

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

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL DIVISION
	:	NO. CR-1227-2025
v.	:	
	:	Omnibus Motion
CHRISTOPHER POGUE,	:	
Defendant	:	

OPINION

This matter was before the Court on January 28, 2026, for a hearing and argument on Defendant's Omnibus Motion, filed on November 17, 2025, by and through counsel, Robert Hoffa, Esquire. At the hearing on the Motion, Defendant appeared personally represented by Attorney Hoffa. Eric Birth, formerly with the Lycoming County District Attorney's Office appeared on behalf of the Commonwealth.

Defendant is charged by way of the Criminal Information with thirty-three (33) counts of Child Pornography under Title 18 Pa.C.S. Section 6312(d), felony of the third degree, and four (4) counts of Criminal Use of a Communication Facility under Title 18 Pa.C.S. 7512(a).

Defendant's Omnibus Motion contains a Motion to Suppress, a Motion for Discovery, and Motion to Reserve Right. At the conclusion of the hearing, Defendant indicated that his discovery motion was resolved, and he would not be seeking to file any additional motions. Accordingly, the Court need only address Defendant's Motion to Suppress.

Defendant seeks to have suppressed the search warrant and evidence seized from the residence at 230 Hoover Drive, Cogan Station, Lycoming County, Pennsylvania, related to the investigation of Defendant for sexual abuse of children on the basis that the information was stale at the time the search warrant was obtained and because the affidavit of probable

cause did not establish a nexus existed between the crimes alleged and the property to be searched.

At the hearing on the Motion, the Commonwealth submitted Commonwealth Exhibit No. 1, Application for Search Warrant, July 21, 2025, and without objection from Defendant, the exhibit was admitted to the record. The Commonwealth presented Detective Calvin Irvin with the Lycoming County District Attorney's Office as the sole witness at the hearing on the Motion.

Testimony

Detective Irvin, detective with the Lycoming County District Attorney's Office, investigates internet crimes against children (ICAC) with Federal Bureau of Investigation task force, violent crimes against children, and forensics, since approximately 2019. In or around January of 2024, Detective Irvin received an internet tip for ICAC from Yahoo regarding the uploading of child sexual abuse material (CSAM). The cyber tip was received by Detective Irvin on January 17, 2024, through the portal used by the investigators from Yahoo, Inc. and the tip included Defendant's name, date of birth, and email address.

Detective Irvin testified that he reviewed the images and IP identifiers provided with the cyber tip including, the email and phone numbers associated with the IP address. Detective Irvin determined that evidence of CSAM existed in the images that were downloaded and provided through the cyber tip. With respect to the tip being submitted in January of 2024 and the next step documented in Detective Irvin's investigation, Detective Irvin testified that his unit lacks manpower, in that, he is the only individual in the County to receive cyber tips related to ICAC. Additionally, Detective Irvin received 92 tips in 2024 and 92 tips in 2025, plus he has additional responsibilities, including completing digital extractions for active

cases. Active cases related to homicides and sexual assault receive priority over pending investigations of suspected criminal activity.

Detective Irvin testified that on April 1, 2025, administrative subpoenas were prepared and approved for (1) Comcast Cable Communications; (2) Greater Vision Microwave Networks LLC (River Valley Internet); and (3) Verizon Wireless. The subpoenas were issued on April 3, 2025. Detective Irvin received (1) a response from Comcast on or around April 5, 2025; (2) a response from Greater Vision Microwave Networks (River Valley Internet) on or around April 6, 2025; and (3) a response from Verizon on or around April 23, 2025. Detective Irvin testified the reason for the requests from the internet provider companies is to better determine and verify the user or owner of the accounts linked to the IP addresses.

On April 28, 2025, surveillance was conducted at the 230 Hoover Drive residence and no vehicles registered to Defendant were observed. Additionally, surveillance was conducted at Defendant's employer—WeCare at Sycamore—but no vehicles registered to Defendant were present at the company property. On May 17, 2025, surveillance was conducted on the residence at 230 Hoover Drive and a red Jeep was observed. Surveillance on the residence was conducted again on May 19, 2025, where detectives observed a dark in color Ram truck and the red jeep. On July 10, 2025, surveillance was conducted on the residence and detectives observed lights on in the residence and the leased Ram truck registered to Defendant leave the property. On July 11, 2025, surveillance was conducted on the residence and lights on in the residence were observed, the same leased Ram truck was present in the driveway, a male left the residence driving the black Ram truck, and detectives followed the truck to Defendant's presumed place of employment in Lock Haven, Pennsylvania. Detective Irvin testified on cross-examination that he received only the one

cyber tip regarding CSAM on January 17, 2024. The Application for Search Warrant was submitted and approved on July 21, 2025, Detective Irvin sought to search the residence at 230 Hoover Drive, Cogan Station, Pennsylvania, requesting:

devices, conduct on site previews, and continued analysis if needed of electronic storage devices. I am also requesting to search vehicles located on the curtilage of the property and any persons inside, or on the curtilage of the residence for electronic storage devices. The electronic storage devices will be examined by the Lycoming County District Attorney's Office and/or other trained examiners.

Commonwealth Exhibit No. 1, Application for Search Warrant at 10.

Detective Irvin was seeking to procure digital evidence of CSAM as suspected from the cyber tips, such as evidence contained on cellular telephones and computers. The Application for Search Warrant sought to search Defendant's residence because such items, and as registered in this matter, are personal devices that are typically kept on a suspect or in a suspect's home. Detective Irvin testified that digital evidence is not as perishable as other kinds of evidence, and evidence can be retained on a device's hard drive even in cases when a user believes he has deleted all of the evidence manually or with a hard reset of the device.

Argument

Defendant submits that Detective Irvin's explanation of low manpower and a surplus of digital forensic work does not excuse the staleness of the cyber tip information being received on January 17, 2024, and the search warrant application being made on July 21, 2025. Moreover, Defendant submits that there was no new information received either virtually or through surveillance that gave rise to any indication of criminal activity that was ongoing or occurring at the time of the Application for Search Warrant. Defendant argues that an eighteen-month lapse in the time from the receipt of the information made the cyber tip stale and there was no probable cause for the issuance of the search warrant justifying the violation of Defendant's constitutional right against unreasonable search of his home and

seizure of evidence therefrom. Defendant's second argument for suppression of the evidence is that no nexus was established between the cyber tip, Defendant, and his residence to support the probable cause finding that a search of Defendant's Cogan Station residence was warranted. Defendant argues that there is no allegation of any criminal activity at the address because the tip from Yahoo, Inc. returned an access address of 1445 Sycamore Road, Montoursville, Pennsylvania. Thus, the affidavit of probable cause fails to establish a nexus between where and what evidence is being sought.

The Commonwealth argued that Detective Irvin's training and expertise support the conclusion in the affidavit of probable cause that a personal computer and other personal-use electronic devices will be kept in the residence of the individual suspected of digital offenses. Moreover, the Commonwealth, relying on *Commonwealth v. Gomolekoff*, 910 A.2d 710, argued the age of the information alone does not determine staleness. Also, in relying on *Gomolekoff*, the Commonwealth argued that two factors unique to CSAM cases are that (1) suspects tend to keep any CSAM for long periods of time and (2) if deleted, any trained forensic examiner could retrieve the evidence from the hard drive of the computer. The Commonwealth further relied on *Commonwealth v. Hoppert*, 93 A.3d 358 (Pa. Super. 2012) in arguing that the staleness of evidence varies with the type of evidence being searched for by detectives, *i.e.*, shoes versus controlled substances.

Standard of Review

The applicable standard for reviewing courts in assessing the probable cause determination of the issuing magistrate set forth by the Pennsylvania Supreme Court provides:

Article I, Section 8 and the Fourth Amendment each require that search warrants be supported by probable cause. The linch-pin that has been developed to determine whether it is appropriate to issue a search warrant is the test of probable cause. 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.

In *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the United States Supreme Court established the totality of the circumstances test for determining whether a request for a search warrant under the Fourth Amendment is supported by probable cause. In *Commonwealth v. Gray*, 509 Pa. 476, 503 A.2d 921 (1986), [the Pennsylvania Supreme] Court adopted the totality of the circumstances test for purposes of making and reviewing probable cause determinations under Article I, Section 8. In describing this test, [our Supreme Court] stated:

Pursuant to the “totality of the circumstances” test set forth by the United States Supreme Court in *Gates*, the task of an issuing authority is simply to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit before him, 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.... It is the duty of a court reviewing an issuing authority's probable cause determination to ensure that the magistrate had a substantial basis for concluding that probable cause existed. In so doing, 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.

* * *

Further, a reviewing court is not to conduct a *de novo* review of the issuing authority's probable cause determination, but is simply to determine whether or not there is substantial evidence in the record supporting the decision to issue the warrant.

Commonwealth v. Jones, 605 Pa. 188, 988 A.2d 649, 654–656 (2010) (brackets and some quotations and internal citations omitted).

I. Is the information contained in Affidavit of Probable Cause so stale as to render the issuance of the search warrant for 230 Hoover Drive unconstitutional and in violation of Defendant’s protections against unreasonable search and seizure under the Fourth Amendment such that the suppression of the evidence obtained therefrom warranted?

“Settled Pennsylvania law establishes that stale information cannot provide probable cause in support of a warrant.” *Commonwealth v. Janda*, 14 A.3d 147, 158 (Pa. Super. 2011).

More specifically:

[a]ge of the information supporting a warrant application is a factor in determining probable cause. If too old, the information is stale, and probable cause may no longer exist. Age alone, however, does not determine staleness. The determination of probable cause is not merely an exercise in counting the days or even months between the facts relied on and the issuance of the warrant. Rather, *we must also examine the nature of the crime and the type of evidence.*

Id at 158-59 (quoting *United States v. Harvey*, 2 F.3d 1318 (3rd Cir. 1993)(specifically discussing staleness of information contained in a search warrant relative to suspicion of child pornography offenses))(emphasis added).

In evaluating claims of stale information contained in an affidavit of probable cause, the Pennsylvania Superior Court has reasoned “that a stale observation of items that can be quickly disposed of, such as drugs, does not provide probable cause for a warrant absent evidence of an ongoing course of conduct on the part of the defendant.” *Commonwealth v. Novak*, 335 A.2d 773, 775-76 (Pa. Super. 1975). Pursuant to that reasoning, the Pennsylvania Superior Court “observed in [*Commonwealth v.*] *Janda*, [14 A.3d 147, 159 (Pa. Super. 2011)], that ‘shoes, unlike drugs, are not an item commonly disposed of soon after they come into their owner’s possession [and that] the issuing authority needed to find only a ‘fair probability’ that the shoes Janda wore during the Berks County burglary would be found at his apartment.’” *Commonwealth v. Hoppert*, 39 A.3d 358, 363 (Pa. Super. 2012). The Court in *Gomolekoff* specifically addressed the issue of stale information as it relates to child pornography. Different here, however, is that while the initial tip related to the suspicion that the appellant possessed child pornography occurred fifteen months prior to the search warrant, it was two months since appellant last engaged in conduct involving child pornography when the search warrant issued. *Gomolekoff, supra*, at 713. Nonetheless, the *Gomolekoff* Court recognized that courts distinguish cases that involve child pornography:

[i]n concluding our staleness analysis in *Harvey*, we also pointed to the fact that pedophiles rarely, if ever, dispose of child pornography. Many courts have similarly accorded weight to that fact. *See: e.g., United*

States v. Lacy, 119 F.3d 742, 746 (9th Cir. 1997); *United States v. Peden*, 891 F.2d 514, 518-19 (5th Cir. 1989). Presumably individuals will protect and retain child pornography for long periods of time because it is illegal and difficult to obtain.

Gomolekoff, *supra*, at 714 quoting *United States v. Zimmerman*, 277 F.3d 426, 434 (3rd Cir. 2002)(finding by the court that the expert opinion contained in the affidavit was not sufficient to establish probable cause because the case involved adult pornography and not child pornography, which the *Zimmerman* court repeatedly emphasized).

The finding that child pornography is distinguishable from adult pornography is further supported by *United States v. Rabe*, 848 F.2d 994 (9th Cir. 1988), and *United States v. Rakowski*, 714 F.Supp. 1324 (D.Vt.1987), on which the *Gomolekoff* and *Harvey* courts relied in determining that the information related to child pornography in the underlying cases was not stale. In a more similar case, *United States v. Lacy*, 119 F.3d 742 (9th Cir. 1997), ten-month-old information was not held to be stale. *Lacy* involved child pornography; and, the court placed considerable weight on the expert opinion that possessors of child pornography “rarely, if ever, dispose of such material and store it for long periods in a secure place, typically in their homes.” *United States v. Zimmerman*, 277 F.3d 426, 435 (2002)(citing *United States v. Lacy*, 119 F.3d 742, 746 (9th Cir. 1997)(citing *Rabe*, 848 F.2d at 995-96)). Moreover, the *Lacy* court placed additional weight on the fact that the defendant downloaded the images, rationalizing that downloading the images to a disc or a hard drive established that child pornography was likely present in the defendant’s home, forming the basis for the search of the defendant’s residence. *Zimmerman*, 277 F.3d at 435 (citing *Lacy*, *supra*).

In the instant matter, the affidavit of probable cause submitted by Detective Irvin thoroughly sets forth his experience and training and the ways in which image files containing child pornography can be downloaded, stored, transferred, and transmitted through various technological devices, including cellular telephones and computers. Detective Irvin provided that images containing child pornography are typically kept in the residence and on devices intended for personal use. Detective Irvin further detailed the

reasoning behind needing to execute the search warrant while the suspect is present in the residence—because the evidence can be stored on his cellular telephone. Moreover, Detective Irvin stated in the affidavit that “[c]hild sexual abuse material is typically stored for long periods and subsequently shared/traded with other individuals who also do the same.” Commonwealth Exhibit No. 1 at 11. Specific to this case, Detective Irvin provided the methodology involved in his investigation after receiving the cyber tip from Yahoo! Inc. and the information related to Defendant that was included with the cyber tip. Id at 8. Through three internet service providers, the information of Defendant was linked to the internet provider (IP) address from where the files were uploaded on January 17, 2024. The address provided matched the driver’s license information on file for Defendant. Yahoo! Inc. flagged the upload of two videos, 57 seconds in duration, depicting a prepubescent, female juvenile engaged in sexually explicit conduct. Uploading files is the process of putting documents, files, images, *etc.*, **on** the internet. Surveillance conducted from May of 2025 through July of 2025 provided that Defendant lived at the address linked to his internet user and Yahoo! Inc. accounts thus establishing that Defendant still lived at 230 Hoover Drive, Cogan Station.

Accordingly, the Court finds that based on the information contained in the affidavit, the nature of the underlying charge, the fact that the CSAM was *uploaded* from a device linked to Defendant, and in deferring to the issuing magistrate’s sound determination, the 18-month lapse was not too long so as to render the information stale. The case law supports this finding, in that, offenses involving sexual abuse and exploitative content of children are distinguished from crimes involving searching for evidence of more perishable or short-lasting nature. The case law does not dictate how long is too long for information to be rendered stale, however, the trends from related cases show that significant weight is placed on the nature of the crime and the type of evidence being searched for. A valid finding of

probable cause for a search warrant to issue requires that probable cause exist *at the time of the magistrate gives authority to search*. Based on the serious nature of the offense, the fact that the content was uploaded from Defendant's service provider account, and in relying on the finding that possessors of child pornography "rarely, if ever, dispose of the content" this Court finds that probable cause existed at the time the application for search warrant was made and was not based on stale information. Thus, Defendant's argument that the evidence be suppressed because the stale information does not support a finding of probable cause shall be denied.

II. Does the Affidavit of Probable Cause fail to establish a nexus between the Defendant's residence at 230 Hoover Drive and the Defendant's alleged internet activity involving CSAM?

A constitutionally valid search warrant shall issue upon police providing to the issuing authority sufficient information to persuade a reasonable person that there is probable cause to believe a search is warranted based on the information that is viewed in a common-sense, non-technical manner. *Commonwealth v. Nicholson*, 262 A.3d 1276, 1280 (Pa. Super. 2021). "Probable cause to believe that a man has committed a crime does not necessarily give rise to probable cause to search his home." *Commonwealth v. Way*, 492 A.2d 1151, 1154 (Pa. Super. 1985). "[A]n allegation based on an assumption or supposition not supported by facts is insufficient to support (an inference of) criminal activity in the premises, in spite of the fact that there are plenty of allegations alleged to relate to criminal activity of the individual who is alleged to have lived in the premises." *Commonwealth v. Kline*, 335 A.2d 361, 363 (Pa. Super. 1975). "The affidavit of probable cause must establish a 'substantial nexus' between the suspect's home and the criminal activity or contraband sought to permit the search of the home. *Commonwealth v. Nicholson*, 262 A.3d 1276, 1280 (Pa. Super. 2021) (citing *Commonwealth v. Wallace*, 42 A.3d 1040, 1049-50 (Pa. 2012)). The issuing authority

is tasked with determining whether, under the totality of the circumstances, there is a fair probability that the evidence of the alleged crime or contraband will be found in the particular place to be searched. *Commonwealth v. Nicholson*, 262 A.3d 1276, 1280 (Pa. Super. 2021).

Here, Detective Irvin received the tip on January 17, 2024. The tip provided the credentials for the account subscriber and contact information. Based off of that tip, Detective Irvin subpoenaed the internet service providers linked to the tip which came back with residential information for Defendant. Additionally, Detective Irvin included in the affidavit of probable cause:

I respectfully request that this court issue a search warrant for the residence located at 230 Hoover Drive, Cogan Station, PA 17728, Lycoming Township, Lycoming County authorizing the seizure of the items described in this application. The evidence sought by this search warrant is believed to be present due to the fact that people with collections of child sexual abuse material typically keep their collection for periods of time. Even if the child sexual abuse material was deleted, the Lycoming County District Attorney's Office, or any other trained forensic examiner can recover deleted files long after the files have been deleted.

Your affiant respectfully requests authorization for the nighttime execution of this search warrant pursuant to PA RCP, which requires a special justification for the service of a warrant between the hours of 2200 hours-0600 hours.

This request is made in the connection with an investigation involving the possession and/or distribution of Child Sexual Abuse Material (CSAM). One of the target devices in this case is the suspect's mobile phone, which is believed to contain critical digital evidence, including evidence of communication, storage, and transfer of CSAM. Due to the portable nature of mobile devices, there exists a high risk that evidence may be lost, altered, or destroyed if the device is not secured while still within the residence/curtilage.

Based on surveillance, it appears that the suspect is employed outside of Lycoming County and is known to leave his residence for work prior to 0600 hours. Surveillance conducted at the residence revealed interior lights turning on as early as 0430 hours, indicating someone is awake and preparing to leave during that timeframe. Therefore, to ensure the

suspect and relevant digital evidence remain on-site, the warrant must be executed in the early morning hours before the suspect departs for work.

Commonwealth Exhibit No. 1 at 10 and 13.

Based on the foregoing and in applying the applicable law, the Court finds that the issuing magistrate was provided with sufficient probable cause at the time of the request for the search warrant to believe that a nexus was established between the Defendant's criminal activity and the residential address at 230 Hoover Drive, Cogan Station, Pennsylvania, such that the issuance of the search warrant was justified. Thus, Defendant's Motion on this basis shall be denied.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 29th day of October, 2026, based on the foregoing, and in consideration of the testimony and evidence presented, the Court finds that the Application for Search Warrant submitted by Detective Irvin contained sufficient probable cause in the affidavit for the search warrant to issue and the search of Defendant's residence to be justified in connection with the allegation that Defendant possessed child pornography in his residence and/or on his personal devices. Thus, it is hereby **ORDERED and DIRECTED** that Defendant's Motion to Suppress is **DENIED**.

By the Court,

Hon. Ryan M. Tira, Judge

RMT/asw

CC: DA; CA

Robert Hoffa, Esq.

Gary Weber, Esq.—Lycoming Reporter