

## **A twist in child porn sentences: Restitution Courts can force pornography convicts to help support victims - Courts can force pornography convicts to help support victims**

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Every time someone is arrested on federal charges of possessing her image, “Vicky” is notified.

The images are photos and videos of the sexual abuse she suffered at the hands of a relative when she was 10 and 11, according to a federal court brief. They were made-to-order videos of the rape, sodomy and bondage of her as a child.

Now in her 20s, Vicky can’t escape what happened in her childhood.

“I am living every day with the horrible knowledge that someone somewhere is watching the most terrifying moments in my life and taking grotesque pleasure in them,” Vicky wrote. “I am a victim of the worst kind of exploitation: child porn.”

To protect her identity, The Tampa Tribune is identifying the victim through the pseudonym of Vicky.

The “Vicky” child porn series is popular on the Internet, according to her lawyer, Carol Hepburn in Seattle. Some perverts specifically collect them. One person even made a “Where Is Vicky Now?” video, using her current Facebook picture, along with the images of her abuse.

Whenever federal authorities arrest someone on child pornography charges who has images of Vicky, they send her a notice.

Six years ago, when Vicky’s family first visited Hepburn, they had two 55-gallon barrels full of notification letters.

Hepburn said she alerted authorities to send the notices to her office instead of to the family. “I got piles of letters every day,” she said. “It’s horrid. Just horrid.”

Among those found with Vicky’s images around the country have been numerous people arrested in the Tampa area. And some of them are being ordered, as part of their sentences, to pay restitution to Vicky and other child pornography victims.

One example: Last week, Peter David Tengerdy was ordered to pay Vicky \$5,000, plus another \$6,000 to others whose images he possessed.

Tengerdy, 52, was arrested in Sarasota after the FBI traced his activities sharing child pornography on the Internet. He told agents he had been collecting child porn for five years. Tengerdy was also sentenced to nine years in federal prison.

Another of the victims whose pictures Tengerdy had was “Angela,” who also was abused by a relative.

“He injured the kid with a knife to her throat saying, ‘If you ever tell anybody, these are the people you love that I’m going to kill,?’” said Angela’s lawyer, Marc Lenahan of Dallas, Texas.

Lenahan estimated the abuse started when Angela was about 5.

Like Vicky’s abuser, Angela’s perpetrator took orders from child pornography consumers who would tell him what they wanted to see him doing to the child.

“It’s the distribution, the marketplace that drove a great portion of” the abuse, Lenahan said.

Angela, who is still a minor, receives notices several times a week that someone has been arrested on federal charges with her images. Charges in state courts don’t lead to notification, Lenahan said, so there’s no way to know how many people have been arrested with her images.

For the girl’s parents, whenever they receive a notice of another arrest, “it’s a punch to the gut every time,” Lenahan said.

“These are really devastating injuries,” Hepburn said. “It’s only been in the last few years that the focus has been on the victims as real people.”

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Lives are ruined well beyond the effects of the original trauma.

As the children grow, they live in fear of being recognized and find it difficult or impossible to work in jobs in which they have to deal with the public.

Hepburn said one of her clients works as a restaurant server. One time, a customer said he thought he knew her from somewhere.

The young woman had a “full-on panic attack” and ran into the kitchen hyperventilating, Hepburn said.

“The images that flow from these crimes keep a large number of victims out of the workforce,” Hepburn said.

A therapist who examined Angela wrote that she has trouble trusting people and difficulty tolerating emotional or physical closeness with others. That makes it hard for her to participate in normal adolescent socialization and “makes her increasingly less competent to deal with the world on her own.”

The trauma of the abuse affected her brain, making it difficult to concentrate or attend school, the therapist said.

Even if victims get all the therapy possible and seem to be coping relatively well, they can have relapses without warning. The damage is serious and lifelong, the lawyers said.

And so they work to secure restitution orders from defendants, both to try to compensate for the victims’ losses and to make the criminals pay even more for their contribution to the damage.

So far, Hepburn said, Vicky has received several hundred thousand dollars. She said Vicky’s calculated financial loss well exceeds \$1 million.

Angela has not received enough to pay for even a full year of therapy, Lenahan said.

When the charges involve mere possession or receipt of child pornography — as opposed to creating and distributing the images — restitution has been a controversial issue. The argument has been that an individual viewer doesn’t directly cause the trauma in a way that can be measured and therefore can’t be ordered to pay restitution.

