

United States District Court

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

RICHARD PETIX

CRIMINAL COMPLAINT

CASE NUMBER: 05-M-4014

FILED
APR 7 2005
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

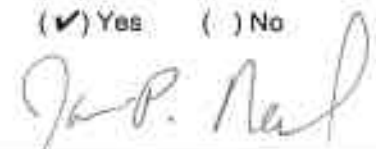
Between on or about January 1, 2005 through on or about April 1, 2005, in the Western District of New York, the defendant did knowingly receive and distribute child pornography that had been mailed, shipped or transported in interstate or foreign commerce by any means including by computer (in violation of Title 18, United States Code, Section 2252A(a)(2)(A)) and knowingly possessed material containing child pornography that had been shipped, mailed or transported in interstate or foreign commerce by any means including by computer or that was produced using materials that have been mailed, shipped, transported in interstate or foreign commerce by any means, including by computer (in violation of Title 18, United States Code, Section 2252A(a)(5)(B)).

I further state that I am a Special Agent with the Federal Bureau of Investigation and that this complaint is based on the following facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof:

(☒) Yes () No



JOHN P. NEAL, Special Agent, FBI
Signature of Complainant


Sworn to before me and subscribed in my presence,

April 7, 2005
Date

at

Rochester, New York
City and State

HON. MARIAN W. PAYSON, USMJ
Name & Title of Judicial Officer



Signature of Judicial Officer

**AFFIDAVIT IN SUPPORT
OF A CRIMINAL COMPLAINT**

John P. Neal, being duly sworn deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI") and have been so employed since April 2004, duly appointed according to law and acting as such.

2. I am presently assigned to the Rochester, New York, Resident Agency of the FBI and I investigate, among other things, matters involving child pornography and the interstate transportation of obscene material in violation of Title 18, United States Code, Sections 2251, 2252 and 2252A.

3. The statements contained in this affidavit are based on information provided by employees of the FBI, information provided by other law enforcement personnel, and based on my experience and background as a Special Agent of the FBI. Since this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that from January 1, 2005 through to April 1, 2005, RICHARD PETIX has committed violations of Title 18, United

States Code, Section 2252A.

RELEVANT TERMS

4. *Internet Relay Chat (IRC) Channels:* IRC channels are similar to chat rooms. They are places on the Internet where people can go to communicate with people who have similar interests. The communications are in real time, just like telephone calls or face to face communications, through typed messages. The difference between IRC channels and chat rooms is that subscribers to online service providers providing chat rooms have unique and traceable screen names assigned to them. IRC users can assume any screen name they want and change it at any time they want. They can assume one identity during one IRC session and another identity during another IRC session just minutes or hours later, which makes identifying and tracking IRC users much more difficult. However, these individuals can be identified through the Internet Protocol (IP) number assigned to the individual on a particular date and time. IRC chat is transmitted directly by simply typing on the keyboard. IRC is an international network of computer systems that allows users to search for chat rooms that have topics that they are interested in. Users can then join the chat room on an availability basis, or they can create their own chat room. Once inside the chat room, users can "talk" to everyone in the room or privately to an individual. Chat room occupants can exchange messages or files.

As with other files, these files can contain images. An IRC user can create a "hidden" channel so users can only enter with a password or by invitation. Channels dedicated to sexual activity with children appear under altered titles daily and disappear when the last person exits the channel.

5. "Fservices" are a feature of IRC channels. An IRC user can set up an fserve that allows other users to access and download files from particular directories on the hard drive of the IRC user's computer. Fservices provide a mechanism that child pornography collectors use to build their collections. Fservices enable computer users to program their computers so that visitors can download a certain number of bytes in exchange for uploading a certain number of bytes. In other words, it is an automated, computer-programmed trading system. The person who sets up the fserve (the host) can establish the parameters of the trading. He can restrict the visitor to certain directories on his hard disk. He can give the visitor a credit of a certain number of bytes or no credit at all. Once the visitor uploads the minimum number of bytes, he can download a pre-set number of bytes, selecting from the file names listed on any of the directories made available by the host. Most often, a host programs his computer and leaves it on in his absence. The trading is then done automatically by his computer using the parameters the host

previously established. Identifying people who establish fserves is done in the exact same way as identifying other users of IRC channels.

FACTS SUPPORTING PROBABLE CAUSE

6. On March 1, 2005, Special Agent (SA) KENNETH JENSEN of the Buffalo, New York, FBI Field Division executed a "who" command for all of the nicknames present in the IRC channel entitled "#100%preTeenGirlSexPics". The "who" command occurs in the IRC and, when prompted, it will give particular diagnostic information about the IRC users, such as IP address. Among the nicknames present was the nickname PERVERT1. The results of the "who" command indicated that PERVERT1 was connecting to the Internet using Rochester Road Runner via IP address 69.204.38.191. SA JENSEN then sent an instant message (IM) to PERVERT1, which stated "Hey, u tradin?" PERVERT1 responded in the affirmative, and thereafter engaged in an IM conversation with SA JENSEN regarding trading child pornography. During the IM conversaion, PERVERT1 stated that if SA JENSEN sent a video file of "pre rape", PERVERT1 would grant SA JENSEN leech access to a fileserver that he was operating. Leech access occurs when certain conditions are met and the operator of the fileserver grants access to all files on that server. PERVERT1 went on to explain that he had a daughter, who is eight (8) years of age.

PERVERT1 stated that he "needed someone to help him break her in". PERVERT1 stated that he was from Rochester, New York, and that his first name was "Rick". After learning that SA JENSEN was from western New York, PERVERT1 granted leech access to SA JENSEN for use on PERVERT1's fileserver. PERVERT1 explained that the trigger for the fileserver was "!pervert".

7. SA JENSEN entered the fileserver offered by PERVERT1 using the trigger !pervert. Once connected with the fileserver, SA JENSEN viewed the contents of the files available for download and downloaded files with titles consistent with child pornography. SA JENSEN also transmitted one corrupted file entitled babyshi_daddy+shower.avi to PERVERT1. A summary of the fileserver session follows:

Name:	PERVERT1
IP address:	69.204.38.191
Trigger:	!pervert
Uploads:	babyshi_daddy_shower.avi (corrupted)
Chat log:	#100%perTeenGirlSexPics.20050301.log
File server log:	pervert1.20050301.log
Downloads:	18 child pornography related files

8. The images and movie files downloaded by SA JENSEN consisted of a number of juveniles, appearing to be under the age

of ten (10), engaging in overt sexual acts and/or engaging in a lascivious display of their genitalia. Three of the files depicted an adult male sexually penetrating a juvenile female, who appeared to be under the age of ten (10), as the juvenile laid on a bed. Another file displayed an adult male performing oral sex on a juvenile female, who appeared to be under the age of five (5). One of the files exhibited a juvenile under the age of ten (10) performing oral sex on an adult male. In that particular image, the juvenile's gender was unable to be determined.

9. During the fileserver session, SA Jensen executed the "stats" command which gives various statistical information with regard to the fileserver. The fserve was offering a total of 5,485 files.

10. On March 1, 2005, SA JENSEN transmitted an administrative subpoena for information regarding the user of IP address 69.204.38.191 on March 1, 2005, between 5:33 PM and 6:32 PM Eastern Standard Time (EST). The subpoena return indicated the subscriber was RICHARD PETIX of 73 Virginia Manor Road, Rochester, New York. The telephone number associated with the account was 585-247-3445.

11. A Choicepoint public records database search confirmed the above address information and provided a Social Security number ending with the four digits -6533.

12. Using the above information, a NCIC check was performed which provided further information for PETIX: Date of Birth 01/13/1985; New York Drivers License number: 24239906; Height: 6 feet; Eyes: Blue; Weight: 160; Hair: Brown; arrested on 11/30/2004, for second degree Criminal Impersonation with no reported disposition.

13. A search of the online public records database Autotrack yielded the following subscriber information for the telephone number 585-247-3445: Louis Petix, 73 Virginia Manor Road, Rochester, New York.

14. Subsequent to the above detailed March 1, 2005 online session with PERVERT1, SA JENSEN received an IM at his undercover Yahoo! ID "dadddypuu" from the Yahoo! ID "slave4pain2323." The IM indicated that slave4pain2323 was "Rick". SA JENSEN printed out the Yahoo! profile for "slave4pain2323." The Yahoo! profile contained an image of an erect penis and states that the ID "slave4pain2323" resides in Rochester, New York.

15. On or about March 17, 2005, SA JENSEN engaged in IM conversation with "slave4pain2323", where "slave4pain2323" made references to the conversation SA JENSEN had on March 1, 2005 with PERVERT1. Specifically, "slave4pain2323" asked about "dadddypuu's" daughters (SA JENSEN had indicated to PERVERT1 on March 1, 2005 that he had two daughters). Then "slave4pain2323" stated, "i wanted to break ion [sic] my daughter, and maybe we can get all trhe [sic] girls together and have some fun". When asked by SA JENSEN how old his daughter was, "slave4pain2323" responded that she was 9 years old. "Slave4pain2323" told SA JENSEN that he had "gotten together" with another person's daughter before in Rochester, New York - - specifically, with a 12 year old female whose father's Yahoo! nickname is "phoseboi". According to "slave4pain2323", "phoseboi" "wanted me to come over and break [his daughter] in". When questioned again by SA JENSEN about his real age, "slave4pain2323" stated that he was really 27 years old and that he had listed his age as being 18 on his Yahoo! profile so he could get young girls.

16. On March 31, 2005, I reviewed information that had been obtained by the Department of Homeland Security, Bureau of Immigration and Customs Enforcement ("ICE"), regarding their investigation into violations of Title 18, United States Code, Sections 2252 and 2252A, also taking place at 73 Virginia Manor

Road, Rochester, New York. The essence of ICE's investigation into the alleged violations and their supporting facts are set forth below in paragraphs 17 - 20.

