

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

Case No. 17-CR-11-WMC

BRIAN SAVAGE,

Defendant.

**MOTION TO EXCLUDE EVIDENCE AND DISMISS THE INDICTMENT
HEARING CONDITIONALLY REQUESTED**

On February 20, 2015, Hon. Theresa C. Buchanan, U.S. Magistrate Judge for the Eastern District of Virginia issued a search warrant (“NIT warrant”) authorizing the deployment of malware to search computers for identifying information. Acting on information developed by executing that warrant, law enforcement obtained Brian Savage’s confession and his consent to seize and search his computer on March 16, 2016. This Court granted application by FBI agents for a warrant to search Savage’s computer on April 1, 2016.

Brian Savage moves this Court for an order suppressing as evidence for use at trial all evidence obtained or derived from execution of the NIT warrant on the following grounds:

(1) The search warrant lacked particularity in its ambiguous description of the places to be searched, as further indicated by its affidavit’s description of the agents’ intent to exercise impermissible discretion to select the places to be searched;

(2) The government violated the Fourth Amendment’s Reasonableness Clause by executing the warrant in a manner that re-victimized the children portrayed in the

images distributed by the FBI's operation of the Playpen website;

(3) The NIT warrant affidavit misled the magistrate judge about the warrant's scope and manner of execution, causing constitutional violations of Fed. R. Crim. P. 41(b) and 28 U.S.C. § 636;

(4) The NIT warrant overbroadly authorized searches unsupported by probable cause by understating the likelihood of inadvertent visitors to the Playpen website; and

(5) Correction of misleading and reckless or intentional omissions contained in the warrant's affidavit emphasizes the absence of probable cause.

Savage further requests this Court order the indictment dismissed because the government's conduct in procuring and executing the search warrant in this case meets the outrageousness standard of *United States v. Russell*, 411 U.S. 423 (1973).

Savage asserts that the hearing transcripts and court documents cited in and appended to the attached brief satisfy the evidentiary requirements of this motion. Conditioned on the Court's acceptance of their content as evidence, he does not request a hearing.

Respectfully submitted this 14th day of June, 2017.

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CERTIFICATION OF SERVICE

I certify that I have served the above document on the office of the United States Attorney by CM/ECF.

/s/ Stephen J. Meyer
Stephen J. Meyer