

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA v. KURT KRUMPHOLZ	CRIMINAL NO. 15-245
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MEMORANDUM RE DEFENDANT’S MOTION TO SUPPRESS

Baylson, J.

January 22, 2016

I. Introduction

Defendant Kurt Krumpholz has been indicted on two counts of production of child pornography, in violation of 18 U.S.C. § 2251(a), three counts of receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2), one count of possession of child pornography in violation of 18 U.S.C. § 2252(a)(4), and one count of attempted online enticement of a minor to engage in sexual conduct, in violation of 18 U.S.C. § 2422(b). Presently before the Court is Defendant’s Motion to Suppress certain statements and physical evidence. ECF 14. The Court held a hearing on this Motion on November 9, 2015, and Defendant and the Government have each submitted supplemental briefing. ECF 30, 34.

For the reasons discussed below, Defendant’s Motion is denied.

II. Factual Background

A. Events Predating January 19, 2015

This case began with a solicitation on Craigslist: Defendant posted an ad in the “men for men” section of the website titled, “Hot dad/coach wants horny son/player to top him! – m4m –

40 (Central Bucks).” Nov. 9 Hr’g Tr. (“Tr.”) 63-65; ECF 34-2 Gov Ex. 2.¹ On January 17, 2015, Detective Michael Henricks of the East Norriton Township Police Department came across this posting. Suspecting that the ad sought to solicit sex with minors, Detective Henricks posed as a 14 year old male named “Mike Richards” and responded.

Over the next two days, Detective Henricks (as Mike Richards) and Defendant exchanged 76 emails. Detective Henricks repeatedly made clear to Defendant in these communications that the person Henricks was pretending to be was under the age of 18. For example, the detective “talked about my parents being in the room. [Defendant] originally asked me for a picture of myself right away, and I said that my parents were in the room, I couldn’t take a picture. That I wasn’t supposed to be on the computer because I got in trouble in school.” Tr. 69.

As the emails continued, Detective Henricks and Defendant exchanged photos. The detective sent Defendant a photo of a police officer when that officer was 14 years old, and Defendant sent the detective a photograph which he claimed was of himself. The photo was of an adult white male (not Defendant) standing in front of a black sports car. Tr. 70.

Eventually, Defendant and “Mike Richards” agreed to meet on Martin Luther King Day (January 19, 2015) at a Friendly’s restaurant in East Norriton, Pennsylvania for the purpose of engaging in sexual acts. Tr. 71-72. Defendant believed that per Defendant’s suggestion, “Richards” would bring another younger friend as well.

B. Defendant’s Arrest Outside Friendly’s on January 19, 2015

¹ Translated from online vernacular, as the police explained (Tr. 67), this ad was expressing an offer from a 40 year old male based in Central Bucks County, Pennsylvania to be the receptive partner in anal sex with a significantly younger male partner.

On the day of the planned meeting, police arrived in advance of Defendant. Six officers including Detective Henricks, all in plain clothes and unmarked vehicles, went to Friendly's and set up surveillance. Tr. 38. All officers were outside the restaurant.

Around 3:00 p.m., Defendant emailed Detective Henricks (still posing as "Richards") stating that Defendant was running late, but that he should be there around 4:00 p.m. Tr. 73. At 3:42 pm, Defendant said that he was further delayed and would arrive in thirty minutes. Tr. 157. Detective Henricks asked Defendant if Defendant was going to be driving the black car in the photo that Defendant had sent. Defendant replied, "no a different car." Tr. 156.

At approximately 4:25 p.m., a blue Toyota Camry pulled into the parking lot. An individual, later identified as Defendant, exited the vehicle, walked towards the Friendly's, and entered the restaurant. The individual "went to the dining room area, looked around as though he was looking for somebody, came back, walked down to the bathroom area, was there for maybe a second, and then walked back out into the dining room area, and again looked as though he was looking for something, and then he exited the restaurant." Tr. 78-79.

As the individual headed back toward the Camry, Montgomery County Detective James Vinter and Detective Lieutenant Christopher Kuklantz approached and flashed police badges. In response to a request for identification, Defendant produced his license showing a Bucks County address. Lieutenant Kuklantz asked Defendant he was doing at Friendly's, and Defendant said he had stopped to use the restroom and/or get something to drink. Tr. 16, 81. Lieutenant Kuklantz asked Defendant if he knew anyone in the Norristown area, and Defendant said that he did not. Tr. 16. During this time, Defendant appeared nervous. Tr. 17. It was apparent that Defendant was not the same person as the individual in the picture given to Detective Henricks.

Shortly afterwards, the other police officers on the scene approached and Defendant was arrested. Police towed Defendant's car to the Police Department until Detective Henricks could obtain a warrant to search both the vehicle and a cell phone visible on the front passenger seat. The parties have briefed facts pertaining to a subsequent search of the phone and statements Defendant made once in custody. In light of the Court's disposition of those arguments as moot as discussed below, the Court will not explore them.

C. Police Obtain a Warrant to Search Defendant's Home

On January 23, 2015, Detective Henricks assisted Bucks County District Attorney's Detective Martin McDonough in preparing a search warrant for Defendant's home. The warrant sought to uncover correspondence and pictures between the Defendant and "Mike Richards' . . . and any other minor children." ECF 34 at 22. The warrant detailed Detective Henricks' interactions with the Craigslist poster and all events leading up to Defendant's arrest outside Friendly's, as well as statements from a relative of Defendant's that Defendant had displayed deviant sexual behavior. *Id.* at 22-24. Assistant District Attorney Eric Harakal approved this warrant. ECF 34-2 Gov Ex. 2.

A Bucks County district justice signed the warrant at approximately 4:00 p.m. the same day, and the warrant was executed immediately thereafter. Tr. 110-11.

III. Analysis

A. Defendant's Motions to Suppress Evidence Obtained from His Cell Phone and Statements Made to Law Enforcement Are Denied as Moot

The Government has conceded that it will not offer during its case in chief evidence obtained from Defendant's cell phone or statements Defendant made to the police after being taken into custody. ECF 34 at 13, 17, 20, 26. Accordingly, Defendant Motion is denied as moot as to this evidence and these statements, though the Government may still use them for

impeachment purposes. United States v. Quintero, 38 F.3d 1317, 1333 n.13 (3d Cir. 1994) (citing United States v. Havens, 446 U.S. 620, 627-28 (1980)) (“[A] defendant’s statements made in response to proper cross-examination reasonably suggested by the defendant’s direct examination are subject to otherwise proper impeachment by the government, albeit by evidence that has been illegally obtained and that is inadmissible on the government’s direct case, or otherwise, as substantive evidence of guilt.”).

B. The Police Had Probable Cause to Arrest Defendant

“An arrest was made with probable cause if at the moment the arrest was made . . . the facts and circumstances within the officers’ knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense.” Wright v. City of Phila., 409 F.3d 595, 602 (3d Cir. 2005) (citations omitted). “In making a determination of probable cause the relevant inquiry is not whether particular conduct is ‘innocent’ or ‘guilty,’ but the degree of suspicion that attaches to particular types of noncriminal acts.” United States v. Nelson, 284 F.3d 472, 479 (3d Cir. 2002) (citations omitted).

Defendant argues that the police lacked probable cause to arrest him because (according to Defendant) “law enforcement arrested defendant Krumpholz based solely upon his mere presence at a public Friendly’s restaurant which was extremely busy at that particular day.” Defendant contends that the only information police had as to the identity of the Craigslist poster was the photograph Defendant sent Detective Henricks, which was not a photograph of Defendant, and that Defendant’s status as a white male resident of Bucks County could not establish probable cause. ECF 30 at 10-11.

Defendant's argument fails because it overlooks the totality of the evidence police had obtained that Defendant had committed the felony offense of Attempt to Commit Involuntary Deviate Sexual Intercourse with a Child Under the Age of 16 Years, in violation of 18 Pa. C.S.A. § 3123(a)(7) (2015). Specifically, Defendant showed up at the very Friendly's where the Craigslist poster was to arrive at almost exactly when the poster said he would be there. Defendant's behavior at the restaurant also gave rise to suspicion, as he spent less than one minute inside Friendly's and appeared to have been looking for someone the entire time. Defendant was also nervous in conversing with police and gave them inconsistent and implausible justifications for his reasons being there: Defendant claimed he went to use the restroom and went to get something to drink, but he did not have time to do either of those things. Defendant's license also revealed he was from central Bucks County (as was the Craigslist poster), and Defendant matched the Craigslist poster's self-description as a white male in his 40s.

