

No.

IN THE
SUPREME COURT OF THE UNITED STATES

GERARD F. STELLWAGEN,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida Second District Court of Appeal**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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A.

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

GERARD F. STELLWAGEN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2024-1992

June 10, 2026

Appeal from the Circuit Court for Sarasota County;
Thomas W. Krug, Judge.

Laurel Cornell Niles of Michael Ufferman Law Firm,
P.A., Tallahassee, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and
Ceresse Crawford Taylor, Assistant Attorney General,
Tampa, for Appellee.

PER CURIAM.

Affirmed.

KELLY, KHOUZAM, and ATKINSON, JJ., Concur.

Opinion subject to revision prior to official
publication.

B.

[Page 1]

IN THE CIRCUIT COURT OF THE TWELFTH
JUDICIAL CIRCUIT IN AND FOR SARASOTA
COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

Case No. 2021 CF 011157 NC

GERARD F. STELLWAGEN,
Defendant.

_____ /

ORDER DENYING DEFENDANT'S MOTION TO
SUPPRESS AND DEFENDANT'S MOTION TO
DISMISS, SUPPRESS, OR FOR A SPECIAL JURY
INSTRUCTION AND PRESUMPTION

THESE CAUSES came before the Court on several occasions for evidence to be taken and argument to be made. The procedural history of both Motions will be laid out infra, along with the Court's analysis and ruling. For brevity's sake, the Court will state here at the outset that all of the Defendant's motions are hereby DENIED for the reasons laid out below.

The Defendant's Motion to Suppress Evidence
Collected Pursuant to a Residential Search Warrant

The Defendant's first Motion asked this Court to suppress evidence collected at the Defendant's home on

September 29, 2021 pursuant to a residential search warrant obtained by members of the Florida Department of Law Enforcement (FDLE). The Motion was filed March 16, 2023 and the State's response was filed August 9, 2023. The Court held an evidentiary hearing on August 15, 2023 and heard argument from the parties on the same day. The Court announced its findings and ruling on this Motion on the record on August 15, 2023 and this Order memorializes those findings and that ruling.

At the hearing, the Court admitted a federal search warrant ("Federal Warrant") (Exhibit 1); federal affidavit in support of the Federal Warrant ("Federal Affidavit") (Exhibit 2); the state search warrant ("State Warrant") (Exhibit 3); and the application for the State Warrant (Exhibit 4), all via stipulation of the parties. The Court also heard testimony from FDLE Special Agent Larry Long, who has worked at FDLE for 21 years and is a supervisor responsible for the cyber and surveillance squad at the Ft. Myers Regional Operation Center, having conducted many

[Page 2]

investigations similar to the one at bar.¹ The Court also considered the Defendant's Motion and the State's Response, having reviewed them prior to the August 15, 2023 hearing.

1. The Federal Warrant

The Defendant's first argument is that the Federal Warrant was not supported by probable cause, which means it was improperly authorized by the Federal Magistrate. Therefore, the Defendant argues

¹ The Defendant is charged with 10 counts of Possession of Child Pornography.

the inclusion of the information obtained from the Federal Warrant's execution in the application for the State Warrant means the State Warrant must also fail. The State argues first that this Court does not have the authority to invalidate the Federal Warrant. Second, the State argues even if this Court has the authority to review the Federal Warrant's propriety, the Federal Warrant is supported by probable cause, which makes it properly issued, and therefore properly included in the application of the State Warrant.

The Court first finds that it has the authority to consider the Federal Affidavit and Federal Warrant because they were incorporated by reference in the application for the State Warrant.² Having so ruled, to the extent necessary to adjudicate the issues presented here, the Court finds that the Federal Warrant was supported by probable cause when it was signed by the Federal Magistrate.³ Special Agent Wargo ("S.A. Wargo") investigated another individual and through that investigation located an email containing the phrases "GFS Home." S.A. Wargo conducted additional investigation that tied the email address to this Defendant and to his location in Nokomis, FL. S.A. Wargo also located the Defendant's identifying

² The Court does agree, though, that it does not have the authority to vacate the Federal Warrant that was signed by a Federal Magistrate in a federal court of competent jurisdiction.

³ Because of this holding, it is not necessary for the Court to address the State's alternative argument that even without the Federal Warrant information, the State Warrant should still stand.

information through their investigation, viewed the image at issue that was attached to the Defendant's email to confirm it depicted child pornography, and found that in February of 2021 the National Center for Missing and Exploited Children ("NCMEC") flagged the "GFS Home" email, which had already been tied to the Defendant, in a cybertip for possible child pornography. S.A. Wargo also detailed what exactly the image depicted.

2. The State Warrant

The Defendant argues that because the Federal Warrant was defective, the inclusion of the information obtained from the execution of the Federal Warrant is fatal to the State Warrant based on a "fruit of the poisonous tree" argument. Additionally, the Defendant argues the State

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Warrant failed to establish a nexus to the Defendant's home because there was no probable cause to believe there was contraband (child pornography) in his home.

The Court holds that the application for the State Warrant established probable cause to search the Defendant's home and seize various items. The application described the details of the federal investigation by S.A. Wargo, which the Court addressed *supra*; the holding above also means that information was properly considered by Judge Curley (the Judge who signed the State Warrant). The Court notes that there was additional investigation into the Defendant by FDLE agents such as surveillance where they saw the Defendant coming and going from the home, *and no one else*. There was information obtained from the Florida Department of Highway Safety and Motor Vehicles ("DHSMV") showing the home was the

Defendant's residence. This additional investigation established a nexus to the home.

3. Staleness

The Defendant argues the information in the application for the State Warrant was stale because the child pornography image referenced in the application for the State Warrant was from approximately 8 months prior to the application for the State Warrant. The Defendant argues there is not enough evidence that *this Defendant* is storing child pornography and saving it for long periods of time – therefore, 8 months is too long for there to be probable cause to support the issuance of both the Federal Warrant and the State Warrant. The State argues this time lapse does not make the information stale given the case law in the Florida and Federal courts on this issue.

