

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
LEXINGTON

Eastern District of Kentucky  
FILED

JUN 30 2009

AT LEXINGTON  
LESLIE G. WINTERS  
CLERK U.S. DISTRICT COURT

CRIMINAL ACTION NO. 08-153-S-KSF

UNITED STATES OF AMERICA

PLAINTIFF

V.

PLEA AGREEMENT

JOSEPH ROBERT LEITNER

DEFENDANT

\* \* \* \* \*

1. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the Defendant will enter a guilty plea to Counts 2 and 3 of the Superseding Indictment, charging a violation of 18 U.S.C. § 2252(a)(2) and 18 U.S.C. § 2253 respectively.

2. The essential elements of Count 2 are:

- (a) First, that the Defendant knowingly received one or more matters which contained visual depictions of minors engaged in sexually explicit conduct as defined by federal law;
- (b) Second, that one or more of the visual depictions had been mailed shipped, or transported in interstate commerce by any means including by computer; and
- (c) Third, that the Defendant was aware of the sexually explicit nature and character of the materials.

3. The essential elements of Count 3 are:

- (a) The computers, associated software, and residence were involved in a knowing violation of 18 U.S.C. § 2252(a)(2).

4. As to the charges, the United States could prove the following facts that establish the essential elements of the offenses beyond a reasonable doubt, and the Defendant admits these facts:

The Kentucky State Police, the Lexington Division of Police, and United States Postal Service worked a joint investigation involving an individual identified as David Allen, who ordered CP from an undercover postal inspector in 2006, however, when they tried to deliver it to his address at the time, which was 417 Cochran Road, a male identified as Leitner answered the door and said Allen was not there, so they did not complete delivery.

They continued the investigation, including a knock and talk at David Allen's residence in June 2008, which resulted in federal search warrant. Allen admitted to having thousands of CP images and told officers he obtained much of his CP from Leitner when he lived with Leitner during 2005 and 2006 at 417 Cochran Road. Within days of the search warrant at Allen's residence, officers obtained a state search warrant for the 417 Cochran Road address.

Leitner was present and admitted collecting CP images for the last several years and then burning them to CDs. He further admitted they were mostly of teenage boys 11-14 years old and some adult males. Leitner denied sexually abusing children. There were close to 100 CDs and several computers seized during the search of Leitner's residence.

The computers were examined and the CDs were reviewed. The review revealed over 30,000 of images of CP including very young children.

A few days later, officers conducted a quick preview of Allen's computer and found several images showing the sexual abuse of young boys (5-10) with a male in the photos who appeared to be Allen.

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Forfeiture of Leitner's house is based on the number of years he utilized his home to download and view child pornography and the volume of child pornography involved. The images were sent to the National Center for Missing and Exploited Children (NCMEC) for possible identification. NCMEC was able to identify over 600 images as having come from known series of child pornography including a minimum of 34 videos. Some of the known images are children as young as 6 to 10 years old and a number of the images involve penetration of children under the age of 12. Leitner knowingly received one or more sexual explicit images of minors that had traveled interstate commerce on the Internet between March of 2008 and May of 2008, and knowingly possessed one or more sexual explicit images of minors that had traveled interstate commerce on the Internet between April of 2005 and June of 2008.

5. With regard to Count 2, the statutory punishment is not less than 5 years imprisonment and not more than 20 years imprisonment, a fine of not more than

\$ 250,000.00, or both, and a term of supervised release of any term of years to life. A mandatory special assessment of \$100 applies, and the Defendant will pay this assessment to the U.S. District Court Clerk at the time of the entry of the plea.

6. The United States and the Defendant recommend the following sentencing guidelines calculations, and they may object to other calculations. This recommendation does not bind the Court. The United States, at the time of the preparation of this agreement, believes these recommended guidelines to be the full and complete guidelines applicable to the case. If, however, the United States Probation Office, in its preparation of the Presentence Investigation Report, arrives at a computation of guidelines that is different in any way from the recommended guidelines that follow herein, the United States and the Defendant reserve the right to object to, remain neutral on, or agree with any and all of those guideline computations that are different.

- (a) United States Sentencing Guidelines (U.S.S.G.), November 1, 2008, manual, will determine the Defendant's guideline range.
- (b) Pursuant to U.S.S.G. § 1B1.3, the Defendant's relevant conduct includes the conduct set forth above.
- (c) Pursuant to U.S.S.G. § 2G2.2 (a)(2), the base offense level for Count 2 is 22 as the instant conviction involves a violation of 18 U.S.C. § 2252(a)(2).
- (d) Pursuant to U.S.S.G. § 2G2.2 (b)(2), increase the base offense level by two levels (material involved a minor who had not attained the age of 12).
- ~~(e) Pursuant to U.S.S.G. § 2G2.2 (b)(3)(F), increase the base offense level by two levels (distribution).~~

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- (f) Pursuant to U.S.S.G. § 2G2.2 (b)(4), increase the base offense level by four levels (material that portrays sadistic or masochistic conduct or other depictions of violence).
- (g) Pursuant to U.S.S.G. § 2G2.2 (b)(6), increase the base offense level by two levels as the offense involved the use of a computer.
- (h) Pursuant to U.S.S.G. § 2G2.2 (b)(7), increase the base offense level by five levels as the offense involved 600 or more images.
- (i) Pursuant to U.S.S.G. § 3E1.1, decrease the offense level by 2 levels for the Defendant's acceptance of responsibility. If the offense level determined prior to this 2-level decrease is level 16 or greater, the United States will move at sentencing to decrease the offense level by 1 additional level based on the Defendant's timely notice of intent to plead guilty.

7. No agreement exists about the Defendant's criminal history category pursuant to U.S.S.G. Chapter 4.

8. The Defendant will not file a motion for a decrease in the offense level based on a mitigating role pursuant to U.S.S.G. § 3B1.2 or a departure motion pursuant to U.S.S.G. Chapter 5, Parts H or K. Additionally, the defendant will not file a motion to receive a sentence below the advisory guidelines.

9. The Defendant waives the right to appeal and the right to attack collaterally the guilty plea, conviction, and sentence, including any order of restitution. The Defendant reserves the right to appeal his sentence if the sentence is greater than 120 months.

10. The Defendant will forfeit to the United States all interest in the property listed in Count 3 of the Indictment including the residence and will execute any documents necessary for this forfeiture.

11. After pleading guilty, the Defendant will make a full and complete financial disclosure to the United States and will assist the United States in the gathering of all financial information. The Defendant will complete and sign a financial disclosure statement or affidavit, will sign financial releases prepared by the United States, and will submit to a deposition in aid of collection at times and places that the United States directs. The Defendant agrees that any unpaid penalty will be submitted to the United States Treasury for offset. If the Defendant fails to comply with any of the provisions of this paragraph, the United States will not move the Court pursuant to U.S.S.G. § 3E1.1(b) to reduce the offense level by one additional level, and may in its discretion argue to the Court that the Defendant should not receive a two level reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a).

12. If the Defendant violates any part of this Agreement, the United States may void this Agreement and seek an indictment for any violations of federal laws, and the Defendant waives any right to challenge the initiation of additional federal charges.

13. This document and the sealed supplement contain the complete and only Plea Agreement between the United States Attorney for the Eastern District of Kentucky and the Defendant. The United States has not made any other promises to the Defendant.

**This agreement does not prohibit further prosecution of the Defendant for producing child pornography if it is determined that the Defendant produced child pornography or assisted others including David Allen in the production of child pornography.**

14. This Agreement does not bind the United States Attorney's Offices in other districts, or any other federal, state, or local prosecuting authorities.

15. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

JAMES A. ZERHUSEN  
UNITED STATES ATTORNEY

*Hydee R. Hawkins*

Date: 6/29/09  
6/18/09

By: *Hydee R. Hawkins*  
for Hydee R. Hawkins  
Assistant United States Attorney

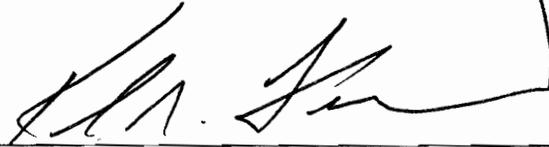
Date: 6/29/09  
6/22/09

*Joseph Robert Leitner*  
Joseph Robert Leitner  
Defendant

Date: 6/29/09  
6/29/09

*Jeff Darling*  
Jeff Darling  
Attorney for Defendant

APPROVED, this 30<sup>th</sup> day of June, 2009.

A handwritten signature in black ink, appearing to read 'K. S. Forester', written over a horizontal line.

KARL S. FORESTER, SENIOR JUDGE  
UNITED STATES DISTRICT COURT