

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 CP-41-CR-1196-2022
 v. :
 :
 MANDON JACOB WATTS, :
 Defendant :
 :
 OMNIBUS PRETRIAL MOTION

OPINION AND ORDER

Mandon Jacob Watts (Defendant) filed an Omnibus Pretrial Motion in the nature of a Habeas Corpus motion on January 6, 2023. Defendant was represented by the Public Defender's Office at the preliminary hearing. On March 6, 2023, Robert Hoffa, Esquire was granted leave to enter the case. On March 29, 2023 Hoffa filed a Motion for authorization to supplement the omnibus pretrial motion. The hearing on the motion to supplement the omnibus was held on May 1, 2023, and Hoffa was granted permission to supplement the original Omnibus Pretrial Motion. The hearings on the omnibus pre-trial motions were started on August 8, 2023 and were completed on October 23, 2023.

Defense Counsel alleges that the Commonwealth has failed to establish its *prima facie* burden on all of the charges filed. In addition, Defense argues that the search warrants issued for the defendant's home and cell phones lacked probable cause to justify their seizure.

Background

Defendant was arrested and charged on August 25, 2022 with five counts of Attempted Homicide¹, five counts of Aggravated Assault²-serious bodily injury attempted, five counts of Aggravated Assault³-with a deadly weapon, ten counts of Simple Assault⁴, five counts of

¹ 18 Pa. C.S.A. §901(a).

² 18 Pa. C.S.A. §2702(a)(1).

³ 18 Pa.C.S.A. §2702(a)(4).

⁴ 18 Pa. C.S.A. §2701(a)(1), (3).

Recklessly Endangering another person⁵, and one count each of Propulsion of a missile into an occupied vehicle⁶, Criminal Mischief⁷, Firearms not to be carried without a license⁸, Possession of an instrument of crime⁹, Possession of a weapon prohibited¹⁰ and Criminal use of a Communication facility¹¹. After the preliminary hearing MDJ Gary Whiteman found that the Commonwealth met its burden of proof and all of the charges were held for court.

Preliminary Hearing Testimony

Austin Mariano (Mariano)¹² testified for the Commonwealth at the preliminary hearing on September 12, 2022. Mariano explained that he had posted a “gym pic” on Snapchat and user “Trap” (later identified as Defendant) commented that he was “small as shit” or “small as fuck”. N.T. Preliminary Hearing, 9/12/2022 at 5. He only knew of Defendant by the name “Trap”. *Id.* Mariano and his friends agreed to meet up to fight and Defendant picked the cemetery as the location. *Id.* at 6. He testified that about five of his friends went with him in two vehicles; Mariano was in the white car. *Id.* at 7. Mariano described that when he went into the cemetery, there is a section of woods before you reach the graves and that he saw someone standing in the woods. *Id.* at 8. He described the person as wearing an all-black ski mask. *Id.* He said that “it was kinda sketchy and there was a gun.” *Id.* He at first thought that it looked like an airsoft gun with a green beam on it in Defendant’s hand. *Id.* Mariano wasn’t too sure if it was an Air Soft gun, but that Defendant was texting him as though it was. *Id.* at 9. Mariano said that they left because although Defendant was telling him the gun wasn’t real, it made him

⁵ 18 Pa. C.S.A. §2705.

⁶ 18 Pa. C.S.A. §2707(a).

⁷ 18 Pa. C.S.A. §3304(a)(5).

⁸ 18 Pa. C.S.A. §6106(a)(1).

⁹ 18 Pa. C.S.A. §907(a)

¹⁰ 18 Pa. C.S.A. §907(b).

¹¹ 18 Pa. C.S.A. §7512(a)

¹² Also referred to as A.M. in the search warrants filed by the PSP.

uncomfortable so they left. *Id.* At some point they spoke on the phone and Defendant told Mariano that it was not a gun. He agreed to return to the cemetery after about 20 minutes *Id. at 10.* Both vehicles returned to the cemetery: Mariano, Jax, Jake and Nick were in one car and Tyler and Dawson were in the other. *Id.* This time they travelled all the way back through the woods to go over by the graves when they saw an ATV pull-up. *Id. at 11.* Mariano described that the guy on the ATV was holding out a gun pointing it toward them and started firing in the direction of Mariano's vehicle. Five shots were heard and one of the bullets struck the car Mariano was in. *Id.* He then got out of the front passenger side of the vehicle with his hands up. *Id. at 12.* He was showing that he did not have a weapon. *Id.* Mariano believed that the person shooting was about 20-30 feet away. *Id.* Because of the sound it made they did not think that it was a gun. *Id. at 13.* But when they saw the bullet hole, they decided to get out of the cemetery as quickly as possible. *Id.* He described the person shooting as wearing a ski mask and black clothing, and riding on an ATV that looked smaller than a normal four-wheeler. *Id.* Mariano testified that all contact, texts and phone call with his assailant was through Snapchat. *Id. at 14.* Mariano testified on cross that he did not know Defendant he just knew of him by the name he used on Snapchat, "Trap." *Id.*

The next witness for the Commonwealth was Jake Ackerman (Ackerman).¹³ He testified that he knew Defendant because they used to play baseball together. N.T., 9/12/2022 at 19. He testified that he hadn't talked with him in many years until "the whole fight thing was going on." *Id. at 21.* Ackerman described that he received a text from the Mandon Watts Snapchat account. *Id.* He also would have been familiar with a "Trap" account with a user name of "Ghost." *Id.* Ackerman described that his friend Mariano posted a gym picture and

¹³ Also referred to as J.A. in the PSP search warrants.

something like ‘gym goals’ on Snapchat and the “Trap” account responded something to the effect that Mariano was ‘weak.’ *Id.* Ackerman testified that after what had been discussed between “Trap” and Mariano, he would have blocked “Trap’s” account. Mandon Watts’ account would have reached out to him to ask him to unblock the “Trap” account. He would have told the Mandon account that “Trap” needed to text back Austin without telling the Mandon account why. *Id.* at 23. “Trap” then proceeded to text Mariano back which resulted in Ackerman, Mariano and Jax going to the cemetery in one car and friends Tyler, Keena, and Dom in the other car. *Id.* at 24. They drove around the cemetery and saw a kid in all black, with a black ski mask about 15-20 yards away coming out of the woods. *Id.* at 25. Mariano got out of the car to fight and when Ackerman saw a black object in his hand with a green laser, he and Jax got back into the car because he thought that the kid had a gun in his hand. *Id.*

Ackerman testified that once they returned back to Mariano’s house “Trap” texted Ackerman saying that he heard that they had left the cemetery quickly because you or the “Trap” kid had a gun and that they didn’t want things to ‘escalate.’ *Id.* at 26 After about 15 minutes Mariano and “Trap” were texting again and he heard him confront “Trap” about why he brought a gun. *Id.* at 27. Ackerman was clear that he was texting “MANDON270”, who was Defendant. *Id.* at 27. He thought that this incident took place in August. *Id.* He described the voice of the person that Mariano was talking to as a person his age and that what he remembered was that “Trap” said he took the gun home and that it was an Air Soft gun. *Id.* at 29. “Trap” also said that he was going to bring his goons with him when he returned to the cemetery but he had no one with him either time. *Id.*

Ackerman testified that when they went back to the cemetery he was in Jax's car with Mariano and Nick¹⁴. *Id.* at 30. He described that they went into the entrance of the cemetery but didn't want to go in too far if anything happened. *Id.* He then described that "Trap" came back all in black on an ATV and signaled them to come over into the woods. *Id.* They followed him into the woods but neither they nor the other car with Dawson and Tyler could find him. *Id.* He described that he saw "Trap" holding his arm in a way that made him think that he had a gun near his hip. *Id.* at 32. When "Trap" raised and aimed the gun, Ackerman yelled for everyone to duck. *Id.* He heard five gunshots but only one bullet hit Jax's car. *Id.* He then saw "Trap" leave the cemetery and realized that the car had been hit in the front passenger side where Mariano had been sitting. *Id.* at 33. He showed on a map at the hearing that they saw "Trap" travel down Hales Lyon Road. *Id.*

On cross examination, Ackerman testified that he saw a green laser light from the gun and that the hole made by the bullet was about the size of a nickel or a quarter. *Id.* at 36, 39.

Trooper Brian Siebert (Siebert) of the Pennsylvania State Police (PSP) also testified. In the course of his investigation, he would have obtained search warrants for Snapchat accounts IMAUSTYNN, ACKERMAN.JAKE, MANDON270 and GHOST5K30S. *Id.* at 41. The last account had a vanity name of "Trap" listed with some emojis. *Id.* IAMAUSTYNN would be the account for Austin Mariano. *Id.* ACKERMAN.JAKE was for Jake Ackerman and Defendant would have been MANDON270. *Id.* at 42. As a consequence of seeing the Snapchat communication between Mariano and a "Ghost" account he also obtained that account information as well. *Id.* In reviewing the account information he could confirm the information provided by Mariano about the comments and the offer to fight at the cemetery. *Id.* at 43.

¹⁴ Referred to in the warrant as N LYONS.

Siebert testified that the way he was able to connect Defendant to the activity that day was the “Ghost” account sent pictures of himself to others which matched the JNET picture of Defendant. *Id.* at 44. He was also able to confirm that both the “Ghost” and Mandon Watts accounts used the same three IP addresses on the date of this incident. *Id.* It also confirmed that the Defendant was using an iPhone 10 on both accounts. *Id.* at 46.

On cross, Siebert also testified that he was able to find five shell casings and observed the bullet hole on the white vehicle as described by Mariano and Ackerman. *Id.* at 49. He also testified that the casings were 22 rimfire cartridges but the gun which fired them had not been found. *Id.*

Season Cundiff was called to testify as the owner of a 2021 Subaru Crosstrek. She is the mother of Jaxiah Loner¹⁵ who drove the vehicle the day of August 7th. *Id.* at 53. She testified that there had been no damage to the vehicle on August 7th when she let her son Jax use the vehicle. *Id.* at 54. When the vehicle returned, she described a bullet hole by the right passenger side and that there were marks to show that the bullet had ricocheted by the windshield wiper and a little ricocheted spot on the front of the vehicle, left side. *Id.*

Corporal Nicholas Loffredo (Loffredo) testified that on August 7th he was working part of a neighborhood canvas for a shooting incident that occurred at the catholic cemetery outside Montoursville borough. *Id.* at 55. He described the path that he took from the cemetery to a business on the cemetery side, crossed the road and went down Hales Lyon Road behind Wood Whims. *Id.* at 55. As he was heading down the road he saw that two other troopers, Cpls. Morse and Parker were already knocking on doors. *Id.* at 56. He chose that path because the police were told that the shooter on an ATV travelled down that road after the incident. *Id.* As

¹⁵ Also referred to as J.L. in PSP search warrants.

Loffredo travelled past Morse and Parker he discovered what appeared to be ATV marks in the vegetation. *Id.* He travelled on foot to follow a defined set of ATV tracks which led him behind a home in the Bella Vista development. *Id.* at 57. He walked further to see if there were any more ATV trails and was unable to discover any. *Id.* at 57. He would have been able to observe the tracks near a shed in the back. *Id.* at 58. He was able to observe the tracks or marks in the grass from outside the fenced in yard. *Id.* at 58, Morse contacted the home owner who gave permission to search the shed. *Id.* at 59. In the shed, police observed two dark forest green ATVs. *Id.* at 59. The location of the ATVs was 153 Confair Parkway, Defendant's residence. *Id.* They appeared to have been ridden recently. *Id.* at 60.

Finally, Trooper Eileen McDermott testified. She participated in the search of Defendant's home on August 11, 2022 as a member of the Forensic Services Unit. *Id.* at 62. She took photographs of a black ski mask that was located in Defendant's top dresser drawer in his bedroom. *Id.* at 63. She also took photographs of a second ski mask that was found in a plastic bin in the basement. *Id.* McDermott testified that the masks were identical. *Id.*

Omnibus Hearing Testimony

At the first hearing on the motion August 8, 2023, the Commonwealth presented Siebert again to clarify some of the issues raised at the hearing. He clarified that the iPhone that was allegedly used was not an iPhone 10 but an iPhone 8. N.T., Omnibus Hearing, 8/8/2023 at 23. Defendant acknowledged that his Snapchat account was MANDON270. *Id.* at 10. Siebert also clarified that the IMAUSTYNN Snapchat account belonged to Austin Mariano. *Id.* at 13. He also clarified that the Ghost account for which he also received a search warrant was associated with the nickname "Trap." *Id.* at 11. He also explained that when Jake Ackerman blocked the Ghost account that day from his Snapchat, that he began receiving messages from

MANDON270. *Id.* at 15. So, when he requested search warrants he knew the owners of three of the accounts, but not the GHOST5K30S account. *Id.* When Siebert received the results of the search warrant for the Snapchat accounts, he discovered that the user of GHOST5K30S identified as Mandon, 18 years old from Williamsport. *Id.* at 16. He also compared the photos that the Ghost account sent with Defendant's JNET photo and they appeared to be the same person. *Id.* at 16. Siebert also talked about the communication between the Ghost account and the IMAUSTYNN account. *Id.* at 17. Specifically, it referred to fighting each other and suggesting the Resurrection Cemetery as the location. *Id.* There had also been communications between the two accounts that discussed how long it would take Mariano to get to the cemetery (12-minute car ride). *Id.* at 19.

On cross examination, Siebert testified that he neither located any additional ATVs in the neighborhood nor other tracks in the area. *Id.* at 26. Siebert also testified that he wasn't sure if Sauers was asked if ATVs travelling in the area were a common occurrence. *Id.* at 26. Although there may have been another in the neighborhood and while the PSP did a neighborhood canvass, they were not able to identify and speak to that person. *Id.*

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 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).

Defense argues several challenges to the testimony of the preliminary hearing. First, that the Commonwealth has failed to show that it was Defendant who engaged in the acts of that day as no one had identified him. Next, defense argues that the Commonwealth has essentially overcharged the Defendant based upon his alleged actions on the day of this incident. Since Mariano was the shooter’s intended target five counts of attempted homicide, aggravated assault and simple assault are not warranted simply because Defendant allegedly discharged five rounds in Mariano’s direction. To this argument, Commonwealth concedes that if five shots were fired toward one individual it would not warrant five separate charges being filed. In addition, the Commonwealth agrees that one count of recklessly endangering and aggravated assault should be at minimum dismissed.

Defendant alleges that the Commonwealth failed to prove that it was the Defendant who was in the cemetery August 7, 2023 to have discharged the firearm at Mariano and his friends. The Court finds that the Commonwealth has met its prima facie burden.

The evidence presented by the Commonwealth showed that an individual reached out to Mariano and Ackerman over Snapchat by the name of MANDON270 or “Trap” with an account name of GHOST5K30S. Ackerman knew MANDON270 as someone he knew from baseball. This person arranged to meet with Mariano in the Resurrection Cemetery in Montoursville. When they arrived at the cemetery Mariano and his friends saw someone with a black mask on a black ATV with what appeared to be a gun and they left. They saw the ATV leave the area and go down Hales Lyon Road. The MANDON270 and “Trap” accounts both reached out to Mariano and his friend Ackerman about running from the cemetery. They agreed to meet again but Mariano said how he didn’t understand if they were going there to fight, why did “Trap” bring a gun.

Both Mariano and his friends and the person on the ATV returned. The Commonwealth then alleges that Defendant returned to the cemetery on the ATV and discharged five shots at the vehicle Mariano and his friends occupied. After the incident was reported to the State Police, they did a neighborhood canvas and determined that ATV tracks went to a house in the Bella Vista development which belonged to Defendant and his family. A search warrant discovered two ATV’s that generally matched the description in an outdoor shed, and two black ski masks inside Defendant’s house. Snapchat records of Mariano, Ackerman and MANDON270 obtained by the PSP identified Defendant as the owner of both MANDON270 and the “Ghost” accounts.

At the hearing on the Omnibus motion, Siebert testified that at the time that he sought the first search warrant on August 10, 2022 he knew that the IMAUSTYNN Snapchat account belonged to Austin Mariano, and after Mariano posted the picture, the account GHOST5K30S communicated with him. Hearing, 8/8/2023 at 13. Siebert also knew that the vanity name associated with GHOST5K30S was “Trap.” *Id.* He also knew that whoever was using the GHOST5K30S account was suspected to be the assailant. *Id.* at 14. Siebert also knew that the ACKERMAN.JAKE account belonged to Jake Ackerman and there were communications between his account and the GHOST5K30S account. *Id.* Ackerman told Siebert that once he blocked the GHOST5K30S account he received messages over Snapchat from MANDON270. *Id.* at 15. Siebert also discovered that the MANDON270 account belonged to Defendant. *Id.* The only account Siebert did not know was the owner of the GHOST5K30S. *Id.*

After serving the warrant (Commonwealth’s exhibit #2), Siebert discovered that GHOST5K30S account belonged to a Mandon, 18 years old from Williamsport sending photographs of the Defendant. He confirmed that those photos sent by the account were of the Defendant. *Id.* He also discovered that there were communications between the IMAUSTYNN account and GHOST5K30S accounts discussing a fight at Resurrection Cemetery and it being about 12 to 14 minutes from Mariano’s house to the cemetery. *Id.* at 17. There was additional discussion on Snapchat about the firearm at the cemetery. *Id.* at 21.

In addition, Siebert discovered the IP (internet protocol) addresses the GHOST5K30S was using on August 7, 2022. IP addresses are unique addresses for devices when they are connected to the internet. *Id.* He described that only one device can have the same IP address. *Id.* Siebert determined from the results of the search warrant that both the GHOST5K30S and MANDON270 accounts were using the same three IP addresses that day. *Id.* at 22. The results

also told Siebert that the device used was an iPhone 10.1. *Id.* at 23. The second search warrant collected among other items an iPhone 8 from Defendant's house. *Id.* Siebert then obtained a search warrant for an iPhone 10 from Defendant's residence; however, one was not discovered. *Id.*

As a consequence, Siebert consulted with the Computer Crimes division of the State Police to determine what type of device he should be looking for to match the device described. *Id.* at 24. After he did his due diligence, he discovered that Apple has their own convention calling the iPhone8 publicly but internally as a 10.1. *Id.* Siebert eventually discovered that Defendant used an iPhone 8 the day of the incident. *Id.* He also identified that only one of the accounts GHOST5K30S and MANDON270 was logged in at any one time. *Id.* at 25.

The Commonwealth may sustain its burden of proving every element of the crime by means of wholly circumstantial evidence. *Commonwealth v. Rosario*, 307 A.3d 759, 765 (Pa. Super. 2023). The Court finds that the Commonwealth has presented sufficient evidence to connect Defendant to the activities on that day.

Attempted Homicide

The Commonwealth has charged Defendant with five counts of Attempted Murder. To satisfy this charge the Commonwealth is required to prove that "with intent to commit [Murder], [Defendant did] any act which constitute[d] a substantial step toward the commission of [Murder]." 18 Pa. C.S. § 901(a). Specifically, the Commonwealth must show Defendant possessed the "specific intent to kill and took a substantial step towards that goal." *Commonwealth v. Blakeney*, 946 A.2d 645, 652 (Pa. 2008). Both the *mens rea* and *actus reus* elements must be present to satisfy Attempted Murder. *Commonwealth v. Predmore*, 199 A.3d 925, 929 (Pa. Super. 2018) (*en banc*). The *mens rea* element may only be satisfied if a

defendant possesses the specific intent to commit Murder of the First Degree. *See Commonwealth v. Griffin*, 456 A.2d 171, 177 (Pa. Super. 1983) (Second Degree and Third-Degree Murder by definition do not satisfy the *mens rea* requirement because the crimes do not require the intent to kill). Such specific intent may reasonably be inferred from an accused's use of a deadly weapon on a vital part of the victim's body. *Commonwealth v. Hobson*, 604 A.2d 717, 720 (Pa. Super. 1992). "The *actus reus* element of the offense is the commission of one or more acts which collectively constitute a substantial step toward the commission of a killing." *Predmore*, 199 A.3d at 929.

There is no dispute that firing multiple bullets at a person constitutes a substantial step towards the commission of attempted homicide if directed at a particular person. *Commonwealth v. Palmer*, 192 A.3d 85, 89 (Pa. Super. 2018) In *Palmer*, the Court discussed a "kill zone theory" which was adopted in California and multiple other states. 192 A.3d 85, 96-99 (Pa. Super. 2018). Under this theory an individual could be held responsible for attempted murder without having a particular individual in mind. *Id.* at 98. The example used in *Palmer* was that if an individual shoots two houses side by side, which were fully occupied, the individual could be charged for the attempted murder for any of the individuals in either house because he was still intending the outcome to murder someone, although no one specific. *Id.* at 96. The Pennsylvania Superior Court used the theory to find that an individual had the specific intent to commit serious bodily injury when he fired into a group of people multiple times. *Id.* at 99.

In *Commonwealth v. Cannavo*, the Superior Court also found the evidence sufficient to support the elements of attempted murder of the first degree even though Cannavo fired his

weapon toward a group of people who he could not see but where he thought they might be.
199 A.3d 1282, 1292.

Defendant's actions in conjunction with his comments on Snapchat support the Commonwealth's position that he acted with the intent to injure at least Mariano.

Based on the evidence presented, the Commonwealth has established that the Defendant allegedly discharged five rounds toward the white Subaru Crosstrek which was occupied by Mariano, Jax, Nick and Ackerman with one bullet hitting the vehicle, satisfying its burden that Defendant acted with a specific intent to kill and took a substantial step toward the commission of the crime. *See* 18 Pa.C.S. § 901(a); *Cannavo*, 199 A.3d at 1292 (“We have no hesitation in finding the evidence sufficient to support the elements of attempted murder of the first degree. By firing his weapon toward a group of people, he took a substantial step toward the commission of the crime.”). However, since there were only four occupants of the vehicle, one count of attempted murder shall be dismissed. The Information has the individuals from the second vehicle listed as the victims for Counts 3 and 5, but there is not a count listed for Nick (“N.L.”) who was an occupant of the white Crosstrek. Therefore, the Court will direct the Clerk of Courts to amend Count 3 to list the victim as N.L. and to dismiss Count 5.

Aggravated assault

Defendant is charged with two counts of aggravated assault, attempting to cause serious bodily injury with extreme indifference to the value of human life and attempting to cause bodily injury with a deadly weapon. “A person is guilty of aggravated assault if he:

- (1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life;
... [or]
- (4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon...

18 Pa. C.S.A. § 2702(a)(1), (4).

The Commonwealth has charged Defendant with five counts each of these two different Aggravated Assault sections. No one was actually injured. Therefore, the Commonwealth is proceeding on an attempt theory for all of the aggravated assault charges. When evaluating an alleged aggravated assault, “an ‘attempt’ is found where the accused, with the required specific intent, acts in a manner which constitutes a substantial step toward perpetrating a serious bodily injury upon another.” 18 Pa. C.S.A. § 901(a). The intent of a defendant may be proven by direct or circumstantial evidence. *Commonwealth v. Matthew*, 909 A.2d 1254, 1257 (Pa. 2006).

With respect to first five counts of aggravated assault, the Commonwealth must prove that Defendant attempted to cause serious bodily injury. With respect to the other five counts, the Commonwealth must prove that Defendant attempted to cause bodily injury with a deadly weapon.

Defendant pointed a loaded gun at Mariano and his three friends in the Crosstrek and allegedly pulled the trigger five times, hitting the vehicle once. The Commonwealth has satisfied its *prima facie* burden that Defendant attempt to cause serious bodily injury and that Defendant attempted to cause bodily injury with a deadly weapon for both of these theories of aggravated assault. However, the vehicle that was shot only contained four occupants. Although there was another vehicle with two occupants, the Commonwealth did not present any evidence to show that the other vehicle was struck or even where that vehicle was in relation to the shooter or the Crosstrek. Similar to the attempted homicide charges, the two occupants of the other vehicle were listed as the victims in Counts 8, 10, 13 and 15, but the Information did not contain Counts for N.L. Since no evidence was presented that the second

vehicle was struck by the bullets, the Court will direct the Clerk of Courts to amend Counts 8 and 13 to list the victim as N.L. and to dismiss Counts 10 and 15.

Simple Assault

A person is guilty of assault if “he attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another” or “attempts by physical menace to put another in fear of imminent serious bodily injury.” 18 Pa. C.S. §2701(a)(1), (3). The Commonwealth has charged Defendant with five counts of each theory of simple assault.

The evidence presented at the preliminary hearing is that Defendant was identified as the person who fired shots at Mariano and his friends which resulted in damage to the vehicle that Mariano was traveling in. In consideration of the previous analyses of attempt, Defendant’s acts constitute an attempt to cause bodily injury. Therefore, the Commonwealth has met its burden of proof on four counts of simple assault by attempting to cause bodily injury. Count 18 is amended to list the victim as N.L. and Count 20 is dismissed.

With respect to simple assault by physical menace, the court finds that all of the individuals present (other than the shooter) were put in fear of imminent serious bodily injury. See Preliminary Hearing Transcript, 09/12/22, at 32-33, 37-38. There were six individuals present, but there are only five counts of simple assault by physical menace. Therefore, the Court directs the Clerk of Courts to add as Count 37 Simple Assault by Physical Menace, 18 Pa. C.S.A. §2701(a)(3), Victim: N.L.

Recklessly Endangering another Person

A defendant commits the crime of Recklessly Endangering another Person “if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.” 18 Pa. C.S.A. § 2705.

The Commonwealth presented evidence that Defendant shot at the white Crosstrek containing Mariano, Ackerman and their two friends. Five bullets were discharged and one hit the vehicle. Defendant's conduct had the potential to place the four occupants in danger of death or serious bodily injury. Accordingly, the Commonwealth has met its burden for four counts of this charge. Count 28 will be amended to reflect the victim as N.L, and Count 30 will be dismissed.

Propulsion of missiles into an occupied vehicle

In order to prove the charge of propulsion of missiles into an occupied vehicle, the Commonwealth must prove

- (a) Occupied vehicles. --Whoever intentionally throws, shoots, or propels a rock, stone, brick, or piece of iron, steel, or other like metal, or any deadly or dangerous missile, or fire bomb, into a vehicle or instrumentality of public transportation that is occupied by one or more persons commits a misdemeanor of the first degree.

18 Pa. C.S. §2707(a).

Here the testimony established that Defendant pointed a weapon with a green laser and discharged five cartridges toward the vehicle in which Mariano and Ackerman were riding. One projectile hit the car on the front passenger side where Mariano had been sitting. Therefore, the Commonwealth has met its burden of proof on this charge.

Criminal mischief

A person is guilty of criminal mischief if he: (5) intentionally damages real or personal property of another. 18 Pa. C.S.A. §3304 (5).

The Commonwealth established through the testimony of Mariano, Ackerman and Cundiff that the Subaru Crosstrek did not have a bullet hole in its front passenger side prior to

going to the cemetery and that the vehicle was shot at by Defendant while inside the cemetery. Therefore, the Commonwealth has met its burden of proof on this charge.

Firearms not to be carried without a License

In Pennsylvania, “any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.” 18 Pa. C.S.A. § 6106(a)(1).

At the time of this incident, Defendant was 18 years old. Since he was not yet 21 years of age he was not eligible for a firearm license in Pennsylvania. *See* 18 Pa. C.S.A. Section 6109(b). Defendant was not at his home or fixed place of business; he was lurking around the Resurrection Cemetery wearing black clothing and a black ski mask. Defendant made Mariano concerned for his safety to the extent that they left the cemetery and returned after Snapchat messages were exchanged promising that Defendant would not be bringing a gun. From this evidence, a jury could infer that Defendant was carrying the firearm concealed on his person, but the jury is not required to do so. Therefore, the Commonwealth has met its burden of proof on this charge.

Possession of an instrument of crime

A person commits a misdemeanor of the first degree if he possesses any instrument of crime with intent to employ it criminally. 18 Pa. C.S.A. § 907.

Witnesses testified that the Defendant held the weapon in such a way that they weren't initially sure what it was. They believed it was an airsoft gun. However, once Defendant pointed the gun toward their vehicle, they saw the green laser and heard the shots fired. One of

the bullets hit the white Crosstrek and damaged the front passenger side with a bullet hole and a ricochet mark.

The evidence is also sufficient to show that Defendant employed the firearm criminally. He was wearing a black face mask. He had a gun with a green laser and discharged five bullets. At least one bullet struck the vehicle in which Austin, Jax, Jake and Nick were occupants. In an exchange of messages, Defendant directed Austin to the Cemetery for a fight. Instead, he fired five shots at him. Although Defendant denied being at the cemetery, the police followed tracks made by an ATV from the cemetery to the shed at Defendant's residence which housed two ATVs. Those statements, along with Defendant's reaction when the trooper spoke to him about what happened in the could be considered as consciousness of guilt. The court has already found that the evidence was sufficient to establish a *prima facie* case of attempted homicide, aggravated assault, simple assault and criminal mischief. The firearm was utilized in the commission of these offenses. The court finds that based on the totality of circumstances, the Commonwealth has presented *prima facie* evidence that the Defendant committed the offense of possession of an instrument of crime.

Possession of a weapon

A person commits a misdemeanor of the first degree if he possesses a firearm or other weapon concealed upon his person with intent to employ it criminally. 18 Pa. C.S.A. § 907(b).

The Court relies on the previous discussion, *supra*, on the charge Possession of an instrument of crime. As a consequence, the court finds that the Commonwealth has presented *prima facie* evidence on the offense Possession of a weapon.

Criminal use of a communication facility

A person commits a felony of the third degree if that person uses a communication facility to commit, cause, or facilitate the commission, or the attempt thereof of any crime which constitutes a felony under this title. Every instance where the communication facility is utilized constitutes a separate offense under this section. 18 Pa. C.S.A. §7512.

The Commonwealth presented testimony that the defendant reached out to Mariano and Ackerman on Snapchat talking both about the photos Mariano posted and to meet at the cemetery. The purpose of the meeting was to “fight.” As a consequence of that communication through Snapchat, they met at the cemetery. As previously discussed in this Opinion, Defendant fired shots at the white Crosstrek, putting the occupants thereof in danger of death and serious bodily injury. The evidence presented by the Commonwealth at the preliminary hearing was sufficient to establish a *prima facie* case for the felony offenses of attempted homicide and aggravated assault. Defendant used a communication facility to get Austin and his friends to come to the cemetery where these felony offenses occurred. Therefore, the Commonwealth has met its burden that the Defendant committed the offense of criminal use of a communication facility.

Search Warrant

In his Motion, Defendant contends that the search warrant affidavit for the search of his residence did not contain probable cause to search his residence for a black .22 caliber handgun with a green laser, CCI .22 caliber ammunition and firearm accessories, black ski mask, Dark Green/Black ATV, cellphone belonging to Mandon Watts and photographs of the residence and evidence collected inside the residence. A separate set of search warrants were requested for the Snapchat accounts of MANDON270, GHOST5K30S,

ACKERMAN.JAKE and IMAUSTYNN, along with a warrant for Defendant's iPhone 8 and a separate warrant for an iPhone 10.

The affidavit of probable cause for the first warrant states:

On Friday, August 5, 2022 17-year-old juvenile victim referred to herein as A.M. posted on his Snapchat Story, a photograph of himself at the gym. A.M.'s Snapchat account name is IMAUSTYNNN and his vanity name is Austyn.

A person utilizing the Snapchat account name of "GHOST5K30S" and vanity name "Trap" commented on the photo saying A.M. was small. This upset A.M. and caused A.M. to send a Snapchat message to GHOST5K30S on August 7th 2022. GHOST5K30S never opened the message until Sunday, August 7th, 2022.

A.M.'s friend 17-year-old juvenile victim referred to herein as J.A. messaged GHOST5K30S utilizing his Snapchat account name ACKERMAN.JAKE and vanity name "Jake Ackerman". J.A. told GHOST5K30S that he shouldn't be saying stuff like that about his friend A.M. J.A. blocked GHOST5K30S on Snapchat and shortly thereafter he received a message from Snapchat account named "MANDON270" and vanity name "Mandon". J.A. identified MANDON270 to be Mandon WATTS. WATTS told J.A. to unblock and add GHOST5K30S back on Snapchat. J.A. unblocked GHOST5K30S on Snapchat. GHOST5K30S opened A.M. messages up on Snapchat. They began exchanging Snapchat messages back and forth. They decided to fight each other and GHOST5K30S recommended A.M. to meet at the Resurrection Cemetery, 4323 Lycoming Mall Drive, Fairfield Township, Lycoming County, Pennsylvania, if A.M. wanted to fight him.

Seventeen-year-old juvenile herein referred as J.L., drove A.M., J.A., and a victim Nick LYONS (Car 1) to the Resurrection Cemetery to fight the person known as "GHOST5K30S". A second vehicle (car 2) followed J.L. to the cemetery. This vehicle operated by victim Tyler SUDDETH with the following passengers: seventeen-year-old juvenile witness #2 referred to herein as K.C. and seventeen-year-old juvenile witness #3 referred to herein as D.S. While at the cemetery, an identified suspect, assumed to be GHOST5K30S wearing all black pointed a black handgun with a green laser at Car 1. GHOST5K30S was also wearing a black mask that covered his entire face but his eyes. This caused A.M. and GHOST5K30S to exchange Snapchat messages and Snapchat phone calls back and forth because GHOST5K30S was not supposed to bring a weapon. Car 1 and Car 2 left the cemetery in fear of GHOST5K30S having a weapon and using it on them. Car 1 and car 2 left the cemetery and went back to A.M.'s residence.

Upon leaving the cemetery, WATTS messaged J.M. on Snapchat saying “I heard what happened and you guys really ran away. You guys were only there for 10 seconds, and you guys were talking mad crazy.”

A.M. continued to exchange Snapchat messages with GHOST5K30S until they agreed the weapon that GHOST5K30S had was an airsoft gun. They decided to meet at the Resurrection Cemetery for a second time.

On August 7th, 2022 at approximately. 1800 hours, Car 1 returned to the cemetery with the same people in it. Car 2 was still being operated by T.S. K.C. and D.S. were no longer in the vehicle. However, victim referred to herein as D.A.S. was in the vehicle with T.S.

When Car 1 and Car 2 arrived at the cemetery, they met GHOST5K30S on the cemetery road. This time GHOST5K30S was operating an ATV. The ATV was described to be a dark green or black in color ATV with a back rack. GHOST5K30S waved for Car 1 and Car 2 to proceed forward into the cemetery. Car 1 and Car 2 proceeded forward in the cemetery but lost the ATV. They drove around the cemetery before parking at the first intersection of the cemetery. While they parked at the intersection, GHOST5K30S drove his ATV near their vehicles and fired (5) five .22 caliber rounds from a handgun at the vehicles. Car 1 was struck in the passenger front fender. No other cars or people were hit. Car 1 and car 2 then proceeded to drive away as the ATV turned around and started following them. Car One and Car Two made a left onto Lycoming Mall Drive and the ATV continued straight across Lycoming Mall Drive onto Hales Lyon Rd.

From here, Commonwealth’s exhibit #2 and #3 diverge in the information in their respective affidavits of probable cause.

Commonwealth’s Exhibit #2 continued with this information:

The Snapchat account IMAUSTYNN was preserved by preservation letter to Snap Inc. on August 8, 2022. Investigators request the court to grant a search warrant authorizing a search of the Snapchat account IMAUSTYNN for the period of July 1, 2022, to August 9, 2022.

The Snapchat account GHOST5K30S was preserved by preservation letter to Snap Inc. on August 8, 2022. Investigators request the court to grant a search warrant authorizing a search of the Snapchat account GHOST5K30S for the period of July 1, 2022, to August 9, 2022.

The Snapchat account ACKERMAN.JAKE was preserved by preservation letter to Snap Inc. on August 8, 2022. Investigators request the court to grant a search warrant authorizing a search of the Snapchat account ACKERMAN.JAKE for the period of July 1, 2022, to August 9, 2022.

The Snapchat account MANDON270 was preserved by preservation letter to Snap Inc. on August 8, 2022. Investigators request the court to grant a

search warrant authorizing a search of the Snapchat account MANDON270 for the period of July 1, 2022, to August 9, 2022.

I therefore respectfully request the court to grant a search warrant authorizing a search of the Snapchat accounts, IMAUSTYNN, ACKERMAN.JAKE, MANDON270, GHOST 5K30S for the period of July 1, 2022 to August 9, 2022.

Your affiant also requests that this search warrant be sealed from the public and the media because the investigation is the attempted homicide of A.M., J.A., J.L., NL, TS, and DAS and is still under investigation. Your affiant also requests that this search warrant be sealed pursuant to Rule of Criminal Procedure 211. The affidavit must be sealed to preserve the facts and circumstances revealed in the affidavit, if became public knowledge, could hinder subsequent interviews and collection of evidence, and specifically could jeopardize the safety of witnesses interviewed by investigators, who have provided specific information regarding this investigation. Pursuant to Rule 211(E) the affidavit shall be sealed for a period of not more than 60 days unless extended by the Commonwealth.

Commonwealth's exhibit #3 continued with this information.

On August 8th, 2022 we recovered (5) .22 caliber CCI casings.

On August 9th, 2022, at approximately 1000 Hours, Cpl. Tyler MORSE was assisting with an area canvass in the area of Resurrection Cemetery in Hales Lyon Rd. Cpl. MORSE spoke with the Christina SAUERS who stated she was home on Sunday, August 7th, 2022 at 1800. Hours. SAUERS did not hear any gunshots, but did observe a black ATV traveling South on Hales Lyon Rd. In the afternoon on August 7th, 2022. Approximately 30 minutes after first observing the ATV, the same ATV was traveling north on Hales Lyon Rd. SAUERS described the operator to be young and thin. The operator was wearing a hooded sweatshirt. She thought it was odd because it was hot outside.

During the area canvass, Cpl. Nicholas LOFFREDO observed vegetation that had been recently knocked down by an all-terrain vehicle (ATV). On the eastern side of Hales Lyon Rd. Cpl. LOFFREDO followed the ATV tracks which led to a well-established ATV trail within the wooded area to the east of Hales Lyon Rd. Cpl. LOFFREDO then walked the ATV trail, which looped around through the woods and ultimately brought him to the edge of the wood line to the rear of 153 Confair Pkwy. The yard to the rear of the residence was fenced, and there was what appeared to be ATV tracks in the grass within the fence line. There was also what appeared to be a gated section in the fence, and there was a wooden shed located inside the fence, in the southeastern corner of the yard. Cpl. LOFFREDO then walked to the east behind the neighboring residences to see if there were any other ATV tracks coming from that direction, but none were observed.

On August 9th, 2022, Cpl. MORSE interviewed Jennifer BOYLES and Mandon WATTS, who reside at 153 Confair Pkwy, Fairfield Township,

Lycoming County. Cpl. MORSE advised J BOYLES that PSP Montoursville was investigating an ATV complaint in the roadway. J BOYLES related that she had two sons that rode ATV's in the area. J BOYLES allowed Cpl. MORSE and Cpl. LOFFREDO entry into the residence. While inside the living room, Cpl. MORSE observed a shooting target with holes in it. They walked to the rear of the residence where there was a shed on the property. Inside the shed were two green Yamaha Grizzly 300's.

Cpl. MORSE told J BOYLES that the complaint was on Hales Lyon Rd. WATTS related that he would drive the ATV around the area but would never go on the main roads. He further related that he would drive the ATV on Hales Lyon Rd. J BOYLES related that Cpl. MORSE questioning was "intense" for a complaint of an ATV on the roadway. Cpl. MORSE told them that there was an incident that occurred at the cemetery. WATTS immediately looked at Cpl. MORSE and appeared concerned. The look on WATT'S face appeared to be an immediate recollection and concern about what the police knew. Cpl. MORSE told WATTS that he appeared to know what he was referring to. WATTS related he did not know.

Cpl. MORSE asked if WATTS had a Snapchat account. WATTS related he did and provided his name, Mandon. WATTS related he did not have any other accounts. Cpl. MORSE asked him to tell J BOYLES about why the police were asking him questions about what happened on Sunday. WATTS related he didn't know and began to stutter and look to the ground. WATTS appeared to be nervous.

Cpl. MORSE asked J BOYLES about the target with the bullet holes in the living room. J BOYLES related her and MANDON went to the gun range. (National Range and Armory, 531 Washington Blvd. Williamsport City) on Saturday or Sunday. J BOYLES then expressed concern about the investigation and said that WATTS never left the residence Sunday. Cpl. MORSE asked J BOYLES if there were any firearms in the residence. J BOYLES related that there were only hunting rifles and denied having any handguns.

WATTS retrieved his cell phone from his bedroom and Cpl. MORSE asked to see his Snapchat username. WATTS showed Cpl. MORSE his Snapchat username quickly. Cpl. MORSE asked if he could photograph his Snapchat username, but WATTS refused to allow him. WATTS put his phone away and refused to show his Snapchat username again. Cpl. MORSE asked Watts what his Snapchat was again. WATTS related it was "Mandon." Cpl. MORSE confronted WATTS about it not being true and that there were numbers associated with this Snapchat username. WATTS then related it was "MANDON270". Cpl. MORSE asked if he could see it and WATTS refused. Cpl. MORSE asked if there was anyone else at the residence on Sunday. WATTS related no.

On August 10th, 2022, we confirmed with National Range and Armory that J BOYLES took WATTS to National Range and Armory on Saturday, August 6th, 2022. WATTS rented an AR15 rifle, 9mm handgun, and a .22-caliber handgun.

WATTS criminal history indicates he was adjudicated for receiving stolen property and fleeing or attempting to elude a police officer for an incident that took place on October 7th, 2021. According to Williamsport Bureau of Police Incident Report 21-09884, WATTS fled from police in a stolen vehicle. When police apprehended WATTS, WATTS was wearing a black mask covering his entire face and head. WATTS was further adjudicated for fleeing or attempting to elude a police officer, recklessly endangering another person, and driving under the influence of drugs or combination of drugs for an incident that took place on June 13th, 2021. According to Tiadaghton Valley Regional Police Department. Incident Report 21-1360, WATTS fled from police in a vehicle and crashed the vehicle with two passengers in it. WATTS was under the influence of Delta-9 THC.

It is probable that the information requested in this search warrant will be relevant in the investigation and lead to a possible suspect.

Your affiant also requests that this search warrant be sealed from the public and the media because the investigation is the attempted homicide of A.M., J.A., J.L., Nick LYONS, Tyler SUDDETH, and Dawson STAHL and is still under investigation. Your affiant also requests that this search warrant be sealed pursuant to Rule of Criminal Procedure 211. The affidavit must be sealed to preserve the facts and circumstances revealed in the affidavit, if became public knowledge, could hinder subsequent interviews and collection of evidence, and specifically could jeopardize the safety of witnesses interviewed by investigators, who have provided specific information regarding this investigation. Pursuant to Rule 211(E) the affidavit shall be sealed for a period of not more than 60 days unless extended by the Commonwealth.

Commonwealth Exhibit #3.

In the subsequent warrants requested for the iPhones, the affidavits were identical with the exception that the warrant, Commonwealth's #4, was for the iPhone seized on the search of Defendant's house on August 11th, 2022. The search time frame was set for July 1, 2022 to August 9, 2022 looking for the owner and photos, communication and location information related to the Snapchat accounts "MANDON270", "GHOST5K30S" and "ACKERMAN.JAKE." The language added to the affidavit above was as follows:

On August 11, 2022, PSP Montoursville executed a search warrant of WATT'S residence, 153 Confer Pkwy, Fairfield Township, Lycoming County, Pennsylvania. We seized a rose in color Apple iPhone 8, model number A1863, belonging to WATTS.

Based upon my knowledge training and experience as it relates to the use of cellphones, images, messages and audio files, can be saved on multiple devices, and

transferred to device to device. Also, Snapchat content can be accessed and stored on multiple devices, if the app is installed, or the phone has internal access.

An additional search warrant was obtained on August 25, 2022 for information contained in an iPhone10 alleged to have been at the 153 Confair Pkwy address but no iPhone 10 was discovered. The Commonwealth notified Defense Counsel at the hearing on the motion, that no information was obtained from the iPhone seized from Defendant's house.

Was there sufficient probable cause for the search warrants

Even though there were four search warrants issued in this case, the warrants in question appear to be Commonwealth's #2 which was the request for Snapchat records for the four accounts mentioned and Commonwealth's #3 the search of the Defendant's house at 153 Confair Parkway,

Both the Fourth Amendment of the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens from unreasonable, searches and seizures. *Commonwealth v. Burgos*, 64 A.3d 641, 648 (Pa. Super. 2013). The Fourth Amendment has a strong preference for searches conducted pursuant to warrants. *Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. 2018). Search warrants may only issue upon probable cause and the issuing authority may not consider any evidence outside of the affidavits. Pa. R. Crim. P. 203 (B). The affidavit of probable cause must provide the magistrate with a substantial basis for determining the existence of probable cause. *Leed*, supra (quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983)).

In order to consider the Defendant's claim that there was insufficient probable cause, the parties agree that the Court must restrict its analysis to the information contained in the affidavit of probable cause attached to the warrant, or its "four corners." The Court "must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of

probable cause when determining whether the warrant was issued upon probable cause.”

Commonwealth v. Arthur, 62 A.3d 424, 432 (Pa. Super. 2013).

“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.” *Leed*, supra (quoting *Commonwealth v. Johnson*, 615 Pa. 354, 42 A.3d 1017, 1031 (2012) (internal quotation marks and citation omitted). The affidavit of probable cause “must provide the magistrate with a substantial basis for determining the existence of probable cause[.]” *Gates*, 462 U.S. at 239, 103 S.Ct. 2317. It is “not require[d] that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location.” *Commonwealth v. Forster*, 385 A.2d 416, 437-38 (Pa. Super. 1978). A magistrate must simply find that “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Commonwealth v. Manuel*, 194 A.3d 1076, 1081 (Pa. Super. 2018). Courts must construe applications for warrants in a common sense, nontechnical manner. See *Commonwealth v. Burno*, 154 A.3d 784, 781 (Pa. 2017)(arrest warrant); *Commonwealth v. Baker*, 615 A.3d 23, 25 (Pa. 1992)(search warrant).

Defendant asserts primarily that the PSP did not have sufficient probable cause to justify the search of Defendant’s home. Defense counsel argues that they had no DNA evidence to connect the cartridges found at the scene, Defense argues that they seized two ATV’s when only one was requested in the warrant. Most importantly, the warrant does not give enough

information that the Defendant is the one who engaged in the activities that day to justify the search of 153 Confair Parkway and the seizure of anything from that location.

The Commonwealth argues that the PSP was investigating a shooting where the shooter arrived and left on an ATV. When they followed the tracks of the ATV which did cross a roadway to exit, it led them to 153 Confair Parkway. In addition, before they obtained the search warrant for that location the Defendant did confirm that he was the owner of the Snapchat account and when they came upon the iPhone¹⁶ it was consistent with the device they were seeking. Therefore, none of the items should be suppressed.

The Court finds that the applications for the search warrants for the Snapchat accounts (Commonwealth's #2) and the search warrant for Defendant's residence (Commonwealth's #3) established probable cause to conduct those searches.

The shooting incident at the cemetery arose from messages that were exchanged on Snapchat between the four accounts for which the Commonwealth requested the search warrant. The GHOST5K230S account insulted Mariano's gym pictures posted on his IMAUSTYNN account. Ackerman blocked the GHOST5K30S account, but unblocked it and added it back on Snapchat at the request of MANDON270, who Ackerman knew to be Mandon Watts. Subsequent messages between IMAUSTYNN and GHOST5K30S resulted in Mariano agreeing to meet GHOST5K30S at the cemetery to fight. Mariano and several friends drove to the cemetery in two vehicles. At the cemetery, they encountered an individual wearing black clothing, who possessed a black handgun with a green laser. They left the cemetery in fear of GHOST5K30S having a weapon and using it on them. They returned to the cemetery after GHOST5K30S assured them that the weapon was an airsoft gun. They then met at the

¹⁶ Despite the fact the iPhone was seized, PSP as of the hearing were unable to do a "dump" of the phone, thus the reason search warrants 4 and 5 were not challenged.

cemetery for a second time. This time GHOST5K30S was on a dark green or black ATV and fired shots at the vehicle in which Mariano, Ackerman and two other individuals were occupants.

It was reasonable for the police to believe that the individual dressed in black and riding on the ATV was GHOST5K30S since he told Mariano to meet him at the cemetery. Based on Ackerman's statements to the police about receiving a message from MANDON270 to unblock GHOST5K30S and knowing MANDON270 to be Mandon Watts, it was reasonable for the police to believe that Mandon Watts was involved in the incident, either as also being GHOST5K30S or knowing who GHOST5K30S was to be advocating on behalf of that account. It was reasonable to believe that the search warrants for information from and about the Snapchat accounts would provide evidence to corroborate what Ackerman and Mariano told the police as well as lead to evidence to confirm that the MANDON270 belonged to Mandon Watts and to identify whether GHOST5K30S also belonged to him. In other words, based on the totality of the circumstances viewed in a common sense and nontechnical manner, it was reasonable to believe that searches of the Snapchat accounts would lead to evidence regarding what led up to the incident and evidence regarding the identity of the shooter.

Search warrant Commonwealth's #3 which was obtained on August 11, 2022 and executed on the Defendant's residence at 153 Confair Parkway, obtained two ATV's Yamaha Grizzly 300's darker green in color, two face masks one from the basement and one from Defendant's bedroom. *Id.* At the time of the hearing PSP did not have any known samples of DNA, so they were unable to identify if there was any DNA on any of the items seized and to whom it belonged. *Id.*

At the time the Commonwealth sought a search warrant for 153 Confair Pkwy, they had a number of items of information that led them to believe that evidence of a crime could be found at 153 Confair Pkwy. They knew that there was communication over Snapchat by two accounts belonging to Defendant which discussed meeting for a fight in Resurrection Cemetery. Whoever was communicating with Mariano lived close enough to the cemetery to be able to calculate the distance it would take Mariano to get to the cemetery to meet up for a fight. Ackerman testified that he received communication through Snapchat from Mandon270. Ackerman knew MANDON270 was Mandon Watts.

The police found five (5) .22 caliber CCI casing at the cemetery. On August 10, the day before applying for the search warrant, the police discovered that on August 6, 2022, the day before the incident, Watts rented a .22 caliber handgun at the National Range and Armory.

The affidavit also indicates that GHOST5K30S was operating a dark green/black ATV. Sauers saw an ATV cross the roadway about the time the incident occurred. The operator was young and thin and was wearing a hooded sweatshirt, which was odd because it was hot outside. PSP followed ATV tracks to 153 Confair Pkwy. Defendant resides at 153 Confair Pkwy. There were ATV tracks in the grass inside the fenced yard near a wooden shed. Police went to the residence to speak with Defendant and his mother. While at the residence, the police observed a shooting target with holes in it. The police observed two green Yamaha Grizzly 300 ATVs in the shed on the property. Defendant confirmed ownership and use of the MANDON270 account. Defendant's mother stated that she had two sons that rode ATVs. Defendant admitted that he would drive the ATV on Hales Lyon Road. Defendant became nervous, stuttered and looked at the ground when the police mentioned the incident at the

cemetery and asked him to tell his mother why the police were asking him questions about that incident.

Defendant had a previous encounter with law enforcement when wearing a black mask, he tried to evade the police by leaving the scene in a stolen vehicle.

Based upon the facts that the PSP had in their possession, there is a fair probability that Defendant was involved in the shooting incident. There was a fair probability that the ATV ridden by the shooter would be found in the shed because the tracks/broken vegetation led to the shed. Sauers saw a young, thin individual wearing a hooded sweatshirt riding an ATV on Hales Lyons Road. Defendant admitted driving an ATV on Hales Lyon Road. Since both ATVs matched the description of the ATV used in the incident, it was reasonable for the police to seize both ATVs.

There was a fair probability that a .22 caliber handgun and ammunition would be found at 153 Confair Pkwy. Based on the casing discovered by the police, it was reasonable to believe that a .22 caliber handgun and ammunition were used in the shooting. The day prior to the shooting, Defendant rented a .22 caliber handgun at the National Range and Armory. The police also observed a shooting target with holes in it in Defendant's living room.

Cell phones are frequently utilized to post messages through apps such as Snapchat. The police had reason to believe that Defendant had exchanged messages with Mariano and Ackerman based on their knowledge of the MANDON270 account belonging to Defendant from both Ackerman's statements and Defendant's admission and Defendant's request to Ackerman to unblock and add GHOST5K30S back on Snapchat. Therefore, it was reasonable for the police to search for and seize Defendant's cell phone.¹⁷

¹⁷ As was adequately and credibly explained by Trooper Seibert, only one cellphone of Defendant's was seized and searched or attempted to be searched. The discrepancy between the nomenclature of describing that phone as

The shooter wore a black mask that covered his head and face except his eyes. Based upon Defendant's connection to the MANDON270 account, his request to Ackerman to unblock the GHOST5K30S account and the ATV tracks leading to Defendant's residence, the police had reason to believe that Defendant was the shooter. The police also knew that Defendant had worn a mask like that when he fled from the police in October of 2022. Therefore, there was a fair probability that the police would find a black mask like the one worn by the shooter at Defendant's residence.

When the totality of the circumstances is viewed through the eyes of experienced police officers in a common sense and nontechnical manner, there was a fair probability that the items requested in the search warrant would be found at 153 Confair Pkwy. Therefore, the court will deny Defendant's motion to suppress.

With respect to Defendant's claim that no separate warrant was obtained to conduct gunshot residue (GSR) testing on the ATV, the Court would rely on *Commonwealth v. Smith*. In *Smith*, the Pennsylvania Superior Court held that a separate warrant was not required for the Commonwealth to compare blood evidence on the defendant's clothing with his DNA and the victim's DNA after the Commonwealth had lawfully obtained the defendant's DNA through a valid search warrant. 164 A.3d 1255 (Pa. Super. 2017). In so holding, the Superior Court noted that "historically, no separate warrant has ever been required to conduct scientific testing upon physical evidence lawfully obtained by the Commonwealth." 164 A.3d at 1258. The Court would also rely on *Commonwealth v. Simonson*, 148 A.3d 792 (Pa. Super. 2016), which was cited by the Commonwealth and held that police could conduct warrantless GSR testing of the appellant's hands incident to his arrest. The Superior Court noted that the physical

both an iPhone 8 and iPhone 10.1 was simply a variance in what the same phone was called publicly versus internally at Apple.

intrusion was negligible and the appellant's expectation of privacy was already curtailed. *Id.* at 800.

Conclusion

This Court finds the Commonwealth had presented enough evidence at the preliminary hearing to establish a *prima facie* case for the charges of Attempted Murder, Recklessly Endangering, Aggravated assault, and Simple Assault as it relates to A.M., J.A., J.L and N.L., along with the other offenses involving the gun and communication between Mariano and Defendant to meet at the cemetery to 'fight.'

Although the firearm discharged five projectiles with one hitting the Crosstrek, since there were only four occupants of the car, sufficient evidence of a fifth count of Attempted Murder, Aggravated Assault, Recklessly Endangering and Simple Assault-attempting to cause bodily injury was not presented. Sufficient evidence was presented to establish six counts of Simple Assault-by physical menace.

In reviewing the totality of the circumstances, PSP had sufficient probable cause to believe that Defendant was involved in the shooting. Through the communications over Snapchat, the ATV path leading directly to the Defendant's home, and the statements made to PSP when they were doing the neighborhood canvass, PSP believed that Defendant was the one that reached out to Mariano to arrange a fight in the cemetery, discharged the weapon while wearing a black ski mask and who fled the scene. Therefore, Commonwealth exhibits two and three each contain sufficient probable cause to request Snapchat information as well as to search 153 Confair Pkwy for an ATV,¹⁸ black ski mask and any other items related to the crime, including an iPhone.

¹⁸ Defense counsel argued that both ATVs should not have been seized. Although only one ATV was used in the incident, both ATVs matched the description of the involved ATV. Therefore, it was reasonable for the police to

ORDER

AND NOW, this 17th day of May, 2024, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Omnibus Pretrial Motion in the nature of a Petition for Habeas Corpus is hereby **GRANTED IN PART**. Count 5 Attempted Homicide, Count 10 Aggravated Assault-attempt to cause SBI, Count 15 Aggravated Assault- with a deadly weapon, and Count 20 Simple Assault-attempt to cause bodily injury are **DISMISSED**. Counts 3, 8, 13 and 18 are amended to list the victim as N.L. Count 37, Simple Assault- by physical menace, 18 Pa. C.S. §2701(a)(3), is added with the victim listed as N.L. With respect to the remaining charges, the Habeas is **DENIED**. The Clerk of Courts is directed to correct the charges on CPCMS to reflect these changes.

The motion to suppress is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA(MWade)
Robert A. Hoffa, Esq.
Jerri Rook
Clerk of Courts

seize both ATVs and conduct further investigation to determine if the witnesses could differentiate them or if there was evidence on one of the ATVs (such as gun shot residue) that would indicate which ATV was used in the incident. While no handguns were recovered, if multiple .22 caliber handguns had been located at the residence, it would be reasonable for the police to seize both of them and send them for testing to determine which, if any, had discharged the spent .22 caliber casing found at the scene. The same type of argument can be made with respect to the ATVs.