

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1630-2021
v.	:	
	:	
TYREE HOLLY,	:	OMNIBUS MOTION
Defendant	:	

OPINION AND ORDER

Tyree Holly (Defendant) was charged with sexual assault and other related offenses, totaling eighty-three (83) counts. The charges arise from Defendant allegedly engaging in various acts of sexual misconduct with a minor female. Defendant filed an initial Omnibus Pretrial Motion on March 28, 2022. This Court held a hearing on the motion on June 23, 2022. The Commonwealth filed a Motion to Re-Open Record of Suppression Hearing on July 18, 2022 and the Court then held an additional hearing on August 15, 2022. In his Omnibus motion, Defendant first argues that the search warrant for two (2) cellular phones in this case lacked probable cause and any evidence seized from these phones must be suppressed. Second, Defendant submits that the search warrant for the phones is overbroad, and the evidence seized pursuant to the warrant must be suppressed. Lastly, Defendant asserts that the Commonwealth failed to establish their *prima facie* burden on all Sexual Abuse of Children¹ charges and believes those charges must be dismissed.

Preliminary Hearing and Background

The Commonwealth presented the audio of the preliminary hearing, marked as Commonwealth's Exhibit 2. A.H. testified on behalf of the Commonwealth at the preliminary hearing. A.H. testified that she is sixteen (16) years old and is familiar with Defendant because

¹ 18 Pa.C.S. § 6312 generally. This challenge includes 6312 (b)(2) encompassing Counts 1, 9, 18, 26, 35, 43, 51 and 59; 6312 (c) encompassing counts 2, 10, 19, 27, 36, 44, 52 and 60, with Counts 68-83 of the criminal information all alleging a violation of section 6312(d).

he is the father of her child. She admitted to having a sexual relationship with Defendant in October through December of 2020. A.H. indicated that she was fifteen (15) at that time and believed Defendant to be twenty-five (25). She stated that sexual intercourse occurred at the TownePlace Hotel in the city of Williamsport. A.H. said they recorded their sexual encounters twice by setting her phone on a pillow on the bed. She also confirmed that she viewed those videos and recognized herself in all of them. A.H. also said that photographs were taken during intercourse on her phone. Defendant then used her phone to send the videos to his own phone. A.H. admitted to also sending photos of herself to Defendant when they were not spending time together. She said she could identify herself in most of the photos but could not recall the ones she could not identify. A.H. eventually showed the images to Detective Loretta Clark and allowed her to look through her phone. A.H. further testified that she and Defendant engaged in oral sex and had sex more than once. A.H. said that she did not inform Defendant of her age and A.H. admitted that the sexual encounters did not resume after Defendant found out her age in December of 2020. A.H. discovered she was pregnant in November 2020 and told her parents the news first. She also informed her parents of Defendant's age.

Detective Loretta Clark (Clark) of the Lycoming County District Attorney's Office also testified on behalf of the Commonwealth at the preliminary hearing. Clark testified that she became familiar with Defendant in January 2021 when she became aware of a statutory sexual assault case regarding Defendant's purported sexual conduct with A.H. Charges were filed against Defendant in relation to this alleged incident and Clark obtained an arrest warrant for Defendant who was arrested on January 14, 2021 by the U.S. Marshals. Defendant had a black iPhone and a rose-colored iPhone on his person at the time of arrest. These phones were seized incident to arrest and provided to Clark. Clark obtained a search warrant for those phones and

took them to the crime lab where they attempted to do an extraction on the rose-colored phone, but it was unsuccessful because they did not have the passcode. A partial extraction of the black iPhone was successfully completed, and Clark was able to review the evidence pulled from that device.

Clark viewed multiple images of various parts of the female body, including breasts, vagina, and buttocks. However, the face of the person in the photographs was not visible. After locating these images, Clark asked A.H. to come in for an interview. During that interview, she confirmed that these were her body parts and even recognized a bed spread. A.H. could tell Clark where these images were taken on her own phone. Clark was able to corroborate the photos found from Defendant's phone to the exact images on A.H.'s phone. While A.H. was showing her these photos, Clark could also see a folder on her phone containing nine (9) videos of A.H. and Defendant engaging in sexual intercourse. Clark asked for permission to search A.H.'s phone and both A.H. and her parents consented to this search. A full extraction of A.H.'s phone was successfully completed, and Clark reviewed the data from the extraction.

Clark wrote a report based on this evidence and categorized each video. Clark further testified that there is a group of charges for each video and charges for the photographs found on Defendant's phone as well. Defendant was not charged for the images or videos where A.H. could not identify herself. Clark indicated Defendant was twenty-five (25) at the time of the alleged conduct. Each video and photograph include the date they were captured, and these dates are within the date range that A.H. testified to having a sexual relationship with Defendant. Clark reiterated that all the videos in this case were retrieved from A.H.'s phone and only photographs were discovered on Defendant's phone. Clark testified similarly at the hearing on this motion. Additionally, Clark stated that she would have looked at A.H.'s phone

regardless of how much information could be extracted from Defendant's phone. Clark also noted that the search warrant application was written based off the first set of charges filed against Defendant and law enforcement was not yet aware of any images or videos which could have been transmitted or received by a cellular phone.

On August 1st, a brief hearing was held, and the Court granted the Commonwealth's request to reopen the record of testimony of the suppression hearing. At the August 15, 2022 hearing the Commonwealth called Agent Jeremy Brown (Brown) of the Williamsport Bureau of Police. Brown testified that he was not involved in the investigation initiated by the DA's office prior to Wade contacting him. He explained that Wade wanted him to review case information and if applicable apply for a search warrant. He would have reviewed the incident reports, actual video footage of the crimes and the interview of the victim. He did not talk with Clark or have any knowledge or involvement with the investigation. He would have applied for a search warrant on June 29, 2022, from MDJ Biichle. Once the warrant was granted, he would have given it to the Lycoming County Detectives to serve and search the phone. Brown did not do the extraction himself, because the DA's office had possession of the phones. Lycoming County Detective Calvin Irvin extracted the data from the phone.

