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ATTORNEYS FOR DEFENDANT

In The District Court

For the District of Wyoming

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
Vs.)
)
NATHANIEL SOLON)
)
 Defendant.)

Case No. 07-CR-32-B

**MOTION IN LIMINE TO PRECLUDE GOVERNMENT FROM SHOWING
CHILD PORNOGRAPHY TO JURY**

COMES NOW the Defendant through undersigned counsel and moves the Court to prohibit the Government from displaying to the jury child pornography videos viewable after a forensic examination of his computer.

The basis of the motion is Federal Rule of Evidence 403. The evidence may be relevant; however, it should be excluded because its probative value is substantially outweighed primarily by the danger of unfair prejudice, but also confusion of the issues, and misleading the jury.

Undersigned counsel has reviewed the videos that constitute the material that probably would be presented at trial. The videos are vile and very disturbing. The jury may want to convict the Defendant just on the basis of seeing these videos without proper consideration of the evidence and the legal issue of whether the Defendant knowingly possessed the videos.

Under information and belief, the Government’s evaluation of the hard drive is similar in many respects to the evaluation conducted by defense expert Tami L. Loehrs.

The Government's initial reports and discovery as well as Ms. Loehrs' examination report which has been provided to the United States as well as to the Court, indicates five retrievable files that contain child pornography, all of which were found in "unallocated space", as well as a preview file for each of the files that was found.

Ms. Loehrs opines four of the five files she was unable to play the preview file during her forensic exam and therefore there is no evidence that the content of the file was ever viewed before the download was cancelled and deleted. For the fifth file, there was no video. The only part that played was the sound of a door closing. Therefore, for that file, she found no evidence that the content was ever viewed before the download was cancelled.

Therefore, according to the defense's expert, while the videos are present on the hard drive in unallocated space, there is no conclusive evidence that any of the five files containing suspect child pornography were ever viewed, saved, or copied.

The defense believes that the showing of the child pornography would be extremely prejudicial to the defense. The mere showing of the five filthy files might cause the average juror to be angry and disgusted; and unable to consider the absence of evidence the files were ever viewed. The mere existence of the files of the Defendant's hard drive does not constitute knowing possession. But the likelihood is that the jury would not appreciate that distinction after seeing the videos.

THEREFORE, Defendant respectfully requests the Court order that unless and until the Government presents evidence that this Defendant viewed or copied the five videos or previews of the videos, (thereby showing dominion or control, or other indicia of knowing possession) that the videos not be shown to the jury.

RESPECTFULLY SUMMITTED this 11th day of June, 2008.

By: _____/S/
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served this 11th day of June, 2008, by electronic email, addressed to:

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_____/S/
Cheryl Deere