

COPY

Approved: Lauren Goldberg
LAUREN GOLDBERG
Assistant United States Attorney

Before: HONORABLE GEORGE A. YANTHIS
United States Magistrate Judge
Southern District of New York

01500

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UNITED STATES OF AMERICA : COMPLAINT

-v.- : Violation of

: 18 U.S.C. § 875(c)

BENJAMIN BALLARD, :

:

Defendant. : COUNTY OF OFFENSE:

: WESTCHESTER

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SOUTHERN DISTRICT OF NEW YORK, ss.:

Pamela A. McGovern, being duly sworn, deposes and says that she is a Special Agent of the Federal Bureau of Investigation and charges as follows:

On or about March 23, 2001, in the Southern District of New York and elsewhere, BENJAMIN BALLARD, the defendant, transmitted in interstate commerce a communication containing a threat to kidnap a person and a threat to injure the person of another.

(Title 18, United States Code, Section 875(c).)

The bases for my knowledge and for the foregoing charge are, in part, as follows:

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI") and have been personally involved in the investigation of this matter. This affidavit is based upon my conversations with other law enforcement officials and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents or transactions, conversations or statements of others are related herein, they are related in substance and in part, unless otherwise indicated.

2. On March 23 and March 24, 2001, I spoke with other members of the FBI and a representative from the Westchester District Attorney's Office who were assigned to the investigation of this matter. Based on these conversations, as well as my review of reports and records, I learned the following:

a. Early in the morning on March 23, 2001, the Superintendent of the Edgemont School District in the Town of Greenburgh, located in Westchester County, ordered the schools closed that day as a result of a threat contained in an Instant Message exchange between a student at Edgemont High School, and an unknown individual, later identified as BENJAMIN BALLARD, the defendant. An Instant Message is a typed communication from the sender's computer which is then transmitted directly to the computer of the recipient. Both the sender and the recipient must be online in order to exchange Instant Messages. The exchange took place between approximately 12:04 and 12:44 a.m. on March 23, 2001.

b. The recipient of the threat was online using her America Online ("AOL") account. BALLARD, who is not an AOL account holder, was online using the screen name "marvel666." A person who is not an AOL account holder can exchange Instant Messages with an AOL account holder by using the AOL Instant Message ("AIM") service. AIM software is available to anyone who has an account with any internet service provider. Information provided by AOL revealed that the screen name "marvel666" belonged to someone using AIM, and not to an AOL account holder.

c. On March 23, 2001, AOL provided the Internet Protocol address (the "IP address") for the communication sent by "marvel666." The IP address is a unique numeric address identifying the specific computer from which a given communication originates. AOL also identified the IP address for "marvel666" as belonging to an internet subscriber of US West, also known as Qwest Internet Services.

d. On March 23, 2001, Qwest Internet Services identified the IP address provided by AOL as belonging to an account in the name of the defendant's parents. Qwest Internet also provided the telephone number and billing address for the account. The address provided was located in Portland, Oregon.

3. On the evening of March 23, 2001, law enforcement agents in Oregon, accompanied by a private computer consultant, visited the address provided by Qwest Internet Services. The agents spoke with the defendant's father and brother regarding the communication at issue and the IP address associated with that communication. The defendant's father informed the agents that

there are multiple computers in the home. As a result of the way the computers are configured, however, the computer consultant was able to confirm that the IP address at issue was linked to the defendant's computer. With the consent of the defendant's father, the agents seized the defendant's computer. The agents also asked the defendant's father to have the defendant contact them.

4. At approximately 1:30 a.m., pacific standard time on March 24, 2001, law enforcement agents spoke with the defendant by telephone. The defendant admitted that he uses the screen name "marvel666" and that he had sent the communication at issue. BALLARD also stated that he knew it was a stupid thing to do.

5. I have reviewed the transcript of the Instant Message exchange in question. During that exchange, BALLARD pretended to be a senior at Edgemont High School and warned the recipient not to go to school the next day because "theres going to be alot of people dead tomorrow. but hey we get to be on the news thets the cool part. eve dont try to warn the school because thats just going to hurt you."

WHEREFORE, deponent prays that a warrant be issued for the arrest of the above-named defendant and that he be arrested and imprisoned or bailed as the case may be.

Pamela A. Mc Govern

PAMELA A. MCGOVERN
Special Agent
Federal Bureau of Investigation

Sworn to before me this
26th day of March, 2001

S. G. C.

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK