

BR:RWH/TM
F.#2004R00653

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-against-

RYAN HOGAN,

Defendant.

SEALED AFFIDAVIT
IN SUPPORT OF
APPLICATION FOR AN
ARREST WARRANT

(18 U.S.C. §§ 1470 and
2422 (b))

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JAYME NABEREZNY, being duly sworn, deposes and states that she is a Deputy Inspector General with the New York City Department of Investigation ("NYC DOI"), duly appointed according to law and acting as such.

Upon information and belief, on or about and between March 8, 2004 and March 10, 2004, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RYAN HOGAN, using a facility or means of interstate or foreign commerce, did knowingly and intentionally attempt to persuade, induce and entice an individual who had not attained the age of 18 years to engage in sexual activity that would be in violation of New York State law, to wit: New York Penal Law Sections 130.30(1) and 130.45, in that the defendant, being 18 years old or more, knowingly and intentionally attempted

to persuade, induce and entice a person less than 15 years old to engage in sexual intercourse and sexual acts.

(Title 18, United States Code, Section 2422(b)).

Upon information and belief, on or about and between March 8, 2004 and March 10, 2004, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RYAN HOGAN, using a facility or means of interstate or foreign commerce, did knowingly and intentionally attempt to transfer obscene matter to another individual who had not attained the age of 16 years, knowing that the individual had not attained the age of 16 years.

(Title 18, United States Code, Sections 1470, 2).

The source of your deponent's information and the grounds for her belief are as follows:¹

1. I have been an investigator with the New York City Department of Investigation for approximately five years. My duties include, but are not limited to, overseeing investigations of personnel who work for the New York City Fire Department ("FDNY") and investigating allegations of corruption and

¹ Because the purpose of this Affidavit is only to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware. In addition, when I rely on statements made by others, such statements are set forth in part and in substance unless otherwise indicated. Further, I have relied upon expertise of forensic computer investigators and examiners during the course of this investigation and for the purpose of preparing this Affidavit.

wrongdoing by FDNY personnel. This affidavit is based on my personal participation in this investigation, my examination of reports, records and responses to subpoenas, and conversations with other law enforcement agents. I have experience investigating computer-related crimes, as do other law enforcement agents upon whom I relied during the course of the investigation and in preparing this affidavit.

THE INTERNET

2. As part of my training and experience, I have become familiar with the Internet, which is a network of computers that individuals and entities can use to gain access to a wide variety of information, to conduct commercial transactions, and to communicate via electronic mail ("e-mail"). An individual who wants to use Internet e-mail typically must obtain an account with an Internet service provider ("ISP") (e.g., America Online) and have access to a computer that is linked to the Internet. The ISP typically assigns to each subscriber an account name ("e-mail address"), an e-mail mailbox, and a personal password, which can normally be selected by the subscriber. By using a computer equipped with a device that can access the Internet (e.g., a telephone or cable modem), the subscriber can establish communication with an ISP over a telephone line or through a cable system, and can access the Internet by using his or her account name and personal password.

Once the individual has accessed the Internet, he or she can use Internet mail services, including sending and receiving e-mail.

3. Instant messaging ("IM") is another means by which Internet users may communicate with one another. With the appropriate software, an IM session allows direct communication between people in real time over the Internet.

4. There are two basic ways to send video images over the Internet. One method, a "live feed," utilizes a video camera or other device (often referred to as a "web cam") to capture a live image as it is occurring. If a recipient has a computer capable of viewing a "live feed" image, the recipient may view the image in real time as the sender is recording the image. In the alternative, an individual may send a previously recorded video image. This method may involve a variety of different file formats. In the "file format" method, a video image may be recorded as a file and then sent as an attachment to an e-mail message, uploaded to a web site for downloading, posted in a chat room, or transmitted by various other means.

5. America Online, Inc. ("AOL"), is a commercial computer service and Internet service provider. AOL offers subscribers access to "chats." A "chat" is a real-time type-written conversation between people, much like a verbal conversation. AOL also provides e-mail service, enabling subscribers to communicate by computer in a manner similar to

writing and sending letters through the postal service. In addition, AOL offers subscribers access to instant messaging and the world wide web. Each AOL subscriber must have access to a computer which communicates with AOL's central computer system located in Northern Virginia.