The Court holds, based on current case law, that the passage of 8 months does not make this information stale. The parties addressed this case law at length with the Court at the hearing. *See State v. Felix*, 942 So.2d 5, 12 (Fla. 5th DCA 2006); *U.S. v. Lacy*, 119 F.3d 742, 745-46 (9th Cir. 1997); *U.S. v. Irving*, 452 F.3d 110, 124-25 (2d Cir. 2006); *Burnett v. State*, 848 So.3d 1170 (2d DCA 2003). The Court finds that the nature of the investigation and the type of evidence sought – digital evidence that can be stored for a long period of time – means the lapse of time does not defeat probable cause. The Court is distinguishing this evidence from other types of evidence where staleness issues arise much earlier, such as drugs where there is typically a 30-day rule for staleness issues.

4. Overbreadth

Lastly, the Defendant argues the State Warrant as it applies to his computer was overbroad because it gave law enforcement unfettered access to everything on his electronic devices.

The Court holds that this search warrant is not overly broad because the technology at issue can be easily stored, duplicated, and sent to other devices. *See Russ v. State*, 185 So.3d 622 (Fla. 5th DCA 2016); *United States v. Gomez-Soto*, 723 F.2d 649 (9th Cir.), cert denied 466 U.S. 977 (1984). Based on the facts of this case and this investigation, the warrant was not overly broad and did not give law enforcement unfettered discretion on what could be seized and searched.

5. Good Faith Exception

Because of the Court's findings on the four issues discussed above, the Court does not reach the issue of whether the good faith exception would apply to law enforcement's conduct in this case.

The Defendant's Motion to Dismiss, Suppress, or For a Special Jury Instruction and Presumption

The Defendant's second Motion asked the Court to take several steps, all pieced in the alternative, based on allegations of law enforcement misconduct and destruction of certain pieces of evidence when FDLE agents conducted an "on-site preview" of a computer in the Defendant's home. The Motion was filed on August 15, 2023. The Court held evidentiary hearings on October 18 and December 4, 2023. The State called three witnesses: FDLE Agent Larry Long, FDLE Agent Christopher Tissot, and FDLE Agent Orlando Esquibel. The Defendant called one witness, Harold

McFarland. The Court also reviewed FDLE policies and procedures relating to examination and handling of digital evidence as well as the warrants and applications from the prior hearings on the issue of the warrants themselves. Argument of the parties was heard at the close of evidence on December 4, 2023. The Court announced its findings and ruling on this Motion on the record on August 15, 2023 and this Order memorializes those findings and that ruling.

1. The Evidence at Issue and Findings of Fact

At the outset, it is important to delineate what law enforcement did in this case, and what action they took that the Defendant now feels warrants the requested relief. Based on the testimony of the witnesses, it is clear that there were pieces of metadata – “access times” – that

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were changed as a result of law enforcement’s conduct on September 29, 2021 when the State Warrant was executed at the Defendant’s home.

Testimony from the FDLE agents indicated that they routinely do what are called “on-site previews” of electronic devices for various reasons. One reason is that if a device is located and is turned on, turning that device off could have important ramifications for the data on the device, or delete it entirely. To preserve the data on the devices as possible evidence of a crime, FDLE agents testified about using a “triage” device to determine if the electronic device is even needed in the first place. The purpose of using the “triage” device is to look at the data on the computer (for example, looking for child pornography) *without changing the data on the device*.

The testimony in this case was that something went wrong with the “triage” device when it was used on-scene at the execution of the State Warrant. When it was plugged into the computer where these files were found, the “access time” was changed to the date and time of the execution of the State Warrant. No witness could explain *why* that occurred, but it was clear from the testimony that this was *not* what law enforcement *intended* to happen. The whole point of the “triage” device and program is to prevent this exact scenario from happening. Law enforcement testified that they have used the “triage” device before and something like this has not happened. Law enforcement clearly testified that it was never, and is never, their intent to destroy any evidence in a case, let alone that which may be helpful for the Defendant. The testimony was also clear that this changing of the “access time” data for the charged images was not done at the behest of the State Attorney’s Office personnel.

The Defendant was not home at the time the State Warrant was executed; therefore, it is uncontroverted that the “access time” shown for each image (September 29, 2021) were NOT indicative of the Defendant being the one to access the images on that date and time. It is clear that the Defendant takes Umbridge with law enforcement using the “triage” device at the execution of the search warrant on September 29, 2021 which ended up changing the “access time” metadata.

2. Arguments of the Parties

The Defendant’s arguments center around the culpability of law enforcement and the propriety of their actions in using the “triage” device in asking for a range of remedies. The State argues first that the

“access time” data is not materially exculpatory because this data is not the “end-all, be-all” in proving the charges; therefore, the evidence is merely *potentially useful*. Therefore, this means bad faith is required. The State argues there is no evidence that law

[Page 6]

enforcement *purposefully* destroyed evidence that they believed to be exculpatory/helpful to the Defense. Essentially, the State argues that this was an “unfortunate mistake” and there was no bad faith inherent in what occurred. As to the jury instruction, the State argues one should not be given for the same reason- there was no bad faith on the State’s part and the jury instruction on reasonable doubt would be given at trial, which covers the issue.

3. The Court’s Findings and Ruling

The Court denies the three requests from the Defendant on this issue. When looking at the State Warrant, the Court has already determined that probable cause existed for the issuance of that warrant. One of the reasons advanced for dismissal and/or suppression is that law enforcement did not follow the language of the State Warrant when they conducted an on-site preview – only off-site forensic analysis was allowed. However, the State Warrant in paragraph 5 specifically gave permission to do an on-site preview if off-site analysis is not practicable. The computer was on, and law enforcement testified that the preview needed to be done to preserve any evidence that may be on the device. Ironically, the opposite occurred, but that was the reason for law enforcement doing what they did with the “triage” device and that was allowed by the State Warrant. Dismissal and suppression are

not warranted under these circumstances where there was legal authority to do what they did and no evidence to suggest the action was undertaken with nefarious motivations.

As to the jury instruction request, the Court finds that the case of *United States v. Sivilla*, 714 F.3d 1168 (9th Cir. 2013) is instructive and provides the appropriate analysis on this issue in that bad faith is not the end-all, be-all to the analysis. The appropriate inquiry is balancing the quality of the government's conduct with the degree of prejudice to the accused. *Id.* Here, the prejudice to the Defendant is, for example, that he may not be able to establish an alibi offense for the where the Defendant was at the access time before the government's conduct.

However, the State correctly points out that the "access time" data goes to only one of multiple ways of proving the crimes with which the Defendant was charged. In other words, the "access time" data is not the sole lynchpin upon which the State's case must rest. The government's conduct in using the "triage" device on-scene instead of some other method was not completely unreasonable. There is no evidence that this data was intentionally destroyed, nor was the on-site preview done in bad faith (although that is not the standard per *Sivilla*). The State Attorney's Office was not involved in the case at the time of the data being destroyed, so there is no way they too could be complicit in the data's destruction.

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Based on the facts of this case and because there was no intentional bad conduct by law enforcement or any other government agency, combined with minimal prejudice to the Defendant, there is no reason to give

the proposed jury instruction the Defendant suggests. The Defendant's counsel is still free, of course, to make all "reasonable doubt" arguments that he deems appropriate to a jury based on this conduct and series of events.

ORDERED AND ADJUDGED that, based on the foregoing findings of fact and conclusions of law, both of the Defendant's Motions are DENIED in their entirety.

DONE AND ORDERED in Sarasota County, Florida, 23 day of July 2024.

[signature of Thomas W. Krug]

THOMAS W. KRUG
Circuit Court Judge

cc: Clerk of the Circuit Court
S. Ethan Dunn, Assistant State Attorney
Derek Byrd, Counsel for the Defendant

C.

Excerpt of Transcript of August 15, 2023, Hearing on
Motion to Suppress

[Page 1:]

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT IN
AND FOR SARASOTA COUNTY, FLORIDA

CASE NO.: 2021-CF-11157-NC

STATE OF FLORIDA,

Plaintiff,

vs.

GERARD F. STELLWAGEN,

Defendant.

_____ /

HEARING BEFORE: THE HONORABLE
THOMAS KRUG

DATE TAKEN: AUGUST 15, 2023

LOCATION: JUDGE LYNN SILVERTOOTH
JUDICIAL CENTER
2002 RINGLING BOULEVARD
COURTROOM 3-B
SARASOTA, FLORIDA 34237

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[Page 21:]

....

BY MR. BYRD:

Q. Would you agree with me that email accounts can easily be spoofed?

....

[Page 22:]

....

A. Sometimes emails can be sent by various individuals depending on whether they got passcodes to the email address and that sort of thing.

BY MR. BYRD:

Q. Bad actors take over people's email accounts for nefarious purposes; is that fair to say? That happens sometimes?

A. That happens.

....

[Page 28:]

....

BY MR. BYRD:

Q. Did – do you – did you list or do you have any specific evidence listed in the search warrant that

suggested that this defendant, Gerard Stellwagen, was a collector of child pornography?

A. Specifically?

Q. Correct.

A. No.

....

D.

[Page 112:]

THE COURT: I understand the argument.

MR. BYRD: – that they can do that.

THE COURT: It is obtrusive – intrusive.

All right. I'm going to deny the motion to suppress. I'm going to find that probable cause existed when Judge – I'm going to ask that you provide an order for me to sign – for me to sign. I can't speak now.

You know, it's – to me, it's a very interesting motion today, and I think that I want to preserve it so you can appeal this, Mr. Byrd. So please assist Mr. Dunn to make sure the language is in.

We have the evidence of each of these four documents; we have the affidavit for the federal search warrant, we have the state affidavit and search warrant.

I'm going to find that the Court considered the federal – let me say it this way – tell me if you object to this because I want to make sure we have all the facts contained in this order. I looked at all of those documents. I reviewed them, and I considered them all in my ruling today.

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I believe that the federal affidavit and search warrants has been incorporated into the state search warrant, both in it goes to my decision and my ruling today as to whether Judge Curley had probable cause. And I think the state search warrant, for the most part, includes the federal affidavit. Is that fair?

MR. BYRD: Yes. Well, Judge, if we got that far, the State's argument would be that if you take the federal case out of it, there was still probably cause, so

—

THE COURT: I'm not going to rule on that.

MR. DUNN: Okay.

THE COURT: I'm going to rule that I find – I'm finding specifically today that there was probable cause for Judge Curley to sign this warrant, including considering what was contained related to the federal investigation; and that is, as outlined, that Mr. Wargo investigated Mr. Runco; consent to search and obtain his information that discovered this email from gfs@home; that he then obtained a customs report from Oath, Incorporated that gave Mr. Stellwagen, the defendant in this case, his personal information including name, email address, [Page 114] alternative email address, and phone numbers.

In addition to that, the federal agent obtained and learned about a NCMEC where Oath, Incorporated flagged Mr. Stellwagen's email back in February of 2021. That with all – and that Federal Agent Wargo viewed the email in the photograph and determined it to be child porn; and that it was described in the federal search warrant in detail depicting child porn.

And so I'm finding – I'm going to find that there was probable cause for the federal search warrant to be executed. I guess – I think you're asking me to rule on that, so I'm going to rule on it. I think there was probable cause for that magistrate. Even though I have no authority whatsoever to overrule or agree with

a federal judge – they’re way above my pay grade – I think it is something incorporated into today, and that’s the finding I’m making. So subsequent to that, I’m also – and that was provided in the search warrant that Judge – or the affidavit that Judge Curley considered that was authored by Mr. Long.

*In addition to those, the investigation by the federal agent, Mr. Wargo, there was additional [Page 115] investigation that was conducted. There was surveillance of the defendant’s home where they observed him coming and going to the home and inside the home. There was an investigation into his DHSMV identification that listed this address in Nokomis as his home. They didn’t see any other persons coming and going from the home over the period of time that they were looking into this, which wasn’t long, by the way. I don’t know. I’m not suggesting that they were staking out the house for any duration, but during the time that they surveilled the house, they did not see anybody else coming or going.

I’m going to find that, based on current case law, that the eight months is not – I’m not going to find it stale, and that is because we have an email sent in February, and then we have subsequent chatting between the same two email accounts or the alternative email accounts with each other related to that same photo. So we have 30 days almost. I think it’s the 21st and the 19th in duration of those various months, so you have 30 days that lapse where there’s still discussion of what is determined to be child porn by law enforcement. So it’s not just one day or [Page 116] one particular sent email. There’s a 30 – almost 30 – day later discussion about the child porn from the same email account that now that this Mr. Long

determined belongs in Nokomis, Florida, to a Gerry Stellwagen. I think all of that rises to the level of probable cause.

Mr. Stellwagen, it is a fairly low standard, probable cause. It's that probably the evidence will be there and that a crime is being committed or had been committed. It does not require that there is any more evidence other than the one photo that is or that was contained in his email there that they have seen and viewed.

In response to Burnett, I've already discussed. If you can just identify that I reviewed the case law that was presented. I'm going to file all the case law that was presented. I'm going to file all the case law with the clerk today so it's preserved.

So I'm finding that it's not stale. It's this Court's finding that because of the nature and type of evidence, that being a photograph digitally stored, that because in and through technology it can be stored for a long period of time, years, decades or beyond, that eight months for a photo on a computer does not become stale. [Page 117] I want that specific ruling and finding so an appellate court can look and see if Judge Krug is wrong on this issue.

I find that a picture on a computer is different than drugs or a perishable item that we know there are much lesser time frames, where something becomes stale much quicker in time. I don't have any direction that's been provided as to how long that could be, I think eight months is within the reasonableness of still being on a computer, seven months. We didn't reach whether this was years later or decades later. So again, this was eight months later when the search warrant was executed from the date, I think, of the

email being sent.

As to overly broad, I think the current law as I know it, allows. Again, because technology can be stored and duplicated and sent to various devices, I'm going to find that it's not overly broad in this case as well, the search warrant.

So the motion to suppress is denied. Counselors, Mr. Dunn, please provide an order.

Are there any additional facts, Mr. Byrd, that you presented and I ruled on today that you want in the motion –

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MR. BYRD: No. I think you covered it.

THE COURT: – so it's ripe for appellate review?

MR. BYRD: You covered it. Thank you, Your Honor.

THE COURT: All right. If there is something that when you, Mr. Dunn – I appreciate it, Mr. Dunn. I've asked you since you were the success – the one who succeeded in this motion, so to speak, I'll ask that you do that work. It is recorded. If you want to download a copy of it that can be sent to you.

MR. DUNN: I will, Judge. Just –

THE COURT: If, Mr. Byrd, you review it and you want some additional language of what was testified to, presented, or argued and ruled on by me, bring it to Mr. Dunn's attention. And if you can't agree on it, I'll certainly make time to hear it, okay?

MR. BYRD: Okay, Judge. I'm sure we can. He's a very good writer, too, so he's a much better – (Indiscernible.)

THE COURT: All right. Is there anything else we need to discuss? Are we already set – are we set for case management or trial or –

E.

[Page 1]

IN THE TWELFTH JUDICIAL
CIRCUIT IN AND FOR
SARASOTA COUNTY, FLORIDA

CASE NUMBER: 2021 CF 011157 NC
DC Number I92413

STATE OF FLORIDA

-vs-

GERARD F. STELLWAGEN
Defendant

(CORRECTED PER ORDER 2-28-25)
ORDER OF COMMUNITY CONTROL
WITH SEX OFFENDER CONDITIONS
FOLLOWED BY SEX OFFENDER PROBATION

This cause coming before the Court to be heard, and
you, the defendant, being now present before the court,
and you having

[X] entered a plea of guilty to

Count 1-10,
POSSESSION OF CHILD PORNOGRAPHY

SECTION 1: JUDGMENT OF GUILT

[X] Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you serve 6 months, credit for time service in County Jail be placed on Community Control for 2 years followed by 12.5 Sex Offender Probation under the supervision of the Department of Corrections, subject to Florida law.

IT IS FURTHER ORDERED that you shall comply with the following standard conditions of supervision as provided by Florida law:

- (1) You will report to the probation officer as directed.
- (2) You will pay the State of Florida the amount of \$0.00 per month, as well as 4% surcharge, toward the cost of your supervision in accordance with s. 948.09, F.S., unless otherwise exempted in compliance with Florida Statutes.
- (3) You will remain in a specified place. You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (4) You will not possess, carry or own any firearm. You will not possess, carry, or own any weapon without first procuring the consent of your officer.
- (5) You will live without violating any law. A conviction in a court of law is not necessary for such a violation of law to constitute a violation of your probation, community control, or any other form of court ordered supervision.

(6) You will not associate with any person engaged in any criminal activity.

(7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician, an advanced practice registered nurse, or a physician assistant. Nor will you knowingly visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.

(8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.

(9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.

(10) You will pay restitution, court costs, and/or fees in accordance with special conditions imposed or in accordance with the attached orders.

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(11) You will submit to random testing as directed by your officer or the professional staff of the treatment center where you are receiving treatment to determine the presence or use of alcohol or controlled substances.

(12) You will submit a DNA sample, as directed by your officer, for DNA analysis as prescribed in ss. 943.325 and 948.014, F.S.

(13) You will submit to the taking of a digitized photograph by the department. This photograph may be displayed on the department's website while you are on supervision, unless exempt from disclosure due to requirements of s. 119.07, F.S.

(14) You will report in person within 72 hours of your release from incarceration to the probation office in County, Florida, unless otherwise instructed by the court or department. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at 658 S. Tamiami Trail Osprey, Florida 34269.

SPECIAL CONDITIONS

1. Cost of supervision waived
2. Report to Seaview Assisted Living Facility in Sarasota with sex offender condition within 24 hours upon release and reside there unless ordered otherwise by the Court. Can only move by Order of the Court.
3. Complete a minimum of 6 weeks of psychosexual counsel. Within 60 days of release, enroll in psychosexual counseling.

AND, IF PLACED ON PROBATION AND COMMUNITY CONTROL FOR A SEX OFFENSE PROVIDED IN CHAPTER 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, COMMITTED ON OR AFTER OCTOBER 1, 1995 OR ON OR AFTER JULY 1, 2021, AND WHO ARE PLACED UNDER SUPERVISION FOR A VIOLATION OF CHAPTER s. 787.06(3)(b), (d), (t), or (g), YOU WILL COMPLY WITH

THE FOLLOWING STANDARD SEX OFFENDER CONDITIONS, IN ADDITION TO THE STANDARD CONDITIONS LISTED ABOVE AND ANY OTHER SPECIAL CONDITIONS ORDERED BY THE COURT:

(15) You will report to your officer as directed, at least one time a week, unless you have written consent otherwise.

(16) You will remain confined to your approved residence except for one half hour before and after your approved employment, public service work, or any other special activities approved by your officer.

(17) You will maintain an hourly accounting of all your activities on a daily log, which you will submit to your officer on request.

(18) If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, child care facility, park, playground, or other place where children regularly congregate, as prescribed by the court. The 1,000-foot distance shall be measured in a straight line from the offender's place of residence to the nearest boundary line of the school, child care facility, park, playground, or other place where children congregate. The distance may not be measured by a pedestrian route or automobile route.

(19) Active participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders, at the offender's own expense. If a qualified practitioner is not available within a 50-mile radius of

the offender's residence, the offender shall participate in other appropriate therapy.

(20) A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, a qualified practitioner in the sexual offender treatment program, and the sentencing court.

(21) If the victim was under the age of 18, a prohibition on contact with a child under the age of 18 except as provided in this paragraph. The court may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment. Further, the sex offender must be currently enrolled in or have successfully completed a sex offender therapy program. The court may not grant supervised contact with a child if the contact is not recommended by a qualified practitioner and may deny supervised contact with a child at any time.

(22) If the victim was under age 18, a prohibition on working for pay or as a volunteer at any place where children regularly congregate, including, but not limited to any school, child care facilities, park, playground, pet store, library, zoo, theme park, or mall.

(23) Unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program, a prohibition on viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or

auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.

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(24) A requirement that the offender submit a DNA sample to the Florida Department of Law Enforcement to be registered with the DNA data bank.

(25) A requirement that the offender make restitution to the victim, as ordered by the court under s. 775.089, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.

(26) Submission to a warrantless search by the community control or probation officer of the offender's person, residence, or vehicle.

EFFECTIVE FOR PROBATIONER OR COMMUNITY CONTROLLEE WHOSE CRIME WAS COMMITTED ON OR AFTER OCTOBER 1, 1997, AND WHO IS PLACED ON COMMUNITY CONTROL OR SEX OFFENDER PROBATION FOR A VIOLATION OF CHAPTER 794, s. 800.04, s. 827.071, s.847.0135(5)or s. 847.0145, OR ON OR AFTER JULY 1, 2021, AND WHO ARE PLACED UNDER SUPERVISION FOR A VIOLATION OF CHAPTER s. 787.06(3)(b), (d), (t), or (g), IN ADDITION TO ANY OTHER PROVISION OF THIS SECTION, YOU MUST COMPLY WITH THE FOLLOWING CONDITIONS OF SUPERVISION:

(27) As part of a treatment program, participation at least annually in polygraph examinations to obtain information necessary for risk management and

treatment and to reduce the sex offender's denial mechanisms. A polygraph examination must be conducted by a polygrapher who is a member of a national or state polygraph association and who is certified as a postconviction sex offender polygrapher, where available, and at the expense of the offender.

(28) Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the supervising officer.

(29) A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.

(30) If there was sexual contact, a submission to, at the offender's expense, an HIV test with the results to be released to the victim and/or the victim's parent or guardian.

(31) Electronic monitoring when deemed necessary by the probation officer and supervisor, and ordered by the court at the recommendation of the Department of Corrections. If you are placed on electronic monitoring, you must pay the department for the cost of the electronic monitoring service.

(32) Effective for an offender whose crime was committed on or after July 1, 2005, and who are placed on supervision for violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, a prohibition on accessing the Internet or other computer services until a qualified practitioner in the offender's sex offender treatment program, after a risk assessment is

completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.

(33) Effective for offenders whose crime was committed on or after September 1, 2005, there is hereby imposed, in addition to any other provision in this section, mandatory electronic monitoring as a condition of supervision for those who:

- . Are placed on supervision for a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older; or

- . Are designated as a sexual predator pursuant to s. 775.21; or

- . Has previously been convicted of a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

You are hereby placed on notice that should you violate your probation or community control, and the conditions set forth in s. 948.063(1) or (2) are satisfied, whether your probation or community control is revoked or not revoked, you shall be placed on electronic monitoring in accordance with F.S. 948.063.

(34) Effective for offenders who are subject to supervision for a crime that was committed on or after May 26, 2010, and who has been convicted at any time of committing, or attempting, soliciting, or conspiring

to commit, any of the criminal offenses listed in s.943.0435(1)(h)l.a.(I), or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense: the following conditions are imposed in addition to all other conditions:

(a) A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. The court may also designate additional locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the offender from visiting a school, child care facility, park, or playground for the sole purpose of attending a religious service as defined in s. 775.0861 or picking up or dropping off the offender's children or grandchildren at a child care facility or school.

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(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court.

(35) Effective for offenders whose crime was committed on or after October 1, 2014, and who is placed on probation or community control for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition to all other conditions imposed, is prohibited from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually

stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

AND, IF PLACED ON COMMUNITY CONTROL, YOU WILL COMPLY WITH THE FOLLOWING CONDITIONS, IN ADDITION TO THE STANDARD CONDITIONS LISTED ABOVE AND ANY OTHER SPECIAL CONDITIONS ORDERED BY THE COURT:

(36) You will report to your officer as directed, at least one time a week, unless you have written consent otherwise.

(37) You will remain confined to your approved residence except for one half hour before and after your approved employment, public service work, or any other special activities approved by your officer.

(38) You will maintain an hourly accounting of all your activities on a daily log, which you will submit to your officer on request.

YOU ARE HEREBY PLACED ON NOTICE that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose

any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

IT IS FURTHER ORDERED that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

IT IS FURTHER ORDERED that you pay:

Court Costs, Fees, and Fines, as imposed at sentencing, in the total amount of: \$820.00

Payments processed through the Department of Corrections will be assessed a 4% surcharge pursuant to s. 945.31, F.S.

Pursuant to s. 948.09, F.S., you will be assessed an amount of \$2.00 per month for each month of supervision for the Training Trust Fund Surcharge.

IT IS FURTHER ORDERED that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, ON THIS 23RD DAY OF JULY 2023.

[signature of Thomas Krug]
Honorable Thomas Krug
Circuit Judge

F.

[Page 1]

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
GFSHOME@VERIZON.NET and
GERRYSTELL@VERIZON.NET ("Target
Accounts"), THAT IS STORED AT PREMISES
CONTROLLED BY OATH INC.

Magistrate No. 21-1792

[UNDER SEAL]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR
SEARCH WARRANT

I, J. Brandon Wargo, a Special Agent (SA) with
Homeland Security Investigations, being duly sworn,
depose and state as follows:

INTRODUCTION

1. I am a Special Agent with the Department of
Homeland Security (DHS), Immigration and Customs
Enforcement (ICE), Homeland Security Investigations
(HSI), currently assigned to the Pittsburgh,
Pennsylvania office. I have been so employed since
June 2009. As part of my duties as an HSI Special
Agent, I investigate criminal violations relating to

high technology crime, cyber-crime, child exploitation and child pornography including violations pertaining to the illegal distribution, receipt, possession, and production of materials depicting the sexual exploitation of children in violation of Title 18, United States Code, Sections 2252(a)(2), 2252(a)(4)(B) and 2251(a). I have received training in the area of child pornography and child exploitation investigations, and I have had the opportunity to observe and review numerous examples of such materials in a variety of electronic media. I am a member of the Western Pennsylvania Internet Crimes Against Children (ICAC) Task Force. I have participated in and led numerous child pornography investigations. I have executed numerous

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search warrants related to child pornography investigations. In this regard, I have reviewed extensive samples of child pornography, including videos, photographs, and digital reproductions of photographs or other print media.

2. As a federal agent, I am authorized to investigate violations of United States laws and to execute warrants issued under the authority of the United States.

3. This affidavit is submitted in support of an application for a search warrant for information contained in or associated with the Oath Inc. electronic mail (e-mail) account(s) of GFSHOME@VERIZON.NET and GERRYSTELL@VERIZON.NET herein identified as the "Target Accounts", controlled by the web-based electronic communication service provider known as Verizon Media - Oath headquartered at 22000 AOL Way, Dulles, VA 20166. The location to be searched is

particularly described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), and 2703(c)(1)(A) to require Oath Inc. to disclose to the government copies of records and other information, (including the content of communications), as particularly described in Attachment B, associated with the account(s), G F S H O M E @ V E R I Z O N . N E T a n d GERRYSTELL@VERIZON.NET.

4. The purpose of this application is to search for and seize evidence, fruits and instrumentalities, more particularly described in Attachment A, of violations of Title 18, United States Code, Section 2252(a)(2), which makes it a crime to knowingly receive or distribute material depicting the sexual exploitation of a minor, if the material was transported in or affecting interstate commerce by any means, including by computer; Title 18, United States Code, Section 2252(a)(4)(B), which makes it a crime to possess material depicting the sexual exploitation of a minor; and Title 18, United States Code, Section 2251(a), which makes it a

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crime to produce material depicting the sexual exploitation of a minor (child pornography).

5. Through my experience and training, I am aware that Title 18, United States Code, Section 2256 defines “minor”, for purposes of Section 2252, as “any person under the age of eighteen years”. Section 2256 also defines “sexually explicit conduct” for purposes of these sections as including: (a) genital-genital, oral-genital, anal-genital, and oral-anal sexual intercourse, whether between persons of the same or

opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic; or (e) lascivious exhibition of the genitals or pubic area of any person.

6. The statements in this affidavit are based, in part, on information provided by witnesses and your affiant's investigation of this matter. Since this affidavit is being submitted for the limited purpose of securing a search warrant, 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 evidence, fruits, and instrumentalities of the violations of Title 18, United States Code, Sections 2251(a), 2252(a)(2) and 2252(a)(4)(B) are presently located within the email account(s) of G F S H O M E @ V E R I Z O N . N E T and GERRYSTELL@VERIZON.NET. Based on my training and experience and the facts as set forth in this affidavit, I respectfully submit that there is probable cause to believe that violations of Title 18 U.S.C. §§ 2251(a), 2252(a)(2) and 2252(a)(4)(B) have been committed by Dominic RUNCO. There is also probable cause to search for information described in Attachment A for evidence, instrumentalities, contraband, and fruits of these crimes, as particularly described in Attachment B.

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JURISDICTION AND AUTHORITY TO ISSUE
WARRANT

7. This Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A), & (c)(1)(A). Specifically, the Court is "a district court of the United States ... that has

jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

PROBABLE CAUSE

8. On or about April 27, 2020, HSI Richmond was contacted by US Army Criminal Investigations Division (CID) concerning an individual that was accessing child pornography from Fort Lee, Virginia. Army CID received a tip from the National Center for Missing and Exploited Children (NCMEC) that the individual was trading child pornography using a Yahoo email address. Their investigation led to the identification of an email address, kimlisajennings@yahoo.com, who had received child exploitation material from their suspect.

9. The case information was forwarded to HSI Pittsburgh SA Wargo, your affiant, who reviewed the information and on or about December 4, 2020, your affiant presented an application for a search warrant for records associated with the email account of kimlisajennings@yahoo.com to the Honorable United States Magistrate Judge Lenihan. The warrant (2:20-mj-02435-LP) was approved by Judge Lenihan. A follow up warrant (2:20-mj-02463-MPK) was presented to and approved by the Honorable United States Magistrate Judge Kelly on or about December 11, 2020 for the aforementioned email account.

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10. On or about March 12, 2021, search warrants were issued by the Honorable United States Magistrate Judge Kelly (2:21-mj-00556-MPK and 2:21-mj-00557-MPK) for the residence of RUNCO and for his person.

11. On or about March 22, 2021, HSI Pittsburgh Special Agents with the assistance of the Pennsylvania

Attorney General's Office and the Pennsylvania State Police executed the warrants on RUNCO and his residence. During a subsequent interview of RUNCO, which occurred after he waived Miranda, RUNCO admitted to participating in sexual explicit conversations about children and consented to allowed your affiant to "take over" his email accounts. This consent was granted on March 22, 2021, during the course of the search warrant on RUNCO's person and residence. RUNCO was provided with his Miranda Warnings prior to providing consent. The consent was documented on DHS Form 4602.

12. On April 12, 2021, HSI Pittsburgh Special Agent Wargo examined several email addresses which were provided as consent search / account takeovers. A review of this email address Missy_Nye@yahoo .com (an account controlled by RUNCO) resulted in the discovery of a previously opened email from "gfshome@verizon.net" which was sent on February 9, 2021 at 12:24PM. An image within the email depicts three minor children, a minor boy, who is approximately 8 years old, a minor female who is approximately 8 years old, and a minor female who is approximately 12-14 years old. The minor male is standing fully nude, the younger minor female is performing oral sex on the male, and the older female is directing the head of the younger minor female onto the penis of the minor male. Your affiant downloaded the file from the email account and a SHA 1 hash of 2A7D56943B3BAA907E07E12BB76786CE9CC77074 was obtained.

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13. On or about April 15, 2021, SA Wargo served a Customs Summons on Verizon for subscriber

information related to the aforementioned email account. Verizon documented their response under case number 21236155-0. Their response stated they are not the custodian of record and all legal process for Verizon.Net emails needs to be served on Oath Inc.

