IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CP-41-CR-0000252-2023**
v.	:	**CP-41-CR-0000253-2023**
	:	
COLIN BEST,	:	**OMNIBUS PRETRIAL MOTION**
Defendant	:	

OPINION AND ORDER

Colin Best (Defendant) was charged on October 29, 2024 at criminal docket number 253-2025 with Unlawful Contact with a Minor,[1] a felony of the third degree, Furnishing Alcohol to Minors,[2] a misdemeanor of the third degree and Corruption of Minors,[3] a misdemeanor of the first degree. He was also charged on December 30, 2024 at criminal docket number 252-2025 with nine counts of Child Pornography,[4] a felony of the third degree; one count of Photographing/Filming/Videotaping a child,[5] a felony of the second degree; six counts of invasion of privacy,[6] misdemeanors of the second degree; three counts of Corruption of Minors,[7]misdemeanors of the first degree, three counts of Furnishing Alcohol to Minors,[8]misdemeanors of the third degree; six counts of Criminal Use of a Communication facility,[9] felonies of the third degree; one count of Indecent Assault of an unconscious person,[10] a misdemeanor of the first degree, and one count of Endangering the Welfare of Children

---

[1] 18 Pa. C.S.A. Section 6318(a)(1).
[2] 18 Pa. C.S.A. Section 6310.1(a).
[3] 18 Pa. C.S.A. Section 6301(a)(1)(i).
[4] 18 Pa.C.S.A. Section 6312(d). This statute was amended effective December 30, 2024; however, these offenses pre-date those amendments. The amendment changes the terminology from child pornography to child sexual abuse material (CASM), a term which counsel has used in these proceedings.
[5] 18 Pa. C.S.A. Section 6312(b)(1).
[6] 18 Pa.C.S.A. Section 7507.1(a)(1).
[7] 18 Pa.C.S.A. Section 6301(a)(1)(i).
[8] 18 Pa. C.S.A. §6310.1(a).
[9] 18 Pa. C.S.A. §7512(a).
[10] 18 Pa. C.S.A. §3126(a)(4).

(EWOC),[11]a misdemeanor of the first degree. Formal Court Arraignment was scheduled in both cases for February 24, 2025. On March 6, 2025, the Commonwealth filed a Notice of Joinder pursuant to Pa.R.Crim.P. 582(B)(1).

Defendant filed an omnibus pretrial motion on April 10, 2025 in both cases. In the omnibus motion, Defendant asserted that: the cases should be severed; the Commonwealth failed to present *prima facie* evidence for Count 1, Unlawful Contact in case 253-2025, all counts of furnishing alcohol to minors and Counts 1 to 10 in case 252-2025 and these counts should be dismissed; and a motion to suppress evidence.

Hearing and argument were held on was held on July 14, 2025. The Commonwealth introduced the transcript of the preliminary hearing on February 6, 2025[12] held before MDJ Christian Frey as Commonwealth's exhibit #1. The Commonwealth did not present any additional testimony at the time of the hearing. Defense counsel's brief was filed on August 14, 2025, and the Commonwealth's brief was filed on September 10, 2025.[13]

Preliminary Hearing Testimony

A.S. testified that she was friends with E.B. in the summer of 2024. On June 13, 2024, she spent the night at E.B.'s house, which was on Grace Street in Williamsport. She was sleeping on a couch wearing a black top with no straps. She saw a video taken of her without

[11] 18 Pa. C.S.A. §4304(a)(1).
[12]Although the coversheet of the preliminary hearing transcript lists the date as February 6, 2024, this is a typographical error and the year should be 2025. The testimony presented at the preliminary hearing showed that the offenses occurred in 2024; therefore, the hearing had to have occurred in 2025.
[13] Defendant submitted a pro se "supplemental brief" on December 12, 2025, which will not be considered by the court. Defendant is represented by counsel and the supplemental brief is not signed by counsel. *See* Pa. R. Crim. P. 596(a)(4) and comment (requiring the clerk of courts to file the document but the filing does not trigger any deadline nor require any response). Furthermore, Defendant is not entitled to hybrid representation. *See Commonwealth v. Ellis*, 534 Pa. 176, 626 A.2d 1127, 1139 (1993)("Superior Court was correct in its determination that there is no constitutional right to hybrid representation either at trial or on appeal."). Defendant can be represented by counsel or he can represent himself, but court will not permit hybrid representation.

her knowledge and consent. She could tell it was her from her hair and the clothing that she was wearing. Preliminary Hearing Transcript (PHT), 02/06/25, at 4-6.

K.K. testified that she was 14 years old in April of 2024. In Spring or April 2024, E.B. came to her house for a sleepover. They hung out sometimes because E.B.'s father (Defendant) was dating K.K.'s mother. PHT at 7. On the day of the incident, the following people were present: K.K., E.B., M.F., and Defendant and consumed alcohol provided by Defendant, specifically Peach Crown. PHT at 8-9. They also used vapes that were provided by Defendant. *Id*. Defendant took a video of K.K. drinking alcohol. K.K. also testified that she took a shower that evening and M.F. and E.B. were with her. A video was taken of her getting ready to take a shower without her knowledge or consent. K.K. was sleeping in her sisters' bedroom. She went to bed in her underwear and a sweatshirt. She could tell by the clothes and she could see it was her in the video.

M.F. testified that she was 14 years old in April 2024. She had a sleepover with E.B. at K.K.'s house. Defendant was the boyfriend of K.K.'s mom. Defendant is E.B.'s dad. She, K.K. and E.B. consumed alcohol provided by Defendant; the alcohol was Crown. E.B. provided a video of her consuming alcohol that was taken by Defendant. She also used vapes that night. She took a shower that night and E.B. and K.K. were with her. She saw a video of her getting ready to take a shower; the video was taken without her knowledge or consent. She knew it was her in the video from the shorts she was wearing. She also spent the night on a different night, which was a school night. Defendant came into the room with his flashlight. After she woke up because of the light, he walked back out of the room. PHT at 12-15.

On cross-examination, she testified that she could not remember the date of the different night. She said that you could not see her face in the video but one could see K.K's body and

the sweater she had on that night. She knew that Defendant took the video because he was the only person in the house besides K.K.'s mom and the little girls, her, K.K. and E.B. PHT at 15-16.

E.B. testified that she was 17 years old in 2024, and A.S was one of her close friends. A.S. spent the night at E.B.'s house over the summer in 2024. A.S. was wearing blue jeans and a black tube top. In Spring of 2024, there was a sleepover with K.K. and M.F. Present in addition to E.B., K.K. and M.F were K.K.'s mom who went to sleep because she had to work the next morning and the three little girls. She, K.K. and M.F. consumed alcohol that was provided to them by Defendant. She was pretty sure that the alcohol was Crown Royal Apple. She also used vapes provided by Defendant. There was a video of her drinking alcohol that was taken by Defendant; E.B. found it on Defendant's phone. She also saw a video of her and her friends getting undressed for a shower. She could identify K.K. in the video because she was the smallest and E.B. could see her face in the video. PHT at 18-20.

On cross-examination, defense counsel asked who told her that videos were found on Defendant's phone, she said she saw them herself. She was also asked if her mother provided vapes to her and she replied that her mother did not get her any vapes because E.B. was on probation. PHT at 20.

M.B.[14] testified that Defendant was her husband and she had known him for 22 years. She testified that there was a video of an unconscious child that was filmed in her home. She could tell that it was her home from the floor and the couch. Her home is on Grace Street in Williamsport. She saw the hand of the person who was taking the video and recognized it as Defendant's hand from a blood blister on the pointer finger which he had gotten from work a

[14] Although M.B. is an adult, the court is using her initials to protect the identities of the minors.

week or two earlier. She also recognized a fleece Halloween blanket and she provided the blanket to law enforcement. She also saw a video of an unconscious child filmed in a different house. She recognized the hand and shirt sleeve of the person taking the video (which could be seen in the video) as Defendant's. She provided the shirt to law enforcement. She also testified that when Defendant was not living with her, he still had access to her home. PHT at 22-24.

On cross-examination, she testified that the hand was Defendant's left hand. When asked if there was anything notable about the shirt, she testified that it was a hoodie. She remembered it because they bought it and it was a set. PHT at 24.

Agent Brittany Alexander of the Williamsport Bureau of Police testified that she received a Childline report and investigated these cases. She received an extraction of a phone or Google drive and reviewed it. Videos were found on Defendant's phone and his iCloud account. She observed images of child pornography or child sexual abuse material. There were several images and videos depicting children under the age of 18. She could tell they were under 18 because of the lack of pubic hair. It was obvious that the videos and images depicted children engaged in sexual activities. There were about five images, give or take, and two videos. She also discovered videos of the victims who testified. There was a video of A.S. wearing a black ribbed strapless top asleep on her side on a couch, covered by a Halloween blanket. Defendant's hand comes into the video and manipulates the side of her top to expose her breast. A.S. was not conscious. There were three videos of her. The Halloween blanket and Defendant's shirt were provided to Agent Alexander. PHT at 25-27.

Agent Alexander also saw a shower video. This video depicted two females: M.F. was completely nude and E.B. was getting undressed. They were joining K.K. in the shower. The

video was taken from under a doorway between the floor and the bottom of the door. This video was found on Defendant's phone. There also were three videos depicting minors consuming alcohol and using vapes. She could tell that it was alcohol because one was labeled Fireball and the other was labeled Crown Royal Peach. She heard a male voice on the video and recognized it as Defendant's voice as she had interviewed him and was familiar with his voice. She also saw a video of K.K. and M.F. in a bed. K.K. was wearing a peach-colored long sleeve top and no bottoms; M.F. was wearing black shorts that she was wearing in the alcohol video. Defendant manipulated M.F.'s underwear to expose her vagina. The girls did not appear to be conscious. There were five videos. A male hand and shirt sleeve were visible. The shirt sleeve said Mossy Oak Element on it, which was consistent with the shirt provided to Agent Alexander by M.B. The videos were on Defendant's phone and were taken in April 2024 and June 2024. PHT at 27-28.

On cross-examination, Agent Alexander testified that some of the videos were taken in Lycoming County and some were taken at K.K.'s house in Centre County. The phone was an Apple iPhone that she received from Defendant. There was a search warrant for Defendant's iCloud account, the content of which was in a secure facility within the WBP on a specialized computer for CSAM. PHT at 30-31.

On redirect, Agent Alexander testified that the iPhone was seized from a residence in Williamsport where Defendant was working at the time.

The testimony of these witnesses related to the charges filed in case 252-2025.

E.B. was recalled as a witness to testify about the charges filed in case 253-2025. E.B. testified that R.R. was her best friend since second grade. On August 9, 2024, E.B. was spending time with R.R. at the house on Grace Street in Williamsport where E.B. lived with her

mom. They consumed alcohol and marijuana that was provided to them by Defendant. PHT at 33-34. On cross-examination, she testified about two other people who were present that also drank alcohol and smoked marijuana but they were not minors, they were an 18-year-old and a 23-year-old. PHT at 35.

R.R. testified that she was 17 years old. E.B. was her best friend since second grade and Defendant was E.B.'s dad. On August 9, 2024, she was at a sleepover at E.B.'s house on Grace Street in Williamsport. She, E.B. and two other people consumed alcohol and smoked marijuana. The alcohol was Pink Whitney, Pinnacle Whip and a third that she did not know the name of.[15] She testified that she took two shots and did not want to drink any more alcohol. Defendant tried to get her to drink a darker alcohol but she refused. She went to the living room and laid down. She got woken up to being passed weed. She didn't necessarily want to smoke it because she was half asleep. She got up, smoked marijuana and then fell back to sleep. She felt "tipsy" after consuming alcohol and marijuana. E.B. tried to wake her up but she couldn't. Around 3:00 or 4:00 a.m., Defendant woke her up by tugging on her shorts. She woke up, turned over and said what the--. Defendant asked what happened, she said nothing and ran upstairs and tried to wake E.B. In his hand, Defendant had his phone with the flashlight illuminated. She identified Defendant in the MDJ's courtroom. PHT at 26-39.

On cross-examination, R.R. testified that it wasn't exactly dark in the room. It was lighter out but not fully dark. The television downstairs was also on. She also testified that Defendant passed the marijuana around. PHT at 40.

DISCUSSION

[15] Pink Whitney is a pink lemonade flavored vodka and Pinnacle Whip is whipped vodka.

Motion to Sever

The first issue raised by Defendant is that the cases should be severed. Defendant alleges that for the Commonwealth to join 252-2025 which contains three charges alleging acts on August 9, 2024 and 253-2025 which contains 30 counts of criminal offenses allegedly committed by Defendant between February 1, 2024-December 31, 2024 unfairly prejudices him. He alleges that the jury will be confused and improperly cumulate the evidence. The Commonwealth argues that pursuant to current caselaw and Rules 582 and 583 the joinder was proper. The court finds that the cases should be tried together.

The decision to sever offenses is within the sound discretion of the trial court and will be reversed only for a manifest abuse of that discretion or prejudice and clear injustice to the defendant. *Commonwealth v. Wholaver*, 605 Pa. 325, 989 A.2d 883, 898 (2010); *Commonwealth v. Gray*, 296 A.3d 41, 47 (Pa. Super. 2023).

The Pennsylvania Supreme Court has established a three-part test that the lower courts must apply in addressing a severance motion similar to the one raised in this case. The court must determine:

> (1) whether the evidence of each of the offenses would be admissible in a separate trial for the other; (2) whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and, if the answers to the previous two questions are in the affirmative, (3) whether the defendant will be unduly prejudiced by the consolidation of offenses.

Commonwealth v. Collins, 550 Pa. 46, 703 A.2d 418, 422 (1997) (quoting *Commonwealth v. Lark*, 518 Pa. 290, 302, 543 A.2d 491, 497 (1988)), cert. denied, 525 U.S. 1015, 119 S. Ct.

538 (1998). While evidence of other crimes is generally not admissible to show a defendant's propensity to commit crimes, such evidence may be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *See* Pa. R. E. 404(b); *Gray*, 296 A.3d at 47.

The Commonwealth argued that evidence from each case was admissible in the other as proof of a common plan or scheme, identity and absence of mistake or accident. The court agrees. There are significant similarities in these cases. The similarities show a common plan or scheme of Defendant turning on the flashlight on his phone and using the phone to video the private parts of teenaged girls while they were sleeping and/or passed out. In April 2024, he provided alcohol to 14-year-old M.F. and K.K. and 17-year-old E.B. and while M.F. was asleep he videotaped M.F. as he approached her and moved her shorts to expose her vagina. In June 2024, Defendant videotaped A.S. He approached A.S. while she was sleeping on a couch at a residence on Grace Street, and moved her top to expose her breast. On August 9, 2024, Defendant provided R.R. with alcohol and marijuana. While R.R. was sleeping or passed out on the couch at the same Grace Street residence, he approached her with the flashlight on his phone and tugged on her shorts but R.R. woke up. This evidence not only shows the same plan or scheme as Defendant used with M.F. and A.S, it also shows what he intended to do when he approached R.R. and that his actions were not an accident or mistake. The evidence also tends to show that the person who was videotaping each girl was Defendant.

The court also finds that the evidence is capable of separation such that the jury would not be confused. The incidents occurred on separate dates and involved separate teenaged girls.

Next, the court must determine if consolidation of the offenses will unduly prejudice the defendant. *Collins*, 703 A.2d at 422. The court must "weigh the possibility of

prejudice and injustice caused by the consolidation against the consideration of judicial economy. *Janda*, 14 A.3d 147, 155-156 (Pa. Super. 2011) (quoting *Commonwealth v. Morris*, 493 Pa. 164, 171, 425 A.2d 715, 718 (1981)). This prejudice exists "if the evidence [tends] to convict [the defendant] only by showing his propensity to commit crimes, or because the jury was incapable of separating the evidence or could not avoid cumulating the evidence." *Boyle*, 733 A.2d at 637(quoting *Lark*, *supra* at 499). The admission of relevant evidence connecting a defendant to the crimes charged is a natural consequence of a criminal trial and not grounds for a severance. *Commonwealth v. Brown*, 186 A.3d 985, (Pa. Super. 2018)(quoting *Commonwealth v. Dozzo*, 991 A.2d 898, 901 (Pa. Super. 2010)).

The court finds that Defendant will not be unduly or unfairly prejudiced by the joinder of the offenses. Unfair prejudice is "a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." *See* Pa.R.E. 403, cmt. It does not mean merely harmful to a defendant. *See Commonwealth v. Hairston*, 624 Pa. 143, 84 A.3d 657, 666 (2014). The evidence would be used for legitimate purposes pursuant to Pa.R.E. 404(b)(2) and not for a propensity to commit crimes. Furthermore, any potential for prejudice could be ameliorated with a cautionary instruction. Therefore, the court will deny Defendant's request to sever these cases for trial.

Habeas 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 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).

In the motion and brief filed by defense counsel, Defendant alleges that the Commonwealth has failed to establish its *prima facie* burden on the charges of Unlawful Contact with a Minor, Furnishing Alcohol to Minors, and Sexual Abuse of Children.

Unlawful Contact with a Minor

Defendant first asserts that the Commonwealth failed to establish a *prima facie* case because it failed to establish that he was in contact with a minor for the purpose of engaging in any offense under Chapter 31.

In Count 1 of the Information in case 253-2025, the Commonwealth charged that on or about August 9, 2024, Defendant was in contact with a minor for purpose of engaging in any offense under Chapter 31 (relating to sexual offenses). At the time of this offense, the offense was defined as follows:[16]

> **(a) Offense defined.--**A person commits an offense if the person is intentionally in contact with a minor, or a law enforcement officer acting in the performance of duties who has assumed the identity of a minor or of another individual having direct contact with children, as defined under 23 Pa.C.S. § 6303(a) (relating to definitions), for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:
> (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).
> (2) Open lewdness as defined in section 5901 (relating to open lewdness).
> (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).
> (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).
> (5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).
> (6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).

18 Pa. C.S.A. § 6318(a).

The court is constrained to agree with Defendant. The Commonwealth relied on the decision of the Magisterial District Judge (MDJ) and attached his decision to its brief. With all due respect to the MDJ, he did not limit his decision to the offense as charged in this case. The MDJ refers to all of the minors, not just R.R. and did not limit the purpose to engaging in activity to any offense under Chapter 31 related to sexual offenses. The court agrees with the MDJ that the definition of contact is designed to address communications, not physical contact. The statute defines "contacts" as

> Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or

[16] The statute was amended to add additional offenses on June 27, 2025. *See* Act 5 of 2025, effective August 26, 2025.

> agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

18 Pa. C.S.A. §6318(c); *see also Commonwealth v. Davis*, 225 A.3d 582, 587 (Pa. Super. 2019)("the statute is best understood as "unlawful communication with a minor," for by its plain terms, it prohibits communication with a minor for the purpose of carrying out certain sex acts.").

There is no evidence that Defendant engaged in sexual offenses under Chapter 31. R.R testified that the incident involving her occurred on August 9, 2024. She indicated that she drank alcohol and smoke marijuana that was provided by Defendant. While she was sleeping, Defendant was holding his phone with the flashlight on and tugged on her shorts, but she awoke and Defendant left the room. Defendant may have attempted to videotape R.R. and her intimate parts but there is no evidence that he was successful. Agent Alexander testified about videos from incidents in April and June of 2024, but not August 9, 2024. There also was no evidence that Defendant made contact with the sexual or other intimate parts of R.R. for an indecent assault offense under 18 Pa. C.S.A. §3126.[17] R.R. did not testify that Defendant touched her body at all. Instead, there is only evidence that he tugged on her shorts. The 2025 amendments to the statute added a paragraph (7) which includes any attempt, solicitation or conspiracy to commit any offense subsection (a), but that amendment does not and cannot apply to this case which is based on incidents in 2024. To apply those amendments would violate *ex post facto* principles. Therefore, this offense cannot be based on an attempt to

[17] Indecent assault is defined as having indecent contact with the complainant for the purpose of arousing sexual desire under certain circumstances. *See* 18 Pa. C.S.A. §3126. Indecent contact is defined as "any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire in any person." 18 Pa. C.S.A. §3101.

commit any offense listed in any subparagraph of paragraph (a), including any Chapter 31 offense. Since no other offenses were alleged in the Information, the offense cannot be based on any subsections of the sexual abuse of children statute, including child pornography.[18] Accordingly, the court will grant *habeas corpus* relief and dismiss Count 1, Unlawful Contact with a Minor in case 253-2025.

Selling or Furnishing Liquor or Malt or Brewed Beverages to Minors

Defendant also asserts that the Commonwealth failed to present *prima facie* evidence for any counts of furnishing liquor or malt or brewed beverages to minors because there was no evidence to show that beverages allegedly provided by Defendant to minors contained 0.50% of alcohol by volume. Defendant relies on *Commonwealth v. Tau Kappa Epsilon*, 530 Pa. 416, 609 A.2d 791 (1992) and *Commonwealth v. Erney*, 212 Pa. Super. 174, 239 A.2d 818 (1968). The court finds that Defendant's reliance on these cases is misplaced and his claim lacks merit.

The Crimes Code defines this offense as follows:

> **(a) Offense defined.**--Except as provided in subsection (b), a person commits a misdemeanor of the third degree if he intentionally and knowingly sells or intentionally and knowingly furnishes, or purchases with the intent to sell or furnish, any liquor or malt or brewed beverages to a person who is less than 21 years of age.

18 Pa. C.S.A. §6310.1. The term "furnish" means "[t]o supply, give or provide to, or allow a minor to possess on premises or property owned or controlled by the person charged." 18 Pa. C.S.A. §6310.6. "Liquor" includes "any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations

[18] The Commonwealth charged Defendant with a violation of 18 Pa. C.S.A. 6318(a)(1), not (a)(5). Furthermore, there are no child pornography charges or allegations in case 253-2025; those allegations are in case 252-2025.

or mixtures and reused, recovered or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than 0.50% of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages. *Id*. Furthermore, following the *Tau Kappa Epsilon* decision relied upon by Defendant, the Pennsylvania Legislature passed 75 Pa. C.S.A. §6312, which states:

> (a) **General rule** --In an action or proceeding ... in which a material element of the offense is that a substance is liquor or a malt or brewed beverage, all of the following apply:
> (1) ***Chemical analysis is not required to prove that the substance is liquor or a malt or brewed beverage.***
> (2) Circumstantial evidence is sufficient to prove that the substance is liquor or a malt or brewed beverage.
> (b) **Evidence presented by defendant.**--Notwithstanding subsection (a), nothing shall prevent a defendant from presenting evidence that the substance is not liquor or a malt or brewed beverage.
> (c) **Applicability**-- ***The provisions of subsection (a) shall apply to proceedings under Titles 18 (relating to crimes and offenses)*** and 42 (relating to judiciary and judicial procedure) and under the act of April 12, 1951 (P.L. 90, No. 21), known as the Liquor Code.

75 Pa.C.S.A. §6312 (emphasis added). Therefore, contrary to Defendant's argument the Commonwealth is not required to present evidence of chemical testing of the alcohol to establish that the beverage contained 0.50% of alcohol by volume. *See Commonwealth v. Oliver*, 693 A.2d 1342, 1345-46 (Pa. Super. 1997).

The testimony presented by the Commonwealth at the preliminary hearing established that in the Spring or April of 2024, there was a sleepover at K.K.'s house that was attended by M.F. and E.B. and K.K.'s mother, her siblings, and Defendant were present at the residence. PHT at 8, 12-13, 18. K.K. testified that Defendant provided alcohol to her, specifically Peach Crown, and that E.B. and M.F. also consumed alcohol. PHT at 8-9. M.F. testified that Defendant provided alcohol to her, specifically Crown and that K.K. and E.B. also consumed alcohol. PHT at 13. E.B. testified that Defendant provided alcohol to her, Crown Royal, pretty

sure it was apple. He also provided the alcohol to K.K. and M.F. PHT at 19. Agt. Alexander testified that she viewed videos from that incident which showed the bottles of alcohol were Fireball and Crown Royal Peach. PHT at 28. She also heard a male voice on the video that she recognized as Defendant's encouraging them to consume the alcohol.

R.R. testified that on August 9, 2024 she slept over at E.B.'s house on Grace Street in Williamsport. Defendant provided three different alcohols to her: Pink Whitney, Pinnacle Whip and she not know name of other one E.B. also consumed alcohol. PHT at 37.

Based on *Oliver*, the court finds that the Commonwealth presented sufficient direct and circumstantial evidence to show that the beverages consumed by the minors satisfied the definition of liquor. Therefore, the court will deny Defendant's request to dismiss the furnishing alcohol to minors offenses, which are Counts 20, 21 and 22 under Information 252-2025 and Count 2 under Information 253-2025.

Child Pornography

Under Information 252-2025, the Commonwealth charged Defendant with nine counts of possession of child pornography and one count of photographing, videotaping or filming a child under the age of 18 engaging in a prohibited sexual act or simulation of a sexual act. Defendant contends that the Commonwealth failed to establish that the images and videos depicted individuals under 18 years of age. The court cannot agree.

The statute in effect at the time of the commission of these offenses defined them as follows:

> **(b) Photographing, videotaping, depicting on computer or filming sexual acts.--**
>
> (1) Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act commits an offense if such person knows, has

> reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed.
> (2) Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act commits an offense.
> * * *
> **(d) Child pornography.—**
> (1) Any person who 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 commits an offense.

18 Pa. C.S.A. §6312(b), (d). A first conviction for possession of child pornography is a felony of the third degree and a first conviction for photographing, videotaping and filming is a felony of the second degree, unless it depicts indecent contact or a child who is under 10 years of age or prepubescent, in which case the grading is increased one grade. 18 Pa. C.S.A. §6312(d.1). The term "prohibited sexual act" means "masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or **nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction**." 18 Pa.C.S.A. §6312(g)(emphasis added). Count 1 and Counts 4-9 are counts of child pornography graded as felonies of the third degree. Counts 2 and 3 are counts of child pornography graded as graded as felonies of the second degree based on depicting indecent contact and Count 10 is photographing, filming and videoing is graded as a felony of the second degree.

Defendant's sole challenge to the child pornography offense was that the Commonwealth indicated that the children were 13-18 years old which includes an 18-year-old adult. The court cannot agree. Some of the Child Pornography counts are based on videos that Defendant took of E.B.'s friends during sleepovers but most are based on videos other children such as those that could be downloaded from the internet. K.K., M.F., A.S., E.B. and R.R. all

provide testimony about their age. K.K. and M.F. testified that they were 14 years old and E.B., A.S. and R.R. were 17 years old at the time of the incidents. With respect to the videos and images depicting other children, Agent Alexander testified that she could tell they were under 18 because of the lack of pubic hair, and it was obvious that the videos and images depicted children engaged in sexual activities. Since the evidence presented by the Commonwealth shows that the videos and images depicted children under the age of 18, the court will deny Defendant's motion to dismiss the child pornography charges.

Motion to Suppress

The final portion of Defendant's motion is a motion to suppress evidence. Defendant contends the evidence that the Commonwealth seized pursuant to search warrants must be suppressed because the Commonwealth did not limit itself to what was permitted under the search warrants. More specifically, Defendant alleges that the Commonwealth exceeded the dates necessary to search.

In the counseled brief, Defendant asserts that the October 29, 2024 warrant was for the purpose of establishing Defendant's location to determine a Megan's Law reporting violation but nothing on the cell phone could show his long-term residence. He contends that the November 21, 2024 search warrant was for an iCloud account attached to an email of Defendant but the email address was improperly gleaned from Defendant providing contact information at the request of the MDJ at his preliminary arraignment. He contends that the December 19, 2024 warrant also used the improperly obtained email address and that there was "a wildly overbroad request for images despite the Commonwealth's knowledge that the dates were limited." He asserts that the warrant issued a month later was a culmination of all of the

above. He argues that his due process rights were violated under Article 1, Section 9 of the Pennsylvania Constitution and the Fourth and Fifth Amendments of the United States Constitution. He requests that all evidence obtained pursuant to these warrants be suppressed.

The sum and substance of the Commonwealth's brief in opposition is as follows:

> The defendant claims that "These cases are replete with violations of warrant limitations and requirements." However, the defendant never states what those violations are. The challenge of the search warrants in this case is a bald assertation with no factual basis shown in the argument. The defendant's due process was not violated by the issuance or execution of the warrants in this case signed by this Court. Attachments 3, 4, and 5. For the above stated reasons the Court should not suppress the evidence obtained by the search warrant.

Commonwealth's brief, p.5.

The court's ability to address these issues is limited by the lack of specificity in the motion and the parties' briefs and by the fact that although this matter was scheduled for a hearing and argument, no testimony was presented at the hearing and no argument was made. Instead, the Commonwealth submitted some exhibits and the parties asked to submit their arguments via briefs. If the parties had discussed this issue on the record at all, perhaps everyone involved, including the court, would have been more attuned to what the suppression issues in this case were. Nevertheless, the court will endeavor to address this issue to the best of its ability.

Rule 581 requires a suppression motion to "state specifically and with particularity the evidence sought to be suppressed, the grounds for suppression, and the facts and events in support thereof." Pa. R. Crim. P. 582(D). The motion in this case fails to comply with this rule. Therefore, this issue is waived.

Even if the issue were not waived, Defendant would not be entitled to the relief requested. The court is unsure what Defendant was trying to express or the specific issue he

was attempting to raise when he alleged that the Commonwealth did not limit itself to what was permitted under the search warrant, specifically, it exceeded the dates necessary to search. To the extent that this issue is that the last incident involving the teenaged girls in these cases was on August 9, 2024 but the warrant sought materials through October 29, 2024, the court would reject this claim. In addition to searching for evidence of Defendant's criminal activities with E.B.'s friends – K.K., M.F., A.S. and R.R. – the Commonwealth was investigating whether Defendant tampered with evidence. The affidavit for the November 21, 2024 warrant indicates that the Commonwealth believed Defendant had tampered with or destroyed evidence. It indicates that when the police went to arrest Defendant, he was working at a residence on Park Avenue in Williamsport. Defendant did not have a phone on his person and denied having one. The police obtained permission from the owner of the residence where Defendant was working to walk through it and discovered Defendant's iPhone on a five-gallon bucket. The police then obtained a search warrant to seize that phone, which belonged to Defendant. The U.S. Marshal's Fugitive Task Force executed the warrant, seized the phone from the Park Avenue residence and provided it to Agent Alexander. Defendant was arrested for Unlawful Contact with a Minor and related offense. During his arraignment, he provided MDJ with email address of ezwindowcleaning@ outlook.com. He was aware that the police had seized his iPhone and were seeking to search it. Defendant was released on bail. Agent Alexander returned to the criminal investigative unit and the iPhone was working normally and notifications were displayed on the home screen. On October 29, 2024, Agent Chris Salisbury inquired whether the iPhone had been placed in airplane mode and Agent Alexander said it had not. Agent Salisbury informed Agent Alexander that the iPhone had been locked and was now displaying a message that it had been locked by the owner and could be seen by the owner

ezwindowcleaning@outlook.com. It was apparent to the police that Defendant had taken steps to prevent the police from searching the iPhone. The warrant sought evidence regarding the location and device used to lock it, videos and photographs with date and time, location data to show that Defendant was not staying at his Megan's Law address. Since the crime the police were investigating was the tampering with physical evidence, the fact that all of the offenses related to E.B.'s friends occurred on or before August 9, 2024 is of no moment. The police were searching for evidence regarding Defendant locking his device and altering or destroying evidence that was contained on it between August 9, 2024 and October 29, 2024.

