

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0000586-2023
: CP-41-CR-0000345-2023
vs. :
: **Opinion and Order re**
TIMOTHY DARREN STROUD SR., : **Defendant’s Omnibus Pre-Trial Motions**
Defendant :

OPINION AND ORDER

These matters came before the court for a hearing and argument on November 7, 2023 and June 18, 2024 on the Omnibus Pre-Trial Motions filed on June 8, 2023 and on December 12, 2023 by Timothy Darren Stroud, Sr. (“Defendant”).

By way of background, in case 345-2023, Defendant is charged with over one thousand offenses including but not limited to rape, involuntary deviate sexual intercourse (IDSI), aggravated incest assault, indecent assault, corruption of minors and unlawful contact with a minor, allegedly committed against five minor children between 1992 and 2019. In case 586-2023 Defendant is charged with three counts of sexual abuse of children (possession of child pornography), 46 counts of criminal attempt-sexual abuse of children (possession of child pornography), and one count of criminal use of a communication facility.

During the investigation and prosecution of these cases, five search warrants were issued. On February 21, 2023, Trooper Matthew Miller obtained a search warrant for Defendant’s former residence on Zinck Road in Jersey Shore, Pennsylvania. The warrant (hereinafter First Warrant) was to search for and seize computers, hard drives and storage devices, as well as to take forensic photographs of the residence as this is the location where

the alleged sexual contact with Victim #1 in case 345-2023 occurred. Trooper Miller obtained another warrant on February 21, 2023 to search for and seize Defendant's cell phone from his current residence on Penn Street in Muncy, Pennsylvania.¹ This warrant was to search for communications between Defendant and some of the victims in case 345-2023. As a result of this warrant, Trooper Miller discovered that Defendant got a new cell phone in 2021, that all of the data and images from his old phone did not transfer to his new phone, and that Defendant still had his old phone. On March 19, 2023, Trooper Miller obtained a search warrant (hereinafter Second Warrant) to search the Penn Street residence in Muncy for electronic devices such as cell phones, laptops, tablets and drives capable of transmitting or storing electronic communications between Defendant and some of the victims in case 345-2023. On March 20, 2023, Trooper Miller obtained a separate warrant (hereinafter Third Warrant) to search the contents of the Dell laptop, and Verizon and Samsung cell phones seized from the Penn Street property on March 19, 2023. While searching these electronic devices for evidence related to Defendant's contacts and communications with some of the victims in case 345-2023, the Pennsylvania State Police (PSP) discovered internet searches for what appeared to be child pornography. The PSP ceased searching these devices until Trooper Miller obtained a warrant on April 11, 2023 to also search the devices for internet searches and images related to child pornography.

In the first count of the motion filed on June 8, 2023, Defendant seeks habeas corpus relief by asserting that the Commonwealth failed to present a *prima facie* case for any of the charges because (1) the Commonwealth failed to present expert testimony that the images

¹ Defendant did not challenge this warrant. To make the numbering system consistent with Defendant's motion, the court will not give a number designation to the two warrants that were not challenged.

were of pre-pubescent male penises; and (2) the Commonwealth failed to establish access to the internet or that Defendant, as opposed to other individuals in the household, used the computer to attempt to access child pornography. In the second count of the motion, Defendant seeks suppression of the results of the search of the laptop computer because the affidavit in support of the search warrant lacked probable cause. Finally, in the last count of the motion, Defendant seeks to reserve the right to file additional motions as all discovery has not been produced yet. The parties agreed to defer decision on all of the motion except the habeas count, pending Defendant filing another suppression motion related to the search warrant(s) utilized to seize the laptop computer so that all of the warrants related to the search and seizure of the laptop could be litigated at one time.

On December 12, 2023, Defendant filed an omnibus pre-trial motion in case CR-345-2023 challenging the search warrants issued on February 21, 2023; March 19, 2023; and March 20, 2023. Defendant contends that all of the warrants lacked probable cause, the information was stale and the March 20th warrant was fruit of the poisonous tree

At the first hearing on Defendant's motion, the Commonwealth introduced a computer forensics report authored by Trooper James Ballantyne (Commonwealth's Exhibit #1), a letter report from Dr. Pat Bruno, the Medical Director of the Children's Advocacy Center in Danville Pa (Commonwealth's Exhibit #2)² and testimony from Trooper Matthew Miller. Defendant offered a non-certified transcript of the preliminary hearing (Defendant's Exhibit #1), which the Commonwealth objected to and the court deferred ruling on, and a copy of the Fourth Warrant obtained on April 11, 2023 (Defendant's Exhibit #2).

Trooper Miller testified that he has been a trooper since August of 2013. He has been

with the criminal investigative unit since April of 2018 and a polygraph examiner since 2020.

In March of 2023, Trooper Miller was involved in an investigation of Defendant. He obtained a warrant to search Defendant's residence in Muncy and executed the warrant on March 19, 2023. Pursuant to the warrant, he was searching Defendant's residence for electronic devices such as cell phones, tablets, and computers. The only person present at the residence at that time was Defendant's wife's son, Dylan. Dylan was on the phone with his mother and asked Trooper Miller if he wanted to talk to her. Trooper Miller told Defendant's wife that they were searching for electronic devices. Defendant's wife told Trooper Miller that there was a laptop on Defendant's side of the walk-in closet between the master bedroom and the master bathroom. Trooper Miller described the closet as an approximately 10-foot-long hallway, which on one side contained men's clothing and the other side contained women's clothing. A black Dell laptop was found under some clothing on Defendant's side (the male clothing side) of the closet. Trooper Miller took possession of the laptop.

Trooper Miller prepared another search warrant to search the laptop computer. He sent the laptop to the Computer Crime Unit where it was searched by Trooper Ballantyne. The user name for the computer was "Tim"; the account was registered to Tim Stroud. The device had "a Gmail name of timbowhunter68@gmail.com and tstroud@lycoming.com." Some examples of the over 40 searches included: "Omegle Small Boy Masturbating"; "Lil Hairless Boys Cock" and "Little Thai Girls". Several photographs/images were recovered, three of which appeared to be images of the genitals of very young boys. The images were sent to Dr. Bruno, who provided a report (Commonwealth Exhibit #2) that indicated he "reviewed 29 pictures on a computer with images that portray real people suspected to be

² Defense counsel stipulated to Dr. Bruno's report but only for purposes of the habeas proceeding, not for trial.

children who have been photographed nude/partially clothed and/or involved in sexually explicit activities” and, “with reasonable degree of medical certainty, portray 6 children less than 18 years of age who are nude and/or involved in sexually explicit activity.” Of those images, about 6 were “recognized to be less than 14 years of age.”

Trooper Miller also testified that three individuals regularly resided in the home – Defendant, his wife, and her son; another son stayed there occasionally.

DISCUSSION

1. Admissibility of the preliminary hearing transcript

The prosecutor objected to the admissibility of the preliminary hearing transcript, because it was not a certified transcript. Defense counsel noted that he recorded the preliminary hearing, and a member of his staff typed the transcript of the recording; he no longer had the recording. The court informed counsel that it typically accepts preliminary hearing transcripts from either party but it would defer ruling on the objection. The court finds that it need not rule on this objection. Trooper Miller’s testimony at the preliminary hearing was similar to his testimony at the hearings in these cases. To the extent that the defense wished to rely on Trooper Miller’s indefiniteness or lack of expertise to establish the age of the individuals depicted in the images found on Defendant’s laptop, it is of no moment as the Commonwealth submitted the expert report letter from Dr. Bruno as Commonwealth’s Exhibit #2 in case 586-2023 at the hearing on November 7, 2023 to establish the age of the individuals depicted in the images and defense counsel stipulated to Dr. Bruno’s report for the purposes of the omnibus pretrial motions.

2. *Did the Commonwealth present a prima facie evidence of the charges*

At the preliminary hearing stage, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” *Commonwealth v. DiStefano*, 782 A.2d 574, 582 (Pa. Super. 2001); *see also Commonwealth v. Jones*, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983); *see also Commonwealth v. Kohlie*, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

Defendant first asserts that the Commonwealth failed to establish a *prima facie* case

of possession of child pornography because it failed to introduce expert testimony that the images were of pre-pubescent male penises. Defendant asserts that expert testimony is required and relies on paragraph (e) of section 6312 for this argument. The court cannot agree.

In counts 1, 2, and 3, Defendant is charged with sexual abuse of children-possession of child pornography for possessing at least three photographs of pre-pubescent male penises. The crime of sexual abuse of children, child pornography is defined as follows:

Any person who intentionally views or knowingly possesses or controls any child sexual abuse material or artificially generated child sexual abuse material commits an offense.

18 Pa. C.S.A. §6312(d). Child sexual abuse material includes photographs depicting a child under 18 years of age engaging in a prohibited sexual act or the simulation of such act, but does not include the accidental or inadvertent viewing of such material. 18 Pa. C.S.A. §6312(g). The term prohibited sexual act includes but is not limited to the “lewd exhibition of genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.” *Id.*

Although paragraph (e) states that competent expert testimony shall be sufficient to establish the age of the person, it does not require the Commonwealth to present expert testimony in every case.

Proof of age, like proof of any other material fact, can be accomplished by the use of either direct or circumstantial evidence, or both. The proof necessary to satisfy the element of age in a dissemination or possession of child pornography case is not limited to expert opinion testimony. Subsection (e) merely allows that if competent expert testimony is presented it shall be sufficient to establish the age element of the crime. This subsection does not mandate such proof in order to sustain a conviction. Rather, the

outward physical appearance of an alleged minor may be considered by the trier of fact in judging the alleged minor's age.

Commonwealth v. Robertson–Dewar, 829 A.2d 1207, 1212 (Pa. Super. 2003); see also *Commonwealth v. Koehler*, 914 A.2d 427, 438 (Pa. Super. 2006). Even if expert testimony were required, at the hearing and argument the Commonwealth introduced, as Commonwealth Exhibit #2, Dr. Bruno's expert report letter that indicated with a reasonable degree of medical certainty that there were several photographs depicting real people under the age of 18 and under the age of 14. The images depicted many young males and females in which one or more of the following were present: (1) genitalia or pubic area or breasts were the focal point; (2) the subject was posed in an unnatural and/or sexual position; (3) the subjects were nude, or partially undressed; (4) the image portrayed the female/male as a sex object; and (5) the image suggested sexual coyness and/or a willingness to engage in sexual activity.

In light of Dr. Bruno's expert letter, the court rejects Defendant's claim that the Commonwealth has failed to establish a *prima facie* case that the genitals of minors were depicted in the materials.

During the argument, defense counsel argued that the evidence was insufficient to establish a *prima facie* case that Defendant was the individual who downloaded the child pornography and/or visited or attempted to visit the sites containing child pornography or that he had internet access. In counts 4 through 49, Defendant is charged with criminal attempt to possess child pornography for attempting to discover child pornography via web searches on his laptop.

At this stage of the proceedings, the Commonwealth need not establish Defendant's

guilt beyond a reasonable doubt. Furthermore, at this stage of the proceedings the court must view the evidence and the inferences that can be drawn from the evidence in the light most favorable to the Commonwealth. When the court views the totality of the evidence and circumstances in this manner, the court finds that the Commonwealth has presented a *prima facie* case. The police found child pornography and internet searches attempting to access child pornography on the black Dell laptop computer, which was found on Defendant's side of the master bedroom closet under male clothing in Defendant's Muncy residence. The regular occupants of the Muncy residence were: Defendant, Timothy Stroud, Sr.; his wife, Loretta; and Loretta's son, Dylan. Another son of Loretta's would also occasionally stay at the residence. The laptop was neither in a common area of the house nor sitting out in the open. Rather, it was underneath male clothing on Defendant's side of the master bedroom closet. The names and email addresses associated with the laptop were "Tim", "Timbowhunter68@gmail.com" and "tstroud@lycoming.com." Defendant was born in 1968, which is consistent with Defendant being the user of the email "Timbowhunter68@gmail.com." Trooper Miller testified that the "lycoming" email address was consistent with Defendant's employment. Furthermore, the laptop was seized in conjunction with Trooper Miller's investigation into Defendant for allegedly engaging in sexual conduct with minors, which tends to show that Defendant has a sexual interest in minors. From the totality of the evidence and circumstances, one could reasonably conclude the laptop belonged to Defendant and he was the individual who had used it to access and view or attempt to access and view child pornography.

Criminal use of a communication facility is defined as follows:

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 or under the act of April 14, 1972 (P.L. 233, No. 64),¹ known as The Controlled Substance, Drug, Device and Cosmetic Act. Every instance where the communication facility is utilized constitutes a separate offense under this section.

18 Pa. C.S.A. §7512 (a). A communication facility is “a public or private instrumentality used or useful in the transmission of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part, including, but not limited to, telephone, wire, radio, electromagnetic, photoelectronic or photo-optical systems or the mail.” 18 Pa. C.S.A. §7512(c). Laptops and cell phones are communications facilities.

Based on the totality of the circumstances, a jury could reasonable conclude that the laptop belonged to Defendant and that he used or attempted to use the laptop computer to view or attempt to view child pornography. Sexual Abuse of Children, Child Pornography is a felony of the second or third degree, depending on whether it is a first or second or subsequent offense. *See* 18 Pa. C.S.A. §6312(d), (d.1). Therefore, the Commonwealth presented a *prima facie* case that Defendant utilized a communication facility, i.e., his laptop computer, to commit, cause or facilitate the commission or the attempt to commit the felony crime of Sexual Abuse of Children, Child Pornography. *See Commonwealth v. Colon-Plaza*, 136 A.3d 521, 526-529 (Pa. Super. 2016)(rejecting similar arguments regarding the appellant’s possession and use of a laptop to download child pornography and finding the evidence the sufficient to support the appellant’s convictions for sexual abuse of children/child pornography and criminal use of a communication facility).

Accordingly, the court will deny Defendant’s requests for habeas corpus relief.

3. *Were the search warrants supported by probable cause*

In Count II of his OPTM in case 586-2023, Defendant contends that the Third Warrant, which was used to search the laptop lacked probable cause and was overly broad. In case 345-2023, Defendant challenges the First, Second and Third warrants. He asserts that the warrants contained stale information and lacked probable cause. He also asserts that the Third Warrant was fruit of the poisonous tree, i.e., it was a result of Second Warrant which was invalid because it contained stale information and lacked probable cause.

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

Probable cause is a practical and fluid concept that turns on the assessment of probabilities in particular factual contexts, which cannot readily be reduced to a neat set of legal rules. *Commonwealth v. Rapak*, 138 A.3d 666, 671 (Pa. Super. 2016), quoting *Commonwealth v. Huntington*, 924 A.2d 1252, 1256 (Pa. Super. 2007). Probable cause exists where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted. *Commonwealth v. Leed*, 646 Pa. 602, 186 A.3d 405, 413 (Pa. 2018). The issuing magistrate must apply the totality of the circumstances test which requires him or her to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that

contraband or evidence of a crime will be found in a particular place. *Commonwealth v. (Harve) Johnson*, 615 Pa. 354, 42 A.3d 1017, 1031 (2012); see also *Commonwealth v. Manuel*, 194 A.3d 1076, 1081 (Pa. Super. 2018)(probable cause does not demand the certainty we associate with formal trials; rather, it requires only that the totality of the circumstances demonstrate a fair probability that contraband or evidence of a crime will be found in a particular place). A reviewing court’s duty is merely to ensure that the issuing authority had a substantial basis for concluding that probable cause existed. The reviewing court must accord deference to the issuing authority’s probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner. *Commonwealth v. (Lavelle) Johnson*, 240 A.3d 575, 584 (Pa. 2020). Furthermore, where some evidence in a search warrant affidavit is unlawfully obtained, the court must consider whether the affidavit nonetheless sets forth probable cause in the absence of such evidence. *Commonwealth v. Hernandez*, 594 Pa. 319, 935 A.3d 1275, 1283-84 (Pa. 2007); *Commonwealth v. Shaw*, 476 Pa. 543, 383 A.3d 496, 501 (1978).

A. *The First Warrant*

The First Warrant, which was issued on February 21, 2023, was for the Zinck Road residence in Jersey Shore. See Commonwealth’s Exhibit #1 (in case CR-345-2023). The residence was owned by Defendant’s ex-wife. The items to be searched for and seized were: “Computer hard drives, mass storage devices, external hard drives, consistent with the time period of 1992 to 2004. Photographs of the inside/outside of [the residence]. Photographs of [Defendant] and Victim #1. Photographs of Victim #1 in her built-in bedroom. Photographs showing the inside of Victim #1’s basement bedroom.”

The affidavit of probable cause for the warrant indicates that five (5) known victims reported sexual crimes committed against them by Defendant throughout the approximate date span of January 1, 1992 through December 31, 2018. Defendant lived at the Zinck Road residence in Jersey Shore until approximately five (5) years ago. Most, but not all, of the sexual crimes took place in the residence or locations on the property itself. Victim #1 reported that she was pressured and coerced by Defendant to provide sexual contact with him from when she was a very young age until approximately 2004. She indicated that the contact occurred “hundreds of times” and many of the crimes took place in Victim #1’s built-in basement bedroom. Victim #1 also described how when she was a teenager Defendant displayed to her, via his computer, pornography, some of which she believed was child pornography. She indicated that Defendant always placed a Windows CD rom drive into the computer after they were done watching pornography to reinstall the software so it couldn’t be tracked. She believed he stored his pornography on hard drives, external hard drives, or mass storage devices and that the storage devices could still be located inside the residence.

The affiant, Trooper Matthew Miller, also requested forensic photographs of the inside and outside of the residence to capture the residence in its current state and to identify significant landmarks to corroborate the crimes committed against Victim #1, which would make these pictures have evidentiary value. He also requested seizure of any photographs in Victim #1’s personal property still located in the residence that depicted Defendant and her, Victim #1 in her basement bedroom, and photographs of the inside and outside of the residence from 1992-2004.

The warrant was issued at 5:00 p.m. on February 21, 2023. The residence was searched around 9:00 a.m. on February 22, 2023. The receipt/inventory shows that no drives

or storage devices were seized. Instead, only photographs were seized.

The court finds that Defendant is not entitled to relief with respect to the First Warrant. Although a defendant charged with possessory offenses has automatic standing to file for suppression, to be entitled to relief the defendant must show that he has an expectation of privacy in the place invaded or the thing seized that society is prepared to recognize as reasonable. *See Commonwealth v. Enimpah*, 106 A.3d 695, 698-99 (Pa. 2014). The First Warrant was to search the Zinck Road residence to obtain forensic photographs of the residence; photographs from Victim #1's personal property that depicted Defendant and Victim #1 and the victim's basement bedroom; and photographs of the inside and outside of the residence during the time frame that the alleged crimes against Victim #1 occurred, as well as any of the Defendant's hard drives and storage devices that he may have left behind. Defendant did not own the residence. He had not lived at that residence for five years. He also did not own the forensic photographs of the premises that were taken by the police or the photographs retrieved from Victim #1's personal property. As Defendant did not have a reasonable expectation of privacy in the residence or the photographs, Defendant is not entitled to suppression.³

B. The Second Warrant

The next warrant challenged by Defendant is the warrant issued on March 19, 2023 at 1:30 p.m. to search the Penn Street property, curtilage and outbuildings for cell phones, laptops, computer hard drives, mass storage devices, USB drives, tablets or any other

³ While perhaps one could debate whether Defendant would have a legitimate expectation of privacy in hard drives or storage devices he left at his ex-wife's residence after he moved out five years earlier or whether any

portable electronic devices with the capability for the storage of electronic communication between Defendant and Victims 1, 3, 5, and 6 between the time period of 05/28/08 to 2/22/23.⁴ The property was searched at approximately 3:15 p.m. and three items were seized: a black Dell laptop that was found in the closet, a black Verizon GZ One cell phone, and a Samsung Galaxy S7 cell phone.

With regard to Trooper Miller's training and experience, the affidavit states that Trooper Miller has been with the PSP since August 2013. He had initiated and participated in numerous search warrants and has been involved in hundreds of sexual abuse investigations. Through experience, he has obtained evidential communication between suspects and victims that date back several years. He also indicated that individuals involved in this type of investigation keep and store communication on their cell phones whether previously owned or currently owned.

He noted that Defendant was arrested on February 22, 2023 for various sex crimes. A separate warrant was served to seize Defendant's cell phone from his person. Material on that cell phone dated back to approximately April of 2021. Within the cell phone content was a text message from Defendant to his wife sent on June 3, 2021, saying, "I might have it on my old phone out in the shed doll I will look when I get home no big deal doll." Other text messages in the same time frame indicated that Defendant got a new phone and he was missing some content that did not transfer to the new phone, including certain pictures (unknown what kind of pictures).

The interviews with the victims disclosed that Defendant communicated with them

items left there were abandoned, no such drives or devices were found.

⁴No charges were filed related to Victim 6 due to the expiration of the statute of limitations.

via cell phone and that the conversations contained sexual content. *See* Commonwealth's Exhibit #2 in case CR-345-2023.

More specifically in her interview with Trooper Miller on January 9, 2023, Victim #1 recalled Defendant making her watch pornography, possibly child pornography, on a computer. She also revealed that approximately five years ago, Defendant was going through a divorce with his ex-wife and he froze the ex-wife's cell phone account, which prohibited the ex-wife from contacting the doctors of her mother, who was battling cancer. This enraged Victim #1 and she wrote a "novel" to Defendant through text messages about how he ruined her life and he was a pedophile. Defendant texted her the next morning that he would open ex-wife's cell phone account back up.

Victim #3 was interviewed on February 2, 2023. Victim #3 revealed that Defendant harassed her even after the last physical contact took place, including in 2013 sending her an unsolicited video of him masturbating. Trooper Miller noted in the affidavit that it is not uncommon for sexual predators to keep conversation chains between them and their victims saved and stored on their personal devices for occasional reference. He further stated that it's likely, without a response from Victim #3 to leave her alone, that the conversation chain was never deleted and the text message between Defendant and his wife that he still has a previous cell phone shows that it is likely that previous cell phone contains the messages between Defendant and Victim #3 where the unsolicited video was sent.

Victim #5, who was interviewed on February 8, 2023, revealed that he was sexually abused between 2003 and 2008 when he was between 11 and 16 years old. However, he stated that one to two years ago (2020-22) he was still in contact with Defendant, who sent

him a message asking how big his two-year-old relative's penis was.⁵ Victim #5 stopped communicating with Defendant after this text message. Trooper Miller noted that since this text dates back to potentially 2020, there's a likely chance that the text message chain containing that message is located on a cell phone that Defendant admittedly kept.

Victim #6 was interviewed by Corporal Rebecca Parker on February 23, 2023. Victim #6 revealed that Defendant committed sexual crimes against her from 1978 to 1993, for which the statute of limitations expired. She revealed that in July of 2016, Defendant messaged her that he wanted to "spend a little time with her", followed up with "you know what I mean." Victim #6 knew that Defendant meant sexual activity because she had dealt with his sexual advances throughout her lifetime. Victim #6 provided Corporal Parker screen shots of this conversation with Defendant. Trooper Miller sought to locate this message chain on Defendant's old cell phones. He noted that even though Defendant could not be criminally charged for his actions against Victim #6, the discovery of this conversation is evidential because it corroborates Victim #6's account of years of sexual requests and advances and it corroborates the other victims' claims that Defendant showed a pattern of unsolicited sexual advances through the approximately 25 years of sexual abuse against the different victims.

Defendant contends that the warrant lacked probable cause and the information was stale. The court cannot agree.

Although some of the alleged sex crimes occurred many years ago, the disclosures about those crimes were recent. The victims were interviewed between January 9, 2023 and

⁵ At one point, Trooper Miller refers to the two-year-old as Victim #5's grandson, and at another point he indicates it was his son.

February 23, 2023. Defendant was arrested on February 22, 2023 and the Zinck Road residence was searched on that date. Defendant's ex-wife was the owner of that residence and she told the police that Defendant took all of his belongings to his new residence. The new residence was on Penn Street in Muncy. When the police arrested Defendant, a separate search warrant was issued on his person for the seizure of his personal cell phone ("current" phone). As a result of the search of the current phone via a separate search on March 14-15, 2023, police seized the content of the phone and discovered that Defendant still possessed his "old" phone and some of the content from the old phone had not transferred to his current phone. Based on this information, the police had reason to believe that Defendant retained his old cell phones/electronic devices and that these devices contained information from years prior to 2021, which is when most of the crimes and conversations between Defendant and the victims occurred. Therefore, on March 19, 2023, the police sought and obtained a search warrant to search the Muncy residence to seize laptops, cell phone, hard drives, electronic devices and storage devices to search for evidence of communications between Defendant and the victims from May 28, 2003 through February 22, 2023. As the information contained within the Second Warrant issued on March 19, 2023 was obtained between January 9, 2023 and March 15, 2023, it was not stale. Furthermore, to accept Defendant's arguments would prohibit the Commonwealth from investigating and prosecuting serious crimes that do not have statutes of limitations such as murder or rape or crimes that have lengthy statutes of limitations. *See* 42 Pa. C.S.A. §5551 (regarding offenses with no applicable limitations); §5552(b), (c)(3) and (3.1)(regarding major sexual offenses and sexual offenses committed against minors).

To the extent Defendant would argue that the text to his wife about content on his old

phone was stale information because it was sent on June 3, 2021, the fact that this text was still on Defendant's current phone when he was arrested on February 22, 2023 corroborates Trooper Miller's experience and his belief that old communications would likely still be on Defendant's devices. In other words, it shows that Defendant does not delete old messages and information from his devices.

Given the information contained within the affidavit of probable cause for the Second Warrant, the court finds that there was a fair probability that Defendant still had old electronic devices and storage devices at the Muncy property that contained information of evidentiary value with respect to the alleged sex crimes that Defendant committed against the victims and with respect to the communications that he had with them.

C. The Third Warrant

The police executed the Second Warrant on March 19, 2023 at approximately 1515 hours (or 3:15 p.m.) and seized a black Dell laptop, a black Verizon GZ One phone and a Samsung Galaxy S7 phone. On March 20, 2023, Trooper Miller sought and obtained a warrant to search the content of these devices for the following: text messages, communications, phone call details and mixed media messages sent to/from Defendant and Victim # 1 between January 1, 2017 to March 31, 2021; text messages, communications and mixed media messages sent to/from Defendant and Victim #3 between May 28, 2008 and December 31, 2013; text messages and communications sent to/from Defendant and Victim #5 between January 1, 2020 and March 31, 2021; and text messages and communications sent to/from Defendant and Victim #6 in July 2016. The purpose was to corroborate or expand upon the victim's interview disclosures.

The same or substantial similar information regarding the disclosures made by Victims #1, #3, #5 and #6 that were contained in the affidavit for the Second Warrant were also contained in the affidavit for the Third Warrant. In addition, the affidavit stated that the black Dell laptop was discovered inside Defendant's residence and the cell phones were discovered in the back of a drawer in his woodshop. Trooper Miller noted that since the cell phone seized from Defendant's person during his arrest on February 22, 2023 only dated back to approximately April of 2021, it is highly likely that the cell phones contained the communications sought. Further, if the cell phones were important enough to keep in the back of the drawer in the woodshop, then there's reason to believe they still contain communication of his sexual exploits that the victims provided during their interviews. See Commonwealth's Exhibit 3, page 2, ¶2 (in case CR-345-2023).

Additionally, the last four paragraphs of the Application for the Third Warrant stated:

Due to the above information, it's highly likely messages of any sort as well as the MMS messages will still be stored on [Defendant's] old cell phones. Through my experience, most individuals who engage in sexual conversation and photographs/videos do not delete them. Individuals store them on their phone for pleasure or reference. Cell phones, in general, are the most common place device to store content. Most individuals communicate via cell phone and anything they determine they need to save is saved directly to their device. For this reason, I believe all the items to be seized/searched in attachment A are likely still stored on [Defendant's] old cell phones. Searching for those items in attachment A will allow me to identify the extent of [Defendant's] criminal activity as well as context to [Defendant's] continual criminal behavior.

Laptops can easily store mass amounts of data and communication. Since [Defendant's] wife indicated the black Dell laptop belonged to [Defendant], it's likely the laptop stored communication, or the content listed in Attachment A. In my experience, some individuals engaged in this kind of criminal activity will store their exploits on a separate device out of fear of being caught.

[Defendant's] old cell phones and laptops, which are stored at PA State Police-Montoursville's evidence room under property record F01-25503 (H) will be extracted at a later date and time, off location. Searching cell phones

and laptops for criminal evidence is a highly technical process requiring expert skill in a properly controlled environment. Cell phones and laptops can store thousands of GB's and data. Searching authorities will examine the cell phone which can take a significant amount of time, which includes days, weeks, months or even years. The actual search for the cell phone content will take more time than the (48) hours allotted in this search warrant. Therefore, I request that as long as the seizure of the actual devices commences within the (48) hours allotted, investigators may be permitted to examine, and extract data/stored information from that devices as long as necessary and prudent to accomplish the task, and/or extraction.

I believe probable cause exists that the execution of this search warrant will result in the seizure of significant evidence for this investigation.

Commonwealth's Exhibit #3, page 3, ¶¶ 4-7.

The court finds that the information was not stale and the affidavit set forth probable cause to believe that communications between Defendant and the victims would still be contained on his electronic devices. As noted with respect to the Second Warrant, the information was not stale because the interviews with the victims occurred between January 9, 2023 and February 23, 2023. As a result of the communications from Defendant's ex-wife during the search of the Zinck Road residence on February 22, 2023 and the information found on Defendant's current cell phone on March 14-15, 2023, particularly the text from Defendant to his current wife regarding content on his old phone in the shed, the police had reason to believe that Defendant's belongings, including cell phones, laptops, electronic devices and storage devices would be located at Defendant's property in Muncy. The fact that the text from June 3, 2021 was still on his current cell phone when Defendant was arrested on February 22, 2023 and the content of that text showed that Defendant still possessed old electronic devices and that he did not delete information such as photographs and text messages from them. Defendant communicated with the victims via text messages, phone calls, mixed media messages (MMS) and the like that typically occur through cell

phones, laptops and other electric devices and could be stored on hard drives, thumb drives or other storage devices. In light of all the information gathered by the police between January 9, 2023 and March 15, 2023, the court finds that there was a fair probability that information and communications between Defendant and the alleged victims would be found on his old devices.

While searching the laptop and cell phones for communications between Defendant and the alleged victims, the police discovered evidence of internet searches for child pornography. The police stopped searching the devices and obtained another search warrant to search for and seize evidence relating to child pornography. *See* Commonwealth's Exhibit #1 in case CR-586-2023 (Trooper Ballantyne's Computer Forensics Report) and Defendant's Exhibit #2 (the warrant obtained April 11, 2023).

Defendant argued that the Third Warrant and the discovery of material related to child pornography were fruit of the poisonous tree. As the court has found that the search warrants were supported by probable cause, there is no poisonous tree, and Defendant is not entitled to the suppression of the evidence related to child pornography found on his devices.

The evidence regarding child pornography was not stale. It was discovered on or after March 20, 2023 while reviewing the content of Defendant's devices for his communications with the alleged victims of the sexual offenses. On April 11, 2023, the police obtained a separate warrant to search for child pornography and internet searches for child pornography on the devices. Moreover, case law supports the propositions that (1) age alone does not determine staleness; rather staleness is determined by the totality of the circumstances, including the nature of the crime and the type of evidence; and (2) because child pornography is difficult to obtain and illegal to possess, offenders typically do not

discard it. *See Commonwealth v. Green*, 204 A.3d 469, 484 (Pa. Super. 2019); *Commonwealth v. Gomolekoff*, 910 A.2d 710, 713 (Pa. Super. 2006); *United States v. Harvey*, 2 F.3d 1318, 1322 (3d Cir. 1993).

For the foregoing reasons, the court rejects Defendant's challenges to the search warrants.

ORDER

AND NOW, this 4th day of April 2025, the court denies Defendant's Omnibus Pretrial Motions.

By The Court,

Nancy L. Butts, President Judge

cc: Phoebe Yates, Esquire (ADA)
Robert A. Hoffa, Esquire
Tyler Calkins, Esquire
Jerri Rook
Gary Weber, Esquire
CR-345-2023

NLB/laf