

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:00CRXXX-1

UNITED STATES OF AMERICA :
 :
 v. : MOTION FOR PROTECTIVE ORDER
 :
 [REDACTED] :

NOW COMES the Defendant and moves this Court for a protective order permitting counsel to inspect and examine contraband material seized from the Defendant's home by agents of the FBI, and to do so with impunity. In support of this Motion, the Defendant shows unto the Court the following facts.

The Defendant is charged in a two count indictment which alleges in Count One that the Defendant shipped or transported in interstate commerce by means of a computer child pornography, and alleges in Count Two that the Defendant possessed child pornography which had been transported in interstate commerce by computer.

On March XX, 2000, the FBI seized from the Defendant's home a computer, Seagate hard drive, Western Digital hard drive, a ZIP drive, and 23 floppy disks. The government asserts that this computer, together with its peripherals, was the medium by which the Defendant committed the acts as alleged in the indictment. Thereafter, the government states the FBI duplicated, bit-by-bit, all relevant data from the Defendant's computer equipment to a CD-ROM.

Federal Rule of Criminal Procedure 16(a)(1)(C) allows a defendant to inspect and copy or photograph tangible objects which are within the possession, custody or control of the government and were obtained from or belong to the defendant. Id. Counsel for the Defendant, with the assistance of his in-house Computer Systems Administrator (CSA), wishes to inspect and examine the CD-ROM in order to determine how best to advise his client with regard the charges he faces. Further, since the government has alleged that such machine and its components contain contraband material and that such material has been transferred to the CD-ROM, counsel and his CSA seek an order protecting them while they inspect and examine the CD-ROM in the course of representing the Defendant.

Counsel for the Defendant has spoken with the attorney for the government about the relief requested herein and said attorney has no objection to the Court granting the same.

WHEREFORE, the Defendant respectfully requests this Court enter a protective order permitting counsel to inspect and examine the CD-ROM produced by the FBI from data allegedly stored on the computer and related peripherals seized from the Defendant's home by the FBI.

Respectfully submitted this ____ day of February, 2004.

Thomas N. Cochran
Assistant Federal Public Defender
N.C. State Bar No. [REDACTED]
101 North Elm Street, #210
Greensboro, North Carolina 27401
Telephone: (336) 333-5455

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing upon Ms. XXXXX XXXX, Assistant United States Attorney for the Middle District of North Carolina, 101 South Edgeworth Street, Suite 400, Greensboro, North Carolina, 27401, by hand-delivering or by mailing a copy of the same.

This the ____ day of February, 2004.

Thomas N. Cochran

5. Counsel for the defendant, with the assistance of his in-house Computer Systems Administrator (CSA), requests to inspect and examine the CD-ROM in order to determine how best to advise the defendant with regard to the charges the defendant faces.

6. Additionally, counsel for the defendant requests protection from the Court for himself and his CSA since the government has alleged that the data contained on the CD-ROM is contraband material, and counsel and his CSA would necessarily have to view and possess such contraband in the course of representing the defendant.

BASED UPON THE foregoing findings of fact, the Court makes the following CONCLUSIONS OF LAW:

1. So that defense counsel can effectively represent his client, the government should permit the defendant and his CSA to possess, inspect, and examine the CD-ROM, containing data assertedly transferred from the computer and related peripherals seized from the defendant's home, in order to determine how best to advise the defendant with regard to the charges the defendant faces; and

2. Defense counsel and his CSA should be protected, since the government has alleged that the data on the CD-ROM contains contraband material, and counsel and his CSA would necessarily

have to view and to possess such contraband while they inspect and examine the CD-ROM in the course of representing the defendant.

IT IS THEREFORE ORDERED that the defendant's Motion is hereby GRANTED and the government must permit the defendant and his CSA to possess, inspect, and examine the CD-ROM in order to determine how best to advise the defendant with regard to the charges the defendant faces; and

IT IS FURTHER ORDERED that defense counsel and his CSA are hereby protected from prosecution, since the government has alleged that the defendant's machine and its components contain contraband material, such material has been transferred to a CD-ROM, and counsel and his CSA must necessarily possess such contraband while they view and examine the CD-ROM in the course of executing their Constitutional duty of representing the defendant; and

FINALLY, IT IS ORDERED that neither defense counsel nor his CSA shall copy or distribute any of the material which comes into their possession as permitted under this Order, and shall return the CD-ROM to the government upon completion of this matter, if not sooner.

IT IS SO ORDERED, this the _____ day of August, 2000.

United States District Judge