The court also finds that the fact that Defendant provided the email address at arraignment does not mean the evidence from this and other warrants must be suppressed. First, there was no allegation in the suppression motion that the email address was unlawfully obtained; therefore, that issue is waived. *See* Pa.R.Crim.P. 581(B). Furthermore, the email address was obtained without the information provided at arraignment. The affidavit states that the email address was on the display of the iPhone. Additionally, Defendant is an offender who is required to register under Megan's Law/SORNA. As such, he is required to provide his email addresses or other designations used in internet communications and postings. *See* 42 Pa.C.S.A. §9799.15(g)(8), 9799.16(b)(2), (3). Therefore, unless Defendant was failing to comply with his registration requirements, the police would have had the ability to find Defendant's email addresses, even without his statements at his preliminary arraignment or it being on the display of the iPhone.

To the extent that Defendant asserts that a search of his phone would not provide evidence regarding his long-term address, the court cannot agree. A search of Defendant's phone could show his location history. The police could search it for cell-site location

information (CSLI), which would provide circumstantial evidence of where he was staying. *See Commonwealth v. Rivera*, 316 A.3d 1026, 1030-38 (Pa. Super. 2024)(regarding the ability and procedure to obtain CSLI information from a phone carrier).

The police had statements from Defendant's parents on October 15, 2024 that he was not staying at his approved address in Jersey Shore and that he was staying at his wife's address. The next day, Defendant updated his address with Megan's Law registry to the Grace Street address. The location information from his phone could confirm those statements. It also could show where Defendant was located on June 13, 2024 and August 9, 2024 (the dates of the incidents with A.S. and R.R.) and perhaps could help determine the date of the incident in Spring or April of 2024.

For the foregoing reasons, the court will deny Defendant's motion to suppress.

Conclusion

The court will deny Defendant's motion to sever the cases for trial. The evidence of each case is admissible in the other case for several permissible purposes under Pa.R.E. 404(b). There is no danger of confusion because there are separate victims and separate dates of the offenses. Defendant will not suffer undue or unfair prejudice from the joinder.

The court will grant the motion to dismiss Count 1, Unlawful Contact With A Minor in case 253-2025. The Commonwealth failed to present sufficient evidence that Defendant had contact with R.R. for the purpose of engaging in a sexual offense under Chapter 31 of the Crimes Code. The Commonwealth is limited to the offense charged. In all other respects, the court will deny Defendant's motion to dismiss.

The court will deny Defendant's motion to suppress. Defendant failed to comply with specificity requirements of Rule 581 and several components of Defendant's argument were

not raised in his motion. Therefore, these issues are waived. Even if they were not waived, Defendant would not be entitled to relief. The dates for the warrant related to tampering with evidence extended beyond August 9, 2024 because the alleged tampering occurred after August 9, 2024 and on or before October 29, 2024. Even without Defendant's statement at his preliminary arraignment, the police knew Defendant's email address because it appeared on the display after Defendant's iPhone was locked. Furthermore, unless Defendant was violating his registration requirements, the police would have been able to obtain his email from information he would have provided pursuant to 42 Pa. C.S.A. §§9799.15(g), 9799.16(b)(2), (3).

Accordingly, the following order is entered:

ORDER

AND NOW, this 29th day of December, 2025, upon consideration of Defendant's omnibus motion and based upon the foregoing Opinion, it is **ORDERED** and **DIRECTED** as follows:

1. The court **DENIES** Defendant's motion to sever these cases for trial.

2. The court **GRANTS** Defendant's motion to dismiss Count 1, Unlawful Contact with a Minor in case 253-2025. The Commonwealth failed to present evidence that Defendant communicated with R.R. for the purpose of engaging in an offense under Chapter 31 of the Crimes Code. In all other respects, the court DENIES Defendant's motion to dismiss.

3. The court **DENIES** Defendant's motion to suppress.

By the Court,

Nancy L. Butts, President Judge

cc: DA(KM)
Brian Ulmer, Esq.
23 North Derr Drive, Suite 3
Lewisburg, PA 17837
Jerri Rook
Gary Weber, Esq.
Clerk of Courts