

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION

NOV 19 2003

U. S. DISTRICT COURT W. DIST. OF N. C.

UNITED STATES OF AMERICA)
vs.)
BRIAN A. SALCEDO,)
ADAM W. BOTBYL a/k/a "itszer0", and)
PAUL G. TIMMINS a/k/a "noweb4u")

DOCKET NO. 5.03cr53

BILL OF INDICTMENT

- Violations:
18 U.S.C. § 2
18 U.S.C. § 371
18 U.S.C. § 1029
18 U.S.C. § 1030
18 U.S.C. § 1343

THE GRAND JURY CHARGES:

At the specified times and at all relevant times:

Introduction

1. From a date unknown to the Grand Jury, but no later than in or about October of 2003, through on or about November 9, 2003, defendants BRIAN A. SALCEDO, ADAM W. BOTBYL a/k/a "itszer0", and PAUL G. TIMMINS a/k/a "noweb4u" conspired and schemed to gain unauthorized access to the nationwide computer system used by Lowe's Companies, Inc. and, after gaining access, to download and steal credit card account numbers from that computer system.

2. In order to carry out this scheme, defendants SALCEDO, BOTBYL, and TIMMINS secretly compromised the wireless network at a Lowe's retail store in Southfield, Michigan, and thereby gained unauthorized access to Lowe's Companies, Inc.'s central computer system in North Wilkesboro, North Carolina and, ultimately, to computer systems located in Lowe's retail stores around the United States. Having gained this unauthorized access, the defendants then attempted to install and installed a computer program on the computer system of several Lowe's retail stores, which program was designed to capture the credit card information of customers conducting transactions with those stores.

Victim Entity and Computer System

3. Lowe's Companies, Inc. is a corporation organized under the laws of the State of North Carolina with its corporate headquarters and principal place of business in the Western District of North Carolina. Lowe's Companies, Inc. wholly owns two corporate subsidiaries.

Centers, Inc. and Lowe's HIW, Inc. (hereafter, collectively, "Lowe's"). Lowe's is engaged in the business of selling home improvement products and construction supplies in interstate and foreign commerce. Specifically, Lowe's Home Centers, Inc. owns, operates, and maintains retail facilities at various locations in the eastern portion of the United States, including, but not limited to, North Carolina, Michigan, Kansas, California, Florida, South Dakota, Kentucky, and New York. Similarly, Lowe's HIW, Inc. owns, operates, and maintains retail facilities at various locations in the western portion of the United States, including, but not limited to, California.

4. Each of the retail stores owned by Lowe's maintains, operates, and uses a computer system dedicated to that particular store. Many of the computer systems in individual Lowe's stores include a wireless network, allowing scanners and telephones to connect to that store's computer system remotely and without the benefit of wires or cables. Lowe's also maintains and operates a central Corporate Data Center (hereafter, "CDC") at its facility in North Wilkesboro, North Carolina. The CDC houses, among other things, a computer server known as "dev1." Each of the computer systems in individual Lowe's retail stores is connected to the CDC by means of interstate wires and satellites. Because of the configuration of Lowe's nationwide computer system, it is possible to access the computer system of a particular Lowe's retail store from the computer system of another Lowe's retail store only by using and connecting through routers in Lowe's CDC. Lowe's nationwide computer system is used by the company in interstate and foreign commerce and communication.

The Computer Hacking Scheme to Defraud

5. In or about April of 2003, defendants BOTBYL and TIMMINS gained unauthorized access to the computer system at the Lowe's retail store #1604, located at 28650 Telegraph Road, Southfield, Michigan (hereafter, "Lowe's Store #1604"). Defendants BOTBYL and TIMMINS gained unauthorized access to the computer system at Lowe's Store #1604 while driving around Southfield, Michigan in an automobile searching for vulnerable wireless internet connections using a laptop computer equipped with a wireless card and a wireless antenna. This activity is commonly known as "wardriving."

6. Several months later, in or about October of 2003, defendants BOTBYL and SALCEDO formulated a scheme to steal credit account information from the Lowe's corporate computer systems. In order to aid, abet, assist, and advance this scheme, defendant TIMMINS supplied defendants BOTBYL and SALCEDO with the wireless computer card that defendant TIMMINS had previously used to gain unauthorized wireless access to the computer system in Lowe's Store #1604.

