, I mean, we know phones are computers, so no question with that. But did he use that phone to commit the offense of accosting a child for immoral purposes? He did not.

So when you go back and look at these jury instructions, these are what you have to focus on and this is what the prosecutor has to prove.

What happened? Okay. So the human trafficking task force goal is to catch individuals that were predators, that wanted to have sex with minors. We all know that's a good thing. And how would they do that? They would pose as minors. They did that by putting pictures of what they thought were people that looked underage and see if they could draw in any bites. That's what Detective

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Loomis said they go about it, they pose as minors and then they act as minors when they interact back and forth with these messages. And they are to identify the adults who want to seek out the minors. And then Detective Wimmer said the goal is to make contact with anyone who is contacting and trying to meet underage individuals. We all agreed at the very beginning that is a good thing. They did not do that in this case.

So we talked earlier that at the beginning, the scales of justice are tilted so that Evan Lakatos is not guilty and the prosecutor has to fill up this side to change those scales of justice. That's the way the scales have to be at the end of this, that they've provided so much evidence that there's proof beyond a reasonable doubt of guilt that Mr. Lakatos wanted to meet with a 15 year old, intended to meet with a 15 year old, and to commit immoral acts with a 15 year old. It's the only way those scales get tilted.

But Evan Lakatos did not believe any of this. And how do we know that? Again, we look at the totality of the circumstances.

The photos that were sent, this is Max Citro (indicating), Ladies and Gentlemen. The

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picture on the right has been admitted. It's in the Grindr apps. That's his profile picture. The other two pictures are other pictures that were sent by Dylan Wimmer acting as Max Citro, acting as Taylor Williams to Evan Lakatos.

I've been a 15 year old boy at one point. When I was 15, I had friends that were 15-year-old boys. I've two sons that at 1 time were 15-year-old boys and they have friends that are 15-year-old boys. That is not the body of a 15-year-old boy. Evan Lakatos knew that from the beginning. And what did he tell you he liked? Leaner, abs, males, everything that Max Citro is.

Clearly, an adult male.

And one other thing. When you get the exhibits, when you look through the exhibits, the ones that are marked in red were admitted by the prosecutor. They wanted you to see those exhibits, so they admitted them. The ones I admitted have a blue sticker. I admitted those. We admitted those, Evan Lakatos, because we wanted you to see them. You have to ask yourself why wouldn't the prosecutor want you to see those pictures? Would it be because this is clearly a 27-year-old adult male and not a 15 year old? That's probably a good reason.

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Grindr has strict age requirements to get into the app, to sign up. You heard Detective Loomis say that, Detective Wimmer. I think even Detective Kolk agreed that you've got to be over 18 to be on the app, 21 in some jurisdictions, and you've got affirm that.

Evan Lakatos did not believe Dylan Wimmer was 15 because of the conversations. On the left is the very first one that is captured on this phone and it shows 8:15 AM on August 24th. So from 8:15 to 4:03, there are conversations between the two talking about sex, talking about pictures they've exchanged, talking about how excited it's going to be to get together. That's what they were talking about for eight hours on the 24th. But remember, Detective Loomis told us the conversations started the night before. So sometime the night before on the 23rd all the way up until 4:00 o'clock, they're having all of these let's get together, let's hook up, let's have fun conversations and never a mention of age, never, not once. It's in here. You'll see it.

So as they're passing these back and forth, these jovial messages, it's clear from looking at this that Mr. Lakatos takes it as a joke. He doesn't take it as serious. It's all part of the

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role play. And remember, he told that to Detective Kolk in the interview. There's a lot of role playing on it. He didn't believe he was talking with a 15 year old. If he did, instead of saying how rude of them, those texts would have said: Hey, whoa. What? Hold on. You're 15, with a question mark, question mark, question mark? Instead, he goes on with the communication, because he knows he's not talking with a 15 year old.

He also knows that he wasn't talking with a 15 year old because of how quick these responses came in. 3:37, Dylan Wimmer says he's getting a hotel, too. Evan responds a couple minutes later. At 3:56, Dylan Wimmer tells Mr. Lakatos send a couple of pictures because he's excited. And then seven minute later, Mr. Lakatos is supposed to believe that he was at a hotel room, got denied a room, got his cousin, got a hotel room and is now set for the night. That timeframe does not add up. One more of the reasons why Evan Lakatos did not believe he was talking with a 15 year old.

The interview. You saw the interview. You heard that Mr. Lakatos considers younger guys to be 18, 19, even 24 year olds are younger to him because he's 34. He knows Grindr has the age

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restrictions. He's been cat fished before. And his words exactly were I showed up and it was an old dude when he was expecting to meet somebody young. He also said he's reported underage accounts to Grindr in the past. And why did he say he did that when he was up here on the stand? Because they've made other statements, "I'm in high school", "are you okay with this", something affirming they are underage. And what did he do in that situation? He turned them in. That was not this situation because he didn't believe that this individual was 15 years old.

And the next one the prosecutor kind of got caught up in it because he saw the interview, he saw the way that Detective Kolk was feeding Mr. Lakatos the lines, we know you did this, we know we have this so you should just admit it. You have to write this apology, do this, do this. Even the prosecutor when he questioned Detective Kolk said: Well, when you pressured Mr. Lakatos -- And do you remember the way Detective Kolk responded when he got that question? He was kind of like don't use that word, change your word. And so the prosecutor had to backtrack and I didn't -- I didn't mean pressured, I meant when you were interrogating him, or something like that. Why did he slip and use the word

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pressure? Because he was watching the same interview you and I were, Ladies and Gentlemen, and Mr. Lakatos was being pressured.

Mr. Lakatos was cooperative, let the detective download his phone, denied there was going to be any child porn or any communication on that. You heard Detective Davis that came up, there were 219,000 images on that phone. Zero child porn. There were thousands of messages, no messages with anyone underage. That's why Evan Lakatos did not believe he was talking with a 15-year-old individual?

So now to the apology letter. You saw it. You're going to be able to read it. This is verbatim from the -- from the interview. Detective Kolk tells Mr. Lakatos, write the apology letter saying that you knew it was wrong to communicate with someone under the age of 16 and to ask for some type of forgiveness. When you read the apology letter, it's pretty much dictation. Kolk tells him, "write this", Mr. Lakatos writes that. And why is he so compliant? Why is he following the rules? Because he respects the police and they're telling him do this, you're not a criminal, we know you're not a criminal, just write this and you'll be fine.

So after he wrote that, it wasn't specific

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enough because he didn't get the inappropriate language in. And I'm not going to repeat any of that language because we've already heard it about 800 times in prosecutor's questions. I think it's offensive and it's meant to shock your conscience and it doesn't have anything to do with Mr. Lakatos believing this person was 15 years old.

So he has him write the second part and then comes in. And the kicker, you saw it, Detective Kolk tells him to sign it and date it. Evan does that. But the big line, and I told you this at the beginning, "that way it's not like we made this up or something like that". If you want to watch the interview again, that part, it's practically verbatim of what Detective Kolk tells Mr. Lakatos to write down.

So, when you add it all up, it does add up that Mr. Lakatos did not believe this individual was a 15-year-old male. The pictures, remember those pictures that the state didn't introduce because they didn't want you to see them because it's obviously of an adult male. Grinders age restrictions. Mr. Lakatos had been a member of Grindr for five years. He had turned in other individuals for being underage. He knew you had to be 18, or 21 in certain

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jurisdictions, to be a member of Grindr.

The one passing mention of age in a joking manner over more than 20 hours of conversation starting the evening of the August 23rd, ending the evening of August 24th, over 100 message exchanges, all of this in back and forth, ha-ha joking language, Mr. Lakatos didn't believe it. If he believed it, he would have come back with: Hold on, 15? But he knew from the picture, everything else, he was not dealing with a 15 years old.

Response was too quick to get a room. The way that that message came out of the blue too fast didn't make sense. Mr. Lakatos has reported others he actually believed were underage because there was that verification, there was that evidence, that further interaction about: You okay with me being 15? I've been around the block, but I'm still 15. Situations like that, he's reported because those are the ones we don't want on sites like this. And if Mr. Lakatos had responded to a confirmation that he was 15 then he should be punished, but that's not the case we have here.

Role playing, common in this situation. You can see that in the communications. In fact, Mr. Lakatos has been cat fished before by an old dude

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pretending to be a mid-20 somebody and it's not who they turn out to be.

So when you add all of that up together, those scales never tilt. The scales stay the same because there is not proof beyond a reasonable doubt that Mr. Lakatos believed or attempted to accost or do anything to a minor. And because of that, I'm confident at the end of this you can go in and you will come to that same conclusion, that Mr. Lakatos is not guilty of both of these charges. Thank you.

THE COURT: Thank you, Mr. Kortes. Rebuttal, Mr. Holmes?

MR. HOLMES: Yes, sir. Well, Ladies and Gentlemen, I'm certainly glad this case is coming to a close. If we'd gone on much longer, I fear that Mr. Kortes would have me on charges, because I apparently am devious enough to try to shuck the conscious of the jury in order -- or by repeating instances of what Mr. Lakatos wanted to do to the decoy in Mr. Lakatos' own words. Apparently, that's shocking. That's what Mr. Lakatos said.

Detective Kolk is a mean person. He spoon fed what he wanted the defendant to say and tricked the defendant into not saying anything about what his defense was, and by golly we're both just mean

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people. That's not the case, Ladies and Gentlemen.

Mr. Kortes has a very important job and that's representing Mr. Lakatos. And Mr. Kortes, I think you would find, did an excellent job. But what he can't do is put enough spin on what happened here to get Mr. Lakatos off the hook, because it's Mr. Lakatos' own words, it's Mr. Lakatos' own admissions that seal these convictions.

You heard time and time again he never believed for an instance that the person he was communicating with was under the age of 16, repeatedly. He took the stand and said as much under oath, but that's not what he tells everybody else. He puts in the text messages from Grindr that's rude. That's rude for them not to give you a room because you're under the age of 16. Absent that, that comment of that's rude doesn't make any sense. It has no context. Mr. Lakatos would tell us that that comment was just a glib response. It didn't fit what we were talking about because he knew he wasn't 15 and that didn't make any sense so I made a response that didn't make any sense. That doesn't wash, Ladies and Gentlemen.

Again, remember when we first started this process out and I had said common sense is the one

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thing you don't want to leave at the door when you go back to deliberate. Does any of that make sense? Does any of that make sense? More importantly, he says, "I never knew", Mr. Lakatos says on the stand, "that the person was under 15. All I know is they told me he was under 15. I never believed that for a minute."

Think about where this information comes from. It comes from Mr. Lakatos on the day of trial for the very first time. He choose to take the stand. Detective Wimmer, Detective Kolk, Detective Loomis, did anybody ever hear Mr. Lakatos say anything of the sort at any point in the time during any portion of this investigation? No. You know, and, you know, and you know, and you all know that if you're unjustly accused of a crime to the point where the police are getting involved and you didn't do it, you're going to speak up. You're going to say: I didn't do this. I didn't believe the guy was 15. That's all it would have taken, that one simple statement, but that's not what he said. Detective Kolk challenges him on his skating around the issue of the person, the decoy, being under the age of 16. He says: Be honest with you us, you knew he was under the age of 16. Yes, yes, I did. You knew he

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was under the age of 16 when you went -- you were headed there. Yes, I did, and I was nervous the whole time I was driving there.

Was he cat fished? He wasn't cat fished, Ladies and Gentlemen. Because if he was cat fished he would have put that what are you telling me? You're 15, question mark, question mark, question mark, as Mr. Kortes says in his closing arguments. But he didn't. In fact, Detective Kolk challenged him on that portion. You say you've turned people in before for being minors online. Well, yes. Yes, I did. You didn't do it here, though, did you? No, I did not. That statement again verifies the fact that he knew the person was under the age of 16, he chose not to turn him into Grindr to get him booted off because he was nervous. He was going to go see what was going to happen.

Nothing by way of what he told us here today on the stand, Ladies and Gentlemen, jives in any way, shape, or form with what he told the officer and what he wrote on those text messages. I would ask you to disregard it because it doesn't jive. It doesn't make sense.

The prosecutor didn't introduce the pictures of Max Citro. Prosecutor didn't want you to

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see the 27-year-old body of Max Citro and how well developed it was because they're hiding something. Ladies and Gentlemen, the fact that he didn't believe Max Citro was 16 years of age or older was first heard here today. Did you tell the detectives at any point in time that you didn't believe that? No. No, I didn't. That's the first time it's ever come up. The image of Max Citro was never an issue until today when, conveniently, it shows up that Mr. Citro -- I'm sorry, Mr. Lakatos doesn't believe the person he was communicating with was under 16 at any point in time, despite not denying it, despite would have been a good defense to the officers during their investigations, he chose not to.

Jovial joking messages back and forth. Ladies and Gentlemen, Detective Wimmer acknowledged that he had used emojis. Apparently using emojis is a defense to having committed these crimes. It's not. Mr. Kortes would have you believe that because there was jovial emojis used that that somehow verifies and validates the belief that Mr. Lakatos didn't believe the person he was dealing with was a minor. How about this, Ladies and Gentlemen, let's submit for your consideration that the reason he was being key -- Mr. Lakatos was being jovial is because

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he's an old man and he doesn't want to scare away a 15 year old so he's trying to keep things light hearted. Consider that in your deliberations as opposed to I didn't believe him. My response made no sense. And I saw jovial emojis so, therefore, I must have hooked up with a guy or tried to hook up with a guy who is over the age of majority. That doesn't make sense at all.

Mr. Lakatos never believed that the person that he was communicating with was under the age of 16 because had he, says Mr. Kortes -- had he done that, had he believed he was under the age of 15 that he would have said: What? Your 15, question mark, question mark, question mark. That would have been a responsible person who believed a person was under 15; or, Ladies and Gentlemen, a person who wanted to hook up with a 15 year old. You got a 15 year old that you've been trolling for and you found. You figure you're going to get away with it, you're nervous the whole time you're driving there, this is going to be my payday, that's why I didn't ask those questions. One, because he wanted it to be a 15 year old and that's why he didn't ask any questions.

Says he's been cat fished, that he shows up someplace and there's an old dude there. Why is

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this situation any different? I'm a 15 year old. How does he know it's not somebody that's role playing? Why wouldn't he use the same cautions and protections he's used in other instances where he got burned in this particular instance? Because he wanted it to be true. That's why, Ladies and Gentlemen. He wanted it to be a 15 year old on the other side of that text message and that's what he was going there for.

You remember the testimony of Detective Kolk that, hey, I've turned people in before who are minors. I'm a good guy. I'm the one that turns these types of people in to get them off there so they don't get hurt and these people don't get injured and the people don't arrested, so on and so forth. And Detective Kolk challenged Mr. Lakatos on that. But you didn't do that here, did you? No. What's the context of that exchange? You knew he was under the age of 16, you should have turned him in, you didn't do that here and here we sit charging you with accosting a minor for immoral purposes. That's the context of that exchange, Ladies and Gentlemen. Again, a third acknowledgment of knowing that the person he's dealing with was under the age of 15 or he believed the person was under the age of 15.

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I think the videos speak for themselves, Ladies and Gentlemen. You watched them, as well I did. I'm not going to harp on them any longer, but you saw the interactions of Detective Kolk. Detective Kolk is a trained detective, interviewer and investigator. All the information contained in that apology letter is information that had already been discussed and explained by both sides during the course of the interview. There is nothing in that letter that Mr. Lakatos had not already admitted to. So if the detective says, "hey, you know, when you admitted that you were going to do this to the person and that to the person, you knew he was under 16, put that in the letter", does that invalidate the letter? No. It's just confirmation of something that they've already talked about. Does that make Detective Kolk a villain? No. He did his job and he did it well. Now he's being chastised for it because, heaven forbid, we should ask tough questions of a defendant charged with trying to molests a child.

Ladies and Gentlemen, I think the People have proven their case beyond a reasonable doubt. When you go back and deliberate, again, think about what has been said here by way of a defense to this -- to these charges, that they only came forward

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today from Mr. Lakatos on the stand and that's the first time we're hearing of it. I think if you just use your common sense, you use your own self as an example, what would you have done if you were being accused of this interview with Detective Kolk knowing full well that the person you're dealing with was not underneath the age of 16. You would have stood up and said: This is BS. I never did that. He didn't do that. That's how we know what he's telling us here today is not true.

I'd ask you, Ladies and Gentlemen, to find Mr. Lakatos guilty on both counts, using a computer to commit a crime and accosting a minor for immoral purposes. Thank you.

THE COURT: Members of the Jury, the evidence an arguments in this case are finished. I will now instruct you on the law -- that is, I will explain the law that applies to this case. Remember that you have taken an oath to return a true and just verdict based only on the evidence and my instructions on the law. You must not let sympathy, bias or prejudice influence your decision. You must avoid reaching conclusions that may be -- that may have been unintentionally influenced by stereotypes. You must reach your own conclusions about this case

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individually, but you should do so only after listening to and considering the opinions of the other jurors who may have different backgrounds and perspectives from yours.

As jurors, you must decide what the facts of this case are. This is your job and nobody else's. You must think about all the evidence and then decide what each piece of evidence means and how important you think it is. This includes whether you believe what each witness said. What you decide about any fact in this case is final.

It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say.

At various times, I've already given you some instructions about the law. You must take all my instructions together as the law that you are to follow. You should not pay attention to some instructions and ignore others. To sum up, it is your job to decide what the facts of the case are, to apply the law as I give it to you, and in that way to decide the case.

A person accused of a crime is presumed to be innocent. This means that you must start with the

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presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that he is guilty.

Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove his innocence or do anything. If you find that the prosecutor has not proven every element beyond a reasonable doubt then you must find the defendant not guilty.

A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt but a doubt based on reason and common sense. A reasonable doubt is just that, a doubt that is reasonable after a careful and considered examination of the facts in this case.

When you decide the facts of this case, you may only consider evidence that was properly admitted in this case. Therefore, it is important for you to understand what is evidence and what is not evidence.

Evidence includes only the sworn testimony

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of witnesses, the exhibits admitted into the evidence, and anything else I told you to consider as evidence. Many things are not evidence and you must be careful not to consider them as such. I will now describe some things that are not evidence. The fact that the defendant is charged with the crime and is on trial is not evidence. Likewise, the fact that he is charged with more than one crime is not evidence. The lawyer's statements and arguments are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept the things that the lawyers say that are supported by the evidence or by your own common sense and general knowledge. The lawyer's questions to the witnesses and any questions I may have asked to the witnesses are also not evidence. You should consider these questions only as they give meaning to the witnesses' answers.

My comments, rulings, questions, and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express a personal opinion about the case. If you

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believe I have an opinion about how you should decide this case, you should pay no attention to that opinion. You are the only judges of the facts and you should decide this case from the evidence.

At times during the trial, I have excluded evidence that was offered or stricken testimony that was heard. Do not consider those things in deciding the case. Make your decision only on the evidence that I let in and nothing else. Your decision should be based on all the evidence, regardless of which party produced it.

You should use your own common sense and general knowledge in weighing and judging the evidence, but you should not use any personal knowledge that you may have about a place, person, or event. To repeat once more, you must decide this case based only on the evidence admitted during this trial.

As I have said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness said. You are free to believe all, none, or part of a person's testimony. In deciding which testimony you believe,

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you should rely on your own common sense and every day experience. However, in deciding whether you believe a witness' testimony, you must set aside any bias or prejudice that you may have and not be influenced by a witness' disability, gender, gender identity, race, religion ethnicity, sexual orientation, age, national origin or socioeconomic status.

Again, take the time you need to test what might be automatic or instinctive judgments and to reflect carefully about the evidence.

There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions. Was the witness able to see or hear clearly -- to hear or see clearly? How long was the witness watching or listening? Was anything else going on that may have distracted the witness? Does the witness seem to have a good memory? How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth or did the witness seem to evade the questions or argue with the lawyers?

Does the witness' age and maturity affect how you judge his or her testimony? Does the witness

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have any bias, prejudice or personal interest in how this case is decided? Have there been any promises, threats, suggestions or other influences that affected how the witness testified? In general, does the witness have any special reason to tell the truth or any special reason to lie? All in all, how reasonable does the witness' testimony seem when you think about all the other evidence in the case?

Sometimes the testimony of different witnesses will not agree. You must decide which testimony you accept. You should think about whether the disagreement involves something important or not and whether you think someone is lying or simply mistaken. People see and hear things differently and witnesses may testify honestly but simply be wrong about what they thought they saw or remembered. It is also a good idea to think about which testimony agrees best with the other evidence in the case. However, you may conclude that a witness deliberately lied about something that is important to how you decide this case. If you -- If so, you may choose not to accept anything that witness said. On the other hand, if you think that the witness lied about some things but told the truth about others, you may simply accept the part that you think is true and

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ignore the rest.

The prosecution has introduced evidence of a statement that it claims the defendant made. Before you may consider such an out-of-court statement against the defendant, you must find -- first find that the defendant actually made the statement as given to you. If you find that the defendant did make the statement, you may give that statement whatever you think it deserves -- whatever weight you think it deserves. In deciding this, you should think about how and when the statement was made and about all the other evidence in this case. You may consider the statement in deciding the facts of the case and deciding if you believe the defendant's testimony in court.

Facts can be proved by direct evidence from a witness or exhibit. Direct evidence is evidence that about what we actually see or hear. For example, if you look outside and see it is raining, see raining falling, that is direct evidence that it is raining. Facts can also be proved by indirect or circumstantial evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat

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covered with small drops of water that would be circumstantial evidence that it is raining.

You may consider circumstantial evidence. Circumstantial evidence by itself or a combination of circumstantial evidence and direct evidence can be used to prove the elements of a crime. In other words, you should consider all the evidence that you believe.

The defendant's intent may be proved by what he said, what he did, how he did it, or by any other facts and circumstances in evidence.

You should not decide this case based on which side presented more witnesses. Instead, you should think about what each witness and each piece of evidence -- instead, you should think about each witness and each piece of evidence and whether you believe them. Then, you must decide whether the testimony and evidence you believe proves beyond a reasonable doubt that the defendant is guilty.

You have heard testimony from a witness Levi Davis who has given you his opinion as an expert in the field of digital forensic analysis. Experts are allowed to give opinions in court about matters they are experts on; however, you do not have to believe an expert's opinion. Instead, you should

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decide whether you believe it and how important you think it is. When you decide whether you believe an expert's opinion, think carefully about the reasons and facts that he gave for his opinion and whether those facts are true. You should also think about the expert's qualifications and whether his opinion makes sense when you consider the other evidence and what you think about the other evidence in the case.

You have heard testimony from witnesses who are police officers. That testimony is to be judged by the same standards you use to evaluate the testimony of any other witness.

The defendant is charged with the crime of accosting a minor for an immoral purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt: First, that the defendant accosted, enticed, or solicited Dylan Wimmer or Max Citro posing as Taylor Williams.

Second, that the defendant believed Dylan Wimmer, Max Citro posing as Taylor Williams, was less than 16 years old -- 16 years old. It does not matter if Dylan Wimmer or Max Citro was older, as long as the prosecutor proves that the defendant believed Taylor Williams was less than 16 years of age.

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Third, that when the defendant accosted, solicited, or enticed Dylan Wimmer, Max Citro posing as Taylor Williams, he intended to induce or force Dylan Wimmer/Max Citro posing as Taylor Williams to commit an immoral act, to submit to an act of sexual intercourse, to submit to acts of gross indecency, to submit to an act of depravity, or submit to an act of delinquency. It does not matter whether Dylan Wimmer or Max Citro posing as Taylor Williams actually submitted to the immoral act, sexual intercourse, gross indecency, act of depravity, or act of delinquency.

The defendant is charged with using a computer to commit or attempt to commit the offense of accosting a minor for immoral purposes. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

First, that the defendant used the internet, computer, computer program, computer network, or a computer system to communicate with any person.

Second, that this communication was done for the purposes of committing the offense of accosting a minor for immoral purposes.

The elements of accosting a minor for

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immoral purposes again are:

First, that the defendant accosted, enticed, or solicited Dylan Wimmer, Max Citro posing as Taylor Williams.

Second, that the defendant believed Dylan Wimmer/Max Citro, who was posing as Taylor Williams, was less than 16 years of age. It does not matter if Dylan Wimmer or Max Citro was older, as long as the prosecutor proves that the defendant perceived Taylor Williams was less than 16 years of age.

Third, that when the defendant accosted, enticed, or solicited Dylan Wimmer/Max Citro, posing as Taylor Williams, he intended to induce or force Wimmer/Citro/Williams to commit an immoral act, submit to an act of sexual intercourse, submit to an act of gross indecency, submit to an act of depravity, submit to an act of delinquency. It does not matter whether Wimmer or Citro, posing as Taylor Williams, actually submitted to an immoral act, sexual intercourse, gross indecency, act of depravity, or act of delinquency. It does not matter whether the defendant or anyone else has been convicted of accosting a minor for immoral purposes.

The prosecutor must also prove beyond a reasonable doubt that the crime occurred on or about

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August 24th, 2021, within Newaygo County.

When you go to the jury room, you will be provided with a written copy of my final jury instruction. You should first choose a foreperson. The foreperson should see to it that your discussions are carried on in a business like way and that everyone has a fair chance to be heard.

During your deliberations, please turn off your cell phones or other communications equipment until we recess.

A verdict in a criminal case must be unanimous. In order to return a verdict, it is necessary that each of you agrees on that verdict. In the jury room, you will discuss the case amongst yourselves, but ultimately each of you will have to make up your own mind. Any verdict must represent the individual considered judgment of each juror. It is your duty as jurors to talk to each other and make every reasonable effort to reach an agreement. Express your opinions and the reasons for them, but keep an open mind as you listen to your fellow jurors. Rethink your opinions and do not hesitate to change your mind if you decide you were wrong. Try your best to work out your differences. However, although you should try to reach an agreement, none

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of you should give up your honest opinion about the case because the other jurors disagree with you or just for the sake of reaching a verdict. In the end, you must vote -- your vote must be your own and you must vote honestly and in good conscience.

If you have any questions about the jury instructions before you begin deliberations or questions about the instructions that arise during deliberations, submit -- you may submit them in writing to the bailiff.

Possible penalty should not influence your decision. If you find the defendant guilty, it is the duty of the judge to fix the penalty within the limits provided bylaw.

If you want to communicate with me while you're in the jury room, please have your foreperson write a note and give it to the bailiff. It is not proper for you to talk directly with the judge, the lawyers, court officers or other people involved in the case.

As you discuss this case, you must not let anyone, even me, know how your voting stands. Therefore, until you return a unanimous verdict, do not reveal this to anyone outside the jury room.

When you go to the jury room to

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deliberate, you may take your notes and full instructions. If you want to look at any of the referenced documents or exhibits that have been submitted, just ask for them.

When you go to the jury room, you'll be given a written copy of the instructions you have just heard. As you discuss this case, you should think about all my instructions together as the law that you are to follow.

The defendant is charged with two counts -- that is, the crimes of accosting a minor for immoral purposes and using a computer to commit a specified crime. These are separate crimes and the prosecutor is charging that the defendant committed both of them. You must consider each crime separately in light of all the evidence in this case. You may find the defendant guilty of both or either one of these crimes or not guilty.

There is a jury verdict form that should be pretty self-explanatory. Count I charging using a computer to commit a specified crime. You can choose guilty or not guilty. Count II, accosting a minor for immoral purpose, guilty or not guilty.

And with that, I will have you retire to the jury room. Do not begin your deliberations yet.

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I need to give the bailiff an oath, cover a couple of things with the attorneys, and you should be able to begin your deliberations in just a matter of minutes.

Oh, I always forget this part. I have to eliminate two of you. So we've done that randomly and the two that will not take part in the deliberations are?

MS. JAMIE COOK: Earnest Batch, Juror Number 7, Panel A, Number 1; and Kimberly Goerner, Juror Number 2, Panel D, Number 66.

THE COURT: All right. Now you both are free to go. I'll have you give your phone numbers to my staff. The reason we do that is if something were to happen to one of your fellow jurors today or if we go until tomorrow, you can be called in to jump into the deliberations. You still can't discuss this case with anyone. My staff will call you when the jury reaches a verdict. Okay? Thank you for coming and you have to meet with my staff in just a minute.

So the two jurors, you're free to go.

(Whereupon, Juror Batch and Juror Goerner excused at 3:41:04 P.M..)

THE COURT: All right. The rest of the jurors, you can go to the jury room. And then Ms. May, once you get them settled in the jury room, just

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come back and we'll administer your oath.

(Whereupon, jury left the court-room at 3:41:42 P.M..)

THE COURT: Mr. Holmes and Mr. Kortes, any objection to the final instructions that were given or the manner in which they were delivered?

MR. HOLMES: None by the People, sir.

MR. KORTES: No, Your Honor.

THE COURT: All right. Ms. May, will you please stand and raise your right hand? All right. Do you solemnly swear that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial from separating from each other; that you will not suffer any communication to be made to them or any of them orally or otherwise; that you will not communicate with them or any of them orally or otherwise, except by order of this Court, or to ask them if they've agreed on their verdict until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of the deliberations or the verdict they have agreed upon, so help you God? If so say: I will.

THE BAILIFF: I will.

THE COURT: Okay. Perfect. All right.

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And with that, we have the jury -- we have a verdict form, we have copies for the jurors. All right. We can bring the jury the instruction and the verdict form back with you.

MR. HOLMES: The exhibits, you want to send those in?

THE COURT: We wait for them to ask.

MR. HOLMES: Okay.

THE COURT: All right. We will be in recess until we get a verdict. Mr. Holmes, you're going to be in your office?

MR. HOLMES: I will, sir.

THE COURT: Mr. Kortes?

MR. KORTES: We'll be in the building. We'll stay in the building.

THE COURT: Fine.

MR. HOLMES: One question. I have my computer hooked up so they can want to watch the video, if they want to watch it a second time. Did you wish me to hook it up or do you have ability to play it on your own.

THE COURT: That sounds great.

MR. HOLMES: I'm sorry?

THE COURT: Leaving your computer here sounds great. What we've done before is called them

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in here and turned it on without anybody else in here and they can just listen to it.

MR. HOLMES: Very good, sir.

THE COURT: All right.

(Whereupon, proceedings recessed at 3:45:35 P.M.; proceedings resumed at 3:58:26 P.M., out of the presence of the jury.)

THE COURT: You can be seated. So we just got the request for the evidence and all videos to be played for review. The way we've been doing that previously is that we set up the video. We clear the courtroom. They watch it on their own and they go about their business so that way they can discuss things or they can stop it, they can start it, they can do whatever they want to do, and they can do that in private.

Any objection to that approach, Mr. Holmes?

MR. HOLMES: No, sir.

MR. KORTES: No, Your Honor.

THE COURT: Mr. Kortes? Okay.

MR. HOLMES: I'm assuming one of your assistants has the technological wherewithal to assist them in playing this?

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THE COURT: Just one?

MR. HOLMES: You would like to believe that, wouldn't you? Takes a little bit of maneuvering, but they should be able to do it.

THE COURT: Why don't you just key it up.

MR. HOLMES: Do we know which one they want to --

THE COURT: Let's bring them in.

MR. HOLMES: They have the photographs of the one to scroll. Right?

MR. KORTES: Right. Well, I mean, if they want to watch that, that's 25 seconds, but --

MR. HOLMES: Yeah.

(Whereupon, jury returned to court-room at 3:59:44 P.M..)

THE COURT: All right. Please be seated. So while I got your request for the evidence, which is certainly no problem at all. If you want to see the video, if you want to see that now, what we would do is we would key it back up onto the screen. We would all clear the courtroom and then you could watch it in here. If you wanted to look at the other stuff first and them come look at the video then you can just let us know when you want the video. So do you want to watch the video now? Is that where you

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want to start?

(Whereupon, jury responded affirmatively.)

THE COURT: Okay. All right. So we will --

MR. HOLMES: Which one?

THE COURT: The interview --

JUROR DAVIS: The interview.

THE COURT: -- or the scrolling of the text?

JUROR DELLINGER: The interview.

THE COURT: The interview. Okay. All right.

All right. As you can see on the screen, right at the bottom there is that typical arrow that says "play" or "pause", and you can do that from Mr. Holmes' tablet. So somebody feel comfortable hitting the button once we all leave?

(Whereupon, jury responded affirmatively.)

THE COURT: All right. We have got some button pressers. All right. So with that, we'll clear the courtroom. We'll put up signs "do not enter" on the doors. And when you're -- when you're done with that, you can just knock on this door. Ms. May will just be in the hallway and she'll get you back into the jury room. Okay?

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MR. HOLMES: They need the rest of the exhibits to go with them?

THE COURT: They're right here. So the rest of the exhibits we'll just put on the table there. Okay.

MR. HOLMES: Very well.

THE COURT: With that, we can clear the courtroom and they can hit the button and go.

(Whereupon, proceedings recessed at 4:03:26 P.M.; proceedings resumed at 6:00:56 P.M..)

THE COURT: All right. You can be seated.

All right. So it's just a little bit after 6:00. We can -- You can continue to deliberate for awhile this evening, if you want, if that's what you want to do. I can order in some food for you of some sort, Subway or some pizzas or something like that. If you would rather go home and come back tomorrow, we can do that, as well.

I have a little bit of concern about the weather. It's raining out. It's windy. The temperatures are going to drop. They're talking maybe some ice, maybe up to an inch of snow, but more ice is what they're worried about, and that's throughout the night and into tomorrow, kind of high

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winds and stuff, so a fear of ice and some heavy winds and stuff like that. But so on that, you may want to stay and see if you can knock it out tonight, or you could be tired, like some of us, and just as soon go home and come back tomorrow.

I guess raise your hand if you want to keep going tonight.

UNIDENTIFIED JUROR: I'm indifferent.

THE COURT: Anybody want to -- Anybody really want to go home?

(Whereupon, no audible response.)

THE COURT: All right. Well, I guess we'll order some food, then. Okay? You want to go back and talk about it amongst yourselves and then slip me a note what you want to do?

JUROR BALSITIS: Yeah. Can you give us a few minutes, maybe?

THE COURT: Yes. All right. Why don't you go do that and just write a note if you want to keep deliberating and order food or we want to go home.

JUROR BALSITIS: Okay.

THE COURT: All right.

(Whereupon, jury left the court-

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room at 6:05:14 P.M..)

THE COURT: We'll go off the record.

(Whereupon, proceedings recessed at 6:05:43 P.M.; proceedings resumed at 6:10:36 P.M., out of the presence of the jury.)

THE COURT: All right. They're indicating give them 30 minutes to an hour, don't order any food.

(Whereupon, proceedings recessed at 6:10:04 P.M.; proceedings resumed at 6:29:05 P.M., out of the presence of the jury.)

THE COURT: The Court has been informed that the jury has reached a verdict. Anything for the record, Mr. Holmes or Mr. Kortes, before we bring the jury in?

MR. HOLMES: None by the People, Your Honor.

MR. KORTES: No, Your Honor.

THE COURT: Okay.

(Whereupon, jury entered court-room at 6:29:18 P.M..)

THE COURT: Everybody? All right. And please be seated. And would the foreperson please

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rise? And would you read your verdict please, sir?

FOREPERSON DELLINGER: The members of the jury find Evan Andrew-Bartell Lakatos on Count I, using a computer to commit a specified crime, guilty; on Count II, accosting a minor for immoral purposes, guilty.

THE COURT: Thank you, sir. You can hand the verdict form to the bailiff and I'll put it in the file.

Thank you. All right. So the next step in the case would be to set this case for sentencing. And we'll set this case for sentencing on --

MS. ANNA FRITSMA: -- February 6th at 1:50.

THE COURT: All right. And Mr. Kortes and Mr. Lakatos, we will notify the probation department. And Mr. Kortes, if you can just give my staff a good number for Mr. Lakatos, they will contact you to make arrangements to get you a presentence investigation packet and what to do.

THE DEFENDANT: Okay.

THE COURT: Okay? All right. So thank you for your service. You're excused for this evening. And if you happen to be called back in the next year and you want to serve again, you can, or

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this will serve as a one-year exemption. So if you get called back in, you can just call my office and say: All right. I served already and I don't want to do it again at least for a year. Okay?

MR. KORTES: Your Honor?

THE COURT: Yes, sir.

MR. KORTES: May I have the jury polled?

THE COURT: I'm sorry. Yes. What that means is, as I indicated in the instructions that the jury has -- the verdict has to be each one of your own verdict, so that I'm just going to go through and I'll start on the top row and go all the way around and then the bottom row.

Juror Number 1, is that and was that your verdict?

JUROR CUSHMAN: Yes.

THE COURT: Juror Number 3?

JUROR DAVIS: Yes.

THE COURT: 4?

JUROR HENSLEY: Yes.

THE COURT: 5?

JUROR AGENS: Yes.

THE COURT: 6?

FOREPERSON DELLINGER: Yes.

THE COURT: 8?

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JUROR GARDNER: Yes.
THE COURT: 9?
JUROR BEATY: Yes.
THE COURT: 10?
JUROR BALSITIS: Yes.
THE COURT: 11?
JUROR HILLIKER: Yes.
THE COURT: 12?
JUROR EMORY: Yes.
THE COURT: 13?
JUROR BURMEISTER: Yes.
THE COURT: 14?
JUROR GILBERT: Yes.
THE COURT: All right.
MR. KORTES: Thank you.
THE COURT: All right. So you're excused for now. You can now talk about the case with anyone that you want to or you don't have to. Sometimes the attorneys may want to reach out to you and say, "hey, what did I do well, what could I work on", or sometimes they don't. So but you're under no obligation at all to talk with anybody about your case or about your deliberations or anything.

Do you have any general questions for me before I let you go?

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JUROR GARDNER: Just when we have to have the letters for work or whatever like that, could we come back in the morning and get those to say that we were here?

THE COURT: Okay. We can get them to you. We can do it by e-mail or we can mail it to you. So if you need something like that, just hang back and my criminal clerk Anna can get that information for you. We can send it directly to your employers or however you want to do it. I hate to have to have you come back tomorrow since the weather is supposed to be crummy. I don't --

JUROR GARDNER: I don't live that far away.

THE COURT: Okay. Yeah. Either way. If you want us to send it to you, mail it to you or you want to come in, we can have that for you.

MR. GARDNER: Okay. Thank you.

THE COURT: Any other questions or comments? Yes, sir?

JUROR BALSITIS: We do have the information, the little pamphlets that we filled out with our names and personal information, on the tables in there. I didn't know if somebody was to collect those or not, but phone numbers, e-mail

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addresses.

THE COURT: Okay. Yeah. We'll collect those up. Anything else?

(Whereupon, no response.)

THE COURT: Okay. You are free to go.

(Whereupon, jury excused at 6:34:22 P.M..)

THE COURT: All right. So Mr. Holmes, any objection if I continue Mr. Lakatos' bond?

MR. HOLMES: No, sir.

THE COURT: That would be my plan anyways. You made every court date. You have no criminal record, so I'll continue your bond pending sentence. And just look for a call from the probation agent. If you don't get it in the next day or so at least have Mr. Kortes reach out to the Court and we can take care of the issue. Okay?

MR. KORTES: Okay.

THE COURT: So you need to grab your exhibits, I guess. Two up there. All right. And if there's nothing else, we'll go off the record.

(Whereupon, proceedings concluded at 6:35:36 P.M..)

--ooOoo--

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STATE OF MICHIGAN)
) ss.
COUNTY OF MUSKEGON)

I, Michelle M. McKee, Certified Shorthand Reporter, acting as the official reporter for the 14th Judicial Circuit Court and Notary Public for the County of Muskegon, State of Michigan, do hereby certify that the foregoing Pages 1 through 199, inclusive, comprise a full, true and accurate transcript of the proceedings and testimony taken in the matter of THE PEOPLE OF THE STATE OF MICHIGAN versus EVAN ANDREW-BARTELL LAKATOS, File No. 21-12849-FH, on December 14, 2022.

Electronically signed
Michelle M McKee

_____
Michelle M. McKee, CSR-3841
Certified Shorthand Reporter

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF NEWAYGO

- - -

THE PEOPLE OF
THE STATE OF MICHIGAN,

RECEIVED
OCT 17 2024
STATE APPELLATE
DEFENDER OFFICE

Case Number 2021-12849-FH

-vs-

GINTHER HEARING

COPY

EVAN ANDREW-BARTELL LAKATOS,

Defendant.

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of the proceedings had in the above-entitled cause in said court on the 17th day of September, 2024, at about the hour of 9:20 a.m., before the HONORABLE ROBERT D. SPRINGSTEAD, Circuit Court Judge.

APPEARANCES:

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On behalf of the People,

MS. DOMINICA R. CONVERTINO (P86976)
MS. KATHERINE L. MARCUZ (P76625)
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DEFENSE EXHIBITS:	MARKED	ADMITTED
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White Cloud, Michigan

Tuesday, 17 September 2024

At about the hour of 9:20 AM

R E C O R D

(At about 9:15 AM, Defense Exhibits #1, #2, and #3 marked)

THE COURT: All right. This is Case Number 2021-12849-FH. We're here for a, I guess, the start of a Ginther Hearing.

Would you put your appearances on the record, please?

MS. MARCUZ: Yes, Your Honor. Katherine Marcuz from the State Appellate Defender Office on behalf of Evan Lakatos, who is here seated to my left.

THE COURT: All right.

MS. CONVERTINO: Good morning, Judge Springstead. Dominica Convertino with the State Appellate Defender Office also here on behalf of Mr. Evan Lakatos.

THE COURT: All right.

The People are represented by Ms. Robinson.

The defense can go ahead.

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MS. CONVERTINO: Thank you, Judge.

Before we get started taking testimony today, I just want to take a brief moment to remind the Court why we're here today.

With Mr. Lakatos's motion for a new trial, we raised two distinct issues in ineffective assistance of counsel. And the first issue is that trial counsel was objectively unreasonable in failing to raise an entrapment defense in a pretrial motion before this case even went to a jury trial. And then the second issue is that trial counsel provided ineffective assistance of counsel when he failed to call two expert witnesses to testify at Mr. Lakatos's trial. The first being an expert in communications, and the second being an expert in false confessions. And so the Court today will be hearing today testimony from an expert in each of those respective fields, and we just wanted to remind the Court again of those two issues that are being raised to sort of contextualize the information that this Court will be hearing today.

THE COURT: All right. So, the thrust of your argument is that the testimony from the communications person would have been admissible at trial, and also that whatever testimony that you're proposing from false confessions would also be admissible

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at trial?

MS. CONVERTINO: That's correct, Your Honor. I would like to add just one caveat with regard to our expert in communications. A lot of Dr. Sidelinger's testimony today also speaks to the claim of entrapment, so it would be relevant for this Court's consideration had this Court had a pretrial entrapment hearing. And so today the testimony that this Court will be hearing will be relevant in that context as well. But again, because this case was not disposed of in an entrapment hearing before trial, then, yes, to Your Honor's question, both experts would have been necessary to contextualize the statements that Mr. Lakatos made both in the Grindr and text messages, and then also the statements, and that would be relevant to the communications expert. And then the statements that Mr. Lakatos made in the police interrogation which, of course, would be relevant to the false confession testimony.

And, Judge, if I could just add one more point to Your Honor's question. Not only is it a failure for trial counsel to have failed to call these expert witnesses or experts in these fields at trial, but it's also a failure to investigate, and so had trial counsel not conferred with any experts in these fields or

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considered raising those issues, that, in itself, would also constitute ineffective assistance of counsel.

As Your Honor knows, we are not eliciting testimony today from trial counsel, Jeffrey Kortes, so we will decide with Your Honor's discretion what date we will return for a second day of evidentiary hearing so that we can hear from trial counsel about whether he did consider these legal issues before trial and then, you know, in advance of the jury trial itself.

THE COURT: All right. So it goes -- So now you've changed it. So now it is testimony and consult; so that's the thrust of your argument, testimony and consult?

MS. CONVERTINO: That's correct, Your Honor. This is -- It's not a change from what we've briefed in our motion for new trial. All of that would be developed still within the legal argument of ineffective assistance of counsel, but the failure to investigate could constitute a deprivation of one's constitutional right to present a defense at trial, if that is an issue that's so integral to the person's defense, which in this case it is. There was really only evidence of Mr. Lakatos's guilt that the jury could hinge its verdict on as it relates to the communications that took place in texts and Grindr conversations, and then

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also the statements that Mr. Lakatos made to the police during his interrogation, so really everything turns on whether the jury was able to properly contextualize that evidence.

THE COURT: All right. Well, I was just clarifying because you said, failing to provide testimony, so I just want to make sure that it is to investigate as well.

MS. CONVERTINO: Thank you, Judge.

THE COURT: As to the communications testimony, are we going to have to have a Daubert hearing on that?

MS. CONVERTINO: Judge, we don't believe so. We are able to and eager to lay the foundation for Dr. Robert Sidelinger's expertise in his field. We have the report that Dr. Sidelinger had commissioned or had created for this case, which was included as an appendix to our motion for new trial, and then we have that prepared for this Court today as a defense exhibit.

In that report, Dr. Sidelinger both lays out his expertise of his field and his education and experience. He is a scholar in the field of communications, and so we don't expect that there would need to be a full Daubert hearing to establish his qualification to be admitted as an expert, but, of

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course, we will, when calling Dr. Sidelinger to the stand today, we are prepared to lay that foundation for his expertise and then move to admit him as an expert today.

THE COURT: So, communications in the LGBTQ community, is that something that has been peer reviewed, tested, as far as this linguistics goes?

MS. CONVERTINO: Yes, Judge. So, Dr. Sidelinger is a scholar in the field of communications generally. That's what we are planning to move to admit him as an expert in today, but within that, like, umbrella field of communications, Dr. Sidelinger also has experience in specific areas of the LGBTQ or queer linguistics so communications specific to the gay community. And there is peer reviewed scholarship that Dr. Sidelinger has based his opinions on today as it relates to that specific niche area of the field of communications.

I hope that answers Your Honor's question.

And, Judge, another thing to note for Dr. Sidelinger's expertise is that he, as an expert in communications, generally he also has peer reviewed scholarship on which he bases his opinion to speak as an expert in online communication, so this is -- it's necessary to have Dr. Sidelinger's testimony to demonstrate for the Court and the factfinder in any case,

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had it been the jury or Your Honor, to see the ways in which communications can change when it takes place online versus in person, face-to-face communications, and the sort of things that are lost when communications take place online, and then specifically getting into the ways in which adult gay men communicate in ways that are distinct from just the general community at large. In ways that the jury might not understand or likely would not understand because it is outside the ken of what a layperson would understand if you're not within the gay community.

THE COURT: So, as to the online communications, you don't think that jurors in this day and age know that texting is different than talking face-to-face or on the phone? I mean, you need an expert to say that?

MS. CONVERTINO: Judge, yes, I do believe so. And the reason that I believe that is the case is based on the voir dire in the transcript of the voir dire that took place. I believe it's the first day of trial is where the transcript occurs for the voir dire in this case, which was pretty extensive. There did seem to be a good amount of confusion, if you will, with regard to the prospective jurors and then officially impaneled jurors as it relates to online dating, dating apps, all of which

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fall under the realm of online communications. And so, yes, I do think that it would have been necessary and was necessary for an expert to opine on the ways in which that communication that takes place on those platforms is inherently different from face-to-face communication. So we're not talking about email communication which could be, in a sense, online. Specifically, we are looking at the ways in which online communications on a dating application which has a different sort of, you know, people might be engaging in multiple communications at once or having these conversations while they are at work, and so it is necessary to have an expert explain what is lost when communications take place in that sort of format.

THE COURT: Okay. Anything else?

MS. CONVERTINO: No, Judge. We are prepared to call our first witness to the stand if Your Honor doesn't have any additional questions with regard to Dr. Sidelinger's proposed testimony or anything else.

Our first witness will be former deputy sheriff with the Newaygo County Sheriff's Office Nicole Loomis. And we have subpoenaed Ms. Loomis to appear today because Ms. Loomis was the first witness who testified at Mr. Lakatos's trial and her testimony was integral to the prosecution's case in that she, Ms.

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Loomis, testified about the operational plan that the sting operation or task force was acting in accordance in this case, and so Ms. Loomis's testimony today is necessary for us to do just that. To delve deeper into the operational plan and what sorts of things were considered like the do's and don't's of what this would require.

With that, Your Honor, we are prepared to call Ms. Loomis to the stand, if Your Honor doesn't have any additional questions.

MS. ROBINSON: Your Honor, I'm going to object to the relevance of Ms. Loomis's testimony here today. This hearing is strictly on whether or not Mr. Kortes was effective in his representation of Mr. Lakatos. We have Ms. Loomis's testimony already. The defense has indicated that based on the transcript they believe that it was crucial to the conviction. They have everything that they need from that. The purpose here today is to not see what else is out there. To go further into the trial evidence. What could or could not have come in. It is about Mr. Kortes and what his representation was and whether or not it was effective. And I don't think that there's been any foundation laid as to how Ms. Loomis's testimony today would go towards the effectiveness of Mr. Kortes's representation, Your

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Honor.

MS. CONVERTINO: Judge, in response to that point by the prosecution, Ms. Loomis's testimony is directly relevant to the frame of ineffective assistance of counsel as it relates to trial counsel's failure to raise the entrapment defense. So had trial counsel raised the defense of entrapment in a pretrial motion there would have been an entrapment hearing taking place before this Court. It would have been before the jury. And Ms. Loomis's testimony at trial is not the same than it would have been if -- had that testimony been elicited at an entrapment hearing.

My co-counsel just mentioned specifically as it relates to the fact that Ms. Loomis was not asked to delve into the operational plan in a broader sense in the testimony that took place at trial. And so when we are looking at the task force specifically, entrapment claims focus on the actions of the police. And because trial counsel did not raise an entrapment defense, there really was no investigation or no opportunity to delve deeper into the actions of the police in this case, and Ms. Loomis's testimony would have provided just that, had she been called to testify in an entrapment hearing, and so today the testimony that we plan to elicit from Ms. Loomis would speak directly to that fact of what

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could have been and should have been elicited at an entrapment hearing, so it is directly relevant with regard to the ineffective assistance of counsel claim in that trial counsel did not raise an entrapment defense and did not call any witnesses let alone a witness who is pivotal to this sort of testimony at trial like Ms. Loomis at an entrapment hearing.

THE COURT: Are you aware of any cases in Michigan or, I guess, anywhere where entrapment has been successfully raised in a situation such as this, I'll call it a sting operation, that was run here?

MS. CONVERTINO: Yes. Yes, Your Honor. In fact, this is something that we have recently reviewed the transcripts of two cases; the first being called People v William Voyles. And the second case is --

THE COURT: Hang on. Hang on.

MS. CONVERTINO: I'm sorry, Your Honor?

THE COURT: Boyles or Voyles?

MS. CONVERTINO: Voyles. V-o-y-l-e-s.

THE COURT: And where is that from?

MS. CONVERTINO: Charlevoix County. And there's another case, before going into that further, another case called People v Grat Newcomb. We have the transcripts here if Your Honor would like. We weren't planning on bringing this up today, but in response to

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Your Honor's question, these were two cases both of which stemmed out of Charlevoix County. This was a case where both of these defendants were caught up in a sting operation exactly like the one in which Mr. Lakatos was caught up in. It took place on Grindr for both of these men. And in this case Judge Roy C. Hayes, III, dismissed both of these cases under the claim of entrapment. And this was actually a transcript from the entrapment hearing that took place before Judge Hayes. But the same exact issue -- In fact, it was the same sort of sting operation that was, we believe, stemming from one particular county that has trained each of these counties on the west side of Michigan as to how they can operate these sorts of operations, these sting operations.

THE COURT: Have those cases been appealed?

MS. CONVERTINO: No. This is from May of this year, Your Honor, so I'm not sure if the prosecution appealed the decision. It doesn't appear from the transcript, there's no reason for us to believe that it was, but it's a pretty exhaustive transcript of the entrapment hearing if Your Honor would like to see the way in which these hearings take place. And again, the facts -- the facts are similar in that it was a sting operation trained in a similar way or it appears at least

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to be the case that they were trained in a similar way and operated in a very similar way to the way in which the task force here, the Newaygo County Task Force, operated in this case, and both of the men, again, were communicating with somebody on Grindr, and then that transaction or that conversation, rather, was transferred to text message. It really matches quite well with the facts of Mr. Lakatos's case. And at this entrapment hearing Judge Hayes again dismissed both of those cases under the defense of entrapment.

And if Your Honor would like, I can provide the case numbers. And again, we are happy to provide this transcript to the Court as well, but the case number for Mr. Voyles --

THE COURT: The case number is not going to do me any good. I don't have the ability to look that up on my computer or anything.

MS. CONVERTINO: Oh, okay. Well, then, if I may approach, I'd be happy to --

THE COURT: Does the prosecutor have that as well?

MS. CONVERTINO: No, we did not. This is not information that has been subpoenaed, and it's not information that we planned to bring up today, but we had it, and because it spoke directly to Your Honor's

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question about other cases where a defense of entrapment was raised and raised successfully, but we are happy to provide that transcript to you and the prosecution.

THE COURT: Any published or unpublished cases?

MS. CONVERTINO: With regard to that question, Your Honor, it's difficult to answer that because a lot of these cases, if there is a successful entrapment defense it won't have a published case, right, because it won't go to the Court of Appeals, so we expect that there probably are a lot of cases that exist similar to Mr. Voyles's case and Mr. Newcomb's case where they were disposed of at the trial court level and then not appealed, so then there's really no way to see a published opinion at the Court of Appeals level.

But with regard to published opinion that exist in the realm of entrapment defenses, it's very scarce. A lot of the opinions both by the Court of Appeals and Michigan Supreme Court are older and there's not really a clear, a clear majority rule for a lot of the Supreme Court's decisions as it relates to entrapment, but we went through this in our motion for new trial the different factors that the Supreme Court and the Michigan Supreme Court, I'm sorry, the Michigan Court of Appeals have proffered in some of their cases,

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there are 12 factors specifically that are not exhaustive but that sort of guide trial courts on these questions of entrapment.

THE COURT: All right.

Any other response before we get to the testimony?

MS. ROBINSON: I would just point out that I believe the answer to that is no, Your Honor. There is no published or unpublished cases on this issue.

Nothing further. Thank you.

MS. CONVERTINO: Your Honor, if I may? That's actually not -- I don't think that that's a fair representation of my answer there. I don't have that answer prepared with regard to whether there is a published or unpublished case that speaks directly to this. The real question is whether at the trial court level there are cases that have been successful in an entrapment hearing similar to one that we believe trial counsel failed to raise and to have in Mr. Lakatos's case, and we can see that with regard to this exact sort of set of facts, there's reason to believe that it would have been successful had trial counsel raised that defense.

THE COURT: All right. Well, I guess either of the parties may brief it additionally or I'll

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do it as well, but, you know, really the way it's going to come up is that in a motion such as this, where the claim is made that trial counsel didn't raise the entrapment defense in one of these, quote, "sting operations," and the Court of Appeals looked at it and says; yes, that should have been raised, and maybe they say it would have been successful or maybe they say at least it should have been raised.

Are you aware of any cases like that?

MS. CONVERTINO: Well, Your Honor, thank you for clarifying that question.

There is a case pending in the Michigan Court of Appeals right now called People v Jayneel Jade, I believe. And I can find the spelling of that case if Your Honor would like. My co-counsel, Ms. Marcuz, said that she will look for that right now. But that is a case that's pending right now again in Michigan Court of Appeals, and it speaks directly to Your Honor's question with regard to a sting operation that took place -- not on Grindr -- I believe in that case the facts were that the communication took place on a website called Skip the Games. It's not a website that either of us is familiar with, but that case involves an entrapment claim with regard to a criminal sexual conduct event and that again is pending in the Court of Appeals right now.

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So one lens through which this Court could look at this issue is that these sting operations appear to be relatively new. There appears to be sort of a proliferation right now all throughout the different counties in Michigan where they are, you know, engaging in these types of interactions with people on dating websites or websites generally that are meant for adults, and so I would expect that probably in the very near future that we will start to see published and unpublished opinions being decided by the Michigan Court of Appeals that will then be appealed to the Michigan Supreme Court, so this is sort of an area that is just now seeming to become an issue with regard to entrapment in criminal sexual conduct cases.

THE COURT: Well, they had a To Catch a Predator case that was on maybe 20 years ago where they were posing as young individuals in different chat rooms and stuff like that. Certainly some of those cases have gone through the Court of Appeals and up through the process throughout the United States. Right?

MS. CONVERTINO: Yes, Your Honor. And to that point, to analogize these cases to that show, "To Catch a Predator," I think would be problematic in one regard. That show it seems, at least from what I've seen, they appear to be pretty meticulous and pretty

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exhaustive in making sure that the people that they are catching in those operations are people who were enthusiastically trying to seek out a minor child for sexual relation, and so it leaves very little by way of question whether this person actually intended to engage in (inaudible). The cases that we are beginning to see here in Michigan, in the county circuit court level, and then also again with this Jayneel Jade case in the Michigan Court of Appeals, is that there appears to be a proliferation of task force operations where the officers are not being explicit or at least acting in a way that opens the door to an entrapment defense with regard to reprehensible conduct on the part of the police, or ways in which it would be reasonably likely that a person who is not intending to engage in this unlawful activity will get caught up, that they are casting too wide a net and would catch in that net people who were not intending to have sexual relations with a minor child. So again when comparing Mr. Lakatos's case against cases that would be similar to what we would see on television, "To Catch a Predator," I think it's important to keep that in mind, that those cases the police seem to be doing something very different than the cases that we are seeing pop up all throughout Michigan and similar to Mr. Lakatos's case here.

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THE COURT: All right. So I guess getting back to the original objection, I guess I'll hear, I'll allow Ms. Loomis to testify and we'll see where it goes.

MS. CONVERTINO: Okay. Thank you, Judge.

THE COURT: Would you raise your right hand, please?

MS. NICOLE LOOMIS: I do.

NICOLE LOOMIS

Called by defense at about 9:43 AM, sworn by the Court, testified:

D I R E C T E X A M I N A T I O N

BY MS. CONVERTINO:

Q Hi, Ms. Loomis.

A Hello.

Q I'm Dominica Convertino. I'm one of the attorneys for Mr. Lakatos. Thank you for being here.

Could you please just state your name for the record?

A Yes. It is Nicole Loomis. L-o-o-m-i-s.

Q Thank you. And on August 24 of 2021, did you work for the Newaygo County Sheriff's Office?

A I did.

Q And what was your title at that time?

A I was a detective for the Central Michigan Enforcement Team.

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Q Thank you. And, I'm sorry, I wasn't sure if you were -- I noticed that in the transcript at some points you were referred to as detective, and I wasn't sure if you were a detective or a deputy sheriff, so thank you for clarifying that.

A No problem.

Q Now, do you remember testifying at Mr. Lakatos's trial in December of 2022?

A I do.

Q Okay. And were you still at the sheriff's office at that point?

A No.

Q No. Okay. You testified at that case about the general operations of this multi-jurisdictional task force that was present in this case. Do you recall that?

A I don't remember specifically what I said, but I do remember testifying.

Q Okay. Generally just about the task force, like, creating these profiles, right? You created the profile in Mr. Lakatos's case?

A Some, yes.

THE COURT: Hang on. Don't talk over each other.

Q At the time of Mr. Lakatos's arrest, you mentioned that you were a member of this task force. Was there a time

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other than this case that you were working as an undercover detective in this sort of operation?

A Yes.

Q Do you mind just letting us know how many cases you remember being involved in?

A I can't speak on a specific number because I am not aware of that, of a specific number.

Q Okay. More than five?

A Again, I can't speak on a specific number because I don't really know.

Q Okay. At least two?

A At least two.

Q Okay. And as it relates to the operational plan or training, I want to just turn to that next. So how many people were generally assigned to these sting operations, in your experience?

A I can't put a specific number on it because I believe every operation was different, but I will say that there were more than 20 people, if I had to put a number to it.

Q Okay. So more than 20 people. Would those people all be in the hotel room or in one space while this was taking place?

A Not specifically confined to the hotel, no.

Q Okay. So it would be 20 people who were actively involved in the operation but not necessarily with you as

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you were messaging as the decoy, for example?
A Right.
Q Okay.
A Decoys don't message, though.
Q Messaging as the decoy.
A Okay. Sorry. Decoys don't message, though.
Q Right. Thank you for that clarification, just in case.
Does each person, each of those 20 people, let's say, do they each have a distinct role in the operation?
A Yes, they'll be assigned to different areas.
Q Okay. Do you mind just giving us because we generally, we don't know what that would look like? Do you mind just delving into that a little bit from what you can recall what those roles sort of looked like as part of those operations?
A Sure. There are people who are on surveillance. There are people who are Intel analysts that include at the state level and the federal level. They also include chatters, decoys, interviewing teams, arresting teams. I believe those are all the teams.
Q Okay. Thank you. And are all of those people members of -- so this is the multi-jurisdictional task force, just going back to that, so these 20 people, theoretically, would they be pulled from different counties or would

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they be mostly in the Newaygo County Sheriff's Office?

A No, they are all pulled from various agencies within the task force. So, Mecosta, Isabella, Montcalm, Oceana, Newaygo. I believe that's all.

Q I think Clare was the only one that's missing? Clare County?

A Clare is not a part of the MMION hosting.

Q Oh, it was not part of this task force?

A No.

Q Okay.

THE COURT: Hang on.

You used a term. What?

THE WITNESS: The MMION?

THE COURT: MMION.

THE WITNESS: M-M-I-O-N. Those are the acronyms for all of the agencies, so Mecosta, Montcalm, Isabella, Osceola, Newaygo.

THE COURT: This is a task force different than CMET?

THE WITNESS: Correct.

THE COURT: Okay.

THE WITNESS: So that's the human oppression strike team, host the MMION, host team.

Q So, you mentioned the human oppression strike team. That sounds very familiar to another team in Genesee County,

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the Genesee Human Oppression Strike Team, GHOST. Is that an agency or a body that you are familiar with?

A Vaguely.

Q Do you mind letting us know of the vague parts that you do recall?

A I know I've seen them online. I've seen that they have arrested people, but I don't have any direct relation to that team.

Q Okay. And do you know if that team had any role in training the MMION? You said MMION?

A MMION.

Q Okay. Do you know if the Genesee County Human Oppression Strike Team had any role in training the MMION?

A I believe that there was, in the very beginning, an operation that they were a part of alongside the team, but as far as the details of how that happened, I have no idea.

Q Okay. So you were not part of any relation that the MMION team had with GHOST in terms of training or developing an operational plan? You were not privy to those direct communications?

A I have no idea of how that happens.

Q Okay. Okay. Do you know if your office did develop a plan for this operation?

A I believe there's a plan developed for every operation.

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Q Okay. So a plan was provided to you then since you partook in this?

A I was not given a physical copy of a plan.

Q Okay. So you think that there was a plan that was created because they create plans just in law enforcement, generally, for any task force operation, but you were not provided one for this?

A That would be above my pay grade.

Q Okay.

A I'm just a detective, or, I was.

Q Okay. Did you undergo any training before participating in this sting operation?

A As far as what? I guess I don't understand.

Q So, because you acted as the decoy, right, was there any training to tell you how you should do that? That seems like a difficult task, I would think, to act as the decoy without any guidance? Was there --

MS. ROBINSON: Your Honor, I'm going to object to relevance on this. What training then Detective Loomis had is irrelevant for an entrapment motion. What happened matters. Not what was supposed to. What training happened. I don't see how the training of an individual, you know, deputy, detective at the time has to do with whether or not an entrapment motion was required or would have been successful. What

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matters, as the Court knows in an entrapment motion, is what actually occurred.

MS. CONVERTINO: Your Honor, in response to the prosecution's point, in order to determine what -- in order to determine whether there was an entrapment, we necessarily would need to know what was supposed to happen, to borrow the words of the prosecution. So we know what happened here. We have the facts of the case. We need to know what was supposed to happen here in order to determine whether the officers in this case went outside the scope of what was supposed to happen.

And with regard to Detective Loomis's or former Detective Loomis's testimony here today, it speaks directly to that point because Detective Loomis had a role in creating the profile that ultimately was used and chatted with Mr. Lakatos and ultimately led to his arrest in this case, so it is directly on point to know what sort of training Detective Loomis and officers who were acting in a similar capacity at the time underwent with regard to the communications that Mr. Lakatos engaged in.

THE COURT: So, is the point going to be that there's some standardized training that goes in with parameters that decoys or chatters are supposed to follow to avoid entrapping people, and then whether they deviated from that standard protocol?

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MS. CONVERTINO: That's correct, Your Honor.

THE COURT: All right.

So, I guess at this point I'll overrule the objection, but you're not there yet. You haven't established that there is a protocol that's been utilized, tested, signed off on, and we don't know what her directions were, so I'll give you a little bit more latitude to try and pull all that together, but you're not there yet.

MS. CONVERTINO: Thank you, Judge.

Q Ms. Loomis, so we will settle with; you don't know if there was a written plan, a written operational plan that was used to formally train the people who acted in your capacity, right? You said that that's above your pay grade?

A Yes.

Q Okay. So, when you were engaging as the chatter in Mr. Lakatos's case, and I know that you created the profile, right?

A Yes, I did.

THE COURT: Hang on. So, you referred to her before as being the decoy. Now you're referring to her as the chatter.

Did you have two roles; decoy and chatter?

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THE WITNESS: So, in the beginning of this operation I set up the account. Soon after creating the account, it was a very brief time, people began to message these accounts. And there was a period of time, very briefly, where I exchanged casualties [sic]: Hey. Hi. Simple things like that. I did not actively chat with Mr. Lakatos as the chatter in this case. That was Detective Wimmer during that period.

THE COURT: So this brief thing where you're saying: Hey. Hello. That would be in the decoy role or no?

THE WITNESS: Well, I would have created the accounts, I would have had the accounts open, and they would be reaching out. There was a multitude of people who reached out to these accounts. It wasn't just on the Grindr app; it was across all accounts that people immediately started chatting with these people or these accounts, I should say.

THE COURT: All right. So maybe -- I'm sorry. I'm sorry, I'm confused.

So, the person who sets up the account, what's the name of that person? Is that considered the decoy, the chatter, the what?

THE WITNESS: It can be anybody that's a detective associated with the operation.

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THE COURT: So, it's just somebody does it?

THE WITNESS: Somebody does it. It's just a task that's assigned.

THE COURT: They don't have a name?

THE WITNESS: No.

THE COURT: Okay. Okay.

Well, I guess we'll see what happens.

MS. CONVERTINO: Thank you, Judge.

Q So there was a name associated in this case, though, right, with the decoy?

MS. CONVERTINO: And, Your Honor, to make things easier, I will stick with decoy. I've been using the two interchangeably.

Q The person who is the chatter is acting as the decoy, so the decoy was named Taylor in this case, right? It was a decoy of a 15-year-old boy on Grindr, right?

A Sure.

Q That was the profile that you created?

A Taylor was the account that was created.

Q Okay. And now speaking to the actions that the person acting as the decoy would engage in, this speaks to other cases because you had mentioned at least two other cases that you were involved with as the chatter.

What are some of the do's and don't's that

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you would do when you were acting as the chatter?

A So I guess I should be clear. So there's a person assigned as a decoy who has photos that we utilize within the operation.

There is a person who is a chatter who actually does the chatting with these individuals who reach out to these profiles.

Those are two very separate people. They are not the same.

Q Thank you.

A So, there are people who are specifically decoys and specifically chatters.

So, I guess, what was your question again?

Q Thank you for that clarification. This is exactly the sort of thing that we are trying to learn today.

So the decoy in this case was Max Citro, right, he was a 27-year-old officer whose photos of his abs, that was not you, that was the person acting as the decoy, right?

A Well, I am not a male --

Q Right.

A -- correct, and I don't know Max's age. I do know that he was assigned to the task force as a decoy.

Q As the decoy. Okay. And you acted as the decoy in other cases, right?

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A Correct.
Q Okay. And you've also acted as the chatter in other cases?
A Yes, I did.
Q And you also acted as the chatter in this case at the beginning?
A True.
Q Okay. Well, it was short, but the answer is, yes, right, you did communicate with Mr. Lakatos?
A I did send a message, yes.
Q Right. Okay. But, yes, I say that with the understanding that Detective Dylan Wimmer was the chatter for much of the conversation?
A Correct.
Q But you were the initial chatter?
A Sure.
Q Okay. So, is there anything, like, going back to the question I had asked was with regard to do's and don't's, just generally speaking, but I can be more specific.

Is there, I don't want to say assignment, but a general understanding that the goal is to have the suspect, the person with whom the chatter is chatting, to have the suspect reach out to the chatter first?
A That's correct.
Q Okay.

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A We as chatters are not allowed to reach out first.
Q Okay. And, similarly, is there a goal that the chatter allow the suspect to be the first person to bring up sex with the decoy?
A That I am not aware of.
Q Okay. So it's plausible that the decoy could -- once the chatter -- once the person with whom the chatter is speaking says, hey, you know, they initiate engagement, that it's possible that the decoy or the chatter would ask them if they want to have sex without the person initiating it first?
A I'm sorry, I'm confused. What was your question?
THE COURT: Basically what she's trying to ask is: Does the chatter solicit the defendant/suspect for sex first?
THE WITNESS: Do they say: Hey, do you want to come have sex? No. That's the answer. No, they don't.
MS. CONVERTINO: Okay. That is --
Thank you, Judge.
Q So it would be the suspect who would have to say that first?
A Sure.
Q That just seems like that is the answer, it's the same as what you just said, right?

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A Yes. As a chatter I would never reach out to a person on a profile and say: Would you want to come have sex?

Q Right. You would wait for them to say that to you?

A True.

Q Okay. Thank you. And then if the decoy or the chatter, rather, responds in a sexual way; so let's say the suspect solicits sex and the decoy or the chatter responds in a sexual way, the goal would still be to have the suspect leading the sex talk, right?

MS. ROBINSON: Objection, Your Honor. Leading. She had said the goal would be provided they concern the question.

Q Would it be the goal to have, in line with the other answers that you've given, would it similarly be the goal of the chatter to have the suspect be the one leading the sexual tone of the conversation?

THE COURT: You can answer it.

THE WITNESS: Okay. I'm sorry.

A Can you ask that one more time?

Q Sure.

A Sorry, there's a lot going on. I'm really trying to understand.

Q No, I appreciate that. Let me know if there's any other time that that happens.

So, when engaging as the chatter you had

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mentioned that the suspect would be the first person to solicit sex, right? And I'm wondering now, would it similarly be the goal of the chatter, the police officer, to have the suspect lead the conversation as it relates to sex talk?

A As far as the goal goes, I think that there's just common conversation that happens in these operations as it relates to the suspect reaching out, in initiating the conversation at that time the conversation happens, and where it goes or how the detective at the time as a chatter handles that. I do it much differently than what another police officer would do, so I can't speak on what other people do as a chatter as it relates to this specific investigation.

Q Okay. Would you mind speaking to how you would do it? That's still very helpful.

A Generally, for me, I'm pretty lowkey. I allow them to control the conversation, but, again, I'm also very limited in my responses.

Q Okay. Thank you.

The task force in this case was set up at a hotel, right?

A Correct.

Q And in order to make the arrest, is it true that you need the person to come to a hotel or come to the hotel,

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rather?

A They need to come to the location, correct.

Q Okay. So at some point in the conversation the chatter, the officer, would have to establish that the decoy, the person whose photos, and the chatter, the person with whom the suspect is chatting, the officer would have to establish that that decoy is located at a hotel, right?

A I'm sorry. What was that? You use a lot of terms that are very different, so I'm sorry.

Q Yes, I'm trying to -- For so long I was thinking the decoy and chatter were the same, and so I appreciate that. They are not synonymous.

So, the suspect is talking to the chatter, but they are seeing photos of the decoy?

A There's a --

Q And -- Sorry.

A The decoy is on the profile, that's a profile photo.

Q Right.

A There are times where there is an exchange of photographs in the communication, but that's up to the individual chatter.

Q Right. So, I'm wondering, you said that the task force/ the sting operation was stationed at a hotel, and that you need the person/the suspect to come to the hotel physically to arrest them?

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A Correct.
Q So at some point in the conversation the officer has to tell the suspect: Hey, I'm at a hotel, right? Otherwise --
A Correct.
THE COURT: Don't talk over each other.
MS. CONVERTINO: Oh. Thank you.
Q Do you mind just restating? I didn't mean to talk over you.
A I said correct.
Q Correct. Thank you.
And so when you or when the chatter tells the suspect that the person with whom they are chatting is at a hotel they don't mention age when they say that, right? This is just --
MS. ROBINSON: Objection, Your Honor, leading.
Q Do they mention age when they say that the decoy/chatter is at the hotel?
A There is a time where there is an exchange of age. That is the whole crux of the investigation and age has to be exchanged and there has to be an acknowledgement.
Q So, I want to get into that a bit later with regard to when the age would be disclosed, but would it be disclosed early on in the conversation?

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A It can be disclosed throughout the conversation at any time.
Q Okay. And if -- when mentioning the hotel we know that children can't get hotels, right, or can children get hotel rooms by themselves?
A Not that I'm aware of.
Q Okay. And we know that the decoy is supposed to be a child, right, or is the decoy supposed to be a child?
A Right.
Q So to stay consistent with the deception that the decoy and chatter that that is supposed to be a child and that they are at a hotel, in order to make that make sense, the officer would have to say someone got this person a hotel room?
A True.
Q Okay. And the decoy or, I'm sorry, the default on Grindr like other adult dating apps, is that everybody on the app is supposed to be at least 18 years old?
A Supposed to be.
Q Okay. So to find a child predator on an adult dating app where everybody is supposed to be over the age of 18, you would need to sufficiently counter the assumption that there is a person on Grindr that's over the age of 18, right?
A I'm sorry. What was that?

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Q So, when you are talking to somebody on an adult dating app, the assumption is that that person is an adult, right?

A I don't assume anything when speaking to anybody. I'm not a part of these apps personally, so I can't speak to that, but there is an acknowledgement in the beginning where you have to acknowledge that you are at least the age of 18. As with most apps, like Snapchat, you have to acknowledge that you are of the age of 18. However, there are many of times that there are children on those apps that are not 18 because you can simply bypass it by putting in a simple math age of 18 years old.

Q Right. And that's what happened in this case, right?

A Correct.

Q So, I guess I'll rephrase this another way. You would have to make it clear that the person who is acting as the decoy or the chatter, you would have to make it clear that they are not 18 years old, right?

A Like I said previously, there is an exchange of age and there's an acknowledgement of that age throughout conversation.

Q Okay. And that exchange of age would have to be explicit?

MS. ROBINSON: Objection, Your Honor, leading.

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Q Would that disclosure of the decoy or chatter's age have to be explicit?

A Would they have to believe that they are less than the age of consent? Yes.

Q Well, that's a different -- You've answered a question that I didn't ask, which is okay, but I want to ask it again.

So I'm wondering, you said that at some point in the conversation there has to be an exchange about age, and I'm wondering, does that exchange have to be clear? Do you have to make it clear to the person that you're talking to: Hey, you're talking to a kid. This is someone who is not only not 18, they are not even 16? Would that have to be made clear?

A Like I said, I can speak to what I do as a chatter and what I've done as a chatter is made it clear. I can't speak to what another detective has done as a chatter.

Q And so going back to your answer earlier, you're not familiar if there's even a rule for officers in these sting operations that they have to make the age clear?

A There has to be an acknowledgement that the person who we are chatting with is aware that this person is under the age of consent.

Q And how would you get that acknowledgement that this person is, without question, under the age of consent if

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there's not a clear mention that this person is under the age of consent?

MS. ROBINSON: Your Honor, I'm going to renew my objection to relevance. The answer before was that this was supposed to be based on a set of rules that, you know, a specific thing. There was never any establishment that that even existed here. Repeatedly former Detective Loomis has just said: All I can say is what I would do. And I would renew my objection that what she would do in a different case is in no way relevant to what occurred here, especially without the establishment that there even existed a standardized set of rules or, you know, guidelines or policies, so I'm going to renew my objection to relevance at this point.

MS. CONVERTINO: Judge, we have reason to believe that there is a standard operational plan here both because Detective Loomis testified that these sorts of operations don't take place without operational plans. Detective Loomis just said that that's above her pay grade to have seen a written operational plan.

And similarly from other cases in neighboring jurisdictions that have engaged in eerily similar sting operations to the one that occurred in this case, there was admission that there were operational plans set forth that lined up very closely, if not

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exactly, with what Detective Loomis is saying today. And it's important to elicit this testimony because we are establishing not just what Detective Loomis did as an individual, but what was best practices of these sorts of sting operations. And in order to properly evaluate the facts of this case to see what the officers did not do, like make an explicit reference to age, it is important to note that other officers who were operating under this exact same sting operation in this exact case and in this exact jurisdiction what those officers were doing whether that officer can remember precisely why she was doing it.

