
STATE OF WISCONSIN

Plaintiff,

-vs.-

Criminal Complaint**Gustavo Zamarron Herrera**315 W River St
Arcadia, WI 54612
DOB: 09/30/1974Court Case No.: 09 CF
DA Case No.: 2009TR001209

Defendant.

Sarah Matchey, being first duly sworn, states that:**Count 1: POSSESSION OF CHILD PORNOGRAPHY**

The above-named defendant on or about Wednesday, August 26, 2009, in the City of Arcadia, Trempealeau County, Wisconsin, did, having attained the age of 18, knowingly possess photograph(s) of a child engaging in sexually explicit conduct, and knew or reasonably should have known that the child was under the age of 18, contrary to sec. 948.12(1m)&(3)(a) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than twenty five (25) years, or both.

And furthermore, invoking the provisions of Wisconsin Statute Section 939.617, upon conviction the Court shall impose a bifurcated sentence including a term of initial confinement for at least three years. The Court may impose a sentence less than three years or place the person on probation upon a finding on the record that the Court finds the lesser sentence is in the best interests of the community and the public will not be harmed.

And furthermore, invoking the provisions of Wisconsin Statute 973.042(2), upon conviction for a crime under 948.05 or 948.12 and the defendant is at least 18 years of age at the time of the commission of the crime, the Court shall impose a surcharge of \$500.00 for each image or each copy of an image, as defined in 973.042(1), associated with the crime. The court shall determine the number of images or copies of images associated with the crime by a preponderance of the evidence and without a jury.

Count 2: POSSESSION OF CHILD PORNOGRAPHY

The above-named defendant on or about Wednesday, August 26, 2009, in the City of Arcadia, Trempealeau County, Wisconsin, did, having attained the age of 18, knowingly possess a video of a child engaging in sexually explicit conduct, and knew or reasonably should have known that the child was under the age of 18, contrary to sec. 948.12(1m)&(3)(a) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than twenty five (25) years, or both.

And furthermore, invoking the provisions of Wisconsin Statute Section 939.617, upon conviction the Court shall impose a bifurcated sentence including a term of initial confinement for at least three years. The Court may impose a sentence less than three years or place the person on probation upon a finding on the record that the Court finds

the lesser sentence is in the best interests of the community and the public will not be harmed.

And furthermore, invoking the provisions of Wisconsin Statute 973.042(2), upon conviction for a crime under 948.05 or 948.12 and the defendant is at least 18 years of age at the time of the commission of the crime, the Court shall impose a surcharge of \$500.00 for each image or each copy of an image, as defined in 973.042(1), associated with the crime. The court shall determine the number of images or copies of images associated with the crime by a preponderance of the evidence and without a jury.

PROBABLE CAUSE: and prays that said defendant be dealt with according to law and that the basis for the complainant's charge of such offense is: That your complainant is an employee of the Trempealeau County Sheriff's Department and relies on reports prepared by Wisconsin Department of Justice Division of Criminal Investigation (DCI) officers and officers from the Trempealeau County Sheriff's Department (TCSO).

In July, 2009, DCI Special Agent Vern Vandeberg was conducting an authorized undercover operation via the internet and identified a computer in Wisconsin that was offering to participate in the distribution of known child pornography. Vandeberg obtained a subpoena for information on the identified computer and traced it to a residence located in the City of Arcadia, Trempealeau County, Wisconsin. Using the IP address for the computer, Vandeberg determined that the computer in Arcadia offered to participate in distribution of child pornography on July 27, 2009 at 3:15:02 p.m., Central Daylight Time via a peer to peer network. A subpoena was issued for the Internet Service Provider records for this computer, which led to the identification of the residence in the City of Arcadia, Trempealeau County, Wisconsin.

Special Agent Jon Spallees obtained a search warrant for the residence that matched the computer IP address. DCI and TCSO officers executed the search warrant at that residence occupied by the defendant and his girlfriend located in the City of Arcadia, Trempealeau County, Wisconsin. The defendant was present, and told officers he lived there. DCI Special Agent Brad Montgomery conducted an on-site preview of the only computer located in the residence, which the defendant admitted belonged to him. Montgomery's preview search of the computer revealed at least five images of suspected child pornography, consisting of photographs and one video. The images are of pre-pubescent females engaged in sexually explicit conduct. Based on his training and experience, Spallees believes that the images are that of females under the age of 18. The on-site preview also revealed the use of search terms that are commonly entered to search for child pornography on the internet. Officers seized the computer for further forensic analysis.

Agent Spallees and Detective Paul Loesel conducted an interview of the defendant with the assistance of an interpreter. The defendant told officers that he had been living at the residence with his girlfriend since November or December of 2008. He stated that he had been in the United States for approximately 10 years. The defendant stated that there was a computer kept in the bedroom of the residence, which he purchased two years prior. The defendant stated that he and his girlfriend use the computer. He stated that he used the computer to download music. Agent Spallees asked the defendant about some of the

search terms found in the computer memory by Agent Montgomery. The defendant admitted to using those terms to obtain other types of information, including “a lot of things he shouldn’t have.” The defendant explained that he did not want to download some of the pornography he received, but admitted that he sometimes looks at it. When asked if he downloaded any videos of children, sex, or pornographic material to his computer, the defendant stated that he did. The defendant told officers that he searched for child pornography from the internet, but denied viewing it. The defendant stated that he would download material, leave the room and then view it later, erasing anything that he did not want. When confronted with information regarding the images found in the computer preview, the defendant admitted that there would be possibly ten pornographic images of persons aged 10 – 16 years old.

The defendant said that when he saw the images of children, he got rid of them right away. The defendant stated that he knew it was a crime to view the images. The defendant said that if the downloads resulted in adult pornography he would keep it, but deleted any child pornography. When asked how he differentiated between the two, the defendant said that he could tell the age by the face. The defendant admitted that after he had gone to sites from which he had downloaded child pornography, he continued to search using the same search terms that resulted in the illegal images. The defendant stated that he alone downloaded the images of children engaged in sexually explicit conduct, and stated that his girlfriend had nothing to do with it.

Subscribed and sworn to before me,
and approved for filing on:
September 4, 2009

Jeri A. Marsolek
District Attorney

1022935

Sarah Matchey
Complainant