17. During March of 1997, the United States Customs Attaché in Frankfurt, Germany initiated Operation Kinderschutz to identify for investigation individuals who distribute and receive child pornography via the Internet. The principle source of leads is the German National Police ("BKA"), which obtains information from private citizens, as well as local and regional German police departments. The BKA then forwards all available information and evidence, including e-mail addresses, image file(s), date/time stamp for transmissions, and computer names of intended recipients(s) to the Immigration and Customs Cyber Crimes Center (IC3) via the Frankfurt ICE Attaché.

18. On January 3, 2005, the BKA Computer Crime Unit developed a lead regarding a subject using the screen name "pervert1" in the IRC #100%PreTeenGirlSexPics. The BKA's Computer Crime Unit was in contact with the suspect in an undercover capacity on this channel during the time period 08:48 to 09:00 Greenwich Mean Time (GMT) + 1 hours. The BKA Internet Monitoring Squad, acting in a undercover capacity, was able to download seventeen child pornographic picture files and one child

pornography video from pervert1 via a fserve which allowed the Computer Crime Squad to dial into pervert1's computer and access files through a one on one connection after entering the Password "1pervert1". Three of the photographs downloaded by the BKA are described as follows:

- a) "!!!!10yr_old_blonde_sucks_dad3.jpg": A prepubescent female engaged in oral sex with what appears to be an erect adult male penis. The prepubescent female is not wearing a shirt and is holding onto the penis with her right hand;
- b) "18yrhelenfuckedbydad000.jpg": A nude prepubescent female lying on her back with her hands covering her face. Her legs are spread and what appears to be an erect adult male penis is inserted in the prepubescent female's vagina; and
- c) "LL-B1-09.jpg": A black and white colored image of a naked prepubescent female. She appears to be sitting down and is holding up her left leg, exposing her genital area.

19. The status log provided by the BKA shows that pervert1 utilized the Internet Protocol (IP) Address 69.202.184.251, which is registered to Road Runner Internet Service from Time Warner Cable, 13241 Woodland Park Road, Herndon, Virginia 20171.

20. On January 24, 2005, ICE Special Agent Bryan Merrill sent a summons to Road Runner Internet Service from Time Warner Cable, 13241 Woodland Park Road, Herndon, Virginia 20171 for

subscriber information on IP address 69.202.184.251, January 3, 2005 from 08:48 - 09:00 GMT + 1. Road Runner Internet Service from Time Warner Cable informed ICE that the IP address, 69.202.184.251, was in use at the time of the download by RICHARD PETIX. ICE discovered that PETIX received Road Runner Internet Service from Time Warner Cable at 73 Virginia Manor Road, Rochester, New York 14606.

21. A federal search warrant (05-M-533) for the premises located at 73 Virginia Manor Road, Rochester, New York 14606 was issued by the Honorable Jonathan W. Feldman on or about March 31, 2005.

22. Your affiant, along with other law enforcement personnel, executed the search warrant on or about April 1, 2005 and seized many items including computers.

23. On or about April 1, 2005, your affiant, along with other law enforcement personnel, interviewed RICHARD PETIX, D.O.B. 01/13/1985, Social Security Number ending in the four digits -6533, at his girlfriend's residence in Hilton, NY. PETIX indicated that most of the child pornography on his computer came from IRC and that he had about 1,000 images and 150 movies downloaded related to child pornography on his computer.

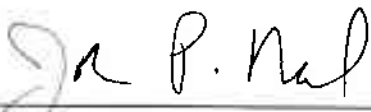
24. PETIX further indicated that he had a server that was posted on the IRC and that he gave people access to his server. Individuals would send him images which he kept and the individuals could download and upload images from his computer. To access PETIX's server, a person would have to type in a trigger word to make the server appear.

25. PETIX also stated that his primary screen name is the Yahoo! ID "slave4pain2323" and that he has an ad on Yahoo!

CONCLUSION

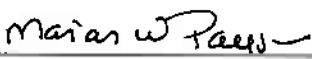
40. Based upon the above information, I believe probable cause exists that RICHARD PETIX committed violations of Title 18, United States, Sections 2252A(a)(2)(A) (knowing receipt and distribution of child pornography that has been shipped or transported in interstate or foreign commerce by any means, including by computer), and 2252A(a)(5)(B) (knowing possession of material containing child pornography that has been shipped, mailed or transported in interstate or foreign commerce by any means including by computer or that was produced using materials that have been mailed, shipped, transported in interstate or foreign commerce by any means, including by computer). Based on the above information, your affiant respectfully requests that

this court issue a criminal complaint and arrest warrant for
RICHARD PETIX.



JOHN P. NEAL
Special Agent
Federal Bureau of Investigation

Sworn to before me this
7^m day of April 2005.



MARIAN W. PAYSON
United States Magistrate Judge