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29 September 2022

Capt James T Kirk
Circuit Defense Counsel, Eastern Circuit
Air Force Trial Defense Division (AF/JAJD)
123 Oakland St.

Affidavit regarding TSgt Donald T. Duck

Greetings Capt Kirk:

You have explained to me that your client, TSgt Donald T. Duck, has plead guilty to the following:
On numerous dates between on or about 24 April 2021 and on or about 16 May 2021, TSgt Duck uploaded obscene visual depictions of minors engaging in sexually explicit conduct to his Google account. Of these uploaded visual depictions, some were animated or computer-generated, some were of actual minors, some known to law enforcement and tracked by the National Center for Missing and Exploited Children (NCMEC).

You provided me various documents for my review, including the following:

Report of Investigation	6 December 2021	596 pages
Offer for Plea Agreement	8 September 2022	3 pages
Stipulation of Fact (draft)	19 September 2022	7 pages

You also asked that I provide an affidavit for the Court's consideration. During the past 30 years I have conducted well over 1000 evaluations for State, Federal and Military courts. Over a span of 15 of those years I have also provided over 300 trainings for peers (psychologists, social workers, probation officers, etc.) regarding sex crimes and psychosexual evaluations. This has included a series of CLE courses for the State Bar of Arizona and Pima County Adult Probation regarding "Online Sex Offense: What Every Attorney Should Know" (the student handout can be found here: <https://arizonaforensics.com/cle-seminars/>). I am recognized by the Supreme Court of the State of Arizona and by Pima County Superior Court to conduct evaluations. I am trained and/or certified in the Abel, Affinity 2.5, LOOK VTM, MEGA, Static 99R/2002R, Stable/Acute 2007, SVR-20, HCR-20, J-SOAP 2, ERASOR, SAPROF and Limestone plethysmograph. I am a member in good standing with the Association for the Treatment of Sexual Abusers (ATSA, national and the Arizona chapter).

In my lectures to the State Bar of Arizona, Pima County Adult Probation, Pima County Public Defender's Office, and the Davis-Monthan AFB legal office I have emphasized the important distinctions between various sex offenses and how those differences impact risk to the community and rehabilitation potential for the offender. This is particularly important with regards to non-contact online sex offense (possession of child pornography without contact).

I. Recidivism Rates for Non-Contact Child Porn Offenders

Scientific research shows the viewing of child pornography (non-contact) is not a strong predictor of future sexual violence (recidivism). Research reveals child pornography offenders are much larger in number than solicitation and contact offenders. On average, they are less antisocial than contact sex offenders. This is particularly important as a factor for re-offense.

Research findings for Recidivism Rates for CP / Non-contact Offenders

- 3.4% committed new CP viewing, 2% committed future physical contact (Seto, 2011)
- 1.6% committed new CP viewing, 3% committed physical contact (N=638, Faust, 2015)
- 7% committed new CP viewing, 3% committed physical contact (N=135, Seto & Eke, 2015)
- **2.3% committed new CP viewing, 3.6% committed physical contact (N=610, Saris, 2013, from the US Sentencing Commission report)**
- 2.9% committed new CP viewing, .5% committed “cross-over”/physical contact (N=125, MiKADO Study; Schuhmann, 2015)
- Any type of recidivism was uncommon in the Wakeling et al. study, at 8% after one year and 11% after two years. Three quarters of the sexual recidivism identified by Wakeling et al. (2011) was Internet related. This was especially true for Internet “specialists” that is, those individuals who have no history of any other type of offending and thus tended to have low scores on the risk managers compared with the rest of the sample.
- Neither the Risk Matrix 2000 nor the OGRS3 (United Kingdom measures) significantly predicted recidivism among Internet-only offenders, due to the low base-rate of recidivism observed for this subgroup (There were few new offenses to predict and thus less statistical power to detect any real association). This is consistent with the findings reported by Seto et al. (2011) and Eke et al. (2011).
- Note these recidivism rates are in contrast to contact sex offenders’ average recidivism rate of 13%.

The Association for the Treatment of Sexual Abusers (ATSA) is a professional association of sex offense researchers, evaluators, treatment providers and probation officers. ATSA official position regarding online sex offenders includes the following:

“Several overlapping, follow-up studies of child pornography offenders suggest these individuals present less risk for future hands-on offenses, on average, than undifferentiated samples of contact sex offenders... Child pornography offenders also presented a relatively low risk to commit another child pornography offense. . . Studies that have compared Internet-facilitated sex offenders to contact sex offenders have found consistent differences. These studies suggest Internet-facilitated sex offenders are less antisocial and are; therefore, less of a risk to commit a new offense or a probation violation than contact sex offenders. These studies also suggest Internet-facilitated sex offenders are similar to or score lower than contact sex offenders on measures of clinical needs including offense-supportive attitudes and beliefs, intimacy deficits, and emotional problems. At the same time, child pornography offenders are more likely to show pedophilic sexual arousal on penile plethysmograph assessment than are contact sex offenders.

Although researchers have suggested several typologies of Internet-facilitated offenders, we currently know very little about the treatment and supervision needs of Internet-related sex offenders. These typologies include individuals who are sexually interested in children, those who are more sexually indiscriminate, those who are curious, and those who opportunistically engage in Internet-facilitated offending (e.g., an adult male who uses the Internet to gain sexual access to adolescents). Effective intervention will need to be tailored to the type of offender and the risk they present. For example, an individual who viewed child pornography out of curiosity and is a low risk to offend in the future might require little (or no) treatment and minimal supervision while a pedophilic individual who opportunistically used the Internet to gain access to victims and who is a higher risk to offend in the future would require more intensive treatment and supervision. Regulation of access to the Internet would be expected to be a central consideration in treatment or

supervision. Methodologically sound evaluation research is needed to develop effective treatment programs for Internet-facilitated sex offenders.”

ATSA Policy Statement on Internet-Facilitated Sex Offending, September 7, 2010
<http://www.atsa.com/internet-facilitated-sexual-offending>

These citations are consistent with the finding that online offenders are low risk, as a group, and suggests if they do reoffend online offenders are more likely to commit future online offenses than to commit contact sexual offenses. Dr. Michael Seto is one of the world’s leading researchers regarding online sex offense. He states:

The low base rate of sexual recidivism among online-only offenders suggests that there is little variance in risk in this subgroup to predict. The most accurate risk statement is to assume that an online-only offender with no prior criminal history of any kind is not going to sexually reoffend. Because existing risk measures are already applicable to online offenders who have also committed contact-sexual offenses, the follow-up research to date has suggested that an online– offender-only risk measure is unlikely to be successful. (Seto, 2013, p. 211)

There may appear to be a paradox in the risk in recidivism results ... Among identified sex offenders, pedophilia is a robust and important risk factor, having one of the strongest associations with new sexual offenses in meta-analysis conducted by Karl Hanson and his colleagues (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005). Yet online child pornography offenders, many of whom are likely to be pedophiles, have a relatively low recidivism rate, at least in the studies we were able to examine in Seto et al. (2011).

This seeming paradox is resolved when we remember that the motivation-facilitation model requires both motivation (such as pedophilia or hebephilia) as well as facilitation factors (such as antisocial personality traits) for contact sexual offenses to occur (Seto, 2008). Many online child pornography offenders may indeed be motivated to have sex with children, but many do not have the necessary facilitation factors for this to occur, given their relatively low scores on psychopathy, antisocial attitudes and beliefs, and criminal history.

... child pornography offending can be viewed as a risk factor for sexual offending against children in the general population but as a ‘protective’ factor in the sexual offender population. This does not mean that child pornography use has a cathartic effect, only that it is a marker of lower risk of future offending within a sample of individuals identified for committing sexual crimes.” (Seto, 2013, p. 213-214)

II. Response to Government’s Objection to an Expert for Sentencing

You have indicated that Government is objecting to my provision of an affidavit for sentencing purposes. I am the first to acknowledge I am not an attorney and readily leave legal matters to greater minds than mine. But I would humbly offer a forensic psychologist’s response to some of Government’s concerns.

