

COPY

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

NOV 16 1999

ROBERT H. SHEMPELL, CLERK
BY *[Signature]*

UNITED STATES OF AMERICA
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA : CRIMINAL NO. CR96-20027-01
: :
: :
V. : :
: :
ARNOLD KATZ : JUDGE DOHERTY
: MAGISTRATE JUDGE TYNES

MOTION TO DISMISS

Now into Court comes the United States, through the undersigned Assistant United States Attorney for the Western District of Louisiana, who states in support of the above entitled motion the following:

The defendant, ARNOLD KATZ was indicted on April 10, 1996. The Indictment charged that he distributed child pornography in interstate commerce. On November 14, 1996, the Indictment against the defendant was superseded, adding an additional count of receiving child pornography in interstate commerce. Both counts of the superseding Indictment require that the United States prove that the individual depicted is in fact under the age of eighteen (18).

The United States intended to prove this element using an expert in the area of the Tanner Scale of Human Development which was developed by Dr. James Tanner. Using Dr. Tanner's research, pediatricians have testified as experts establishing the age ranges of minors based upon physical development.

The Court held a Daubert Hearing to determine if the use of Tanner Staging (the use of the Tanner Scale of Human Development to determine the approximate age of a minor)

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was scientifically based as a method of determining if a model in a video tape was under the age of eighteen. The Court found that Tanner Staging was scientifically based and allowed for the admission of the expert testimony to establish the age of the individual in a video tape using the Tanner Scale of Human Development.

Since the time of that ruling Dr. James Tanner has published a report criticizing the use of Tanner Staging to determine if a model in a pornographic video tape is under the age of eighteen. Based upon his expertise, he determined it would be impossible to use the Tanner Staging method to gauge, with any degree of certainty, whether a model in a video tape was under the age of eighteen. Dr. Tanner's recently published criticism calls into question the prior Daubert ruling and the credibility and admissibility of expert testimony to establish that a model in a pornographic video tape is under the age of eighteen, based upon the Tanner Scale of Human Development.

In this particular case, based upon the recent published report by Dr. Tanner, the government cannot prove beyond a reasonable doubt the age of the female, an essential element of the crime charged. As a result, the interest of justice demand that the United States dismiss the Indictment against the defendant.

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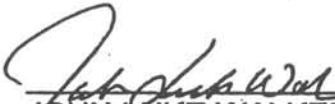
Law Offices Of
Lorenzi, Sanchez & Rosteet

WHEREFORE, the United States prays that this Honorable Court dismiss the above entitled Indictment with prejudice.

Respectfully submitted,

MICHAEL D. SKINNER
United States Attorney

By:


JOHN LUKE WALKER (18077)
Assistant United States Attorney
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Lafayette LA 70501-6832
(337)262-6618

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing motion has been mailed, first-class, postage prepaid, to defense counsel of record, on this 16th day of November 1999.


JOHN LUKE WALKER
Assistant United States Attorney

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UNITED STATES OF AMERICA
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	:	
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V.	:	
	:	JUDGE DOHERTY
ARNOLD KATZ	:	MAGISTRATE JUDGE TYNES

ORDER

BASED UPON THE FOREGOING MOTION

~~IT IS HEREBY ORDERED~~ that the above entitled Indictment be dismissed with prejudice.

Thus done and signed, Lafayette, Louisiana, on this _____ day of November, 1999.

REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE