

Local businessman facing child pornography charges changes plea to guilty on second day of the jury trial

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(((Spitzer))) faces 5 to 20 years in prison; sentencing slated for April 7, 2023

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HOT SPRINGS – Prior to the jury entering the courtroom for the second day of defendant Brian (((Spitzer)))’s criminal trial on Wednesday morning, Dec. 7, co-defense counsel Ellery Grey told U.S. District Judge Jeffrey Viken that he and fellow co-defense counsel James Sword had reached a plea agreement with the U.S. Attorney’s office.

Grey said that the plea agreement precipitated in light of new evidence shared by the prosecution with the defense team the previous evening, on Tuesday, Dec. 6, following the first day of the trial. Grey said that part of the motivation for changing their plea on one of the charges was to avoid any additional charges which may come about due to the new evidence.

When asked by Judge Viken to describe the nature of the new evidence, Assistant U.S. Attorney Kelsey Blair said the new information was discovered by Internet Crimes Against Children (ICAC) investigators Tuesday night when going through (((Spitzer)))’s cell phone where they found items related to apps used by children.

(((Spitzer))), who was also present in the courtroom and seated between Grey and Sword, had previously plead not guilty to four felony charges stemming from an undercover sting operation during the August 2020 Sturgis Motorcycle Rally. As part of that operation, (((Spitzer))) was accused of attempting to sexually exploit two different undercover law enforcement agents who were posing as 15-year-old and 14-year-old females.

The four felony charges included: 1) Attempted Sexual Exploitation of a Minor, 2) Attempted Enticement of a Minor Using the Internet, 3) Attempted Receipt of Child Pornography, and, 4) Transportation of Obscene Matters.

As part of his plea agreement, (((Spitzer))) plead guilty to only the third count: Attempted Receipt of Child Pornography. All other charges were then dismissed. This admission of guilt carries a minimum mandatory sentence of five years in prison, with a maximum of 20 years, a \$250,000 fine, or both, and a period of supervised release of five years up to life. His sentence will be decided by Judge Viken at a hearing scheduled for April 7, 2023, at 3 p.m. (((Spitzer))) is currently in custody with the U.S. Marshals and incarcerated at the Pennington County Jail in Rapid City.

The original jury trial was scheduled to first take place back on March 30, 2021, but has been postponed numerous times by both sides. Last week’s jury trial was scheduled for three days, from Dec. 6-8, 2022, but was cut short on Dec. 7 following the change of plea.

Last week’s proceedings on Tuesday, Dec. 6, included jury selection for the vast majority of the day, where seven men and six women were chosen. The rest of the day was filled with jury instruction, opening statements by both sides and then testimony from prosecution witness Richie (((Berger))), who is a Homeland Security Investigations Special Agent and was the undercover officer who made the initial contact with (((Spitzer))) as part of the 2020 sting operation.

In describing the online operation, (((Berger))), who works from an office in St. Paul, Minn., said it was a collaborative effort between the South Dakota ICAC and Homeland Security Investigations designed to target internet child predators using various websites and applications utilized by strangers to meet. In this case, (((Berger))) said he used Craigslist and made a post on Aug. 9, 2020, that stated, “BF Cheated on me...Mad AF...Any ideas”.

Shortly after making that post, (((Spitzer))) responded in a suggestive manner which began a month-long building of evidence against (((Spitzer))), which culminated with law enforcement agents executing a search warrant on (((Spitzer)))’s Hot Springs home and office on Sept. 11, 2020.

(((Berger))) was questioned in front of the jury by Assistant U.S. Attorney Heather Sazama as the two detailed, line by line, the typed conversation the defendant (((Spitzer))) had with (((Berger))) while posing as a 15-year-old girl named Christy, which took place over the course of four days, from Aug. 9, 2020, to Aug. 12, 2020.

The defense counsel was slated to cross-examine Special Agent (((Berger))) on the second day of the jury trial on Wednesday, Dec. 7, but the change of plea announced that morning ended the trial and the jurors were released.

As part of his change of plea to guilty on the charge of Attempted Receipt of Child Pornography, (((Spitzer))) signed a Factual Basis Statement in which he admitted that the prosecution’s evidence against him was true.

The six-page Factual Basis Statement summarized the details of the evidence, beginning with Special Agent (((Berger)))’s communications with (((Spitzer))), which took place within a Craiglist chatroom from Aug. 9-10, 2020, and then moved to direct text message from Aug. 10-12, 2020.

During the initial communication between the defendant and Special Agent (SA) (((Berger))) (posing as Christy), (((Spitzer))) asked for the age and picture of the person who posted on Craigslist. SA (((Berger))) responded that “she” was 15-years-old. (((Spitzer))) responded that he was not anticipating the Craiglist poster to be so young but then asked for a picture two additional times and continued to move forward with a conversation of an explicit sexual nature.

As part of that four-day communication, the two discussed the possibility to meet up in person for a sexual encounter but it did not happen. (((Spitzer))) ultimately cut off communication with “Christy” on Aug. 12, 2020.

Then, on Aug. 24, 2020, ICAC member Pennington County Sheriff’s Investigator Jesse Fagerland sent a text to (((Spitzer)))’s cell phone number and said “her” name was Jenna and that she was Christy’s friend. During that first day of communications between the two, “Jenna” identified herself as being 14-years-old.

The Factual Basis Statement described near-daily, texted conversations between (((Spitzer))) and “Jenna” over the course of about two weeks, all of which were mostly of an explicit sexual nature. During the second day of their texting communications, on Aug. 25, (((Spitzer))) made an effort to have “Jenna” send him photos of herself going “commando.”

The Factual Basis Statement then reads, “In doing so, (((Spitzer))) knowingly attempted to cause the minor to produce and for him to receive images of child pornography.” This attempt then warranted the charge of Attempted Receipt of Child Pornography, to which (((Spitzer))) eventually plead guilty.

During the search of (((Spitzer)))’s home and office on Sept. 11, 2020, law enforcement agents located multiple devices, including a phone later determined to contain all of the aforementioned communications, which were via the internet and were in and affecting interstate and foreign commerce.

(((Spitzer))), 58, a 1982 graduate of Hot Springs High School, is the President of (((Spitzer))) Construction, Inc. Some of his other previous community endeavors have included being Board Chairman of the Miss South Dakota Scholarship Foundation during its final year in Hot Springs in 2018.

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