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United States District Court

NOV 19 2003

NORTHERN

DISTRICT OF

CALIFORNIA

ROSE W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES OF AMERICA

v.

CHARLES T. BOOHER

CRIMINAL COMPLAINT

966 Pocatello
Sunnyvale, CA 94087

CASE NUMBER
5 03 292

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about May to July, 2003 in Santa Clara county, in the Northern District of District defendant(s) did, (Track Statutory Language of Offense)

Transmit in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another

in violation of Title 18 United States Code, Section(s) 875(c)

I further state that I am a(n) Special Agent and that this complaint is based on the following facts:
Official Title

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof: Yes No

Approved As To Form:

[Signature]

AUSA: H. H. (Shashi) Kewalramani

[Signature]
Name/Signature of Complainant: John A. Carney

Sworn to before me and subscribed in my presence,

November 19, 2003

at

San Jose, California

Date

City and State

Richard Seeborg
United States Magistrate Judge

[Signature]
Signature of Judicial Officer

Name & Title of Judicial Officer

STATE AND NORTHERN DISTRICT OF CALIFORNIA)
)
CITY OF SAN JOSE, COUNTY OF SANTA CLARA)

ss. Affidavit in Support
of Arrest Warrant and
Criminal Complaint

I, John A. Carney, Special Agent of the Federal Bureau of Investigation (FBI), being duly sworn, depose, and state:

1. I am a Special Agent of the Federal Bureau of Investigation, currently assigned to the San Jose Resident Agency, San Francisco Division. I have been employed by the FBI since March of 1999. As a Special Agent of the FBI, I am authorized to investigate violations of laws of the United States, and I am a law enforcement officer with authority to execute arrest and search warrants under the authority of the United States. I have participated in a wide variety of criminal investigations, to include, Internet fraud, wire fraud, mail fraud, and computer fraud. The information contained in this affidavit is being submitted in support of a criminal complaint charging Charles Booher (Booher) with violations of Title 18, United States Code §875(c) (Interstate and Foreign Communications Containing A Threat to Injure the Person of Another). To date in this investigation, I have interviewed the victim, Douglas Mackay, the subject of this investigation, Charles Booher, and I have received records from Earthlink, the Internet Service Provider (ISP) organization, in regard to this matter. I have only included facts necessary to establish probable cause to believe that Booher has committed violations of 18 U.S.C. §875(c). I have not included each and every fact I have learned in the course of this investigation.

2. On 07/21/2003, I telephonically interviewed Douglas Mackay (Mackay), the President of DM Contact Management, Inc. (Contact Management), 611 Discovery Street, Victoria, British Columbia, Canada, V8T5G4, at his place of business.

3. Mackay advised he is the President of Contact Management, an Internet advertising company that assists customers in providing advertising to email subscribers. Mackay advised that in May 2003, an individual identifying himself as Charles Booher, through telephonic and email means, contacted Contact Management to discuss his dissatisfaction with receiving the email advertisements Booher believed was being sent to his

email account from Contact Management. Booher accused Contact Management of sending Booher email advertisements from Albion Medical (Albion), also known as Leading Edge Marketing, Inc., PO Box CR-56766, Suite number 1210 Nassau, New Providence, Bahamas. Mackay explained to me that Albion sells products to include "VigRX" a alleged penile enlargement medication. Mackay advised that Booher was angry because he believed that Contact Management was sending email advertisements on behalf of Albion to Booher's email account. Mackay explained to Booher that Contact Management did not send him any email messages on behalf of Albion. Booher told Mackay, in graphic detail, that he would kill Mackay for sending messages to his email account.

4. More specifically, Mackay told me that from May 2003 to July 16, 2003, Booher made numerous telephone calls and sent numerous email messages threatening Mackay's life and safety. Mackay further advised, that beginning in May 2003, other employees of Contact Management also began receiving email messages from Booher using the email addresses ctb1@ix.netcom.com, Fuckyou@Fuckyou.com, Satan@hell.org and SatanLordOfHell666@yahoo.com. The last telephonic conversation between Mackay and Booher transpired on July 16, 2003, where Booher threatened Mackay's life.

5. Mackay advised that in June 2003, he reported the threats to the Sunnyvale Department of Public Safety, in Sunnyvale, California. Mackay stated that he believed that the Sunnyvale Police Department contacted Booher requesting Booher cease and desist all threatening activity directed toward him. I contacted the Sunnyvale Police Department, and they confirmed to me that an officer telephonically contacted Booher, after failing to reach him at his residence, in June 2003 and advised Booher to cease and desist from contacting Mackay. Mackay advised me that Booher ceased contacting him for several days following the visit from the Sunnyvale Police Department, but ultimately resumed his contact. Telephonic and email contact from Booher to Mackay and to other employees at Contact Management each contained threats to kill or severely injure Mackay and/or Contact Management employees.

6. Mackay advised that, on or about July 16, 2003, Mackay contacted the Victoria Police Department, in Victoria, British Columbia, Canada, to advise that Booher was continuing his threats. Mackay explained to me that he contacted the Victoria Police Department because he was concerned for his life and safety.

7. Mackay advised that he hired an attorney in the United States to attempt to convince Booher to stop the threats. Mackay hired Peter L. Isola, Attorney at Law, representing the law firm

of Davis, Wright, Tremaine, LLP, to serve a State of California court order instructing Booher to cease and desist from contacting Mackay. Mackay provided, and I have reviewed a Temporary Restraining Order issued by the Superior Court of California, County of Santa Clara, dated July 11, 2003, case number CV000729.

8. On 07/23/2003, I and another FBI agent interviewed Booher at his residence at 966 Pocatello, Sunnyvale, CA 94087. Booher admitted that on numerous occasions, he had threatened the life and safety of Mackay. Booher stated that the reason he threatened Mackay was that Booher is a testicular cancer survivor and he felt the email messages in regard to penile enlargement were frustrating. During the course of the interview, I asked Booher to review seven (7) of the numerous email messages he sent.

9. I requested Booher review an email message sent to Mackay on June 14, 2003 at 4:02 p.m, which stated as follows:

"Doug Mackay Albion Medical I am going to locate you, disable you using either a quick 22 calibre shot to your lower spine and then duck tape and plastic shrink raps. Then I am going to kidnap you and take you to my secret hiding place. There I will castrate you and remove your penis using crude gardening tools, I will use a lightweight torch to cauterize your wounds and you will be awake and conscious during the entire procedure. Then I am going to prepare your genitals into some kind of meat loaf dish and use a nasro-gastric tube to force the fetid stew I have made from your genitals down your throat. Then I am going to cut into the left side of your brain using a power drill and an ice pick and I am going to study enough neuro-surgery that I have a good chance of making you aphasic so that you feel every bit of pain and terror I am going to inflict upon you. Then I am going to use a blow torch to burn your skin off a little at a time until I am certain that you are close enough to death that and that the Burn unit and the Neuro-surgery unit has a medium chance to save your life. You will spend many long years in a painful rehab and I will spend my life in a nice mental hospital taking really cool drugs that will be paid for with your tax dollars. Doug, I am certain that you can make all my penis enlargement scam go away, but if you cannot for some reason accomplish this noble goal then I recommend that you and everybody at your company quit and the founders move because I am coming after you mother fucker."

After reading the email message, Booher admitted that he sent the email message from or near Sunnyvale, California to Mackay, in Victoria, Canada.

10. I requested Booher review an email message sent to Mackay, on May 31, 2003 at 8:53 a.m., which stated as follows:

"I am sending a package full of Anthrax Spores to your address mother fuckers. Stop Spamming me mother fucker or I will locate the family of all of the quacks at Albion \"Medical\" and put a bullet in your head mother fuckers."

After reading the email message, Booher admitted that he sent the email message from or near Sunnyvale, California to Mackay in Victoria, Canada.

11. I requested Booher review an email message sent to Mackay, on July 6, 2003 at 10:18 p.m., which stated as follows:

"Here is the way it is going to work Doug Mackay. I am going to slam a 10cm ice pick into your left ear. It is going to go past your ear drum and when it does so you are for a brief moment going to be in more pain than you can imagine. As the ice pick pushes through into your brain Doug Mackay it will cause damage that might kill you, or will more likely maim you causing brain damage such as loss of control over the right side of your body, seizures, and with luck a neuro-surgeon from the fine Canadian Health care service will be able to get the bleeding stopped. If I roll around the ice pick enough I think I can either kill you or take out your language area such that you are rendered aphasic. It should be an interesting trial you fucking pig piece of shit Doug Mackay. Be afraid Doug Mackay, be very afraid."

After reading the email message, Booher admitted that he sent the email message from or near Sunnyvale, California to Mackay, in Victoria, Canada.

12. I requested Booher review an email message sent to Mackay, on June 30, 2003 at 12:21 p.m., which stated as follows:

"Doug Mackay you mother fucking piece of shit. I am back on your fucking companies mailing list and I need to be removed again? Is anybody at your company having strange health problems?"

After reading the email message, Booher admitted that he

sent the email message from or near Sunnyvale, California to Mackay, in Victoria, Canada.

13. I requested Booher review an email message sent to Mackay, on June 13, 2003 at 3:51 p.m., which stated as follows:

"I am happy that you are investigating me, and I hope you lean as much about me as you possibly can. Please let me know if there is any assistance I can give you in learning more about me. I am a very public person. Go check out the movie Hannibal II if you want to find a fictional hero that I most admire. Lifetime incarceration in Atascadero State Hospital for the criminally insane is looking pretty good to me given the State of the California economy, but given my total desperation, and an industry that is as annoying as the penis enlargement pill industry, it would be a very good thing for your own health and safety if you didn't bother me too much. The cells at Atascadero are just one option and given my circumstances that is not my first choice, but getting free food, medical care, and psychiatric care and the like from the State of California for acting out my most vicious perverted violent sexual fantasy on an enemy that will not stop bothering me is something I have been thinking about more than you would really like to know. I know that the cells at Atascadero are nowhere near as gloomy, and given an adequate amount of real drugs I could live out my life happily in that place and have no regret at all about my actions. I know that I would find the people who work at Atascadero very nice, and I know that I would be happy living with all the other inmates at Atascadero for the rest of my life. I don't care what the Penis pill enlargement industry does. I just don't want to see 30 spam messages a day from you guys inside the email address ctb1@ix.Netcom.com. I am willing to accept pop up spam from you guys when I am checking sites related to male medical issues, or porno sites, but when I am looking at the NCBI web site or any other site that deals with something else other than these two issues I wish to be left alone by the penis pill vendor industry. All I am asking for is peace and quiet. I just want to be left alone."

After reading the email message, Booher admitted that he sent the email message from or near Sunnyvale, California to Mackay, in Victoria, Canada.

14. I requested Booher review an email message sent to Mackay, on May 3, 2003 at 10:42 a.m., which stated as follows:

"I know where your fucking office is. I am going to go to your office with a hand gun and a knife and kill everybody who works at your office. I will severely wound a couple of people who work at your office and use my knife to cut of their dicks and shove them down your fucking throats while you are still alive. FUCK YOU MOTHERFUCKERS AND GO AWAY!"

After reading the email message, Booher admitted that he sent the email message from or near Sunnyvale, California to Mackay, in Victoria, Canada.

15. I requested Booher review an email message sent to Mackay, on July 9, 2003 at 1:05 p.m., which stated as follows:

"I have returned a sample of your product with the shrink wrap on it. It has been contaminated with Cadmium from a set of old Cadmium batteries. When you resell this product the idiot who swallows it will die of cadmium poisoning. Tell Doug Mackay that I am going to cut his fucking balls off."

After reading the email message, Booher admitted that he sent the email message from or near Sunnyvale, California to Mackay, in Victoria, Canada.

16. In addition to the email messages reviewed by Booher, I played audio recordings of four (4) voicemail messages sent by Booher to Mackay.

17. The first message stated:

"You motherfucking pieces of shit, you scum sucking pieces of motherfucking turd shit. I'm going to be in there Monday morning with a shotgun and thirty rounds of ammunition and a hunting rifle and a handgun. I'm going to kill everyone one of you motherfuckers and cut your dicks off. You hear me motherfuckers? You get your fucking popups off of my screen."

After listening to the voicemail message, Booher admitted that he sent the voicemail message from or near Sunnyvale, California to Mackay, in Victoria, Canada, between May 2003 and July 2003.

18. The second message stated:

"I hope the motherfuckers who work at your company

and got good medical insurance. I hope they are really paid up on their premiums. I hope your life insurance premiums are set up well too, because I've got a little surprise coming for you motherfuckers next week. Oooh it should be fun, you guys are really going to enjoy this one. I am really going to hurt some of you motherfuckers, I am really going to hurt you motherfuckers. Okay motherfucker, just go out of business, just go the fuck out of business. You hear me motherfucker, go out of fucking business. Okay, you piece of shit motherfucker, just go out of business motherfucker."

After listening to the voicemail message, Booher admitted that he sent the voicemail message from or near Sunnyvale, California to Mackay, in Victoria, Canada, between May 2003 and July 2003.

19. The third message stated:

"This is Charles Booher again. You motherfuckers need to get me off your email list. I have a nice collection of weapons. I'm going to come to sunny Canada and I'm going to hunt you motherfuckers down and I'm going to hurt you bad. If you want to avoid this get me off your fucking email list motherfucker. You understand?"

After listening to the voicemail message, Booher admitted that he sent the voicemail message from or near Sunnyvale, California to Mackay, in Victoria, Canada, between May 2003 and July 2003.

20. The fourth message stated:

"Do any of you motherfuckers at your Company have weird medical problems? You are going to real soon. Be on the lookout. I left a few gifts for you; maybe check it out with a radioactive detectors or have the biohazard people look around but you motherfuckers need to stop spamming me. Okay motherfuckers, you need to stop spamming me."

After listening to the voicemail message, Booher admitted that he sent the voicemail message from or near Sunnyvale, California to Mackay, in Victoria, Canada, between May 2003 and July 2003.

21. On 11/17/2003, I received the results of a Federal Grand Jury (FGJ) Subpoena served on Earthlink for records in

regard to email account ctb1@ix.netcom.com. Earthlink confirmed that the account is listed as being assigned to Charles Booher. This account was used by Booher to send email messages to Mackay.

22. I believe Booher is in violation of Title 18, United States Code §875(c) (Interstate Communications). The Statute reads as follows:

"Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both."


23. Based upon the above information, I believe there is probable cause to believe that Charles Booher has violated eleven (11) counts of Title 18, United States Code §875(c) (Interstate Communications), by transmitting, in foreign commerce, multiple threats to Douglas Mackay.



John A. Carney Special Agent
Federal Bureau of Investigation

SWORN AND SUBSCRIBED TO BEFORE ME

THIS 19th DAY OF November, 2003



Richard M. Seeborg
United States Magistrate Judge