

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. 07-80191-CR-RYSKAMP/HOPKINS

UNITED STATES OF AMERICA,

v.

TIMOTHY W. BECKETT,

Defendant.

**THE UNITED STATES' RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS INDICTMENT**

COMES NOW, the United States of America, by and through its undersigned Attorney, and files this Response in Opposition to defendant, Timothy W. Beckett's (Beckett) Motion to Dismiss (D.E. 12), and, in support thereof, states as follows:

In 1998, in response to concerns over the use of interstate facilities to persuade or entice minors to engage in illegal sexual activity, the Congress amended 18 U.S.C. § 2422 to include subsection (b) which states that: "Whoever, using the mail or any facility or means of interstate or foreign commerce, . . . knowingly persuades, induces, or entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or a sexual activity for which any person can be criminally charged with a criminal offense, or attempts to do so" violates Title 18, United States Code, Section 2422(b).

I. ARGUMENT

A. The Indictment Need Not Charge The Number Of Images Pursuant To 18 U.S.C. § 2252A(a)(5)(B)

Defendant, Timothy W. Beckett (“Beckett”), claims that the indictment should be dismissed because the government failed to put defendant on notice of the amount of “computer files” which are alleged to be child pornography. The defendant cites to *United States v. Sanchez*, 269 F.3d 1250 (11th Cir. 2001) to support the position that the government must allege that amount of alleged contraband files on the defendant’s computer. Defendant’s cites no other support for this position and for good reason. There is no other support for his position. The defendant’s claim is without merit because in *Sanchez* the court found that the indictment must contain the quantity of narcotics if it increased the statutory maximum sentence. The *Sanchez* court specifically found that *Apprendi* has no effect on either mandatory minimum sentences or the Guideline Sentence calculations when in either case the ultimate sentence imposed does not exceed the proscribed maximum penalty. *Id.* at 1288. In the case at bar, the quantity of child pornography has no effect on the statutory minimum mandatory or maximum sentence although it does effect the Guideline Sentence calculation. Accordingly, *Sanchez* is distinguishable from the facts and law that apply to the case at bar and dismissal is not appropriate. Under *Sanchez*, the remedy would not be to dismiss the indictment. This court would simply hold that the indictment charged the defendant with a lesser included charge.

Defendant also appears to claim that the indictment does not provide him with notice sufficient to mount a defense. The government construes this as a motion for a bill of particulars. In that regard, the government puts defendant on notice that at trial the government will produce

files one through sixty-six as listed on the PBSO computer crime forensic report case number 07-250058. This report, which was provided to defense in discovery, is a forensic report of Beckett's three Dell computers and various CD/DVDs found at his house. The report and the contents are available for defendant's inspection at the PBSO computer crimes laboratory. Accordingly, the defendant is on notice that the government has charged him with the possession of the specific files as listed above.

B. The Indictment Is Facially Sufficient and Properly Charges Defendant With a Violation of 18 U.S.C. § 2422(b)

Defendant, Timothy W. Beckett ("Beckett"), claims that the indictment should be dismissed on the grounds that counts six through eight charge the same or similar violations that overlap on the same dates. Defendant's motion at 4. The indictment properly charges Defendant with three counts of using a computer to attempt to coerce, persuade, induce or entice a minor to engage in a sexual activity.

The allegations set forth in the indictment are facially sufficient. An indictment is sufficient if it contains the elements of the offense charged, fairly informs the defendant what charges he must be prepared to meet, and enables the accused to plead acquittal or conviction to bar a future prosecution for the same offense. *United States v. Harrell*, 737 F.2d 971, 974 (11th Cir. 1984), cert. denied, 469 U.S. 1164 (1985); *United States v. Cauble*, 706 F.2d 1322, 1333 (5th Cir. 1983), cert. denied, 465 U.S. 105 (1984). Where, as here, the indictment tracks the language of the statute charged, the indictment is sufficient "if the statutory language unambiguously sets out all the elements necessary to constitute the offense." *United States v. Gordon*, 780 F.2d 1165, 1169 (5th Cir. 1986). The indictment "need not provide [defendant] with the evidentiary details by which the government plans to establish his guilt." *Id.* at 1172.

Counts six through eight of the instant indictment properly charge the defendant with violations of Title 18, United States Code, Section 2422(b). The indictment tracks the statutory language, unambiguously states each element of the offense charged, and delineates the time period charged. The indictment gives the defendant clear notice of the offense charged, gives sufficient notice for him to meet these charges, and will allow him to plead double jeopardy in a future prosecution. Nothing else need be pled in those counts. Count six , based on the time frame of July 10, 2007 through July 18, 2007, charges defendant with coercion of CV-1. Count seven, based on the time frame of July 11, 2007 through July 18, 2007, charges defendant with coercion of CV-2. Count eight, based on the time frame of June 2007 through July 18, 2007, charges defendant with coercion of CV-3.

Finally, Defendant seek dismissal of the distribution of child pornography on July 16, 2007. This count charges the defendant with the distribution of one image of CV-1 which is the alleged child pornography that Beckett sent to the undercover agent on July 16, 2007. The defendant is on

notice that the government intends to produce that image at trial. Defendant may inspect the image at the PBSO computer crime laboratory.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

s/ LOTHROP MORRIS

By: LOTHROP MORRIS
ASSISTANT U.S. ATTORNEY
Florida Bar # 0095044
500 Australian Avenue, Suite 400
West Palm Beach, FL 33401
(561) 820-8711
(561) 820-8777 (FAX)
LOTHROP.MORRIS@USDOJ.GOV

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with CM/ECF on February 5, 2008 to Jack Fleischman, Esq., 2161 Palm Beach Lakes Blvd., Suite 403, West Palm Beach, Florida, 33409.

s/ LOTHROP MORRIS
LOTHROP MORRIS
ASSISTANT UNITED STATES ATTORNEY