

AFFIDAVIT OF SETH FIORE

Seth Fiore, being duly sworn, does depose and say as follows:

1. I am a Special Agent with Homeland Security Investigations (HSI). HSI is a directorate within Immigration and Customs Enforcement (ICE). I have been a special agent since October, 2009. I am currently assigned to the Burlington, Vermont Resident Agent in Charge Office. I hold a Bachelor of Science degree in management and Master of Business Administration degree from Fitchburg State University. I graduated from the Federal Law Enforcement Training Center in March, 2010.

2. This Affidavit is offered to demonstrate that probable cause exists to believe that on or about March 2, 2012, Derek Thomas, of 73 Granite Creek Road, Colchester, Vermont, knowingly possessed visual depictions that had been shipped or transported using any means or facility of interstate commerce, including by computer, and the production of such visual depictions involved the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct in violation of 18 U.S.C. §2252(a)(4)(B).

3. I have not set forth all facts I know from my investigation into this matter. Rather, I have included those facts I believe establish probable cause to believe that Derek Thomas committed the foregoing offense. My knowledge comes from my own investigation as well as information I have received from other agents.

4. Due to my previous investigation in this matter, I was aware that Diane Jarvis and her two sons reside at 73 Granite Creek Road, Colchester, Vermont. I was also aware that a male named Derek Thomas may possibly live there as well

5. At approximately 6:15 a.m., I and ICE Agent Fran Heslin knocked at the door of the residence. Thomas answered the door and allowed us entry.

6. Simultaneously, two other members of the search team went to Starr Farm Nursing Center where Diane Jarvis was employed. She told law enforcement that she lived with her two sons, Gunner and Cole, as well as her boyfriend, Derek Thomas at 73 Granite Creek Road, Colchester. She said that in the bedroom that she shared with Derek Thomas, there were two computers. She said she used a white laptop computer that would be found on her side of the bed (she slept next to the window and Derek slept on the side of the room near the bathroom). She also said that Derek used a black laptop computer that would be located on an end table near his side of the bed. She also explained that her two sons possessed computers as well.

7. We spoke with Derek Thomas at the kitchen table. He was very forthcoming about his employment, hobbies, and medical condition but once the conversation turned to the subject of the internet, he became nervous (visibly shaking and biting his fingernails). He then invoked his right to counsel. No further conversation ensued.

8. Forensic Examiners Brian Penders and Eric Laforte commenced an Onsite Forensic Preview of each computer located in the home.

9. According to Brian Penders, the black laptop computer located on Thomas's side of the bed contained at least 500 images and videos containing child pornography. As of this time, I am not aware that the examiners found any child pornography on the other computers located in the home.


10. The laptop computer is a facility of interstate commerce and it had access to the internet because the household maintains an account with Comcast, an internet service provider, in the name of Diane Jarvis. Furthermore, peer2peer (file sharing) software was installed on Thomas's laptop computer. The peer2peer software that was installed is eDonkey and Gnutella. Finally, Brian Penders has explained to me that the laptop computer contains a file path labeled

as “users/owner/downloads/cocks.” The fact that images contained in the folder “cocks” were “downloaded” indicates they were download from the internet. All of these facts establish probable cause that images on the laptop computer have been shipped or transported in interstate commerce and that the interstate commerce element of 18 U.S.C. § §2252(a)(4)(B) has been satisfied.

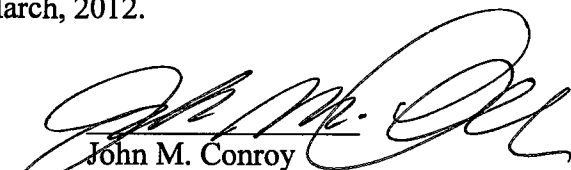
11. A image file titled “pthc-Rona Blowjob” was found in the “cocks” file. It is described as follows:

A prepubescent female, standing no higher than the pelvis of an adult male, is standing in front of the adult male and performing oral sex on that male.

12. Based on the foregoing, I believe there is probable cause to believe that Derek Thomas has knowingly possessed visual depictions that had been shipped or transported using any means or facility of interstate commerce, including by computer, and the production of such visual depictions involved the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct in violation of 18 U.S.C. §2252(a)(4)(B).


Seth Fiore
Special Agent
Homeland Security Investigations

Subscribed and sworn to before me this 2nd day of March, 2012.


John M. Conroy
United States Magistrate Judge