THE COURT: So, I understand what you're trying to do. Ms. Loomis says that she didn't see the operational plan. You haven't asked her if there's best practices. You haven't -- I'm not aware of any other witness that you're going to call, maybe you have witnesses that you're going to call to establish what a best practice is, but if your line of questioning is: This is the best practices, or, this is what the law says you have to do, does this witness know what those things are? Yes or no? If she knows, then she gets to say whether they were followed or not. But I agree with Ms. Robinson comparing what she would do in another case versus what a different chatter did in this case doesn't establish what the best practices or what is required or

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what is mandatory.

MS. CONVERTINO: Judge, if I could push back on that just a bit?

Ms. Loomis did testify when I asked if the do's and don't's of the operations require that the officers let the suspect reach out to the decoy or chatter first. She responded that it is not allowed, quote, not allowed for the officers to bring that up or solicit the conversation first. And then I asked if the officers let the suspect bring up sex first, and she agreed that, yes, the suspect would bring up sex first. And then we get into what Detective Loomis is saying specifically she would do, which was to --

THE COURT: But she wasn't the chatter. What she would do doesn't impact what happened here.

MS. CONVERTINO: Judge, I do have --

So, Judge, we were not going to bring this up quite yet in Detective Loomis's testimony, but we have prepared today, by way of a subpoena, so we subpoenaed Ms. Loomis for her testimony today, but similarly we issued a subpoena to the Newaygo County Sheriff's Office for all of the evidence and the full case files of two other men who were arrested on the same night as Mr. Lakatos as part of the exact same sting operation. Detective Loomis had actually -- she was not only the

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decoy in one of those cases, but she was the chatter from the beginning to the end in one of those cases, so we think that not only is this directly pertinent to our claim in Mr. Lakatos's case, because again it's the exact same sting operation, exact same jurisdiction, exact same day as Mr. Lakatos's case, but the same person who created the profiles, and again I just want to remind the Court that Ms. Loomis testified at Mr. Lakatos's trial. She was the witness that the prosecution called to establish the general operation of creating these accounts and the best practices of doing that.

And so if Your Honor would like I would be happy to provide the Court with a copy of these messages that stemmed from a case called People v Daniel Schmidt where again Ms. Loomis was both the chatter and the decoy, and we can see that a lot of what Ms. Loomis is testifying to today of what the officers should do took place in that case. And it really is startling juxtaposed with what happened in Mr. Lakatos's case, which again speaks directly to whether Mr. Lakatos was entrapped and whether he had ever been given an explicit reference to age that would establish, as Ms. Loomis had noted, that he understood that the person with whom he was chatting was supposed to be a 15-year-old child.

MR. ROBINSON: Your Honor, I would object

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to the admission of those. Again those are things, that the Court just mentioned, those are things that Deputy then, you know, Deputy Detective Loomis did in another case, she has not testified today as to what people should be doing. The only time she said that there was a specific rule, she said we're not allowed to reach out, you know, initially, every answer after that was; I would not have done that, or, I would have done it this way. Again, the fact that she did it this way in a different case is not only irrelevant here because it is a completely separate case as to what happened here. There's also been absolutely no foundation laid that what Ms. Loomis would do in another case has any relevance or bearing on what was supposed to happen. Counsel is conflating those two things that what Deputy Loomis said she would do is the same as what an officer is supposed to -- or what Deputy Loomis said she would do is the same as what an officer should do. No foundation has be laid to that. Not only is her testimony at this point irrelevant, I would object to any admission of these exhibits on the same grounds that they are irrelevant and the proper foundation for their relevancy has not been laid.

MS. CONVERTINO: Your Honor, the foundation was set at trial when Ms. Loomis was called by

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the prosecution to testify to this exact fact; that she was the person who was tasked with creating these profiles, stating that she was over the age of 18 when creating those profiles, and allowing for people to engage with the decoy, and having those initial conversations. But furthermore at trial Ms. Loomis had talked about more nuanced issues that the task force was supposed to follow, which include transferring the conversation at one point from the dating app to a private text message.

THE COURT: But you haven't asked her that.

MS. CONVERTINO: Well, that's actually next, Your Honor, and so I --

THE COURT: All right. So, I get you. So here's what we're going to do.

So here's my ruling. Okay?

That she can answer: Was she trained to do a certain thing in a certain way? Okay? And does she know if that was done in this case because she's not the chatter?

MS. CONVERTINO: Thank you, Judge.

Q So, Ms. Loomis, at trial, at Mr. Lakatos's trial, you talked about how on the app the conversation begins on an app and then at some point it transfers to text message,

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so I just want to get -- And if you need me to recall your memory as to that, I'm happy to show you the transcript, but does that ring a bell that that was what you had testified to, that the conversation at some point transferred on to a private text message exchange?

A In this case that is what happened. There was a text exchange on the app and then it went over to actual physical text message on a phone.

Q And it happens in other cases as well?

A Pretty not abnormal to do.

Q It happened in the case of People v Daniel Schmidt, where you were the chatter and the decoy?

MS. ROBINSON: Objection, Your Honor, relevance to Daniel Schmidt's case.

THE COURT: Right.

So, I'll sustain the objection.

I don't know if I'm not clearly communicating what I allowed the question to be or if you're intentionally not following my direction.

So, if we're talking about best practices, which is what I thought that you were talking with this witness about, the question would be: In your training, was it the goal or was it part of the plan to transfer someone from a social media app to text? Okay? So, I think that's a fair question. And whether that happened

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in this case or not or the why, that's fine. But again, what happened in Mr. Schmidt's case, it doesn't matter. We're talking about best practices or training. That's what we're talking about with this witness.

MS. CONVERTINO: Thank you, Judge. And thank you for clarifying that. And I do want to just note for Your Honor's reference that I certainly would not intentionally go against what Your Honor was trying to explain, that Your Honor would like with regard to the line of questioning, so I will be very careful to match what Your Honor has just mentioned, and I appreciate that opportunity to do that.

Q So, Ms. Loomis, were you trained to transfer -- As the chatter, were you trained to transfer the conversation at some point with the suspect from the social media app or dating app on to a private exchange with phone numbers and text message?

A Not specifically. You can, as a chatter, keep the communication in the app or you can transfer it to a text back and forth via phone number, so it's not specific, you don't have to specifically do that.

Q I'll be a little bit more specific with my question then. Were you trained when making a reference to age that best practice is to make that reference to age not on the dating app but in text message?

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A No. You can make reference to age anywhere. You can make that in any time of the conversation. It's strictly up to the chatter how that happens.

MS. CONVERTINO: Judge, may I recall the witness's memory about her testimony at trial because that answer does directly contravene what Ms. Loomis testified at Mr. Lakatos's trial?

THE COURT: Yes.

Q Ms. Loomis, you had mentioned at trial that when a reference is made to age on an adult dating app, an explicit reference to age, that there was a risk that the decoy account would be reported as a minor that is not supposed to be on an adult dating app, and if the account was reported as a minor, then all of the data would be deleted from the dating app, meaning all of the other hundreds of people who reached out, all of those messages would be deleted.

Do you recall testifying to that fact?

A I don't specifically recall that, but what I do know is there is that, that is always an option across any of these platforms that these profiles can be reported whether that's because the age was communicated in the app or outside of the app that can still happen, but that, like I said, that's always an option, that is always something that anybody can do. Anybody not even

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communicating with those profiles, anybody can report that profile that they suspect this person is under age.

Q So you don't --

A Which has happened. I'm sorry. I don't mean to step over you. Which has happened to me as a decoy on these apps.

Q Do you mind just elaborating what has happened to you as a decoy?

A My profile has been reported and everything has been removed.

Q I see. Okay. So do you recall testifying at trial that it was standard protocol for the task force to do the exchange of age on a text message exchange and not the adult dating app?

A I don't remember my specific testimony word-for-word from that trial.

Q Okay.

MS. CONVERTINO: And, Judge, I did want to encourage the Court to look at these messages from People v Daniel Schmidt, and if I may just explain a bit again why it is directly pertinent to this case.

THE COURT: You've explained it before. I've sustained the prosecutor's objection. I don't know why you're coming back to it.

MS. CONVERTINO: Okay. Thank you, Judge.

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Q Okay. Ms. Loomis, can you give an example for us from your training on how to make an explicit reference to the age of the decoy/chatter?

A I can say what I would do. I can't speak on what another chatter would do.

THE COURT: The question is: Speak to your training.

THE WITNESS: Sure.

THE COURT: How were you trained?

A As long as you communicate that you are under the age of consent, which in Michigan is 16, and that person acknowledges that you have made that statement.

Q And are you trained on how to do that? On how to make sure that the statement says that the decoy/chatter is under the age of 16?

A I think anybody with common sense can understand what that would mean.

Q Would you mind explaining for us what the common sense would say?

A I'm not 16. Or, I can't drive yet. I don't have my license. I don't get my license until a certain age. I'm 13. I'm 14. I have not quite turned 16 yet. I mean, there's a whole slew of things that can be said.

Q And what would your training say constitutes an acknowledgement on the part of the suspect that they

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understood that this person just said that they are not yet 16 years old?

A I can say generally what happens when I am communicating as a chatter, but I can't to the specific case because I was not the chatter.

Q That's fine.

A Okay. So generally you're usually met with: Ooh, that's jail bait. Oh, I'm going to go to jail. Or, oh, I was wishing you were older. Contact me when you're older. You shouldn't be on these sites. Somebody's going to take advantage of you. There are a lot of people on these sites that take advantage of people like you.

Those are some of the things that I can recall have been said to me through my investigation as a chatter.

Q Okay. Thank you. And you had mentioned that in your training there might be a reference to age by way of saying something along the lines of: I don't have my driver's license yet because I'm not 16. Or, I'm about to turn 16.

Like, can you think of any other ways in which your training informed you on how to make that reference?

A I don't know that there was a specific standard that said, you must say you are blank, blank, blank. I don't

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know that there is that.

Q Okay.

A I don't at least recall that.

Q Okay. But just to be clear, you noted earlier that you do have to mention age at some point to the suspect?

A Yes, the suspect needs to know that you are less than the age of consent. That's the whole crux of the investigation.

Q Right. The whole point is to find adults who are intentionally seeking out sex with children? Is that fair to say?

A I guess that's fair to say, yes. I mean, the reason that we're on these apps is because we know that there are people who prey on minors. We also know that there are people who happen to have sex out of convenience. What that age is we specifically as a task force, I am speaking in past tense as if I were on the team, I am no longer on the team, but we specifically would make it abundantly clear or would make it clear that we are not at the age or 16 or at the age of consent in these investigations. At least that was my understanding as a detective on the team.

Q Right. You want to make that clear so that you know you're catching the right people.

Thank you, Ms. Loomis.

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MS. CONVERTINO: We don't have any further questions for this witness, Judge.

THE COURT: All right.

Ms. Robinson, any questions?

MS. ROBINSON: Yes.

C R O S S-E X A M I N A T I O N

BY MS. ROBINSON:

Q Did your training for this task force make any differentiation between looking for people enthusiastically seeking sex with minors or could just be willing to have sex with minors, if that's what presented itself?

A No, there was no specific thing that said enthusiasm or no.

Q Thank you.

MS. ROBINSON: Nothing further, Your Honor.

THE COURT: All right.

You can step down.

(At about 10:24 AM, Witness stepped down)

MS. CONVERTINO: Judge, my co-counsel is going in the hallway to get Dr. Robert Sidelinger who we will call as our next witness.

THE COURT: Okay.

Good morning. Would you raise your right

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hand, please?

DR. ROBERT SIDELINGER: Sure.

Yes.

ROBERT SIDELINGER, Ed.D.

Called by defense at about 10:25 AM, sworn by the Court, testified:

D I R E C T E X A M I N A T I O N

BY MS. CONVERTINO:

Q Good morning, Dr. Sidelinger.

A Good morning.

Q Could you please state your name for the record?

A Sure. Robert Sidelinger.

Q And what is your occupation?

A I'm a professor at Oakland University in the department of communication and journalism and public relations.

Q Great. And do you hold any other positions at that university?

A Yes. I am currently the communication program director and interim chair.

Q Interim chair of the communications department?

A Department, yes. Yes.

Q And how long have you been a scholar and professor in this line of --

A I've been teaching in higher education since 1996, but I've been at Oakland University since 2008.

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Q And are there any other areas of this field that you focus on within communications?
A Sure. I primarily teach courses, interpersonal communication courses that focus on sexuality communication, gender communication, disability communication, and health communication.
Q Great. Thank you. And could you describe for the court your education as it pertains to communication?
A Sure. I have a doctorate of education from West Virginia University. That was an interdisciplinary program that combined instructional communication with interpersonal communication.
Q And any other degrees you hold?
A A masters degree in communication and theory and research and an undergraduate degree in mass communication.
Q Thank you. Have you been published in your field, Dr. Sidelinger?
A Yes. I have roughly 35 to 37 published journals.
Q And are those peer reviewed?
A Yes. Yes. All of them are peer reviewed.
Q And do you serve on any editorial boards?
A Yes. I'm on four journal editorial boards.
Q Great. And those are also for peer reviewed scholars?
A Yes. Yes. So they are all within the communication discipline.

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Q Great. Now, when you -- Before I move for your qualification as an expert in this case, just to make clear for the Court, do you intend on forming your opinions or conclusions in this case based on peer review to scholarly research that is well-regarded within your field?

A Yes. And, well, even outside like psychology and social psychology which communication bars from other disciplines.

Q Great. Thank you.

MS. CONVERTINO: With that, Judge Springstead, I move to qualify Dr. Robert Sidelinger as an expert in the field of communication.

THE COURT: Ms. Robinson?

MS. ROBINSON: Your Honor, may I voir dire this witness?

THE COURT: Sure.

MS. ROBINSON: Thank you.

V O I R D I R E

BY MS. ROBINSON:

Q You sort of said you've done peer reviewed journals?

A Right.

Q Can you explain the science that you apply or the, you know, what do you apply to make those journals something more than just opinion?

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A Oh, well, it's quantitative methodology, so we survey -- for my type of research, we survey participants who complete measures that relate to a variety of communication constructs, so typically a population from anywhere from 200 to 400 participants.

Q What sort of constructs have you looked into?

A Well, I looked at sexual communication, so looking at, for example, how couples negotiate sex talk and safer sex practices in intimate relationships.

Instructional communication. As a college professor, I look at classroom dynamics and how that facilitates learning.

Q Okay. Have you done any specific research into online communications?

A Yes. A while ago, when it was rather still new, I did relational online speakers and online communication.

Q Why haven't you done it more recently?

A It's just not -- Well, it's not an area that necessarily is something that I'm particularly, what's the word I want to say, I have more interesting areas that I want to delve into.

Q When was the last time you looked into online communications?

A Well, I teach it. I teach it in my courses.

Q Okay.

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A And I do that pretty frequently.
Q What about research-wise?
A It's been a while. I would say 2008.
Q So the studies in online communications have been going on for 15 years now?
A Probably longer than that; it predates to 2008, but, yes.
Q Do you have any idea what, you know, a portion of the population is unfamiliar with online communications?
A Well, there is the digital divide; right? We overestimate the likelihood of people being online because we're on online, like myself, or others that use the Internet. We have an overestimation of who is online, but, no, I don't have a specific number of who is not online.
Q Is there any research into how you can bridge that divide and how you can make people that are not online understand online communication?
A In terms of access, is that what you're referring to?
Q In terms of understanding.
A Well, you have, of course, digital literacy, in which, just like media literacy, you inform a population about online communication. For example, online bullying, and being familiar with that, as an example.
Q And to be clear, you have no information on current research on people not understanding online

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communication?

A No.

Q Would you say online communication is pretty common at this point?

A I guess it would depend on the age demographic you're looking at. If you're looking at a relatively young portion of the population I would say yes, it is probably pretty common.

Q At what age would you say it becomes uncommon based on the research that you've read?

A Well, the older the population gets the less likely they're going to use digital communication.

Q Okay.

A So, I mean, probably as we get into the elder population.

Q Okay. Do you have any training or experience or any research the exposure to educating the elder population in online communication?

A No.

Q So, who are you educating on online communication?

A Well, my class is, again, I'm a college professor, so I teach college students.

Q The generation, the age group that you've testified would be familiar with them already?

A For the most part, yes. But in terms of what I'm looking at, what my students are looking at, we're looking at how

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relationships, how they are initiated, maintained, and also even terminated online. How communication is facilitated, how relationships are facilitated online.

Q And is that based on any current research you've done or just reading other articles? What do you use for that?

A Academic scholarship.

Q Okay. What would you say is the current, leading, I guess, understanding or theory on how to apply that nowadays?

A Well, there's a few things to consider, which I included in the affidavit. The hyperpersonal communication, media communication. Initially, Joseph Walther explored the hyperpersonal model of communication. He used the examples of strangers on a train; that when you meet someone and you know it's a short duration you're likely to share much more information than you may even with a friend that you've known for a long time. And obviously with technology advancing he moved his research to computer mediated communication suggesting that again because of the parameters of online communication, people feel freer to communicate in ways they may not face to face. For example, with online communication you can present a more idealized sense of self when you communicate with others, so when you have an idea of what they are looking for, for example, you can cater your

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messages to what they would find appealing. We can't do that so easily in person.

Q You have a part on information I have provided on your expertise in queer linguistics?

A Right.

Q Okay. Can you explain what that is?

A So, just like any other marginalized group of the United States, they, as a group of people, queer people, use language. Language is valuable. We use it in many ways, ways that work for us, so historically not only in the United States but in other countries queer people could be arrested and institutionalized for being queer, so they had to use coded language. Language that might be understood by others in the community, but outsiders would not be fully immersed in the culture, and, therefore, not know the intended meaning of those messages.

Q Are you talking about Polari or something different?

A Yes. Yes. Polari was used in the United Kingdom. They use, for example, Italian kind of sing-song language.

Q Can you explain to the Court what Polari is?

A Again, it's coded language.

Q Used by who?

A Well, in the United Kingdom it was used by gay men.

Q Okay. That's pretty universally considered a dead

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language now, isn't it?

A I mean, it's still used, but not used in the same way because people aren't being arrested for being gay. In the United States you still have language being used, but again it's not because I'm going to be arrested for using it. An example would be misgendering people, so you might refer to someone as; oh, that girl, you know, et cetera, even though you're talking about a man, but by misgendering the man you're signalling that again it's coded language. But today people use it just as commonly but not for the same reasons.

Q You're saying that those are slang or, you know --

A In a sense, yes, it's become watered down slang, right?

Q For lack of a better term?

A Yes. Slang.

Q And that's language that's specific to the gay community?

A Well, once it was.

Q Is it now?

A I would say no. It's probably kind of delved more into mainstream because of, for example, television shows like RuPaul's Drag Race has kind of allowed language to be permeated to a larger audience.

Q Okay. One of the terms you specifically referred to was daddy?

A Yes.

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Q Would you say that daddy is pretty universally used as a sex term? It's not used --

A Well, I wouldn't even say it's a sex term, but I think from its origins within the gay community, how it's kind of moved to mainstream. It's like with any culture words if we think about the black community and bling, bling was used among rappers, and then all of a sudden housewives were using it, so it permeates, language permeates.

Q Would you say that the slang of the gay community is pretty well permeated in the mainstream at this point?

A It would probably depend on the community.

Q Do you have any research on what communities would need more?

A I would say people who are more media savvy. Again, younger adults are probably going to be more familiar. They are heavy media consumers.

Q Okay.

MS. ROBINSON: Your Honor, I have no further questions.

I have argument, but I don't know if you want me to make that now or allow further voir dire from the defense.

THE COURT: Anything that you want to follow up on that?

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MS. CONVERTINO: Yes, Judge, and I'll keep it limited just to the points that the prosecution mentioned in her voir dire of Dr. Sidelinger.

V O I R D I R E

BY MS. CONVERTINO:

Q So, Dr. Sidelinger, I just want to begin by addressing the point that you have not recently been published with regard to online communication, more specifically, but you did talk about being published within the field of communications and that scholarly work.

Is it necessary for a person who is an expert in this field, specifically within the realm of online communication, to be actively publishing journals and articles or could one be an expert by teaching and keeping up to date as to that scholar?

A I think, yes. Part of our job in higher education is to, for example, attend conferences, read research, and keep up to date. If we didn't, you know, I would be talking like it's 1996 and, you know, we're not even texting one another, so, yes, we're constantly keeping up to date. I attend a couple conferences a year, attending research panels, and, of course, keeping up to date with the current research because that's my job is to provide students with current information.

Q Right. And the prosecution had asked if you specifically

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teach older adults. Is there a forum in which scholars would be teaching only older adults?

A Not necessarily. I mean, we do have adult learners in the classroom, so the traditional college age student course makes up a large pool of my students, but we do have a mix of young adult, older adult, but in terms of solely be teaching older adults, I don't think you're likely to come across that.

Q Right. And if there were older adults, say, on the jury, would somebody in your -- somebody with your expertise have been able to effectively teach, in a sense, people who are older adults in that capacity through your testimony?

A I think so. I think, you know, I'm not trying to convey the idea that older adults are living in a vacuum and not aware of what's going on in the world or the culture or society that they belong to, but they may not, for example, be as tech savvy or heavy media users as younger adults.

For example, some research highlights that people between the ages of 13 to 17 text over 3,000 messages a month. And just moving to the next group of 18 to 24 it's down to about 1,800 texts a month. So it even changes -- just even that change in age highlights just how they use messaging.

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Q Right. And is there a difference, would you say, based on your scholarship and research in this area, between people who just simply use the Internet and are familiar with how to use the Internet, and the understanding of the nuances of the ways in which online communication can affect communication overall?

A Right. I definitely think so because, I mean, you know, cyberbullying has come up in the last decade and how it affects people. We're constantly learning about how online communication has an impact on our health and wellbeing. Psychologically, you know, it's constantly evolving, constantly changing. More recently you don't even know if you're talking to someone who is real online, you have AI now, who can act as a person communicating with you on dating websites. Five years ago I don't think we had that.

Q Right. Okay. And then I just want to quickly point out, so you had mentioned in response to Ms. Robinson's questions about this dialect, that sounds like it was specific to the United Kingdom, and you said, it's not dead, it's just sort of evolved in a way?

A Or just permeated. I don't think evolved is the right word. I think it's just moved beyond what it was needed for. Again, the idea of having to use a coded language just to stay under the radar and not be

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institutionalized. I mean, that has its roots around the world. Currently in Russia they still have to do that because you can be put in jail, arrested for being gay in Russia.

Q Right. So, in the context of this country we see that language and communication is appropriated by different subgroups, and that language permeates those different subgroups?

A Right. Yes.

Q And you had mentioned that this at some times certain terms like daddy could become mainstream for people who are media-savvy, younger adults; that's how you phrase it, I believe?

A Can I --

Q Yes.

A So, it permeates then further, so media consumers learn that language, begin to use it, and then those that aren't media consumers or heavy media consumers begin to use it as well. It's like this, you know, constant motion.

Q Right. Without knowing the origin of that term?

A Yes. Yes.

Q So, do you think that it's fair to say that older individuals who live in a rural area where they have less, less exposure by way of these communities, right,

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who could permeate for them the different, specific language; that it would be less likely that they would be part of that mainstream understanding?

A In part or they simply don't care to attend to it. You know, some people it's not relevant. It's not appropriate. They ignore it. They don't attend to it. It's just not part of their life and that could be whether it's a rural area or a conservative suburban area.

Q Great. Thank you.

A Thank you.

MS. CONVERTINO: I have no further questions for voir dire. Thank you, Judge.

THE COURT: I have a couple questions, Doctor.

V O I R D I R E

BY THE COURT:

Q So, I'm old enough that what colleges and universities offer for classes kind of astound me.

A Right.

Q I can't imagine that there's a whole college course on online communication?

A There are.

Q So, what's in your syllabus? What do you teach people about online communication?

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A It could range depending on the focus.
Q But your class?
A Yes, my own personal class, so I focus on the nature of relationships online.
Q What do you mean by that?
A How people start conversations online. Just like real life but now we're in the mediated world, so the mediated world is a place where fantasy and reality mix, so you can be anything online that you want to be because no one sees you physically, so that's part of it.

So, in a sense, we look at, for example, deception online, and deception is a pretty common expectation because it happens so frequently because it's so easy to deceive online, so people are often more likely to be wary when they do meet someone online and only are communicating online than if you're meeting someone face to face. There's plenty of research out there within communication within psychology and so forth that highlight. The frequency of deception I gave the example before is, you may think you're talking to an actual person, but it's really an artificial intelligence AI person that a company has created to trick you.
Q Okay. So, to me that seems common sense. There's fake people online. There's people that are going to deceive you. You have a sense of anonymity. But what's the next

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step? I mean, so those things exist, but then what? What are you teaching?

A We talk about safety. Safety would be a big factor to consider no matter your age. Not only communicating safe ways online but when you move offline. So scamming is pretty common where someone might try to get graphic pictures from you, and then try to suggest that they are going to reveal those graphic pictures to others unless you pay them.

There was a case in Upper Michigan of a high schooler who committed suicide because he sent graphic images of himself who he thought was a woman but it turned out to be men from Africa who then tried to blackmail him. So you have scams like that in extreme cases or they are trying to get money from you for some reason or they are just not who they say they are.

It's been found that men are more likely to pretend to be a woman online than women to be pretending to be a man, so you don't even know if you're talking to the right sex.

Q All right. So, it's an online communication safety course?

A No. No, it's not. It's not. I'm not -- I'm not teaching -- I'm not a trainer teaching skills. We talk about theoretical concepts, and, of course, how they play

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out in everyday life.

So going back to the example of the hyperpersonal model of communication, you know, that is a theory or model that suggests what is likely to happen, so it provides what I tell my students is a roadmap of what might occur, but, of course, the real world we never know what's likely to occur or what will actually occur.

Q All right. You have some sort of specialty or training in what's called queer linguistics; is that right?

A I mean, my course is we cover in terms of sexuality and identify language and how language is used by different groups of people. And, as an example, queer linguistics, which became -- was really developed and written about in the 1990s, I think the scholar's name was William Leap, really talked about how people within the LGBTQ community, merely focused on gay men, communicate with one another again to avoid any kind of persecution. That was initially how it was used. But it was also -- It's also used to convey sexual preferences. Sexual identity. You know, I used the example of misgendering. You also have The Hanky Code, so the color of your hanky indicated some sexual preference that you might have, so it's used in many different ways.

Q So in this case, the crux of what I get from the brief would be that you would say that in this particular case

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that the use of daddy doesn't mean that person calling another person daddy is underage?

A Right. That within the queer community the term daddy between gay men is not anything that would be out of the ordinary. I believe the decoy said: Tell me more, daddy. He also said: I like mature men. You know, he never said: I like older men; so there was never a mention of that preference.

Daddy could be a form of flirtatious play as a word as a term of endearment. It doesn't necessarily mean age because they could be very similar in age the two people involved in the communication.

Q All right.

THE COURT: Go ahead with your argument as to the --

Q Well, I guess the other thing; have you ever been qualified in any court as an expert witness in queer linguistics?

A No, this is my first court.

Q How about an expert in online communication? Have you ever been qualified by a court as an expert in that?

A No. No.

Q All right.

THE COURT: Ms. Robinson?

MS. ROBINSON: Your Honor, it's clear that

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Dr. Sidelinger has more knowledge and information about the different theories and the different changes in the way online communications work. I don't doubt his education or his understanding of those topics.

I think specifically for this case in terms of the number of requirements for an expert it's not only just that somebody knows what they are talking about, but there are additional things. There has to be the science and the technique behind it and how it can relate to the reliability of it.

The opinion that Mr or that Dr. Sidelinger has given is that these interactions are typical of queer adult men. However, he is -- And I think he said gay adult men. I apologize. However, when I talked to him about it, he said that these terms, this language has permeated into mainstream, so there's nothing that shows that it is specific to that. Based on his own testimony, that specificity has eliminated itself maybe back, you know, in the -- I think we talked about the 1990s and even before that in the 1960s with these different languages where there was people being persecuted because of those things, maybe in Russia, not here today. Here it's pretty mainstream. People are familiar with these terms. Terms like daddy are not unique to the gay community.

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In addition, the Court would have to find that this expert would assist the trier of fact in understanding and determining facts at issue. The testimony was that this research into online communications has been going on for, you know, since before 2000. We're at 25 years, at least, of this. Most people are familiar with that. This individual, while he knows a lot about this topic, he has no particular training or experience, it sounds like, in helping a group of people that possibly don't understand these online communications with understanding them.

So, I would argue, Your Honor, that while Dr. Sidelinger is clearly very adept at his job and probably advanced in his field, I'm not familiar with the field, personally, but I don't doubt his knowledge. I don't think the qualifications for the purposes of this case is appropriate, and I would ask that there be no further testimony taken from him, Your Honor.

THE COURT: Response?

MS. CONVERTINO: Judge Springstead, I just want to begin by pointing out that -- something that Your Honor said that I think is really key here; which was the note that Your Honor even was surprised to hear that in this day and age there are entire courses being taught at universities about the nuances of online communication.

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That in itself demonstrates that because Your Honor was not aware of that fact, I admittedly was not aware of that fact, this is not something that we can infer would be in the ken of a layperson who is sitting on the jury.

And to the prosecution's point that Dr. Sidelinger does not have specific experience training people who would be on a jury, that's the case for most if not all experts who testify at trial. Dr. Sidelinger has never been admitted as an expert in a case before because he's never been asked. This is an area of scholarship that has existed, but the specific application of his testimony is only applicable in cases such as the one that we have before this Court today where we are talking about a conversation that took place on Grindr, which is an app that is used by and for gay men for sexual purposes. And so the nuances of how gay men communicate in those websites and use language that people who are not within that LGBTQ community might know exists. Right? So daddy we think of like sugar daddy or other ways in which straight people might use that term. That application of the word daddy has a very different meaning when used by and among adult gay men when communicating in a sexual manner. And those are the precise reasons why Dr. Sidelinger's expert testimony would not only be needed at trial but would be needed in

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an entrapment hearing for Your Honor to be able to properly contextualize the messages that took place in this case both on Grindr and in text messaging. Because the prosecution's case turned on this sort of theme that the use of these specific terms used by adult gay men are in some way sexually deviant or predatory, and Dr. Sidelinger's testimony would be able to counter that narrative, and demonstrate to jurors or the factfinder, being this Court in an entrapment hearing, that that's not the case. That using the word daddy or using the word boy is not a reference to age. It does not mean that this is a child that the person is communicating with, but that's similar to how gay men might use the word girl to misgender a man on purpose. That these are nuances/ways in which people in a marginalized community communicate with one another, and again, that is outside the ken of the understanding of the people who are not within that specific community, which is why Dr. Sidelinger's expertise is needed in this case.

And lastly, I just want to point to the language of Rule 702. It is not necessary for Dr. Sidelinger to have directly continued research in every single one of these guilds himself for him to be an expert in these areas. Dr. Sidelinger is a very -- he has a very colored experience with regard to his

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education and his experience in being published as a scholar in this field. But he still in order to qualify as an expert for purposes of testimony would only need to demonstrate that his opinions and beliefs and conclusions that he may form are based on methods of studying and researching this field that are accepted within the community of scholars in this area, and Dr. Sidelinger during voir dire had explained that that is the case.

And to Your Honor's questions, Dr. Sidelinger had cited specific scholars that have laid the foundation of queer linguistics and that this is an area of study that has existed for multiple decades, all of which he has himself been part, an active part of either being published himself researching and teaching this area. I believe Dr. Sidelinger says since 1996 he has been teaching in this area. And so again while Dr. Sidelinger has not been admitted as an expert in other cases, it is only because this is such a specific area that is so specifically applicable to Mr. Lakatos's case and that's why we ask that this Court allow Dr. Sidelinger's testimony to be heard today as an expert witness so that we can further demonstrate how trial counsel was ineffective for not conferring with somebody with this sort of expertise who was available in this area.

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MS. CONVERTINO: Thank you, Judge.

E X A M I N A T I O N

BY THE COURT (continuing):

Q So, has there been, Dr. Sidelinger, has there been any research or studies done on what daddy means in the gay community?

A Yes. I cited one study, Mosher Mcoun, if I pronounced that name correctly. Those researchers interviewed gay men and talked about, so it was a qualitative study through interviews, what they were -- how they perceived themselves as daddies and their relationships. And they use the word boy to describe their male partner, adult male partners that they had and how they kind of negotiated the submission/dominance of the relationship. So, yes, there is research, but in terms of looking at it culturally, really the word daddy originated as a leather daddy. I believe after World War II, men, gay men, instead of going back home, wherever they were from, stayed in port cities like San Francisco, and went to biker bars, leather bars, so you began to have the term leather daddy, and then leather was dropped to move to daddy. And again progressing forward even the Grindr app that was used has tribes, and one tribe is the daddy tribe, so you can self-identify as a daddy on Grindr.

Q So does daddy always mean the same thing in the gay

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community?

A Yes. Well, I wouldn't say the same exact thing for everyone. It could be again a form of flirtatious play, so calling your partner daddy might be just being flirty with that person even though you don't have this dominant/submission relationship, so it could be a term of endearment as well rather than just role playing.

THE COURT: All right.

COURT'S RULING

THE COURT: So, the defense moved to have Dr. Sidelinger qualified as an expert in communications, and the court is going to agree that he is an expert in communications.

MS. CONVERTINO: Thank you, Judge.

With that, Judge, would it be okay if I approach the podium again and continue questioning Dr. Sidelinger?

THE COURT: Yes, ma'am.

MS. CONVERTINO: Thank you.

D I R E C T E X A M I N A T I O N

BY MS. CONVERTINO (continuing):

Q Okay, Dr. Sidelinger, could you tell us and the Court about your familiarity with this case?

A So, I was provided transcripts of the text messaging, so essentially it was an Excel file. I was provided a video

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recording of the conversation on Grindr, which was difficult to follow because it was a video. I had to pause a lot. And then also some of the photos that were sent back and forth between Mr. Lakatos and the decoy.

Q Great. And did you also have a record of the text messages that were exchanged after the --

A Yes.

Q -- conversations were transferred?

A Yes.

Q I'm sorry, I didn't know if you had mentioned that or not.

A Yes, the Excel file.

Q The Excel file.

A The Excel file, sorry.

Q No, no, that's okay.

THE COURT: Stop. Stop talking over each other.

MS. CONVERTINO: I'm sorry, Judge?

THE COURT: Don't talk over each other.

MS. CONVERTINO: My apologies. Thank you, Judge.

Q And you prepared a report for this case; is that right, Dr. Sidelinger?

A Yes.

Q After reviewing all of those materials?

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A Yes.

MS. CONVERTINO: Judge, I had moved to admit Dr. Sideliner's expert report as Defense Exhibit #2. This is a report that was included or attached, rather, as an appendix to the motion for new trial that we filed with this Court back in April.

THE COURT: Any objection to the admission?

MS. ROBINSON: No. It was also provided to the Court, so no objection to that, Your Honor.

THE COURT: Exhibit #2 will be admitted.

(At about 11:05 AM, Defense Exhibit #2 Admitted)

MS. CONVERTINO: Thank you, Your Honor.

Q Dr. Sidelinger, in your professional opinion, what are the fundamental differences between communication that takes place online and communication that takes place in person, face-to-face?

A I had included in the affidavit, for example, media richness theory. The idea that when you, depending on the medium you're using, you have rich and lean media. The leaner the media the more difficult it is to understand fully what is being said, so sending someone a fax or a letter, that's considered lean media. Whereas face-to-face, in person face-to-face, that's considered

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very rich media because we have more channels and cues to read off of to fully understand what's being said, so facial expressions, tone of voice, body posture, all those things help us to better understand what's being said to us.

But an email, for example, or a text message, it's kind of, you just have the words in the message to get any meaning from.

Q And when engaging in multiple online communications at once, could that impact the quality even further of the communication?

A Yes, in part. You have what is a myth is the idea of multi-tasking, and that's considered a myth. What we're really doing is shifting from one thing to the next thing. So, if you are texting multiple people around the same time, you're going back and forth between those conversations. Or if you're driving while doing voice to text, you know, you have multiple things going on, so really when it's lean media it's better to use lean media when you don't have to put much cognitive energy into what's being said. Whereas if it requires a lot of thought, then you're going to spend more time on it, and just simply you're not going to shift very successfully across multiple messaging or multiple tasks.

Q Right. Okay. So going a little bit deeper into this

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idea of multi-shifting that you've mentioned, when we multi-shift, are we fully immersed in any of the things we're multi-shifting in? Could it be possible that you are -- Is it possible to be fully immersed when you are multi-shifting?

A It's going to be more difficult, I think, even if you look at some of the timestamps. Hours went by between one message to another. So, you're moving around and you're doing other things because you can. Online communication is pretty deregulated. We don't follow the same social norms as we would face-to-face, so you're jumping in and out of conversations, text messaging. Yes, you could be fully immersed, it's just more difficult to do that when you're just texting someone because you're kind of limited in some ways. Whereas when we're talking face-to-face it's very rich, we can delve deeper into whatever we're talking about.

Q Okay. And you had mentioned, like, there could be big gaps in time between communications and that that might be indicative of multi-shifting. Could it also be -- what about when messages are sent almost instantaneously, within seconds, multiple lines of communication almost?

A I would say they are probably, well, one, they're pretty short, and none of the messages sent between Mr. Lakatos and the decoy were very long. So, yes, I mean, those

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that text are pretty efficient texters, we can text pretty quickly, and that's why you will see acronyms, emojis. We do a lot of things. Even if you're sending an email you might include an emoji, so we're doing everything to kind of shorthand our messaging. That's why, you know, I easily saw misspellings for both parties, acronyms being used by both parties, so, yes, we shortcut to make it easier.

Q Right. Okay. And when we take those shortcuts in online communication, is it more likely that the context or substance of the communication that the things that are being said might be more easily missed?

A Sometimes, yes. We lose nuance with online communication. Text messaging is the messaging, you lose some nuance, so you can't be -- you're less accurate, you may be even inaccurate in person, but you're even more -- there's a greater chance of being inaccurate in your interpretation online.

Q Great. And generally speaking, do people in their teenage years communicate differently than adults?

