

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

UNITED STATES OF AMERICA

v.

Case Number 3:16cr57/MCR

RICHARD D. WATERSON II
_____ /

FACTUAL BASIS FOR GUILTY PLEA

This statement of facts is submitted on behalf of the undersigned parties.

All parties agree that if the above-captioned case were to go to trial, the government could produce competent, substantial evidence of the following facts to prove the defendant is guilty of the offenses charged in the Indictment to which the defendant is pleading guilty. The parties further agree that not all of the facts known from or related to this investigation are contained in this brief summary.

STATEMENT OF FACTS

On January 13, 2016, a Homeland Security Investigations Task Force Officer (TFO), who was acting in an undercover capacity, placed a post in the blog section of a free public website that caters to persons that have a sexual interest in incest. The post reads as follows, "I was wonder if anybody in these incest site are into real incest or just talking about it. I live the lifestyle and haven't been able

to find anyone else out there like us. We belong to a number of lifestyle sites but never really ran across others. Lol maybe I should start my own website.”

On May 17, 2016, the TFO observed that a person named “Richard W,” later identified as the defendant, appeared to have posted/blogged on May 10, 2016. The defendant wrote, “unlikely I’ll even get any positive replies to this, but who knows: 46 year old guy, divorced and living in the Florida panhandle. I’m here to see if my hope can be made real and to see if I’m just deluding myself by thinking there might be women out there who just might be interested in incest and in starting an openly sexual, incestual family from the very beginning.” “Local (us) women only please! If you have an issue with sex offenders, pedophiles or child pornography, do us both a favor and just step on to the next profile. I am on Florida state probation until 2021, unable to leave the area I currently live in.” After reading this post, the TFO responded and wrote, “hey Richard was your response to my blog. Thanks for answering it. I been having a problem getting on this website and couldn’t answer you. If your serious about starting a family hit us up I have a 13 yo girl and was looking for other who enjoyed young. We also live in Florida.”

On May 18, 2016, the TFO received a response from the defendant who said he was very serious and was having difficulties because he was on probation until

2021. The TFO told the defendant, if he was serious he (the TFO) had family in the area where the defendant lived. The defendant advised he had to be very cautious for the time being and he had searched for 26 years. The defendant said, this should tell you "how serious I am." The TFO once again reminded the defendant of the child's age by saying "wow bro guess ur serious being my girl is 13 we also have to be very cautious and discreet." The TFO told the defendant that his family had no idea about his 13-year-old baby girl and how he shared her. The defendant told the TFO, "When you get up this way send a message, I'll see what I can do about meeting someplace if you want." The defendant said he lived with his family, so they could not meet at his residence. The TFO said they usually stayed at a hotel off Interstate 10.

A review of the profile page for the defendant on the blog site indicates that he lives in Crestview, Florida, was born on May XX, XXXX, and is divorced. He also stated that he is 45 years old, an ex-felon doing six years of probation, and is unable to leave the State of Florida. A profile picture was also attached to the account displaying a middle aged white male. The TFO ran a facial recognition program on the profile picture that matched the Florida Driver and Vehicle Information Database (DAVID) driver's license photograph of Richard Dwight Waterson II with the same date of birth and an address in Crestview, Florida.

On May 18, 2016, the TFO received a Yahoo friend request from the defendant using the Yahoo name "dharkhon." The TFO accepted the friend request. Between May 18, 2016, and June 7, 2016, the TFO and the defendant had additional conversations on Yahoo messenger regarding sexual contact with the TFO's 13-year-old fictitious daughter Amber. A portion of the conversation revealed the following:

- WATERSON: Nice to find someone that's real and not just a talker
- TFO: same we are very real. so your also into young
- WATERSON: Yeah, the younger the better, IMO. Though right now not so much lol
- TFO: why
- WATERSON: Why not so much right now? My probation
- TFO: o yeah that sucks bro
- WATERSON: 5 years and that goes away, just is a long time to wait
- TFO: Yeah. Like u under house arrest
- WATERSON: Not really, GPS monitor, and I've got limits on certain places, like I can't be around schools or parks/playgrounds but other than that, not a lot of restrictions. Biggest 2 is not supposed to talk to minors and I have a night time curfew
- TFO: o ok thats cool lol so probably not a good idea we meet
- WATERSON: We can meet, just have to be careful
- TFO: definately bro be cool. We are very discreet.
- WATERSON: Would have to be, with the rest of the family unaware
- TFO: yeah they don't know about our lifestyle, my girl get out of school next week and was plann on coming up that way. they want to have a little party for her since she just got out of 8th grade and is going into high school next year
- WATERSON: Cool a kind of graduation party
- TFO: Yeah.
- WATERSON: BTW, no I'm not asking for anything to happen when we meet, though I won't say no if it does lol
- TFO: well what would you want to do with her i could ask if you want

- WATERSON: Would mostly depend on time and location, plus if she's even interested, but at least mutual oral
- TFO: nice well we get a room up to you you just want oral lol
- WATERSON: Lol I'd love to slide deep into her, personally, but that's up to you and her
- TFO: i sure she would be ok with that you would have to wear a condom tho

- WATERSON: I'm in 6 or 7 group's on Facebook and it's wall to wall fakes, players and chatters, when it's not middle easterners
- TFO: so i'll talk to Amber tonight so all ya want to do is oral and fuck her
- WATERSON: Well, not all, but let that be a start anyways
- TFO: lol tell me what else bro
- WATERSON: Put simply, anything and everything she'll let me do to her, and her respond in kind. Oral, facial, fingerings, fucking and anything else she's willing to do

During the conversations, the TFO and the defendant agreed to meet at a restaurant in Crestview, Florida on June 8, 2016, so the defendant could meet the TFO before going to a local hotel to engage in sexual activity with Amber, the fictitious 13-year-old girl.¹ The defendant informed the TFO he did not have a driver's license and would have to walk to the restaurant.

On June 7, 2016, the TFO and the defendant confirmed their meeting for 10:00 a.m., the following day. On June 8, 2016, at approximately 8:20 a.m., agents observed the defendant walking towards the restaurant in Crestview,

¹ A 46-year-old man engaging in sexual activity with a person 12 years or older but less than 16 years of age is a violation of Florida Law. Florida Statutes, section 800.04(4) and (5).

Florida, that was approximately three miles from the defendant's residence. At approximately 9:30 a.m., the defendant arrived at the restaurant and met with the TFO. During their conversation, the TFO told the defendant Amber was at the local hotel. In addition, the defendant spoke via the telephone to an undercover officer playing the role of Amber. After the telephone conversation, the defendant confirmed that he was ready to meet and have sex with Amber. The defendant and the TFO proceeded to walk to the hotel. Once the defendant entered the hotel parking lot, he was taken into custody and transported to the Crestview police station. The defendant had a cellular telephone and tablet computer in his possession.

At the police station, the defendant was read his *Miranda* warnings and he waived his rights. Post-*Miranda*, he confirmed he met the TFO on social media and communicated with him over the past few weeks. The conversations, mostly on Yahoo messenger, were about the defendant having sex with and starting a relationship with the TFO's 13-year-old daughter Amber. The defendant stated the purpose of their meeting on June 8, 2016, was for him to have sexual intercourse with Amber and to start a relationship. In addition, the defendant confirmed the email accounts dharkhon@gmail.com and dharkhon@yahoo.com were his email accounts. After his arrest, a search of his residence was conducted

pursuant to a federal search warrant and multiple computers were seized.

Prior to the defendant's arrest, on May 23, 2016, HSI agents were contacted by an Okaloosa County Sheriff's Office investigator regarding a National Center for Missing and Exploited Children Cyber Tipline Report related to a subject believed to be the defendant. According to the Tipline Report, Google forwarded information that on February 13, 2016, one of its subscribers with the user name of dharkhon@gmail.com had uploaded a file, named "nena.avi," to Google Drive that was believed to be child pornography. The Internet Protocol (IP) address that was used by dharkhon@gmail.com to facilitate the upload of the child pornography video was assigned to the defendant's residence in Crestview, Florida. The child pornography video portrays a minor female child who appears to be between six (6) to eight (8) years of age. In the video, an adult male is vaginally penetrating the minor child with his penis in the backseat of a car.

During his interview with law enforcement on June 8, 2016, the defendant said he had viewed child pornography since he was released from prison in May 2015 and had also emailed child pornography images to his cellular phone. In addition, he said images of child pornography would be found on his cellular telephone and tablet computer, and possibly on a laptop computer at his residence. The defendant consented to a search of his cellular telephone, but not his tablet. A

search of the cellular telephone revealed approximately four images of child pornography.

On June 10, 2016, a search warrant was issued for the defendant's tablet computer. A forensic examination located child pornography on the laptop, cellular phone, ^{JAH} ~~GPS~~ ^{to 10/16/16} unit, and tablet computer. In total, approximately 250 child pornography images, downloaded from the internet, were located on his electronic devices.

A review of the defendant's criminal record indicates that he is a registered sexual offender with the State of Florida following a conviction in 2012 for numerous counts of possession of child pornography. The defendant was sentenced to four years' incarceration followed by six years of probation. He was released from prison in May 2015, at which time, he registered as a sexual offender. He is on sexual offender probation until 2021.

Elements of the Offenses

Count One – Attempted enticement of a Minor, in violation of Title 18, United States Code, 2422(b)²

First: the defendant used a facility or means of interstate commerce;

² Eleventh Circuit Pattern Jury Instructions - Criminal (2015) 92.2; United States v. Lanzon, 639 F.3d 1293 (11th Cir. 2011); United States v. Lee, 603 F.3d 904 (11th Cir. 2010); United States v. Hornaday, 392 F.3d 1306 (11th Cir. 2004); United States v. Murrell, 368 F.3d 1283 (11th Cir. 2004); United States v. Grafton, case number 3:15cr35/MCR.

- Second:* when the defendant used the facility or means of interstate commerce, he knowingly intended to persuade, induce, or either personally or through an adult intermediary, a person who he believed was under age 18 to assent or agree to engage in sexual activity;
- Third:* the defendant took a substantial step toward obtaining the minor's assent or agreement to engage in sexual activity; and
- Fourth:* if the sexual activity had occurred, the defendant could have been charged with a criminal offense under the laws of the State of Florida. Under Florida law, it is a criminal offense for an adult male to have any sexual contact or engage in any sexual activity with a person who is under age 18.

The Defendant need not communicate directly with the minor, it is sufficient if the Defendant attempted to induce a minor via an adult intermediary. As used in this instruction, induce means to stimulate the occurrence of or to cause.

An actual minor victim is not required for an attempt conviction under this Count. It is not a defense that the minor did not actually exist.

Count Two – Receipt of child pornography, in violation of Title 18, United States Code, Section 2252A(a)(2)

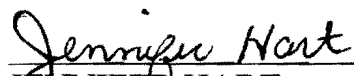
- First:* the Defendant knowingly [received] an item or items of child pornography;
- Second:* the item[s] of child pornography had been [transported] [shipped] [mailed] in interstate or foreign commerce [including by computer]; and
- Third:* when the Defendant received or distributed the item[s], the Defendant believed the item[s] [was] [were] [contained] child pornography.

Count Four – Penalties for Registered Sex Offenders, in violation of Title 18,
United States Code, Section 2260A

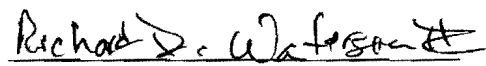
First: the Defendant is required to register as a sex offender under Federal or
other law; and

Second: the Defendant commits a felony offense involving a minor under Title
18, United States Code, Section 1201, 1466A, 1470, 1591, 2241,
2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or
2425.

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JENNIFER HART
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Date


RICHARD D. WATERSO II
Defendant

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