

CRIMINAL

Court: United States District Court, Southern District of Florida

Case Title: USA v. Beckett

Docket Number: 9:07CR80191

Expert(s): n/a

Mark the Correct Category	Crime Type	LBL2
	White Collar Crime	CRIM100
	Drugs	CRIM120
	DUI/DWI	CRIM140
	Immigration	CRIM160
	RICO	CRIM180
	Murder	CRIM200
	Burglary	CRIM220
	Robbery	CRIM240
	Illegal Possession of Guns/Firearms	CRIM260
X	Miscellaneous	CRIM300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: CASE NO: 07-80191-CR-RYSKAMP/JOHNSON

UNITED STATES OF AMERICA,

vs.

TIMOTHY WAYNE BECKETT,
a/k/a "chelzzz420zzz"
a/k/a "2*cute*for*school"
a/k/a "yesurifnotcuter"

Defendant.

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

Comes now the defendant, Timothy W. Beckett, and files this motion to suppress, requesting that the court enter an order suppressing any and all evidence collected, seized, and developed as a result of written requests by law enforcement to America On Line (AOL), and MySpace, Comcast, and Bell South, and in support hereof states as follows:

1. The defendant is charged in a nine count indictment with various child pornography violations, by and through the use of his computer.

2. On July 12 and 13, 2007, law enforcement forwarded AOL, MySpace, Comcast, and Bell South, registration, IP history, and phone number requests, alleging that "imminent danger" and or "emergency circumstances" were present and thus seeking were the information prior to a subpoena being produced and

served on each of the subject companies. In the case of Bell South, law enforcement wrote that the suspect "has an extremely lengthy and dangerous criminal history."

3. Subpoenas to each of the subject companies were actually not signed and served until July 30, 2007.

4. The defendant believes that information and evidence was gathered by law enforcement from the subject companies prior to the subpoenas being issued.

5. The Electronic Communications Privacy Act, 18 U.S.C. § 2703, prohibits law enforcement from obtaining customer information from an Internet service provider without a valid search warrant, court order, or administrative or grand jury subpoena. Any exception to this (18 U.S.C. § 2702), such as emergency circumstances where immediate danger of death or serious physical injury, or as alleged in the letter to Bell South of a lengthy and dangerous criminal history on the part of the defendant, did not exist.

6. The defendant moves to suppress all evidence derived from these warrantless requests. The activities of law enforcement in obtaining records, IP addresses, sign on and sign off times, phone records, and all other information/evidence gathered as a result of the written requests were illegal.

7. The Electronic Communications Privacy Act specifically provides that law enforcement may *not* obtain subscriber information from an Internet service provider without a valid search warrant, court order, or subpoena. In this case, no valid

search warrant, court order, or subpoena existed at the time law enforcement directed the subject companies to turn over the requested items and to search for and disclose the defendant's information.

Section 2703(c) provides:

§ 2703. Required disclosure of customer communications or records

...

(c) Records concerning electronic communication service or remote computing services. – (1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity –

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant;

(B) obtains a court order for such disclosure under subsection (d) of this section;

(C) has the consent of the subscriber or customer to such disclosure;

(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or

(E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the –

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

8. That subpoenas spoken of in the written correspondence, and served on or about July 30, 2007, cannot cure the warrantless search that took place prior beginning July 12, 2007, resulting in law enforcement obtaining customer information linking the defendant to the IP addresses under investigation, and the collection of all other evidence obtained by law enforcement from the subject companies.

WHEREFORE, the defendant, Timothy W. Beckett moves to suppress all evidence derived directly and indirectly from the warrantless searches conducted by the subject companies at the request of law enforcement via the written requests of July 12, 2007.

FLEISCHMAN & FLEISCHMAN, P.A.
Jack A. Fleischman
2161 Palm Beach Lakes Bd.
Suite 403
West Palm Beach, FL. 33409
561-585-3666 / Fax 471-8343
FL BAR NO: 0714534
Email: fflaw@yahoo.com

By /s/ Jack A. Fleischman
Jack A. Fleischman

Certificate of Service

I hereby certify that on the 21 day of January, 2008, I electronically filed the foregoing Motion to Suppress Evidence with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on, Lothrop Morris, A.U.S.A (lothrop.morris@usdoj.gov), U.S. Attorney's Office, West Palm Beach, FL

/s/Jack A. Fleischman
Jack A. Fleischman

cc: Client

7/12/07

703-265-1933



PALM BEACH COUNTY SHERIFF'S OFFICE

RIC L. BRADSHAW, SHERIFF



DETECTIVE COLLINS
COMPUTER CRIMES UNIT
PHONE: (561) 688-4078

FAX: (561) 688-4089

E-MAIL: collinsc@pbsso.org

Date: July 12, 2007

K

THIS IS A THREATENING EMERGENCY

Urgent

AOL
Compliance and Investigations
Fax: (703)265-2305

RE: Registration Info/IP History Request-Exigent Circumstance

Dear AOL:

The Palm Beach County Sheriff's Office is currently investigating a child solicitation involving 2 live juvenile victim's. The suspect is a user of AIM/AOL and we are hoping to locate them based on IP history logs. This case involves 2 live victims. To aid in our discovery of who may be involved with making and/or carrying out these acts it is necessary for us to identify the IP address used over the last 7 days for the following user ID:

yesurifnotcuter from July 10, 2007 6:00PM EST to July 12, 2007 at 2:25PM EST

The Palm Beach County Sheriff's Office will obtain a subpoena under legal process, which will be faxed to AOL within the next 3 business days. Since imminent danger is present, the Palm Beach County Sheriff's Office requests the production of registration/subscriber information and IP history as soon as possible. The Palm Beach County Sheriff's Office must secure the safety of these individuals immediately, which requires us to identify where the suspect is located and logged onto AOL/AIM.

Please furnish records to fax numbers listed:

Palm Beach County Sheriff's Office
Detective Cass Collins
3228 Gun Club Road
West Palm Beach, FL 33306
FAX Number: (561) 688-4089
Email: collinsc@pbsso.org
Voice Number: (561) 688-4078

Please send this information via fax ASAP, based on the exigent circumstances. The agency case number is 07-250058.

Regards,

C. Collins #7451
Detective Cass Collins

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PALM BEACH COUNTY SHERIFF'S OFFICE

RIC L. BRADSHAW, SHERIFF



DETECTIVE COLLINS
COMPUTER CRIMES UNIT
PHONE: (561) 688-4078

FAX: (561) 688-4089

E-MAIL: collinsc@pbso.org

Date: July 12, 2007

THIS IS A THREATENING EMERGENCY

Urgent

MySpace
Compliance and Investigations
Fax: 310-969-7394

RE: Registration Info/IP History Request-Exigent Circumstance

Dear MySpace:

The Palm Beach County Sheriff's Office is currently investigating a child solicitation involving a live juvenile victim. The suspect is a user of MySpace and we are hoping to locate them based on IP history logs. This case involves 2 live victims. To aid in our discovery of who may be involved with making and/or carrying out these acts it is necessary for us to identify the IP address used over the last 7 days for friend ID 20446825. The agency case number is 07-250058.

The Palm Beach County Sheriff's Office will obtain a subpoena under legal process, which will be faxed to MySpace within the next 5 business days. Since imminent danger is present, the Palm Beach County Sheriff's Office requests the production of registration/subscriber information and IP history as soon as possible. The Palm Beach County Sheriff's Office must secure the safety of these individuals immediately, which requires us to identify where the suspect is located and logged onto MySpace.

Please furnish records to fax numbers listed:

Palm Beach County Sheriff's Office
Detective Cass Collins
3228 Gun Club Road
West Palm Beach, FL 33306
FAX Number: (561) 688-4089
Email: collinsc@pbso.org
Voice Number: (561) 688-4078

Please send this information via fax ASAP, based on the exigent circumstances.

Regards,

Cass Collins #7457
Detective Cass Collins

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*related
7/11*

Emergency Situation Disclosure Request
by Law Enforcement

Please complete this form to assist Comcast IP Services in exercising its discretion to disclose information to your law enforcement agency or governmental entity pursuant to 18 U.S.C. § 2702(b) or § 2702(c). If you are unable to answer a specific question in writing, please call 856-638-4021. Failure to provide complete answers to any question may result in a delay of the disclosure of the requested information or Comcast choosing not to make any disclosure.

- 1. What is the nature of the emergency involving immediate danger of death or serious physical injury to any person?

Child endangerment

- 2. Whose death or serious physical injury is threatened?

2 juveniles

- 3. What is the pending nature of the threat? Do you have information that suggests that there is a specific deadline before the act indicated in Question 1 will occur? (For example, tonight, tomorrow, at noon.)

yes

- 4. Why is the required disclosure process pursuant to 18 U.S.C. § 2703 or another applicable law insufficient or untimely as set forth by the deadline indicated in Question 3?

Patriot Act

- 5. What specific information in Comcast's possession are you seeking to receive on an emergency basis? (Please be specific such as name, street address, telephone, or e-mail contents; do not respond by asking for everything or all account information as that will likely delay processing of the request.)

*July 7, 2007 to July 14, 2007
(6:00 PM EST) to (2:25 PM EST)*

IP # 66.229.252.138

If Comcast makes an emergency disclosure to your law enforcement agency or governmental entity pursuant to 18 U.S.C. § 2702(b) or § 2702(c), you agree that Comcast is entitled to reimbursement for costs and fees pursuant to 18 U.S.C. § 2706. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Cass G. Collins

Printed Name

Det. Cass Coll #7401

Signature

Detective

Title

Palm Beach County S.O.

Name of Agency/Governmental Entity

3228 Gun Club Rd.

Address

West Palm Beach, FL 33406

Address

561-688-4078

Telephone number

561-688-4089

Fax number

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07/16/2007 09:28

NO. 313 P002

561 742 6156

FROM : BBPD INVESTIGATIONS

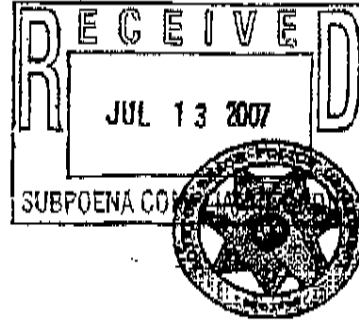
FAX NO. : 561-742-6156

Jul. 13 2007 04:17PM P1

The City of Boynton Beach

Police Department

"A CFA Accredited Law Enforcement Agency"
100 E. Boynton Beach Boulevard
P.O. Box 310
Boynton Beach, Florida 33425-0310
Phone: (561) 742-6100
Fax: (561) 742-6185
Marshall R. Gage, Chief of Police



BellSouth Subpoena Compliance,

I am requesting information if at all possible on a phone call made [redacted] by a blocked number at approx 0119 hrs this morning. We are currently working a case in which the 16 year old victim lives at this address and has been solicited and now threatened by an adult male who knows the child home address and home phone number (listed above). There is also an identical case with the same suspect to a 17 year old male in Boynton Beach as well we are working with the same suspect. We have tracked the IP address of the internet provider he is using to solicit and now stalk the children, and of the people at that address at least one, who fits the description has an extremely lengthy and dangerous criminal history. We would like to request for that matter this exigent request to release to our agency the number that called [redacted] approx 0119 hrs this date. There should be no other calls around that time to this number. Thank you for any and all assistance you can give at this short notice. A subpoena will follow as soon as time allows us to get it drafted and sent to your agency.

BBST 0707 3985

Det Toby Athol
BBPD
561-742-6152

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA (CRIMINAL DIVISION)

STATE'S ATTORNEY SUBPOENA TO: COMCAST CABLE COMMUNICATIONS
SHARMA AUSTIN, LEGAL ANALYST
650 CENTERTON ROAD
MOORESTOWN, NJ 08057
FAX NUMBER: 856-317-7319

D#07-250058

RESPECTFULLY REQUESTING: ANY AND ALL SUBSCRIBER INFORMATION, INCLUDING NAME, BILLING ADDRESS, AND PHYSICAL LOCATION OF CABLE MODEM BOX TO IDENTIFY IP ADDRESS ASSOCIATED FROM JULY 7, 2007 6:00 PM EST TO JULY 12, 2007 2:30 PM EST FOR IP ADDRESS 72.229.252.138.

I HEREBY CERTIFY THAT I MAY COMPLY WITH THIS SUBPOENA BY SUPPLYING THIS INFORMATION AND ANY OTHER INFORMATION ASSOCIATED WITH THIS BILL TO L.E.A.C.H. TASK FORCE, DETECTIVE CASS COLLINS, 3228 GUN CLUB ROAD, WEST PALM BEACH, FL 33406, FAX NUMBER 561-688-4089, VOICE NUMBER 561-688-4089.

DEFENDANT'S RIGHTS:

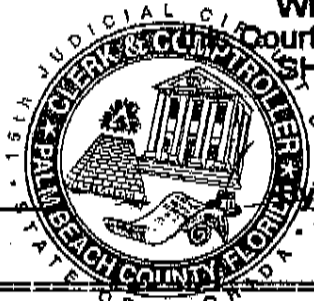
YOU ARE HEREBY COMMANDED TO BE AND APPEAR BEFORE THE STATE'S ATTORNEY or his assistant, in and for Palm Beach County, Florida, at the Criminal Justice Building, 401 North Dixie Highway, West Palm Beach, Florida, on INSTANTER, 2007, for interrogation and the truth to speak, in a certain matter pending and under investigation. Failure to appear will subject you to contempt of court.

PLEASE DO NOT DISCLOSE THE EXISTENCE OF THIS REQUEST AS IT MAY IMPEDE AN ONGOING CRIMINAL INVESTIGATION.

(Circuit Court Seal)

ow

JAH H. WEISS
Assistant State Attorney



WITNESS my hand and the seal of the Court on 00 day of JULY 2007.
SHARON R. BOCK, Clerk

[Handwritten Signature]
Deputy Clerk

I received this subpoena on the _____ day of _____, 2007, and executed the same on the _____ day of _____, 2007, by delivering a True Copy thereof to the within named witness in the County of Palm Beach, State of Florida.

SHERIFF, PALM BEACH COUNTY

By: _____
Deputy Sheriff

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**THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA (CRIMINAL DIVISION)**

STATE'S ATTORNEY SUBPOENA

TO: MYSpace.COM
ATTN: CUSTODIAN OF RECORDS
1333 2ND STREET, FIRST FLOOR
SANTA MONICA, CA 90401
FAX NUMBER: 310-969-7393
VOICE NUMBER: 310-969-7399

#07-250058

RE: TECUM: IDENTITY OF IP ADDRESS FOR FRIEND ID 20446825

MAY COMPLY WITH THIS SUBPOENA BY SUPPLYING THIS INFORMATION TO L.E.A.C.H. (LAW ENFORCEMENT ASSISTANT), DETECTIVE CASS COLLINS, 3228 GUN CLUB ROAD, WEST PALM BEACH, FL 33411, FAX NUMBER 561-688-4069, VOICE NUMBER 561-688-4078.

DEFENDANTS:

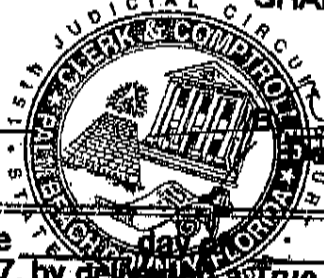
YOU ARE HEREBY COMMANDED TO BE AND APPEAR BEFORE THE STATE'S ATTORNEY or his assistant, in and for Palm Beach County, Florida, at the Criminal Justice Building, 401 North Dixie Highway, West Palm Beach, Florida, on INSTANTER, 2007, for interrogation and the truth to speak, in a certain matter pending and under investigation. Failure to appear will subject you to contempt of court.


DO NOT DISCLOSE THE EXISTENCE OF THIS REQUEST AS IT MAY IMPEDE AN ONGOING CRIMINAL INVESTIGATION.

WITNESS my hand and the seal of
this Court on 30 day of JULY, 2007.
SHARON R. BOCK, Clerk

(Circuit Court Seal)


AH H. WEISS
Assistant State Attorney




Deputy Clerk

I have served this subpoena on the _____ day of _____, 2007, and executed the same on the _____ day of _____, 2007, by delivering a True Copy thereof to the within named witness in the County of Palm Beach, State of Florida.

SHERIFF, PALM BEACH COUNTY

By: _____
Deputy Sheriff

THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA (CRIMINAL DIVISION)

STATE'S ATTORNEY SUBPOENA TO: AMERICA ONLINE
ATTN: CUSTODIAN OF RECORDS
22000 AOL WAY
DULLES, VA 20166
FAX NUMBER: 703-265-2305

PHONE: 707-250058

DESIGNEE: IDENTITY OF IP ADDRESS FOR USER ID:

Yesurifhotcutter from July 10, 2007 6:00 PM EST to July 12, 2007 at 2:25 PM EST

YOU MAY COMPLY WITH THIS SUBPOENA BY SUPPLYING THIS INFORMATION AND ANY
ASSOCIATED BILL TO L.E.A.C.H. TASK FORCE, DETECTIVE CASS COLLINS, 3228 GUN CLUB
ROAD, WEST PALM BEACH, FL 33406, FAX NUMBER 561-688-4089, VOICE NUMBER 561-688-
8.

MEETINGS:

YOU ARE HEREBY COMMANDED TO BE AND APPEAR BEFORE THE STATE'S ATTORNEY or
assistant, in and for Palm Beach County, Florida, at the Criminal Justice Building, 401 North Dixie
Boulevard, West Palm Beach, Florida, on INSTANTER, 2007, for interrogation and the truth to speak,
in a certain matter pending and under investigation. Failure to appear will subject you to contempt of
court.

**PLEASE DO NOT DISCLOSE THE EXISTENCE OF THIS REQUEST AS IT MAY IMPEDE AN
ONGOING CRIMINAL INVESTIGATION.**

WITNESS my hand and the seal of
this Court on 30 day of JULY 2007.
SHARON R. BOCK, Clerk

(Circuit Court Seal)



DAVID H. WEISS
Assistant State Attorney

Deputy Clerk

I received this subpoena on the _____ day of _____, 2007, and executed the same on the
_____ day of _____, 2007, by delivering a True Copy thereof to the within named witness in the
County of Palm Beach, State of Florida.

SHERIFF, PALM BEACH COUNTY

By: _____
Deputy Sheriff



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Law School

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U.S. Code collection

TITLE 18 > PART 1 > CHAPTER 123 > § 2702

§ 2702. Voluntary disclosure of customer communications or records

(a) Prohibitions.—
Except as provided in subsection (b)—

(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service;

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing; and

(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.

(b) Exceptions for disclosure of communications.— A provider described in subsection (a) may divulge the contents of a communication—

(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(2) as otherwise authorized in section 2517, 2511 (2)(a), or 2703 of this title;

(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032);

(7) to a law enforcement agency—


(A) if the contents—

- (i) were inadvertently obtained by the service provider; and
- (ii) appear to pertain to the commission of a crime; or

[(B)] Repealed. Pub. L. 108-21, title V, § 508(b)(1)(A), Apr. 30, 2003, 117 Stat. 664]

(8) to a Federal, State, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.

(c) Exceptions for Disclosure of Customer Records.— A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

- (1)** as otherwise authorized in section 2703;
- (2)** with the lawful consent of the customer or subscriber;
- (3)** as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;
-  **(4)** to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information;
- (5)** to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 5333); or
- (6)** to any person other than a governmental entity.

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