**State of Wisconsin** **Circuit Court** **Dunn County**

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| STATE OF WISCONSIN<br>Plaintiff,<br>-vs-<br><br>James A Mayer<br>1920 S. Broadway, Apt. #3<br>Menomonie, WI 54751<br>DOB: 08/05/1970<br>Sex/Race: M/W<br>Eye Color: Brown<br>Hair Color: Brown<br>Height: 6 ft 2 in<br>Weight: 300 lbs<br>Alias:<br><br>Defendant, | DA Case No.: 2010DN001042<br>Assigned DA/ADA: Andrew J. Maki<br>Agency Case No.: 10-4114<br>Court Case No.: 2010CF000_____<br>ATN:<br><br>**Criminal Complaint** |

Andrew Maki, Assistant District Attorney, Dunn County, Wisconsin, upon information and belief, being first duly sworn, states that:

**Count 1: POSSESSION OF CHILD PORNOGRAPHY**

The above-named defendant on Wednesday, April 28, 2010, in the City of Menomonie, Dunn County, Wisconsin, did, having attained the age of 18, knowingly possess photograph(s) of a child engaging in sexually explicit conduct, and knew that the child was under the age of 18, to-wit: a juvenile female, no pubic development. It shows only her vaginal area. Her legs are pretty close together and a male penis attempted to be inserted into the vagina, being held by a hand. There is also what appears to be a hairy leg depicted in the corner of the picture; along with numerous other photos depicting underage female/male in various sexual positions, contrary to sec. 948.12(1m)&(3)(a) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than twenty five (25) years, or both.

And furthermore, invoking the provisions of Wisconsin Statute Section 939.617, upon conviction the Court shall impose a bifurcated sentence including a term of initial confinement for at least three years. The Court may impose a sentence less than three years or place the person on probation upon a finding on the record that the Court finds the lesser sentence is in the best interests of the community and the public will not be harmed.

And furthermore, invoking the provisions of Wisconsin Statute 973.042(2), upon conviction for a crime under 948.05 or 948.12 and the defendant is at least 18 years of age at the time of the commission of the crime, the Court shall impose a surcharge of $500.00 for each image or each copy of an image, as defined in 973.042(1), associated with the crime. The court shall determine the number of images or copies of images associated with the crime by a preponderance of the evidence and without a jury.

**PROBABLE CAUSE**:

Your complainant bases this complaint on the reports of Brett Kohnke and Travis Mayer of the Dunn County Sheriff's Department, said reports having been prepared, filed and maintained in the normal and ordinary course of that business.

Deputy Kohnke advised your complainant that he was working for the Dunn County Sheriff's Department on April 18, 2010. On that date, at approximately 1804 hours he was dispatched to N2547 440th Street in the Township of Dunn, Dunn County, Wisconsin where the complainant, Richard Schroeder, called reporting finding some photographs that were left behind from a recent tenant, James Mayer, hereinafter referred to as the defendant.

Upon arrival at the scene, Deputy Kohnke advised he met with Richard Schroeder, at which time he took him up to apartment #2 which is located in the upstairs at that location. He advised Deputy Kohnke that the apartment had been rented by James Mayer, the defendant, and he had just recently moved out of the property. He stated there were a few things left at the property and while the apartment was being cleaned out, the photographs were found in a chair. He took Deputy Kohnke to where the photographs were at. They were located in a blue rocker/recliner within the apartment. He said that one of the tenants from a separate apartment, Ryan Peterson, was cleaning out the apartment for them and had located these photos in the cushion of the chair. Once he located the photos, Richard stated that Ryan advised him of that and that is when he called the Sheriff's Department. He also left the photographs for Deputy Kohnke to review.

Deputy Kohnke advised that upon looking through the photographs, they were all computer printed images. Several of the images were cartoon pornographic photos. He also located several other photos, one being a female which he believed to be somewhere between the ages of possibly seven or eight and twelve years old. The female was clothed with the exception of no pants or underwear on and you could see her vagina in the photo. Deputy Kohnke also located another photo that had another female appearing to be around the same age lying which appeared to be on a bed or couch with a shirt on and underwear. Two other photographs that Deputy Kohnke located appeared as though an adult male was inserting his penis into a vagina.

Deputy Kohnke advised that after reviewing the photographs, he asked the complainant if he had any idea as to who this would be and he did not. He stated that the defendant lived alone and did not know of anyone else that stayed with him. He stated that he does know the defendant has a computer however, did not know if it was a laptop or a desk top. He stated that the only reason hew knew this was because when he last had contact with the defendant, the defendant told him that he had to get his TV, his computer and some other items and stated he would have to leave the rest of the items in the apartment. He also advised that he had no idea where the defendant went. He said he left in a hurry and left on the 15th of April. The only information he could provide Deputy Kohnke was a cell phone number for the defendant. He also aid he did not have the defendant's dob, however, did state that he was on the Wisconsin Circuit System as he had some previous retail thefts. Deputy Kohnke advised that after speaking with Richard, he had him complete a written statement form indicating the information that he had provided information to Deputy Kohnke as well as having him include in the statement that he believed the internet service provider for that location was 24/7 Telcom.

Deputy Kohnke then went to the Sheriff's Department where he did some checking through CCAP and located a James Mayer with a middle initial of A and a dob of 8/5/70. In reviewing the defendant's entries on the web site, the entries also had the address of the original complaint that he was at for him. After finding that information, dispatch provided Deputy Kohnke with a photograph from the Dunn County Jail of the defendant. Deputy Kohnke advised that he then made contact with Inv. Mayer and advised him of the photographs that he had located. He was advised to forward the incident to Investigations and he would follow up.

Inv. Mayer advised that he was working for the Dunn County Sheriff's Department on April 18, 2010, when he was contacted by Deputy Brett Kohnke. At that time he was advised that Kohnke had just taken possession of a child pornography case. He advised Inv. Mayer that he had reviewed the pictures and a number of them were cartoons but there were a couple very young girls with their legs spread and no clothes on exposing their vagina. Deputy Kohnke left a copy of his report along with an evidence locker key sealed in an envelope for the locker with the evidence in it. Inv. Mayer then reviewed the report and found that the defendant had moved to an unknown address. He had been living at N2547 440th Street #3 and because of some issues there, he was evicted or asked to move out. He did not have a residence to move to and did not have the means to take all of his items so he took his main items, his TV, computer, air conditioner and left his furniture there which included a couple of old chairs and a bed. In cleaning up the apartment, a number of computer printed pictures of young children had fallen out of a chair. Inv. Mayer advised that he do go to the evidence room and did remove the pictures from the locker and reviewed them.

Inv. Mayer advised that he then went and spoke with the landlord, Richard Schroeder. Schroeder advised that he had been receiving complaints with regards to the defendant and made an agreement that if the defendant moved out there would be no law enforcement involvement in that aspect. He advised that the defendant was to be out by the 15th and leave his key in the lock box that they have on the property where rent can be deposited into. He said that the defendant told him he did not have anywhere to go; he only had a small vehicle and could not take most of his property so he was going to take the TV, computer, air conditioner and his clothes and other items but there was going to be some furniture left behind. Richard advised Inv. Mayer that it was an unfurnished apartment when he moved in and the defendant left behind a bed and a couple Lazy Boy chairs. As per the agreement that stuff would be disposed of by the landlord.

Richard advised that he then hired Ryan Peterson, who lives in the one of the apartments, to clean the property out of that apartment. He said that he then received a call from Ryan stating that he had found some images, that he didn't' want to look at, in one of the chairs. Richard then went over there and contacted law enforcement.

Richard advised that the defendant lived alone and appeared to be a very loner type guy, never really seen anyone come over there and visit and did not see any kids up there. He said that the other tenants did talk to the defendant from time to time. Richard stated that Ryan may possibly be in the area and he would have access to the apartment. Inv. Mayer asked if he could go there and double check that this was just computer images. Richard stated that he was quite certain on what he had seen was just all computer images and he did not recognize the children in any of the pictures.

Inv. Mayer advised that he then attempted to call Ryan and did not get an answer. Inv. Mayer advised that he then made contact with Danny Wienzirl, the co-owner of the apartment, and Wienzirl have Inv Mayer permission to go into the apartment as the door was unlocked and look around. The apartment had been turned back over to the landlords and the defendant no longer has an expectation of privacy within that apartment based on their agreement to turn the key over on the 15th, which he complied with.

Inv. Mayer advised that he went to the apartment and looked around initially. A short time later, Danny arrived. Danny advised that the defendant had lived in the apartment for eight months. He lived alone. He said that because of the number of complaints, they had a meeting with the defendant on April 13 and he was given 48 hours to move out, which he complied with. Inv. Mayer then left the residence.

Inv. Mayer went back to the office and checked the Web site that was listed on the one picture. It appears to be a child erotica sight and does not show any nudity but does show children in numerous different poses in very little clothing such as swimsuits, underwear, bras etc. It also branches out to numerous other sites. Inv. Mayer advised that based on his training and experience with possessors of child pornography and the indications that these pictures came from a computer off the internet, that he would have further images stored in the hard drive or media within his control because people that possess child porn generally never get rid of that; so he believes there is probable cause that once the defendant is located, to get a search warrant for the computer and interview the defendant about this property.

Inv Mayer advised that on April 20, 2010, he met with Ryan Peterson at his apartment. Ryan advised that he knew the upstairs neighbor, the defendant, who was recently evicted. He said that he volunteered to clean up the apartment after he left and left his stuff behind. In cleaning the apartment, Ryan advised that he was going to knock the chairs apart so that they would fit into the dumpster and as he started to knock the chair apart, he found a large wad of paper. He said that he noticed that there was a juvenile female on the picture. He said that it was a little girl in a suggestive pose so he immediately notified the landlord. He said that the defendant was a very to himself person. He said that he has never had any indication before that the defendant was into child pornography or anything like that.

Inv. Mayer advised that on April 26, 2010, when he returned to work, he was advised that the Menomonie Police Department had made contact with the defendant at the House of Hope. Inv. Mayer advised that he made contact with Officer Buhrow who was the officer that had met with the defendant. He said that the defendant living at apartment #3 and he was living alone and had just moved there on the previous Thursday.

Inv. Mayer advised that he went to the House of Hope and spoke to the Director, Heidi Hooten. While speaking with Ms. Hooten, Inv. Mayer did observe the defendant's vehicle parked in the parking lot. He could see that there was some of his personal possessions still within the vehicle but he did not approach the vehicle as he did not know if the defendant was watching and he did not want to tip him off.

Inv. Mayer advised that he then left the residence and contacted Special Agent Spaulees. He updated Spaulees on the information and then completed an Affidavit for a Search Warrant. Inv. Mayer advised that the next morning he did obtain a search warrant on April

28, 2010. A copy of the search warrant was provided to John Spaulees from the Dept of Criminal Investigation and to Inv. Brian Hagen of the Menomonie Police Department.

On April 28, 2010, Inv. Mayer advised that he executed the search at approximately 11:00 am at 1920 S Broadway in the City of Menomonie, Dunn County, Wisconsin. Officer Buhrow was on scene and stated he had the defendant's cell phone number and he called the defendant and the defendant stepped out. When the defendant came to the door, he was told that he was not under arrest but for safety reasons, they wanted to pat him down. He was patted down by Inv. Mayer and Agent Spaulees. He was if he would come out to Agent Spaulees vehicle so they could speak as his apartment was very small and could not do the interview and search the apartment due to the volume of traffic. The defendant stated he was willing to over to the car but needed his glasses and shoes. They then went to Agent Spaulees car and the interview within the car was tape recorded. Agent Spaulees first got information from the defendant and explained to him that they were there in reference to searching his property because of information obtained. During this time, the defendant was told he was not under arrest and could leave any time. Agent Spaulees advised the defendant that they wanted to talk about the truth and get the truth of what was going on. The defendant was then read his Miranda warnings at 11:08 am and he stated he understood and was willing to talk.

The defendant stated he was living at his current address since last Thursday. He lives alone and he is the only one at the apartment. He previously lived at N2547 440th Street, where he also lived alone. He has a computer, which is a Desktop E Machine, in his apartment. He currently does not have internet service but did have Internet service through 24/7 Telcom. He said that he did not understand what Peer to Peer programs were and stated that he did not have any Peer to Peer programs. He did admit that he does download pornography from time to time. He was first talking about adult pornography. He said that he did go to a web site where he paid for pornography. He ha since cancelled that subscription but he was paying $29.95 a month for that. He said that it was mainly a site showing girls that were playing with themselves/masturbating and he said that on the web site, when he went in it said that all models or participants were 18 years of age or older at the time of the photo shooting. He said that that was mainly movies and a lot of that may have been downloaded when he was living at the Gaylord Nelson apartments in the City of Menomonie where he also lived alone and had sole access to a computer. He said while living there, his internet service provider was Charter Communications. Initially he said he does not have child pornography; he does not chat on the Internet except for when he is playing pool. He was then explained that an analyst was on scene and would be searching his computer.

Inv. Mayer advised that during this interview, he was seated in the backseat behind Spaulees. Spaulees was seated in the driver's seat and the defendant was n the passenger seat. As Spaulees was explaining this, Inv. Mayer noticed that the defendant's head physically dropped towards his right side and eyes kind of closed. At that point, he was again asked numerous times about child pornography. He stated that he possibly does have child pornography. It was explained to him that they would be able to locate both deleted and undeleted files and he then stated that he probably does have a couple dozen images of child pornography. He said that most of them would be between the ages of five and ten (5-10) years of age. They are girls but a lot of them are cartoon characters but some are real and the pictures are nude and they are posing with their vagina exposed with theirs legs open and visible. He stated that he has burned some

movies to CDs but those were all adult type movies. He has saved the child pornography images to his hard drive under he believed maybe a document folder or under My Pictures, he was not sure. He stated he also has a flash drive which contains just movies and songs; there should not be any child pornography on that drive.

The defendant went on to explain that some of the girls may have been engaged in sex with guys. He did not remember for sure. He again stated that he probably had about two dozen still images. He does not have any movies of children. He said that he was getting movies through the web site. He stated that he has been looking at child pornography for approximately the last eight months while he lived in the Downsville area. He initially denied that he masturbated to these. He was asked about masturbating. He said that has masturbated to adult porn and then later admitted that he masturbated maybe one or two times to the child porn and then after that he admitted that that probably happened more times than that. He said he viewed the files approximately once a month and all of the downloading of the child pornography happened while he was in Downsville.

The defendant said he never thought it was illegal to have child pornography on his computer. He stated he has viewed approximately a couple hundred images of child pornography in the last eight months. He said that it has been mainly little girls. He was asked if he had a preference on age or age range or if he wanted prepubescent. He said that that did not matter. When asked about older women, he said that yes he does view images of older women; he actually prefers older women. The example given by him was 40 years old. He was asked why he knew these were images of child pornography and he stated “they were little girls.” When asked if they had any pubic hair development he stated no. He was asked about breast development and he stated no. He was then asked if he had taken any pictures and he stated that he had not. He was asked if he had any just simple pictures of children and the defendant stated that he had taken one picture of a friend’s daughter who was kind of sitting in a chair playing. He aid he just snapped a picture of her. He said it wasn’t anything sexual or anything like that. She was clothed at the time.

Inv. Mayer then asked the defendant about printed images. The defendant did admit that he had printed off a few mages of child pornography. He stated that he thought they were all cartoons. He was asked if it was fair to say that some of them were not and he stated yes, it was probably fair to say that some of them were not cartoons, that they were live people. He was then asked about the pictures that were left in the arm of the chair. He stated that those were pictures he had printed up and he did admit that he had viewed them and masturbated to them a few times. When asked if he had printed those off because they were of particular interest to him he stated that that is probably why he printed them off because those were ones that he liked. He stated that no one looked at the pictures with him. He always did that alone. He was asked about playing War Craft games. He stated he used to play them a lot but could not afford to any more and he did cat while he was in there. Inv. Mayer told him that was a known place where people to transmit child pornography. He denied that he had gotten any child pornography in that way . He was asked if anyone had ever mailed him CDs or e-mailed him. He stated no one had.

Inv. Mayer then advised that Agent Spaulees came back and advised that there were numerous images located on the computer. Inv. Mayer was later told that there were probably 12 to 15 images of actual child pornography on the computer. After meeting with

Spaulees and quickly view3ing a number of the images which were of child pornography, Inv. Mayer advised he viewed them off the computer used by the analyst to review what was on the hard drive. Inv. Mayer advised that he saw numerous that were prepubescent that were either completely nude or semi-nude in sexually explicit manners. It was then decided that the defendant would be arrested. At this point, there was a minimum of 12 live children on the computer so he was charged with 12 felony counts of Possession of Child Pornography. Inv. Mayer advised he went up to the defendant and explained to him because of what they had found on his computer, it could not be ignored and that he was under arrest. He was then transported to the Dunn County Jail.

The statements made by the law enforcement officers can be considered truthful, credible, and reliable because of the positions of trust they hold. The statements of the citizen witnesses can be considered truthful, credible, and reliable because they are made by citizen witnesses. The statements of the defendant(s) can be considered truthful, credible, and reliable to the extent to which they are admissions against interests.

Based on the foregoing, the complainant believes this complaint to be true and correct.

Subscribed and sworn to before me,
and approved for filing on:

This _____ day of May, 2010.

_____
Complainant

_____
Assistant District Attorney

State Bar No._1009368___