It is of no moment that the Defendant did not resemble the individual in the picture previously received by Detective Henricks. The Third Circuit has held that probable cause to arrest can exist even when a defendant does not match a purported photograph of the suspect. See Lynn v. Christner, 184 F. App'x. 180, 184 (3d Cir. 2006)(unpublished) (holding in a 1983 action that police had probable cause to arrest the defendant even though the defendant had a scar on his face while the robber depicted in security camera footage allegedly did not). Moreover, individuals on the Internet (particularly in the context of websites offering casual sexual encounters such as Craigslist) routinely send purported self-photos that are actually pictures of other (usually younger or more attractive) people. Detectives trained in cybercrime, online ads, and child pornography investigations such as Henricks, see Tr. 62; ECF 34-2 Gov.

Ex. 2, would have been well aware that in the modern age of Internet “catfishing,”² the fact that Person A does not resemble pictures previously sent to Person B is not dispositive of whether Person A was the individual who had been communicating with Person B before the two met for the first time. The police were likely even more distrustful of the Craigslist poster’s picture considering that it depicted a (relatively fancy) black sports car in the background while Defendant arrived in a Toyota Camry. For a detective trained in online computer postings, one logical inference from that discrepancy is that the poster was sending fake and/or inflated pictures in an effort to make himself appear more appealing.

All of these facts amount to the conclusion that the police had probable cause to arrest Defendant.

C. The Police Had Probable Cause to Search Defendant’s Home

Assuming that evidence from the search of Defendant’s cell phone could not contribute to probable cause for a search warrant of his home, the government still had sufficient independent probable cause to justify the warrant. United States v. Karo, 468 U.S. 705, 719 (1984) (“[I]f sufficient untainted evidence was presented in the warrant affidavit to establish probable cause, the warrant was nevertheless valid.”); United States v. Shields, 458 F.3d 269, 277 (3d Cir. 2006) (holding that an affidavit can still support probable cause even when purged of some of its underlying content).

The affidavit of probable cause attached to the warrant described Detective Henricks’ investigation of the Craigslist posting, including the emails he and the person behind the posting

² “‘Catfishing’ is a term used to describe the phenomenon of internet predators that fabricate online identities and entire social circles to trick people into emotional/romantic relationships (over a long period of time).” Zimmerman v. Bd. of Trs. of Ball State U., 940 F. Supp. 2d 875, 891 (S.D. Ind. 2013) (citations omitted). See also Kori Clanton, We Are Not Who We Pretend to Be: ODR Alternatives to Online Impersonation Statutes, 16 *Cardozo J. Conflict Resol.* 323 (2014).

had exchanged and the fact that the person behind the posting attempted to proceed with sexual relations despite Henricks identifying himself as a fourteen year old. The affidavit further described the activities leading up to Defendant's arrest at Friendly's. As already detailed, this information established sufficient probable cause to arrest Defendant. The warrant further noted that unbeknownst to the police at the time of his arrest, Defendant had taken his BMW in for unscheduled servicing just thirty nine minutes before Defendant drove the dealership's loaner Toyota Camry to Friendly's. ECF 34-2. The warrant also contained information from a relative who advised that Defendant had displayed deviant sexual behavior. This is plainly sufficient for probable cause that evidence of illegal pictures of and communications with minors would be on computers located in Defendant's home.

Even if the warrant were deficient, suppression would not be warranted because Detective McDonough acted in good faith in obtaining and executing it. United States v. Tracey, 597 F.3d 140, 150 (3d Cir. 2010) (citations omitted) (“[E]vidence should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.”). Defendant has not argued or put forth any evidence to the contrary.

IV. Conclusion

The authorities had probable cause to arrest Defendant outside Friendly's and to search his home based on a validly executed warrant. Because the Government has promised it will not use any of the remaining challenged evidence in its case in chief, Defendant's Motion shall be denied in its entirety.

An appropriate Order follows.

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ORDER

AND NOW, this 22nd day of January, 2016, upon consideration of Defendant's Motion to Suppress (ECF 14) and all submissions related thereto, and for the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that Defendant's Motion is **DENIED**.

BY THE COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON, U.S.D.J.