A Yes. But again, if we're looking at an age span the difference between, for example, a 14-year-old and a 17-year-old and a 17-year-old versus a 20-year-old, you know, those are going to be miniscule changes. However, young texters are definitely even more efficient than

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adult texters.

As I said earlier, people between the ages of 13 to 17, so very young texters, are sending out more messages/texts than the group of 18 to 24. And those numbers change probably with every moment, anyone that looks into it, but they are the heaviest texters, so they'll be even more efficient because they are texting so often. So an example would be combining letters and numbers, so, you know, B4, the letter B with the number 4. Or one I came across is Starbucks is an asterisk and a dollar sign to mean Starbucks, so you're more likely to find that very efficient. And when I read about those things it's usually literature from K-12 teachers, The Happy Book, not K-12, but public school teachers lamenting about those students then turn in papers with those similar, efficient messaging. But we even see it with adults that we will abbreviate just to make our lives easier, but probably not to the efficient level that you'll see that younger group.

Q Right. And in your professional opinion, how would you characterize the style of the decoy's/chatter here? Did it seem older, in your opinion, or younger?

A One, it didn't appear much different than Mr. Lakatos. They both had misspellings. They both used acronyms. And when I was reading it, I initially thought the photo

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of the decoy was the actual person, so I still thought it was a young adult because I was -- and I thought it was odd that someone as a young adult was using punctuation and apostrophes lending itself to be in a bit more formal than casual and informal. And then I was informed that the decoy's photos and the actual texter were two different people, so it didn't appear to be a sense of more casual, more juvenile. There didn't seem to be any difference, really, in the age between the two when you were looking at how they were texting than the style of texting.

Q That's interesting. I just want to delve into that very quickly.

So, the photo that was used as the decoy in this case, we told you that that was a 27-year-old officer, right?

A Yes. Yes.

Q And so you thought -- I just want to make sure I'm summarizing this right -- you thought when reading the messages that that 27-year-old young man was the one actually messaging Mr. Lakatos?

A Yes.

Q And you further thought; that's surprising because this person who is messaging doesn't message like someone in their 20s, they message like someone who is older than

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that?

A To me, in my head, I was thinking; this person should have a better sense of what it means to text like someone more youthful and again using apostrophes and punctuation for the most part. Again, they both had misspellings, they both used acronyms, but not acronyms that were unusual. I use acronyms, many of us in this room use acronyms when texting, like, LOL, but a very young group of texters would be even more efficient and use many more acronyms that probably most of us wouldn't even be familiar with if we didn't have children that age and knew what they were texting.

Q Right. And just to go back to some of the examples that you had provided from studies earlier. So, you would expect to see acronyms like a star -- an emoji with a star and then the dollar sign for Starbucks?

A And that would be just used as an example of that efficient communication.

Q Right. Or B and the number four?

A Yes.

Q Okay. Thank you. So, kind of going down that line further, what are some of the common linguistic indicators that a person communicating online is an adult and not a child aside from those that we've mentioned? You said grammar --

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A Well, grammar, writing style.

THE COURT: Wait. Wait. So, I have to jump in here.

You used the word child. He never used the word child in terms of style. It's like younger versus older, so he didn't say that there was a difference between a child and not. You didn't ask him that question.

MS. CONVERTINO: Thank you, Judge. That is a very important distinction and I appreciate that greatly.

Q So, Dr. Sidelinger, because this case concerns a person who is not even just a teenager, which I think I used that term earlier, someone who is in their early teenage years, but somebody who is not yet the age of consent, so someone who is younger than 16 years old, so for purposes of the record and everything that we just talked about, when we are talking about the people who use these shortened acronyms; is it fair to say that that back and forth was in reference to children who are younger than the age of 16?

A In terms of the efficient communication that I was referencing?

Q Yes.

A That is more typical based on what I've read and what's

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out there is that's your 13- to 17-year-old group is the heavy texters.

Q Thank you. And just to reiterate with the communication style of the chatter in this case, did you believe that that person, based on your professional experience and your scholarship in this field, that they were messaging in a way that was consistent with how a person under the age of 16 would be messaging?

A Yes.

Would be consistent or inconsistent?

Q Yes. Did you believe, based on your experience in this field, that the chatter was communicating in a way that is like a child, like someone under the age of 16?

A It did not appear juvenile to me when I was reading the texts. And again, they both were very similar in style, the two involved. There wasn't again the typical highly efficient communication texting that you're more likely to see with more youthful, younger people, and again the idea that using punctuation and apostrophes, all those things have a more formal tone to it that you typically are less likely to see with a younger group of people.

Q Thank you. And were there any red flags in any of the communications that you read that would indicate to you; oh, this is a person under the age of 16? The way that they were communicating?

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A Not that I -- No red flags to me.
Q And in your professional opinion, does the decoy's use of the term daddy indicate in any way that the decoy/chatter was a minor child?
A No.
Q Can you explain a bit more how the word daddy might influence the interaction between consenting adult gay men in an online interaction?
A Right. Again, even the app, the Grindr app has a tribe that you can identify as a daddy, so -- And I was not -- I'm not familiar with either's profile and what they included in their profile, the decoy's or Mr. Lakatos's, I don't know. You can also have tags in terms of who you are and what you're looking for as well. So, tell me more, daddy, is not suggestive of an age difference. He also, the decoy said: I like mature men. He likes a dominant man. So, he never referenced, he never even said, older man.
Q Thank you. And can you explain for us what boy means when used by adult gay men?
A Well, boy reference is a type like tweek. Tweek is someone who is younger. Typically slimmer. And boy is used as a way to either indicate a submissive sexual role, but also in some of the literature will, I think BAM is the one who -- no, it's not BAM -- who highlight

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kind of the tropes or the I don't want to use the word stereotypes, but what the different categories of gay men you might have. So you have the frat boy, the surfer dude, I think I used as examples. So these are kind of the American youthful ideal. What is physically fit, what is attractive, and for some gay men that is appealing to them.

Q Thank you. And I just want to note something that Judge Springstead had brought my attention to a bit ago with regard to the use of the term younger. When answering that question you said that boy could refer or does refer to a gay man who is younger. Could you just elaborate a bit more about what you mean when you say younger in that context?

A Well, younger could be simply two years difference. It could just be again someone who -- You can have a preference for younger than yourself, that is everywhere. And I will say gay men are men, and according to evolutionary psychology, men, in general, prefer mates who are youthful, and have a preference for youth and beauty. Because evolutionary psychology suggests that that's a sign of fertility, so heterosexual men prefer younger mates, and gay men are men, and we have thousands of years of being biologically the same, so it's not shocking that gay men would prefer a youthful attractive

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partner.

Q Right. And just to drive this point home because I think it's a very important point; when you say youthful and younger you are talking about an adult gay man who is over the age of 18?

A Yes.

Q And when the word boy is used by consenting adult gay men in these contexts, does it necessarily mean child?

A No. And I will also say that again following the hyperpersonal model of communication is the decoy set the tone. He set up the interaction. He initiated using daddy, and using mature men, and following the hyperpersonal model of communication then if Mr. Lakatos finds the decoy attractive, even though he never saw a face photo, that he wants to continue the communication, so he's going to respond in a way that he thinks the decoy will find appealing. So the decoy has set the tone, the suggestive play, daddy, mature men, dominant men, so I think Mr. Lakatos said something along the lines: I like a boy who free balls, so he's just playing using boy as a play off of daddy.

Q Got it. So, the decoy/chatter in this case set the tone as Mr. Lakatos as the daddy and the decoy is the boy; is that right?

A Yes.

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Q And are there other things that stand out to you from your review of the conversation here about the way that the decoy presented himself?

A (No response)

Q Or, let me rephrase that.

The way in which the decoy communicated, were there other ways that the decoy was messaging Mr. Lakatos that stood out to you?

A Right. The decoy initiated kind of a sex talk, and I think, and I don't recall the exact words, but the decoy asked Mr. Lakatos either: What are you looking for? Or, what do you want to do? And Mr. Lakatos mentioned giving a massage; and then I think the decoy said, tell me more, daddy. Had messages of: This is getting me hot, stuff like that, so he was further encouraging more sexualized communication.

Q And can you -- Can you discern, based on those conversations that you were just discussing, you said that the decoy here led the conversation. Is it fair to say that that decoy by saying, dominant man, and all these terms that you referenced, that the decoy led the conversation and established the sexual dynamics? Is that a fair summation?

A He started the suggestive role-playing dynamics, yes.

Q And so then based on the interpersonal communication that

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you had referenced that that sort of model interpersonal communication, that it was the appropriate response or expected response that someone in Mr. Lakatos's position would respond the way that he did?

A If Mr. Lakatos wants to continue the interaction and wants the decoy to find him appealing, he will create an idealized sense of himself for the decoy, and that's kind of the big difference between online and offline communication. We can't do that so easily in person.

Q Great. And I just want to really wrap up your testimony by asking, as an expert in this field, what conclusions, if there are any additional conclusions, can you draw from the communication exchange that took place here in the Grindr messages and text messaging between the decoy/chatter and Mr. Lakatos?

A Overall, the use of daddy and boy is not indicative of a significant age gap between the two of an adult communicating with an underage child. This would be pretty -- This would be expected between two consenting gay men, adult gay men, and the way they might use kind of interpersonal flirtatious rapport behaviors.

Mr. Lakatos may not be a dominant daddy in real life, but being online, communicating online, it's easy to portray that because the decoy suggested that's what he desired.

Q Great. And my last question for you is, is there

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anything about the decoy/chatter's communication in this case that reads childlike to you as an expert in communications?

A No.

Q Thank you.

MS. CONVERTINO: We have no further questions for this witness, Your Honor.

And thank you, Dr. Sidelinger.

THE WITNESS: Thank you.

THE COURT: Any questions, Ms. Robinson?

MS. ROBINSON: Yes, thank you, Your Honor.

C R O S S-E X A M I N A T I O N

BY MS. ROBINSON:

Q Dr. Sidelinger, is your testimony that people outside the gay community wouldn't understand the connotation of boy?

A I can't speak for everyone, so I don't know if everyone would not understand the connotation.

Q Would you say that boy used in that way is unique to the gay community?

A Boy is used in many ways among many groups of people. For example, it could be a derogatory term when someone speaks, for example, a white man might refer to a black man as boy, and that's a derogatory term, so it varies in meaning and how it's used, and doesn't indicate age, so it's used in many different ways beyond describing a

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child.

Q Do you believe that that is unique to the gay community?

A In the way it was used or the word itself?

Q In the way it was used.

A I would say it's probably less likely to be used as suggestive sexual play between consenting adults outside of the gay community.

Q Do you think that the 1984 song, "Let's Hear It for the Boy," by Deniece Williams, was interpreted by the masses as her dating --

A Well, similar to, like, girl, right?

THE COURT: Hang on. Just a second.

THE WITNESS: Oh, sorry. Sorry.

MS. ROBINSON: You need to let me finish my question.

THE WITNESS: Sorry.

Q Do you think that that song was interpreted by the masses to mean that she was dating a young child?

A No.

Q Okay. What about, "Rude Boy," by Rihanna, from I think 2009? Are you familiar with that song?

A No.

Q You're not familiar with the billboard hit, "Rude Boy," by Rihanna?

A I'm not, no. I would say no.

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Q Okay.
A Can I --
Q I believe the lyrics are:
"Come here rude boy, boy, can you get it up? Come here rude boy, boy, is you big enough?"
Outside the gay community, would you say that the use of boy there is referred to as a young child?
A No.
Q Okay. Do you agree with me that I could go on for hours on mainstream examples of where boy is used to refer to a man without any suggestion that age is included?
A For popular music examples, probably not. In everyday kind of communication exchanges, I'm not sure how common it is.
Q Is your testimony that people outside the gay community would have a harder time understanding that boy does not mean a young child?
A No, I don't think outside of the gay community that they could not understand when boy is used that it's not only referring to someone based on their age.
Q Okay. Now, you have testified to a lot of things that stuck out to you in the communications as being indicative of, you know, age or maturity. Are all of those things based on your very specific knowledge in

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your training and experience?

A Are you asking if someone without --

Q I'm asking if you know those things because of your expertise?

A Yes.

Q Do you have any information on how somebody without your expertise would pick up on those things or interpret those specific signs?

A In general, I would think when the decoy says: Tell me more, daddy; that I would hope most people would interpret that as, especially if they were to know this is an adult dating app where you have to be 18 to be on it, that they would think to themselves that this is an adult using daddy as flirtation.

Q Okay. I'll rephrase my question.

I think you said things like use of apostrophes. Lack of, you know, excessive emojis, I'm going to call it. Those things suggested to you that this was not a child in the age range of 13 to 17?

A I did not say is not a child. I said kind of offered they were using more formal language that is more common among older people, adults.

Q Okay. And do you know that because of your expertise?

A Well, we do -- Language in general, how language is used, communication styles are used.

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Q Do you know that because of your expertise or just because you just know these things?
A From what I've read about it.
Q In peer review journals?
A In some journals, yes, or textbooks.
Q So that information would be meaningless and wouldn't play into the consideration of somebody who hadn't read those journals?
A I don't know.
Q So, without those journals those indicators wouldn't mean those same things to you?
A I think people have an understanding what is more formal communication versus what is more casual communication.
Q You said that the text messaging between the decoy, and I think you meant the chatter, and Mr. Lakatos resembled typical interaction between consenting gay men in online settings.

Were those interactions unique to adult gay men in online settings?
A You mean the entire interaction?
Q Whatever you were referring to there.
A In terms of the app used, Grindr, which is a gay app, and the communication exchanged, which was suggestive in nature, that they were looking for a potential hookup, yes, it's probably common.

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Q But is it unique to adult consenting gay men?

A I would think any app whether it was gay men or heterosexual interactants would use a form of suggestive play.

MS. CONVERTINO: Judge, I'm going to object to that last question because Dr. Sidelinger has already testified that the communication here was consistent with interaction between adults, consenting gay men, and it's unclear what the prosecution is trying to get at with regard to asking whether that's unique between consenting adult gay men, when Dr. Sidelinger has already testified that it is entirely consistent with communication between adult gay men.

MS. ROBINSON: Your Honor, those are two separate things. He's an expert in the field of communications indicating here the importance is he needs to be able to explain queer linguistics. It is clearly within my purview to be able to say; well, is this really queer linguistics or is this just people talking?

MS. CONVERTINO: Judge, it's unclear whether the prosecutor is trying to ask Dr. Sidelinger whether straight people would be communicating in this way. And if that's the case, Dr. Sidelinger has already indicated that because Grindr is an app for adult gay men specifically this is a communication that is unique to

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them and consistent with communication between them. And so again I just want to object for this questioning is unclear and Dr. Sidelinger having already answered that line of questioning.

MS. ROBINSON: He wasn't admitted as an expert in Grindr, Your Honor.

THE COURT: So, I'll allow the question. Why don't you ask the question again.

Q You indicated in your report that the text messaging that you saw resembles typical interactions between consenting adult gay men in online settings. The interactions you saw, were those what you would call unique to the interactions of adult guy men in online settings?

A No.

Q Okay. Thank you.

MS. ROBINSON: Nothing further, Your Honor.

THE COURT: Any followup?

MS. CONVERTINO: One moment, Judge. If, Your Honor --

No further questions, Judge. Thank you.

THE COURT: I have a question.

E X A M I N A T I O N

BY THE COURT:

Q So, you teach a course on online communications, and you

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said that there are scammers out there, there's posers, imposters, you can't take anybody at their word for what they are; correct?

A For the most part.

Q All right. So, just because someone is on Grindr, that doesn't give you any sort of assurance that that person is over 18 even though they checked the box, right?

A Yes.

Q There's no assurance that if there's any pictures that the pictures are of who they say they are, right?

A True.

Q By either party?

A Yes.

Q Decoys, you can be whoever you want to be online, right?

A Yes.

Q Okay.

MS. CONVERTINO: Judge, may I ask a brief followup just to Your Honor's question for Dr. Sidelinger?

THE COURT: Sure.

MS. CONVERTINO: Thank you.

R E D I R E C T E X A M I N A T I O N

BY MS. CONVERTINO:

Q Dr. Sidelinger, so Judge Springstead pointed out that it's unclear after that initial disclosure of age to

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Grindr itself whether the person with whom Mr. Lakatos was chatting was indeed over the age of 18.

Now, did Mr. Lakatos seek any additional verification of the decoy's age in any way? And, if so, what did he do?

A He repeatedly asked for a face photo, and the decoy in one way or another tried to come up with reasons why he could not send a face photo. One was, there was a storm going through the area, so the face photos wouldn't go through. Another he said he was worried about being blackmailed, indicating that he's had experience himself with online deception or scams, whatever that might be. But Mr. Lakatos had asked for face photos, photos several times, and did not get them.

So again going back to deception in online communication that people are and they should have a concern about who they are communicating with and will try to get as much information as possible so that they can make the best decisions for themselves.

Q Thank you. And so this sort of goes to your testimony earlier about how people deceive others online. Right? There's a certain level of deception, you had testified.

So, when somebody is repeatedly, incessantly asking for photographs of the person's face, what else are they trying to verify? What would you say

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in your professional opinion is the reason, what are they trying to verify, Dr. Sidelinger?

A That they are the person that they say they are. That they are -- Yes, that they are actually the person.

Q And what would it mean or what would you classify it as when somebody is not who they say they are? Is there a term for that?

A Catphishing would be the popular/popularized term for it. Is that you are not who you are supposed to be.

Q Thank you. So, Mr. Lakatos's requests for photos of the decoy or chatter's face, you, in your professional opinion, interpret that as an attempt to verify that the decoy is who they say they are?

A Yes.

Q And from the decoy's statement, because the only other thing here really is the one reference to a hotel room, is that right?

A Yes.

Q From that statement in itself, was that a clear and unambiguous reference to age?

A It signalled, at the very least, if we just look at the kind of lean media that someone knows the decoy is in a hotel room, which is important for safety, you know, you're meeting strangers from the Internet and you're signalling that someone knows I'm here.

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Q And so for gay men in particular is that something that you would, in your professional experience of looking at the queer linguistics and communication in general in these sorts of settings, that you would expect a gay man to let the other person know: Hey, someone else knows where I'm at?

A Not necessarily even gay men. I think that's anyone who is meeting people from online for safety issues. There are examples out there; someone showing up to meet someone and they are robbed, their money is stolen from them. So, the person is not a gay man potentially, but they are there just to steal from the person that shows up, so, yes, safety is a huge concern, but that's for anyone meeting people from online.

Q Great. Thank you.

MS. CONVERTINO: No further questions, Your Honor.

E X A M I N A T I O N

BY THE COURT

Q So in the texts that you looked at, did Mr. Lakatos ever say: Show me a picture of you so I can see how old you are?

A No.

Q And, I guess, maybe I missed your answer. Was your answer that the chatter saying, essentially, that the

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hotel would not rent a room to me because I'm only 15, that's not a clear indication of, I'm underage?

A He didn't -- That was not the message. He never said his age. He said his cousin's age. Or, you have to be over 15. He said his cousin had to get it.

Q All right. I can't get the room?

A He didn't say: I can't get the room. I believe he did not say: I can't get the room.

MS. CONVERTINO: Judge, if I may, I have the transcript here?

THE COURT: All right.

MS. CONVERTINO: So the direct quote was: "My cousin finally got the room for me. I guess you have to be older than 15 to get a room."

That is the word-for-word message.

Q So that's not a clear indication?

A It's not a clear indication, no.

Q It's not?

A No.

Q Okay.

A It could have been meant as -- First of all, you can't, even in Michigan, get a room until you're at least 18, and most hotels won't give you a room unless you're 21.

Q So the person is saying: "I can't get it. My cousin has to get the room."

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A He didn't say, I can't, though. At least I did not read that from the transcript.

MS. CONVERTINO: That's correct. He did not say; I cannot get a room. He said: "My cousin got the room for me. I guess you have to be older than 15 to get a room."

Q All right. Now as to this indication from the text that this person that the chatter was older.

Are there any studies, research projects that you could point to that says that we can definitively say if they do this, they fall in this range, and if they don't, then they're in this range?

A I mean there's nothing definitive about the way people --

Q Has it been studied?

A It's been studied in terms of the language used, but not necessarily who is using what language or how they are using language based on age, yes. But there's no definitive: If you text this way, you're in this age group versus another age group. It's not definitive.

Q Have you talked with Mr. Lakatos?

A No.

Q Do you know if he testified at trial or not?

A If he did?

Q Yes.

A No, I was not provided any trial transcripts.

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THE COURT: That's all I have.

You can step down, sir.

THE WITNESS: Okay. Thank you.

(At about 11:43 AM, witness stepped down)

MS. ROBINSON: Your Honor, I would ask that this witness remain under subpoena until this hearing is concluded. As the Court knows, Mr. Kortes is not present here today, but depending on how he testifies, I may have follow-up questions for this witness.

THE COURT: Okay. Sure, that's reasonable.

MS. ROBINSON: Thank you, Your Honor.

MS. CONVERTINO: Judge, I just would like to know, Dr. Sidelinger is not under subpoena, so if prosecution plans to subpoena Dr. Sidelinger, that's something that it should pursue.

MS. ROBINSON: I guess I was told that those were people that were brought here today. I believe that this witness needs to be produced at the remainder of the hearing as the defense's witness and they asked for the continuation, Your Honor. I believe that in order to appropriately cross-examine Dr. Sidelinger we need to have the opportunity to do the same with Mr. Kortes.

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MS. MARCUZ: Your Honor?

THE COURT: Yes.

MS. MARCUZ: If after Mr. Kortes testifies the prosecutor wants to recall Dr. Sidelinger, that's absolutely fine with me, we can do that. But he is in Oakland County, and I think that to bring him here to not know if you are going to need him or not would be a greater expense to the county, which is paying for him, so if we could take his testimony by Zoom or take his testimony, if necessary, if the prosecutor decides it is necessary later, instead of just bringing him here to wait, I think it would be more prudent.

MS. ROBINSON: With respect to this hearing, I have no objection to Zoom testimony, Your Honor.

THE COURT: Okay. Thank you.

THE WITNESS: Thank you.

MS. CONVERTINO: Judge, my co-counsel is calling Dr. Brian Cutler to let him know that the Court is ready for him to be called as our third and final witness for the day, unless there is something that Your Honor would like to proceed with before then.

THE COURT: How long is his testimony going to take?

MS. CONVERTINO: I will work with the

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Court's schedule, so is there an amount of time that this Court would like us to stay within?

THE COURT: Lunch time is noon.

MS. CONVERTINO: I expect that it would run more than 13 minutes. Would this Court prefer that we have a brief recess? Is there a way in which we could proceed with testimony after that time?

THE COURT: You don't have any idea how long his testimony is going to take?

MS. CONVERTINO: Your Honor, we expect that it probably would take the same amount of time that Dr. Sidelinger's testimony took.

Dr. Brian Cutler is -- We can spend less time with regard to his qualifications because Dr. Cutler is so experienced in his field and experienced with in regard to being qualified as an expert in courts, including courts in Michigan, so we can proceed with that area of the testimony much faster than we had to do with Dr. Sidelinger.

So, my co-counsel said within 30 or 40 minutes, if that's okay with the Court, if we can get his testimony.

THE COURT: All right.

We're going to take a ten-minute break. I'm going to eat some quick lunch. I have to be in

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District Court at one o'clock, so you're going to have from noon to one.

MS. CONVERTINO: Okay. Thank you so much, Judge. We appreciate that.

(At about 11:50 AM, break)

(At about 12:03 PM, court resumed)

THE COURT: All right. Defense can call their next witness.

MS. CONVERTINO: Thank you, Judge.

Our next witness is Dr. Brian L. Cutler. And we contacted him outside and Dr. Cutler said that he was in the waiting room. I don't know if Your Honor can see him in there.

COURT CLERK: He's there, Judge.

THE COURT: Okay.

MS. CONVERTINO: Thank you, Judge.

Dr. Cutler, can you see me and hear me right now?

DR. BRIAN L. CUTLER: Yes, I can.

MS. CONVERTINO: Okay. Thank you. Let me know if there's any point at which you can't.

My first question for you is --

THE COURT: Ma'am? Ma'am?

MS. CONVERTINO: Sorry, Judge?

THE COURT: Could I swear him in?

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MS. CONVERTINO: Oh, I'm so sorry. Yes, please.

THE COURT: Would you raise your right hand, please?

DR. BRIAN L. CUTLER: Yes, Your Honor.

BRIAN L. CUTLER, Ph.D.

Called by defense at about 12:04 PM, sworn by the Court, testified:

D I R E C T E X A M I N A T I O N

BY MS. CONVERTINO

Q Dr. Cutler, could you please state your name and occupation for the record?

A My name is Brian Cutler. I'm a professor and program director at Fielding Graduate University.

Q And, Dr. Cutler, with respect to your field of work, would you please state your qualifications and education and training for the Court?

A Yes. I have a Ph.D. in psychology from the University of Wisconsin at Madison. I've been employed -- I'm at my fourth university. I've been continuously employed by universities since 1987. I have devoted my career to teaching and research on various topics in forensic psychology.

Q Thank you. And have you been published in your field?

A I have.

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Q In peer reviewed journals?
A Yes, peer reviewed journals, books, and book chapters.
Q And these peer reviewed journals and books and book chapters relate to interrogations and confessions?
A Some of them do, yes.
Q Thank you. Have you testified as an expert in any courts in the State of Michigan?
A I have.
Q Have you testified as an expert in other state courts?
A I've testified in about 14 different state courts.
Q Have you testified as an expert in federal courts?
A I have.
Q And the research that you will be discussing today is widely accepted within the scientific community?
A Yes, it is.
Q And your professional opinions will be informed based on the social/psychological research that's relevant to interrogations and confessions?
A That's correct.

MS. CONVERTINO: Judge Springstead, I would like to move for Dr. Brian Cutler to be admitted as an expert in the field of psychology of interrogations and confessions.

MS. ROBINSON: No objection, Your Honor.

THE COURT: All right.

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THE COURT: With no objection, he'll be qualified as an expert witness in psychology, interrogations, and confessions.

MS. CONVERTINO: Okay. Thank you, Judge.

Q Dr. Cutler, let's begin by reviewing briefly the risk factors for false confessions. Are false confessions a thing?

A False confessions are indeed a thing. We know that they occur from various sources including known cases of wrongful conviction. We know that a portion of known cases of wrongful conviction have involved false confessions.

Q Thank you. And how might an innocent person end up giving a detailed and believable but false confession in a case?

A There's a process by which this occurs. It begins with what we call a classification error where an innocent individual becomes misclassified as a criminal suspect or a potentially guilty suspect.

It then -- The next error in the process is called a coercion error, and that is where an innocent suspect is subjected to an interrogation that is sufficiently persuasive that the innocent suspect falsely confesses to the crime under investigation.

And the third step is called a

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contamination error. And that's where an investigator either advertently or inadvertently conveys details associated with a crime to the innocent suspect, essentially educates the suspect about how the crime occurred so that the suspect can relate a detailed narrative confession.

Q Thank you. So I just want to ask a follow up on that last point, which I believe you called a contamination error. So, is this a fair summation that interrogators provide information, either advertently or inadvertently, about the crime, that that helps create a narrative that makes the suspect look more culpable, more criminally culpable?

A That is correct.

Q Have researchers identified different risk factors that are known to elicit false confessions?

A Yes, they have.

Q Can you give us some examples of those sorts of risk factors in ways that they appear in interrogations?

A Yes. Some of the risk factors are, one category is called personal risk factors, and that is characteristics of the individual that renders them more vulnerable to false confession. Those who are mute, developmental disabilities, mental illness, certain mental states, such as fatigue, stress, hunger, discomfort.

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And then there's another category called situational risk factors, and those risk factors are isolation from social support, sometimes prolonged interrogation, and the tactics that are used by the investigators who encourage a confession.

Q Could you delve into those sorts of tactics that you referenced?

A Yes. Interrogators are trained to use tactics to persuade suspects to confess. Researchers have developed various ways of classifying those tactics. In previous research we've identified about 36 different tactics that investigators may use. They can be lumped under two separate categories:

One is called maximization. Those maximization tactics put pressure on suspects to confess. They serve the purpose of convincing the suspect that they have no chance of convincing the investigator of their innocence.

And the other category is called minimization tactics. And those ease a suspect toward confession by offering the suspect rationalizations or excuses or otherwise minimize the gravity of the crime.

And so there's multiple tactics under this maximization category, and there's tactics under this minimization tactics.

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So those are what investigators are trained to use, and they are quite effective at getting guilty people to confess, and when they are used with innocent people some portion of them will falsely confess.

Q And why would an innocent person -- you had mentioned that they -- when these interrogations are used with an innocent person that they may falsely confess. Why wouldn't an innocent person simply resist the pressure to these interrogation tactics and convince the investigators that they are innocent?

A Well, some do. Some innocent suspects don't confess. Others begin by resisting pressure, but become convinced that they have no chance of convincing the investigators because that's part of the tactics that the investigators use is to convey that they are unmovable on this subject.

They may say things like; we're not here to determine whether you are innocent. We're here to determine who else was involved or why you did it or some other aspect of the crime. So, once the suspect becomes -- the innocent suspect becomes convinced that they can't change the investigator's mind, they shift their thinking from establishing their innocence to minimizing the damage or mitigating the damage. What will bring me the least punishment, and that may involve confessing to what

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appears to the innocent suspect to be a lesser, more excusable version of the crime.

Q Thank you. And next I'd like to move, Dr. Cutler, to the interrogation that occurred in this specific case with Mr. Lakatos. But before that, I just want to clarify, you cannot opine on whether Mr. Lakatos made a false confession in this case; right?

A That's correct.

Q But you can opine on whether you observed certain concerning factors; like the factors that you just described for the Court that were present in the interrogation and that are known in your field of research to elicit false confessions?

A Yes.

Q And you reviewed some information for this case, correct?

A That's correct.

Q What did you review?

A I reviewed the recorded interrogation of Mr. Lakatos, and a transcribed version of that interrogation. I reviewed the text messages that Mr. Lakatos exchanged with the -- with the detective. And I also reviewed the trial transcript from Mr. Lakatos's case.

Q Thank you. And did you prepare a report after reviewing all of those materials that you just listed?

A I did.

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MS. CONVERTINO: I would like, Judge Springstead, to move to admit Dr. Cutler's expert report. We've marked it as Defense Exhibit #3. And this, just for the Court's reference, this is the same expert report that we attached as an appendix to Mr. Lakatos's motion for new trial back in April.

THE COURT: Ms. Robinson?

MS. ROBINSON: No objection to the defendant's proposed exhibit #3, Your Honor. This, again, has already been provided to the Court, so it's a little bit of a moot point.

(At about 12:17 PM, Defense Exhibit #3 admitted)

Q Dr. Cutler, did you reach any opinions about the interrogation in this case?

A I did.

Q Did you observe any concerning factors in the interrogation?

A I observed situational risk factors that are known in the research to increase the risk of false confession of innocent suspects.

Q Thank you. And let's turn to the tactics that are used in the interrogation. What are rapport-based tactics?

A Rapport-based tactics are tactics that an investigator uses to attend to establish rapport with the suspect with

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the aim of getting the suspect to talk, to provide information to the investigator. It's generally understood that when there's a rapport people are more willing to talk.

Q And did you observe any of that happening here?

A Yes.

Q Why is that important that that happened here?

A Well, some of the rapport-based tactics are positive factors like offering a drink or something like that. In one case, sorry, in several instances there were rapport-based tactics that were problematic. The detective indicated that he was there to provide some level of help to Mr. Lakatos.

Q And would you mind explaining to the Court what an evidence-based tactic is?

A An evidence-based tactic is when the detective uses evidence in the case, it could be true evidence, false evidence, or what we call a bait or a bluff to put pressure on a suspect to confess.

Q And did you observe that taking place here, evidence-based tactics?

A There were evidence-based tactics used in the interrogation.

Q Would you mind explaining to the Court what those evidence-based tactics were and how often they were used?

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A May I consult my report?
Q Yes. Thank you. Dr. Cutler, if it's easier for you, so I'm looking at page 14 of your report --
A Yes.
Q -- and I can walk through -- So, let's walk through it together. So, you have listed several instances of evidence-based tactics used by the detectives in their interrogation of Mr. Lakatos. We have a message from Detective Wimmer: We've got everything on text message, he said. Is that an evidence-based tactic?
A Yes.
Q There's also another quote from Detective Wimmer: "We know what your intentions were."

Is that an evidence-based tactic?
A Yes.
Q We see a quote from Detective Kolk: "Several times, we know that the person that you're communicating with told you how old they were."

Is that an evidence-based tactic?
A Yes.
Q Also from Detective Kolk: "We know that they told you that they were almost going to be 16."

Is that an evidence-based tactic?
A Yes.
Q And again Detective Kolk: "So we know that. Okay?"

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Is that an evidence-based tactic?

A Yes.

Q And two more quotes from Detective Kolk:

"We are going to go through it all."

"We are going to have all of the documentation."

Are those examples of evidence-based tactics?

A They are.

Q And what is the impact of those evidence-based tactics being present in the interrogation in this case?

A Evidence-based tactics in general put pressure on the suspect to confess. It serves a purpose of confessing, of convincing the suspect that he has no chance of establishing his innocence with this investigator.

If false evidence is used, then false evidence is a specific risk factor for false confession.

Q Thank you. And turning next to the use of baiting questions, which is similarly on page 14, and then goes on to page 15 of your expert report. Did you -- Do you mind explaining to the Court what baiting questions are and whether you observed that taking place here?

A Yes. Baiting or sometimes called bluffing if it's misleading is also an evidence-based tactic. It's suggesting that there will be evidence forthcoming or

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there may be evidence forthcoming that will be conculpatory [sic].

Q Thank you. And before we move on from evidence-based tactics, I have one more followup for you, Dr. Cutler.

So you had mentioned that false evidence, the presentation of false evidence to a suspect is a form of evidence-based tactic, right?

A Yes.

Q And did you see from the review of the materials that were provided to you in this case, including the full interrogation of Mr. Lakatos by Detective Kolk and Detective Wimmer, did you observe those detectives presenting to Mr. Lakatos false evidence and using that false evidence as an evidence-based tactic to elicit a confession?

A Well, with some of the evidence that the detectives claimed I wouldn't know, but there were a couple things that I would point out.

One was that, as I said in paragraph 43, subparagraph C: "We have several times we know that the person you're communicating with told you how old they were."

When I reviewed the text messages, I found that -- there weren't several, there was one indication, and the -- I'm not sure how to refer to him, but the

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detective did not say specifically how old he was. He made a statement from which age could be inferred, but he didn't say; I'm 15 or I'm almost 16, unless it was on a text message that I missed, but that's what I would point to.

Q You are correct, Dr. Cutler. So the message specifically, if I could read it again for the Court is, quote:

"My cousin finally got the room for me. I guess you have to be --"

MS. ROBINSON: Your Honor, counsel is testifying at this point; not asking questions. She said; you're correct, Doctor. She's now -- This is testimony.

MS. CONVERTINO: Judge, the reference to Dr. Cutler being correct is that he thought for a moment that there might have been additional text messages that he was not provided, and I'm merely reiterating that Dr. Cutler did have a full and comprehensive review of the evidence in this case.

With regard to the actual message that was sent, it's necessary to refer to the exact phrasing of the message that was sent in this case. It speaks directly to what Dr. Cutler is referencing in his testimony about the presentation of false evidence as an

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evidence-based tactic and how that presentation may elicit a false confession on the part of the suspect who is being interrogated.

THE COURT: I'm going to sustain the objection.

MS. CONVERTINO: May I proceed, Your Honor?

THE COURT: Yes.

MS. CONVERTINO: Thank you.

Q Dr. Cutler, do you remember the precise message that was sent to Mr. Lakatos, the one -- you said that there was sort of a reference to age that was not directed in this case. Do you remember what that reference was?

A I don't remember by quote, but the gist of it was, the detective texted that my cousin rented the hotel room for me. Apparently, they don't rent hotel rooms to people under 16, or something to that effect.

Q Would it be helpful if I recalled your memory as to the exact quote of the message that was sent so that you can opine further on whether this was indeed a presentation of false evidence as an evidence-based tactic?

A It would help to have my memory refreshed.

MS. CONVERTINO: Your Honor, may I?

THE COURT: Yes.

MS. CONVERTINO: Thank you.

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Q Dr. Cutler, the exact quote was, quote:

"My cousin finally got the room for me. I guess you have to be older than 15 to get a room."

Now, hearing that and recalling your memory as to the exact language of that message, does that match these evidence-based tactics in paragraphs A through G or paragraph 43, rather, but subsection A through G that you have testified constitute evidence-based tactics presented to Mr. Lakatos?

Again, I'll reiterate the question.

Does the exact quote, that I just read to recall your memory, match the evidence that the detectives told Mr. Lakatos during his interrogation that the decoy/chatter had said to him with regard to age?

A It does not match precisely.

Q So, in your professional opinion, would you then conclude that the officers here did, while interrogating Mr. Lakatos, did present false evidence which is known to elicit false confessions?

A I would certainly call it misleading evidence. And it does fall under the category of tactics that would increase the risk of false confession.

Q Thank you. Next --

THE COURT: Let me jump in here real quick.

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THE COURT: What is the misleading statement that you're relying on for that opinion?

THE WITNESS: Well, there are the statements in the transcript were, we have several times, we know that the person you're communicating with told you how old they were. We know that they told you that they were almost going to be 16.

THE COURT: Okay.

Thank you.

Q Dr. Cutler, I'd like to move next to minimization tactics. What types of -- Well, first of all I'll ask, what are minimization tactics? I know that you briefly spoke on it already today, but if you could just refresh our memories?

A Yes. Minimization tactics, it's a category of tactics that includes things like offering rationalizations or excuses for having committed the crime that give the appearance of excusing the crime. It may also include more direct statements about minimization suggesting that the crime is not as important as it actually is. They are -- Interrogators are trained that use of minimization tactics can lead a suspect to conclude on its own that he will be treated more leniently for confessing than for maintaining his innocence. Investigators are trained that they cannot explicitly promise leniency in exchange

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for a confession, but they can say things that lead a suspect to conclude that on their own. I refer to it as an implicit promise of leniency, and the psychological research shows that that's the effect that minimization has. That minimization leads an innocent suspect to conclude that they will be treated more leniently by confessing and increases the risk of false confession.

Q Thank you. And as part of a minimization tactic, would that include officers' attempts to shame or embarrass a suspect?

A No. I would put that under a different category of tactics.

Q What category would you --

A I have a category that I refer to as social and psychological manipulation. That would cover shaming and embarrassing the suspect.

Q And do we see that in this case?

A We see that in this case as well. We see both minimization and social and psychological manipulation.

Q Thank you. So I'd like to turn next to pages 16 and 17 of your expert report, Dr. Cutler. You there walk into some of the ways in which minimization tactics were used in this case. And I'm wondering if you could just sort of walk through that for us here in the courtroom.

A Yes. On page 16?

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Q Yes.

A Paragraph 48. I listed several examples of minimization. One, Detective Kolk said: "You seem like this might have been a mistake." Another is: "I know it's kind of a question, you are kind of avoiding there, but if you could be honest with us about it and just help us out to show us that you are cooperating and show us that this was a mistake and that you were working with us to fix it."

Another example is: "Have you been drinking? Have you done any drugs or anything like that? Did you take anything?"

A fourth example: "This is to prove it's the one time you did this. If this is a one time or this happened or you had a lapse of judgment."

Another example, same theme, this was the one time when you had a lapse of judgment.

And the last example was under this category is: "This isn't like an ongoing thing you've been do doing day in, day out, day after day, and there's no child pornography on his phone, this is the only stuff we found on there."

Q Thank you. And for the sake of time, I want to -- I know that there are additional examples of minimization tactics that you lay out in your report, but I would like

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to touch on the other area that you just referenced for tactics, which was the social and psychological manipulation tactics, which is at the bottom of page 17, and this was the category that you testified just now that you would consider tactics of trying to embarrass or shame a suspect or being enveloped within this type of interrogation tactic; is that right?

A Yes.

Q And did you see by -- through your review of the evidence in this case, the presence of the tactic of trying to shame and embarrass Mr. Lakatos?

A Yes, I did.

Q And that is on the bottom of page 18 and all throughout page 19 and page 20 of your expert report, all of the examples of that happening here?

A Yes, that's correct.

Q And what sort of impact does that have where we see the officers continually asking Mr. Lakatos to describe in detail specific sex acts? What sort of impact can that have on a person while they are being interrogated?

A Right. When we shame or embarrass people, it leads people to increase their compliance to try to internally or externally restore their reputation, their feelings of self-worth, and they typically do that through compliance.

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Q Thank you. And would you mind reminding us here in the courtroom what confession contamination is?

A Confession contamination is when the investigator advertently or inadvertently conveys details of the crime to the suspect, and the suspect learns these details, incorporates them, and is able to make a more detailed and compelling confession.

Contamination also can involve the use of apologies and expressions of remorse such as when the investigator specifically asks for an apology, the gist that a suspect apologize or express remorse.

Q And does that include requests by detectives that the suspect write an apology letter?

A Yes.

Q Did you observe any contamination in the interrogation of Mr. Lakatos?

A I did.

Q Would you mind explaining that for the Court what specifically caught your attention as evidence of contamination?

A Well, to begin with, asking for an apology letter is in itself a form of contamination. A statement could have been taken in a form of a narrative confession. But asking or inviting or encouraging a suspect to write an apology letter is the same form of contamination.

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Moreover, the detective suggested some content that should be included in the letter, and upon reading the letter, suggested additional content that should be included, and including expressions of remorse.

Q Thank you. I'm looking now at page 22 of your expert report, just for everybody here in the courtroom to follow along. So, when you talked about contamination, Dr. Cutler, you said that this can be in the form of eliciting an apology or asking the suspect to give an apology, and it also can be in the form of feeding information to the suspect, even if that's false evidence that's being fed to the suspect? Is that right?

A Yes.

Q And on paragraph or in paragraph, rather, 58 on page 22, we see a statement by Mr. Lakatos. Do you mind reading that aloud for the Court?

A 58?

Q Yes.

A Mr. Lakatos's statement: I guess he did say he was under 16 or about to be 16, may be an admission; however, it is not a confession. The admission is a stage and a process that leads to a confession, which is a narrative with unique and culpatory [sic] details that can be corroborated. And here I cited, invalid all trainers of interrogation. The detectives continued interrogating

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Mr. Lakatos so that he provided the details which were memorialized in the recorded interrogation, and in Mr. Lakatos's written statement, the apology letter.

Q Thank you. So, now going back to the apology letter in paragraph 60, and I won't ask you to go through each of these points that you make, but I just wanted to highlight for the Court this is sort of or this is exactly what you were getting at before this question about the specific ways in which the apology letter constituted a contamination of the confession given in this case? Is that right?

A Yes.

MS. ROBINSON: Your Honor, I'm going to object again. That's more of counsel testifying and leading and then just saying; here's the answer, isn't that right?

THE COURT: Sustained.

MS. CONVERTINO: Okay.

Q Dr. Cutler, is everything that I just pointed to already information that you testified to today in paragraph 60 subsections A through C?

A I believe so.

Q Thank you.

Okay. Dr. Cutler, I want to ask you next about this interrogation because we know you had

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mentioned earlier the length of time of an interrogation can be something that, one of many factors, to look at.

Did you consider this to be a high-pressured and intense interrogation?

A I did consider it to be a high-pressured and intense interrogation. Certainly not an overly-long interrogation.

Q And in your professional opinion, does the intensity of the interrogation, can that sort of counter the length of it, if you will?

A (No response)

Q I can rephrase that question if that's difficult to understand.

A Well, length of the interrogation is one factor that is sometimes important, but it's also the intensity as measured by the specific tactics used is another factor that I consider important as well.

Q And is it possible that a suspect would falsely confess under these conditions that you saw in Mr. Lakatos's interrogation?

A It is possible.

Q And finally, could you summarize for us what opinions you formed in this case?

A The opinions I formed are that, in summary, Mr. Lakatos was subjected to a relatively brief but intense

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interrogation that included tactics that are known to be associated with increased risk of false confession. And that the confession offered by Mr. Lakatos was in some ways contaminated by the investigators who took the confession.

Q Thank you.

MS. CONVERTINO: No further questions for Dr. Cutler, Judge Springstead.

THE COURT: Thank you.

Ms. Robinson?

MS. ROBINSON: Thank you, Your Honor.

C R O S S-E X A M I N A T I O N

BY MS. ROBINSON:

Q Doctor, is it possible that a suspect could give a true confession under these circumstances?

A Yes.

Q Okay. You said that there's an increased risk of a false confession based on these circumstances. How much of an increase?

A Good question. I'm not able to quantify it. The research does not provide that level of detail.

Q So you have no idea what, how much greater the chances are?

A I'm unable to quantify it.

Q All right. Thank you.

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You also said that these factors we know you said can result in some portion of confessions being false. What portion?

A I'm not able to quantify that either.

Q Okay. And you said that there's studies on wrongful convictions, some of them that are due to false confessions. How do you know they are false confessions?

A Well, for example, the national registry of exonerations housed at the University of Michigan maintains a database of about 3,500 wrongful convictions that occurred since 1989. About 600 of those are DNA-based exonerations, so DNA evidence was used to rule out the person convicted of the crime or having committed the crime, so that's pretty strong evidence. And of those 600 cases about 140 of them, about 24 percent, involved false confessions, so the innocent person exonerated by DNA evidence had confessed to the crime.

Q So, that's 140. Are there -- Are you aware of any other statistical support in other areas?

MS. CONVERTINO: Objection, Your Honor. That is a question that was asked and answered. The first question was whether there is statistical support for the claim that false confessions happened, and that was answered by Dr. Cutler with a specific statistic backed in research from an accredited university here in

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Michigan.

THE COURT: What was your question again?

MS. ROBINSON: He said that there are 140 at the University of Michigan in that area. Is he aware of any other, I guess, holding of these cases, and if they have statistics on whether or not what things were false confessions.

THE COURT: I'll allow it.

A So, in the University of Michigan's exoneration database I mentioned there's about 3,500 cases and 600 which were DNA-based exonerations. The others were exonerations, and in the whole database about 12 percent of those cases were involved false confessions.

From the broader perspective there are studies of wrongful conviction dating back to the 1930s, and about every ten years there would be another collection of wrongful conviction cases where mistaken, excuse me, false confessions was cited as one of the causes.

The Innocence Project in New York also maintains a database where they estimate that around, I think it's 25 or 33 percent of their DNA-based exonerations include false confessions.

Q Is there any research or any numbers on false confessions that don't involve DNA?

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A Yes. In the national registry database I mentioned about 600 of the about 3,500 cases involved DNA, so that leaves about 2,900 that did not involve DNA.

Q And all of them were established to be false confessions?

A No. All of those were established to be wrongful conviction cases, and a portion of those involved false confession.

Q Okay. Without DNA, how do you establish that the confession was false?

A Well, they do it in a number of ways, and in some cases it's established that the crime never occurred yet somebody confessed to it. And in other cases, they are able to establish that the suspect had an ironclad alibi and could not have committed the crime, or another person had -- it was established that another person had committed the crime, so there's various ways that innocence can be established.

Q I guess I didn't ask about innocence. I asked specifically about false confessions.

A Oh, apologies. So, when there's a known wrongful conviction case, a conviction of the innocence case, and the innocent defendant had confessed, that's considered a false confession.

Q Okay. So you're saying anytime a conviction is overturned and somebody confessed that's considered a

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false confession?

A No, I wouldn't say that. I believe the registry and the Innocence Project are pretty clear they are interested in actual innocence, not cases in which an individual was acquitted because their rights were violated.

Q Would you consider these risk factors for confessions a violation of rights?

A They --

MS. CONVERTINO: Objection, Your Honor.

Dr. Cutler, I'm sorry.

THE COURT: Hang on.

MS. CONVERTINO: Your Honor, I just want to object to that question. That question, in a sense, is asking Dr. Cutler to make an opinion or render an opinion based on what lawyers do to determine whether it is a deprivation of Mr. Lakatos's constitutional rights to have risk factors present in an interrogation that are known to elicit false confessions is simply outside the scope of what a person with Dr. Cutler's expertise should be actually opined on.

MS. ROBINSON: Your Honor, he just said that these programs are interested in innocence, not in a violation of rights. I think I have the opportunity to or I should be allowed the opportunity to ask him what that means to him.

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THE COURT: Overruled.

You can answer the question.

THE WITNESS: Can I have the question again, please?

Q Yes, sir. Would you consider these risk factors that you spoke about a violation of rights?

A I would not equate a risk factor with a violation of rights. It is certainly the case that under certain circumstances that interrogation tactics can violate a suspect's rights. That's my understandings. I would not say that every time somebody is interrogated their rights are violated, but it is possible to violate a suspect's rights with the use of interrogation tactics.

Q Now, you testified that rapport building techniques result in the suspect being more willing to talk. Is that correct?

A Yes, that's the idea behind establishing rapport during an interrogation.

Q But you didn't say more willing to falsely confess; just to talk, correct?

A That's correct.

Q All right. And you said that evidence-based tactics put pressure on the suspect to confess, correct?

A Yes.

Q But you did not say put pressure on them to falsely

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confess? Would you agree it's just confess in general?

A Yes, it would be confess in general. If it's a guilty suspect it would put pressure on a guilty suspect to confess. If he's an innocent suspect it puts pressure on an innocent suspect to falsely confess.

Q Now you said that minimization leads innocent suspects to believe that it's better for them to confess. Is that specific to innocent suspects or would that be true of all suspects, guilty and innocent?

A It is believed to have a similar effect on both innocent and guilty suspects.

Q And you said that shame or embarrassment leads to increased compliance. Is that for guilty suspects as well or specifically innocent suspects?

A I would think it would apply to both.

MS. ROBINSON: Nothing further, Your Honor.

MS. CONVERTINO: Judge, if I may, a brief followup?

R E D I R E C T E X A M I N A T I O N

BY MS. CONVERTINO:

Q Dr. Cutler, with regard to the prosecution's questions about whether guilty suspects and innocent suspects are similarly impacted by these interrogation tactics that are known to elicit false confessions while the person is

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innocent; are officers trained to interrogate suspects in a way that avoids the risk of eliciting false confessions from innocent suspects?

A Yes. Modern training of interrogators usually includes modules of false confessions, their causes, and how to avoid them.

Q And so it's possible for officers to interrogate people in a way that minimizes or decreases the risk of eliciting a false confession from an innocent person? Is that right?

A Yes.

Q And so the presence of the interrogation tactics here that similarly impact innocent suspects and elicit false confessions is something that could have been avoided, in theory?

A Yes.

Q Thank you.

MS. CONVERTINO: No further questions.

THE COURT: Ms. Robinson?

MS. ROBINSON: Very briefly, Your Honor.

R E C R O S S-E X A M I N A T I O N

BY MS. ROBINSON:

Q What sort of techniques encourage, I guess, confessions that are true but would not encourage a false confession?

A There are modern interrogation techniques being developed

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in Europe, they are being trained in Canada, they are being trained in the United States, also, that are non-accusatory in nature.

For example, the PEACE technique in England is a non-accusatory interrogation technique. It's now being trained by some of the leading trainers of interrogation out of Chicago, and the research on this technique shows that it reduces the risk of false confession without reducing the likelihood of a true confession. In other words, you get as many if not more true confessions than accusatory techniques, but they reduce the risk of false confession.

Q Do they have numbers by how much it reduces it?

A There is what was called a meta-analysis comparing these techniques, but I don't know the numbers off the top of my head.

Q What techniques did they use to establish whether something was a false or a true confession when they did those studies?

A In the studies that are able to establish whether confessions are true or false are typically laboratory studies done in psychology laboratories where participants are usually students at the university, and they participate in a task, and they are accused of transgressing in some minor, relatively minor way,

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something that would be approved by our university research ethics committees. So under these conditions, we know with certainty whether the participants confessions are true or false. It's very difficult to know that in studies of actual cases, so those studies are typically laboratory studies.

Q Okay. So you would agree that as applied to the real world, people actually suspected of crimes and accused of crimes, there is no research on to the actual reduction that those techniques would make to false confessions?

A I'm not sure I understand the question. May I have it back?

Q Yes, sir. You testified that these new techniques have reduced false confessions without reducing true confessions, for lack of a better term? Correct?

A Yes.

Q Would you agree that there has been no studied application of that to real-world scenarios outside the laboratory?

A No, I wouldn't agree with that. I believe there has been research done in the United Kingdom, some of the research done in the United States. I'm just not knowledgeable about all of it, so I couldn't say with any certainty that there has been no research on actual cases.

Q Okay. Are you familiar with any of the research in the

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real world outside the laboratory?

A Yes.

Q Okay. In the studies that you're familiar with, how did they determine whether something was a false or a true confession?

A So, most of that research focuses on known wrongful conviction and known false confession cases. There's archival research that's done. There's -- Well, I think it's mostly archival research, the likes of which I explained earlier in the databases of the national registry of exoneration and in the wrongful conviction more generally.

Q So, how do they do archival research on these newly developed best practice interview techniques that we're talking about?

A I don't believe that the research on the newly developed techniques is archival, but I'm not familiar with it enough to speak authoritatively about it. I didn't prepare myself to testify about research on the PEACE technique.

Q Okay. I'm sorry, maybe I didn't ask clearly before.

On the PEACE technique, are you aware of any studies that have been done outside of the laboratory?

A Yes.

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Q What, in those studies, how do they determine whether something was a false or a true confession?

A I don't know if they did. If I may, I'm aware of research that's been done in Great Britain. I am not knowledgeable about the details of that research.

Q Okay. I guess maybe I don't study what you do.

How would you determine a reduction in false confessions without determining whether something was a false or a true confession?

A You would absolutely have to be able to determine whether a confession was a true or a false confession in order to determine that a technique led to a reduction in false confession.

Q Okay. Thank you.

MS. ROBINSON: Nothing further, Your Honor.

E X A M I N A T I O N

BY THE COURT:

Q Of the 140 false confession reports out of the University of Michigan database, do they break those down into different factors that appear most often?

A There's a section of the web page that has dynamic graphs, and what one can divide those cases in some other ways, not by interrogation tactics or risk factors, but by other evidence in the case, such as whether there was

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mistaken identification or prosecutorial misconduct. I don't -- I don't know for sure, but I don't think they talk -- they have information on the specific interrogation tactics.

Q So just for example, they don't track that you're aware of in 50 percent of the 140 cases there was more than one interrogation that took place, or, for example, in whatever percentage of those false confessions the interrogation lasted longer than this period of time? Do they ever track it like that?

A Not that I have seen. I haven't made that inquiry to the organization, and I have not seen it in any of their reports.

Q All right. Thank you.

THE COURT: So, it's 1:05, I have to get to my other court.

If we need to continue with this witness we can do it on our next date. If we're all done, that's okay, too.

MS. CONVERTINO: Thank you, Judge.

Yes, we have nothing further.

And we can be in touch with the Court at a later time to determine the next date of the hearing at which we'll call trial counsel, if that works for Your Honor.

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THE COURT: Great. Thanks.

MS. CONVERTINO: Thank you, Your Honor.

MS. MARCUZ: Thank you, Your Honor.

MS. ROBINSON: Thank you, Your Honor.

MS. CONVERTINO: Thank you, Dr. Cutler.

(Whereupon proceedings concluded at about 1:05 PM)

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STATE OF MICHIGAN

SS

COUNTY OF NEWAYGO

I, Barbara Lynn Wiles, hereby certify that I am a Court Reporter for the 27th Judicial Circuit of Michigan; that I reported the proceedings had in the aforementioned cause, and that the preceding pages represent a true and correct transcript of the proceedings had in said cause, on said date.

Barbara Lynn Wiles – CSR #4288

My commission expires: 02/21/2025

14 October 2024

STATE OF MICHIGAN

27TH CIRCUIT COURT FOR THE COUNTY OF NEWAYGO

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STATE APPELLATE
DEFENDER OFFICE

STATE OF MICHIGAN,

Plaintiff,

-v-

EVAN ANDREW-BARTELL LAKATOS,

Defendant.

Case No. 21-12849-FH

Hon. Robert D. Springstead

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OPINION AND ORDER

I. STATEMENT OF FACTS

Mr. Lakatos was convicted at trial of using a computer to commit a crime with a maximum penalty of 4 years or more but less than 10 years in violation of MCL 750.145d(2)(d) and accosting a minor for immoral purposes in violation of MCL 750.145a. Mr. Lakatos was arrested on August 23, 2021, and charges were authorized on August 26, 2021. A preliminary examination was held on September 16, 2021. The case was bound over as charged. A trial was held on December 13 and 14, 2022.

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The charges arose when Mr. Lakatos started a conversation with "Taylor Williams", a task force member. Taylor Willaims was on Grindr, a dating site for gay men. Taylor Williams is a fictitious person. The Taylor Williams Grindr profile was being managed by members of a multi-jurisdictional group of law enforcement officers. The task force was operating out of a hotel in Fremont, Michigan. On August 23, 2021, the task force was providing the opportunity for members of the public to engage in sexual relations with someone the member of the public believed was under the age of 16. The task force posted a shirtless picture of a male that was very muscular. The profile did not include a picture of the decoy's face. Taylor and Mr. Lakatos exchanged messages on Gindr then switched to text messages outside the Grindr platform. The messages included Taylor saying that he was getting a hotel room. Mr. Lakatos replied, "Nice!" and "it would be fun to hangout." Taylor also sent a text saying that he hoped Mr. Lakatos liked "younger boys." Mr. Lakatos replied that he did like younger boys. Taylor replied that he was excited and asked for more pictures. Mr. Lakatos sent more pictures. After the pictures were received, Taylor said he liked mature men. Mr. Lakatos replied, "I like younger." Taylor then made the statement putting Mr. Lakatos on notice that he was chatting with someone under 16 years old. Taylor followed up on his prior comment that he was getting a hotel room with, "my cousin finally got the room for me I guess you have to be older than 15 to get a room." That statement was followed by emojis of laughing or smiling. Mr. Lakatos received that text and replied, "how rude," followed by emojis.

The chat continued with Taylor asking Mr. Lakatos what he wanted to do stating, "I want the dominant male to tell me what he wants." Mr. Lakatos replied, "love to get head and massages" and "play with your cute bootie." Taylor texted "Tell me more daddy" to which Mr. Lakatos replied, "earn it by showing me more." Taylor sent another picture and Mr. Lakatos

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replied, "Dammnn I want to feel up those muscles and give you a massage." Taylor says, "just a massage tho?" Mr. Lakatos replied, "that leads into making out and sucking your cock and rimming that tight hole."

Arrangements were then made for Mr. Lakatos to travel from Big Rapids, Michigan to Fremont to meet Taylor at the hotel. Taylor also asked Mr. Lakatos to pick up black cherry White Claw which could be another indication that Taylor was young, but not necessarily under 16. Mr. Lakatos went to the hotel with the White Claw and was arrested.

Mr. Lakatos was advised of his Miranda rights and agreed to an interview with Detective Kolk from the Fremont Police Department and Detective Sergeant Wimmer from the Newaygo County Sheriff's office. The interview from start to finish was approximately 39 minutes. The interview portion was approximately 20 minutes and writing the apology letter made up the balance of the time. After Mr. Lakatos waived his right to an attorney, he was informed "we've got everything on text message. That's fine. We know what your intentions were, so —." Mr. Lakatos verified he was the only person using his phone after 5:00 p.m., and that he drove to the Harrington Inn to meet someone he met on a dating app. He acknowledged texting about 'making out' but originally said he did not remember any other specifics. He was asked if they talked about having sex and he acknowledged that there was talk of sex. Mr. Lakatos denied knowing how old Taylor was and said that "Taylor's" age was not listed on Grindr. Mr. Lakatos remembered that Taylor said he was younger. Mr. Lakatos thought younger was 18, 19, maybe 20. Mr. Lakatos said he did not ask Taylor's age. Mr. Lakatos discussed underage people on Grindr and claimed he reported them. He also said minors on Grindr would tell you they are minors. Detective Kolk then tells Mr. Lakatos that he knows Taylor told Mr. Lakatos that he was "almost going to be 16." Detective Kolk asked Mr. Lakatos, to be honest with him, to show

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that he was cooperating, and that this was a mistake. Mr. Lakatos then repeated that Taylor said he was "younger." When confronted with the fact that the police had the "documentation" Mr. Lakatos said, "I guess, he did say, he was under 16" or "about to be 16." Mr. Lakatos was asked what his thought was at the time, and he responded, "I would just see where it went. There was no - - intentions." Detective Kolk says "raping or anything?" and Mr. Lakatos said, "showed up I was nervous the whole fuckin' time, and I should have known that I shouldn't have done that." He further stated, "and I was like, 'well, I'll show up, and if it's not, I'll turn around.'" Detective Kolk asked, "after he told you, he was about to be 16, you were just going to see where it went and then you guys talked about what you wanted to do by making out and then you wanted to have intercourse if it led to that?" To which Mr. Lakatos replied, "I'd have to go and see exactly what I said." Then they discussed going through the texts so Mr. Lakatos could see what he said. They went through the texts and Detective Kolk clarified what Mr. Lakatos meant when he said, "get head" and "rimming." This question did not come across as trying to embarrass Mr. Lakatos, rather to clarify the elements of the crime.

Detective Kolk then asked Mr. Lakatos to write an apology letter and suggested that it say it was wrong to communicate with someone under 16 and talk about the things they talked about and ask for forgiveness. This is a common rouse to get a suspect to write a confession. Detective Kolk reviewed the "apology letter" and asked for it to include more information relevant to the criminal charges like the talk was about sexual intercourse, and asked Mr. Lakatos to use more specific terms. At the conclusion Mr. Lakatos stated he did not feel forced to write the apology and he wrote what he saw in the texts he wrote.

Mr. Lakatos retained attorney Jeffrey Kortes who represented Mr. Lakatos through trial and sentencing. Mr. Kortes has been practicing law for 22 years and specifically criminal defense his

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entire career. Mr. Kortes testified at a *Ginther* hearing on November 13, 2024. Mr. Lakatos waived attorney-client privilege. Mr. Kortes testified his defense strategy was to show that there was miscommunication between Mr. Lakatos and the police and that Mr. Lakatos was not soliciting a minor because Mr. Lakatos did not actually believe he was talking to a minor. Mr. Kortes reviewed the police reports, interrogation video, talked with Mr. Lakatos and investigated other cases that resulted from the same sting operation. Mr. Kortes reviewed the interrogation video several times. Mr. Kortes testified he attacked the "apology letter" by arguing that Mr. Lakatos was just parroting back what the police told him to write. The content of the text messages was attacked at trial arguing that, and Mr. Lakatos testified that, Mr. Lakatos thought the statement about being under 16 was a joke because of the emojis and by Mr. Lakatos testifying that he had been "catfished" before. Catfishing is when someone portrays themselves to be different than who or what they really are online. Mr. Kortes testified he thought the police could have been more explicit in communicating to Mr. Lakatos that the decoy was claiming to be under 16.

Mr. Kortes did not consult with an expert in false confessions. He thought that through cross examination and pointing out in closing that Mr. Lakatos just repeated what the police told him the point was made that the confession was not Mr. Lakatos's own statement. Rather, the police influenced Mr. Lakatos to say what the police wanted him to. To address the issue of whether Mr. Lakatos's statement was coerced, Mr. Kortes's strategy was to have the jury watch the interrogation and they would see the police were telling Mr. Lakatos what to say. Mr. Kortes did not consider Mr. Lakatos's statement that Taylor said he was under 16 a false confession. His theory was that there was miscommunication between Taylor and Mr. Lakatos. Mr. Kortes's opinion was that the police did not have Mr. Lakatos say something that was false. Mr. Lakatos

told Mr. Kortes that he was aware of the statement made by Taylor that you have to be over 15 to rent a hotel room, but he did not believe that Taylor was less than 16.

Mr. Kortes was questioned about the terminology Mr. Lakatos and Taylor used in the chats. He did not interpret the use of "daddy" as being a reference to age but rather as flirtatious. He did not consult with any experts on communications issues. Mr. Kortes's opinion was that most people now communicate online and are familiar with online communications.

Mr. Kortes considered a defense of entrapment but did not raise it after looking at the facts of this case and talking to other attorneys. He thought it would not be successful because Mr. Lakatos did not question the statement by Taylor that suggested he was under 16. If Mr. Lakatos had questioned that, and the police continued to push Mr. Lakatos to do a criminal act, then the police could have been elevating the crime. He determined that an entrapment motion would not have been successful and decided to focus on the aforementioned trial strategy.

At the post-conviction evidentiary hearing, this Court heard the testimony of Brian L. Cutler, Ph.D. Dr. Cutler is an expert in false confessions and police interrogation tactics. His testimony followed the report he authored in this case and the report was admitted, so this Court is not going to recite his testimony in much detail. In short, the testimony was that false confessions are real and there are documented cases of false confession using DNA. He also testified as to the different categories of false confessions, and how in his opinion the confession of Mr. Lakatos was contaminated by the officers' suggestions. He also identified police interrogation tactics used by Detective Sergeant Wimmer and Detective Kolk. He further stated that those tactics had been used in cases where a confession was proven false. He acknowledged that those tactics also result in true confessions.

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Mr. Lakatos also presented the testimony of Robert Sidelinger, Ph.D. Dr. Sidelinger is an expert in interpersonal communication. He reviewed the texts and photographs admitted at trial. His opinion was that the exchanges were consistent with two consenting adult males. He offered his observations of gendered expressions, and sexual discourses within the gay community. He also prepared a report that was admitted at the evidentiary hearing and his testimony was consistent with his report. In short, his testimony was that the terms "daddy" and "boy" do not reflect the age of the people but rather the role they play in the personal interaction. Those being dominant and submissive. His opinion was that the tone and content of the text was consistent with adult males.

II. STANDARD OF REVIEW

"No . . . new trial shall be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice." Mich. Comp. Laws § 769.26 (1927). MCR 6.431(B) also addresses a motion for a new trial. "On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice." *People v. Terrell*, 289 Mich. App. 553, 559 (2010). "MCR 6.431(B) allows the trial court to order a new trial in a criminal case only when a motion has been brought by the defendant." *People v. Torres*, 222 Mich. App. 411, 415 (1997). "The court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record." MCR 6.431(B). "A trial court abuses its discretion if it

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grants a new trial without providing a legally recognized basis for relief or if its basis for relief rests on an unreasonable interpretation of the record." *People v. Loew*, 2024 Mich. Lexis 1286.

The Michigan and United States Constitution's guarantee criminal defendants the right to the effective assistance of counsel. U.S. Const. amend. VI; Mich. Const. 1963, art. I, § 20; *People v. LeBlanc*, 465 Mich. 575, 578 (2002). "In order to preserve the issue of effective assistance of counsel for appellate review, the defendant should make a motion in the trial court for a new trial or for an evidentiary [*Ginther*] hearing." *People v. Sabin*, 242 Mich. App. 656, 658 (2000).

"A claim of ineffective assistance of counsel presents a mixed question of fact and constitutional law," and "[t]he trial court's factual findings are reviewed for clear error, while the ultimate constitutional issue is reviewed de novo." *People v. Traver (On Remand)*, 328 Mich. App. 418, 422 (2019).

"To demonstrate ineffective assistance, a defendant must show that his attorney's performance fell below an objective standard of reasonableness." *People v. Grant (William)*, 470 Mich. 477, 485 (2004). "The defendant must show also that this performance so prejudiced him that he was deprived of a fair trial." *Id.* at 486. "To establish prejudice, he must show a reasonable probability that the outcome would have been different but for counsel's errors." *Id.* See *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984); *People v. Pickens*, 446 Mich. 298, 302-303 (1994). "A defendant's inability to satisfy the plain-error standard in connection with a specific trial court error does not necessarily mean that he or she cannot meet the ineffective-assistance standard regarding counsel's alleged deficient performance relating to that same error." *People v. Randolph*, 502 Mich. 1, 22 (2018). "Courts must independently analyze each claim, even if the subject of a defendant's claim relates to the same error." *Id.* at 22.

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"Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy." *People v. Davis (Marcus) (On Rehearing)*, 250 Mich. App. 357, 368 (2002). "Trial counsel cannot be faulted for failing to raise an objection or motion that would have been futile," *People v. Fike*, 228 Mich. App. 178, 182 (1998), and "trial counsel is not required to advocate a meritless position." *People v. Snider*, 239 Mich. App. 393, 425 (2000). The "failure to conduct a reasonable investigation may constitute ineffective assistance of counsel" when counsel fails "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary," and that failure "undermines confidence in the trial's outcome." *People v. Loew*, 340 Mich. App. 100, 121 (2022).

"A particular strategy does not constitute ineffective assistance of counsel simply because it does not work." *People v. Matuszak*, 263 Mich. App. 42, 61 (2004).

An expert witness may offer an opinion only if he or she has specialized knowledge that will assist the trier of fact to understand the evidence. *People v. Petri*, 279 Mich. App. 407, 416 (2008). MRE 702 provides that a person may have specialized knowledge on the basis of skill, training, experience, or education:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise . . . .

MRE 702 obligates the trial court to "ensure that any expert testimony admitted at trial is reliable." *People v. Dobek*, 274 Mich. App. 58, 94 (2007) (quotation marks and citation omitted). "Expert testimony may be excluded when it is based on assumptions that do not

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comport with the established facts or when it is derived from unreliable and untrustworthy scientific data." *Id.* The inquiry into reliability is a flexible one that is tied to the facts of the particular case, and a reliability determination may differ on the basis of the type of expert testimony offered. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 150; 119 S. Ct. 1167; 143 L. Ed. 2d 238 (1999).

Defense counsel's failure to investigate and attempt to secure a suitable expert witness to assist in preparing the defense may constitute ineffective assistance. *People v. Ackley*, 497 Mich. 381, 393 (2015).

III. OPINION AND ANALYSIS

Defendant's motion for a new trial based on ineffective assistance of counsel for failing to raise the entrapment defense is denied. Mr. Lakatos' counsel was not ineffective for failing to raise an entrapment defense because such a defense would not have been successful and is not supported by the facts of this case. In *People v. Jade*, 2024 Mich. App. LEXIS 8663, the Court of Appeals recently analyzed entrapment in a sting operation like the one that lead to the arrest of Mr. Lakatos. The primary issue on appeal in *Jade* was what standard of review should an appellate court utilize when reviewing a trial court ruling. After deciding on that issue, the Court then stated the law in Michigan for entrapment and then applied the law to the facts of the case. This Court recognizes that *Jade* is unpublished and not binding on this Court, but this Court found the statement of the current law accurate, and the analysis employed informative. In Michigan, entrapment is defined by a "modified objective test." *People v. Johnson*, 466 Mich. 491, 508 (2002). "Under the current entrapment test in Michigan, a defendant is considered entrapped if either (1) the police engaged in impermissible conduct that would induce a law-

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abiding person to commit a crime in similar circumstances or (2) the police engaged in conduct so reprehensible that it cannot be tolerated." *Id.* at 498. However, there is no entrapment if "law enforcement officials present nothing more than an opportunity to commit the crime." *Id.*

"The purpose of the entrapment doctrine is to deter unlawful government activities and to preclude the implication of judicial approval of impermissible government conduct." *People v. D'Angelo*, 401 Mich. 167, 173 (1977). It is the defendant's burden to establish entrapment by a preponderance of the evidence. *Id.* at 183. According to the Michigan Supreme Court, the focus of the entrapment inquiry under the objective test is upon the nature of the police conduct. The guilt or innocence of the defendant is irrelevant to that determination. A decision whether entrapment has occurred will involve the court's evaluation of the government conduct which resulted in the charges against the defendant. *Id.* at 176.

Entrapment may be found if "the police engaged in impermissible conduct that would induce a law-abiding person to commit a crime in similar circumstances." *Johnson*, 466 Mich. at 498.

> examining whether governmental activity would impermissibly induce criminal conduct, several factors are considered: (1) whether there existed appeals to the defendant's sympathy as a friend, (2) whether the defendant had been known to commit the crime with which he was charged, (3) whether there were any long time lapses between the investigation and the arrest, (4) whether there existed any inducements that would make the commission of a crime unusually attractive to a hypothetical law-abiding citizen, (5) whether there were offers of excessive consideration or other enticement, (6) whether there was a guarantee that the acts alleged as crimes were not illegal, (7) whether, and to what extent, any government pressure existed, (8) whether there existed sexual favors, (9)

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> whether there were any threats of arrest, (10) whether there existed any government procedures that tended to escalate the criminal culpability of the defendant, (11) whether there was police control over any informant, and (12) whether the investigation was targeted.

Id. at 498-499. This Court finds the majority of the "inducement factors" do not support a finding of entrapment. There were no appeals to Mr. Lakatos's sympathy as a friend because he and the decoy did not know each other and just met on Grindr. There was not a large amount of time between the investigation and arrest. Mr. Lakatos was questioned by Detective Kolk on August 24, 2021, and arrested the same day. There were not any inducements that would make the commission of the crime unusually attractive to a normal law-abiding citizen. Mr. Lakatos seems to argue that the decoy's muscular body was too much to resist. This Court rejects that argument. There were no real inducements other than potential sexual activity with a 15-year-old. A law-abiding citizen can resist that temptation. There was not any excessive consideration or enticement. No money was promised and again the only enticement was sexual activity with a very muscular 15-year-old. Nothing in the texts suggests the offered sexual activity was not illegal. The legality of the encounter was never discussed. This Court cannot identify any pressure from the government. There was simply an offer to meet in the hotel room which Mr. Lakatos accepted. There were no threats of arrest. The procedures used by the government did not escalate the criminal culpability of Mr. Lakatos. Mr. Lakatos suggested the sexual activity he wanted and chose to use Grindr and a cell phone to communicate. Mr. Lakatos was charged with accosting a minor based on his request for "head" and "rimming" after being put on notice the individual he was chatting with was less than 16 years old. An informant was not used in this

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case. Mr. Lakatos was not targeted. The decoy's profile on Grindr was available to anyone on Grindr.

The only factor that slightly supports the finding of entrapment is that Mr. Lakatos does not have any similar prior convictions.

Many of the arguments raised by Mr. Lakatos in support of being entrapped were raised and rejected in *Jade*. In the case at bar, as in *Jade,* the initial contact was made through an app that required participants to be the age of majority. That fact did not support entrapment. In *Jade* it was the government that was suggesting what sexual activity would occur whereas in the case at bar the government deferred the introduction of sexual activity to Mr. Lakatos, and Mr. Lakatos indicated the activities he wanted to engage in.

This Court finds that the conduct of the government was not reprehensible. Entrapment may also be found if "the police engaged in conduct so reprehensible that it cannot be tolerated." *Johnson*, 466 Mich. at 498. In defining the reprehensible conduct prong, this Court has explained that "there is certain conduct by government that a civilized society simply will not tolerate, and the basic fairness that due process requires precludes continuation of the prosecution where the police have gone beyond the limit of acceptable conduct in ensnaring the defendant, without regard to causation." *People v. Fabiano*, 192 Mich. App. 523, 532 (1992). This Court finds, as did the Court in *Jade,* that the government merely presented Mr. Lakatos with the opportunity to commit criminal acts in a non-targeted manner. The *Jade* Court found no impropriety where the initial contact was made on a site that was supposed to be exclusively for adults, where the decoy informs the defendant that they are underage. The purpose of the sting

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operation was to identify people willing to engage in sexual behavior with minors, not to manufacture a crime.

Trial counsel was not ineffective for failing to call a false confession expert at trial or to consult with an expert in false confessions. The primary reason is that this Court does not find that Mr. Lakatos's confession was false. There is no question that the "chatter" texted the statement "my cousin finally got the room for me I guess you have to be older than 15 to get a room." There is no question that Mr. Lakatos received the text and responded, "how rude." Mr. Lakatos also told Detective Kolk that he was nervous the whole time. Despite this nervousness he decided to go to meet Taylor anyway. His confession is consistent with the undisputed texts.

This Court also finds that the proposed expert testimony would not have been admissible at trial. Courts have held that information about false confessions can be admissible at trial. "[B]ecause the claim of a false confession is beyond the common knowledge of the ordinary person, expert testimony about this phenomenon is admissible under MRE 702 when it meets the other requirements of MRE 702." *People v. Kowalski*, 492 Mich. 106, 129 (2012). In *People v. Warner*, 339 Mich. App. 125, 146-147 (2021) the Court held that *"Kowalski* did not create a categorical ban on false-confession testimony and literature". There are limits on expert testimony. An expert "may not comment on the truthfulness of a defendant's confession, vouch for the veracity of a defendant recanting a confession, or give an opinion as to whether defendant was telling the truth when he made the statements to the police." *Id.* In *Kowalski*, two experts proposed to offer testimony based on research and literature about the phenomenon of false confessions. *Id.* at 111-112, 132. One of the experts also proposed to testify about the defendant's psychological profile. *Id.* at 112, 135. The Court of Appeals held that although

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testimony about the phenomenon of false confessions was the proper subject for an expert witness, the proposed testimony in this case was too unreliable to be admitted because the sources were prone to inaccuracy and had not been subjected to scientific peer-review. *Id.* at 133. The Court further held that the Circuit Court did not abuse its discretion by excluding the expert testimony regarding the published literature on false confessions and police interrogations on the basis of its determination that the testimony was not reliable, even though the subject of the proposed testimony is beyond the common knowledge of the average juror.

Courts have upheld the denial of the admissibility of false confession testimony when there was no information that the person being interrogated was susceptible to coercive interrogation techniques. *People v. Wyngarden*, 2015 Mich. App. LEXIS 1575. This Court recognized that it is an unpublished opinion and not binding but found the analysis informative. Brian Cutler, Ph.D. did not evaluate Mr. Lakatos to determine whether Mr. Lakatos was susceptible to interrogation techniques. Mr. Lakatos was 34 years old. He was employed full-time. Denied having consumed any alcohol or controlled substances and was not under the influence. There is no proof that Mr. Lakatos has any mental or emotional deficiencies.

In *United States v. Deuman*, 892 F. Supp 2d 881 (2012), the United States District Court for the Western District of Michigan granted the government's motion to exclude the testimony of Dr. Richard A. Leo, Ph.D. about false confessions and police interrogation tactics. Dr. Leo's credentials on those topics were impressive. Despite the impressive credentials, the court held that Fed. R. Evidence 702 barred his testimony. The court stated at page 886 "In this Court's judgment, however, Dr. Leo's research on false confessions and his theories based on that research are not sufficiently reliable to be of assistance to the jury in understanding the evidence or determining a fact in issue in a particular case." The court explained at pages 882-887:

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As Dr. Leo forthrightly admits, despite extensive research and review of false confession cases, his methodology cannot accurately predict the frequency and causes of false confessions. *See* Drizin & Leo, 82 N.C. L. Rev. at 931; *see also State v. Wooden*, No. 23992, 2008 Ohio 3629, 2008 WL 2814346, at *4 (Ohio Ct. App. July 23, 2008) [**14] (noting that Dr. Leo's research "has not led to any concrete theories or predictors about when and why false confessions occur"). His theories cannot discern whether a certain interrogation technique, used on a person with certain traits or characteristics, results in a predictable rate of false confessions. In addition, he has formulated no theory or methodology that can be tested. See *People v. Kowalski*, No. 141932, 492 Mich. 106, 821 N.W.2d 14, 2012 Mich. LEXIS 1225 [slip op.] at 25-26, (Mich. July 30, 2012) (affirming the trial court's exclusion of Dr. Leo's testimony under Michigan Rule of Evidence 702, in part, because Dr. Leo's research could not be tested, could not be subjected to a rate of error analysis, and could not estimate the frequency of false confessions). While the Court is aware that some laboratory studies, such as the ALT key study by Professors Kassin and Perillo, suggest that coercive interrogation tactics produce a significant rate of false confessions, such studies shed no light on real-world interrogation practices and results because they "were not conducted by law enforcement, were not part of a criminal investigation, did not involve actual suspects, and did not present the students with a serious penalty. *United States v. Jacques*, 784 F. Supp. 2d 59, 66 (D. Mass. 2011). Moreover, as Dr. Leo testified at the *Daubert* hearing, there is no way of knowing how frequently false confessions occur in the real world.

The other side of the coin, of course, is that coercive interrogation techniques also result in true confessions, likely more frequently than false confessions. *See Wooden*, 2008 U.S.

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Dist. LEXIS 3629, 2008 WL 2814346, at *4 (noting Dr. Leo's testimony that "coercive techniques are also effective in inducing true confessions); *Jacques*, 784 F. Supp. 2d at 67 (citing proffered expert's concession that only several hundred out of several hundred thousand reported confessions have been proven false). As is the case with false confessions, however, there is no reliable means at this point in time of predicting or determining with any degree of certainty—absent, perhaps, an independent and unrefusable evidentiary basis, such as the types of evidence used to confirm the false confessions included in Dr. Leo's 2004 study—whether a particular confession or incriminating statement is true.

Courts in other districts have precluded false confession testimony. For instance, in *Austin v. Brown*, 2024 U.S. Dist. LEXIS 68278, a case from Colorado, an extensive *Daubert* hearing was conducted with the result being the testimony was properly excluded. The court reasoned at page 5:

> the dearth of empirical data on the false confession theory, along with the absence of any established methodology for scientifically assessing the very limited data set . . . prevents Mr. Thompson's proposed expert testimony from clearing the Daubert threshold. And so 'there is simply too great an analytical gap between the data and false-confession opinion proffered.'" ECF No. 238 at 35 (citations omitted). Notwithstanding these findings, Plaintiff makes no attempt in his objection to demonstrate the existence of a valid, quantifiable link between the use of certain interrogation techniques and false confessions. The Court has no basis for rejecting Magistrate Judge Prose's exhaustive review of the literature and studies underlying false- confession theory, or her conclusions

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that the science underlying false-confession theory is not reliable and cannot satisfy the Daubert standard.

This Court finds that Mr. Kortes was not ineffective for failing to consult with an expert in false confessions. The cross examination of Detective Kolk covered the possibility of a compliant false confession and internalized false confessions and pointed out that Mr. Lakatos repeated back what the officers told him to say. There is no question that Mr. Lakatos texted the statements about sexual acts with Taylor. There is no question that Mr. Lakatos received the text about 15-year-olds not being able to rent hotel rooms. Mr. Lakatos, without prompting or suggesting, said he was nervous about going to the hotel room and was going to see what happened. This Court reviewed the transcript of the questioning as well as the video and minimization was briefly used twice but not to rebut any profession of innocence. Likewise, Mr. Lakatos was told that the conversations were available and demonstrated that being under 16 was mentioned. The demeanor of the officers, including body language, their tone of voice and the manner of the questioning in general was not coercive, threatening, or demeaning. The jury watched the interview at least twice and found the elements of the offenses were proven.

Mr. Lakatos was not denied effective counsel where Mr. Kortes did not consult with an online communications expert or an expert in "queer linguistics." One issue raised by Mr. Lakatos in this motion for a new trial are that the jury would not understand that the term "daddy" was a role-playing designation or another way of identifying a dominant male. There was no real risk that the jury could conclude that Taylor using the term "daddy" meant that he was under 16. In fact, the chat shows that Taylor wanted a dominant male and then used the term "daddy." Also, Mr. Lakatos in his statement to the police explained what younger meant to

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him, that being someone in their early 20s. The jury did not need a communications expert to explain that online communication like texting is less formal than other written communication. Dr. Sidelinger's opinion that the words used by Taylor, his punctuation, and lack of emojis demonstrated to Mr. Lakatos that Taylor was not a minor is not reliable. Mr. Lakatos told Detective Kolk about being catfished and testified at trial that the people behind online profiles can be different than who or what they really are.

IV. CONCLUSION AND ORDER

Mr. Lakatos's motion for a new trial is denied because Mr. Kortes's representation did not fall below an objective standard of reasonableness. Mr. Lakatos has not shown that Mr. Kortes's performance so prejudiced him that he was deprived of a fair trial. He has not shown a reasonable probability that the outcome would have been different but for trial counsel's errors.

1-31-25
Date

Hon. Robert D. Springstead, Circuit Court Judge

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STATE OF MICHIGAN
IN THE 33RD JUDICIAL CIRCUIT FOR THE COUNTY OF CHARLEVOIX

THE PEOPLE OF THE STATE OF MICHIGAN,

Case No. 24-593-14-FH

vs. 24-592-14-FH

WILLIAM THOMAS VOYLES AND
GRAT DAVISON NEWCOMB,
Defendant.
_____/

MOTION HEARING
BEFORE THE HONORABLE ROY C. HAYES, III
Charlevoix, Michigan - Thursday, May 16, 2024

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EXHIBITS:	IDENTIFIED	RECEIVED
None.		

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Charlevoix, Michigan

Thursday, May 16, 2024 - At 3:03 p.m.

THE COURT: All right. We're back on the record in the Files of People of the state of Michigan v. Grant Newcomb and People of the state of Michigan v. William Voyles. There's two file -- obviously there's two file numbers because there's two separate cases.

Mr. Newcomb's File Number is 24-592-14-FH, and Mr. Voyles File Number is 24-593-14-FH. And this is a continuation of the hearing on the Defendant's motion to dismiss in both files. We started a couple days ago, I think. It's been a busy couple days. So, where did we leave off?

MS. KUR: I have Mr. Larry Dalman, I hope, on Zoom. I thought he was on Zoom on Tuesday but he sat on there for an hour and a half and thought he wasn't needed and he logged off, so. Hopefully he's on there.

THE COURT: Not yet.

MS. KUR: Well, then I will call Mr. Newcomb to the stand and we'll do him first.

THE COURT: Okay.

Good morning, Mr. Newcomb.

THE DEFENDANT: Good morning.

THE COURT: Do you solemnly swear or affirm the testimony you're about to provide will be the truth, the

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whole truth and nothing but the truth, so help you God?

THE DEFENDANT: I do.

THE COURT: All right. Please be seated.

GRANT NEWCOMB

(At 10:04 a.m., sworn as witness, testified as follows)

DIRECT EXAMINATION

BY MS. KUR:

Q Grant, how old are you?

A I am 36.

Q And what do you do for a living?

A I work in a nursing home.

Q What do you do?

A I do domestic aid, kitchen aid, and activities.

Q And do you have -- did you graduate from high school?

A Yes.

Q Did you go to college at all?

A Some college.

Q Did you do college like (unintelligible)? Do you remember?

A I don't remember.

Q You don’t have any kind of a degree though, right?

A No.

Q And the Judge just basically asked you to swear today to tell the truth. Do you know the difference between the truth and a lie?

A **I don't know.**

Q Well, if I told you that I had a hat on my head right now would that be the truth or would that be a lie?

A **That'd be a lie.**

Q And if I told you that you had a grey vest on this morning, would that be the truth or would that be a lie?

A **That would be the truth.**

Q And do you understand that when you're in court that it's critical and important that you only tell the truth?

A **Yes.**

Q And if someone asks you a question, or if I do, that you don't understand, what are you going to say to me?

A **I don't understand or I don't know.**

Q You're going to tell me that?

A **Yes.**

Q Okay. And you know that you don't have to answer -- you don't have to know every single answer, right?

A **Right.**

Q Okay.

THE COURT: All right. Well, let's get this clear then, because I think there's some confusion. So, Mr. Newcomb, do you promise to tell the truth, understanding the difference between the truth and a lie do you promise to only tell the truth during your testimony today?

THE WITNESS: Yes.

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THE COURT: All right.

BY MS. KUR:

Q So, do you remember the day you got arrested?

A I do.

Q On the day you got arrested were you using a website called Grindr?

A Yes.

Q And do you remember when you first signed up for Grindr?

A It was in June of that year.

Q Of last year?

A Yes, last year.

Q And was that the first and only time that you had been on Grindr?

A Yes.

Q And so you got arrested in July; is that right?

A That is correct.

Q And when you created your account on Grindr did you use your real name?

A No.

Q Why not?

A I wanted to keep my name private.

Q All right. Did you use your -- did they ask you for any other personal information, if you remember?

A They asked about my age, my height, and my weight.

Q And did you put true answers to all that?

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A **Yes.**

Q And during the time -- between the time you set up your Grindr account and the date you got arrested, do you know if you talked to -- or chatted with more than one other member?

A **I chatted with a few.**

Q Okay. Do you remember how many?

A **Three.**

Q Okay. And the -- the member that you were chatting with on the day he got arrested, do you remember the name of that person that they put on Grindr?

A **Yes.**

Q What was the name?

A **Chad.**

Q Okay. And did you -- do you remember if, like, when you first had any contact on Grindr with this Chad guy?

A **I do.**

Q When was it, do you remember?

A **I don't remember.**

Q Okay. Do you -- was it before the day you got arrested were you having some conversation with him?

A **Yes.**

MS. KUR: Does the Court have the exhibits? I think I left them here, but.

THE COURT: I do. I do. Do you have an extra copy?

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MS. KUR: I do not.

THE COURT: Okay. Well --

MS. KUR: Did you write on it or something?

THE COURT: You know, I -- so obviously I'll give you the exhibits, but from a -- just a heads up, I mean, if I'm the find -- fact finder, which I am in this motion, it's really nice to be able to follow along with the exhibits in hands, but -- but I don't have to. I'll give them to him.

MS. KUR: Well, I only made -- my secretary made one for me to give the prosecutor and one for me to give you but she forgot to give me one.

THE COURT: Right, so just anyway, it always -- almost always there's not enough copies of these exhibits.

MS. KUR: I'm sorry.

THE COURT: I'm just giving you a heads up for future reference. Here they are though.

BY MS. KUR:

Q Grant, do you recognize the phone case behind the phone on Exhibit 2?

A Yes.

Q Is it yours?

A Yes.

Q And I want you to just look at this. Have you seen this before --

A I have.

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Q This picture? When did you see that?
THE COURT: Can we clarify which picture he's referring to?
MS. KUR: The one on page one.
THE COURT: But there's multiple -- oh, the photograph -- the whole photograph. Okay.
MS. KUR: Yeah.
BY MS. KUR:
Q Have you seen a picture like this before --
A Yes, I have.
Q That's your phone. Correct?
A That is correct.
Q All right. And does it have a picture of the person that you were talking to?
A Yes.
Q On the date you got arrested --
A Uh-huh (affirmative).
Q -- and pointing to somebody that's --
A Named Chad.
Q Okay. And what's the picture of Chad on the --
A A foot.
Q Did that cause you any concern or anything, or?
A No.
Q Did you think that was weird? Okay. And on the second page of Exhibit 2 you see it says Wednesday and then hello.

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A **Yes.**

Q Is that you?

A **Yes.**

Q Saying hello? And are you -- are you able to -- I didn't ask you this, but you don't have any difficulty reading, do you?

A **I do not.**

Q Okay. You don't have to lean into the microphone, because they're really powerful and they pick up your voice. Okay?

A **Okay.**

Q Are you nervous right now?

A **No.**

Q Okay. So, is this hello though on the second page, is that the first communication that you had with whatever user there was on there named Chad with a foot?

A **Yes.**

Q All right. And can you read from the -- to the -- to the Court what you said on Wednesday -- you know, the date of that Wednesday, was it a week before you got arrested -- do -- do you have any idea when that was?

A **I don't.**

Q Okay. But it wasn't the day you got arrested. Correct?

A **No.**

Q And would it be fair to say that it was a Wednesday though?

A **Yes.**

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Q All right. So, what did Chad say back to you when you first said hello?

A He said hey.

Q And then what did you say?

A I said how are you? What are you up to?

Q And then what did he say?

A He said bored and horny.

Q And -- and then what did you say back?

A Oh, I said same.

Q All right. And then what happened?

A Said want to -- want to link?

Q Chad said that?

A Yes.

Q All right. And you said what?

A I said yes, love to meet up.

Q And then what did he say back?

A I am currently down state visiting friends but should be back up tomorrow in Charlevoix.

Q All right. And then was that the end of communication that day or did you send your location?

A I sent my location.

Q Why did you do that?

A Just to show him where I was located at.

Q So there was a -- there's a picture of a map screenshot or something with a pin?

A **Yes.**

Q Is that where your house is?

A **Yes.**

Q And what street's that on?

A **203 Cherry Street.**

Q All right. And did you (unintelligible) my location?

A **Yes.**

Q And then what did the person that you were talking to say back?

A **He said oh, so you're close. I'll be staying at the Charlevoix Inn and Suites.**

Q And what did you say?

A **Perfect.**

Q And what else?

A **I'm free tomorrow and Saturday.**

Q You said that?

A **Yes.**

Q And then did you say anything else after that?

A **Let me know when you are in Charlevoix.**

Q But was that on a different day?

A **Yes, on Thursday.**

Q Would that have been the very next day then?

A **Yes.**

Q All right. And then did you send any kind of an emoji on Thursday?

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A **Yes.**

Q What did it -- what did it look like?

A **A wink emoji.**

Q All right. And then what about any other message?

A **I said I hope you are free today.**

Q And then what else got said back to you?

A **I'm in Charlevoix but I'll be honest, I'm a little inexperienced.**

Q Okay. And then what did you say?

A **I said yeah.**

Q What did you think that meant?

A **I --**

Q Did you --

A **I didn't --**

Q Did you think anything --

A **I didn't think of anything.**

Q Okay.

A **Yeah.**

Q And then you said something -- yes, yeah. And then what else did you say?

A **I said hot, sexy. I'm at home if you want to do something.**

Q All right. And then what did Chad say back?

A **Do you like inexperienced cock? And --**

Q And was there an emote -- an emoji on there, a hot emoji, or a fire emoji, or something?

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A **Fire emoji.**

Q All right. And what did you say?

A **I said yes, I do.**

Q And then what did he say?

A **Says how old are you?**

Q And what did you say?

A **I'm 35.**

Q Is that the truth?

A **Yes.**

Q And then what else did you say?

A **I said are you okay with that? I put a question mark. Let me know. I live alone in a house.**

Q That was you?

A **Yes.**

Q And then what response did you get back?

A **He says I love older. You have lots of experience?**

Q And then what did you say?

A **I do.**

Q And did you send a picture as well?

A **A winky face.**

Q And was that true, that you had a lot of sexual experience?

A **I don't.**

Q So why did you say that though?

A **Just to keep the chat going.**

Q Prior to this day -- well, prior to the day you got arrested

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had you ever had any kind of sexual experience with anyone?

A **No.**

Q Never any kind of intercourse? Do you know what intercourse is?

A **I don't.**

Q Did you ever put -- this is -- sounds really kind of graphic, but did you ever put your penis inside of any other person?

A **No.**

Q Have you ever -- had you ever before that day given anyone any kind of -- you talk about a blowjob. Have you ever done that before?

A **No.**

Q So, you were not telling the truth when you said that?

A **That is correct.**

Q Why?

A **I was kind of nervous.**

Q All right. And then what happened next?

A **I got out of work early and got kicked out of my house so I got a hotel room for (unintelligible) night all alone.**

Q That was what Chad said to you?

A **Yes.**

Q Read that again?

A **I got out of work early and got kicked out of my house so I got a hotel room for the night all alone.**

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Q And you said what?
A I said nice.
Q And then what did he say?
A Want to link?
Q And then what did you say?
A I live alone.
Q And what did he say back?
A I'm alone.
Q Okay. And then what did you say?
A Can I see a pic of you?
Q Why did you ask to see a pic of him?
A So I know if he was real or not.
Q And did you get a picture back?
A Yes.
Q And is that picture of the picture on your phone; is that the page of the exhibit that you're referring to right now?
A Yes.
Q And I just want you to show it to the Court. So, that wasn't a face though, right?
A No.
Q What did you think when you saw that, or did you think anything?
A I thought it was a real person.
Q Okay. And then did you also get a second picture?
A Yes.

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Q That same -- that same interchange?
A Yes.
Q And can you show the Judge what that picture looked like? And so when you saw that picture did you think that was Chad?
A I thought so.
Q And did you have any thought in your mind that Chad might be under -- might be a teenager under the age?
A I didn't know.
Q Okay. Did he look like an adult to you?
A He does.
Q All right. And did you say sexy or something of that nature?
A Yes.
Q And then what did he say back to you?
A You like young cock?
Q And then what did you say?
A I said yeah, how big is your cock?
Q And then what did he say?
A Six inches comfortable.
Q And then you said what?
A I said yum.
Q And what else?
A Would you like to come over, sexy?
Q And then what did he say?

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A **I don't drive.**

Q And this is all on the date you got arrested, if you remember? I don't -- do you remember?

A **Yes, this is the date that I got arrested.**

Q Okay. He said I don't drive, because you wanted him to come to your house?

A **Yes.**

Q All right. And then did you ask him what motel he was at, or what hotel?

A **Yes.**

Q All right. And then what did he say?

A **He said Charlevoix Inn.**

Q And then what did you say?

A **Is that almost across the golf course?**

Q And what did he say back?

A **He says there's a gas station.**

Q And what else?

A **Sign says (unintelligible).**

Q All right. And then you responded what?

A **Perfect.**

Q And what else?

A **Might come to you.**

Q Okay. And then what did he say back?

A **He said don't freak, but I'm 15. Just thought I'd be honest to you. Nice. I won't freak out.**

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Q You said nice, I won't freak out?
A Yes.
Q What were you thinking when that got -- when that got sent to you?
A I was a little upset.
Q Why?
A I thought he was telling the truth that he was 18.
Q And you responded nice though. Why -- why did you say nice, I won't freak out? Do you remember why you said that?
A I might have got a little scared.
Q All right. And what -- what did he say back?
A Says want to come link?
Q And then you said?
A Yes, I'll come to you.
Q And then what got said back by the -- by the fake person?
A What you drive? I'll look for you.
Q And then what did you say back?
A Meet me outside hotel. I drive a (unintelligible) blue.
Q Okay. And then what -- what else did you say?
A I'm leaving my house right now.
Q And after you found -- after he said he was 15 were you going to the hotel to -- with the intent of having sex with some -- a 15 year old kid?
A No.
Q What did he say -- why were you going there?

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A **I wanted to find out the truth, why he lied about his age.**

Q All right. Were you -- were you -- prior to finding out he was 15 were you excited about meeting somebody?

A **I was excited to meet someone.**

Q So, let's finish up though, what was said. You said I'm leaving my house --

A **I'm leaving my house right now --**

Q -- right now, and then what did the person that was -- identified as Chad say to you?

A **Let me know when you're here. Can you get me a Twisted Tea on the way?**

Q Do you know what Twisted Tea is?

A **No.**

Q Did you know on that date?

A **No.**

Q Did you stop and even try to get him a Twisted Tea?

A **No.**

Q If you knew that that was alcohol would you have done that?

A **No.**

Q Do you use alcohol yourself?

A **No.**

Q Have you ever in your life?

A **No.**

Q And so to the response to the Twisted Tea you just said I'm heading out; is that right?

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A That is correct.

Q And then what did he say to you after that?

A Okay. Let me know when you're -- when you are here.

Q Okay. And then what happened next?

A I said I'm here.

Q And did you send him a picture of the sign?

A Yes.

Q And is that of the Charlevoix Inn Suites up here?

A Yes.

Q And then what did you say after that?

A Are you staying here?

Q Okay. And what did he say back?

A He says want to come shower with me? Yes.

Q Okay. And you said yes, and what else?

A Which room are you at?

Q Okay. And then what did he say?

A Put that cock in my ass. I'm in room 327.

Q Okay. And then were there any other chats or anything after that?

A No.

Q What happened when you got to room 327?

A I knocked on the door.

Q And then what happened after that?

A Then four guys grabbed me and threw me on the bed and arrested me.

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Q And were you thrown on the bend face down or face up?
A Face down.
Q And were you crying?
A No.
Q Were you scared?
A Yes.
Q Did any -- do you remember what any of them said to you at all?
A I don't remember.
Q All right. Did you indicate at any time, if you remember, whether you ever told the police why you -- why you came there even though the person had said they were 15?
A I did.
Q What did you say?
A I said I was going to just give a blowjob.
Q Okay. Did you mean that you were going to give a blowjob to a -- to a 15 year old?
A No.
Q You were going to give -- you were there to give a blowjob to the person -- what did that mean, why did you say that?
A I was a little scared and nervous.
Q All right. Did you ever say anything to the police about wanting to confront this Chad about why you were told two different things?
A No.

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Q Did you -- did you watch your interviews at all?
A No.
Q Okay. So, your testimony though is that you wanted to see why the person lied to you; is that right?
A Yes.
Q Were you eventually told that there was no Chad at all?
A That is correct.
Q Who told you that?
A The -- the detective who was interviewing me.
Q Do you remember his name?
A I don't remember his name.
Q So, you made some statements at the hotel room, right? You talked to police and they talked to you, right?
A Yes.
Q And then where did they take you after that?
A They took me to the old elementary school.
Q Okay. And were you handcuffed?
A Yes.
Q And do you remember how long you were there at all?
A I don't.
Q Do -- you said -- did you say that you remember the name of the person that interviewed you?
A I don't --

THE COURT: He didn't remember.

MS. KUR: Okay.

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BY MS. KUR:

Q Do you remember the person interviewing you asking you to sign a consent to search your cell phone?

A Yes.

Q And you did that, right?

A Uh-huh (affirmative).

Q You have to -- you have to use words, yes or no.

A Yes.

Q So, you did give him consent to search your whole phone?

A Yes.

Q And he asked you whether there was any child pornography on that phone, didn't he?

A Yes, he did.

Q And what was your answer?

A No.

Q Have you ever downloaded any child pornography whatsoever in your life?

MR. THOLEN: Objection --

THE WITNESS: No.

THE COURT: Hold on. Objection?

MR. THOLEN: Relevance.

MS. KUR: I think it's relevant because one of the factors is whether he's got some proclivity for this kind of activity and propensity to commit it. The case law is -- does give the 12 factors in Juliet, but there are opinions

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after that from the Court of Appeals, and United States Court -- Supreme Court decisions as well that do talk about whether there's a propensity or a (unintelligible) of the person whose claiming entrapment to commit those kind of crimes, so I do think it's relevant.

THE COURT: So, the factor is whether the Defendant, quote, had been known to commit the crime with which he was charged. So, looking into that is relevant, but only on the police's perspective. It's not on his perspective. If the police knew he was known to commit it that would be a relevant inquiry. But whether he had ever done it is not relevant.

MS. KUR: I think if you read Juliet, there are two -- two fact scenarios in that case, and one of them talks about the -- the one where they found entrapment talks about the Defendant's inexperience --

THE COURT: All right.

MS. KUR: -- and age, and --

THE COURT: I'll cut to the chase. It's marginally relevant in my view, but I will overrule the objection and allow it.

BY MS. KUR:

Q Have you ever downloaded any child pornography?

A No.

Q Did you trust the profile was true on Grindr?

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A I did.

Q Other than your name, did you put any lies on your Grindr profile?

A No.

Q Were you scared when you got arrested?

A Yes.

MR. THOLEN: Objection, relevance.

THE COURT: Relevance that he was scared when he got arrested? I'll sustain the objection.

BY MS. KUR:

Q Are you gay, Grant?

A Yes.

Q And you've never had a boyfriend?

A No.

Q Never been married obviously. Correct?

A Correct.

Q Would -- were you on Grindr looking for some kind of a relationship?

A Yes.

Q Were you ever on Grindr seeking a 15 year old to do sexual things with?

A No.

Q If the person that answered the door was eight -- or, was -- looked like they were a teenager, what would you have done?

MR. THOLEN: Objection, speculation and relevance.

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MS. KUR: It's not. It's the same response I gave before, the proclivity, and his intent, and all that are relevant.

THE COURT: Well, I mean, marginally. I'll -- I'm going to make a -- I'm going to err on the side of allowing the record to be extensive. It's a -- you know, it's before the Court, so. I'll overrule the objection and allow it. Do you want to -- you probably should just rephrase the question, because -- re-ask the question, because he -- I'm sure he doesn't remember.

BY MS. KUR:

Q Did you in your life think that when you went to that hotel room that you were going to do a sexual act with a 15 year old boy?

A No.

Q When you thought that the person was 18 did you want to do something sexual in the hotel?

A Yes.

Q Okay. And the -- the chats that we went through when I just came up and was close to you there at the witness stand, is that the only communication that you recall having with this person named Chad?

A Yes.

Q Okay. When you got interviewed, or when the police talked with you, did any of them tell you that -- was it Ethan or

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Cody -- what was the person's name again?

A Cody.

Q Okay. I've been saying Chad all the time, but it means -- you were with -- talking to somebody named Cody; is that right?

A Yes.

THE COURT: Wait, no. You lost me. Because I -- maybe I wasn't paying attention, but. Do you mean during an interview or?

MS. KUR: The profile name is what I'm --

THE COURT: The profile name is Chad.

MS. KUR: I see. Okay. All right.

BY MS. KUR:

Q So, you said Cody, but could it have been Chad? Or was there a different --

A It was Chad.

Q Okay. Why did you think Cody? Is there any reason?

A I couldn't remember.

Q Okay. Was there ever any discussion about paying this person for sex?

A No.

Q Have you ever been convicted of any kind of crime in your life?

A No.

Q Did you have any -- do you do drugs?

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A No.

Q Did you have any drugs with you?

A No.

Q Who -- you said you live alone; is that right?

A Yes.

Q Who owns the home that you live in?

A My parents.

Q Okay. Do you have -- does your mom help you pay your bills and do things financial?

A Yes.

Q And --

MS. KUR: I think that's all I have, your Honor.

CROSS-EXAMINATION

BY MR. THOLEN:

Q Your attorney asked you about a fire? I think it's called an emoji?

A Yes.

Q All right. How does a fire emoji get on a text message?

A You tap the message.

Q Okay. So, when Chad said I'm in Charlevoix but I'll be honest, I'm a little inexperienced, there was a fire emoji. Who put that fire emoji on?

A I did.

Q What does the fire emoji mean to you?

A It means I liked the message.

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Q When Chad asked you do you like inexperienced cock, who put the fire emoji on that?
A I did.
Q You were saying you liked that?
A Uh-huh (affirmative).
Q When Chad said I got out of work early and got kicked out of my house so I got a hotel room for the night all alone, there was a fire emoji on that. Who put that on?
A Me.
Q When Chad said I'm alone and there was a fire emoji, who put that on?
A I did.
Q When Chad asked you, you like young cock, and there was a fire emoji on, who put that on?
A I did.
Q You were saying you liked that?
A I accidentally liked it.
Q Had any of the previous ones been accidental?
A No.
Q Were any of the next ones accidental?
A Yes.
Q How many times did you accidentally like one of the things that Chad told you?
A I don't know.
Q You said that you were a little upset about Chad telling you

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that he was 15?

A **Yes.**

Q And you went to the hotel room to confront him about that?

A **Uh-huh (affirmative).**

Q Your father described you as doing anything you can to avoid confrontation; is that true?

A **True.**

Q But you were going to this hotel room to meet somebody you didn't know to confront them?

A **Yes.**

Q Why didn't you confront them in text?

A **Because I wanted to know if they were real or not.**

Q You had said that about the pictures, and you had pictures by that point?

A **Yes.**

Q Okay. So, you wanted to confront somebody you didn't even know if they were real?

A **Yes.**

Q And you didn't want to do that in text?

A **No.**

Q You wanted to confront this unknown person in person as opposed to text?

A **That is correct.**

Q Your father described that when your -- I think it's your nephews come to your -- come to stay, that you'll stay away

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because they're rambunctious or something along those lines?

A **Yes.**

Q But you were going to a hotel to confront a person that you didn't want to confront in text?

A **No.**

Q Okay. You lied about your name; is that right?

A **That is correct.**

Q You lied about your sexual experiences?

A **That is correct.**

Q When you said it was nice that Chad was 15, was that true or a lie?

A **That was a lie.**

Q When you said that you wouldn't freak out, was that true or a lie?

A **That was a lie.**

Q When you told Chad that you wanted to suck his penis, knowing he was 15, was that true or a lie?

A **That was a lie.**

Q When you told Chad yes, you wanted to shower with him, was that true or a lie?

A **That was a lie.**

Q What other lies did you tell?

A **Can you repeat that question?**

Q What other lies did you tell?

A **The -- I don't know.**

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Q Okay. When you told police that you were there to give a blowjob to a 15 year old was that true or a lie?

A That was a lie.

Q Why were you lying in ways that would get you in trouble?

A I was scared.

Q You were scared of getting in trouble?

A Yes.

Q So you lied in ways that would get you in trouble?

A That is correct.

Q Today you're telling us things that are different to get out of trouble; is that right?

A That is correct.

MR. THOLEN: I don't have anymore questions for you, sir.

THE COURT: Redirect, Ms. Kur?

MS. KUR: I don't have anymore --

THE COURT: I just have a question. Mr. Newcomb, I'm going to show you Defendant's Exhibit 2. And on the first page, do you see the -- the Chad profile there?

THE WITNESS: Yeah.

THE COURT: And it says -- can you read what that says? It says gay emoji received four days ago. Is that -- is that what you see there?

THE WITNESS: Yes.

THE COURT: Is that from Chad?

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THE WITNESS: Yes.
THE COURT: What's a gay emoji?
THE WITNESS: I don't know.
THE COURT: You really don't know?
THE WITNESS: No.
THE COURT: Did you get -- do you get emojis from users on Grindr?
THE WITNESS: Yes.
THE COURT: And what do they look like?
THE WITNESS: There, like, regular emojis, like a smile or a wink.
THE COURT: Okay. Do you know what a gay emoji is?
THE WITNESS: No.
THE COURT: Okay. Okay.
Any follow-up?
MR. THOLEN: Not for this witness.
THE COURT: Ms. Kur?
MS. KUR: No.
THE COURT: Okay. You can step down.
(At 10:37 a.m., witness excused)
THE COURT: And Mr. Dalman's on.
MS. KUR: Okay. Call him to the stand. This testimony is for both files.
THE COURT: Okay. Yeah. Everything is -- well,

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whatever. It's combined (unintelligible), so.

Good morning, sir. Please state your name for the record.

MR. DALMAN: My name is Larry Dalman, D-a-l-m-a-n.

THE COURT: All right. Mr. Dalman, please raise your right hand. Do you solemnly swear or affirm the testimony you're about to provide will be the truth, the whole truth and nothing but the truth, so help you God?

MR. DALMAN: I do, sir.

LARRY DALMAN

(At 10:38 a.m., sworn as witness, testified as follows)

THE COURT: All right. I'll zoom out, and Ms. Kur, your witness.

DIRECT EXAMINATION

BY MS. KUR:

Q Mr. Dalman, can you tell me how old you are?

A 66.

Q And what is your employment experience?

A I graduated from high school at the age of 17 and I joined the Michigan State Police three months later as a cadet. I was sworn in as a trooper on my 21st birthday. I worked the road for 12 years, got promoted to a sergeant, was a uniform sergeant for ten years, then I was transferred to Lansing as a detective sergeant four years prior to my retirement.

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I took six months off, and then I opened my own private detective agency in January of 2003.

Q And during the time that you were employed with the Michigan State Police did you receive any certifications or training in forensic computer analysis?

A Yes, ma'am. I spent two weeks at the FBI academy in Quantico Virginia. I was sent to the national center for missing and exploited children for unit commander training for computer crimes units. Since my retirement I've received training in the (unintelligible) in a program called Incase (ph). I also went down to Alabama for two weeks of training for Cellbrite and cell phone tower mapping. And then I've taken some webinars online.

Q Okay. There's been testimony in this case that Cellbrite was used to analyze at least one cell phone. In your experience and training using Cellbrite, does that program have anything that you can set to pick up images of children?

A Law enforcement has a database of known images of children based on the national center for missing and exploited children. Once they obtain a forensic image using Cellbrite, it creates what's called an MD5 Hash for each and every item on the phone. E-mails, text messages, photos, whatever. And if they get a hit, that means that the national center has already identified the victim, they have

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a police report; they have an officer who investigated that specific case. If you get a hit on the database from the national center for missing and exploited children, as a defendant it's extremely damaging.

Q You're being paid here for your testimony this morning. Correct?

A Yes.

Q And have you testified in court before in criminal cases?

A Numerous times, district courts, federal courts, circuit courts.

Q And have you testified --

A Within Michigan and without.

Q I'm sorry, I interrupted you.

A It's all right. Inside of Michigan and outside of Michigan.

Q Okay. And have you testified on behalf of both the prosecution and the defense in various cases?

A Yes, ma'am.

Q And have you been qualified as an expert in forensic computers analysis?

A Yes, ma'am.

Q How many times, if you know?

A I've been retired for 20 years and I did it for four years before I retired. It's got to be in the several hundreds.

Q Okay.

A Quite a few.

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Q And did you --

MS. KUR: Well, I guess I would like to have Mr. Dalman qualified as a forensic expert for purposes of this hearing, your Honor.

THE COURT: Any -- any objection or voir dire, Mr. Tholen?

MR. THOLEN: For purposes of today's hearing and solely as to his qualifications I do not object.

THE COURT: Okay. Then he -- I will allow him to provide expert testimony on forensics.

MS. KUR: All right.

BY MS. KUR:

Q And when I contacted you I contacted you for multiple reasons, but one of the reasons I asked you was to do an inspection of a website called Grindr; is that correct?

A Yes, ma'am.

Q And is that part of -- or, is that something you -- you customarily might do in your business that you have?

A If requested to do so by attorneys I do.

Q Okay.

A Normally I do not, but I have done it and I have testified regarding websites.

Q Okay. Do you have the capability to visit, or did you have the capability to visit a website called Grindr?

A Yes, I did.

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Q And did you actually create a profile on Grindr or just go to what's public?

A I just went to what's public.

Q All right. Do you have any idea from the visit to the website where it's based? If it's based in the United States or a different county?

A It was originally opened by China in 2009. It was sold to a company out of Hollywood, California, and is currently owned by a company in California.

Q All right. And did you have an opportunity to inspect the terms and conditions of the website?

A I did.

Q How would you just describe the website in general if somebody just said tell me what -- tell me about -- tell me -- tell me what Grindr is, tell me about it? How would you generally describe it?

A If you wish we could go to Grindr and I could share my screen with you. If you don't wish, basically when you open Grindr --

Q No, I'd like you to share your screen if you can.

A -- there's a photograph of several men --

Q Hang on just a minute.

MS. KUR: Is the share screen feature available? I mean, is it on?

THE COURT: I think so.

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BY MS. KUR:
Q Go ahead and give it a try, please.
A Okay.
Q So, what are you sharing --
A So, the first thing here is how to create -- I'm sorry, go ahead.
Q No, I interrupted you. What are you sharing -- what is on the screen that you're sharing right now? Is this something that you saw when -- are you on Grindr right now?
A I am, yes. This is live.
Q Okay. Okay. And what does -- what is the significance of what you're showing us? I asked you what it's about.
A I've got several screens -- okay. Grindr is a dating site for homosexual men, and gay women, and transgender people. When you open the website it shows several adult men in their briefs. It's supposed to be one of the largest dating sites online, but it's basically not for straight people I guess would be an easy way to say it.
Q Was there anything on the site that was visible to you as an outsider without an account that raised any suspicion about the site being some sort of a front for child sexually abusive activity?
A No, just the opposite. On their site it states if they find out you're under the age of 18 they report it to the national center for missing and exploited children. That's

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listed on their site.

Q And can you show the Court where that is, if -- if you have that?

A Yes. It's right here. I've highlighted it in blue.

Q Can you read it into the record, please?

A If a profile is suspected to be 18 -- under 18 after registration access will be blocked. We require identification to continue using Grindr. We report illegal content regarding minors to the national center for missing and exploited children. For profiles suspected of using fake photos or impersonating others we require photo verification to continue to use Grindr.

Q So, if there was testimony from the officer in charge here that once -- following a sentence he typed that he was under the age of 18, or something of that nature, would it be consistent with Grindr's policies to block the account or ban the person?

A Yes.

Q Would it be a violation of Grindr's terms and conditions of use for a police officer to create a fake account and lie about their age?

A I did not see any exceptions for law enforcement on their website.

Q So, the answer to that would be it would be a violation. Correct?

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A **Yes, ma'am. I've got other --**

Q From what -- from what you know?

A **-- screens that also --**

Q Okay.

A **Yes.**

Q Are there any other parts of the website that you reviewed as an outsider that would show the extent which the site goes to protect minors?

A **Yes.**

Q Can you describe those, please? Or if you can show --

A **If they believe -- yeah, well on the same site here, up here it says if we believe someone's breaking our rules they will ban them from future profiles. They describe how to create an account -- on this one here it says you must be legal adult accepting this agreement. You're currently 18 years of age. You have to agree to their policy when you create a profile, and some of the things that you have to click on I agree, this is one of those websites. If you look at photograph number one, no usage by underage persons. It's only for legal adults. No persons under the age of 18. And it goes down to say you must be a legal adult. That's highlighted, underlined, and capitalized. To create a user account you have to be currently be 18, etcetera, as you read below there. You are not on any list of US government prohibited or restricted lists, you're not located in a**

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country outside the United States; you're capable of lawfully entering into this performance into and performing all of the obligations that's set forth by the agreement. So, this is something that you have to agree to. And as you scroll down to the bottom, account registrations, personal ID. It's quite lengthy.

Q Have you ever done this same sort of look up, so to speak, on any other adult dating sites in your career?

A Yes, yes.

Q What other sites?

A I did one for an attorney named Scott Graybel (ph). Janelle Jade was the defendant's name.

Q What was the site, if you remember?

A Yep, I've got it. Hold on.

Q I just wondered how this compared to other dating sites as far as the safeguards, if you know. Do you have anything to compare it to? And if -- if you don't, that's fine.

A I'm going to give you a specific -- no, that's fine. SkipTheGames. I testified to a website called SkipTheGames, and in that website for Attorney Scott Graybel, in their policy it says if law enforcement contacts us regarding and investigation they are doing they do not need a search warrant, we're going to give them anything they ask for is what --

Q Does this site say that?

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A -- that website states.

Q Does it -- does this site say that anywhere that you found?

A Not that I found, no.

Q Okay.

A But it does -- just for a second. It says we do not allow any images of minors. If the face is blurred or blacked out in the background. Zero tolerance policy for posting sexual material of any type. This is the one where it says they report it to the national center for missing and exploited children. There's one on there that you have to verify your identification. They will suspend your account if they believe that you are under the age of 18 or if somebody's reported you, and even have a form that you must fill out to verify your identity. And one of the options on this form is the reason you have to identify yourself is because of impersonation. That's one of the options.

Q Can you scroll --

A Impersonation is one of the options.

Q -- down on the screen you're in right now to number three? Did I lose you?

A Okay. If we're on -- we're on the site called get in touch, is that what you're looking at?

Q No, no. I want -- what you have on the screen right now, I see number 2, Grindr's for genuine connections not buying or selling, is there a three underneath there that says be

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yourself if you scroll down? Are you still there?

A Yes. I've got -- I don't see three. I -- on my screen I see get in touch, I need to verify my identity.

Q All right. Well, you sent me --

A Is that what you're looking at?

Q -- an e-mail that had something that said be yourself. A screenshot of something that said be yourself, and you told me that was on the website.

A Yes.

Q And it talks about being able to have a discrete profile where you don't have to put your real name on there. Do you remember that?

A Yes. Yeah, I'm going to find it here. Just a sec.

MR. THOLEN: I'm going to object. The question is whether he remembered something.

THE COURT: Ms. Kur?

MR. THOLEN: He's kind of doing a search through some stuff right now as opposed to answering the question.

THE COURT: Do you what to rephrase the question?

THE WITNESS: I can go back to the e-mail I sent you.

BY MS. KUR:

Q Please, if that would --

A If that would help?

Q -- refresh your recollection and able -- enable -- to enable

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you to answer a question of whether or not you sent me something that indicated it was okay to use a different name than your own.

A I'm going to go back to what I sent you, ma'am. Is this the one you're referring to?

Q No --

MR. THOLEN: Objection, hearsay. We're displaying material. He's supposed to only be refreshing his memory. This is just not a (unintelligible).

THE COURT: Ms. Kur, where are you going with this?

MS. KUR: There's a section of the website that he sent me that indicated that a discrete profile is okay and that you don't have to reveal your real identity. I just wanted to establish that my client who listed a name that wasn't his name didn't do anything in violation of the site.

THE COURT: Just like the officer.

MS. KUR: Right.

THE COURT: Okay.

THE WITNESS: Okay. So, as far as creating a profile, (unintelligible) create an account, the terms of service --

MR. THOLEN: I'm going to object. This is non-responsive to the question.

MS. KUR: He's not saying anything. He's not

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testifying anything.

MR. THOLEN: He is. He's talking about terms of service and how to create a profile, and he's scrolling through -- I don't know what he's scrolling through or why. There was no question.

MS. KUR: I'm asking him is there anything on the site --

MR. THOLEN: You just went through the number three. It was about location data.

THE WITNESS: This one states you may not use anyone else's account.

MR. THOLEN: I going to object.

THE WITNESS: A responsible --

MR. THOLEN: He's not answering the question. He's just freeform talking.

THE COURT: Okay. Ms. Kur, why don't you construct a question and then --

BY MS. KUR:

Q I want you to look at an e-mail that you sent me at 9:19 p.m. on Wednes (sic) -- or, excuse me, Monday, May 13th.

THE COURT: Why don't we do this? Why don't -- because I don't think it's appropriate for him to share the e-mail on his --

MS. KUR: I don't either.

THE COURT: -- during his testimony. So, why

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don't we do this? I'm going to go off the record. I have to use the restroom. And I'll give you a chance to consult -- it's not going to be a private consultation, but obviously we'll keep the Zoom link active and I'll be back in just a few minutes, like less than five. Okay? So, I'm going to go of the record.

MS. KUR: Larry, can you not share your -- not share your e-mails on the screen --

THE WITNESS: Yep.

MS. KUR: -- please?

THE WITNESS: Yep.

THE COURT: So, I'm trying to get back to my -- maybe I have to end. No, I don't want to do that. I can't get back to my --

THE WITNESS: (Unintelligible).

THE COURT: Temporarily, Mr. Dalman, will you stop sharing your screen?

THE WITNESS: I thought I did, sir. All right.

THE COURT: Oh, no. That's okay. Looks like -- exit full screen. All right. I've got it. I've got it. So, now I can --

(At 10:58 a.m., court recesses)

(At 11:13 a.m., court reconvenes)

THE COURT: Okay. We're back on the record. Do I need to -- okay. Mr. Dalman is still connected. And you

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can go ahead and share your screen if you want, if you need to. That's whatever -- however you want to proceed is fine with me.

THE WITNESS: Okay.

BY MS. KUR:

Q Mr. Dalman, did you find the -- anything that you sent to me that indicated terms and conditions about your real identity?

A Yes, I found it.

Q Is it a violation of the Grindr rules to use somebody else's name?

A Yes. I don't know if my screen is coming through on your end or not?

THE COURT: Not yet, no.

THE WITNESS: Okay. Hold on. Okay.

BY MS. KUR:

Q If it's easier to just read the section into the record that's fine.

A Yes. It's under the community guidelines section --

Q And what does it say?

A -- of their website. Paragraph number three says be yourself. We offer you the freedom to choose what you share about yourself, but the information you share should be authentic and true. In bold, black letters, we do not allow scamming, fake accounts, or the use of Grindr to entrap our

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users. We work with NGO's to help challenge entrapments and honey traps of users in high-risk contexts. We provide the option of having a discrete profile, which does not have to reveal a real identity. However, you are still bound by these guidelines and cannot impersonate anyone else. Images must be of you or created by you and not represent anyone else. If your profile is reported as being fake or a catfish we may ask you to verify your identity using secure methods to keep your profile active. Respect others intellectual property rights and don't post copyrighted images from others, images of other people without their consent, or deep fakes, AI generated images, or synthetic media.

Q When you test -- started your testimony you said you attended a training at the national center for missing and exploited children in Virginia; is that correct?

A Yes.

Q Was that an officer training for computer crime units that you attended?

A It's unit commander training for computer crime units, yes.

Q And in that training was there anything stressed about how -- whether or not a police officer should initiate a discussion of sex in a STING operation?

MR. THOLEN: Objection, relevance.

THE WITNESS: Yes.

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THE COURT: Overruled.

BY MS. KUR:

Q What was that -- what was that instruction or advisement?

A The advisement was not to do it. Do not use images of real people and do not initiate sex. The other party that your texting needs to initiate the topic of sex, similar to a prostitution type of a STING. You still there?

Q Yeah, I'm just looking through my -- I'm trying to wrap this up.

A Okay.

Q Would it have been passable if the officer in this case was chatting with someone on Grindr before anything about sex ever came up or anything, just chatting in general, is there -- are there any investigative tools out there that a police officer has that a layperson wouldn't have that would allow them to do sort of a deep dive into who they're talking to?

A Yes.

Q What?

A You can use -- I have a program called TLO. It's run by John Walsh from America's Most Wanted. The TLO will allow you to put somebody's first and last name in, general area of where they live, and with one click I can get the social security numbers, date of births, criminal records, bankruptcies, LEINs, judgments, bank accounts, phone numbers, e-mails, etcetera. That's available to me in the

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private sector. To law enforcement I think they may call it Lexus Nexus or TLO. It would be a similar type of program.

Q Is there anything that you saw on Grindr that would lead you to believe that the site involves or encourages prostitution of any type?

A No.

Q During your training at the National Center for Missing and Exploited Children did you also -- were you also trained on the preservation, whether it's a good idea to preserve all communications between the suspect and the police?

A Absolutely.

Q What was the training, what did they tell you to do?

MR. THOLEN: Oh, sorry. Objection, relevance.

THE COURT: Overruled.

THE WITNESS: To save the information you could either copy and paste it into a Microsoft Word document. As far as a profile, or a photo, or an image, it's extremely easy on the keyboard that you have in front of you on your laptop, on the top row it says print screen. If you tap that button then open a Microsoft Word document you can paste it.

So, if there's something the officer wishes to preserve, for example a video, if the other party is sending you a video and you want to capture it somehow, you can download different software programs that are free, or you

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can use what's already on your laptop and preserve the images. As far as a profile, once again, we were not to use anybody -- anybody's photo. Just tell the other party my camera doesn't work or something to that affect, but.

BY MS. KUR:

Q Okay.

A And that would be it.

Q So, it's not difficult to preserve a profile that you create on Grindr?

A Not at all.

Q Would you be surprised if -- if the site eliminated a profile should they -- if they -- if they got some sort of an algorithm or notice that it was -- could possibly be a minor, that it would be immediately shut down, is that something that happens?

A Yes. That's their policy, yes.

Q Okay. So, lastly, again, you read this into the record, but is it your opinion that if a police officer set up a fake profile on Grindr with lies about their age, and identity, and pictures that weren't them, would that appear to be a violation of the terms and -- of the site's terms of use?

A Yes.

MS. KUR: I don't have anything else.

THE COURT: Cross-examination?

CROSS-EXAMINATION

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BY MR. THOLEN:

Q Would it appear to you to be a violation of terms of use for somebody named Grant to identify themselves as something other than Grant?

A I don't understand the -- identify themselves as a Grant?

Q Okay. Is it a violation of the terms of use to use a fake name and --

A Yes.

Q Are you aware of a litany of cases involving 12 to 15 year olds meeting adults on Grindr and then being sexually assaulted? Are you aware of those cases?

A No, sir.

Q Okay. They do exist. Quite a few cases that are cited in -- -

MS. KUR: I'm going to object. I think that the prosecutor can't testify.

THE COURT: Well, he's cross-examining an expert witness. I'm going to allow him to proceed. Overruled.

BY MR. THOLEN:

Q So, how would that happen? The 12 to 15 year olds are on Grindr and they meet adults and get sexually assaulted. How does that happen?

A I would assume the same way as any other website. The 12 and 15 year olds can log in. Grindr advertises that they have a filter of some type that looks for specific words.

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If that is happening and we've got 12 and 15 year olds being assaulted then it's slipping through, I guess. I don't know what they would do. It would be nice to see the profiles that the 12 and 15 year olds are posting. But once again, if that is happening I'm not aware of it.

Q How would a 12 to 15 year old make an account on Grindr?

A By lying.

Q About their age?

A Everything. It says you can't use anybody else's picture, so I would assume they either don't post a picture at all. It says they have the option of having a discrete profile where you don't have to reveal your real identity, but then it also states in the same photograph you are still bound, you cannot impersonate anyone else --

Q They could just put up a picture of their --

A -- so --

Q -- foot --

A -- I have no --

Q -- couldn't they? They could just put up a picture of their foot and they wouldn't be violating that term of use.

A No.

Q Okay. Did you create --

A A picture of a foot --

Q -- an account --

A Go ahead. No, sir.

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Q Do you have any idea what form of verification or lack thereof Grindr uses for age?

A No, sir.

Q Were you aware that all a person has to do is check a box saying they're 18?

A No, sir. I didn't get into the profiles or accounts at all.

Q Okay. Have you -- do you know of anything contrary as far as what you did read and review?

A If I did create a -- I don't --

Q Okay.

A Repeat that, please.

Q So, we have some testimony for this case that -- these cases, that all you have to do as far as age is just check a box, that's it, that you're 18.

A Okay.

Q Did you read or review --

A Okay.

Q -- anything where you're seeing that there is more than that to create an account?

A If I did -- I know you can create an account through Facebook. It says you can create an account through e-mail, through Apple ID --

Q Okay. Are you aware of anything that a person is required to do beyond just checking a box to verify that they are 18 or older?

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A **No, sir. I'm not.**

Q Okay. Thank you. Your client, Mr. Voyles, described Grindr as a hookup sight. Did you know that?

A **Yes, sir.**

Q And Detective Byrd testified that it's a hookup site. Would you see that as different than a dating site? I think you testified that it's a dating site.

A **To me that would be the same, sir.**

Q Okay. It sounded like you've reviewed it. You didn't create an account but you have reviewed Grindr?

A **Yes, sir. I went through all of their different categories on their website. I've looked at their -- here's one that says confirming your age --**

Q Okay. I'll -- I'll ask a better question.

A **(Unintelligible).**

Q I -- you described it as pictures of males in their briefs; I believe is how you described it?

A **Yes, sir. That's the opening photo that you see when you log into the account.**

Q You did create an account or not?

A **Or, you log into the website.**

Q Okay.

A **Or, no. When you log into the website.**

Q So, the website, the first thing you see is a partially clothed male?

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A **Yes, sir.**

Q Okay. So, you didn't go into the site to see what people are posting not for the public?

A **No.**

Q Okay.

A **I did not look at any gallery images or profiles. I just basically scrolled through their safety tips.**

Q All right. For --

A **Etcetera.**

Q You were asked about law enforcement's ability to do a deep dive of the people they're talking to. Do you remember that question?

A **Yes.**

Q You talked about TLO and Lexus Nexus?

A **Yes, sir.**

Q What type of information is needed to do a lookup on TLO or Lexus Nexus?

A **Very little. If you have an unusual last name -- I can't take your first and last name, put in the state of Michigan, it will give me hits on different people with different ages. If I know approximately what county you live in or what city you live in it gives me all possible hits. If I ran Bill Smith I'm going to get thousands. If I run a Theresa Shoemaker I'm not going to get hardly any at all.**

Q Okay. So --

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A **And once you get that information --**

Q Those two examples you gave, Bill Smith and Theresa Shoemaker, those are first and last names, right?

A **Yes, sir.**

Q And you're assuming that those are authentic first and last names to look them up, right?

A **TLO will tell me if they're legit or not. The question was what can I find on TLO. If I run my name I get a lot of information. If I have a fictitious name -- let's say that I told you that my name is Bill Smith, the information I'm going to receive is on Bill Smith and not on me.**

Q All right. So, your name is --

A **(Unintelligible) if I have a legitimate name --**

Q Okay. So, your name is Larry Dalman. If you told me your name was --

A **Yes, sir.**

Q -- Bob, is there any way I could find out who you actually are?

A **Only --**

Q Just from -- just from the name Bob.

A **-- if you have an address -- no. No way.**

Q So, if somebody lies about their name and only gives a first name you're not going to have any luck with that in TLO, right?

A **Zero.**

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Q Do you know -- you were asked some questions about SkipTheGames. Do you know where SkipTheGames is hosted?

A I testified to it in the past. I can look it up if you'd like, sir.

Q Does the Netherlands sound correct?

A Sounds fine, yes.

Q Okay. And in the Netherlands prostitution is legal, right?

A Yes.

Q SkipTheGames is legal in the Netherlands and Grindr is legal here, right?

A Yes.

Q They're bound by different laws. They're operating under different laws, right?

A Yes. Yes.

Q Do you know whether Grindr has a private policy related to law enforcement use?

A No.

MR. THOLEN: I don't have anymore questions.

THE WITNESS: If they do, I didn't see it on their --

BY MR. THOLEN:

Q Right, in their public terms of use there's nothing about law enforcement accounts specifically?

A No, sir. I didn't see anything as far as law enforcement.

Q Okay. Thank you.

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THE COURT: All right. Any redirect --

THE WITNESS: No, sir.

MS. KUR: No.

THE COURT: Okay. Thank you, Mr. Dalman. Have a nice day, appreciate your time.

THE WITNESS: Thank you, sir. Bye.

(At 11:31 a.m., witness excused)

THE COURT: All right. Ms. Kur, next witness?

MS. KUR: Mr. Voyles.

THE COURT: Mr. Voyles, come on up. Good morning. Please, raise your right hand. Do you solemnly swear or affirm the testimony you're about to provide will be the truth, the whole truth and nothing but the truth, so help you God?

THE DEFENDANT: I swear.

THE COURT: All right. Please, be seated.

WILLIAM VOYLES

(At 11:32 a.m., sworn as witness, testified as follows)

DIRECT EXAMINATION

BY MS. KUR:

Q Good morning, Mr. Voyles. Can you state your full name for the record?

A William Thomas Voyles.

Q And you go by Billy?

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A Yes. It's --

Q Where do you work?

A Sorry.

Q Where do you work?

A I've been working at Petoskey Wendy's for over a year now, and just of last week I started at (unintelligible) Landscaping.

Q You still work at Wendy's also?

A Yes.

Q All right. Did you look through the screenshots of some communication you had with somebody on Grindr on the date you were arrested in this case?

A I'm afraid I did not.

Q Okay. I'm going to show them to you if I could.

THE COURT: I -- he's got it.

MS. KUR: okay.

BY MS. KUR:

Q Can you just basically look through that for me and let me know if there was anything more that you remember than that, or if that pretty much captures everything that was communicated between you and the fake person on the day you got arrested? Is that pretty much it?

A Yeah, that is pretty much it.

THE COURT: Okay. Then let's be -- just so the record's clear, Mr. Voyles, will you identify the exhibit

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number on the first page?

THE WITNESS: It says Exhibit One.

THE COURT: Exhibit One. Okay. Thanks.

BY MS. KUR:

Q How long have you had a Grindr profile?

A This one I -- I re-installed, I should say, a couple months prior to my arrest. This is not my first time using Grindr though.

Q Okay. Did you use it -- how many other times before the account was used on the day you got arrested?

A Only once more.

Q Okay.

A It was in -- I was in New Jersey at the time though.

Q All right. Did you use the same name on both accounts?

A No.

Q Do you remember? Did you use your real name at all?

A I used Bill.

Q Okay. And did you use Bill on this one too?

A No, I used Liam.

Q How come?

A I thought -- I thought I was trying something different this time.

Q Okay.

A And I (unintelligible) just noticed this, but if you take w-i-l from William I technically have Liam, so.

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(Unintelligible) --

Q So, it was a part of your name you used?

A It's partial of my first birth name yeah.

Q Okay. And since the account that was used on the date of your arrest was set up did you have any other -- did that result in any dates or sexual experiences at all?

A No. I had a couple of chats, but none that were --

Q Okay. Other than the name Liam did you put truthful information on your profile?

A I did, yes.

Q Did you put a picture of yourself?

A Yes.

Q And did you -- so, who -- what was the name of the person that you were communicating with, or you thought you were communicating with, on the date of your arrest?

A Ethan.

Q And did you trust that the profile for Ethan was true?

A I did.

Q Did you ever ask Ethan how old he was?

A No.

Q Did you assume that he was over 18?

A I did.

Q Did you remember what he put on his profile? Do you remember that, about how old he was?

A I believe he put -- if I remember correctly he put 19.

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Q Okay. And why did you trust that that profile was correct -- or true that was correct?

A Most of the profiles I have communicated with before all have said that they were at least over the age of 18.

Q Okay.

A Some were actually older than me, if I'm being honest.

Q And how old are you again?

A I'm 24. I'll be 25 in June.

Q And before you -- before this Grindr profile, when you had the other one, did it result in some dates or -- and or just sex, some kind of sex?

A It did result in one date, and --

Q You don't have to get into all the details, but did -- was there some -- you know, did you use Grindr to hook up with somebody?

A Yes.

Q And was it a man?

A Yes.

Q And are you gay?

A I am.

Q And you've had more than one sexual experience in your life; is that true?

A Yes.

Q And on the date that you got arrested, how much time passed between the time the officer told you he wasn't -- he was --

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was going to be one six in a week and the time you got to the hotel, if you remember?

A 15 minutes --

Q Okay.

A -- I believe.

Q The whole transaction, was it fair to say, lasted a couple hours?

A Yeah, maybe like two.

Q Okay. And you -- you're the one that brought up sex first, right?

A I did, yes.

Q And he said what do you want to do, right?

A He did.

Q And what did -- did his profile indicate anything like -- that he was looking for sex or anything like that, that you remember?

A There's a (unintelligible) profile that says expectations, part of it says looking for, where you can put, like, dates, relationship, meet up's, hookup's. I believe on his profile it said hookups.

Q Okay. And you were arrested outside of the hotel, right?

A Yes.

Q And how many police officers arrested you?

A Three, maybe four.

Q All right. And then were you taken to the old elementary

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school too, to be interviewed?

A **No, I was taken directly to the Charlevoix Police Station.**

Q And how many times did you get interviewed by police there, if you remember?

A **Twice, I believe.**

Q And on the date of your arrest did you have some pills in your pocket?

A **I did.**

Q Why?

A **I was asked by my step-sister and my step-father if I could bring my step-sister's prescription pills to her while she was in school because she forgot to take them in the morning.**

Q Did you do that?

A **I did.**

Q What were the -- do you remember the names of the drugs?

A **I do not.**

Q Were they the only two drugs that were found on you?

A **They were.**

Q And when you took -- had you taken them to the school before the arrest on that same day?

A **Yes, before.**

MS. KUR: Can I -- can you hear me?

THE COURT: Yeah.

MS. KUR: Okay.

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THE COURT: Well, I can hear you, but you're -- hopefully you're being picked up. You're not -- you better speak up if you're going to stand over there.

MS. KUR: Okay.

BY MS. KUR:

Q All right. So, what time did you go to the school, if you remember?

A I -- I believe it was, like, maybe around 9:30, maybe --

Q In the morning?

A Yeah, in the morning.

Q And did you go into the office?

MR. THOLEN: Objection.

THE WITNESS: I did.

MR. THOLEN: Relevance.

MS. KUR: There's going to be an argument, and there's a supposition that's being made here that he brought drugs to this transaction in order to give them to an unwitting teenage kid, so I think it's important that the kid -- that the Court know what he told the police, and then what actually happened.

THE COURT: Is that part of the prosecution's theory?

MR. THOLEN: I don't know what it's relevant to. At trial that is a different issue, in his possession, his knowledge of them, that that would be an issue at trial

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because he is charged with that, but. I'm not sure what the relevance is to today.

MS. KUR: Well, it is proclivity to commit criminal acts. It's all a part of the test that's set forth in Juliet, the --

THE COURT: All right.

MS. KUR: -- (unintelligible).

THE COURT: Well, I'll allow it. Overruled.

BY MS. KUR:

Q So, did you go into the office?

A I did. I had to buzz in to a buzzer that's on the outside of the school.

Q Okay. And then what happened next?

A I told them I'm here to give my sister her prescription pills, and they called her down. I think it was a couple minutes before she came to the office.

Q All right. And then what happened?

A She took the pills and just handed them back to me, and I just put them in my coat pocket.

Q Did she take them in front of any other adults besides you?

A The lady -- there was a woman at the front desk who made the call to bring her down. She was still there. And I think there was another person in the room. I -- I'm not sure who that person was though.

Q And so then you put them in your pocket?

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A **I just -- yeah, I just put them in my pocket, and said goodbye, and left.**

Q And so when you got to the hotel you didn't take them out of your pocket, right?

A **I did not.**

Q But the police found them in your pocket?

A **Yes, they did.**

Q Was it your intent ever to give a 15 year old kid drugs?

A **No, it was not.**

Q Was it your intent ever to have some sort of sexual encounter with a 15 year old?

A **No, it was not.**

Q Why did you say that stuff that's in Exhibit One after the officer -- the fake person told you that they were underage? Why did you say that stuff to him?

A **I thought if I play my cards right I could find -- well, not play my cards right. I thought if I could not convince him that I was actually concerned with what's going on with him; I thought he might open up to me more in person.**

Q Okay. And what was your intent when you went there then?

A **My intent was to find out what was -- what was actually going on with him.**

Q Why -- why did you care?

A **Well, I personally -- I kind of -- personally I don't see why anyone wouldn't care. I mean, if that was suddenly him**

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in my shoes I would actually hope someone would care if I was doing similar to what he was doing.

Q Meaning, like, the you're 15 and you're kicked out of your house?

A Or kicked out of my house, or rebelling against parents, or work, or -- and the worst one, he was being forced to do something, to do this stuff by someone else.

Q So, your communication back with him, and -- what was the reason that you went to the hotel then? To --

A To see -- to see what was going on.

Q Okay.

A Like, if he was actually okay. If he -- or if he was being forced to do anything he didn't -- that he didn't actually want to do.

Q Was there some doubt in your mind that -- or -- that he was 15, or that he was 18? I mean, did you --

A There was, because he said he was 15 in a hotel alone instead of in school, so. There was a part of me that thought he was lying about that. Just -- then there was a part where I got concerned that he may actually not be lying.

Q But if he had been an adult, if you got there and he lied about 15, say he was 18 -- you found out he was 18, would you probably of had some sex with him?

A Probably, yeah.

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Q Okay. And did you tell the police any of this stuff about the concern that you're testifying to right now?

A I did not.

Q How come?

A I was -- because when I got arrested I got -- I was scared, and confused, and -- sorry. I just didn't know what was going on at the time, so.

Q It's fair to say that the fake -- fake person on Grindr never asked you on Grindr what your real name was, right?

A No, they did not.

Q Okay. Have you ever had any kind of sex with a minor?

A No.

Q Have you ever paid for sex of any kind?

A No.

Q Were you afraid on the day you were arrested?

A I was, yes.

MR. THOLEN: Objection to relevance.

MS. KUR: Well, it's --

MR. THOLEN: Just -- none of this goes to any of the factors. Whether the Defendant had been known to commit the crime, it's looking at police and we've got all these questions about whether he commits crimes.

MS. KUR: But it's not looking at police. It's the -- again, the law is completely muddled.

THE COURT: I'll allow it. I already said I'm

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going to allow a more extensive record than I would in front of a jury, so overruled.

MS. KUR: Because the -- there's no majority opinion in Juliet. It's a four and four --

THE COURT: I know.

MS. KUR: And then this other guy that says there's no entrapment at all. Not guy. Judge, I should say. I'm trying to make things simple here, but.

THE COURT: That's okay.

MS. KUR: Okay.

BY MS. KUR:

Q So -- I forgot what I even asked you.

THE COURT: Was he scared when he got arrested.

MS. KUR: Yeah, yeah. Yeah.

BY MS. KUR:

Q Were you scared?

A Yes.

Q How many times were you interviewed about the drugs?

A Twice. They asked me about -- if I intended to use it, then -- yeah, then they asked me again in the second interview.

Q Okay. And you never said anything other than what you said here, right? You did tell them that.

A I told them no, I didn't have no intentions of using it.

Q Did you tell them about going to the school for your sister and that it was her drugs?

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A **I did.**

Q And did the prescription bottle say her name on them?

A **They did.**

Q Okay. So, did you ever expect to run into a child on Grindr?

A **I did not.**

Q Why?

A **Because Grindr is legally for 18 year -- 18 or older people. There was -- I never expected any sort of minor -- anything child related on Grindr at all.**

Q Did you ask for -- ever ask for a picture of the person, if you remember?

A **I did not.**

Q How come you didn't do that?

A **I don't really have much of a preference when it comes to physical features.**

Q Okay. But when the person said they were 15 or -- under 16, or whatever, it didn't occur to you to ask for a picture?

A **It did not.**

Q Okay. Were you concerned -- well, when you signed up for your Grindr account, the one that was used on the date of the arrest, did you have to tell them how old you were?

A **I did.**

Q Okay.

A **This was the first --**

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Q And initially, before the -- before the -- before you went to the hotel room, or before you found out the person was under age, were you excited to meet the person?

A I was.

Q Why?

A Because I haven't had -- because I haven't had a boyfriend in about a year prior to that.

Q Okay.

A Maybe two, I believe actually.

Q Okay.

A So, I felt lonely.

Q Did the officer ever say to you -- did the officer that testified in court here on Tuesday, did he -- did he tell you Ethan was upset?

A He did.

Q Even when you knew there was no -- that was in person, right?

A That was in person.

Q But there was no Ethan, right?

A No.

Q Does Grindr have a setting where you can actually say where you are geographically and that will point you to other gay or LGBTQ people in your geographical area?

A Yes, Grindr gives us the option to share our location, but that is -- but that is optional.

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Q Did you do that?
A I did.
Q And during the time that you had this second profile open, did you get a lot of feedback or not very much?
A Not very much.
Q Do you know why? Or do you have an opinion as to why?
A Opinion, not many people around here, and --
Q You mean gay people?
A Yeah, gay people. That and also some are, like, far away, I suppose -- as well. And --
Q Were you -- I'm sorry --
A And personal experience, some are just picky, I guess.
Q Were you afraid to tell the police about your sexuality and your sexual desires?
A A little bit, yeah.
Q And when you were in the jail you called your mom, right? And told her that you were in jail?
A Yes.
Q And did you say it was for -- for trying to have sex with a 15 year old?
A I -- I can't recall, I'm afraid.
Q Okay. Well, I mean, that's what you thought you were arrested for, right?
A Yes.
Q When you said that to her, was it ever your intent, again,

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to have sex with a 15 year old the day of your arrest?

A **No.**

Q Okay. Did anybody ask you to bring alcohol to the hotel?

A **No.**

Q Okay. And did you sign a paper saying that the law enforcement could search your whole phone?

A **Yes.**

Q And did your phone have any -- any illegal child pornography on it?

A **No.**

Q Have you ever even visited or viewed any child pornography in your life?

A **No.**

Q And you don't live on your own, right? You live with your parents?

A **Yes.**

Q And does your mom assist you with some of your financial things?

A **She does.**

Q Does your -- like, who does your taxes, your -- your step-dad?

A **Yeah, my -- yeah, my step-dad.**

Q Have you ever lived independently?

A **No.**

Q All right.

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MS. KUR: I don't have anything else.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. THOLEN:

Q Do you remember what your account said you were seeking?

A Hookups.

Q Okay.

A I did say hookups.

Q And your -- your initial text to Ethan was hi, want to hook up?

A Yes.

Q The whole conversation with Ethan was 32 minutes. Does that sound right?

A Yes.

Q Wasn't a couple hours, it was 32 minutes?

A Yeah, yes.

Q From -- I think from -- you can look at it if you want, but from you saying hi, want to hookup to Ethan saying okay, 202, its easiest going through the front door, that's 32 minutes?

A Yeah, yes. Yes, it (unintelligible) 32 minutes.

Q Did you ever hesitate at all about showing up to kiss, BJ, fuck with a 15 year old?

A Hesitation you said?

Q Yep.

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A **I don't understand.**

Q Was there ever a point in those 32 minutes where you turned your car around, where you started to type out woah, I can't do this.

A **Yes, actually.**

Q What did you do?

A **I stopped my car in a parking lot. I believe it was -- I believe it was in the Goodwill parking lot, and I just waited for a bit (unintelligible).**

Q The Goodwill on 31?

A **Yes.**

Q And what did you do at the Goodwill parking lot?

A **I just stayed in my car.**

Q How long were you in your car?

A **(Unintelligible) I never got out of my car.**

Q Okay. Did you convey to Ethan your hesitation?

A **No.**

Q What made you change your mind and decide to go to the hotel knowing Ethan was 15?

A **It was when he told me he was turning 16 next month, when I got concerned. Because -- because I did -- the whole kiss, BJ, and fuck thing I had mentioned before he mentioned his age.**

Q Right. So, were you in the good -- Goodwill parking lot when you wrote what happens between us stays between us,

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deal?

A **No, I was not.**

Q Where were you when you texted him that?

A **After I got his message I stopped again in the parking lot just to type because I'm aware that you technically cannot be on your phone while driving (unintelligible).**

Q Okay. So, he tells you I turn 16 next month. Where were you when you got that text?

A **I believe I was in the Jacks (ph) restaurant parking spot -- parking lot. I only stopped at Jacks to text then I was on my way.**

Q Okay. Jacks is after the Goodwill. Coming from the high school Jacks is after the Goodwill?

A **Yes.**

Q Okay.

A **Yes.**

Q So -- so, you're texting in the Goodwill parking lot, right?

A **I texted, yes.**

Q Okay. And then you go to the Jacks parking lot?

A **I -- I'm sorry, I don't --**

Q You're coming from the high school, right?

A **I'm sorry -- I. I'm sorry, it's just that day, I tend to --**

Q Okay. So, you drop of the pills to your step-sister, right?

A **Yes.**

Q At Charlevoix high school?

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A **Yes.**

Q Is that where you start this conversation with Ethan?

A **No, I was at home.**

Q Okay. You were at home when you start the conversation, then you go to Charlevoix high school?

A **Yes.**

Q And you're headed back home?

A **I am.**

Q Where was home?

A **Boyne City Road.**

Q Okay.

A **10475 Boyne City Road.**

Q So, you're going from Charlevoix high school to Boyne City Road. You take 31; go towards Boyne City Road, where you're going to turn right?

A **Yes.**

Q So, you pass the Goodwill first?

A **Yeah. It is past the Goodwill.**

Q Okay. And then you pulled into that parking lot?

A **I pulled in to answer -- I'm sorry. I believe I pulled into there to say the -- I said kiss, BJ, fuck, you okay with that? In the Goodwill parking lot.**

Q Okay. And you're saying that's where you expressed some -- that's where you were feeling some hesitation about this?

A **Yes.**

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Q Okay. You said that you received the I turn 16 next month while you were in the Jacks parking lot?

A Not while I was in the Jacks parking lot, like -- I think I was on my way to it.

Q Okay. And then you wrote your what happens between us stays between us, deal? Was that in the Jacks parking lot?

A Yes.

Q Okay.

A And I went back on the road.

Q The times -- tell us about your thought process with that. You're told I turn 16 next month, and your response is let's keep this a secret essentially.

A You said my thought process?

Q Yeah, so why do you decide that you want to keep this a secret?

A Well, initially I didn't actually want to keep it a secret. I just thought -- I just thought, like, if I say that he'll -- then he won't block me because my initial thought process when he told me he was turning 16 was concern. I kept thinking why is this 16 year old alone in a hotel instead of in school? I mean, a 15 year old. Sorry.

Q So, you wanted what happened between you to stay a secret?

A Officially no. That's what I wanted him to think. If -- depending on what happened with the outcome I would have called the police saying there's a 15 year old alone in an

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apartment looking for sex with overage men.

Q I see. Okay. So, you were concerned when you send this text of what happens between us stays between us?

A Yes.

Q Why were you concerned?

A 15 year old alone in a hotel? What's there not to be concerned? I mean, that's, like, red flags to me.

Q Sure, so you knew he was 15 at that point and you were concerned?

A Yes.

Q Okay. So, your prior testimony that you didn't know or you had misread the -- your prior statements that you didn't know or you had misread the texts, those were -- those were lies?

A Yes.

Q Okay.

A I misread the text because I kept seeing a 16 year old (unintelligible) all he said was he's turning 16 next month.

Q You were lying when you said you misread the texts. Correct?

A Sorry?

Q Okay. You get that text and you say you're concerned because he's 15, and he's not in school, and he's in a hotel, right? You're concerned about that?

A Yes.

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Q So you had not misread the text. You understood the text?
A Yes.
Q Okay. So, when you said that you misread the text and you thought he was 16, that was a lie?
A Oh, no. I -- I only said I misread because I kept saying to the detectives -- to the officers that he -- that he was 16. The mistake I made was saying that he -- was saying I thought he was 16, not 15.
Q You just told us that you were concerned because he was 15, not in school, and in a hotel.
A I did.
Q All right.
A It's when I told the officers.
Q All right. We can move on. How many times, if you remember, did you tell officers that you were there to get laid?
A I -- I don't remember how many times.
Q Okay. Do you remember saying that?
A No, actually. No, I don't remember saying specifically that. No.
Q What do you remember saying when police asked you why you were there?
A I was just -- I was just looking for a hookup. Just -- just a hookup.
Q Okay. You don't remember telling them that you were there,

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quote, to get laid?

A I don't remember, no.

Q Okay. It may be -- maybe it's not a big deal. Hookup in your mind, what is that?

A Just mutual intercourse.

Q Okay. Sexual intercourse?

A Yes.

Q Okay. Let's see. Do you remember drawing a picture of how far you were going to put your penis into the 15 year old?

A Yes.

Q Okay. You drew that for police?

A Yes, they asked me to drew -- to draw a picture. I was uncomfortable with it, but I felt -- complied.

Q Ms. Kur, your lawyer, asked you about a statement to your mom on a phone call.

A Yeah.

Q About why you'd been arrested.

A Yes.

Q What do you remember telling your mom?

A I just -- from what I actually do remember, I told her that I'm at the police station and I was arrested. I don't remember going into details because -- from -- because she sounded -- because she was loud, and angry, and upset, and I knew that -- and I knew she would be, and so I was getting upset, and I hated myself at the time. Then she said say

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nothing more until we get a lawyer, if I -- (unintelligible).

Q You understand what she was telling you?

A Yes, yep.

Q You're capable of understanding when somebody tells you you can remain silent, and knew what a lawyer is, and that kind of thing?

A I do --

Q Okay.

A -- understand.

Q Thank you.

A I did understand when she said that.

Q What did you tell your mom though as far as the reason you were arrested?

A I don't think I gave a specific reason. I don't -- I don't recall the whole conversation.

Q Do you remember your lawyer's question?

A She -- she -- she asked if I recalled the phone call to -- the phone call to my mom.

Q And telling your mom that you were arrested for trying to have sex with a 15 year old?

A That was her question, yes.

Q Okay. And you said yes?

A I said yes. I made a phone call to my mom.

Q Okay. So, you weren't answering that part of your lawyer's

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question?

A I didn't say -- I said I didn't recall most of the conversation.

Q Do you remember telling your mother and step-father, who was also on the call, why you were arrested?

A I don't remember, no.

Q Okay. Would you have lied to them?

A No.

Q Okay. So, what you --

A Because I -- I can never lie. They'll always know, even if I'm not in the room. They will know.

Q So, when you told them why you were arrested, that was true?

A I believe it was.

Q Okay.

A I --

Q When you were --

A (Unintelligible). I just don't remember what I said.

Q Okay. When you were at the Jacks parking lot and you texted Ethan what happens between us stays between us, deal? That was because you were concerned about him not being in school, and him having a hotel room?

A Yes.

Q I think you had also said it was something along the lines of you were concerned that he was there against his will or something like that?

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A **Yes, that was -- that was another thought that fit the possible --**

Q Okay.

A **I didn't know for sure.**

Q Like, Ethan was being held in the hotel room; is that what you're saying?

A **I -- I don't know for sure.**

Q Okay. But the -- you were concerned he was in the hotel room against his will and you wanted to go check that out?

A **Yes.**

Q Did you call police?

A **No.**

Q Did you call the hotel?

A **No, I -- I did not.**

Q Did you notify Grindr?

A **I did not, no.**

Q Did you notify anybody?

A **No.**

Q Did you keep it a secret in the same way you were asking Ethan to keep a secret?

A **I suppose.**

Q All right. Thank you, sir.

THE COURT: Any redirect?

MS. KUR: No.

THE COURT: Okay. You can step down, sir. Can I

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have that -- that exhibit, please?

THE WITNESS: Oh, yes. Sorry.

THE COURT: Thank you. No, it's fine. Thank you.

(At 12:04 p.m., witness excused)

THE COURT: Anymore witnesses, Ms. Kur?

MS. KUR: No.

THE COURT: Any witnesses -- any additional witnesses, Mr. Tholen?

MR. THOLEN: No. Thank you.

THE COURT: Okay. Argument, Ms. Kur?

MS. KUR: Well, I think the Court, from the nod I got when I was talking about the law, is pretty familiar with the fact that there hasn't been a Michigan Supreme Court entrapment case decided since 1991, which is a significant period of time. And there have been some Court of Appeals cases in the meantime, some reported, some not.

But, we do have a couple -- we do have some areas where I think Mr. Tholen and I are going to differ in our arguments, and the 12 point impermissible inducement test is one of them. And I think that going through those factors and the -- again, I think the case law's pretty clear that it's not a balancing test of these 12 factors. One of them can be enough for the Court to find entrapment. And here I think we -- we touched on more than one of them.

The first one is whether there existed appeals to

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the Defendant's sympathy as a friend. I think that at least with respect to Grant, the fake person, or the police, clearly held out -- themselves out as someone who was a potential friend for him, a lonely gay person in Charlevoix. Whether the Defendant had been known to commit the crime of which he's charged, clearly the police testified that neither one of them have, and they both testified that they have no criminal history. So, no -- no proclivity and no known instances of past sexual misconduct with children.

Whether there were any long time lapses between the investigation and the arrest, clearly the Voyles case has a relatively short time period. The significance of the time period between the arrest and the initial contact between the fake person and Grant Newcomb was a little bit longer. And also in Grant Newcomb's case it's pretty clear that the officer initiated sexual conversation by saying that he was quote unquote horny.

Whether there existed any inducements that would make the commission of a crime unusually attractive to a hypothetical law-abiding citizen, I don't think there's much evidence with regard to that there or whether there were offices -- offers of excessive consideration or enticement, other than sexual enticement, but that's covered in factor eight.

There was no guarantee made by the state that the

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acts alleged as crimes were not illegal, and there was not extensive governmental pressure. Clearly there was discussion of sexual things, and sexual appeal to the sexual desire of adult males in this area who both used the site to meet -- or, wanted to meet the site's to meet people (sic). There were never any threats of arrest as set forth in prior cases.

Whether there existed any government procedures that tended to escalate the criminal culpability of the Defendant, in one case with Mr. Newcomb there was clearly testimony from the officer himself that he wanted to ratchet it up a little bit and asked for him to bring some alcohol to him after he had said he was a minor. So, clearly that existed.

Clearly there was police control over the informant, because they were the informant, or the -- the snitch, or the fake person, or the decoy, or whatever you want to call it.

And then was the investigation targeted? This was a fishing expedition, and -- on a legal website, as I stated in my brief, and I'm not going to -- not going to regurgitate it because I know that you read pleadings, but you know, the activity that law enforcement engaged in here basically led to these two young men on a perfectly legal website, using this investigative technique which there's

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little or no training on, that escalated legal online dating to a crime. And the question of whether the crime would have been committed were it not for the actions of the government, clearly the answer here is no.

Both of these people understood that the profile was -- that they saw was real, and that it was -- was legal, and then you know, the rug gets pulled out from underneath them literally minutes before they're supposed to meet up, and -- and their lives are turned upside down, and they're facing 40 years in prison.

So, the -- the Court -- you know, the police have a lot of power, and I'm sure that their intentions may have been good, but they were not detecting existing crime. The officer admitted that but for his fake profile and lie that no crime would have occurred here, so clearly no crime would have happened without police involvement.

The (unintelligible) case that I attached to my brief had -- they have a different test, but the gist of it is the same. And I think it's on all fours, your Honor. The legal analysis is similar. The police didn't know anything about the defendant. The government controlled it. Sort of like bowling for dollars, but asking for criminal activity, and I think it's reprehensible that the police prayed on the desire of these two people who were vulnerable, and that they did what they did, and I'm asking

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that the Court find entrapment. And if it does, then the remedy is dismissal. Thank you.

THE COURT: Thank you.

Mr. Tholen?

MR. THOLEN: Yes, your Honor. There's two ways that entrapment can be found, as the Court knows, and I'll try to go through them briefly separately.

As far as the first possibility, it is impermissible conduct that would induce an otherwise law-abiding person to commit a crime in similar circumstances. We have testimony that he chatted with approximately 200 people. The alleged age of 15 went out to approximately 50, and only two showed up. So, the idea that the other 198 -- or, the other 48 didn't show up, I think is a -- an important fact here that this operation, or this way of attempting to proactively prevent children, is not entrapping people because it's not entrapping people.

What it is detecting is people who are ready and willing to accept an opportunity. And that's what we have in both of these cases. If you look at both of these text conversations you see somebody who's ready and willing to do this. You don't see any hesitation. There's literally no hesitation from either one. It's an immediate nice, I won't freak out, in Mr. Newcomb's case, and in Mr. Voyles' case it's what happens between us stays between us, deal?

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This is a person, with Mr. Newcomb, who is ready and willing to do this, and with Mr. Voyles we have somebody who is not only ready and willing but recognizes the illegality of it and wants to keep it a secret.

As far as the factors, I do look at those in the context of those two quotes that I bolded and put it in blue, that entrapment will not be found where the police did nothing more than present the Defendant with the opportunity to commit the crime, and entrapment does not exist if the conduct would induce only those persons who are ready and willing to commit the offense. So, in the context of both of those I think the factors are helpful at looking at that. But, the best evidence here is simply the conversations.

There was no appeal to his sympathy as a friend. There was no information that he was known to commit the crime. And I -- I don't actually know which way that factor goes. I think it could be argued each way, which means it's not all that helpful as a factor. Because if you know somebody's inclined to do something and then you entice them to do it, that's more entrapping than the -- the wide -- the wide opportunity that was presented here.

But, you know, on the flip side you could say well, if they're known to commit the -- the crime then it's less entrapping. So, I don't -- I don't really know how that factor is supposed to play out in any case. There were

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definitely no long time lapses between the investigation and the arrest. I think between the two cases there's -- it's just a matter of minutes from when the age of 15 goes out to when they're at the hotel.

I don't see any inducements at all to make this attractive to a hypothetical law-abiding person. There were -- there was no other excessive consideration, no consideration whatsoever. The only argument that I've heard as far as enticement was that the investigating officer wrote that he was bored and horny. But it -- obviously that needs to be looked at in the context of what this site is, a hookup site where they advertise themselves to the public as a male -- partially clothed male, but then according to Detective Byrd once you get into the site it's a lot of unclothed sexual images.

So, I -- I don't think that there were offers of excessive consideration or other enticement. Whether there was a guarantee that the acts were not illegal, there was no such thing. There was no government pressure. There were no sexual favors. Looking at People v. Wisneski, which tells us how to interpret that, its sexual favors used to induce the alleged crime, and there was -- there was no such thing.

No threats of arrest. I'll skip ten for now. And its number 11, whether there was police control over an

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informant, there was no informant and the investigation was not targeted. So, all of those -- I don't even think there's a whole lot of discussion needed that 11 of the 12 factors just simply don't weigh in favor.

The tenth factor is whether there existed any government procedures that tended to escalate criminal culpability, and this gets to, in my mind, more of the heart of the defenses argument, that the operation as a whole is just entrapment, that there's not something specific done in this case that was entrapment, or government procedures to escalate criminal culpability. But just the -- that doing this is never okay, going onto adult sites and posing as a kid.

That's -- that's how I view the argument that's being made, is that this is just per say entrapment, that it has nothing to do with what Detective Byrd did here, what the Sherriff's Office did here. And I -- I don't think that there is support. (Unintelligible) is a different situation out of the district of Nevada that hasn't been cited for that holding ever anywhere as far as West Law shows. A separate holding was cited twice within the district of Nevada. So, I don't think there's support for that proposition that this is just never okay, it's per say illegal.

So, if you look at this specific case, that factor

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with this specific case, with -- with Voyles, that there was simply nothing. He's told immediately that this kid's 15, and he wants to keep it a secret and he shows up. In Mr. Newcomb's case there's a request to obtain a Twisted Tea, and the idea that that -- that a request for alcohol, which was neither acted on nor responded to by the Defendant, would somehow be an escalation of criminal culpability, I don't know -- I don't understand that argument that something he didn't act on, something he didn't rely on, something he didn't do, makes this case, which is otherwise okay, entrapment. That would be pretty excessive as far as a response.

The way I look at the Twisted Tea, and that is a common part of these operations, is its obtaining proof of intent and identity. If somebody shows up with a Twisted Tea for a 15 year old they're there for nefarious purposes. If somebody walks into a hotel with Twisted Tea, and you've been interacting with Bob, and then you've got Grant that shows up at the hotel, you've got further proof that Grant is Bob. So, the Twisted Tea and the commonality of that in these cases, in my mind, is important as proof of intent and identity.

THE COURT: Well, in your mind it is. And I -- I understand where you're coming from, but -- but the Detective testified that he was trying to get him on another

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charge.

MR. THOLEN: Yeah, a 45 day misdemeanor.

THE COURT: Well, I don't know. Yeah.

MR. THOLEN: An attempted furnishing alcohol to a minor. It -- maybe it would have been charged. But it would be a 45 day misdemeanor as opposed to the 20 year felonies that he's charged with.

So, I heard that testimony. The factor looks at government procedures, so I think you can look at the procedure and possibly the purpose of the procedure there. So, in the end, just looking at the conversations which are -- which is the only interaction between the police and these two gentlemen, it's quite clear that an opportunity's presented, they seized it, and they were ready and willing to do so. So, the case law is clear that that should not constitute entrapment.

The second way that entrapment can occur is if the police engage in conduct so reprehensible that it can't be tolerated, and this is where the focus needs to be on what is happening locally and nationally, and I cited those cases, the cases locally, and then specific to Grindr nationally, that this is a problem. And there can be dispute about whether police should do this or not. I think they should. But ultimately it's a question of resources.

If they -- if somebody shows up to a hotel to have

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sex with a -- a 15 year old, there's proof of that. That's obviously a jury question ultimately whether that was the intent. That's a question for police as far as how they utilize their recourses, and that's a question for juries as far as whether the facts meet these statutes. But it is not conduct that's reprehensible. Thank you.

THE COURT: I have some questions for you.

MR. THOLEN: Yeah.

THE COURT: So, do you acknowledge that lying and dishonesty are generally recognized as immoral?

MR. THOLEN: Not in the context of police interrogations and actions. I would disagree in that context.

THE COURT: Okay. It's alright for the police to lie and be dishonest?

MR. THOLEN: In the -- yes. In the context of catching child predators I do not find that immoral in the slightest.

THE COURT: Okay. All right. Should there be any limitations on the amount or the level of dishonesty or manipulation that law enforcement employs in a STING operation?

MR. THOLEN: Yes, and that is the law we have as far as the first way entrapment can occur.

THE COURT: Okay.

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MR. THOLEN: Which is lying to the level that would induce an otherwise law-abiding person to commit a crime in similar circumstances.

THE COURT: Well, what about with regard to the conduct so reprehensible that the Court cannot tolerate it? That's -- that's the context --

MR. THOLEN: Okay.

THE COURT: -- that I'm considering it.

MR. THOLEN: Sure. So, if there is lying to the degree where it is so reprehensible that it cannot be tolerated, we have a test for that. We already have that. And I would -- I would simply ask the Court to consider what the police were doing.

If this was a, you know, telling 100 multi-faceted complex lies, creating a ruse to make somebody think the most attractive 15 year old ever -- most attractive person ever was 15 years old, then you start to -- to entrap somebody into purchasing alcohol for that 15 year old. Then you've got this fact specific situation where the police are doing something for, you know -- what's the purpose?

You know, you've -- you're trying to detect whether somebody will buy a beer for a 15 year old and you're creating a ruse. That's a different situation than we know Grindr, or other adult applications, are being used to sexually assault kids. And so police are going on there

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and just putting up a picture, people are reaching out, and police say hey, I'm 15; do you want to meet up? And the people do, and two out of 200.

So, we have those tests already. I don't think that there's anything needed to go beyond that in whether lying per say is immoral, or -- I'm not saying the Court was urging that, but. If the posting of a fake profile is conduct so reprehensible, I think you should look at the purpose of the operation, the type of lies that were told, that type of thing.

THE COURT: Should the government be allowed to employ artificial intelligence bots that engage in dishonesty and manipulation in conjunction with STING operations?

MR. THOLEN: So, one concern I would have there is the degree of knowledge that a bot or AI might have about the person they're talking to, where -- you know, we heard he didn't know who these people were.

THE COURT: Okay.

MR. THOLEN: So, he's not --

THE COURT: At some point AI could know everything there is to know about somebody's online identity, and then --

MR. THOLEN: Yeah.

THE COURT: -- it becomes even worse. But

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assuming that the AI is acting blindly, do you think that's okay? To have, like, a, you know, complicated, manipulative, dishonest scheme enacted by an AI entity that's being controlled or working for the benefit of the government?

MR. THOLEN: First off, I'm definitely enjoying this. And I think the law we have would still apply. And one thing I thought about with the AI or the bot is the second factor of how are we going to end up assessing whether the Defendant had been known to commit the crime with which he was charged, and then whether there is -- and then the 12th factor, whether the investigation was targeted.

If this AI knows that my mom's sick, and so it says hey, I'll get your mom some medicine -- you know, just some Tylenol, you know, it -- you know, where a prosecutor might argue it was just Tylenol. But if AI knows how much I love my mom and that type of thing, you're -- this test would still apply. This test would still function. And those facts would have to be assessed based on those facts and the factors that have been given to us.

THE COURT: Okay. Good. I mean, that's -- I appreciate your answer.

Ms. Kur, I'll give you the last word if you have anything more you want to say. You don't have to. I --

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you've thoroughly argued the case. I'm not looking for you to make any final points; I'm just going to --

MS. KUR: Well, I just think that the result here just screams that the ends don't justify the means. I mean, two people that got ensnared in this are who they are, and you just saw them testify, and they're not predators. And it's just sad, and it shouldn't go on. If this was an illegal site I wouldn't have an argument, but clearly from the testimony that's been heard by the Court in both today and Tuesday, it's not an illegal site. So, I think that that's all I have to say.

THE COURT: Okay. So, I'll start off by saying I clearly recognize that there is a necessity that is recognized in the state of Michigan jurisprudence for undercover police work and STING tactics to combat difficult to detect crimes like child sexual predation. So, I mean I -- there's no question about that.

The entrapment occurs -- let's deal with the first -- the first prong, or the first option, if the police engage in impermissible conduct that would induce an otherwise law abiding person to commit a crime in similar circumstances. I'm going to go through -- I guess, because I assume that the Court of Appeals wants me to go through these 12 factors, so I'll go through them. However, at the end of the day there's got to be a bright line, and there is

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a bright line, that exists for law-abiding people not to engage in sexual contact with a 15 year old.

But, the factors are -- the first one, whether there existed appeals to the Defendant's sympathy as a friend, it doesn't really apply here, either on -- either way. I don't think it -- I don't think that occurred. The -- I've got some issues with the length of and the nature of the interaction between the detective and Mr. Newcomb, but I'll deal with that in a different context.

Second factor is whether the Defendant had been known to commit the crime. That doesn't apply here. They didn't know who these people were, who these two individuals were. Law enforcement didn't know.

Whether there were any long time lapses between the investigation and the arrest, there weren't in these cases.

Whether there existed any inducements that would make the commission of the crime unusually attractive to a hypothetical law-abiding citizen, I mean, so the -- the -- I think this does apply to some extent. They -- the law enforcement held themself out initially as a legal adult and advertised for a hookup, or some sort of causal sexual interaction on a website, a social media website used by homosexuals apparently, for purposes of meeting and hooking up with likeminded individuals. And so they initially

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attracted these individuals, these defendants, with false representation that they were going to be -- the fictitious identity they were representing was a legal adult.

So, I mean, but again, I don't find that -- at the end of the day these -- these factors aren't going to rise to the level of inducing an otherwise law-abiding person to commit the crime. The next factor is whether there was offers of excessive consideration or enticement.

There wasn't that I can see, although I've got a pretty big problems with the photographs that were submitted to Mr. Newcomb. But I -- again, I don't think that rises to the level of causing an otherwise law-abiding person to commit a crime.

Whether there were offers -- sorry, number six, whether there was a guarantee that the acts were not illegal. I mean, to some extent the initial representation made by law enforcement to these two individuals was this is a legal relationship I'm offering you. And then there was a little bit of a bait and switch that happened here, and so it happened fairly quickly and promptly with regard to Mr. Voyles, and it happened at the end of a long, drawn out cat fishing expedition with regard to Mr. Newcomb. But anyway, that factor is what it is.

Whether and to what extend government pressure existed, there was some pressure exerted on Mr. Newcomb.

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Government agents were the ones who suggested sex. They suggested twice getting together, so. But, again, I don't think it rises to the level of causing a law-abiding person to have sex with a 15 year old.

Whether there existed sexual favors, there were not.

Whether there were any threats of arrest, there were not.

Whether there existed any government procedures that tended to escalate the criminal culpability, there were some. I mean, obviously one, the procedure of making these fake accounts and then lying about the fictitious identity being underage, and then there was also the request for -- there was also a request for the alcoholic beverage. But the fact -- again, so there was some of this, but it doesn't rise to the level that would cause an otherwise law-abiding person to commit a crime -- this crime specifically.

Whether police control over the informant, police had total control over the informant because police had created these identities -- these fictitious identities, and they were manipulating the -- all the interactions and orchestrating what went on here. So, this is -- again, this does weigh in favor, but it's still not going to rise to the level. And the target -- the investigation was not targeted.

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So, again, I don't find -- you know, an otherwise law-abiding person is not going to under any circumstances, under these circumstances, have sex with a 15 year old child, or even take steps toward having sex with a 15 year old child. So, step -- so, the first prong is not met.

However, with regard to -- so, with regard to Mr. Voyles, the police came right out front, and within a few minutes of this interaction that was initiated by Mr. Voyles they informed the Defendant that they were -- that the fictitious identity they were presenting was underage, and Mr. Voyles charged full speed ahead. So, I don't see that the police engaged in conduct so reprehensible that it cannot -- that this Court cannot tolerate it with regard to Mr. Voyles.

However, I -- I reach a different conclusion with regard to Mr. Newcomb. The -- the Defendant starts the conversation on the -- the day that's shown here. Although, I do have a question, although it's not dispositive either way, about when the gay -- gay emoji was sent by the undercover officer four days before he's making this photograph, and how that relates to the Wednesday and Thursday of all these communications.

But the fact is that the officer was the first to bring up sexual talk and use the term horny. The officer was the first to suggest a meet up, quote, want to link.

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The officer actually did that twice during the back and forth that occurred over several days. The officer suggests the second -- the want to link on the second occasion. It's only in the 58th communication between the parties, at 5:50 p.m., 58th out of 79 total, that the officer reveals the fictitious individual is underage. And that's after the officer has shared the fake photographs, or the photographs of a -- of a deputy who is clearly not underage, but is a -- presumably in his 20s, and both shirtless and with a t-shirt on.

The -- this is a very extensive and very detailed course of, quite frankly, cat fishing, and the -- it's clear to me that what happened here was -- if I look -- when I look at the conversation, law enforcement set the hook, just to use fishing analogies, before they even revealed the -- the claim that the subject was underage. It was elaborate.

It was -- during most of this elaborate setup Mr. Newcomb believed he was dealing with a person who was of legal age and they were going to have a legal, consensual relationship. This is, in my view, a bait and switch. It's -- it's reprehensible, and I can't tolerate it. So, I'm going to dismiss the charges against Mr. Newcomb.

Mr. Newcomb, you can't have sex with people who are under the age of 16. Do you understand that, sir?

THE DEFENDANT: Yes.

THE COURT: It's a serious felony crime. Okay. Ms. Kur, will you prepare an order?

MS. KUR: Yes.

(At 12:36 p.m., proceedings concluded)

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TRANSCRIBER'S CERTIFICATE

I do hereby certify that the foregoing transcript was prepared by me from audio supplied by the Charlevoix County Circuit Court, and that said transcript is true and correct to best of my ability to prepare.

I further certify that I am not related to or employed by any party to this cause or their respective counsel



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CER - 9613



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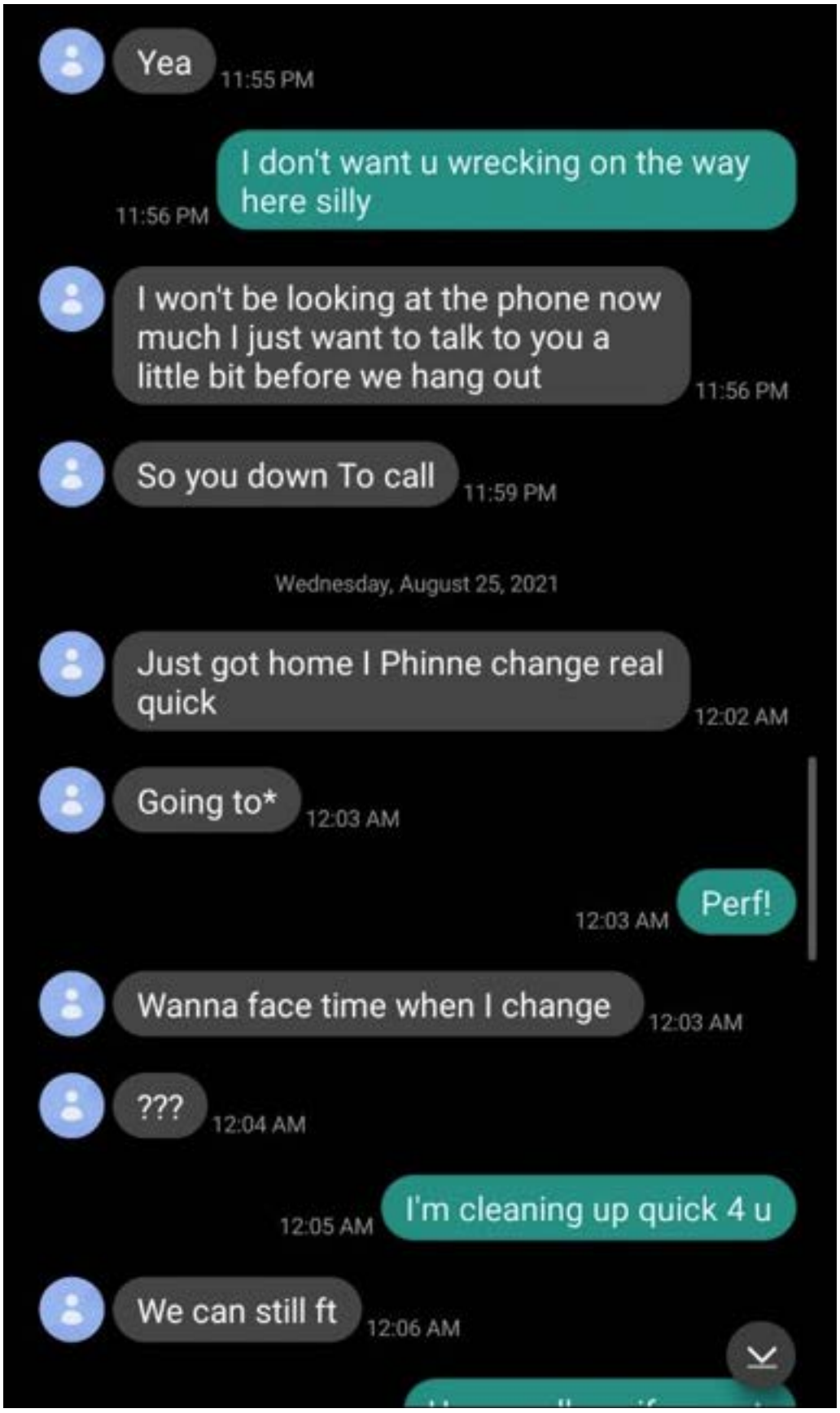

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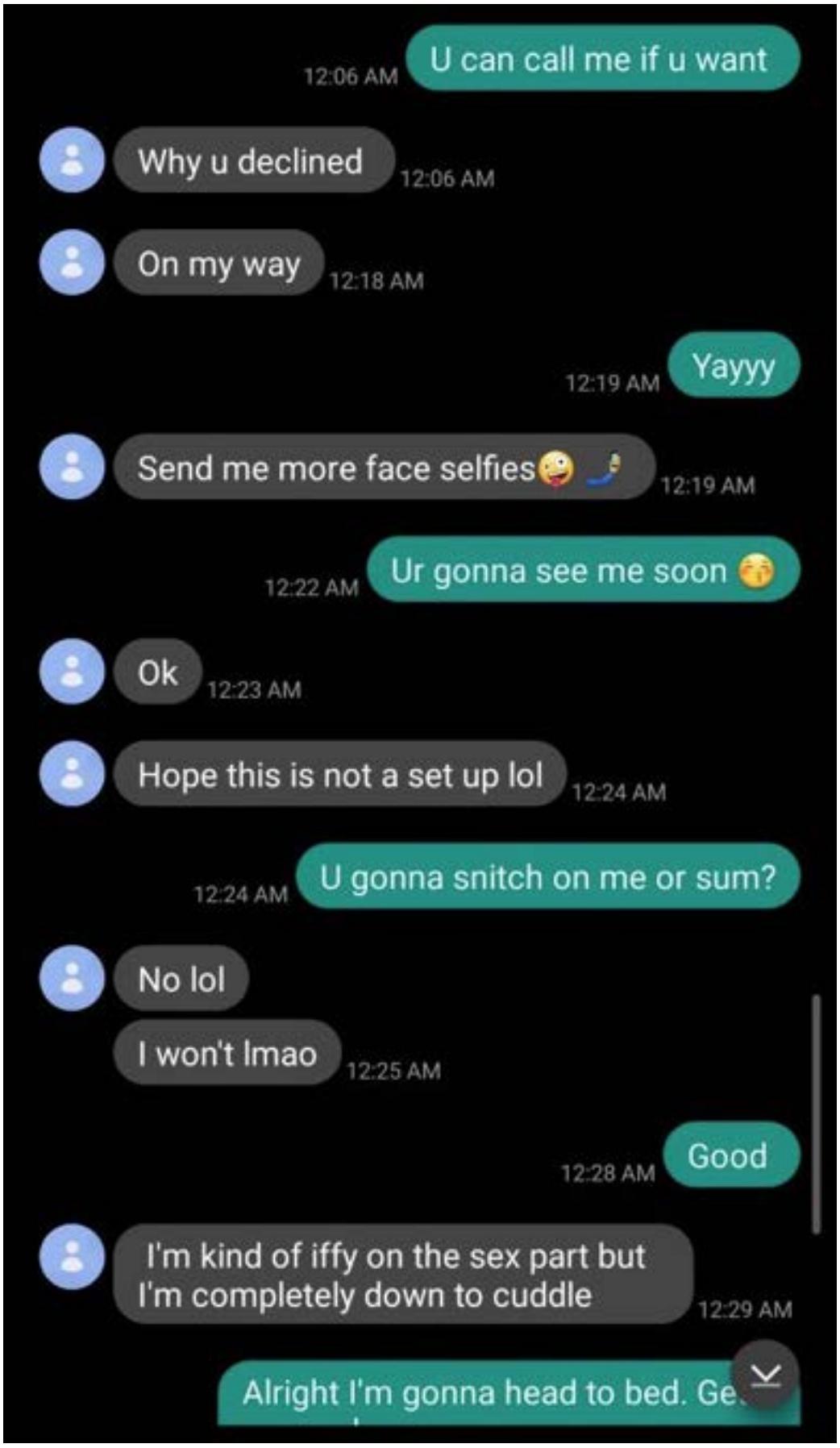

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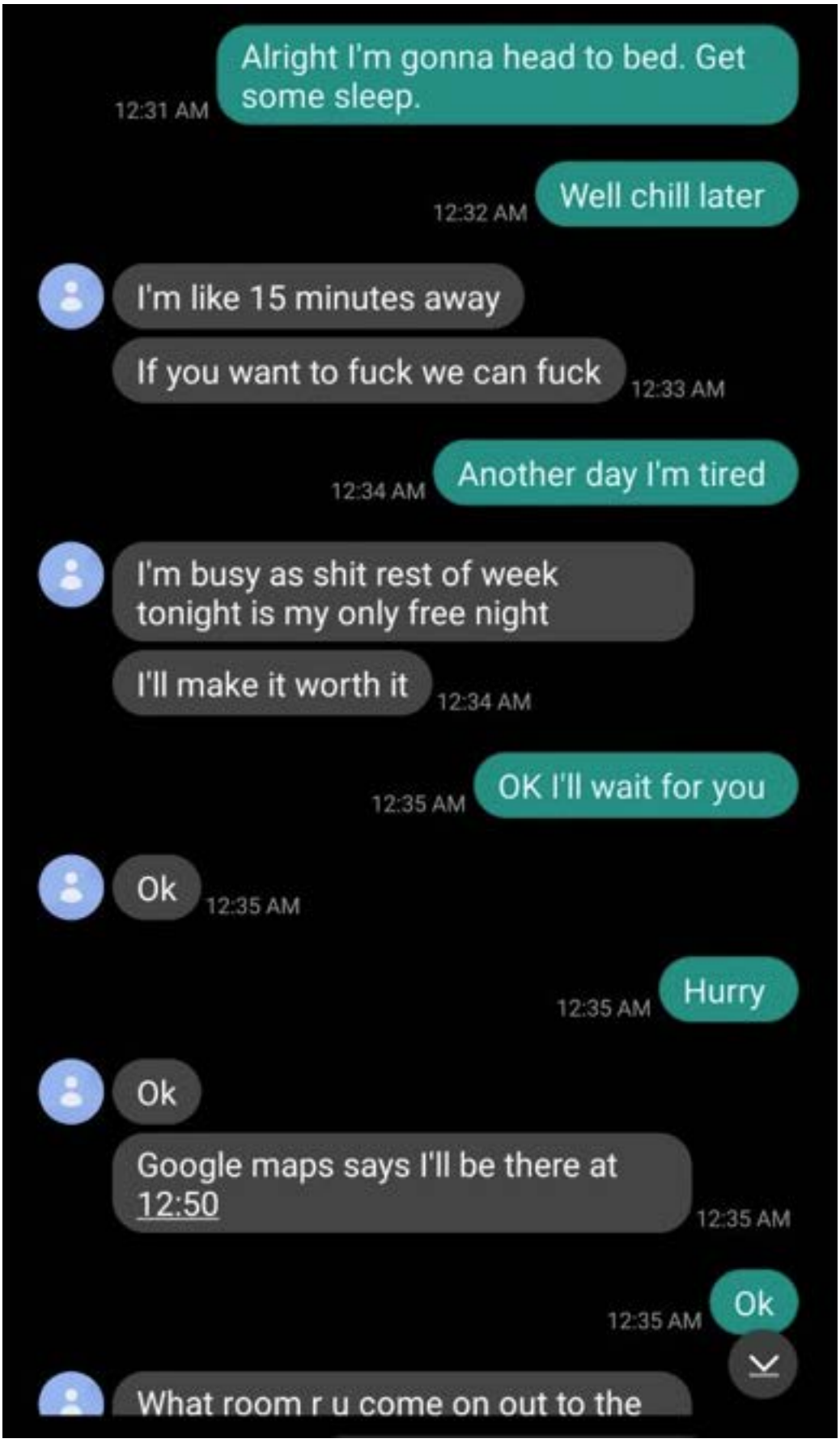

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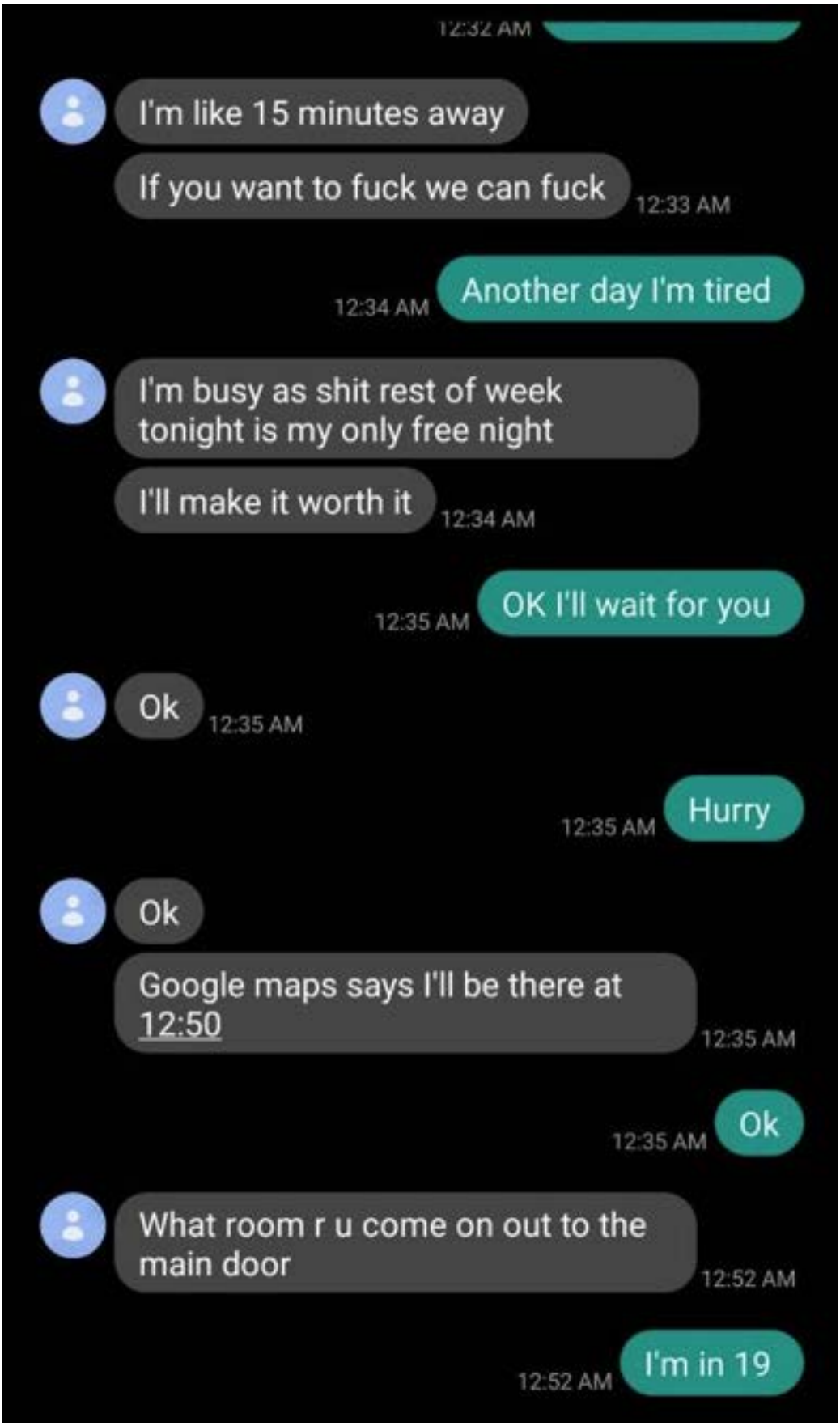

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