14. On or about May 21, 2021, SA Wargo served a Customs Summons on Oath Inc. through their law enforcement portal. Oath Inc. documented the response under internal case number 487943. Oath Inc. responded with records responsive to the request, including but not limited to the following information. Subscriber Name: Gerry Steel, Alternative Email: GerrySteel@verizon.net, Account Status, Suspended.

15. Through various investigative methods, including open source record checks, your affiant was able to determine the individual utilizing GFSHome@Verizon.Net is Gerard F. STELLWAGEN of Nokomis, Florida.

16. On or about May 25, 2021, Special Agent Wargo contacted the National Center for Missing and Exploited Children to deconflict STELLWAGEN. A positive response from NCMEC was received under TA-142040. That TA referenced a NCMEC Cyber Tip which was filed on February 25, 2021 by Oath Holdings, which is documented under CT 87033171. The TA referenced the email that was sent from STELLWAGEN to RUNCO on February 9, 2021 utilizing the email address GFSHOME@VERIZON.NET. The CyberTip provided the identifiers of the account holder as Gerry Steel, with a date of birth consistent with that of STELLWAGEN as well as his home zip code (34724 - which resolves back to Nakomis, FL). The information also indicated that STELLWAGEN verified the email

address of GERRYSTELL@VERIZON.NET on September 24, 2020.

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17. A further review of RUNCO's account, Missy_Nye@yahoo.com, revealed conversations between STELLWAGEN, utilizing his "alternative email address," which had been identified in the Oath Inc. return, documented within paragraph 15 and the previously mentioned NCMEC CyberTip. Those emails are as follow:

From: Missy Nye@yahoo.com
Sent: March 15, 2021 at 8:03 PM
To: gerrystell@verizon.net
Subject: meet

HI.

From: Gerry (gen-ysteel@verizon.net)
To: missy_nye@yahoo.com
Date: Friday, March 19, 2021, 05:44 AM EDT

Yes we have chatted a few times. I'm the guy from Florida who goes by the name "grandpa". I have a friend in PA who passed away. You recognized me the last time we chatted. I guess at some point you felt comfortable enough sending me a photo of your daughters. I labeled them as my friends nieces just to avoid any suspicion. I don't ever share photos so don't worry about that.

I'm going to get my second vaccine shot in a couple of weeks and will consider traveling after that. Every time I get on the website I'll look for you. The last time we chatted you said you have a friend coming over so

we didn't get to chat very much.
Please remind me of your daughters names and ages.
My name is Gerry.
Sent from my iPhone.

On Mar 19, 2021, at 5:27 AM, Missy Nye
(missy_nye@yahoo.com) wrote:

Hi yes but who are you. We must have chatted.

On Tuesday March 16, 2021, 06:46:48 AM EDT,
GerryStell (gerrystell@verizon.net) wrote:

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Are these your girls?

NOTE: The emails appear to be part of an ongoing email string between RUNCO and STELL W AGEN and only the information readily available from within the Missy_Nye@yahoo.com email account was provided.

An additional email was located between RUNCO and STELLWAGEN. It is believed that STELLWAGEN may have sent an image of himself, however, that data was not present within the Missy_Nye@yahoo.com account.

From: GerryStell (gerrystell@verizon.net)
To: missy_nye@yahoo.com
Date: Friday, March 19, 2021, 05:58 AM EDT

Me

18. All of the above facts and circumstances, taken together, lead your affiant, based on his training and experience, to believe that evidence of the offenses under investigation is located, stored, or contained in the Oath Inc. e-mail account(s) G F S H O M E @ V E R I Z O N . N E T and GERRYSTELL@VERIZON.NET. Your affiant believes this evidence will include conversations about the sexual exploitation of children, sexually explicit images and/or videos, and any other associated information, such as Exchangeable Image File ("EXIF") information or other information about when such images/videos were made, shared, and/or "backed up," constitute evidence, instrumentalities, fruits, and contraband associated with the specified violations.

CHARACTERISTICS COMMON TO INDIVIDUALS
WITH A SEXUAL INTEREST IN CHILDREN

19. Based, upon my knowledge, experience, and training in, the investigation of child exploitation crimes, particularly those committed online, and on the training experience of other

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law enforcement officers with whom I have had discussions, I know that there are certain characteristics common to individuals involved in such crimes:

a. Individuals who seek to engage in the online sexual exploitation of children, or who attempt to commit these crimes, may receive sexual gratification, stimulation, and satisfaction from online contact with children; or from fantasies they may have viewing children engaged in sexual activity or in sexually suggestive poses, whether in person, in images, or in videos, or in writings describing such activity.

b. Individuals who produce, distribute, receive, or possess child pornography, and/or seek to engage in the online sexual exploitation of children, or who attempt to commit these crimes, may collect sexually explicit or suggestive materials, in a variety of analog or digital media. Such individuals often use this material for their own sexual gratification, to lower the inhibitions of children they are attempting to seduce, to arouse the selected child partner, or to teach a child how to perform various sexual acts.

c. Individuals who produce, distribute, receive or possess child pornography and/or seek to engage in the online sexual exploitation of children, or who attempt to commit these crimes, often keep copies of child sexual abuse material, that is, their child pornography collections, correspondence, mailing lists, and related books, whether in digital or other forms, in a secure location, like private email accounts. Because the collection reveals the otherwise private sexual desires and intent of the collector and represents his/her most cherished fantasies, the collector rarely, if ever, disposes of the collection. Collectors prize this material and usually keep it for many years. . .

d. Individuals who produce, distribute, receive or possess child pornography and/or seek to engage in the online sexual exploitation of children, or who attempt to commit

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these crimes, may correspond with or meet others interested in child sexual abuse material so that they can share information and materials. Often times, this correspondence occurs via the Internet and chat-logs, emails, and records of the correspondence are stored on the users' computers or digital storage media devices.

Child pornography collectors often keep lists of names, usernames, email addresses or other contact information for individuals with whom they have been in contact and who share the same interests.

e. Individuals who produce, distribute, receive or possess child pornography, and/or seek to engage in the online sexual exploitation of children, or who attempt to commit these crimes, commonly use online resources, including email accounts, to retrieve, share, and store child pornography. The online services allow a user to set up an account with a remote computing service that provides email services as well as electronic storage of computer files in any variety of formats. A user can set up an online account from any computer with access to the Internet. A user assigned an online account frequently can set up such accounts by providing limited identifying information. Any information provided is frequently fictitious in an attempt to preserve the anonymity of the user. Consequently, even if it is known that a collector or distributor of child pornography is a subscriber of an online account, the service provider frequently will have no records in that subscriber's name. Such an online account is particularly useful to a collector or distributor of child pornography. Such a subscriber can collect, store, view and distribute electronic images, including child pornography, directly from the online account. The subscriber can also manipulate the files in an online account from any computer connected to the Internet. For these reasons, if the online account has been used to collect, store, view or distribute images of child pornography, those images will often be maintained within the account by the user of the account and/or stored by the service provider for the

account.

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f. Individuals who produce, distribute, receive or possess child pornography, and/or seek to engage in the online sexual exploitation of children, or who attempt to commit these crimes, prefer not to be without their child pornography for any prolonged time period. This behavior has been documented by law enforcement officers involved in the investigation of child pornography throughout the world.

20. Based on the facts set forth in the paragraphs above, I believe that the user of the Target Accounts likely displays characteristics common to the individuals described within this section.

BACKGROUND CONCERNING EMAIL AND YAHOO

21. I am aware that as of June 2017, Oath Inc., a Verizon Company, became the successor company to AOL, Compuserv, Netscape and Yahoo. Oath Inc. is responsible for processing legal requests (Subpoenas/Court Orders/Search Warrants/Preservations) for all former AOL, Compuserv, Netscape and Yahoo records and Verizon.net accounts. I have learned that the Verizon.Net Division of Oath Inc. provides a variety of on-line services, including electronic mail ("email") access, to the public. Verizon.Net allows subscribers to obtain email accounts at the domain name Verizon.net, like the email account listed in Attachment A. Subscribers obtain an account by registering with Verizon. During the registration process, Verizon asks subscribers to provide basic personal information. Therefore, the computers of Oath Inc. are likely to contain stored electronic communications (including retrieved and unretrieved email for Verizon.net subscribers) and information concerning subscribers

and their use of Verizon.net service, such as account access information, email . transaction. information, and account application information. In my training and experience, such information may constitute

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evidence of the crimes under investigation because the information can be used to identify the account's user or users.

22. A Verizon,Net subscriber can also store with the provider files in addition to emails, such as address books, contact lists, calendar data, pictures (other than ones attached to emails), and other files, on servers maintained and/or owned by Oath Inc . In my training and experience, evidence of who was using an email account may be found in address books, contact or buddy lists, email in the account, and attachments to emails, including pictures and files.

23. In my training and experience, email providers generally ask their subscribers to provide certain personal identifying information when registering for an email account. Such information can include the subscriber's full name, physical address, telephone numbers and other identifiers, alternative email addresses, and, for paying subscribers, means and source of payment (including any credit or bank account number). In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users. Based on my training and my experience, I know that, even if subscribers insert false information to conceal their identity, this information often provides clues to their identity, location, or illicit activities.

24. In my training and experience, email

providers typically retain certain transactional information about the creation and use of each account on their systems. This information can include the date on which the account was created, the length of service, records of log-in (*i.e.*, session) times and durations, the types of service utilized, the status of the account (including whether the account is inactive or closed), the methods used to connect to the account (such as logging into the account via the provider's website), and other log files that reflect usage

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of the account. In addition, email providers often have records of the Internet Protocol address ("IP address") used to register the account and the IP address associated with particular logins to the account. Because every device that connects to the Internet must use an IP address, IP address information can help to identify which computers or other devices were used to access the email account.

25. In my training and experience, in some cases, email account users will communicate directly with an email service provider about issues relating to the account, such as technical problems, billing inquiries, or complaints from other users. Email providers typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications. In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users.

26. As explained herein, information stored in

connection with an email account may provide crucial evidence of the “who, what, why, when, where, and how” of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, the information stored in connection with an email account can indicate who has used or controlled the account. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, email communications, contacts lists, and images sent (and the data associated with the foregoing, such as date and time) may indicate who used or controlled the account at a relevant time. Further, information maintained by the email provider can show how and when the account was accessed

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or used. For example, as described below, email providers typically log the Internet Protocol (IP) addresses from which users access the email account, along with the time and date of that access. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the email account access and use relating to the crime under investigation. This geographic and timeline information may tend to either inculcate or exculpate the account owner. Additionally, information stored at the user’s account may further indicate the geographic location of the account user at a particular time (e.g., location information integrated into an image or video sent via email). Last, stored electronic data may provide relevant insight into the email account owner’s

state of mind as it relates to the offense under investigation. For example, information in the email account may indicate the owner's motive and intent to commit a crime (e.g., communications relating to the crime), or consciousness of guilt (e.g., deleting communications in an effort to conceal them from law enforcement).

INFORMATION TO BE SEARCHED AND THINGS
TO BE SEIZED

27. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Oath Inc. to disclose to the government copies of the items and information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

CONCLUSION

28. Based on the aforementioned information, your affiant respectfully submits there is probable cause to believe that evidence, fruits and instrumentalities of violations of Title 18,

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United States Code, Sections 2252(a)(2), 2252(a)(4)(B), and Section 2251(a) may be contained in the Verizon.Net (Oath Inc.) e-mail account of G F S H O M E @ V E R I Z O N . N E T and GERRYSTEEL@VERIZON.NET.

29. Your affiant, therefore, respectfully requests that the attached warrant be issued authorizing the search of the location particularly described in

Attachment A for the information and records particularly described in Attachment B.

30. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

31. The government will execute this warrant by serving the warrant on Oath Inc. Because the warrant will be served on Oath Inc., who will then compile the requested records at a time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

REQUEST FOR SEALING

32. It is further respectfully requested that this Court issue an Order sealing, until further order of Court, all papers submitted in support of this Application, including the Application, Affidavit, and the Search Warrant, and the requisite inventory notice. Sealing is necessary because the items and information to be seized are relevant to an ongoing investigation and premature disclosure of the contents of this Affidavit and related documents may have a negative impact of this continuing investigation and may jeopardize its effectiveness.

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The above information is true and correct to the best of my knowledge, information and belief.

Respectfully submitted,

/s/ J. Brandon Wargo

J. Brandon Wargo

Special Agent

Homeland Security Investigations

Sworn and subscribed before me, by telephone
pursuant to Fed. R. Crim. P. 4.1(b)(2)(A),
this 2nd day of September, 2021.

[signature of Cynthia R. Eddy]
HONORABLE CYNTHIA REED EDDY
Chief United States Magistrate Judge