6. Each subscriber can communicate with other AOL users via e-mail or in real-time through either public chat rooms, private chat rooms or instant messages, if the other subscriber is also online. Within AOL's system, text messages and graphic images (such as photographs) can be sent to a subscriber, or to any person with an Internet e-mail address. Both text and graphics files can be saved to the computer disk drive for access and printing at any time.

7. Yahoo! is a commercial computer service that provides, among other things, a number of Internet-based services, such as e-mail access and chat rooms. Yahoo! also provides users with screen names, that may be used as the prefix for an e-mail address or within Yahoo!'s chat rooms. In connection with Yahoo!'s screen names, an individual may post a profile on Yahoo! that may include a photo and list, among other things, biographical information, interests and hobbies.

SUMMARY OF THE INVESTIGATION

8. This affidavit summarizes information learned and obtained over the course of the investigation into the defendant

RYAN HOGAN that was conducted by your affiant and other members of the NYC DOI. Along with other investigators of the NYC DOI, I have interviewed various people who were involved in a non-governmental "sting operation," in which defendant RYAN HOGAN attempted to entice an individual, who he believed was a minor, to engage in sexual acts, as set forth below. The complaining witnesses set forth below worked as volunteers for the organization that arranged the sting. ²

9. As set forth more fully below, on or about and between March 8, 2004 and March 10, 2004, the defendant RYAN HOGAN engaged in several conversations, through instant message chat and via e-mail, with a complaining witness who was posing as a young girl ("CW1"). Specifically, CW1 was posing as a 14-year-old girl, using Yahoo! screen name "cuteashley4U1990" ("cuteashley"). The defendant used Yahoo! screen name "ryan4686" to communicate with cuteashley. During the beginning of the first chat, cuteashley clearly stated that she was 14-years-old. In addition, cuteashley's Yahoo! profile indicated that she was 14-years-old. The defendant told cuteashley, via chat, that he had seen cuteashley's Yahoo! profile. The defendant RYAN HOGAN communicated with CW1 from an FDNY computer located at Engine Company 237 in Brooklyn, New York and elsewhere. A second

² The persons posing as the minor were adults volunteering for a group known as "Perverted Justice" which monitors the Internet in an effort to detect Internet users who prey on children.

complaining witness ("CW2"), who was working with CW1, also posed as a 14-year-old girl in order to have a telephone conversation with the defendant RYAN HOGAN regarding HOGAN's plans to travel and meet the 14-year-old girl for the purpose of having sexual contact with her.

10. In addition, on or about March 10, 2004, the defendant RYAN HOGAN transmitted over the Internet, to the individual he believed was cuteashley, what appeared to be a live feed image of himself masturbating. The live feed video image was obscene, in that it consisted of the defendant RYAN HOGAN using his hand to stroke his naked and erect penis, while wearing an "Engine 237" T-shirt.³ The video image of the defendant was observed by CW1 and several others, including witnesses from a television program who were filming the sting operation.

CONTACT BETWEEN THE DEFENDANT AND "CUTEASHLEY"

11. On or about March 8, 2004, CW1 logged on to the Internet, posing as cuteashley. CW1 navigated to a Yahoo! regional chat room for the New York area. At approximately 7:12 p.m. on March 8, 2004, CW1 received an instant message from the defendant RYAN HOGAN, using screen name ryan4686. Information received from Yahoo! shows that the screen name ryan4686 is

³ A still from the live feed video image that was transmitted by the defendant RYAN HOGAN is available for the court's inspection upon request. The defendant is easily identifiable by his facial features.

registered to the defendant RYAN HOGAN at 214 Park Lane, Massapequa, New York. In addition, the defendant's FDNY personnel file indicates that he lives at 214 Park Lane, Massapequa, New York, and is employed as a firefighter at Engine Company 237, which is located in Brooklyn, New York.

12. During their chat, the defendant RYAN HOGAN stated that he had read and seen cuteashley's Yahoo! Internet profile, which included a photograph and stated that she was 14-years-old. In addition, within the first three minutes of the chat, cuteashley stated that she was 14-years-old, and ryan4686 stated that he was 24 years old.⁴ Within the next five minutes of chat with CW1, ryan4686 stated that he was interested in having sex with cuteashley. A few minutes later, ryan4686 asked CW1 what she was doing tonight, and she responded "nothing." Ryan4686 then stated that he was hoping "to get some," a reference to sex. Ryan4686 stated that he was interested in having sex with cuteashley in a variety of ways, including "doggie" sex and "oral sex." Ryan4686 also stated that he "[l]ove[s] going down on a woman . . . You're missing out then. You need a guy to go down on you." Thereafter, ryan4686 asked CW1, "Ever think about

⁴ Ryan4686 had also posted a photograph on his Yahoo! profile. The photograph that he included in his profile was retained by the organization for whom CW1 and CW2 volunteered. I have compared that photograph with a photograph of the defendant in his FDNY personnel file. The photograph of the defendant RYAN HOGAN in the personnel file depicts the same individual depicted in the ryan4686 Yahoo! profile.

anal?" to which CW1 replied, "does it hurt?", to which ryan4686 responded, "at first, but then I think you would like it."

13. Subsequently, ryan4686 asked cuteashley for more photographs, and stated the photographs could be sent via e-mail to e-mail address "ryane237@aol.com." Information received from AOL pursuant to a subpoena shows that "ryane237@aol.com" is an e-mail address registered to 214 Park Lane, Massapequa, New York.

14. After requesting the photos, ryan4686 asked cuteashley when she wanted to meet, and cuteashley stated "whenever. my mom is gone till thursday." In response, ryan4686 stated, "so you're home alone?" Ryan4686 thereafter gave cuteashley a telephone number to call, (516) 978-2929. Information received from AT&T Wireless pursuant to a subpoena establishes that the subscriber for cellular telephone number (516) 978-2929 is the defendant RYAN HOGAN at 214 Park Lane, Massapequa, New York.

15. Thereafter, at approximately 7:55 p.m. on March 8, 2004, CW2 placed a telephone call to (516) 978-2929 and had a telephone conversation with the defendant RYAN HOGAN, who confirmed that he had been instant messaging with cuteashley and was a New York City firefighter. HOGAN and CW2, posing as cuteashley, agreed that he would come to an address to meet cuteashley, for the purposes of having sexual contact with her.

16. After additional chats with cuteashley, the defendant RYAN HOGAN told cuteashley via chat, in substance, that he would come to her house at approximately 10 a.m. on March 10, 2004. Thereafter, at approximately 11:57 a.m., the defendant and cuteashley began another chat. During the chat, ryan4686 stated that he had gone past cuteashley's house, but that he had seen a police car. Cuteashley then stated that she would wait outside if the defendant wanted, and ryan4686 stated that he could not meet her then, because he had to get his windshield fixed. Ryan4686 also asked cuteashley when her mother is coming home.

17. Later in the afternoon on March 10, 2004, cuteashley instant messaged ryan4686 again, and asked, in substance, if he had gotten his car fixed. Cuteashley told ryan4686 that she was "bummed ur not here" and asked him to find out how long he was going to be. Thereafter, cuteashley stated, in substance, "show me your cam," a request for a web cam image of ryan4686. Ryan4686 then stated, "sure you want to see?" and cuteashley replied "yes." In response, ryan4686 stated, "i'm half naked," to which cuteashley replied, "kewl . . . don't tease." At that point, the defendant RYAN HOGAN sent, over the Internet, a video image of himself masturbating, which appeared to be transmitted to cuteashley as a live feed. As noted above, the live feed video image was obscene, in that it consisted of

the defendant RYAN HOGAN using his hand to stroke his naked and erect penis, in close proximity to the video camera.

18. A review of FDNY logs and the substance of the chats showed that the defendant RYAN HOGAN engaged in at least some of the chats with CW1 from a computer located at Engine Company 237, in Brooklyn, New York. That computer is the property of New York City and was seized by DOI investigators on or about March 19, 2004. The computer was subsequently analyzed by a computer expert employed by the DOI Electronic Crime Investigation Unit.

WHEREFORE, your deponent respectfully requests that an arrest warrant issue so that the defendant RYAN HOGAN be dealt with according to law.

JAYME NABEREZNY
Deputy Inspector General
New York City Department of
Investigation

Sworn to before me this
____ day of May, 2004

HONORABLE LOIS BLOOM
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK