

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

SUPERIOR COURT DEPARTMENT
NO. 03-0546

COMMONWEALTH

v.

KELLY HOOSE

Petition for Certificate to Issue a Subpoena Duces Tecum
Pursuant to M.G.L. c. 233 § 13B

Petitioner alleges as follows:

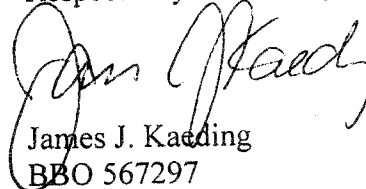
1. Petitioner is the attorney of record for the Defendant in the above entitled action now pending in the Superior Court, Worcester County, Commonwealth of Massachusetts.
2. On April 17, 2003, four indictments were filed by the Grand Jury of Worcester County, Commonwealth of Massachusetts, in which Defendant was charged with possession of child pornography, to which charge the Defendant has pleaded not guilty. Copies of the indictments are attached hereto, marked Exhibit A, and incorporated by reference.
3. Such action has been scheduled for pre-trial conference on _____ in the above court.
4. Thirty-four of thirty-seven images that the Defendant allegedly possessed carry a copyright indicating that they are the property of ALS Scan, Inc.
5. ALS Scan, Inc. operates an internet site containing depictions of models engaging in sexually explicit conduct.
6. A list of the model names, referring to the individuals depicted in the ALS Scan images allegedly possessed by the Defendant is attached as Exhibit B.
7. ALS Scan, Inc. is required by federal law (18 U.S.C. 2257) to maintain records verifying the identity and age of each model used in its images.

8. S. Kiwak is the Custodian of Records of ALS Scan, Inc. ALS Scan, Inc., and is located in Columbia, Maryland.
9. Maryland has adopted the Uniform Law to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.
10. Evidence that the individuals depicted in the images allegedly possessed by the Defendant were at least 18 years old would be exculpatory for the Defendant.
11. On various occasions, the petitioner has communicated with Counsel for ALS Scan, Robert L. Lombardo, Esquire, in an effort to secure the records verifying the age and identities of the models depicted. However, Attorney Lombardo has stated that his client will only provide the requested documents in response to an order of this Court.

Wherefore, the petitioner respectfully requests this court that process be issued pursuant to the provisions of M.G.L. c. 233§ 13B to compel the production of the documents identified in Exhibit B, by issuing a subpoena duces tecum to:

Custodian of Records
S. Kiwak
ALS Scan, Inc.
7340 Grace Drive
Columbia, Maryland 21044

Respectfully submitted,



James J. Kading
BBO 567297
17 Hamilton Street
PO Box 519
Southbridge, MA 01550
(508) 764-3303

03-0546 (1)
Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF

WORCESTER, within and for the County of Worcester, on the First Monday of April in the year of our Lord two thousand and three.

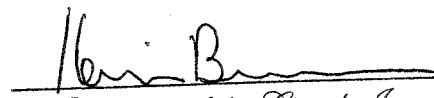
THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

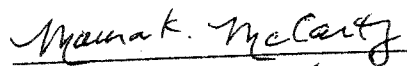
That **Kelly Hoose**

on or about January 1, 2000 to on or about January 17, 2003 at Sturbridge, in the County of Worcester aforesaid, did knowingly possess a negative, slide, book, magazine, film, videotape, photograph or other similar visual reproduction, or depiction by computer, of a child whom the defendant knew or reasonably should have known to be under the age of eighteen years of age and such child is depicted or portrayed in a pose, posture, or setting involving a lewd exhibition of the unclothed genitals, pubic area, or buttocks or, if such person is female, a fully or partially developed breast of the child; with knowledge of the nature or content thereof in violation of G.L. 272, s. 29C.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.


Foreperson of the Grand Jury.


Assistant District Attorney.

Superior Court

April, Sitting, 2003

17 day - Returned by the Grand Jury and filed in Court.


Assistant Clerk

03-0546 (2)

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF

WORCESTER, within and for the County of Worcester, on the First Monday of April in the year of our Lord two thousand and three.

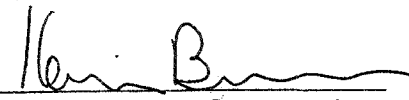
THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

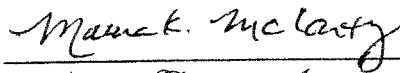
That **Kelly Hoose**

on or about ~~January 1, 2000~~ to on or about **January 17, 2003** at **Sturbridge**, in the County of Worcester aforesaid, **did knowingly possess a negative, slide, book, magazine, film, videotape, photograph or other similar visual reproduction, or depiction by computer, of a child whom the defendant knew or reasonably should have known to be under the age of eighteen years of age and such child is depicted or portrayed in a pose, posture, or setting involving a lewd exhibition of the unclothed genitals, pubic area, or buttocks or, if such person is female, a fully or partially developed breast of the child; with knowledge of the nature or content thereof in violation of G.L. 272, s. 29C.**

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

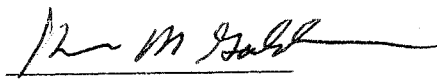

Foreperson of the Grand Jury.


Assistant District Attorney.

Superior Court

April, Sitting, 2003

17 day - Returned by Grand Jury and filed in Court.


Assistant Clerk

03-0546(3)

Possession of visual material of child depicted in sexual conduct
C. 272, §29C

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF

WORCESTER, within and for the County of Worcester, on the First Monday of April in the year of our Lord two thousand and three.


THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

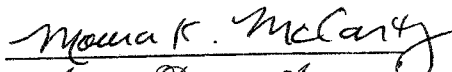
That **Kelly Hoose**

on or about January 1, 2000 to on or about January 17, 2003 at Sturbridge, in the County of Worcester aforesaid, did knowingly possess a negative, slide, book, magazine, film, videotape, photograph or other similar visual reproduction, or depiction by computer, of a child whom the defendant knew or reasonably should have known to be under the age of eighteen years of age and such child is depicted or portrayed in a pose, posture, or setting involving a lewd exhibition of the unclothed genitals, pubic area, or buttocks or, if such person is female, a fully or partially developed breast of the child; with knowledge of the nature or content thereof in violation of G.L. 272, s. 29C.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.


Foreperson of the Grand Jury.


Assistant District Attorney.

Superior Court

April, Sitting, 2003

17 th day — Returned by the Grand Jury and filed in Court.

Assistant Clerk

03-0546 (4)

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of April in the year of our Lord two
thousand and three.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

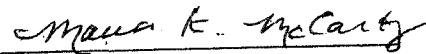
That **Kelly Hoose**

on or about January 1, 2000 to on or about January 17, 2003 at Sturbridge, in the County of Worcester aforesaid, did
knowingly possess a negative, slide, book, magazine, film, videotape, photograph or other similar visual
reproduction, or depiction by computer, of a child whom the defendant knew or reasonably should have known to
be under the age of eighteen years of age and such child is depicted or portrayed in a pose, posture, or setting
involving a lewd exhibition of the unclothed genitals, pubic area, or buttocks or, if such person is female, a fully or
partially developed breast of the child; with knowledge of the nature or content thereof in violation of G.L. 272, s.
29C.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.


Foreperson of the Grand Jury.


Assistant District Attorney.

Superior Court

April, Sitting, 2003

17th day - Returned by the Grand Jury and filed in Court.


Assistant Clerk

EXHIBIT B

The Defendant is seeking identifying records for each individual appearing in images on the internet web site operated by ALS Scan, Inc. under the following names between January 1, 1999 and January 17, 2003, including the individual's legal name, date of birth and any other document ALS Scan, Inc. is required to maintain under federal law:

"Ashley"

"Trisha"

"Jo"

"Zoe"

"Courtney"

"Trista"

"Lainey"

"Ginger"

Documents should be certified by the Custodian of Records that the records are true and complete, and were created or obtained and maintained in the regular course of business, before or shortly after the time the images were created.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

WORCESTER SUPERIOR COURT
NO. 03-0546

COMMONWEALTH

V

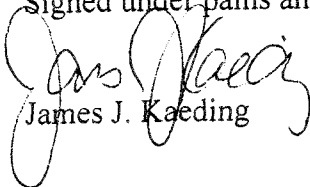
KELLY HOOSE

AFFIDAVIT OF COUNSEL

I, James J. Kaeding, hereby state the following:

1. I represent the Defendant, Kelly Hoose, in the above-captioned matter.
2. The defendant is charged with four counts of possession of child pornography, in violation of G.L. c. 272, section 29C.
3. According to discovery provided thus far, the Commonwealth alleges that the Defendant possessed, on his computer hard drive, thirty-seven (37) visual images of individuals under the age of 18. Thirty-four (34) of these images have a copyright indicating they are the property of ALS Scan, Inc., a company with the internet address of www.alsscan.com.
4. I provided the Assistant District Attorney with the name and address of the Custodian of Records of ALS Scan, Inc., as well as this company's statement that the Custodian of Records maintains records verifying, pursuant to the Federal Labeling and Record Keeping Law, 18 U.S.C. 2257, that all models used in ALS Scan's images are at least 18 years old.
5. The Commonwealth has not sought these records.
6. I have been informed by Counsel for ALS Scan, Inc., Robert L. Lombardo, Esquire, that his client will provide documentation of the models' ages to the Court, on the condition that such records are kept sealed to protect the privacy of the individuals involved.

Signed under pains and penalties of perjury on this 24TH day of January, 2005,


James J. Kaeding