

Approved: 
Marcia S. Cohen
Assistant United States Attorney

Before: HONORABLE JUDITH C. MCCARTHY
United States Magistrate Judge 20 MAG 12317
Southern District of New York

- - - - - x SEALED COMPLAINT

UNITED STATES OF AMERICA : Violations of
 : 18 U.S.C. §§ 2251(a)
-v.- : & (e), 2252A(a)(1) &
 : (b)(1)
JOHN MUESER, :
 : COUNTY OF OFFENSE:
 : WESTCHESTER
Defendant. :
- - - - - x

SOUTHERN DISTRICT OF NEW YORK, ss.:

PAO MEI FISHER, being duly sworn, deposes and says that she is a Special Agent with the Federal Bureau of Investigation, and charges as follows:

COUNT ONE

1. On or about May 1, 2019, in the Southern District of New York and elsewhere, JOHN MUESER, the defendant, unlawfully, willfully and knowingly employed, used, persuaded, induced, enticed, and coerced a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and the defendant knew and had reason to know that such visual depiction would be transported and transmitted using any means and facility of interstate and foreign commerce and in or affecting interstate and foreign commerce and mailed, and the visual depiction was produced using materials that had been mailed, shipped and transported in and affecting interstate and foreign commerce by any means including by computer, and such visual depiction was transported and transmitted using any means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce and mailed, to wit,

MUESER induced an 7-year-old minor to engage in sexually-explicit conduct, used his iPhone to record the activity, and then transported the images from Fairfield County, Connecticut to Westchester County, New York.

(Title 18, United States Code, Section 2251(a) and (e).)

COUNT TWO

2. On or about October 1, 2019, in the Southern District of New York and elsewhere, JOHN MUESER, the defendant, knowingly mailed, transported and shipped using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer, child pornography, to wit, MUESER transported child pornography maintained on his iPhone from Westchester County, New York to Fairfield County, Connecticut.

(Title 18, United States Code, Sections 2252A(a)(1) and (b)(1).)

The bases for my knowledge and for the foregoing charge are, in part, as follows:

3. I am a Special Agent with the Federal Bureau of Investigation ("FBI"), assigned to the Westchester Resident Agency. I have been a Special Agent with the FBI since 2017. During my tenure as a Special Agent, I have conducted and participated in numerous investigations of criminal activity involving crimes against children, including sexual exploitation and child pornography. I have gained expertise in these areas through training and daily work related to conducting these types of investigation.

4. I have been personally involved in the investigation of this matter. This affidavit is based upon my conversations with law enforcement officers and others, and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

5. On or about April 1, 2020, the FBI received information from the Greenwich Police Department ("GPD") concerning events involving JOHN MUESER, the defendant, a 69-year-old male. Based on my conversations with a GPD Detective ("Detective-1") and my review of reports prepared by the GPD, I am aware that:

a. On or about October 1, 2019, members of the GPD responded to a residence in Greenwich, Connecticut ("Residence-1") following a report that inappropriate pictures had been taken of an 8-year-old female ("Victim-1") and that the suspect, JOHN MUESER, the defendant, was still within the residence.

b. Thereafter, Detective-1 arrived at Residence-1. The parents of Victim-1 and another individual present at Residence-1 advised Detective-1 that MUESER had been tutoring Victim-1 at Residence-1 for the past four years, that they had received information that MUESER may have inappropriate photos of Victim-1 on his phone, and that they had approached MUESER to make inquiries of him when he arrived that day to tutor Victim-1. They further advised that, when questioned, MUESER admitted, among other things, that he had had Victim-1 sit on his lap, that she had stroked his hair while sitting on his lap, and that MUESER stated that he thought that there was a time when he and Victim-1 "inadvertently touched each other's private area in an unintended way." In addition, they advised Detective-1 that MUESER had permitted Victim-1's father to view photos on MUESER's phone, a black iPhone 7, and that Victim-1's father scrolled through deleted photos on MUESER's phone and saw photos of Victim-1's underwear and Victim-1 on MUESER's lap.

c. Victim-1's father provided MUESER's black iPhone 7 ("Mueser-Phone") to Detective-1. Detective-1 asked MUESER if he would sign a GPD Cell Phone Cloning/Forensic Extraction Consent Form. MUESER read and signed the form.

6. On or about October 10, 2019, GPD obtained a search warrant to search and seize evidence on the Mueser-Phone related to the crimes of Illegal Contact Of A Victim Under the Age of 16 and Possession of Child Pornography. GPD subsequently conducted a forensic analysis of the Mueser-Phone. The analysis revealed, among other things, hundreds of images and videos, many of which appear to be of Victim-1. In many of the images that appear to be of Victim-1, Victim-1 is partially clothed with her naked

vagina exposed. There are other images in which Victim-1's face is not visible, but portions of her clothing is visible.

7. Detective-1 showed Victim-1's mother several images extracted from the Mueser-Phone in which no face is visible. Victim-1's mother identified the clothing visible in the images as belonging to Victim-1.

8. On or about January 23, 2020, Victim-1 was interviewed by a forensic interviewer. The interview was video-recorded and I have reviewed the recording. Based on my review of the recording, I am aware that Victim-1 advised the following, in substance and in part:

a. JOHN MUESER began tutoring Victim-1 when she was in kindergarten or first grade. She is now in third grade.

b. When JOHN MUESER came to the house, she would sit on his lap to do work.

c. JOHN MUESER touched Victim-1 "in places where you shouldn't when I was sitting on his lap."

d. JOHN MUESER took photos of her during the tutoring sessions and it made her feel "uncomfortable."

e. When the forensic interviewer provided a drawing of an anatomically correct girl and boy and asked Victim-1 to circle the part of the body MUESER touched, Victim-1 circled the vagina on the drawing of the girl.

9. I have reviewed a portion of the material extracted ("Extracted Material") from the Mueser-Phone during the forensic analysis. The Extracted Material contains hundreds of images of what appears to be the same girl. Based on my review of the forensic interview of Victim-1, I recognize the girl in the images as Victim-1. Among the images I reviewed are the following:

a. File name: thumb_9993.bmp: This file is a photo of what appears to be a naked prepubescent vagina. The focus of the image is the vagina.

b. File name: IMG_6394.HEIC: This file is a photo of a female who is squatting with her legs spread open and her naked vagina exposed. In the photo, only a portion of her legs, thighs, vagina and one hand is visible. Her face is not

visible. The girl appears to be squatting in front of what appears to be a digital device with a pink case. A portion of what appear to be pink and white slippers is also visible in the photo. Data embedded in IMG_6394.HEIC indicates that the image was created on May 1, 2019 at approximately 8:22 p.m. using an iPhone 7 camera.

c. File name: IMG_6405.HEIC: This file is a photo of Victim-1 squatting in front of a digital device with a pink case. The device appears to be the same one visible in IMG_6394.HEIC. Victim-1's face is visible and she is wearing what appears to be a white top. Her knees are bare and they are pulled up to her chest, just under her face. She is wearing slippers that appear to be the same slippers that appear in IMG_6394.HEIC. Data embedded in IMG_6405.HEIC indicates that this file was created on May 1, 2019 at approximately 8:24 p.m. using an iPhone 7 camera.

d. File name: IMG_6397.HEIC: This file is a photo of Victim-1 who is squatting with her legs spread open and her naked vagina exposed. A portion of her face is visible in the photo. Also visible are the same pink and white slippers in IMG_6394.HEIC and IMG_6405.HEIC. Data embedded in IMG_6397.HEIC indicates that this file was created on May 1, 2019 at approximately 8:22 p.m. using an iPhone 7 camera.

e. File name: IMG_6396.HEIC: This file is a photo of Victim-1 who is squatting with her legs spread open and her naked vagina exposed. Her face is visible in the photo as is a portion of the same pink and white slippers described above. Data embedded in IMG_6396.HEIC indicates that this file was created on May 1, 2019 at approximately 8:22 p.m. using an iPhone 7 camera.

10. Based on my review of a portion of Extracted Material from the Mueser-Phone, I am aware that the Extracted Material includes various text messages sent to and from the Mueser-Phone. Among these text messages is a message sent from the Mueser-Phone on May 1, 2019 at approximately 8:35 p.m. in which the user of the Mueser-Phone stated, "Leaving Greenwich."

11. Based on my review of a portion of the Extracted Material, I am aware that, in addition to numerous images of what appears to be Victim-1, the Extracted Material also contains numerous sexually-explicit images and videos of other prepubescent children. Among the files I reviewed are the following:

a. File name: IMG_2343.MOV: This file is a 26-second video of a prepubescent girl. She is naked from the waist down and is lying on her back. She inserts her index finger into her vagina and moves her finger from side to side. Data embedded in the file indicates that the file was created with an iPhone 7 on August 5, 2018.

b. File name: IMG_2284.MOV: This file is an approximately 18-second video of a naked prepubescent female who is laying on her back on what appears to be a couch. Her legs are folded underneath her; she has both hands in the area of her vagina and appears to be massaging her genital area. The top of another person's head is visible in the video. Data embedded in the file indicates that the file was created with an iPhone 7 on or about August 2, 2018.

c. File name: IMG_2274.MOV: This file is an approximately 6-second video of a prepubescent female who is naked from the waist down, lying on her back with her legs spread open. Another individual's fingers are inserted into the female's vagina. Data embedded in the file indicates that the file was created with an iPhone 7 on or about July 27, 2018.

d. File name: IMG_7013.MOV: This file is a 31-second video of a prepubescent female who is naked from the waist down. She is standing on one leg and using one arm to brace herself against what appears to be a bathroom sink or counter. Her left arm is holding up her other leg and her genital area is visible. Toward the end of the video, the camera zooms into the area of the girl's vagina. Data embedded in the file indicates that the file was created with an iPhone 7 on May 27, 2019.

12. Based on my training and experience and my review of the files discussed in Paragraph 11(a) through (d) above, I believe that at least some of the video files discussed in Paragraph 11(a) through (d) above are video files that were recorded with an iPhone 7 while they were played on other devices. This conclusion is based, in part, on the fact that, in one of the files, there is a mouse cursor visible while the recording plays and there are words beneath the cursor that say "click to play," and in another file, there is a task bar visible while the video file plays. Because an iPhone 7 does not have a mouse cursor or a task bar, I believe that the iPhone 7 was recording these videos while they were played on other devices.

13. On or about March 18, 2020, JOHN MUESER was charged in Connecticut with Possession of Child Pornography, Risk of Injury to a Minor, Sexual Assault 4th and Voyeurism, and a warrant was issued for his arrest.

14. On or about April 1, 2020, other law enforcement officers and I, assisting Connecticut law enforcement, went to the Westchester residence ("Residence-2") of JOHN MUESER to effect his arrest.

15. On or about October 23, 2020, the Honorable Andrew E. Krause, United States Magistrate Judge, authorized a warrant and order (the "Warrant") to be served upon AT&T for historical location information for the Mueser-Phone. I have reviewed AT&T historical location records for the Mueser-Phone ("Location-Records") that AT&T provided in response to the Warrant.

16. Based on my experience and training, I am aware that cell phone providers have cell towers that are placed throughout geographical areas. Each cell tower contains three sectors and each sector covers a 120 degree angle. When an individual uses his or her cell phone for a communication event (i.e. a call, text or data usage), that cell phone connects to the cell tower and sector with the strongest and clearest signal. When the cell phone connects to the cell tower, it generates a call detail record (which identifies the cell tower and sector) which is maintained by the cell phone provider. By examining the sector and cell phone tower to which a cell phone connected at a given time, the location of the cell phone at the time of the communication event can be determined. As the cell phone moves, it continues to connect to the cell tower and sector with the strongest and clearest signal. Thus, when call detail reports indicate that a cell phone has connected to different cell towers and sectors, that information indicates that the cell phone has moved from one location to another.

17. Based on my review of the Location-Records for May 1, 2019, I am aware that:

a. At or about 3:32 p.m. on May 1, 2019, the Mueser-Phone connected to a cell tower located in Mount Vernon, New York.

b. At or about 3:56 p.m. on May 1, 2019, the Mueser-Phone connected to a cell tower located in New Rochelle, New York.

c. At or about 4:20 p.m. on May 1, 2019, the Mueser-Phone connected to a cell tower located in Purchase, New York.

d. At or about 4:39 p.m. on May 1, 2019, the Mueser-Phone connected to cell tower located in Greenwich, Connecticut.

e. At or about 8:05 p.m. on May 1, 2019, the Mueser-Phone connected to cell tower located in Greenwich, Connecticut.

f. At about 9:33 p.m. on May 1, 2019, the Mueser-Phone connected to a cell tower located in Eastchester, New York.

g. At or about 9:36 p.m. on May 1, 2019, the Mueser-Phone connected to another cell tower located in Eastchester, New York.

18. Based on my review of the Location-Records for October 1, 2019, I am aware that:

a. At or about 11:32 a.m. on October 1, 2019, the Mueser-Phone connected to a cell tower located in Eastchester, New York.

b. At or about 3:04 p.m. on October 1, 2019, the Mueser-Phone connected to a cell tower located in the Bronx, New York.

c. At or about 3:22 p.m. on October 1, 2019, the Mueser-Phone connected to a cell tower located in Mount Vernon, New York.

d. At or about 3:57 p.m. on October 1, 2019, the Mueser-Phone connected to a cell tower located in Greenwich, Connecticut.

e. At or about 4:11 p.m. on October 1, 2019, the Mueser-Phone connected to another cell tower located in Greenwich, Connecticut.

19. Based on the above details concerning the cell towers to which the Mueser-Phone connected on May 1, 2019, I believe that, on May 1, 2019, the Mueser-Phone traveled from Westchester County, New York to Fairfield County, Connecticut

and back to Westchester County, New York. Based on the above details concerning the cell towers to which the Mueser-Phone connected on October 1, 2019, I believe that, on October 1, 2019, the Mueser-Phone traveled from Westchester County, New York to Fairfield County, Connecticut.

WHEREFORE, deponent prays that the above-named defendant be arrested and imprisoned or bailed as the case may be.

/s/ Pao Mei Fisher
PAO MEI FISHER (known to the Court)
Special Agent
Federal Bureau of Investigation

Sworn to me through the transmission of this
Affidavit by reliable electronic means, pursuant to
Federal Rules of Criminal Procedure 41(d)(3) and 4.1, this
17th day of November, 2020

Judith C. McCarthy
HONORABLE JUDITH C. MCCARTHY
United States Magistrate Judge
Southern District of New York