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But the U.S. Supreme Court ruled in 2014 in *Paroline v. the United States* that people who possess and receive child pornography can be required to pay restitution.

The demand for child pornography harms children in part because it drives production, which involves child abuse, the court wrote, adding that the harm caused by child pornography is even more extensive than that because the pornography is “a permanent record of the depicted child’s abuse and the harm to the child is exacerbated by its circulation.”

Before the ruling, federal appeals courts had been divided over how the restitution law should work, according to Assistant U.S. Attorney Karen Gable. The law calls for mandatory restitution if the defendant’s actions were a “proximate cause” of the victim’s losses. Until the *Paroline* decision, what “proximate cause” means in these cases was interpreted differently by different courts.

“Because the law is settled, more child pornography victims are filing claims for restitution,” said Gable, who couldn’t give numbers of claims for Tampa or the Middle District of Florida. “*Paroline* provided a real framework and it settled the law.”

But Hepburn said the courts are still struggling with how to implement the law. And Lenahan said the *Paroline* ruling created a “clunky” system for seeking restitution.

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Congress considered adopting legislation, but the act failed to pass the House this year after clearing the Senate 98-0. The act would have provided specific guidelines to courts in setting restitution amounts for victims of child pornography, Hepburn said.

But the *Paroline* ruling has helped by clarifying that restitution can be ordered in these cases. Before that decision, for example, Hepburn said, prosecutors in the Middle District of Florida would not seek restitution for victims when defendants were charged with possession or receipt of child pornography.

“It was so frustrating,” she said. “Now they are supporting and some of the judges are ordering restitution, thank God. But it was a long haul.”

“Courts all over the nation were awarding restitution to victims and there was nothing in the Middle District of Florida for anybody. They said they didn’t feel that a victim could show that there was a connection between the defendant before the court and the harm that was suffered by a client in a possession case or a receipt case.”

Gable said Hepburn was “not correct” on that point but couldn’t comment beyond that.

Amy Filjones, a spokeswoman for the U.S. Attorney’s Office, released a statement in response to Hepburn’s assertions, saying the office “is committed to the protection of children, and consistently prosecutes a large number of child exploitation cases each year. The policy and practice of the office is to submit a child exploitation victim’s restitution request to the district court and probation office for consideration for restitution for child exploitation victims in a legally defensible manner.”

Before the Paroline decision, Filjones said, the interpretation of law in this circuit “made it challenging” for prosecutors to prove restitution should be awarded in child pornography possession and receipt cases.

Lenahan said his law firm represents a couple of child pornography victims and hopes to represent more “because it’s such an under-served community.”

In addition to seeking restitution, Lenahan said in some instances, he files lawsuits seeking monetary judgments when there’s reason to believe an offender has the means to pay. If they don’t seek more than \$150,000 in a case, Lenahan said, the victim doesn’t have to testify.

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Criminal restitution orders can be “quite illusory,” Lenahan said, meaning the money, in many cases, won’t ever get to the victim, particularly when a defendant is elderly, disabled or serving a long prison sentence.

Hepburn said there are so many people arrested with Vicky’s images, she is selective in deciding when to seek restitution, concentrating on particularly egregious cases.

One factor in choosing when to seek restitution, she said, is selecting defendants who specifically focus on Vicky — the collectors who are obsessed with her images. Some perform searches of her name, others have been found with computer folders full of her images. Still others have made compilations, putting the images together.

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The video with her current Facebook picture “was really hard on her,” Hepburn said.

In contrast to Vicky, there are some victims whose images aren’t so widespread, meaning there are few opportunities to seek restitution. While that means their image has less exposure, that’s “small comfort for a person sitting home afraid to go out,” Hepburn said. “They know they’re there if someone wants to find them.”

Vicky didn’t learn the videos of her were widely available online until she was 17, a day she says her “world came crashing down.” Now she has panic attacks and nightmares and is sometimes stalked by people who collect her videos, according to a brief Hepburn filed in the Paroline case.

Even though she has tried repeatedly, she is unable to work in any job that involves contact with strangers, she said.

“Unlike other forms of exploitation,” she wrote, “this one is never ending. Every day people are trading and sharing videos of me as a little girl being raped in the most sadistic ways. They don’t even know me, but they have seen every part of me. They are entertained by my shame and pain. ... They are trading my trauma around like treats at a party.”

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