Discussion

Habeas Corpus Motion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the

belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” *Commonwealth v. DiStefano*, 782 A.2d 574, 582 (Pa. Super. 2001); *see also Commonwealth v. Jones*, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983); *see also Commonwealth v. Kohlie*, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

Defendant challenges the sufficiency of the Commonwealth’s evidence on the charges of Sexual Abuse of Children, specifically that he did not know her age and therefore he cannot be charged with this offense. In other words, since he was not aware of her age, he did not “knowingly” possess or control material depicting a child under the age of 18 engaging in a prohibited sexual act or in the simulation of such act. Section 6312 generally requires proof of the age of the subject by either “competent expert testimony” or “direct or circumstantial evidence”. *Commonwealth v. Robertson-Dewar*, 829 A2d 1207 (Pa Super 2003), appeal denied 576 Pa. 712, 839 A.2d 352. Mistake of age may be a valid defense available to the

defendant at trial for offenses charged under Chapter 31. *See* 18 Pa. C.S.A. §3102. However, for the charge enumerated in subsection 6312 B, mistake of age is no defense. *See* 18 Pa. C.S.A. § 6312 (e.1). Therefore, with respect to charges 1, 9, 18, 26, 35, 43, 51 and 59 the motion is dismissed. With respect to the other charges, although Defendant alleges in his motion that he may be asserting such a defense, since no evidence was presented at the preliminary hearing by the defense asserting the Defendant's knowledge or lack of her age, the motion is dismissed as to the remaining counts at this time. The Court also accepts the Commonwealth's argument, at least for *prima facie* purposes, that Defendant retained the images on his phone for at least a few weeks after he became aware of the complainant's age and before his phones were seized.

Search Warrant Probable Cause

Defendant also challenges the issuance of the search warrant for Defendant's phone and A.H.'s phone, claiming the results of the search of the phones need to be suppressed because the search warrant did not allege sufficient facts to establish probable cause. When evaluating the probable cause of a search warrant this Court's determination is whether there was "substantial evidence in the record supporting the decision to issue a warrant" by giving deference to the issuing magistrate's probable cause determination and "view[ing] the information offered to establish probable cause in a common-sense, non-technical manner." *Commonwealth v. Jones*, 988 A.2d 649, 655 (Pa. 2010). Probable cause is established by a "totality of the circumstances." *Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985) (adopting *U.S. v. Gates*, 462 U.S. 213 (1983)). The Court "must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of probable cause when determining whether the warrant was issued upon probable cause." *Commonwealth v.*

Arthur, 62 A.3d 424, 432 (Pa. Super. 2013). It is “not require[d] that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location.” *Commonwealth v. Forster*, 385 A.2d 416, 437-38 (Pa. Super. 1978). A magistrate must simply find that “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Commonwealth v. Manuel*, 194 A.3 1076, 1081 (Pa. Super. 2018). The search warrant, entered as exhibit #1, was obtained by Detective Clark and approved by MDJ Biichle on January 19, 2021. Defense argues that there was no information contained in the properly sworn affidavit that would have enabled Clark reason to believe that evidence of a crime would have been contained on the cellular phones. Commonwealth argues that the independent source doctrine requires otherwise.

The independent source doctrine, provides that “evidence tainted by illegal police conduct may nevertheless be admitted into evidence if the evidence can fairly be regarded as having an origin independent of the unlawful conduct.” *Commonwealth v. Henderson*, 47 A.3d 797, 798 (Pa. 2012). The burden of proof then is on the prosecution to establish by a preponderance of the evidence that the evidence illegally obtained would have ultimately or inevitably been discovered by legal means. *Commonwealth v. Fulton*, 179 A.3d 475, 490 (Pa. 2018).

Agent Brown testified that the search warrant he prepared² in June 2022 was not based upon knowledge or information from Detective Clark. He performed his own review of the case reports, interviews and evidence and completed independently of the County Detective’s

² Admitted at the August 15, 2022 hearing as Commonwealth’s #3.

investigation. Therefore, the information was lawfully discovered by Agent Brown independently from Detective Clark and the first search warrant.

Search Warrant Overbreadth

Defendant also alleges that the search warrant obtained by Detective Clark was overbroad. The Commonwealth at the June 2022 hearing acknowledges that fact. However, the Commonwealth requested at that hearing and after a subsequent hearing, was given the opportunity to reopen the record to present additional testimony regarding a subsequent search warrant. *See* Order of August 1, 2022. Although the Commonwealth conceded that the Clark search warrant was overbroad, the Court finds it is of no moment as the subsequent search warrant for the phones independently obtained by Brown was lawful.

Conclusion

The Court finds that the Commonwealth did present enough evidence at the preliminary hearing to establish a *prima facie* case for the contested counts against Defendant. Therefore, Defendant's Petition for Writ of Habeas Corpus is denied. The Court also finds that regardless of whether the affidavit of probable cause for the first search warrant of the cell phones contained sufficient evidence to establish probable cause for law enforcement to search, the subsequent warrant filed by the WBP did. As a result, Defendant's Motion to Suppress the evidence seized pursuant to the search warrant is denied. Lastly, the Court finds that the warrant's overbreadth was immaterial due to the Commonwealth's ability to establish an independent source. Therefore, the evidence seized pursuant to the search warrant shall not be suppressed on these grounds.

ORDER

AND NOW, this 4th day of January, 2023, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus is hereby **DENIED**. The Defendant's Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge