

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-737-2022
	:
vs.	:
	:
DEVIN MIMS,	:
Defendant	:

OPINION AND ORDER

This matter came before the court on August 29, 2024 for a hearing and argument on Defendant's Omnibus Pre-Trial Motion (OPTM). The parties requested the opportunity to file briefs and continuances to do so. Ultimately, the defense brief was filed on February 10, 2025, and the Commonwealth filed its brief on March 11, 2025.

By way of background, the Commonwealth charged Defendant with 283 offenses arising out of his sexual activities in 2020 and 2021 with A.V. and K.G., who were 15 years old at the time, some of which he videotaped as they were happening, as well as soliciting and receiving nude photographs from A.V. and K.G.

On February 16, 2024, Defendant filed his OPTM. The OPTM contained thirteen counts. Many of the issues were resolved by the parties and/or addressed in the court's order dated August 29, 2024 and docketed September 9, 2024. There are two areas still in dispute – the petition for habeas corpus contained in Count III and the motion to suppress physical evidence contained in Count IV of the OPTM.

DISCUSSION

I. Habeas

In Count III, Defendant asserts that the Commonwealth failed to present *prima facie* evidence to support Counts 52-54 relating to Trafficking in Minors; Counts 80-83, 118-119,

and 197-224 relating to Sexual Abuse of Children-Possession of Child Pornography; and Counts 116-117, and 149-150 related to Promoting Prostitution.

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 also may submit additional proof. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (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). The Commonwealth is not required to present direct evidence and can sustain its burden of proof via wholly circumstantial evidence. See *Commonwealth v. Diggs*, 949 A.2d 873, 877 (Pa. 2008), *cert. denied*, 566 U.S. 1106 (2009); *Commonwealth v. Watley*, 81 A.3d 108, 113 (Pa. Super. 2013)(*en banc*). Furthermore, the evidence need not preclude every possibility of

innocence. *Watley, id.*

A. *Trafficking in Minors*

The Commonwealth concedes Counts 52, 53 and 54, which are charges of Trafficking in Minors. Therefore, Count 52, Count 53 and Count 54 shall be dismissed.

B. *Sexual Abuse of Children – Child Pornography*

Defendant is charged with numerous counts of Sexual Abuse of Children in violation of 18 Pa. C.S.A. §6312(d), which states: “Any person who intentionally views or knowingly possesses or controls any child sexual abuse material or artificially generated child sexual abuse material commits an offense.” The term child sexual abuse material is defined as “[a] book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under 18 years of age engaging in a prohibited sexual act or in the simulation of a prohibited sexual act.” 18 Pa. C.S.A. §6312(g). The term “prohibited sexual act” is defines as “sexual intercourse as defined in section 3101 (relating to definitions), masturbation, sadism, 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.”

Counts 80-83 and Counts 197-206 are based on Defendant videotaping himself engaging in sexual intercourse with A.V., who was fifteen years old at the time, and requesting and obtaining from A.V. photographs of her in the nude.

A.V. testified that she met Defendant through Instagram. He messaged her and said she was beautiful and she had a nice body. *See* Preliminary Hearing Transcript (PHT), 05/20/22, at 4. Defendant videotaped them having sex three times. *Id.* at 10-11. She testified that Defendant asked her to send him a video of her “fingering herself” and record it and she

did. *Id.* at 16. She also testified that he asked her to send him naked pictures of herself and she sent him about 10 pictures. *See* PHT, at 9-10.

Counts 118-119 and Counts 207-224 are based on Defendant videotaping himself engaging in sexual intercourse with K.G., who was fifteen years old at the time, and/or requesting and obtaining from K.G. photographs of her in the nude.

K.G. testified that on December 26, 2020 she went with A.V. to hang out at Defendant's residence. She did not realize that they intended for her to engage in sexual activities with them. Defendant locked the door and she did not feel like she had a choice. After the sexual activities were over, Defendant slipped \$145.00 in her back pocket. *Id.* at 28-30, 32. Over the next couple of months, Defendant contacted her twenty to thirty times to send him naked pictures of her body, specifically her boobs and butt. *Id.* at 30-32, 36.

The court finds that A.V.'s testimony is sufficient for the Commonwealth to meet its prima facie burden of proof for fourteen counts of sexual abuse of children: four counts for videotaping sexual activities and ten counts for photographs.

The court also finds that K.G.'s testimony is sufficient for the Commonwealth to meet its prima facie burden for twenty counts of sexual abuse of children based on the nude photographs.

Defendant contends that the Commonwealth cannot meet its burden of proof without the videotapes and photographs. The court cannot agree. The Commonwealth is not required to present direct evidence and can sustain its burden of proof via wholly circumstantial evidence. *See Commonwealth v. Diggs*, 949 A.2d 873, 877 (Pa. 2008), *cert. denied*, 566 U.S. 1106 (2009); *Commonwealth v. Watley*, 81 A.3d 108, 113 (Pa. Super. 2013)(*en banc*). The evidence presented and the inferences that can reasonably be drawn from the evidence show

that Defendant requested photographs of fifteen-year-old girls in the nude and they sent them to him. One can infer that Defendant possessed those photographs for at least some period of time after they were sent. The evidence also shows that Defendant also videotaped himself and A.V. engaging in sexual activities. Those videos were taken with Defendant's phone. Therefore, the evidence shows that Defendant possessed at least for some period of time videos of he and A.V. engaging in sexual activity. One also can infer from the sexual activities that he engaged in with the girls and his statement to A.V. that he "wanted to see what was his" that the purpose of him taking the videos and requesting the photographs was for his sexual stimulation or gratification.

C. Promoting Prostitution

Defendant is charged with four counts of promoting prostitution. Counts 116 and 117 assert violations of 18 Pa.C.S.A. §5902(b.1)(3). Counts 149 and 150 assert violations of 18 Pa. C.S.A. §5902(b.1)(7). Counts 116 and 149 are with respect to Defendant's conduct with A.V. and Counts 117 and 150 are with respect to Defendant's conduct with K.G. The prostitution statute states, in relevant part:

(b.1) Promoting prostitution of minor.--A person who knowingly promotes prostitution of a minor commits a felony of the third degree. The following acts shall, **without limitation of the foregoing**, constitute promoting prostitution of a minor:

* * *

(3) encouraging, inducing or otherwise intentionally causing a minor to become or remain a prostitute;

* * *

(7) leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution of a minor or the promotion of prostitution of a minor, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities or other legally available means;...

18 Pa. C.S.A. §5902(b.1)(3), (7)(emphasis added). A "minor" is an individual under 18 years

of age. 18 Pa. C.S.A. §5902(f). The term “sexual activity” includes “sexual intercourse and deviate sexual intercourse, as those terms are defined in section 3101 (relating to definitions), and any touching on the sexual or other intimate parts of an individual for the purpose of gratifying sexual desire of either person.” *Id.*

A.V. testified at the preliminary hearing that Defendant messaged her on Instagram and told her that she was beautiful and had a nice body. She went to his residence on Washington Boulevard to hang out. After she got there, he told her to strip (remove her clothes). He laid her down on his bed, performed oral sex on her, asked her to perform oral sex on him and then he put his penis inside her vagina and had intercourse with her. When he was finished, he told her to go in the bathroom and clean up. He then got money out of his pocket, handed it to her and told her not to say anything. He gave her \$600 in cash. This activity occurred a couple of times per month for approximately one year. A.V. was paid \$600 in cash most times. The times she was not paid or was paid less was due to her not letting Defendant do what he wanted to do. The activities occurred when in 2020 and 2021 when A.V. was fifteen and sixteen years of age. *See* PHT, at 4-12.

A.V. also testified that she introduced K.G. to Defendant because Defendant wanted to have a threesome. A.V. and K.G. went to Defendant’s residence. A.V. testified that she told K.G. she would get paid and that this threesome happened only once. *See* PHT, at 14-15. K.G. testified that she was introduced to Defendant by A.V. who said they would be hanging out with him. K.G. testified that Defendant forcefully made her, him and A.V. have a threesome. Defendant grabbed their arms and pushed them towards the bed. He told them to take off their clothes. He locked the door and there was a gun on the top of his dresser. Defendant had normal vaginal sex with K.G. When the threesome was over, K.G. went to

the bathroom. They went downstairs to leave. Defendant asked A.V. much money she wanted. A.V. gave a number and K.G. was paid, too. When A.V. opened the door to leave, Defendant put his hand on K.G.'s hip and slipped cash into her back pocket. She found \$145 cash in her back pocket when she went to get a shower. These events occurred on December 26, 2020 when K.G. was fifteen years old. *See* PHT, at 25-29, 32.

The court finds that Defendant's actions of intentionally paying the minor females for sexual activities encouraged, induced or otherwise caused the minor to become a prostitute. In order for there to be prostitution, there must not only be sexual activity but a payment of money as well. *See Commonwealth v. Johnson*, 448 Pa. Super. 42, 670 A.2d 666, 669 (1996). The minors testified that Defendant paid them for engaging in sexual activities.

The court finds that the minor need not be controlled by a pimp or a madame or engage in sexual activities inside a house of prostitution. Those might be requirements for violations of paragraph (a), but the language "without limitation of the foregoing" means the requirements of paragraphs (a) and (b) do not limit a defendant's liability for engaging in sexual activity for money with minors under paragraph (b.1).¹ If the Pennsylvania General Assembly meant this language to refer to the list of activities in subparagraph (1) through (8), it would have used the language "including but not limited to" rather than "without limitation of the foregoing." Furthermore, paragraph (3) does not require the minor to actually be a prostitute. It is enough if a defendant's activities encourage a minor to become a prostitute.

The amounts that Defendant paid the minor females were significant sums for

¹ The word foregoing generally means previously stated, written or occurring. Paragraphs (a) and (b) were stated or written previously to paragraph (b.1) both in sequence and chronology as (b.1) was enacted in 2011 and became effective on February 21, 2012, whereas paragraphs (a) and (b) were enacted in 1972 and became effective June 6, 1973.

individuals their age and significantly more than they could make working an eight-hour day on a non-school day at a minimum wage job.² One could reasonably infer that such sums could encourage minors to forego lawful employment in favor of engaging in sexual activities for money. Therefore, the court finds that the Commonwealth presented a *prima facie* case for Counts 116 and 117.

In Counts 149 and 150, Defendant is charged with promoting prostitution by leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution of a minor or the promotion of prostitution of a minor, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities or other legally available means.

18 Pa. C.S.A. §5902(b.1)(7). The majority of the sexual activities occurred in Defendant's residence at that time at 1025 Washington Boulevard in Williamsport.³ As Defendant resided there, it was a place controlled by him, either alone or in association with others. During 2020 and 2021, Defendant engaged in sexual activities for money with A.V. and K.G. inside this residence, which shows that it was used either for prostitution of a minor or the promotion of prostitution of a minor. As the residence was used for prostitution or the promotion of prostitution of multiple minors, the court finds that at this stage of the proceedings the evidence was sufficient to charge Defendant with Counts 149 and 150.

II. Suppression

Defendant next asserts that the evidence obtained as a result of the search warrant

² The minimum wage is currently \$7.25. The gross wages for an eight-hour day would be \$58. On school days, 15-year-olds cannot work more than three hours which would lower the gross wages to \$21.75.

³ A few incidents of the incidents with A.V. allegedly occurred inside his vehicle. When the search warrant was issued and Defendant was arrested in this case in April 2022, he was residing at 2405 Dove Street in

must be suppressed for the following reasons: (1) the affidavit in support of the search warrant lacked probable cause; (2) there was an insufficient nexus between the items sought and the alleged crimes; (3) the information was stale; and the warrant failed to establish probable cause to believe that evidence of the crimes would be found in the residence.

A. Probable Cause

Defendant contends that the affidavit failed to establish probable cause. The court cannot agree.

When a defendant files a motion to suppress evidence, the Commonwealth shall have the burden of proving to a preponderance of the evidence that the challenged evidence was not obtained in violation of the defendant's rights. Pa. R. Crim. P. 581 (H). A preponderance of the evidence standard is tantamount to a "more likely than not" burden of proof. *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. Ct. 2002).

Probable cause is a practical and fluid concept that turns on the assessment of probabilities in particular factual contexts, which cannot readily be reduced to a neat set of legal rules.

Commonwealth v. Rapak, 138 A.3d 666, 671 (Pa. Super. 2016), quoting *Commonwealth v. Huntington*, 924 A.2d 1252, 1256 (Pa. Super. 2007). Probable cause exists where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted. *Commonwealth v. Leed*, 646 Pa. 602, 186 A.3d 405, 413 (Pa. 2018). The issuing magistrate must apply the totality of the circumstances test which requires him or her to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit, including the veracity and

basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Commonwealth v. (Harve) Johnson*, 615 Pa. 354, 42 A.3d 1017, 1031 (2012); see also *Commonwealth v. Fletcher*, 307 A.3d 742 (Pa. Super. 2023)(“probable cause is based on a probability, not a prima facie showing, of criminal activity and deference is to be accorded to a magistrate’s finding of probable cause”); *Commonwealth v. Manuel*, 194 A.3d 1076, 1081 (Pa. Super. 2018)(probable cause does not demand the certainty we associate with formal trials; rather, it requires only that the totality of the circumstances demonstrate a fair probability that contraband or evidence of a crime will be found in a particular place). A reviewing court’s duty is merely to ensure that the issuing authority had a substantial basis for concluding that probable cause existed. The reviewing court must accord deference to the issuing authority’s probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner. *Commonwealth v. (Lavelle) Johnson*, 240 A.3d 575, 584 (Pa. 2020).

The court finds that the affidavit sets forth probable cause to believe that evidence related to Defendant’s sexual activities with the minors and his possession of child pornography would be contained on his phones. The affidavit indicates that in interviews with police in late March of 2022, Victim #1 indicated that she was contacted by Mims via Instagram direct message in 2020 and he eventually solicited nude photographs of her, which she sent to him via Snapchat. She also indicated that Mims “had taken a video of the two having sex. She said the video was taken on his cell phone which had been placed on his dresser with the camera light on, which indicated the cell phone was recording.” Victim #2 said that she “had sent several nude photographs of herself via text message, [and] she was

also aware of a video he had taken of the two having sex because he had sent it to her afterwards.”

The affidavit notes that on September 8, 2021 Mims was arrested on narcotics offenses by the LCNEU, a search warrant was executed at 1025 Washington Blvd and three cell phones believed to belong to Mims were seized and remained in Williamsport Bureau of Police (WBP) evidence untouched. Additionally, on March 31, 2022 when Mims was taken into custody by probation officers on a probation detainer at his residence at 2405 Dove Street, he tossed a black smartphone onto the couch inside the residence.

The affidavit also states that the affiant knows from her training and her personal and professional experience as it relates to the use of cellular telephones

that electronic data can be transmitted between devices through means of SMS, MMS, etc. Additionally, that there are a variety of potential data sources contained within the memory of cellular telephones and that some cellular telephones are also designed to accommodate external memory, typically in the form of microSD cards, where additional data is typically stored, to include backup accounts linked to a particular phone. These storage sources are used to store images, videos and other saved data. I also know that cloud accounts can be used to transfer saved data into new phones being setup by the user.

The affidavit shows that Defendant used a cell phone to record him having sex with the minor females. The affidavit also shows that he asked them to send him nude photographs of themselves. Victim #2 indicated she sent him nude photographs via text messages. Given the ability to transfer images, videos and data into other devices such as microSD cards, new phones and cloud accounts, there was a fair probability that evidence of Defendant’s possession of child pornography would be contained on his phones and electronic devices. Furthermore, many people send text messages and access their social

media accounts such as Facebook, Instagram and Snapchat via cell phone. Viewing the totality of the circumstances, a reasonable person would find that there was a fair probability that text messages, nude photographs of minor females, and videos of Defendant engaging in sexual activities with the minor females would be found on Defendant's cell phones. Law enforcement officers need not be certain that evidence of a crime will be found in the particular place; there only needs to be a fair probability that the evidence will be found there.

B. *Nexus Between Items Sought and Criminal Activity*

Defendant also contends that the affidavit failed to show a nexus between the items sought and the criminal activity. The court cannot agree.

The affidavit indicates that Defendant used a cell phone to take videos of himself having sex with minor females. It also indicates that he requested nude photographs from them, which they sent to him via Snapchat and text messages. Therefore, there is a clear nexus between the videos and images that are alleged to constitute child pornography and Defendant's cellphones.

To the extent that Defendant may be arguing that these items likely would not be found on the black smartphone seized pursuant to this warrant when the activities occurred in 2020 and 2021 and three phones were seized from him in September of 2021, the court would reject this argument. In light of the transfer capabilities mentioned in the affidavit of probable cause it was reasonable to seize Defendant's black phone in April 2022 even though the activities with the minor females occurred in 2020 to 2021 and another police agency had seized phones from Defendant in early September 2021. Defendant could have easily transferred or stored the images, videos and data from his activities with the minor females in

2020 and 2021 on microSD cards, cloud accounts and the like and transferred those items to the phone in his possession in 2022 so he could still view the material. Therefore, there was a fair probability that contraband or evidence of Defendant's crimes would be found on the black cell phone seized in early April of 2022.

C. Staleness

Defendant contends that the warrant was invalid because the information used to obtain it was stale. The court cannot agree. Staleness is not determined solely by the age of the information; it is also dependent upon the crimes charged and the circumstances of the case. *See Commonwealth v. Green*, 204 A.3d 469, 484 (Pa. Super. 2019)(staleness is not determined by age alone, as this would be inconsistent with a totality of the circumstances analysis). This case includes charges of Sexual Abuse of Children related to the possession of child pornography. Courts have previously observed that pedophiles rarely, if ever, dispose of child pornography" and that "[p]resumably individuals will protect and retain child pornography for long periods for time because it is illegal and difficult to obtain." *Id.* (citing *Commonwealth v. Gomolekoff*, 910 A.2d 710, 714 (Pa. Super. 2006)).

The warrant and the criminal complaint indicate the dates of the child pornography violations were "2020 THROUGH 2021". The warrant was issued on April 1, 2022. In other words, the warrant was issued approximately three months after Defendant's criminal activities involving the minor females ceased. The affidavit indicates that the police obtained the information regarding Defendant's criminal activities when the police met with the minor females in late March of 2022. More specifically, the affidavit states that Agent Brittany Alexander of the WBP met with Victim #1 on March 25, 2022 and March 29, 2022. Within days thereafter, Agent Alexander sought and obtained the search warrant. Defendant is

charged with numerous counts of possession of child pornography for videotaping himself engaging in sex with the minor females and soliciting and receiving nude photographs from them. In light of the totality of the circumstances, including but not limited to the recognition in case law that pedophiles rarely dispose of child pornography, the court finds that the information that provided the police with probable cause to believe that child pornography would be found on Defendant's cell phone(s) was not stale.

D. Nexus to the Residence at 2405 Dove Street

Defendant also asserts that the warrant is invalid due to a lack of nexus between the criminal activities and 2405 Dove Street. Again, the court cannot agree. Although the crimes occurred at 1025 Washington Boulevard, at the time the warrant was issued Defendant was staying at 2405 Dove Street. On March 31, 2022, probation officers took Defendant into custody inside 2405 Dove Street and committed him to the Lycoming County Prison (LCP) on a probation detainer. While they were taking him into custody, Defendant tossed a black smartphone onto a couch inside the residence. Law enforcement had probable cause to believe that evidence of Defendant's crimes would be found on his cell phones as Defendant had used a cell phone to videotape himself having sex with the minor females and he solicited them to give him nude photographs of themselves which they provided to him through text messages and Snapchats. Law enforcement also had probable cause to believe that a cell phone belonging to Defendant was inside the residence at 2405 Dove Street based on the information provided to them by the probation officers. Because there was a fair probability that evidence of Defendant's crimes would be found on his cell phone(s) and a fair probability that a cell phone belonging to Defendant was inside the residence at 2405 Dove Street, there was probable cause to search the east side of 2405 Dove Street to seek and

seize Defendant's black smartphone to preserve and obtain evidence related to Defendant's possession of child pornography.

ORDER

AND NOW, this ____ day of September 2025, the court denies Defendant's Omnibus Pre-Trial Motion.

The court also grants the Commonwealth's request to file its proposed Amended Information provided that it removes all of the counts of Trafficking in Minors as the Commonwealth conceded the dismissal of all of those counts.

By The Court,

Nancy L. Butts, President Judge

cc: Martin Wade, Esquire (1st ADA)
Edward J. Rymsza, Esquire
Jerri Rook
Clerk of Courts