7. On or about October 21, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #1604.

8. At or about 11:20p.m. ET on or about October 25, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store

and thereby accessed the "dev1" computer server in Lowe's CDC.

8. At or about 2:00a.m. ET on or about October 26, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at the Lowe's retail store #1559, located in Salinas, Kansas (hereafter, "Lowe's Store #1559"), and thereby accessed the "dev1" computer server in Lowe's CDC.

9. At or about 1:45p.m. ET on or about October 26, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at the Lowe's retail store #701, located in Wilkesboro, North Carolina (hereafter, "Lowe's Store #701"), and thereby accessed the "dev1" computer server in Lowe's CDC.

10. At or about 5:27p.m. ET on or about October 26, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at the Lowe's retail store #785, located in Long Beach, California (hereafter, "Lowe's Store #785"), and thereby accessed the "dev1" computer server in Lowe's CDC.

11. At or about 9:25p.m. ET on or about October 30, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at the Lowe's retail store #1611, located in Visalia, California (hereafter, "Lowe's Store #1611"), and thereby accessed the "dev1" computer server in Lowe's CDC.

12. At or about 9:00p.m. ET on or about November 4, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at the Lowe's retail store #705, located in Louisville, Kentucky (hereafter, "Lowe's Store #705"), and thereby accessed the "dev1" computer server in Lowe's CDC.

13. On or about November 5, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at the Lowe's retail store #1634, located in Rapid City, South Dakota (hereafter, "Lowe's Store #1634"), and thereby accessed the "dev1" computer server in Lowe's CDC.

14. On or about November 5, 2003, between at or about 8:57p.m. ET and at or about 10:20p.m. ET, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #785, and thereby accessed the "dev1" computer server in Lowe's CDC on multiple occasions. During these unauthorized intrusions, the defendants compiled on the "dev1" computer server in Lowe's CDC a revised version of Lowe's proprietary computer program known as "tcpcredit." As originally written, this program was designed for use in obtaining bank approval of credit card transactions in Lowe's retail stores. As revised by the defendants, the "tcpcredit" program would, in addition to its intended functions, capture and save for later retrieval the account information of every credit card processed at a particular Lowe's store. After compiling the revised version of the "tcpcredit" program, the defendants caused the compiled program to be transmitted from the "dev1" computer server in Lowe's CDC to the computer system in Lowe's Store #785 and then to be installed on that store's computer

Once the revised versions of "tcpcredit" was installed on the computer system at Lowe's Store #785, defendants SALCEDO, BOTBYL, and TIMMINS then disabled the original "tcpcredit" program from that store's computer. This disabling of the original "tcpcredit" program was done by the defendants with the expectation that the revised version of the "tcpcredit" program would operate instead. However, for various technical reasons, the defendants were initially unsuccessful in their efforts.

17. At or about 9:42a.m. ET on or about November 7, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #1604, passed through routers in Lowe's CDC, thereby gained unauthorized access to the computer system at the Lowe's retail store #418, located in Gainesville, Florida (hereafter, "Lowe's Store #418"), and thereby gained unauthorized access to the "dev1" computer server in Lowe's CDC. During these unauthorized intrusions, the defendants again compiled on the "dev1" computer server in Lowe's CDC a revised version of the "tcpcredit" program. This revised version of "tcpcredit," like the prior revised version of "tcpcredit," was designed to capture and save for later retrieval the account information of every credit card processed at a particular Lowe's store. After compiling the revised version of the "tcpcredit" program, the defendants caused the compiled program to be transmitted from the "dev1" computer server to the computer system in Lowe's Store #418 and then to be installed on that store's computer system.

18. On or about November 7, 2003, between at or about 8:34p.m. ET and at or about 8:39p.m. ET, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #1604, passed through routers in Lowe's CDC, thereby gained unauthorized access to the computer system at the Lowe's store #1022, located in Watertown, New York (hereafter, "Lowe's Store #1022"), thereby gained unauthorized access to the computer system at Lowe's Store #418, and thereby gained unauthorized access to the "dev1" computer server in Lowe's CDC. During these unauthorized intrusions, the defendants caused the revised and compiled "tcpcredit" program to again be transmitted from the "dev1" computer server to the computer system in Lowe's Store #418 and then to be installed on that store's computer system.

COUNT ONE

19. The Grand Jury realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 18 of the Indictment, and further alleges that:

20. From a date unknown to the Grand Jury, but no later than in or about October of 2003, through on or about November 9, 2003, in Wilkes County, within the Western District of North Carolina, and elsewhere, the defendants,

BRIAN A. SALCEDO
 ADAM W. BOTBYL
 PAUL G. TIMMINS

defendants knowingly, willfully and unlawfully combine, conspire, and agree together and with other persons known and unknown to the Grand Jury, to commit the following offenses against the United States:

A. To, having devised the above-described scheme and artifice to defraud, transmit and cause to be transmitted by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purposes of executing said scheme and artifice, in violation of Title 18, United States Code, Section 1343.

B. To knowingly cause the transmission of a program, information, code, and commands, and as a result of such conduct, to intentionally cause damage without authorization to a protected computer, in violation of Title 18, United States Code, Section 1030(a)(5)(A)(i);

C. To knowingly and with intent to defraud, access a protected computer without authorization and in excess of authorization, and thereby further the intended fraud described above and obtain anything of value, in violation of Title 18, United States Code, Section 1030(a)(4);

D. To intentionally access a computer without authorization and in excess of authorization and, through conduct involving an interstate communication, thereby obtain information from a protected computer, in violation of Title 18, United States Code, Section 1030(a)(2)(C); and

E. To knowingly and with intent to defraud, possess and attempt to possess fifteen or more unauthorized access devices, in violation of Title 18, United States Code, Section 1029(a)(3), (b)(1).

Overt Acts

21. In furtherance of the conspiracy, and to accomplish the object thereof, the defendants and co-conspirators committed the following overt acts, among others, in the Western District of North Carolina:

A. At or about 11:20p.m. ET on or about October 25, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #1604, and thereby accessed the "dev1" computer server in Lowe's CDC;

B. At or about 2:00a.m. ET on or about October 26, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system

at Lowe's Store #1559, and thereby accessed the "dev1" computer server in Lowe's CDC;

C. At or about 1:45p.m. ET on or about October 26, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #701, and thereby accessed the "dev1" computer server in Lowe's CDC;

D. At or about 5:27p.m. ET on or about October 26, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #785, and thereby accessed the "dev1" computer server in Lowe's CDC;

E. At or about 9:25p.m. ET on or about October 30, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #1611, and thereby accessed the "dev1" computer server in Lowe's CDC;

F. At or about 9:00p.m. ET on or about November 4, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #705, and thereby accessed the "dev1" computer server in Lowe's CDC;

G. On or about November 5, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #1634, and thereby accessed the "dev1" computer server in Lowe's CDC;

H. On or about November 5, 2003, between at or about 8:57p.m. ET and at or about 10:20p.m. ET, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #785, and thereby accessed the "dev1" computer server in Lowe's CDC on multiple occasions;

I. On or about November 5, 2003, defendants SALCEDO, BOTBYL, and TIMMINS compiled the revised version of the "tcpcredit" computer program on the "dev1" computer server located in Lowe's CDC;

J. On or about November 5, 2003, defendants SALCEDO, BOTBYL, and TIMMINS caused the compiled version of the revised "tcpcredit" computer program to be transmitted from the "dev1" computer server located in Lowe's CDC to the computer system in Lowe's Store #785;

K. At or about 9:42a.m. ET on or about November 7, 2003, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #1604, passed through routers in Lowe's CDC, thereby gained unauthorized access to the computer system at Lowe's Store #418, and thereby gained unauthorized access to the "dev1" computer server in Lowe's CDC;

L. On or about November 7, 2003, defendants SALCEDO, BOTBYL, and TIMMINS compiled a revised version of the "tcpcredit" computer program on the "dev1"

computer server located in Lowe's CDC;

M. On or about November 7, 2003, defendants SALCEDO, BOTBYL, and TIMMINS caused the compiled version of the revised "tcpcredit" computer program to be transmitted from the "dev1" computer server located in Lowe's CDC to the computer system in Lowe's Store #418;

N. On or about November 7, 2003, between at or about 8:34p.m. ET and at or about 8:39p.m. ET, defendants SALCEDO, BOTBYL, and TIMMINS gained unauthorized access to the computer system at Lowe's Store #1604, passed through routers in Lowe's CDC, thereby gained unauthorized access to the computer system at Lowe's Store #1022, and thereby gained unauthorized access to the computer system at Lowe's Store #418;

N. On or about November 7, 2003, defendants SALCEDO, BOTBYL, and TIMMINS caused the compiled version of the revised "tcpcredit" program to be transmitted from the "dev1" computer server located in Lowe's CDC to the computer system in Lowe's Store #418.

All in violation of 18 U.S.C. § 371.

COUNTS TWO THROUGH FOUR

22. The Grand Jury realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 21 of the Indictment, and further alleges that:

23. On or about the dates set forth below, in Wilkes County, within the Western District of North Carolina, and elsewhere, the defendants,

BRIAN A. SALCEDO
ADAM W. BOTBYL
PAUL G. TIMMINS

aided and abetted by one another, having devised the above-described scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds, as more particularly described below, for the purposes of executing said scheme and artifice, each being a separate violation of Title 18, United States Code, Sections 1343 and 2.

| COUNT | DATE | INTERSTATE WIRE COMMUNICATION |
|-------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Two | 11/05/03 | Transmitted the revised and compiled "tcpcredit" program from the "dev1" computer server in Lowe's CDC to the computer system in Lowe's Store #785. |
| Three | 11/07/03 | Transmitted the revised and compiled "tcpcredit" program from the "dev1" computer server in Lowe's CDC to the computer system in Lowe's Store #418. |
| Four | 11/07/03 | Transmitted the revised and compiled "tcpcredit" program from the "dev1" computer server in Lowe's CDC to the computer system in Lowe's Store #418. |

COUNT FIVE THROUGH SEVEN

24. The Grand Jury realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 21 of the Indictment, and further alleges that:

25. On or about the dates set forth below, in Wilkes County, within the Western District of North Carolina, and elsewhere, the defendants,

BRIAN A. SALCEDO
ADAM W. BOTBYL
PAUL G. TIMMINS

aided and abetted by one another, knowingly caused the transmission, as more particularly described below, of a program, information, code, and command, and as a result of such conduct, intentionally caused damage without authorization to a protected computer, and attempted to do the same, and by such conduct caused and would, if completed have caused, loss to one or more persons during any one-year period aggregating at least \$5,000 in value, each being a separate violation of Title 18, United States Code, Sections 1030(a)(5)(A)(i), (a)(5)(B)(i), (b) and 2.

| COUNT | DATE | TRANSMISSION |
|-------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Five | 11/05/03 | Transmitted the revised and compiled "tcpcredit" program from the "dev1" computer server in Lowe's CDC to the computer system in Lowe's Store #785. |
| Six | 11/07/03 | Transmitted the revised and compiled "tcpcredit" program from the "dev1" computer server in Lowe's CDC to the computer system in Lowe's Store #418. |

| | | |
|--|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| | 11/07/03 | Transmitted the revised and compiled "tcpcredit" program from the "dev1" computer server in Lowe's CDC to the computer system in Lowe's Store #418. |
|--|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------|

COUNT EIGHT THROUGH TEN

26. The Grand Jury realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 21 of the Indictment, and further alleges that:

27. On or about the dates set forth below, in Wilkes County, within the Western District of North Carolina, and elsewhere, the defendants,

BRIAN A. SALCEDO
 ADAM W. BOTBYL
 PAUL G. TIMMINS

aided and abetted by one another, knowingly and with intent to defraud, possessed and attempted to possess, as more particularly described below, fifteen or more unauthorized access devices, each being a separate violation of Title 18, United States Code, Sections 1029(a)(3), (b)(1) and 2.

| COUNT | DATE | ATTEMPTED POSSESSION |
|-------|----------|-----------------------------------------------------------------------------------------------------|
| Eight | 11/05/03 | Installed the revised and compiled "tcpcredit" program on the computer system in Lowe's Store #785. |
| Nine | 11/07/03 | Installed the revised and compiled "tcpcredit" program on the computer system in Lowe's Store #418. |
| Ten | 11/07/03 | Installed the revised and compiled "tcpcredit" program on the computer system in Lowe's Store #418. |

COUNT ELEVEN THROUGH THIRTEEN

28. The Grand Jury realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 21 of the Indictment, and further alleges that:

29. On or about the dates set forth below, in Wilkes County, within the Western District of North Carolina, and elsewhere, the defendants,

BRIAN A. SALCEDO
 ADAM W. BOTBYL
 PAUL G. TIMMINS

... accessed by one another, intentionally accessed, as more particularly described below, a computer without authorization and in excess of authorization and, through conduct involving an electronic communication, thereby obtained information from a protected computer, and in each instance for:

- A. For purposes of commercial advantage and private financial gain;
- B. In furtherance of criminal and tortious acts in violation of the laws of the United States and of the States of North Carolina and Michigan, to wit:
 - 1.) Wire fraud, in violation of Title 18, United States Code, Section 1343;
 - 2.) Unlawful transmission of computer code, in violation of Title 18, United States Code, Section 1030(a)(5)(A)(i);
 - 3.) Possession and attempted possession of unauthorized access devices, in violation of Title 18, United States Code, Section 1029(a)(3), (b)(1);
 - 4.) Computer fraud, that is they willfully, directly and indirectly, accessed and caused to be accessed a computer, computer system, and computer network, and any part thereof, for purposes of devising and executing a scheme and artifice to defraud and obtaining property by means of false and fraudulent pretenses, representations, and promises, in violation of N.C. Stat. Ann. § 14-454(a);
 - 5.) Computer trespass, that is they used a computer and computer network without authority and with the intent to make and cause to be made an unauthorized copy of computer data, computer programs, and computer software residing in, communicated by, and produced by a computer and computer network, in violation of N.C. Stat. Ann. § 14-458(a);
 - 6.) Unlawful access to computers, that is they intentionally and without authorization and in excess of valid authorization, accessed and caused to be accessed a computer program, computer, computer system, and computer network in order to acquire, alter, damage, delete, and destroy property and otherwise use the service of a computer program, computer, computer system, and computer network, in violation of Mich. Comp. Laws Ann. § 752.795(a);

- 7.) Unlawful access to computers, that is they intentionally and without authorization and in excess of valid authorization, inserted and attached a set of instructions or a computer program into a computer program, computer, computer system, and computer network, that was intended to acquire, alter, damage, delete, disrupt, and destroy property and otherwise use the services of a computer program, computer, computer system, or computer network, in violation of Mich. Comp. Laws Ann. § 752.795(b); and
- 8.) Computer fraud, that is they intentionally accessed and caused to be accessed a computer program, computer, computer system, and computer network to devise and execute a scheme and artifice with the intent to defraud and to obtain money, property, and a service by a false and fraudulent pretense, representation, and promise, in violation of Mich. Comp. Laws Ann. § 752.794; and

C. By obtaining information the value of which exceeded \$5,000 in value.

| COUNT | DATE | UNAUTHORIZED ACCESS |
|----------|----------|----------------------------------------------------|
| Eleven | 11/05/03 | Accessed the "dev1" computer server in Lowe's CDC. |
| Twelve | 11/07/03 | Accessed the "dev1" computer server in Lowe's CDC. |
| Thirteen | 11/07/03 | Accessed the "dev1" computer server in Lowe's CDC. |

Each being a separate violation of Title 18, United States Code, Sections 1030(a)(2)(C), (c)(2)(B) and 2.

COUNT FOURTEEN THROUGH SIXTEEN

30. The Grand Jury realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 21 of the Indictment, and further alleges that:

31. On or about the dates set forth below, in Wilkes County, within the Western District of North Carolina, and elsewhere, the defendants,


BRIAN A. SALCEDO
ADAM W. BOTBYL
PAUL G. TIMMINS

aided and abetted by one another, knowingly and with intent to defraud, accessed and attempted to access, as more particularly described below, a protected computer without authorization and in

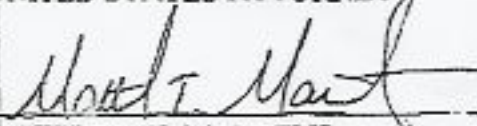
without authorization, and thereby furthered the intended fraud described above and obtained property of value, and attempted to do the same, each being a separate violation of Title 18, United States Code, Sections 1030(a)(4), (b) and 2.

| COUNT | DATE | UNAUTHORIZED ACCESS |
|----------|----------|----------------------------------------------------|
| Fourteen | 11/05/03 | Accessed the "dev1" computer server in Lowe's CDC. |
| Fifteen | 11/07/03 | Accessed the "dev1" computer server in Lowe's CDC. |
| Sixteen | 11/07/03 | Accessed the "dev1" computer server in Lowe's CDC. |

A TRUE BILL


 FOREPERSON

ROBERT J. CONRAD, JR.
 UNITED STATES ATTORNEY


 MATTHEW T. MARTENS
 ASSISTANT UNITED STATES ATTORNEY