

RICHARD GALLAHUE, JR. and
CHRISTEENA GALLAHUE,
Individually and as
Parents and Next of Friend of
RICHARD "R. J." GALLAHUE, III, a minor child

PLAINTIFFS

vs.

COMPLAINT

ROMAN CATHOLIC BISHOP
OF LOUISVILLE

DEFENDANT

Serve: Archbishop Joseph Kurtz
212 East College Street
Louisville, Kentucky 40201

** ** * ** * ** * ** * ** * ** * ** *

Come now the Plaintiffs, as listed above and set forth herein below, by counsel, and for their Complaint herein, state as follows:

1. The damages claimed in this action exceed the jurisdictional limits of this Court.
2. At all times material hereto, Richard "R. J." Gallahue, III, was and is a minor child of Christeena and Richard Gallahue, Jr.
3. At all times material hereto, the "Roman Catholic Bishop of Louisville," is a non-profit corporation, organized and existing under the laws of the Commonwealth of Kentucky, with its principal place of business in Louisville, Jefferson County, Kentucky (hereinafter referred to as "Church"); doing business as an organized religion, including but not limited to the ownership, management and operation of parishes, houses of worship, and owning and operating and managing Catholic schools, including St. Margaret Mary Catholic Community in Louisville, Jefferson County, Kentucky.

GENERAL ALLEGATIONS

4. In 1985, the Defendant Church employed a priest, Stephen Pohl, who over the next three (3) decades served the Defendant Church by providing management at five (5) churches and schools located in either Louisville, Jefferson County, Kentucky or in Bardstown, Nelson County, Kentucky.

5. For decades, Pohl engaged in the bizarre and unusual behavior of photographing clothed children in poses or positions that would allow Pohl to satisfy his prurient and sexual interests, all of which occurred during times while these children were under the care, control and custody of the Church or the agents, servants and/or employees of the Church.

6. On and before 2015, Pohl illegally stored, possessed, viewed and shared with others through the Internet, child erotica and pornographic images of children on computer devices, including a Dell Optiplex desktop computer (confiscated from St. Margaret Mary parish office), Lenovo laptop computer (confiscated from St. Margaret Mary parish rectory) and additional removable digital storage devices, all of which locations were owned and operated by the Defendant Church.

7. Since the 2003 settlement of over 250 lawsuits against the Archdiocese of Louisville, many promises have been made by the Church, including that it will not tolerate child sexual abuse and exploitation; that it will ferret out abusive priests and take swift action to remove them from positions of trust; that it will “reaffirm the Church’s deep commitment to creating a safe environment within the Church for children and youth,” as contained in the *Charter for the Protection of Children and Young People*; that the decades-long period of childhood sexual abuse by priests has long passed; that children would be made safe by “new rules”. Such promises are proven by the conduct of Father Stephen Pohl to be hollow assurances

of child safety, revealing a Church whose leadership has failed to provide the safety its children deserve and their parents were promised over the last 14 years. That for decades Pohl could engage in the possession of child pornography and take thousands of sexually exploitive photographs of children tells the faithful followers of the Church that their children are not safe and that the decades of callous leadership, denial and complacency did not change with these promises. Indeed, the hundreds of past lawsuits against the Church revealed the true horror stories of thousands of children sexually abused by more than 30 priests within this Church. Sadly, these past lawsuits have done nothing to change the leadership culture and the children of the Church remain at serious risk of sexual abuse and exploitation by priests.

FACTUAL BACKGROUND

8. On or about late August of 2014, minor Plaintiff, Richard "R. J." Gallahue, III, and his sister were escorted from the St. Margaret Mary School to the parish offices, a special arrangement made by Plaintiff, Christeena Gallahue, mother of Richard "R. J." Gallahue, III, to accommodate her inability to walk without assistance following her recent ankle surgery. Ms. Gallahue was allowed by parish office personnel to pick up her children just outside the parish office doors. As Ms. Gallahue entered the parish she observed her minor son (then age 7) and minor daughter (then age 5) sitting on the steps inside the parish being photographed by Pohl, although she could not see the position or poses of her children while being photographed.

9. On the above occasion, as Plaintiff Christeena Gallahue approached her children, Pohl immediately stated he was "taking pictures" of her children and quickly walked past her toward the parish offices, holding his camera/cell phone in the air and stating he would send her copies of the photographs he took of her children. During this encounter with Pohl he acted very nervous and startled, all of which was out of character for Pohl. Pohl assured Ms. Gallahue that he would send her copies of all of the pictures, although Pohl never did. While Ms. Gallahue

was surprised by Pohl's nervous and guilt-like behavior, she had no prior warning or notice of Pohl's taking sexually exploitative photographs of children while said children were under the control and supervision of Pohl and the Church and, therefore, Ms. Gallahue did not have the information she needed to determine the true nature of Pohl's conduct.

10. Following the above incident, Plaintiff Christeena Gallahue was attending a Boy Scout banquet at St. Margaret Mary parish with many children and their parents and again came upon Pohl alone with a young boy, taking photographs of the boy sitting on the same steps where her children had been photographed. Again, Pohl acted startled and nervous when he realized that Ms. Gallahue was watching him and the boy, which reaction was out of character for Pohl compared to all other settings in which Plaintiff Christeena Gallahue had occasion to observe Pohl.

11. On or about late September 2014 and shortly after the photographing incident referred to above, the Plaintiff parents observed their son, Plaintiff, Richard "R. J." Gallahue, III, suddenly begin to act defiantly, not wanting to go to school. In an effort to better understand the nature of their son's emotional problems they secured the services of a school therapist/counselor and their son attended several counseling sessions.

12. During many previous encounters with Pohl, Plaintiff Christeena Gallahue observed Pohl asking her son whether he had any loose baby teeth and making references to children and their baby teeth. He was very interested in learning when her son lost his first baby tooth, which Plaintiff, Christeena Gallahue found bizarre.

13. Plaintiff Christeena Gallahue observed Pohl frequently talking about feeling badly for keeping young photos of his nieces and nephews on his refrigerator, since they are now older.

He used to keep a child's wooden chair in the far left corner closet in his upstairs living room of the rectory that had what appeared to be fluid stains on it.

14. In August 2015, following news media reports of Pohl's arrest on charges of child pornography Richard Gallahue, Jr. and Christeena Gallahue obtained a copy of the Affidavit (see Exhibit A) which formed the basis for the service of an arrest warrant of Pohl and the Criminal Complaint, following a search of the Church's property. This Affidavit disclosed the details of a pattern and course of conduct by Pohl which was very similar to conduct witnessed by Plaintiff Christeena Gallahue involving her children and another child at St. Margaret Mary. Upon learning that Pohl possessed child pornography and that he took clothed photographs of children's genital areas in poses designed to sexually excite and arouse him, the Plaintiffs, Richard Gallahue, Jr. and Christeena Gallahue were caused to suffer serious emotional distress when they learned their child, Richard "R. J." Gallahue, III, was a victim of Pohl. Ms. Gallahue reported the 2014 incident referred to above in paragraph 8 to law enforcement authorities on August 25, 2015.

15. After Pohl's arrest in 2015 Plaintiff Richard "R. J." Gallahue, III was questioned by his parents regarding the nature of the photographs taken in 2014 and the minor Plaintiff became upset and agitated, causing Richard and Christeena Gallahue to reasonably believe that their son suffered serious emotional distress from the incident in 2014.

16. During the investigation of Pohl's conduct by law enforcement officials, members of law enforcement performed a "forensic" interview of the minor Plaintiff which revealed that the minor Plaintiff had been photographed as described above. The minor Plaintiff's behavior before during and after the interview demonstrated that he suffered serious emotional distress

from the events described and from the news of Pohl's arrest which became the subject of much discussion by his classmates, increasing the minor Plaintiff's emotional distress.

17. On January 4,, 2016 Pohl plead guilty to accessing child pornography, based upon photographs found on computer devices, including a Dell Optiplex desktop computer (confiscated from St. Margaret Mary parish office), Lenovo laptop computer (confiscated from St. Margaret Mary parish rectory) and additional removable digital storage devices, all of which locations were owned and operated by the Defendant Church. These are the same computer devices which contained hundreds of photographs admittedly taken by Pohl of St. Margret Mary children, deemed by law enforcement officials to be "child erotica."

18. The minor Plaintiff Richard "R. J." Gallahue, III has suffered serious mental pain and suffering and distress necessitating psychological care and treatment.

**HIRING, SUPERVISION AND/OR RETENTION – NEGLIGENCE/GROSS
NEGLIGENCE**

19. The Plaintiffs adopt, reiterate and incorporate by reference as though typed fully verbatim herein, each and every allegation contained in paragraphs 1 through 18 above.

20. The Defendant Church had a duty to exercise ordinary care in the hiring, supervision and/or retention of Pohl.

21. The Defendant Church knew, or reasonably should have known that Pohl was dangerously unsuitable for the position for which he was hired or retained as an employee.

22. Pohl's conduct of photographing children, often without the permission of their parents or guardians, was so open and obvious that the Church's agents, servants and employees were negligent and/or grossly negligent in failing to investigate Pohl's conduct, to properly

supervise his use of computers and storage devices, to recognize his conduct as child sexual exploitation, and in failing to terminate Pohl's employment.

23. The Defendant Church failed to comply with its duty of ordinary care in the hiring, supervision and/or retention of Pohl as an employee.

24. The Defendant Church acted in reckless disregard for the rights, lives and safety of others, including the Plaintiffs.

25. At all times material hereto, the negligence and/or gross negligence as alleged above was and is a substantial contributing factor to causing serious emotional distress to Plaintiffs herein.

FAILURE TO REPORT
SEXUAL EXPLOITATION TO LAW ENFORCEMENT – NEGLIGENCE/GROSS
NEGLIGENCE

26. The Plaintiffs adopt, reiterate and incorporate by reference as though typed fully verbatim herein, each and every allegation contained in paragraphs 1 through 25 above.

27. At all times material hereto, Pohl engaged in a pattern and course of conduct of possessing pornographic material of minor children as well as sexually exploiting children while under the care and control of the Church, which conduct was known or there was reasonable cause to believe such conduct was occurring, by agents, servants and employees of the Defendant Church, creating a duty pursuant to KRS 620.030 to report said child abuse to law enforcement authorities.

28. At all times material hereto, the Defendant Church failed to report the aforesaid child sexual exploitation and possession of child pornography to law enforcement authorities.

29. The Defendant Church acted in reckless disregard for the rights, lives and safety of others, including the Plaintiffs.

30. At all times material hereto, the negligence and/or gross negligence as alleged above was and is a substantial contributing factor to causing serious emotional distress to Plaintiffs herein.

VIOLATION OF KRS 620.030 – NEGLIGENCE PER SE

31. The Plaintiffs adopt, reiterate and incorporate by reference as though typed fully verbatim herein, each and every allegation contained in paragraphs 1 through 30 above.

32. Pursuant to KRS 446.070, “[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.”

33. Pursuant to KRS 446.070, the Plaintiffs suffered damages, which were a direct and proximate result of the Defendant’s statutory violations.

34. KRS 620.030 and/or other relevant statutes are applicable to this action and, as such, Plaintiffs may recover from Defendant Church for their damages resulting from violations of the aforesaid statutes.

35. The Defendant Church violated KRS 620.030 and/or other relevant statutes and such violations were a direct and proximate cause of Plaintiff’s resulting injuries and damages.

36. The Plaintiffs are in the class of persons intended to be protected by KRS 620.030 and/or other relevant statutes.

37. The Defendant Church breached its statutory duties owed to the Plaintiffs and was negligent *per se* as a result thereof.

FAILURE TO WARN – NEGLIGENCE/GROSS NEGLIGENCE

38. The Plaintiffs adopt, reiterate and incorporate by reference as though typed fully verbatim herein, each and every allegation contained in paragraphs 1 through 37 above.

39. The Defendant Church had an enhanced ability to observe the conditions under which Pohl, the person causing the harm, might be expected to be dangerous.

40. The Defendant Church had a duty to warn the Plaintiffs because of its special relationship to Pohl, the person causing the harm.

41. At all times material hereto, the Defendant Church breached its duty to warn in that it took no action to discipline or sanction Pohl or to warn or inform the Plaintiffs, or other students and parents that Pohl was engaging in sexually exploitative conduct of children attending churches and schools controlled by Pohl.

42. The Defendant Church acted in reckless disregard for the rights, lives and safety of others, including the Plaintiffs.

43. At all times material hereto, the negligence and/or gross negligence as alleged above was and is a substantial contributing factor to causing serious emotional distress to Plaintiffs herein.

OUTRAGEOUS CONDUCT

44. The Plaintiffs adopt, reiterate and incorporate by reference as though typed fully verbatim herein, each and every allegation contained in paragraphs 1 through 43 above.

45. Because of the “special relationship” between the Church and the Plaintiffs herein, the law of Kentucky imposes the highest duty upon the Church to protect children in its care, custody and control.

46. Defendant’s conduct directed towards the Plaintiffs was committed in an intentional or reckless manner.

47. Defendant’s conduct was outrageous and intolerable because it offended generally accepted standards of decency and morality.

48. The Plaintiffs are normally constituted human beings who would not be expected to endure the mental stress engendered by the conduct of the Defendant Church as set forth above and therefore, the conduct of the Defendant Church caused Plaintiffs to suffer serious/severe emotional distress.

PRELIMINARY AND PERMANENT INJUNCTION

49. The Plaintiffs adopt, reiterate and incorporate by reference as though typed fully verbatim herein, each and every allegation contained in paragraphs 1 through 48 above.

50. On or about August of 2015 a Federal search warrant was issued for the search of the rectory and office and other locations on Defendant’s property including St. Margaret Mary Church/School and served on said premises.

51. Upon further information and belief, during the course of the resulting search over 200 photographs containing images of children assumed to be enrolled in St. Margaret Mary School were found on various electronic devices located on Defendant’s premises including St. Margaret Mary School/Church.

52. Upon further information and belief, said photographs, along with the devices which house(d) them, including but not by way of limitation, cellular phone, laptop computer and/or prints and/or DVDs/videotape were seized by the Federal Bureau of Investigation and/ or the Cybercrimes Unit of the Metro Louisville Police Department.

53. Upon information and belief said aforementioned photographs and the devices which house(d) them may be returned or released to the Defendant.

54. Said photographs are evidence in the subject action and upon information and belief may not be reproducible and are subject to being destroyed.

55. Should said photos and the devices which house(d) them be destroyed and/or lost, Plaintiffs will suffer irreparable harm, injury, loss or damage.

56. Should said photos and the devices which house(d) them not be preserved, Plaintiffs will suffer irreparable harm, injury, loss or damage.

57. Plaintiffs submit that they have no adequate remedy at law should the photos and the devices which house(d) them not be preserved

58. As a proximate result, Plaintiffs are entitled to the preservation of said aforementioned photographs and the devices which house(d) them and access to same for inspection and use as evidence where applicable.

59. Plaintiffs submit that there is a likelihood of success on the merits of those claims contained in this Complaint.

60. Plaintiffs are entitled to a preliminary and permanent injunction pursuant to Rule 65 and 65.04 of the Kentucky Rules of Civil Procedure, which injunction would preserve the

aforesaid photographs and the devices which house(d) them for Plaintiffs' inspection and use as evidence where applicable.

WHEREFORE, the Plaintiffs, as set forth hereinabove, demand judgment against the Defendant Roman Catholic Bishop of Louisville for compensatory and punitive damages; for a preliminary and permanent injunction; for their costs herein expended, including attorneys' fees; and for any and all further relief to which the Plaintiffs may appear entitled; and a trial by jury of all issues triable as of right by jury.

/s/ William F. McMurry
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UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA)
v.)
STEPHEN POHL)

Case Number 3:15-MJ-368

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States Magistrate Judge without unnecessary delay (name of person to be arrested) Stephen Pohl who is accused of an offense or violation based on the following document filed with the court:

- Indictment
- Superseding Information
- Supervised Release Violation Petition
- Superseding Indictment
- Complaint
- Violation Notice
- Information
- Probation Violation Petition
- Order of the Court

this offense is briefly described as follows: In or about 2015, in the Western District of Kentucky, Jefferson County, Kentucky, Stephen Pohl violated 18 U.S.C. § 2252A(a)(5)(B) when he knowingly accessed with intent to view material that contained an image of child pornography that had been transported using any means or facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer. Namely, he used a Dell Optiplex Desktop (office) and Lenovo Laptop (rectory) to access the Internet and view images of child pornography.

Date: August 21, 2015

Dave Whalin
Issuing officer's signature

City and State: Louisville, Kentucky

DAVE WHALIN
Unite States Magistrate Judge
Printed name and title

Return	
This warrant was received on (date) _____, and the person was arrested on (date) _____ at (city and state) _____.	
Date: _____	_____
	Arresting officer's signature

	Printed name and title

FILED
VANESSA L. ARMSTRONG

UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF KENTUCKY

AUG 21 2015

U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

UNITED STATES OF AMERICA)
v.)
STEPHEN POHL)

Case Number 3:15-MJ-368

CRIMINAL COMPLAINT

I, Dan Jackman, a Detective with the Louisville Metro Police Departments's Crimes Against Children Unit, the complainant in this case, state the following is true to the best of my knowledge and belief.

In or about 2015, in the Western District of Kentucky, Jefferson County, Kentucky, Stephen Pohl violated 18 U.S.C. § 2252A(a)(5)(B) when he knowingly accessed with intent to view material that contained an image of child pornography that had been transported using any means or facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer. Namely, he used a Dell Optiplex Desktop (office) and Lenovo Laptop (rectory) to access the Internet and view images of child pornography.

This criminal complaint is based on these facts:

X Continued on the attached sheet



Complainant's signature

Dan Jackman

Detective, Louisville Metro Police Department CACU

Printed name and title

Sworn to before me and signed in my presence.

Date: August 21, 2015



Judge's Signature

DAVE WHALIN

United States Magistrate Judge

Printed Name and Title

City and State: Louisville, Kentucky

JEK:JEL

AFFIDAVIT

I, Dan Jackman, being duly sworn, state as follows:

1. I am a detective with the Louisville Metro Police Department's Crimes Against Children Unit and routinely investigate child exploitation cases where computers or other means of electronic communications are used. I have successfully completed over 40 individual child abuse training sessions, most of which focus on Internet investigations, since being assigned to the CACU. I hold a Bachelor of Arts degree in Justice Administration from Northern Kentucky University. I have been certified by the Department of Criminal Justice Training at Eastern Kentucky University to instruct in the areas of criminal investigations, crimes against children investigations, and Internet crimes against children. I have also been certified to teach identifying and seizing electronic evidence from the National White Collar Crime Center. As a police detective deputized by the United States Marshals Service, I am authorized to investigate violations of laws of the United States (including those related to child sexual exploitation, 18 U.S.C. §§ 2251 et seq.), and to execute warrants issued under the authority of the United States.
2. Affiant was recognized as an opinion witness in United States District Court for the Western District of Kentucky at Louisville during a trial held in August 2009. The case dealt with an individual making arrangements over the Internet to meet a 14-year-old female for sex as well as attempted production of child pornography.¹ Affiant has investigated more than 650 cases involving child pornography, sexual enticement of minors over the Internet, obscenity directed to minors, and other investigations involving the sexual exploitation of children. I have gained vast knowledge regarding how to conduct such investigations through training in seminars, conferences, classes, and personal experience working these types of investigations in an ongoing basis.
3. Affiant is familiar with the information contained in this Affidavit based upon the investigation I have conducted and based on my conversations with other law enforcement officers who have engaged in numerous investigations involving child pornography. Because this Affidavit is being submitted for the limited purpose of securing a Criminal Complaint and Arrest Warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only those facts that I believe are necessary to establish probable cause to believe that Stephen Pohl violated 18 U.S.C. § 2252A(a)(5)(B) when he knowingly accessed with intent to view material that contained an image of child pornography that had been transported using any means or facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer. Specifically, during 2015, while in Jefferson County, Kentucky, Pohl used two computers -- a Dell Optiplex Desktop (office) and Lenovo Laptop (rectory) to access the Internet and view images of child pornography.

¹All references to child pornography contained in this Affidavit are made in reliance on the definition set out in 18 U.S.C. § 2256(8)(A).

4. Affiant requested and obtained two federal Search Warrants for the personal office and living spaces of Stephen Pohl² located at 7813 Shelbyville Road, Louisville, Kentucky 40223 and 117 Arterburn Drive, Louisville, Kentucky 40222. Law enforcement officials executed the Search Warrants on August 12, 2015. Law enforcement officials seized a Dell Optiplex Desktop (office), a Lenovo Laptop (rectory) and removable digital storage materials.
5. Affiant received a report that a 10 year old boy, hereafter referred to as "V1", was inappropriately photographed by an individual at Saint Margaret Mary School. Det. Jackman spoke with the mother of V1 and arrangements were made to interview V1 at their residence to obtain more information about the incident. Affiant met V1 and his parents at their residence. Det. Jackman interviewed V1 while his parents were in a different room. V1 explained that he attends Saint Margaret Mary School where he participates in after school programs.
6. V1 explained that while he was attending an after school club, Stephen Pohl, A/K/A Father Steve, attended meeting. V1 stated that Father Steve wanted to take a picture of the group. The group of students was taken outside near a garden at the Rectory.³ V1 said that Father Steve took one big group picture with his cell phone. While being escorted back to the meeting space of club, Father Steve took V1 aside and asked for an individual picture. V1 agreed and was told to sit on some stairs leading to the school. The first two pictures taken were of V1 in a normal sitting position with his hands down to his side on the stairs. After taking those pictures, Father Steve told V1 to place his hands on his knees and move his legs apart. Father Steve then took two additional pictures of V1. V1 then returned to the rest of the group in their meeting space. V1 stated that he was not aware of any other child who was asked for individual pictures by Father Steve. V1 described his phone as an "Apple phone in a Lifeproof case" black in color. When asked how he felt as Father Steve was taking the last two pictures, V1 said, "this is weird." V1 added that he had been inside Father Steve's house in May 2015. He stated that Father Steve has a bedroom and an office upstairs. In the office Father Steve has a black and grey "newer" laptop computer on a desk.
7. After interviewing V1, Det. Jackman spoke with his parents. The mother, hereafter referred to as "VM1", explained how she picks up her children from after school activities and routinely asks how school and various clubs went for the day. VM1 stated that when she asked those questions, V1 immediately told her about Father Steve taking his pictures and how he felt weird about the experience. V1 informed her of the one group photo and four individual pictures that were taken.

² Pohl is the Pastor of Saint Margaret Mary Catholic Parish. The Search Warrants covered parish properties, but, as noted above, were limited to areas under Pohl's personal control. Similarly, subsequent searches of digital items seized during the course of the search were limited in scope to materials pertaining to child sexual exploitation and child pornography.

³ The Rectory is the residence for a parish priest or other clergy.

8. The following day, VM1 contacted Father Steve via email to request a copy of the pictures he had taken the previous day. Father Steve replied with a group picture of the Club and one picture of V1. The picture of V1 was the first image taken with him sitting in a normal position and his arms down to his side. VM1 sent another email to Father Steve requesting all the pictures he had taken of V1. No response was received.
9. Shortly thereafter, VM1 and her husband hereafter referred as "VF1" were shopping and discussing the images Father Steve had taken. While out shopping, VM1 sent a third email to Father Steve again requesting all the pictures that were taken of V1. VM1 did not receive a response to the third email. VM1 next called Father Steve and left a voice message requesting the photos and a face-to-face meeting with him to discuss the pictures. Father Steve called VM1 stating the he too was out shopping and that pictures had been deleted. Moments later while checking out of the store, VM1 and VF1 saw Father Steve walk into the store.
10. The parents noticed that Father Steve had his cell phone in his front shirt pocket and approached him. VF1 asked Father Steve if he had his cell phone with him. According to VF1, Father Steve was "shaking like a leaf" and nervous as he handed the cell phone to him. VF1 navigated the cell phone and located the pictures of V1. While looking for the pictures of V1, VF1 saw several photos of other young boys posed in the same manner as V1. VF1 stated that he recognized one of the boys as a student at Saint Margaret Mary School (hereafter be referred to as "V2").
11. VF1 told Father Steve how these types of pictures were highly inappropriate. VF1 advised that Father Steve stated that the boys chose to stand in those poses to show their muscles. VF1 then had Father Steve email him the images of V1. Later that day, Father Steve called VF1 and asked if he could meet with them to apologize to V1 and the family. VF1 told Father Steve that they did not wish to meet as it may make V1 feel uncomfortable.
12. VF1 was familiar with the parents of V2 and called them the following day. VF1 explained the incident with V1 and how he saw similar pictures of V2. VF1 provided Affiant with their contact information.
13. After the interview, Det. Jackman was provided with a copy of the emails exchanged and pictures taken of V1. Below is a description of the three recovered images of V1:⁴

