

ISSUES

- (1) Did a search warrant authorize a search of a computer for AOL Instant Messages?
- (2) Did the affidavit establish probable cause to such a search?

FACTS

Police in San Bernardino County were investigating a report that Ulloa had committed sodomy and oral copulation on a 15-year old boy. The victim told officers he met Ulloa on the internet where they communicated via AOL Instant Messaging.¹ In the course of their investigation, officers obtained a warrant to search Ulloa's home for, among other things, (1) correspondence "which appears to relate to the exploitation of children," and (2) "computers containing any of [such items]."

While conducting the search, the officers seized Ulloa's entire computer system and searched it elsewhere, presumably at the police station. While doing so, they found copies of incriminating AOL Instant Messages between Ulloa and the victim. The officers seized the messages which were used against Ulloa at his trial. He was convicted.

DISCUSSION

Ulloa argued that the AOL Instant Messages should have been suppressed because, (1) the warrant did not specifically authorize a search for them, and (2) the affidavit did not establish probable cause to believe he had a home computer in which he was storing the messages.

Did the warrant authorize a search for Instant Messages?

Although the warrant did not use expressly authorize a search for "Instant Messages," the court ruled that certain language in the warrant—namely, correspondence relating to the exploitation of children—impliedly authorized a search for them. As the court explained, this language was sufficient because (1) instant messages are "correspondence," (2) it was reasonable to believe that any correspondence between Ulloa and the victim related to Ulloa's sexual exploitation of the victim, and (3) instant messages are ordinarily stored in computers.

Probable cause to search the computer

Ulloa contended that even if the warrant authorized a search of his computer for instant messages, the warrant was invalid because the supporting affidavit failed to demonstrate probable cause to believe that Ulloa was storing his correspondence with the victim in the computer. In fact, said Ulloa, the warrant did not even establish probable cause to believe he had a computer in his home.

PROBABLE CAUSE TO SEARCH FOR MESSAGES: Although the affidavit contained no direct evidence on point, the court ruled there was sufficient circumstantial evidence that Ulloa was storing his instant messages on his computer. Said the court, "[T]he officers were informed that defendant and the minor communicated by using AOL's instant messaging service. Accordingly, there was a fair probability that evidence of a crime would be found in defendant's computer."

¹ **NOTE:** "Instant messaging permits users to exchange private e-mails in quick succession. As Agent Howell testified, using instant messages is "like a private chat room.... It's a message that one person sends directly to another AOL screen name, and no one else can see it." These messages, he stated, can be sent back and forth so as to replicate a conversation." *U.S. v. Root* (11th Cir. 2002) 296 F.3d 1222, 1224, fn.3.

PROBABLE CAUSE THAT ULLOA HAD A COMPUTER IN HIS HOME: Although the affidavit did not contain direct evidence that Ulloa had a computer inside his home, the court ruled there was sufficient circumstantial evidence on this point. “[H]ome computers are now common,” said the court, “and the officers had specific information that defendant had been communicating with the minor by computer.”

Note re seizure of entire computer system

Although Ulloa did not raise the issue, the court pointed out that it was proper for the officers to have seized Ulloa’s entire computer system, such as the keyboard, mouse, and other peripherals. Said the court, “Federal courts have rejected [the argument that the seizure of the entire computer system is overbroad] because the only physical way to search a computer system for evidence is to seize the whole system.”²

² Citing *U.S. v. Hay* (9th Cir. 2000) 231 F.3d 630, 637; *Guest v. Leis* (6th Cir. 2001) 255 F.3d 325, 334-7 [“(A) seizure of the whole computer system was not unreasonable, so long as there was probable cause to conclude that evidence of a crime would be found on the computer.”].