

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

**v.**

**CORY MILLER,  
Defendant**

:  
:  
:  
:  
:  
:

**No. 1446-2010  
CRIMINAL**

**OPINION AND ORDER**

Defendant filed a Petition for Writ of Habeas Corpus on December 9, 2010. By direction of the Court, the Petition will be decided on the transcripts from the Preliminary Hearing held before Magisterial District Judge C. Roger McRae on September 18, 2010.

***Background***

On July 31, 2009 Corporal Thomas Trusal of the Pennsylvania State Police Bureau of Criminal Investigation received a referral from Corporal Rob Erdely (Erdely) of the Computer Crime Unit. On July 10, 2009 Erdely was on the Gnutella network, a peer to peer file sharing network, conducting undercover investigations into the sharing of child pornography over the internet. A search was initiated using the search term “pthc”. A file named “! New !(Pthc) Laura Strip Dance 12Yo Tiener Preteen Lolita.mpg” was located. The Gnutella network then continued to search for download candidates for this file. The SHA-1 (base32) hash value for this file was “HCYHYK7TKZNX77D7T2DQBPDUCRQAATZD.” Erdely partially downloaded the file and noted that the Internet Protocol (I.P.) address sending the file was 98.17.49.83. The movie downloaded from a single download source, a computer assigned to the I.P. address 98.17.49.83. Erdely had seen the complete file in other investigations and knew it to be a 5 minute 31 second movie containing the following: A 12 year old child is seen on a bed

taking her clothes off. At 1 minute and 15 seconds she takes her pants off exposing her underwear. She then takes off her shirt exposing her chest. At 3 minutes and 20 seconds she begins to take off her underwear exposing her pre-pubescent genitals. At 4 minutes and 40 seconds, she is seen rubbing her genitals with a black object in her hand. The I.P. address assigned to the computer sharing the above mentioned files was 98.17.49.83 on July 10, 2009.

Erdely browsed all of the files being shared over the internet by the computer system having the I.P. address 98.17.49.83. This list was received by making a direct connection to the computer having the I.P. address of 98.17.49.83. Erdely reviewed the list which included all of the filenames and SHA-1 hash values of the files being shared by the user. In looking at the list of files, Erdely was able to locate the SHA-1 hash value (digital fingerprint) and locate other files which he had seen in other investigations. Since the SHA-1 hash value was an exact match, Erdely knew that all of the files were completely downloaded and present on the computer system sharing these files. The files Erdely recognized depict children under the age of 18 engaged in prohibited sexual acts.

During the file transfer, Erdely was able to capture the globally unique I.D. which was sending the file: F2B5A73496292D2A8EBCDAA720B2AF00. Using the publicly available records of the American Registry for Internet Numbers (ARIN), Erdely found that the I.P. address in question belonged to a block of addresses registered to Verizon Internet Services. Erdely obtained a court order by the Indiana County Court of Common Pleas and forwarded the order to Verizon. Verizon responded to the court order, identifying the subscriber as Laverne H. Gulliver and Janice L. Miller of 14 Wise Road Ext. Montgomery, PA 17752. The phone number was also provided for this subscriber and was reported as 570-547-6485. Erdely then forwarded

the information to Trusal as Trusal was the member of the Computer Crime Unit that covered the area where the Wise Road Ext. address was located.

Trusal made contact with the postal carrier for the Wise Road Extension address. The postal carrier related that Janice Miller moved from the address in April of 2009, but that Laverne Gulliver and other members of the Miller family still resided and received mail at the address. The postal carrier also related that the address was actually 214 Wise Road Extension, even though recently the residents had received some mail with the address listed as "14."

Trooper Bill Holmes (Holmes) went to the residence in question and obtained pictures of the residence. While Holmes was there, he spoke with someone who identified himself as Cory Miller (Defendant) who lives at the residence. Holmes also obtained license plate numbers from two vehicles at the residence: both of the vehicles are registered to the Defendant. Information obtained from "Accurint" databases show an address of 214 Wise Road Extension for the Defendant, Lavern Gulliver, Janice Miller, as well as other current residents.

Trusal obtained a search warrant for 214 Wise Road Extension from Magisterial District Judge C. Roger McRae and executed the warrant on September 18, 2009. The Defendant's brother, Timothy Miller, was the only person present at the time of the search. Upon execution of the search warrant, two computers were located and previewed. One computer was a laptop that was located in a bedroom that was unoccupied at the time of the search. The second computer was a desktop located in Timothy Miller's room. The preliminary examination conducted on the computers at the time of the search revealed that the desktop computer located in Timothy Miller's room did not contain any images of child pornography. However, movie files containing child pornography were located on the laptop. At the conclusion of the search, the laptop computer and numerous CDs/DVDs were seized. Trusal interviewed Timothy Miller

at the scene and Timothy indicated that he himself occasionally used the laptop to download music from iTunes and charge his iPod, but that he has never used it to download child pornography movies. Timothy Miller testified at the Preliminary Hearing that the laptop was located in the Defendant's bedroom. Following the search, Trusal was also able to talk to the Defendant. The Defendant indicated to Trusal that the laptop computer taken out of the residence was his computer. The Defendant also indicated that some of the members of his military unit would have had access to his computer at one time or another. Dr. Pat Bruno, a Pediatrician and child abuse expert, viewed the images recovered during the investigation and determined that 34 of the movie files contained images of children under the age of 18. After checking the file created date/times for the child pornography, the police discovered there were 18 separate dates on which child pornography movie files were created, 15 of which were between June and September of 2009. The child pornography files were found in four different locations on the laptop. One of the locations was a forward called "shared" that was on a hard drive under the user profile "owner." Therefore, when LimeWire, a file sharing program present on the laptop, is running, any of the files in the "shared" folder are available for other people on the Internet to find and download.

At the time of the Preliminary Hearing, Defense Counsel stipulated to the process by which the police found the I.P. address which led them to the Defendant's residence, that a child pornography movie was downloaded and that the movie originated from the I.P. address that was registered to the address located on Wise Road Extension. The only fact that Defense Counsel did not stipulate to was the fact of how the child pornography was linked to the Defendant.

## *Discussion*

The Defendant filed a Petition for Habeas Corpus to dismiss one criminal count of Dissemination of Child Pornography, thirty-three (33) counts of Possession of Child Pornography, and thirty-six (36) counts of Criminal Use of a Communication Facility.

A petition for habeas corpus is the means by which a party can challenge at the pre-trial level whether the Commonwealth presented sufficient evidence against them to establish a prima facie case. Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super 2003). The standard for a prima facie case is met when the Commonwealth “produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

A person violates 18 Pa.C.S. §6312(C)(1) Sexual Abuse of Children, Dissemination of Photographs, Video Tapes, Computer Depictions and Films, if that person:

knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act....

A person violates 18 Pa.C.S. §6312(D)(1) Possession of Child Pornography, if that person, “intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act....” A person violates 18 Pa.C.S. §7512 Criminal Use of a Communication Facility, if that person “[u]ses a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title.”

In this case, a laptop computer was found through police investigation which contained at least thirty-four (34) movies of child pornography. The laptop had the capability to share the files of child pornography with other internet users. The computer was linked to I.P. address 98.17.49.83. which was registered to the address on Wise Road Ext. Montgomery, PA 17752. A search of the residence revealed that the laptop computer in question was located in the Defendant's bedroom. The Defendant indicated to the police that the laptop computer belonged to him.

Based on these facts, the Court finds that the Commonwealth presented sufficient evidence to establish a prima facie case that the Defendant committed the offenses of: Sexual Abuse of Children, Dissemination of Photographs, Video Tapes, Computer Depictions and Films; Possession of Child Pornography; and Criminal Use of a Communication Facility.

**ORDER**

AND NOW, this 4<sup>th</sup> day of March, 2011 based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc. DA  
George Lepley, Esq.