⁴The images of V1 have been shown to the reviewing Magistrate Judge and will be maintained in a secure manner by Affiant. Based on Affiant's specialized training and experience, the photographs "posed" by Pohler constitute child erotica. ⁴"Child erotica," as used in this Affidavit, includes images, materials or items that are sexually arousing to certain individuals but which do not rise to the level of child pornography. For example, "child erotica" [includes] "items such as a person may collect ... such as childrens' [sic] underwear, just pictures

Picture 1

V1 can be seen sitting on a set of concrete steps leading up to a red brick building with a black door. He is wearing Saint Margaret Mary hooded sweatshirt, basketball shorts, and facing the camera. His hands are down to his side under his legs and his knees are near each other.

Picture 2

V1 can be seen sitting on a set of concrete steps leading up to a red brick building with a black door. He is wearing Saint Margaret Mary hooded sweatshirt, basketball shorts, and facing the camera. His hands are wrapped around his knees and his legs have been spread open. One can clearly see up the child's shorts and underwear.

Picture 3

The same pose as in Picture 2, but the camera has been focused on the child's genitals.

14. Affiant visited the residence of V2 and interviewed him regarding the pictures taken of him by Father Steve. V2 advised that Father Steve had taken pictures of him on two occasions. V2 explained the first time Father Steve took his picture he was with his older brother. The pictures were taken in the school gym and only Father Steve and the boys were present. Father Steve took pictures of them together, then individual pictures of V2.
15. The second time Father Steve took V2's picture was while he was in school in May 2015. V2's class was at recess when Father Steve approached him and asked for a picture. V2 agreed and was taken to the school gym where he was posed on the bleachers. Only V2 and Father Steve were in the gym when the pictures were taken. V2 was posed holding a volleyball on top of his knee, then with the volleyball between his knees. V2 stated Father Steve took approximately 15 pictures of him. After the pictures were taken, V2 walked back to recess.
16. During the course of executing the Search Warrants, Affiant and another law enforcement official conducted an interview with Pohl. Pohl admitted to taking the photographs that were the catalyst for seeking the Search Warrants. Pohl admitted to posing the child in specific ways and, when asked about it, he stated he had posed the child in that manner to "make him look more manly." Pohl advised Affiant that he had deleted the photographs of the child in question. However, during the preliminary examination of Pohl's computers, Affiant found more than 150 photographs Pohl had

of children, young children that are clothed ... that may have some sexual satisfaction to the individual that the collection belongs to." *United States v. Caldwell*, 1999 WL 238655 (6th Cir. (ED KY) April 13, 1999).

- taken of school children, including the photographs of the child (VM1) that Pohl claimed to have deleted. The vast majority of the photographs were of children alone. A few were group photos. None of the photographs of the Saint Margaret Mary school children constitute child pornography.
17. Pohl stated he had taken lots of photographs of children at the school that he submitted to the parish's Communication Director to be used on the school's FaceBook page. Affiant reviewed the school's FaceBook page. None of the photographs Pohl had taken of the school children are posted on the FaceBook page. Moreover, Affiant contacted the parish Communication Director and asked about submissions of photographs by Pohl. The Communication Director advised that Pohl had submitted one photograph of a school club in May 2015 for use on the FaceBook page. He had not, however, submitted any photographs of individual children.
 18. A preliminary forensic examination of the hard drives from the computers taken from both Pohl's office and residence revealed the presence of child pornography. The examination has not shown downloading of the images. Rather, the images appear in the computers' cache. Affiant knows from specialized training that downloadable images on the Internet are automatically stored to a computer's cache when a person visits a URL on the Internet. Within the context of computers, a cache is a component that stores data so future requests for that data can be served faster. Images recovered from the computer's cache do not reflect that the user downloaded or otherwise purposely stored the images. Rather, the presence of images in the cache is an indication of accessing and viewing materials.
 19. Before search warrant execution began, Affiant asked Pohl if law enforcement officials would find anything shocking or alarming on his computer. Initially, he stated no. Later, Pohl asked to speak with Affiant privately. Pohl advised that there were some items on his computer that probably should not be there. He said that he went to some websites that were inappropriate but would not elaborate on what topics or web sites he visited on the Internet.
 20. A sampling of the child pornography images⁵ recovered from the computers' cache described below:
 - a. Still image of little boy, approximately 6-8 years of age. He is totally nude. The child is sitting on a large pink ball with his legs spread apart. His penis and scrotum are clearly visible.

⁵The images described above as well as additional images of child erotica and child pornography have been shown to the reviewing Magistrate Judge and will be maintained in a secure manner by Affiant.

- b. Still image of three individuals – an adult female, female child (approximately 7-9 years of age) and male child (approximately 5-7 years of age). The children are totally nude. The three are in a bathroom. The male child and adult female are using paint to paint on the female child's body. The female child's arms are above her head, bent at the elbows. The genital areas of both children are clearly visible.
- c. Still image of a little boy (approximately 6-8 years of age). He is totally nude, sitting in a chair with his left leg bent and his foot resting against his right thigh. The child's penis and scrotum are clearly visible. He is holding something in his hands.
- d. Still image of young male (approximately 14-16 years of age). He is nude and bending over. The photograph is taken from behind. The boy is holding a volleyball just above his buttocks. The boy's anus, scrotum, and penis are clearly visible.
- e. Still image of two nude children in a bathtub. The older child (male – approximately 6-8 years of age) is lying on his back with his legs spread apart. His penis and scrotum are clearly visible. The younger child (late infant – early toddler and sex undetermined) is sitting between the older child's legs holding a ball in the air.
- f. Still image of male child (approximately 10-12 years of age). He is sitting with his knees drawn to chest and legs apart. The child is wearing some type of mesh undergarment and no other clothes. His scrotum is clearly visible as is the outline of his penis.
- g. A still image of four individuals (two adults and two children). All are nude, with full frontal nudity of the adult male, female child, and male child. The adult female's genital area is blocked by a piece of furniture. The adult male has red hearts painted on this body, including an outline around his pubic area. The female child is painted with yellow/black horizontal stripes on her body and a black ring around her left eye. The male child is holding a book/pamphlet – but otherwise nude. The children are approximately 7-9 (female) and 5-7 (male) years of age.

CONCLUSION

Based upon all of the information set forth herein, your Affiant respectfully submits that there is probable cause to believe that in or about 2015, while in Jefferson County, Kentucky, in the Western District of Kentucky, Stephen Pohl violated 18 U.S.C. § 2252A(a)(5)(B) when he knowingly accessed with intent to view material that contained an image of child pornography

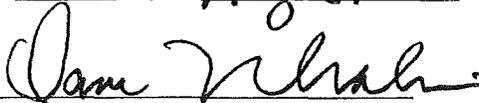
that had been transported using any means or facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer. Namely, he used a Dell Optiplex Desktop (office) and Lenovo Laptop (rectory) to access the Internet and view images of child pornography.

FURTHER AFFIANT SAYETH NOT.



Dan Jackman
Detective, Louisville Metro Police Department

Subscribed and sworn to before me this 21st day of August, 2015



DAVE WHALIN
United States Magistrate Judge