IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMMY REICHLING,

Defendant.

OPINION AND ORDER

13-cr-126-bbc

- -

Robert Ruth, counsel for defendant Timmy Reichling, has written to the court to explain his misunderstanding of the magistrate judge's scheduling order that caused him to file his reply brief on June 3, 2014 instead of on June 1, 2014. His mistake is unfortunate, but it makes no difference to the outcome of the motion. Even if I had had his brief in front of me before I issued the order denying the motion to suppress, dkt. #34, I would have reached the same conclusion: the challenged warrant applications and warrants supported the government's search of the electronic storage devices seized pursuant to the warrants.

Defendant raises three arguments to support his claim that the warrants were insufficient to allow the officers to seize computers and other devices and then search them for evidence of the possible "exploitation, sexual assault and/or enticement of children." Dkts. #30-1, 30-2. He starts with the argument I dealt with in yesterday's order, which is that the warrant did not offer any evidence authorizing the officers to search for images

within the seized devices. "A warrant only grants as much authority as is set forth within the warrant. . . . a warrant to search a place, seize certain items and bring the items before the court means just that and nothing more." Dft.'s Br., dkt. #33, at 2. As explained in the order, dkt. #34, at 2, it is implicit in a warrant authorizing seizure of electronic storage devices that the seized devices may be examined for their contents. Fed. R. Crim. P. 41(e)(2)(B).

Second, defendant argues that even if a warrant could be read to allow searches of the electronic storage devices in some instances, in this case, the warrants did not grant such authority "because on the topic of images, the warrants only purport to authorize the seizure of images 'representing the possible exploitation, sexual assault and/or enticement of children,'" and that the warrant applications did not suggest that officers had any evidence to suggest that officers would find images representing "exploitation, sexual assault or child enticement." If defendant means by this that the kinds of images that the officers were looking for did not fall into the categories enumerated by the issuing court, he is in error. According to the warrant, the officers were looking for photographs of the victim, undressed and in various sexual poses, that defendant had enticed the victim into sending to him by cell phone or computer when she was 14 and 15. Conduct of the kind ascribed to defendant is clearly sexual exploitation of a minor. 18 U.S.C. § 2252(a)(2)(B) (making criminal knowing receipt of visual depiction of minor engaging in sexually explicit conduct). If defendant means that electronic storage devices would not be likely to contain such depictions, he is equally in error.

Defendant argues also that the warrants did not suggest that any images he possessed would have been recorded in the electronic storage devices, which is a necessary showing under Wisconsin law. Instead, the applications say that the victim recorded the images of herself and sent them to defendant, from which he argues that his mere possession of the images would not support a charge of child exploitation. Defendant overlooks the fact that when an image is sent to an electronic storage device, it is "recorded" by the receiving device, without any intervention by the recipient. It is highly likely that defendant's devices would contain recordings of the hundreds of images sent him by the victim.

Third, defendant challenges the court's statement in the order denying his first motion to dismiss, agreeing with the magistrate judge's conclusion that it was reasonable for the state court to grant the warrant applications in this case because it is common knowledge that evidence of child pornography would be likely to be found on defendant's electronic storage devices. Perhaps it would have been better to have said something to the effect that given the evidence presented to the state court that defendant possessed child pornography in the form of images sent him by a minor and that he possessed electronic storage devices, anyone with even rudimentary knowledge about computers would suspect that the evidence of the images would be on one or more of the devices. The point is that if there is reason to believe that a person has solicited pornographic images of a child and possesses electronic storage devices, it is common knowledge that the images will likely be kept in those devices. Defendant asks the court to reconsider the statement, but I see no need to do so in the context of this case.

ORDER

IT IS ORDERED that the request of counsel for defendant Timmy Reichling to consider his untimely brief in support of his second motion to suppress, dkt. #35, is GRANTED; the motion to suppress is DENIED.

Entered this 4th day of June, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge