AO 91 (Rev. 08/09) Criminal Complaint

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
SEP 28 2010
MATTHEW J. DYKMAN
CLERK

# UNITED STATES DISTRICT COURT

for the

District of New Mexico

| | | |
|---|---|---|
| United States of America<br>v.<br>Wayne Shirley<br>Year of Birth: 1952 | )<br>)<br>)<br>)<br>)<br>) | Case No. 10MJ2555 |

*Defendant(s)*

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of September 22, 2010 in the county of Bernalillo in the State and District of New Mexico, the defendant(s) violated:

| *Code Section* | *Offense Description* |
|---|---|
| Title 18, United States Code, § 2252(a)(2), 2252(a)(4)(B), and 2256 | Receipt, Possession, and Distribution of Visual Depictions of Minors Engaged in Sexually Explicit Conduct |

This criminal complaint is based on these facts:

See attached Affidavit.

☑ Continued on the attached sheet.

*Complainant's signature*

Chris Martin, ICE/HSI Special Agent
*Printed name and title*

Sworn to before me and signed in my presence.

Date: 9/28/10

*Judge's signature*

City and state: Albuquerque, New Mexico

Alan C. Torgerson
U.S. Magistrate Judge
*Printed name and title*

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW MEXICO**

| | |
|---|---|
| **UNITED STATES OF AMERICA,** | ) |
| | ) |
| **V.** | ) |
| | ) |
| **WAYNE SHIRLEY** | ) |
| | ) |
| **Year of Birth: 1952** | ) |

**AFFADAVIT OF ICE SPECIAL AGENT CHRIS MARTIN**

The Affiant, Special Agent Chris Martin, from the Department of Homeland Security, Immigration and Customs Enforcement (ICE), being first duly sworn, hereby state as follows:

## I. INTRODUCTION

1. Your Affiant has been employed by Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) since December 21, 2008. Prior to employment with ICE, your Affiant was employed as a Customs and Border Protection Officer at the Detroit and El Paso Ports of Entry from December 2001 to December 2008. Your Affiant has also been employed as Police Officer for the City of El Paso, Texas from April 1996 to December 2001. Your Affiant is currently assigned to the Resident Agent in Charge, Albuquerque, where your Affiant's duties include investigation of individuals in the on-line exploitation of minors including violations of Title 18, United States Code, Section 2252.

2. During this time, your Affiant has successfully completed twelve weeks of Criminal Investigator training at the Federal Law Enforcement Training Center (FLETC). In addition, your Affiant completed nine weeks of Special Agent training with ICE, also at FLETC. Your Affiant has also attended training in Cyber Investigation and Peer to Peer (P2P) investigation. Your Affiant has participated in investigations of persons suspected of violating federal child pornography and exploitation laws and has also participated in searches of premises and assisted in the gathering of evidence by means of a search warrant during investigations for violations of Title 18, United Stated Code, Section 2252.

3. Your Affiant will show there is probable cause in support of a criminal complaint and arrest warrant against Wayne Shirley, (Year of Birth: 1952) for violations of Title 18, United States Code, § 2252(a)(2), 2252(a)(4)(B), and 2256, to wit; Receipt, Possession, and Distribution of Visual Depictions of Minors Engaged in Sexually Explicit Conduct.

4. The statements contained in this affidavit are based on upon your Affiant's investigation, training, experience, and information provided by other law enforcement officers. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint, your Affiant has not included each and every fact known to me concerning this investigation. Your Affiant has set forth only the facts that your Affiant believes are necessary to establish probable cause to support a criminal complaint against Wayne Shirley, in violation of 18 U.S.C. §§ 2252(a)(2) and 2256, and 18 U.S.C. §§ 2252(a)(4)(B) and 2256.

## II. RELEVENT STATUTES

5. This investigation concerns alleged violations of 18 U.S.C. §§ 2252(a)(2) and 2256, and 18 U.S.C. §§ 2252(a)(4)(B) and 2256.

6. 18 U.S.C. §§ 2252(a)(2) and 2256 prohibits receipt and distribution of any visual depiction involving the use of minors engaged in sexually explicit conduct (hereafter referred to as "child pornography") that has been shipped or transported in or affecting interstate or foreign commerce by any means, including by computer.

7. 18 U.S.C. §§ 2252(a) (4) (B) and 2256 prohibits possession of a matter which contains a visual depiction involving the use of a minor engaged in sexually explicit conduct that has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using material that had been shipped or transported in interstate or foreign commerce, by any means including a computer.

## III. DETAILS OF INVESTIGATION

8. The current investigation involves child pornography activity in reference to IP address 75.173.66.76 and other associated IP addresses which occurred on the following dates and times:

   - 07/26/2010 at 04:17 GMT
   - 07/12/2010 at 10:46 GMT
   - 07/10/2010 at 04:46 GMT



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9. On 7/26/2010, New Mexico State Police Sergeant Matt Pilon, of the Online Predator Unit, utilized software configured to search the Gnutella network for IP address/computers which were offering to share or possess, at least in part, files known to law enforcement that contain images/videos which were visual depictions of minors engaged in sexually explicit conduct ("child pornography") in violation of 18 U.S.C. 2256. Upon reviewing the logs within the Law Enforcement version of the peer to peer software, Sergeant Pilon noted this activity occurring on each of the above mentioned dates. Sergeant Pilon noted that a computer utilizing IP address of 75.173.66.76 was offering to participate in the distribution of child pornography. Sergeant Pilon was also able to determine that the IP address was assigned to an Internet service provider (ISP) within New Mexico. In addition to the IP address, he also noted and identified the GUID of 104AD76DD94CEEB2347DF00BA49EA9FA associated with the above IP address.

10. Sergeant Pilon noted that from these logs on each of the above mentioned dates and times described in paragraph 8, a computer utilizing IP address 75.173.66.76, was seen with files containing SHA 1 values which have been previously identified as depicting images of child pornography. Your Affiant reviewed these file lists and determined that the lists contained two (2) video files depicting child pornography, as defined in Title 18, United States Code, Section 2256. Your Affiant also noticed the overwhelming majority of the file names were pornographic in nature and many appeared to be directly referencing underage children. A few examples of these file names were listed as:

    "Vicky String Bikini Pthc 11Yo Pedofilia.mpg"

    And also:

    zooskool- (Hussyfan) (pthc) (r@ygold) (babyshivid)-K- K !!!NEW - WetB4ass (marissa) - young girl lolita pedo fuck brother(1).avi

11. Your Affiant examined a copy of some of the files listed on the logs which included their filenames, and SHA values. After examining these files, Your Affiant noted the following information for a file seen two times on July 26, 2010 at 04:17:08 GMT and 08:14:18:

    **SHA VALUE:** **YUOXWRMPCR6UAGBPNBRAVHPUHRKD7IBY**

    **FILE NAME:** "Vicky String Bikini Pthc 11Yo Pedofilia.mpg"

12. **DESCRIPTION:** A video file which is approximately three minutes and twenty-three seconds in duration. This video depicts an obviously prepubescent female, approximately ten (10) to thirteen (13) years of age. The first segment of the video shows the female child standing as she undresses. The female child then sits on a wooden bench and spreads her labia with both arms reaching from



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under her legs. The second segment of the video shows the female child with a red rope tied around her neck, down and around her chest and breast area. The third segment of the video shows the female child standing, blind-folded, with each wrist bound with white rope above her head and tied to a hook or support in the ceiling. The camera is moved around the naked and bound body of the female child. The fourth segment continues to show the female child, with spread legs, bound and suspended. An obviously adult male, wearing a white T-shirt, stands behind the female child. The adult male begins fondling the female child's vagina and breast. The adult male begins to masturbate with one hand while continuing to fondle the child's vagina. The fifth segment of the video shows the female child blind-folded and bound to a bench with white ropes around each arm, torso, and each thigh, with legs spread open. The adult male, naked from the waist down, fondles the female child's breast and vagina. The adult male, with both hands, spreads the female child's labia. The adult male places his semi-erect penis into the female child's mouth. The female child performs oral sex on the adult male.

13. and also the following information for a file seen on July 26, 2010 at 04:17:08:

**SHA VALUE:** **5ZLEZ5NG2GQWTODXPMCJU4GQZP2WCPDX**

**FILE NAME:** zooskool- (Hussyfan) (pthc) (r@ygold) (babyshivid)-K- K !!!NEW - WetB4ass (marissa) - young girl lolita pedo fuck brother(1).avi

14. **DESCRIPTION:** A video file which is approximately eight minutes and nineteen seconds in duration. This video shows two obviously prepubescent females who are approximately ten (10) to fourteen (14) years of age involved in sexual contact. The female children are completely naked on a bed being instructed by an off camera female voice to perform different sexual acts, to include oral sex on each other.

15. Your Affiant can conclude from specialized training and experience that the logged results indicated that a computer utilizing IP address 75.173.66.76 on the following date and time was receiving, possessing and distributing child pornography images and videos:

    - July 26, 2010 at 04:17:08

16. Affiant knows from training and experience that the software can be configured to allow parts of the files to be shared even if the copy located at these listed IP addresses have not yet been completely downloaded.



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17. Sergeant Pilon conducted an Internet search on the origin of the IP address 75.173.66.76 and found it to be issued to Qwest Communications, which New Mexico State Police investigators learned does not have servers in New Mexico, so as to satisfy interstate nexus.

18. Working this as a joint investigation, Sergeant Pilon requested the assistance of Immigration & Custom Enforcement Special Agent, Christine Brital. Special Agent Brital completed a summons requesting the identification of the subscriber using the IP address of 75.173.66.76 used on:

    - July 26, 2010 at 04:17:08 GMT

19. On August 9, 2010, Qwest replied via email. Special Agent Brital forwarded these results to Sergeant Pilon. The response indicated that one account had been accessing the IP address on the dates and times in question. The response contained the following information:

    - Subscriber Name: Wayne Shirley, Candy Shirley
    - Subscriber Address: 27 Penny Lane, Cedar Crest, New Mexico 87008
    - Billing Address: 27 Penny Lane, Cedar Crest, New Mexico 87008
    - Telephone Number: 505-286-4486
    - Length of Service: August 15, 2006 to Present
    - Type of Service: Qwest Local Service<br>Qwest Long Distance<br>Qwest Broadband with MSFT

20. Your Affiant conducted New Mexico Motor Vehicle Division (MVD) records checks on Wayne Shirley, Candace Shirley and 27 Penny Lane, Cedar Crest, New Mexico 87008. Checks indicate Wayne Shirley and Candace Shirley to reside at 27 Penny Lane, Cedar Crest, New Mexico 87008. 27 Penny Lane, Cedar Crest, New Mexico 87008 is listed as the billing address for the information returned from Qwest.

21. Wayne Shirley possesses a current and valid New Mexico driver's license with the listed address of 27 Penny Lane, Cedar Crest, New Mexico 87008. The records indicate that Wayne Shirley was born in February of 1952 and is 6'2" and weighs approximately 205 pounds.

22. Candace Shirley possesses a current and valid New Mexico driver's license with the listed address of 27 Penny Lane, Cedar Crest, New Mexico 87008. The records indicate that Candace Shirley was born in December of 1952 and is 5'2" and weighs approximately 115 pounds.

23. MVD records also indicate that 27 Penny Lane, Cedar Crest, New Mexico 87008, is located within Bernalillo County.



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24. On Monday, September 13, 2010, at approximately 1410 hours, Your Affiant conducted surveillance at 27 Penny Lane, Cedar Crest, New Mexico 87008. During this time, Your Affiant took several photographs of this residence and its surroundings. While conducting this surveillance, Your Affiant identified a 2003 Subaru Baja, bearing New Mexico plate YLWSUB parked in the driveway of 27 Penny Lane, Cedar Crest, New Mexico 87008. The vehicle registration records show it to be registered to Candace and Wayne Shirley.

25. On September 21, 2010, your Affiant applied for and was granted a search warrant for instrumentalities, fruits and evidence in regards to the residential property and premises located at 27 Penny Lane, Cedar Crest, New Mexico 87008 for violations of Title 18, United States Code, Section 2252 (Distribution, Receipt and Possession of Visual Depictions of Minors Engaged in Sexually Explicit Conduct).

26. On September 22, 2010, your Affiant, along with other HSI special agents and investigators from the New Mexico State Police On-Line Predator Unit, executed the search warrant at 27 Penny Lane in Cedar Crest, New Mexico. The search warrant was based on a peer-to-peer file sharing investigation in which a computer in the residence, located at 27 Penny Lane in Cedar Crest, New Mexico was known to have child pornography.

27. At the residence, your Affiant, assisted by NMSP Agent C. McPherson, met with and requested to speak to Wayne Shirley, who was advised he was neither in custody nor being detained, concerning his involvement in the possession, receipt and distribution of child pornography. The interview of Wayne Shirley was recorded.

28. Wayne Shirley stated he would speak to your Affiant. Wayne Shirley stated he understood that he did not have to speak with your Affiant and also that he was not under arrest and free to leave. Wayne Shirley made statements to your Affiant that he had a technical knowledge of computers. Wayne Shirley advised he had a laptop that only he used and was password protected in an upstairs room used as his in-home office. Wayne Shirley stated he had used readily available file sharing Peer to Peer (P2P) software, known to him as Shareaza. Wayne Shirley used Shareaza to find and look at porn that was available on the internet. Wayne Shirley defined child pornography as "pornography involving children under 18". Wayne Shirley stated he had viewed images and videos involving child pornography, and had seen files which he thought contained teen-aged girls, but also saw files which contained younger children. Wayne Shirley stated he would view the files, but would delete them after he found out what they were. When asked if the settings had been changed in the Shareza program, Wayne Shirley stated that he had not altered the Shareaza settings.



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29. After concluding the interview, your Affiant spoke to NMSP Lieutenant M. Aguilar, who was conducting forensic previews of the computers and other electronic storage media found at 27 Penny Lane. Lt. Aguilar advised that during an on-site preview of the computers, he was provided a Dell Inspiron laptop belonging to Wayne Shirley, which had been located in an upstairs room, which contained approximately 22 files consistent with child pornography, and a Seagate External Hard Drive which contained 44 files consistent with child pornography. Aguilar advised these files were possibly only a portion of the files on the computer and hard drive, and that a full forensic exam would be required to determine the amount of child pornography contained on the computer and hard drive.

30. Items were seized pursuant to the search warrant. An inventory of all items seized was prepared and given to Wayne Shirley.

31. Your Affiant learned that HSI Special Agent Kyle Craig viewed and provided the description of three (3) graphics files found on the Dell Inspiron Laptop belonging to Wayne Shirley as described below;

    - 5NXY6FIWB2QWXXJGRKWIICSAY5IPS6UY.jpg is described as an image depicting a naked prepubescent blond female sitting on a bed, leaning back slightly, with her legs spread, exposing her vagina.

    - 6XCOTUGRNW7ZER7DE7NK6T6YQU66FA2U.jpg is described as an image depicting, what appears to be the same naked prepubescent female on a bed, balancing on her head and feet, legs spread, exposing her anus and vagina.

    - WBRWSTBCIRFRX6FTVEDB3GZETM6L57I4.jpg is described as an image depicting what appears to be the same naked prepubescent female lying on her back, legs spread, hands under her buttocks, exposing her anus and vagina.

32. SA Craig also viewed one (1) video file found on the Dell Inspiron Laptop belonging to Wayne Shirley as described below as an example:

    - DE2N55WFRCMJVCPJUNXXUZ326O4Y5UKF.wmv is described as a video depicting a naked minor female seated, taking an adult males penis into her mouth. The video continues with the minor female engaging in oral sex with and using her hands to masturbate the adult male until he ejaculates. The minor female continues to stimulate the adult male using her mouth and hands until he ejaculates on her face. The video is approximately 4 minutes and 26 seconds in length.



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33. On September 22, 2010 at approximately 1730 hours, Wayne Shirley contacted your Affiant and requested to speak to your Affiant and provide a written statement. At approximately 1830 hours, Wayne Shirley arrived at the HSI office in Albuquerque and met with your Affiant and HSI SSA Morgan Langer. This interview was audio recorded with Wayne Shirley's acknowledgement. Although not in custody, Wayne Shirley was advised of his rights as per Miranda. Wayne Shirley signed a waiver of rights and provided an interview and sworn statement to your Affiant. Wayne Shirley stated he had not been honest with agents during the interview at his residence earlier that day. Wayne Shirley admitted to your Affiant that he did have child pornography on his computers, and that agents would find more. Wayne Shirley further admitted that he had changed the settings on Shareaza to put the child pornography in a different location on the computer because he did not want anyone casually finding child pornography on his computer. When asked if the settings had been changed during initial set up, Wayne Shirley advised the settings had been changed at a later time. Wayne Shirley stated that he had upgraded hard drives and had probably put child pornography on other hard drives as well. Wayne Shirley admitted to your Affiant that he started viewing child pornography approximately five (5) years ago from utilizing the Shareaza file sharing program. Wayne Shirley admitted that he preferred files depicting young females between the ages of ten (10) to thirteen (13) years of age. Wayne Shirley stated he understood that these files were received from Shareaza and that as part of the file sharing peer to peer program, he was in turn sharing these files with others.

## IV. INTERSTATE NEXUS

34. Based upon the statements by Wayne Shirley to special agents, specifically that he received, distributed, and possessed child pornography images via the internet, your Affiant believes that the element of "in or affecting interstate or foreign commerce" is 'satisfied for a violation of 18 U.S.C. §§ 2252(a)(2) and 2256. Specifically, Mr. Shirley admitted that he received, possessed, and distributed visual depictions of minors engaged in sexually explicit conduct through different file sharing programs. Your Affiant knows that file sharing programs operate through the use of the internet, so as to satisfy the "in or affecting" component of interstate nexus. Additionally, your Affiant has learned that Qwest servers, which Mr. Shirley used as his Internet Service Provider, are located outside the state of New Mexico. Therefore, any distributed, received, or possessed child pornography image using a file sharing program that operates through Qwest as the Internet Service Provider would cross through a server out of New Mexico, so as to satisfy interstate nexus.



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## V. CONCLUSION

35. Based on all of the foregoing information, your Affiant submits there is probable cause to believe that Wayne Shirley violated 18 U.S.C. §§ 2252(a)(2) and 2256, that being Distribution and Receipt of Visual Depictions of Minors Engaged In Sexually Explicit Conduct, and 18 U.S.C. §§ 2252(a)( 4)(B) and 2256, that being Possession Of A Matter Containing A Visual Depiction of a Minor Engaged In Sexually Explicit Conduct. Your Affiant requests a criminal complaint and arrest warrant in this matter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. FURTHER AFFIANT SAYETH NOT.

Chris Martin, Special Agent
Immigration and Customs Enforcement

Sworn to and subscribed before me this 28 day of September 2010 in Albuquerque, New Mexico.

United States Magistrate Judge