

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **CRIMINAL NO. 13-201**

VERSUS * **SECTION: "R"**

JOHNNY SMITH *

* * *

FACTUAL BASIS

The defendant, **JOHNNY SMITH** (hereinafter, the "defendant" or "**SMITH**"), has agreed to plead guilty as charged to the two-count Superseding Bill of Information now pending against him, charging him with production of child pornography, in violation of Title 18, United States Code, Section 2251(a) (Count 1) and possession of child pornography, in violation of Title 18, United States Code, Section 2252(a)(4)(B). Should this matter proceed to trial, both the Government and the defendant, **JOHNNY SMITH**, do hereby stipulate and agree that the following facts set forth a sufficient factual basis for the crimes to which the defendant is pleading guilty. The Government and the defendant further stipulate that the Government would have proven, through the introduction of competent testimony and admissible, tangible exhibits, the following facts, beyond a reasonable doubt, to support the allegations in the Superseding Bill of Information now pending against the defendant:

The Government would show that, at all times mentioned in the Bill of Information, the defendant, **JOHNNY SMITH**, was a resident of the Eastern District of Louisiana who lived in Raceland, Louisiana. The Government would further establish through self-authenticating evidence that **SMITH** was born on January 7, 1971.

The Government would present evidence and competent testimony that Special Agents from the Federal Bureau of Investigation determined that **SMITH** was downloading and sharing images depicting the sexual exploitation of children (“child pornography”) through the use of various peer-to-peer file sharing software. On or about July 23, 2013, Special Agents from the Federal Bureau of Investigation executed a valid federal search warrant, based on probable cause, for the defendant’s residence located in Raceland, Louisiana, within the Eastern District of Louisiana. Agents would testify that they recovered, among other things, one 250 GB Seagate hard drive, one (1) digital external “thumb” storage drive that is black and white in color, and one (1) black HP Pavilion Elite Desktop computer from the defendant’s residence.

PRODUCTION OF IMAGES AND VIDEOS DEPICTING THE SEXUAL VICTIMIZATION OF A CHILD

The Government would further establish that, at all times mentioned in the Superseding Bill of Information, Victim 1 was a three-year-old minor female who was born on October 9, 2009.

The Government would further present forensic evidence, as well as the testimony of agents from the Federal Bureau of Investigation, that on or about May 12, 2013, and June 23, 2013, **SMITH** recorded a series of videos in which he engaged in sexually explicit conduct with Victim 1, who was approximately three-years-old during the period of the sexual abuse. On both days, **SMITH** used a hand-held digital recording device that was manufactured outside of the State of Louisiana to record the sexually explicit conduct. **SMITH** subsequently saved the

videos to a small, external digital storage (“thumb”) drive, which was also manufactured outside the State of Louisiana. The videos **SMITH** recorded depicted the following conduct:

May 12, 2013

SMITH recorded Video 1, entitled “VID_20130512_155207.mp4,” which is approximately 56 seconds in length, in the garage of his Raceland, Louisiana home, on about May 12, 2013. The video was taken from **SMITH’S** vantage point. The video began by depicting Victim 1 standing in the garage fully clothed. Initially, the prepubescent white female walks to **SMITH** pulls his shorts down, fully exposing his penis. As the camera initially pans downward, **SMITH’S** flaccid penis is visible. Victim 1 then steps back, and **SMITH** instructs her to “take your dress down,” at which time Victim 1 takes her underwear off. **SMITH** then instructs Victim 1 to “touch it [her vagina],” and Victim 1 complies. After a few moments, **SMITH** tells Victim 1 to come closer to the camera and turn around. **SMITH** then tells Victim 1 to “come back this way, bend over...more...more” as the camera focuses on and zooms in on the exposed buttocks and vaginal area of Victim 1.

June 23, 2013

On June 23, 2013, **SMITH** recorded 5 videos, with a total combined length of approximately 3 minutes, 14 seconds in the living room and kitchen of his Raceland, Louisiana home. During the videos, Video 1 dances in a sexual manner while wearing a black T-shirt and black shorts and then pulls her shorts and panties down to her knees and began fondling her genitals. She walked closer to the camera as the camera zoomed in near her genitals. She again fondles herself by inserting her fingers into her vagina and then lies on her back with her shorts and panties around her knees. **SMITH’S** removes Victim 1’s shorts and pants with his left hand. Later, Victim 1 exposes her buttocks and vagina to the camera, when **SMITH** touches Victim

1's genital area with his left hand. Subsequently, Victim 1 is depicted was unclothed from the torso down and was observed inserting her fingers into her vagina while spreading her vagina open.

POSSESSION OF VIDEOS DEPICTING SEXUAL VICTIMIZATION OF CHILDREN

The Government would also establish through testimony and documentary evidence, including the results of a computer forensic search, that **SMITH** knowingly used his computers to search for, download, and save images and videos of child pornography. Further, the Government would introduce the results of a computer forensic search of the digital media seized, which revealed approximately seven (7) videos and seventeen (17) images depicting the sexual victimization of children. The testimony of FBI forensic examiners would further establish that **SMITH** stored the videos and images on his computer and the external storage "thumb" drive and possessed them until the devices were seized by the FBI on July 23, 2013.

Further, the Government would introduce through the testimony of FBI special agents statements in which **JOHNNY SMITH** voluntarily admitted to federal agents that he knowingly downloaded digital images and videos of child pornography using a Peer-to-Peer software program. **SMITH** admitted that he subsequently viewed those images and videos and saved some of those images and videos. Computer forensic evidence would also be admitted to establish that **SMITH** installed a file "shredding" program on his computer that was designed to remove, or shred, files permanently from his computer in an attempt to minimize the likelihood that others would be able to view or recover files **SMITH** wished to delete.

Forensic evidence consisting of medical testimony, law enforcement officers, and supporting documentation would establish that some of the child victims depicted in the images

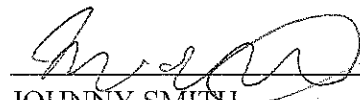
possessed by **SMITH** were of real, identifiable victims, less than the age of eighteen (18) at the time the child pornography was created.

Testimony would establish that some of the child victims depicted in the materials possessed by **SMITH** were of prepubescent children less than 18 years of age; to wit: as young as at least four (4)-years-old and that the images of the child victims were engaged in “sexually explicit conduct” as defined in Title 18, United States Code, Section 2256. These images included videos minors performing oral sex on adult males. All of the images of child pornography possessed by the defendant would be introduced through the testimony of FBI agents.

Further, the Government would show through testimony and documentary evidence that the equipment used by the defendant to acquire and store the child pornography was transported in interstate or foreign commerce.

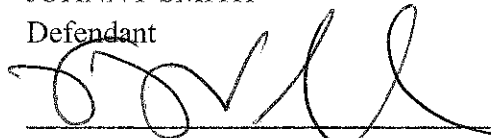
The above facts come from an investigation conducted by, and would be proven at trial by credible testimony from Special Agents from the Federal Bureau of Investigation, forensic examiners from the FBI, other witnesses, documents and electronic devices in the possession of the FBI, and the voluntary statements of the defendant, **JOHNNY SMITH**.

APPROVED AND ACCEPTED:

X 

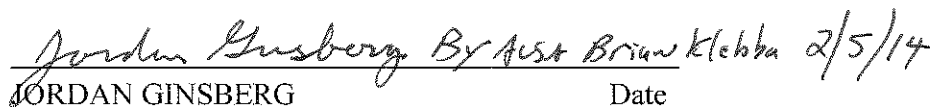
JOHNNY SMITH
Defendant

^{my}
2-5-14
Date



VALERIE WELZ JUSSSELIN, ESQ.
(Louisiana Bar No. _____)
Attorney for Defendant Smith

2-5-14
Date

 By Asst Brian Klebba 2/5/14

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