“why the defense counsel is unable to gather and present the evidence the expert assistant would be able to develop.” (p. 1)

I humbly submit that over three decades of professional training and psychological evaluations have provided me an opportunity to learn some things that might not be readily apparent to judges, juries or attorneys. As such, I sometimes have something to teach that is worth knowing. I never presume to be an attorney. It’s equally respectful when attorneys don’t presume to be psychologists. We have different roles and different giftings.

“Given the government has not secured the services of any similar experts; the due process concerns of . . .” (p.2)

I assume that government will claim aggravating elements in its sentencing argument. Your client should be afforded the benefit of a better-informed sentencing argument from defense. But I would offer this caution, my affidavit and testimony is neither for-nor-against your client. My role to is educate the trier-of-fact as to the scientific findings in forensic psychology. As such, the government may be able to elicit testimony from me that would aid them in their press for aggravating elements for sentencing.

Thank you for the opportunity to provide feedback on these matters. Please contact me with any questions you might have.

Paul Simpson, Ed.D.
Arizona Psychologist, #1967

29 September 2022

Appendix A.

Research related to Child Pornography and Re-offense

The Criminal Histories and Later Offending of Child Pornography Offenders.

Seto, Michael C., et.al., (April 2005). The criminal histories and later offending of child pornography offenders. *Sexual Abuse: Journal of Research and Treatment*, Vol 17(2), pp. 201-210.

Abstract:

The likelihood that child pornography offenders will later commit a contact sexual offense is unknown. In the present study, we identified a sample of 201 adult male child pornography offenders using police databases and examined their charges or convictions after the index child pornography offense(s). We also examined their criminal records to identify potential predictors of later offenses: 56% of the sample had a prior criminal record, 24% had prior contact sexual offenses, and 15% had prior child pornography offenses. One-third were concurrently charged with other crimes at the time they were charged for child pornography offenses. The average time at risk was 2.5 years; 17% of the sample offended again in some way during this time, and 4% committed a new contact sexual offense. Child pornography offenders with prior criminal records were significantly more likely to offend again in any way during the follow-up period. Child pornography offenders who had committed a prior or concurrent contact sexual offense were the most likely to offend again, either generally or sexually.

The consumption of Internet child pornography and violent and sex offending.

Endrass, Jérôme, et. al. (2009, July 14). *BMC Psychiatry*, Vol 9, *ArtID* 43.

Abstract: Background: There is an ongoing debate on whether consumers of child pornography pose a risk for hands-on sex offenses. Up until now, there have been very few studies which have analyzed the association between the consumption of child pornography and the subsequent perpetration of hands-on sex offenses. The aim of this study was to examine the recidivism rates for hands-on and hands-off sex offenses in a sample of child pornography users using a 6 year follow-up design. Methods: The current study population consisted of 231 men, who were subsequently charged with consumption of illegal pornographic material after being detected by a special operation against Internet child pornography, conducted by the Swiss police in 2002. Criminal history, as well as recidivism, was assessed using the criminal records from 2008. Results: 4.8% (n = 11) of the study sample had a prior conviction for a sexual and/or violent offense, 1% (n = 2) for a hands-on sex offense, involving child sexual abuse, 3.3% (n = 8) for a hands-off sex offense and one for a nonsexual violent offense. When applying a broad definition of recidivism, which included ongoing investigations, charges and convictions, 3% (n = 7) of the study sample recidivated with a violent and/or sex offense, 3.9% (n = 9) with a hands-off sex offense and 0.8% (n = 2) with a hands-on sex offense. Conclusion: Consuming child pornography alone is not a risk factor for committing hands-on sex offenses—at least not for those subjects who had never committed a hands-on sex offense. The majority of the investigated consumers had no previous convictions for hands-on sex offenses. For those offenders, the prognosis for hands-on sex offenses, as well as for recidivism with child pornography, is favorable.

The use of actuarial risk assessment measures with UK internet child pornography offenders.

Osborn, Jody; Elliott, Ian A.; Middleton, David.; Beech, Anthony R..

Journal of Aggression, Conflict and Peace Research, Vol 2(3), Jul, 2010. pp. 16-24.

Abstract:

The present study investigates the use of two actuarial assessment measures—Risk Matrix 2000 and Static 99—with individuals convicted of downloading child pornography on the internet. A UK community-based sample of convicted internet sex offenders was assessed using both a standard and a revised version of RM2000 and Static 99 and assessed for rates of reconviction. None of the offenders in the sample were convicted of a further sexual crime between a one-and-a-half and four-year follow-up. These results suggest reconviction rates for internet sex offenders are lower than for contact child sex offenders. It was found that both the standard version of RM2000 and Static-99 overestimate the risk levels posed by internet offenders and that an adapted version of RM2000 may be a more realistic measure of risk level in this population. In addition, it was noted that a higher frequency of low-risk offenders appeared to be accessing images of younger children and images depicting more serious victimization than high-risk offenders.

Contact sexual offending by men with online sexual offenses.

Seto, Michael C., Hanson, R. Karl. Babchishin, Kelly M..

Sexual Abuse: Journal of Research and Treatment, Vol 23(1), Mar, 2011. pp. 124-145.

Abstract:

There is much concern about the likelihood that online sexual offenders (particularly online child pornography offenders) have either committed or will commit offline sexual offenses involving contact with a victim. This study addresses this question in two meta analyses: the first examined the contact sexual offense histories of online offenders, whereas the second examined the recidivism rates from follow-up studies of online offenders. The first meta-analysis found that approximately 1 in 8 online offenders (12%) have an officially known contact sexual offense history at the time of their index offense ($k = 21$, $N = 4,464$). Approximately one in two (55%) online offenders admitted to a contact sexual offense in the six studies that had self-report data ($N = 523$). The second meta-analysis revealed that 4.6% of online offenders committed a new sexual offense of some kind during a 1.5- to 6-year follow-up ($k = 9$, $N = 2,630$); 2.0% committed a contact sexual offense and 3.4% committed a new child pornography offense. The results of these two quantitative reviews suggest that there may be a distinct subgroup of online-only offenders who pose relatively low risk of committing contact sexual offenses in the future.

Specifics:

- 4.6% of online offenders committed a new sexual offense for total sample.
- 2.0% of online offenders committed a new contact offense
- 3.4% of online offenders committed a new CP offense
- (Turner critiques this study)

Examining the criminal history and future offending of child pornography offenders: An extended prospective follow-up study.

Eke, Angela W., Seto, Michael C., Williams, Jennette.

Law and Human Behavior, Vol 35(6), Dec, 2011. pp. 466-478.

Abstract:

We examined police occurrence and criminal records data for a sample of 201 registered male child pornography offenders originally reported by **Seto** and **Eke** (Sex Abus J Res Treat 17:201–210, 2005), extending the average follow-up time for this sample to 5.9 years. In addition, we obtained the same data for another 340 offenders, increasing our full sample to 541 men, with a total average follow-up of 4.1 years. In the extended follow-up of the original sample, 34% of offenders had new charges for any type of reoffense, with 6% charged with a contact sexual offense against a child and an additional 3% charged with historical contact sex offenses (i.e., previously undetected offenses). For the full sample, there was a 32% any recidivism rate; 4% of offenders were charged with new contact sex offenses, an additional 2% of offenders were charged with historical contact sex offenses and 7% of offenders were charged with a new child pornography offense. Predictors of new violent (including sexual contact) offending were prior offense history, including violent history, and younger offender age. Approximately a quarter of the sample was sanctioned for a failure on conditional release; in half of these failures, the offenders were in contact with children or used the internet, often to access pornography again.

Regarding recidivism, this study found:

For CP, but non-violent (non-contact) (n=108)

- Any re-offense = 40.2%
- Release failure = 30.8%
- Violent/sex = 5.6%
- Contact sex = 1.9%
- Noncontact sex/CP = 10.3%
- CP = 8.4%

In contrast, for CP that includes contact (n=163)

- Any re-offense = 50.5%
- Release failure = 35.4%

- Violent/sex = 12.1%
- Contact sex = 8.7%
- Noncontact sex / CP = 11.2%
- CP = 8.7%

2012 Report to the Congress: Federal Child Pornography Offenses

Saris, et al. (2012) United States Sentencing Commission

http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Chapter_11.pdf

"...the general recidivism rate was 30.0 percent (183 of 610 offenders). . . failures were almost evenly split between arrests or convictions for new crimes and arrests or revocations for others violations of the conditions of their supervision:

- *15.9 percent (97 of 610 offenders) were arrested for (and in some cases convicted of) a new criminal offense; and*
- *14.1 percent (86 of 610 offenders) violated the conditions of their supervision or failed to register or report as sex offenders without an arrest for any other new criminal offense.*
- *The sexual recidivism rate for all offenders was 7.4 percent (45 of the 610 cases). Of those 45 offenders:*
 - *22 offenders (or 3.6% of all 610 cases) were arrested for or convicted of sexual "contact" offenses (e.g., rape or sexual assault of a child or adult);*
 - *14 offenders (2.3% of the 610 cases) were arrested for or convicted of a subsequent child pornography offense; and*
 - *the remaining nine offenders (1.5% of the 610 offenders) were arrested for or convicted of a non-contact sex offense involving obscenity or commercial sex.*

Of the 97 offenders who were arrested for any type of new offense during the eight-and- one-half-year follow-up period, the vast majority (77, or 79.4%) were arrested once during the period. Twenty offenders (20.6%) were arrested more than once during the follow-up period. Similarly, of those 86 offenders whose recidivism was limited to violating the conditions of their supervised release or probation, 67 (77.9%) did so once, while the remaining 19 offenders (22.1%) violated their conditions more than once. Furthermore, of the 97 offenders who committed new criminal offenses, 41 (42.3%) were both arrested for a new criminal offense and also had at least one other violation of the conditions of their supervision.

The period of time between reentry into the community and the recidivism event is measured as the "street time" that the offender was at risk until the first arrest, conviction, or revocation time in six month increments. As shown, recidivism increased at a relatively steady rate for approximately the first three years following release and then grew at a much slower rate thereafter. The statutory maximum period of supervised release for the vast majority of this thirds of offenders recidivated during their terms of supervision, and one-third recidivated after their supervision ended. A small number of offenders recidivated for the first time after being in the community for more than five years." (pp. 300-301)

Predicting Recidivism Among Adult Male Child Pornography Offenders: Development of the Child Pornography Offender Risk Tool (CPORT)

Seto, M. C., & Eke, A. W. (2015, April 6). Law and Human Behavior. Advance online publication.

<http://dx.doi.org/10.1037/lhb0000128>

Abstract

In this study, we developed a structured risk checklist, the Child Pornography Offender Risk Tool (CPORT), to predict any sexual recidivism among adult male offenders with a conviction for child pornography offenses. We identified predictors of sexual recidivism using a 5-year fixed follow-up analysis from a police case file sample of 266 adult male child pornography offenders in the community after their index offense. In our 5-year follow-up, 29% committed a new offense, and **11% committed a new sexual offense, with 3% committing a new contact sexual offense against a child and 9% committing a new child pornography offense.** The CPORT items comprised younger offender age, any prior criminal history, any contact sexual offending, any

failure on conditional release, indication of sexual interest in child pornography material or prepubescent or pubescent children, more boy than girl content in child pornography, and more boy than girl content in other child depictions. The CPORT was significantly associated with any sexual recidivism, with moderate predictive accuracy, and thus has promise in the risk assessment of adult male child pornography offenders with further cross-validation.

Specifics included:

For CP only offenders (n=135)

- Any re-offense = 24%
- Release failure = 14%
- Violent (including sex) = 4%
- Contact sex = 3%
- CP = 7%

But: for CP & non-violent and/or violent (n=90)

- Any re-offense = 49%
- Release failure = 40%
- Violent/sex = 10%
- Contact sex = 3%
- CP = 12%

Child pornography possessors and child contact sex offenders: A multilevel comparison of demographic characteristics and rates of recidivism.

Faust, Bickart, Renaud.

Sexual Abuse: Journal of Research and Treatment, Vol 27(5), Oct, 2015. pp. 460-478.

Abstract:

Considerable debate surrounds the topic of whether possessing or distributing online images of childpornography (CP) represents a new type of crime perpetrated by conventional sex offenders (e.g., childcontact [CC] sex offenders), or whether individuals who commit these crimes differ from contact sex offenders in meaningful ways. The current study compares groups of Internet (CP) and CC sexual offenders, with each group's sexual offending history exclusively confined to its offense category. T tests were used to conduct bivariate comparisons of group demographics and criminal histories. Rates of recidivism were examined using survival curves and Cox proportional hazard regression models. Results showed significant differences on demographic and criminal history variables, with CP offenders demonstrating a lower frequency of prior criminal offending and substance abuse, and higher rates of pre-incarceration employment and level of education. Rates of recidivism were significantly different between the two groups, with CP offenders showing lower rates of re-offense for most measures of recidivism. When controlling for background characteristics and the timing of the event, CC offenders were at much greater risk for having an arrest for a new crime or a non-sexual violent crime than CP offenders. Treatment and policy implications are discussed, along with suggestions for future research.

Specifics included:

For Non-contact CP (n=428)

- 19.2% had probation violations
- 1.6% had noncontact sex offense / CP
- 3.0% had contact offense

For contact offenders (n=210)

- 38% had probation violations
- 14.3% had nonsexual/violence
- 5.7% had contact sex offense

Multiple Indicators of Sexual Interest in Prepubescent or Pubescent Children as Predictors of Sexual Recidivism.

Stephens, Skye. Cantor, James M., Goodwill, Alasdair M., **Seto, Michael C.**

Journal of Consulting and Clinical Psychology, Mar 13, 2017.

Abstract (English):

Objective: Sexual interest in children is a well-known risk factor for sexual reoffending (recidivism). The present study examined the relationship between sexual interest in prepubescent children (pedophilia) or pubescent children (hebephilia) and sexual recidivism. It extended previous work by using multiple indicators of sexual interest, using a more sensitive phallometric procedure that measures change in penile blood volume, and examining both hebephilia alongside pedophilia, as well as noncontact sexual recidivism. Method: Six hundred fifty-six men who had committed a sexual offense underwent a comprehensive sexological assessment that included multiple sexual interest measures: volumetric phallometry, self-report, and sexual behavior. Criminal record data were acquired to examine recidivism. Offenders were followed for an average of 10 years of opportunity. Results: Indicators of hebephilia and pedophilia were significantly associated with noncontact sexual recidivism, but inconsistently associated with contact recidivism. The relationship with phallometrically assessed pedophilia and contact sexual recidivism was significant after controlling for offender age statistically. Phallometrically assessed sexual arousal to children did not add to risk appraised by an actuarial measure. Conclusion: Both hebephilia and pedophilia were predictive of noncontact sexual recidivism. The results for contact sexual recidivism are discussed, including a potential confound in previous work on the assessment of sexual interest in children.

Correlates of Admitted Sexual Interest in Children Among Individuals Convicted of Child Pornography Offenses.

Seto, Michael C., Eke, Angela W.

Law and Human Behavior, Apr 06, 2017.

Abstract:

Recent research on a risk assessment tool for child pornography offending suggests that admission of sexual interest in children is a risk factor for any sexual recidivism. Admission is easily vulnerable to lying, however, or to refusals to respond when asked about sexual interests. This may become a particular issue when individuals are concerned about the potential impact of admission of sexual interest on sentencing and other risk-related decisions. In this study, we identified the following behavioral correlates (coded yes/no) of admission of sexual interest in children in the risk tool development sample of 286 men convicted of child pornography offenses: (a) never married (54% of sample), (b) child pornography content included child sexual abuse videos (64%), (c) child pornography content included sex stories involving children (31%), (d) evidence of interest in child pornography spanned 2 or more years (55%), (e) volunteered in a role with high access to children (7%), and (f) engaged in online sexual communication with a minor or officer posing as a minor (10%). When summed, the average score on this Correlates of Admission of Sexual Interest in Children (CASIC) measure was 2.21 (SD = 1.22, range 0–6) out of a possible 6, and the CASIC score was significantly associated with admission of sexual interest in children, area under the curve (AUC) = .71, 95% CI [.65, .77]. The CASIC had a stronger relationship with admission in a small cross-validation sample of 60 child pornography offenders, AUC = .81, 95% CI [.68, .95]. CASIC scores may substitute for admission of sexual interest in risk assessment involving those with child pornography offenses.