

UNITED STATES DISTRICT COURT

for the

Central District of Illinois

United States of America
v.

Case No. 20-MJ- 6473

Nicholas Bryan Swank

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of on or about 11/5/20-11/13/20 in the county of Rock Island in the Central District of Illinois, the defendant(s) violated:

Table with 2 columns: Code Section, Offense Description. Row 1: 18 U.S.C. 2422(b), using facilities of interstate commerce, that is a mobile phone, connected to the Internet, did knowingly attempt to persuade, induce, entice, and coerce an individual who had not attained the age of 18 years, to engage in sexual activity under such circumstances as would constitute a criminal act in violation of 18 United States Code, Section 2422(b)

This criminal complaint is based on these facts:

See attached Affidavit

Continued on the attached sheet.

s/Kurt Bendoraitis

Handwritten signature of Kurt Bendoraitis

Complainant's signature

SA Kurt Bendoraitis

Printed name and title

Sworn to me over the telephone and signed by me pursuant to Fed.R.Crim.P. 4.1

Date: 11/16/2020

s/Jonathan Hawley

Handwritten signature of Jonathan Hawley

Judge's signature

City and state: Peoria, Illinois

Jonathan E. Hawley, U.S. Magistrate Judge

Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CASE NUMBER 20-MJ-6473
)	
)	<u>FILED UNDER SEAL</u>
NICHOLAS BRYAN SWANK,)	
)	
Defendant.)	

CRIMINAL COMPLAINT

I, Kurt Bendoraitis, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

Count 1

(Attempted Enticement of a Minor)

From on or about November 5, 2020 through November 13, 2020, the defendant,

NICHOLAS BRYAN SWANK,

in Rock Island County, Illinois, within the Central District of Illinois, and elsewhere, using facilities of interstate commerce, that is a mobile phone, connected to the Internet, did knowingly attempt to persuade, induce, entice, and coerce an individual who had not attained the age of 18 years, to engage in sexual activity under such circumstances as would constitute a criminal act in violation of 18 United States Code, Section 2422(b).

INTRODUCTION

1. I am a Special Agent with the Federal Bureau of Investigation and have been since May 14, 2017. As part of my duties, I investigate violations of federal law, including the online exploitation of children, particularly in relation of violations of Title 18, United States Code, Sections 1591, 2251, 2252A, and 2422 which criminalize, among other things, the production, advertisement, possession, receipt, transportation of child pornography, individuals attempting to persuade, induce, and entice minors to engage in sexual activity, and underage prostitution. I have gained experience in the conduct of such investigations through training in classes and work related to conducting these types of investigations. Specifically, I have received training in the Online Sexual Exploitation of Children. I have been involved in multiple search warrants, arrests, and have conducted online chatting investigations in an undercover capacity. As a federal agent, I am authorized to investigate and assist in the prosecution of violations of laws of the United States, and to execute search warrants and arrest warrants issued by federal courts.

2. The statements contained in this affidavit are based on my personal knowledge as well as on information provided to me by other law enforcement officers. This affidavit is being submitted for the limited purpose of securing an arrest warrant, and I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that Nicholas Swank committed violations of Title 18, United States Code, Sections 2422(b).

STATUTORY AND LEGAL AUTHORITY

3. This investigation concerns violations of Title 18, United States Code, Section 2422(b), relating to the enticement or the attempted enticement of minors to engage in prostitution or any sexual activity for which any person can be charged. Based upon my training and experience, as well as conversations with other experienced law enforcement officers and experienced federal prosecutors, I know the following:

- a. 18 U.S.C. 2422(b) prohibits using any facility or means of interstate commerce to knowingly persuade, induce, entice or coerce any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged, or attempt to do so.
- b. The internet is a facility of interstate commerce.

Definition of Terms

4. The following terms used in this affidavit have the indicated meaning in this affidavit:

- a. The term "minor" is defined at 18 U.S.C § 2256(1) as any person under the age of eighteen years.
- b. The term "sexually explicit conduct" is defined at 18 U.S.C. § 2256(2)(A) as actual or simulated – (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or anal-oral, whether between person of the same or opposite sex; (ii) bestiality, (iii) masturbation; (iv) sadistic or masochistic

abuse; or (v) lascivious exhibition of the genitals or pubic area of any person.

- c. The term “computer” is defined as set forth in 18 U.S.C. § 1030(e)(1).

Investigation

5. On approximately November 5, 2020, an FBI Online Covert Employee (OCE) was conducting an undercover investigation on a mobile dating application to identify people attempting to sexually exploit minors. The mobile dating application allows users to see other users in a geographic location near them and to directly message another user. The mobile dating application also allows users to have a profile which can include age, likes, dislikes, interests, and other categories. All users must state their age as at least 18 years old. A user, later identified as Nicholas Bryan Swank (hereinafter SUBJECT), directly messaged OCE’s account. The following is the exchange between SUBJECT and the OCE:

The conversation began on the dating application on November 5, 2020:

SUBJECT: Hey what’s up [photograph of face, photograph of male in boxer briefs]

OCE: Hi. Love the pics

SUBJECT: Thanks

SUBJECT: You have any more pics?

OCE: [photograph of FBI confidential human source’s (CHS) face]

SUBJECT: Damn you’re really cute [smiley face emoji with tongue out]

OCE: Don’t share please. I’m not out

SUBJECT: I will not, I respect that

SUBJECT: What are you looking for?

OCE: Discreet hook up o guess. I'm not very experienced

SUBJECT: Nice and that's okay I could help ya [smiley face emoji with tongue out]

SUBJECT: Can you host or travel?

OCE: I can host next weekend

SUBJECT: Damn okay

OCE: Sorry but next weekend I'll have the house to myself

SUBJECT: Can you travel? I could host anytime lol (Your affiant is aware lol commonly refers to "laughing out loud")

OCE: I can't. I don't drive yet

SUBJECT: That's okay would you like to come to my place if I come and pick you up?

Of course I would take you back home.

OCE: Haha. I'm not sure what I would tell my mom lol. what about next Friday

SUBJECT: I'm not sure what I'll be doing haha

SUBJECT: All you have to say Is your hanging out with a friend [smiley face emoji with big grin]

OCE: You live alone?

SUBJECT: I live with my brother but he doesn't care who I have over lol

OCE: Does he know your gay

SUBJECT: He probably wouldn't even see you haha he works early in the morning and don't come back home till after 6pm and he's usually in his room playing his game when he's home. And yeah he knows I'm gay but he doesn't care either way lol

OCE: Lol. What all u want to do

SUBJECT: I'm okay with whatever you want to do lol

SUBJECT: What are you into?

OCE: Not sure lol. Oral and giving for sure

SUBJECT: Nice I'm into pretty much anything really besides I don't bottom lol

SUBJECT: We could still have some fun [smiley face emoji with tongue out]

OCE: You'd have to teach me lol.

SUBJECT: That's okay I will [smiley face emoji with tongue out]

OCE: Just don't think I'm ready for bottom

SUBJECT: You won't have to if you don't want to but if we did get that far you you aid stop or something I would.

OCE: I see. Do you give oral tho

SUBJECT: Yeah I do lol

OCE: Good haha

SUBJECT: Yeah [smiley face emoji with tongue out]

SUBJECT: When would you like to come over? Hehe

OCE: Next Friday for sure. I just have to be careful

SUBJECT: Okay

SUBJECT: Just not sure if I'll be free next Friday just want to let you know.

OCE: I understand. Id be free all day Saturday to

SUBJECT: This Saturday?

OCE: Next

SUBJECT: Dang cause reason I might be leaving town next week just not sure yet lol

SUBJECT: But I'm free anytime before then

OCE: Oh that sucks

SUBJECT: Yeah lol

SUBJECT: Wish we could hang out tonight haha [smiley face emoji winking with tongue sticking out]

The conversation continued on the dating application on November 6, 2020:

SUBJECT: Hey

OCE: Hi

SUBJECT: How're you

OCE: Bored. You

SUBJECT: Same lol

OCE: Hopefully you'll be in town next weekend

SUBJECT: It's possible lol You have any more pics you're willing to share? Hehe

OCE: [photograph of face and arm]

SUBJECT: You're so sexy [smiley face emoji with tongue out]

OCE: Thnx

SUBJECT: Anytime [smiley face emoji winking with tongue sticking out]

OCE: You got any pics

SUBJECT: [photograph of nude male holding penis], [photograph of nude male reclined with erect penis], [photograph of nude male reclined holding erect penis]

OCE: Now I'm excited lol

SUBJECT: Hehe me too

The conversation continued on the dating application on November 9, 2020:

SUBJECT: I'll be around this weekend [smiley face emoji with tongue out]

OCE: Yeah!!!!!!!

The conversation continued on the dating application on November 13, 2020:

SUBJECT: Hey

OCE: Hi

SUBJECT: I wanted to come tonight [smiley face emoji grimacing]

OCE: You can

SUBJECT: When will you be able to be free again?

OCE: Tonight

SUBJECT: Not this weekend another time?

SUBJECT: Where do you live?

OCE: It has to be this weekend. My mom is gone and Im home alone

OCE: Rock Island

SUBJECT: Address? What time should I come?

OCE: Anytime. Just let me know.

OCE: How old r u by the way?

SUBJECT: I'm 28

SUBJECT: All I need to do is shower and get ready

SUBJECT: Is that okay? Lol

OCE: Yeah. I prefer older. I'm 15. Is that ok?

SUBJECT: Umm I thought you were 18??

OCE: No. I have to say that to chat. Hope u don't change ur mind cause I want to do this

SUBJECT: You sure?? Can you send me some more pics?

OCE: I'm definitely sure. Hope you are [photograph of head and shoulders of CHS]

SUBJECT: Xxx pics?

OCE: Sorry. I do those. Guy at school sent some and it went viral. He had to change schools and everything

SUBJECT: Sorry I can't come then.

OCE: K. I understand. Let me know if u change ur mind. I was looking forward to it

SUBJECT: Me too but it's not that I don't want too but I got to know you're for real about it but I wouldn't share your pictures at all. I wouldn't ever do that.

OCE: I can call you or send you a pic with ur name. I promise I'm real.

SUBJECT: It's not knowing you're real lol being under I need to know you're for real about meeting up and without xxx pics I can't meet up. I'm sorry

OCE: Oh lol. I definitely want to experience a guy and I'm serious. I just have to be super careful that no one finds out I'm sucking dick lol

SUBJECT: You don't have to show your face if you find want and decided to send some

SUBJECT: I get being discreet

OCE: [photograph of buttocks clothed in tight shorts]

SUBJECT: Let me see with those down [smiley face emoji with tongue out] then I'll get in the shower and get ready to go. Hehh

OCE: Haha. Nice try

SUBJECT: Lol

SUBJECT: What's your address?

OCE: [provided operational address in Rock Island]

OCE: If ur serious let me know. I'll hop in the shower

SUBJECT: You are alone?

OCE: Yeah. Sure would be trying to do this if I wasnt

OCE: Wouldn't not would

SUBJECT: Haha okay how long do you have alone?

OCE: Til tomorrow morning

SUBJECT: Okay good

OCE: I don't have condoms or lube

SUBJECT: Okay

OCE: Meaning please bring lol

SUBJECT: I know lol

SUBJECT: I'm about to get into the shower

SUBJECT: Your not like trying to set me up are you? Frfr100?? Lol I really want to come up haha (your affiant understands Frfr100?? to mean "100 percent for real, for real?")

OCE: I'm not evil. I'm just trying to get off.....if you know what I mean

SUBJECT: Yeah I understand you know what I mean tho? You understand why I asked?

OCE: Yeah I'm not trying to cause trouble for anyone

SUBJECT: Okay Kool I'll let you know when I get out of the shower [smiley face emoji with tongue out]

OCE: K

SUBJECT: Just got out of the shower now

SUBJECT: I'm just wondering, would you want to come to my place tonight and I'll take you back home tonight or whenever you wanted to go? I just feel like that'll be better I think. Let me know.

OCE: I guess I could. You'll still have to pick me up and r u home alone?

SUBJECT: Of course I know I'd pick you up lol and my brother will be home but he won't even see you. He's usually in his room.

OCE: You sure?

SUBJECT: Nor will be care that I have someone over either way lol you'll be fine.

OCE: Ok

SUBJECT: He won't know you you won't know him and I know for sure he won't even ask questions and 99.9% sure he won't even see you lol

OCE: Ok. You can't tell anybody

SUBJECT: I won't tell anyone I'd hope the same from you tbh lol (your affiant understands the meaning of tbh as "to be honest")

OCE: Lol. Of course

SUBJECT: Okay

SUBJECT: Are you ready now or later?

OCE: Now works

SUBJECT: Okay I'll head out in a few minutes

OCE: K

SUBJECT: On my way now, just got gas.

OCE: K

OCE: When will you be here

SUBJECT: Here soon

OCE: K

OCE: Let me know when ur here

SUBJECT: Just about there like 5 minutes

SUBJECT: I'm here

The last communication from the SUBJECT occurred at 8:14PM.

OCE: Ok. Where r u

OCE: I don't see you

The last communication from the OCE occurred at 8:15PM.

6. On November 13, 2020, shortly after 8:15PM, Special Agents and Task Force Officers observed a red pickup truck with an Iowa license plate drive by the target residence located in Rock Island, IL two times. The red truck pressed the brakes and slowed down by the target residence each time the truck drove by. During this time, it was the only vehicle driving by the target residence. Special Agents and Task

Force Officers stopped the red truck driven by the SUBJECT. FBI Special Agents and Task Force Officers then approached SUBJECT and identified themselves. The driver of the truck matched the pictures sent by SUBJECT. After the identification, SUBJECT was taken into custody. Swank was in possession of a mobile telephone at the time of his arrest.

7. Once in custody, Swank was taken to the operational address in Rock Island, IL and was given his *Miranda* warnings. Swank agreed to speak to an Agent and Task Force Officer. Swank disclosed he was COVID positive, and appropriate protective precautions were taken. The following is a summary of the interview:


8. Swank met an unidentified male via a dating application called Grindr. Swank used the screenname, "lkng4younger" pronounced, "Looking for Younger." Swank used the screenname because he preferred younger male companions and expected the name to dissuade contact from older men. Over the application, Swank exchanged photographs of a face and a torso with the unidentified male and discussed oral sex and "hanging out." Initially, Swank believed the unidentified male was 18 years old based on male's profile but later learned that the unidentified male was 15 years old. Swank offered to pick-up the minor and bring him to Swank's home in Muscatine, Iowa. On November 13, 2020 Swank traveled from Muscatine, Iowa to Rock Island, Illinois with the intention of transporting the minor to his home for the purpose of engaging in oral sex and possibly other consensual sexual acts. Despite being COVID positive, Swank chose to meet the minor without disclosing his diagnosis. Knowing that

the male was underage, Swank knew engaging in sexual activity with the minor was wrong. Swank instead decided not to pick-up the minor as originally planned, which was why he was driving away. Swank advised that he was a registered sex offender. Swank provided consent to search his mobile telephone. Following the interview, Swank was afforded the opportunity to make a telephone call in the presence of the interviewing Agent. Swank called his mother and disclosed the nature of his arrest. Swank remarked to his mother that he did not know the person he was meeting was a minor "right away."

Conclusion

9. Based on the foregoing, I submit that there is probable cause to believe that between November 5, 2020 and November 13, 2020 Nicholas Bryan Swank, using a facility and means of interstate commerce, his cellular telephone to access the Internet, knowingly attempted to persuade, induce, and entice an individual who had not attained the age of 18 years, to engage in a sexual activity for which a person could be charged in violation of 18 U.S.C. 2422(b).

FURTHER AFFIANT SAYETH NOT.


s/Kurt Bendoraitis

Kurt Bendoraitis, FBI Special Agent

Sworn to me over the telephone and signed by me pursuant to Fed.R.Crim.P. 4.1 and 4(d) on this 16th day of November, 2020.


s/Jonathan Hawley

JONATHAN HAWLEY, Magistrate Judge
United States District Court