

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
DOMINIC J. BARBAGALLO	:	
	:	
Appellant	:	No. 127 MDA 2026

Appeal from the Judgment of Sentence Entered December 18, 2025
In the Court of Common Pleas of Adams County Criminal Division at
No(s): CP-01-CR-0000276-2024

BEFORE: LAZARUS, P.J., STABILE, J., and BENDER, P.J.E.

MEMORANDUM BY LAZARUS, P.J.: **FILED: SEPTEMBER 14, 2026**

Dominic J. Barbagallo appeals from the judgment of sentence, entered in the Court of Common Pleas of Adams County, after being convicted, following a stipulated bench trial, of one count each of sexual abuse of children¹ (F-2) and criminal use of a communication facility (F-3).² After careful review, we affirm.

Barbagallo agreed to the following stipulated facts for trial:

On December 18, 2023, Alex Rosen (hereinafter “Mr. Rosen”), a member of a private, non-governmental entity called “Predator Poachers [(PP)], had contact with [Barbagallo] at his residence at 167 Wheatland Drive, Mount Pleasant Township, Adams County, Pennsylvania. Members of [PP] had previously assumed the role of a fictitious thirteen-year-old child named “Mandy” and engaged in online sexually explicit conversations with [Barbagallo]. [Barbagallo] voluntarily agreed to speak with Mr. Rosen, and they mutually agreed to travel in Mr. Rosen’s vehicle to a nearby gas

¹ 18 Pa.C.S.A. § 6312(d).

² *Id.* at 7512(a).

station. Before entering Mr. Rosen's vehicle, Mr. Rosen advised [Barbagallo] "everything is recorded for your safety and my safety." In the vehicle Mr. Rosen stated, "everything in the car will be recorded, okay?" and [Barbagallo] responded "okay." [Barbagallo] voluntarily entered Mr. Rosen's vehicle. The entire conversation between [Barbagallo] and Mr. Rosen was recorded.

During the recording, [Barbagallo] admitted the following:

The online conversation with "Mandy" was sexual in nature, and Barbagallo talked about "how big and thick he is" and that "it will hurt her" if they have sex. Approximately [one] month ago [Barbagallo] received one photo of child pornography from Facebook of a young girl aged 5 to 7 years old, who was in a "spread eagle"" position with her vagina showing. Approximately six months ago[, Barbagallo] used TOR^[3] to securely and safely access the Dark Web to access child pornography. Barbagallo accessed videos of children, including newborns and toddlers, engaging in oral sex and genital penetration. [Barbagallo] had a lot of child pornography on his cell phone [] through the MEGA application, Signal[, or Telegram. [Barbagallo] clarified there were seventy to eighty videos currently on his cell phone containing child pornography. [Barbagallo's] MEGA folder contains between five to six gigabytes worth of child pornography that is separate and apart from the seventy to eighty videos of child pornography on his cell phone. [Barbagallo] had molested two of his six-year-old cousins when he was 13-14 years old. Three months ago, [Barbagallo] molested a three-year-old he was babysitting; he attempted to masturbate the child's penis. Three to four months ago [Barbagallo] was naked with a five-year-old child he was babysitting, and [Barbagallo] was sexually aroused. [Barbagallo] admitted that he has approximately five child pornographic photos of this five-year-old child on his cell phone.

[Barbagallo] returned to his residence with Mr. Rosen to secure [Barbagallo's] cell phone, which [had been] left inside his residence. [Barbagallo] voluntarily provided his passcode for the cell phone to Mr. Rosen. [Barbagallo] agreed with Mr. Rosen [that] he had to get the child pornography off his cell phone.

³ TOR is an Internet browser that allows internet users to have "private access to an uncensored web" by "rout[ing] traffic through multiple servers and encrypt[ing] it each step of the way." <https://www.torproject.org/about/history/> (last visited 8/25/26).

While [Barbagallo] was in his residence with Mr. Rosen, another member of [PP], Pablo Rodriguez, called the Pennsylvania State Police (hereinafter "PSP") in Gettysburg and informed PSP of the information they had obtained from [Barbagallo] concerning his possession of child pornography on his cell phone. Mr. Rodriguez was present for the entire statement [Barbagallo] provided to Mr. Rosen.

Trooper [Brandon] Witherite arrived at [Barbagallo's] residence at approximately 9:40 p.m. [Barbagallo] voluntarily agreed to get into Trooper Witherite's police vehicle and travel with him to PSP Barracks. At 9:46 [p.m., Barbagallo] voluntarily got into Trooper Witherite's police vehicle. [Barbagallo] sat in the front seat of the police vehicle, was not handcuffed, and was not in custody. At 9:48 [p.m., Barbagallo] consented to travel to PSP Barracks with Trooper Witherite. At 9:56 p.m., Trooper Witherite and [Barbagallo] arrived at PSP Barracks. Trooper Witherite escorted [Barbagallo] to the interview room at PSP Barracks. Pursuant to PSP guidelines, Trooper Witherite removed [Barbagallo's] cigarettes, lighter[,], and cell phone from [Barbagallo's] person before [Barbagallo] entered the interview room.

Trooper Jason Kaczor (hereinafter "Trooper Kaczor") met with [Barbagallo] in [the] PSP Barracks' interview room. Trooper Kaczor advised [Barbagallo] he was not under arrest and was free to leave. [Barbagallo] advised Trooper Kaczor that he did not want to speak to Trooper Kaczor without an attorney. Trooper Kaczor advised [Barbagallo] that [Barbagallo's] cell phone would be retained by PSP for purposes of obtaining a search warrant.

All the information, including all the videos prepared by Mr. Rosen and [PP], were ultimately provided to the [PSP]. Detective Eric Beyer (hereinafter "Det. Beyer") and Detective Tim Guise (hereinafter "Det. Guise") of the Adams County District Attorney's Office took over the investigation into [Barbagallo's] alleged possession of child pornography. They received the police reports prepared by PSP and reviewed the entire video between Mr. Rosen and [Barbagallo] from December 18, 2023.

On January 2, 2024, Det. Guise prepared and obtained a search warrant for a forensic search of [Barbagallo's] cell phone. After approval of the search warrant, Det. Guise performed a forensic examination of Barbagallo's cell phone using Cellebrite software and personally viewed more than one hundred images or videos containing suspected child pornography.

Trial Court Suppression Opinion, 2/3/26, at 2-5.

Barbagallo was charged with the above-cited offenses. Prior to trial, Barbagallo filed an omnibus motion to suppress, raising the following claims: (1) the seizure of his cell phone was unconstitutional and without his consent; (2) the search warrant for his cellular phone did not contain sufficient probable cause; and (3) the evidence used to support the search warrant was obtained in violation of the Wiretap Act.⁴ **See** Omnibus Pre-Trial Motion, 5/31/24, at 3-6. The parties agreed to have the motion decided solely on the basis of the affidavit of probable cause and face sheet for the search warrant, as well as the following three videos: (1) December 18, 2023 video and audio recordings between Barbagallo and Rosen/members of PP; (2) body-worn camera video detailing Trooper Witherite obtaining Barbagallo's cell phone and interacting with him prior to being transported to the Gettysburg State Police Barracks (GSPB); and (3) Trooper Kaczor's interview of Barbagallo at the GSPB. **See** N.T. Suppression Hearing, 2/18/25, 2-4; **see also** Exhibits 1-3; Trial Court Suppression Opinion, 2/3/26, at 1-2.

On May 9, 2025, the trial court denied Barbagallo's suppression motion, concluding that: Barbagallo voluntarily agreed to speak with members of the PP, having been advised that their conversation would be recorded; Barbagallo voluntarily agreed to accompany Trooper Witherite to GSPB to speak with a detective while not being in custody; Trooper Witherite took custody of Barbagallo's cell phone, cigarettes, and lighter prior to entering GSPB

⁴ 18 Pa.C.S.A. §§ 5701-5728.

interview room; PSP had probable cause to believe child pornography (still images and videos) were contained on Barbagallo's cell phone; based on recorded statements Barbagallo made to Rosen, PSP possessed exigent circumstances to reasonably believe if Barbagallo's cell phone were returned to him, he would destroy it; and the statements Barbagallo made to Rosen did not violate the Wiretap Act where all parties consented to the recording. **See** Trial Court Suppression Opinion, 5/9/25, at 8-9.

On September 3, 2025, a non-jury trial, before the Honorable Shawn C. Wagner, was held. The parties agreed to accept the facts contained in the Commonwealth's criminal complaint and affidavit of probable cause "as proven beyond a reasonable doubt" for purposes of trial. **See** Stipulation of Facts, 9/2/25. Following trial, Barbagallo was convicted of the above-cited offenses.

Prior to sentencing, Barbagallo agreed to be designated and register as a sexually violent predator under the Sexual Offender Registration and Notification Act (SORNA).⁵ Following the preparation of a pre-sentence investigation report, the trial court sentenced Barbagallo to 2-4 years' imprisonment for child sexual abuse, with a consecutive term of three years of probation.⁶

⁵ 42 Pa.C.S.A. §§ 9799.10-9799.41.

⁶ No sentence was imposed for the criminal use of a communication facility conviction.

Barbagallo filed a timely notice of appeal and court-ordered Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Barbagallo raises the following issues for our consideration:

- (1) Whether the seizure of [Barbagallo's] phone was unconstitutional because he did not give consent for said seizure?
- (2) Whether the search of [Barbagallo's] phone was unconstitutional because the warrant did not contain sufficient probable cause and [Barbagallo] should be permitted to go beyond the four corners of the warrant due to vitally important information being left out [of] the warrant? More specifically, whether the lack of information regarding the background of the vigilante group that conducted the interview and the techniques that the vigilante group utilized rendered the warrant insufficient?
- (3) Whether the [t]rial [c]ourt erred in denying [Barbagallo's] motion to suppress for a violation of the Wiretap Act[?] More [s]pecifically, whether derivative evidence from the alleged wiretap violation should be excluded from the search warrant?

Appellant's Brief, at 7.⁷

Barbagallo first contends that it was illegal for the police to seize his cell phone where he never gave any affirmative consent for his phone to be seized. Appellant's Brief, at 23-24. Additionally, Barbagallo asserts that Trooper Witherite took the phone from his pocket "under the guise [that] it was necessary to do so to enter the interview room[, but] never actually asked Barbagallo for permission to take his phone." *Id.* at 24.

"Both the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution guarantee individuals

⁷ Renumbered for ease of disposition.

freedom from unreasonable searches and seizures.” ***Commonwealth v. Bostick***, 958 A.2d 543, 550 (Pa. Super. 2008) (citation and internal quotation marks omitted). “A warrantless search or seizure is presumptively unreasonable under the Fourth Amendment and Article I, § 8, subject to a few specifically established, well-delineated exceptions.” ***Commonwealth v. McCree***, 924 A.2d 621, 627 (Pa. 2007). One such exception is the exigent circumstances exception. “Exigent circumstances arise only where ‘the need for prompt police action is imperative, either because the evidence sought to be preserved is likely to be destroyed or secreted from investigation, or because the officer must protect himself from danger[.]’” ***Commonwealth v. Lee***, 972 A.2d 1, 5 (Pa. Super. 2009) (citation omitted; emphasis added).

Barbagallo cites to caselaw regarding the validity of consent given in the context of warrantless **searches** and the Commonwealth’s burden to prove that consent was the product of a “free and unconstrained choice, not the result of duress or coercion[], express or implied[.]” Appellant’s Brief, at 24. Here, Barbagallo’s first issue concerns the police **seizing** his cell phone, not searching it.

In any event, we conclude that the police had the right to take Barbagallo’s cell phone while they waited for an authorized search warrant, for fear that vital evidence might be destroyed if the phone were returned to Barbagallo. While Barbagallo refused to consent to the officers searching the contents of his phone, because the police had specific evidence tying the cell phone to the crimes under investigation as well as video evidence of

Barbagallo telling Rosen that he wanted to remove the child pornography from his cell phone, they were legally permitted to seize it while they applied for a warrant to search it. Specifically, during the video conversation with Rosen, Barbagallo admitted that he had between 70-80 videos of child pornography and 5-6 GB of still images of child pornography stored on his cell phone and that it would be fine if Rosen “took a hammer to it.” **See** Exhibit 1 (video conversation between Rosen and Barbagallo). **See also Commonwealth v. Stem**, 96 A.3d 407, 414 (Pa. Super. 2014) (police constitutionally permitted to seize and secure telephones to prevent destruction of evidence during time it takes to secure valid search warrant; police must get warrant before searching phone); **cf. Commonwealth v. Goldstein**, 237 A.3d 1056 (Pa. Super. 2020) (Table) (where Commonwealth had submitted preservation of data request, court properly granted suppression even where defendant’s phone was set up to automatically delete incoming Gmail every 24 hours; there was no evidence presented that defendant used Gmail account to communicate with victim or that Gmail account was causally connected to investigation).

Next, Barbagallo argues that the police illegally searched his cell phone because there was insufficient probable cause to justify the issuance of a search warrant. Specifically, Barbagallo contends that “vitally important information” was not included in the warrant, including the “background of the vigilante group[, PP,] that conducted the interview and the techniques that the vigilante group utilized[.]” Appellant’s Brief, at 18. Without such

information, Barbagallo claims that the “[j]udge signing the warrant [did not have] sufficient information to assess the reliability of any admissions.” **Id.** at 20.

The legal principles applicable to a review of the sufficiency of probable cause affidavits are well[-]settled. Before an issuing authority may issue a constitutionally valid search warrant, he or she must be furnished with information sufficient to persuade a reasonable person that probable cause exists to conduct a search. The standard for evaluating a search warrant is a “totality of the circumstances” test as set forth in **Illinois v. Gates**, 462 U.S. 213 [] (1983), and adopted in **Commonwealth v. Gray**, [] 503 A.2d 921 [] ([Pa.] 1985). A magistrate is to make a “practical, common[-]sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” The information offered to establish probable cause must be viewed in a common[-]sense, non[-]technical manner. Probable cause is based on a finding of the probability, not a *prima facie* showing[,] of criminal activity, and deference is to be accorded a magistrate's finding of probable cause.

Commonwealth v. Manuel, 194 A.3d 1076, 1081 (Pa. Super. 2018) (citations and quotations omitted). “In determining whether a search warrant is supported by probable cause, appellate review is confined to the four corners of the affidavit.” **Commonwealth v. Galvin**, 985 A.2d 783, 796 (Pa. 2009).

Instantly, the affidavit of probable cause, attached to the warrant application for Barbagallo’s cell phone, set forth the following facts and circumstances to support issuance of a warrant:

On 12/18/2023, members of the [PSP], Gettysburg barracks, were notified by a subject identifying himself as Pablo Rodriguez. Rodriguez stated that he was part of a group of persons that pose

as children online and interact with adults about sex and other sexual material. Following this interaction, members of the group then confront the adults in a face-to-face setting. Rodriguez related that he [] and two other team members were currently at 167 Wheatland Drive in Mount Pleasant Township, Adams County, PA. There, they had confronted a subject he identified as Dominic Barbagallo about online conversations Barbagallo had with their group. Following initial contact with Barbagallo, he agreed to accompany Rodriguez and the other two team members to a nearby gas station[] to be interviewed. While enroute to the gas station, a team member identified as Alex Rosen, informed Barbagallo that their conversation was being recorded. Barbagallo stated he understood and consented to the recording.

During the recorded interview, Barbagallo advised Rosen that he had approximately 70-80 videos of child pornography on his cellular telephone, spanning all ages of children being depicted. Barbagallo also stated that he had a "mega-folder" of still images of child pornography that was likely 5-6 GB in size. Barbagallo said these images were also stored on his cellular telephone. Additionally, during their conversation, Barbagallo told Rosen he had several apps on his cell phone, including Signal and Telegram, and that he had accessed the "dark web" via an application called TOR. When asked by Rosen, Barbagallo agreed to turn his phone over to be reviewed and provided a passcode of 7103 to access the phone. In addition to the statements regarding his cellular device, Barbagallo[] told Rosen that on two separate occasions in the past few months, [] he sexually abused minor children while he was babysitting them. On one occasion, Barbagallo stated that he stroked the penis of a three-year-old, non-verbal child, and during the second occasion, he exposed his erect penis to a five-year-old child and had the child run around the house naked.

Following the interview, Barbagallo, Rosen[,], and the others returned to Barbagallo[']s residence for the purpose of taking possession of his cellular telephone. At the residence, Rosen, a team member identified as Matthew Mason, and Barbagallo entered the residence to retrieve the phone. Rodriguez remained in the vehicle and telephoned the [PSP] to report the information that Barbagallo had told them. Several PSP Troopers later arrived and interacted with Barbagallo. Following their discussion, Barbagallo agreed to accompany the PSP to their barracks to be interviewed. Upon arriving at the barracks, Barbagallo provided his cellular telephone to Trooper Witherite, where it was entered into evidence. Prior to an interview with PSP personnel,

Barbagallo requested an attorney, and denied PSP personnel consent to review the cellular telephone.

The information detailed above [] was obtained from a [PSP] incident report, completed by Trooper [] Kaczor and provided directly to Detective Eric Beyer of the Adams County District Attorney's Office. Detective Beyer then personally provided me this information for additional action. Additionally, [PP] posted a video online, showing the interview with Barbagallo in its entirety. I personally viewed this video to confirm the information provided to me was an accurate depiction of the events.

The affiant is an investigator employed by the Adams County District Attorney's Office. Prior to this, the affiant worked as a certified police officer for 27 years with the Cumberland Township Police Department, Adams County, PA[.] The affiant's job responsibility currently includes, and previously included criminal investigations. As part of my duties, I am assigned to investigate computer crimes, specifically child exploitation crimes as a member of the Internet Crimes Against Children Task Force (ICAC). The ICAC Program was developed in response to the increasing number of children and teenagers using the Internet, the proliferation of child pornography, and heightened online activity by predators seeking unsupervised contact with potential underage victims. The ICAC Program is a national network of 61 Task Forces representing more than three thousand federal, state, and local law enforcement agencies. These agencies are engaged in reactive, proactive, and forensic investigations and criminal prosecutions. The affiant has conducted/participated in hundreds of criminal investigations, including offenses involving child exploitation. The affiant has also received specialized training in the investigation of offenses involving computer and [I]nternet crimes, and the prosecution of crimes related to these offenses. The affiant is certified under the Wiretapping and Electronic Surveillance Control Act as administered by the [PSP] Training Academy. The affiant was certified as a Police Officer in the Commonwealth of Pennsylvania in December of 1989[,], and has maintained that certification through the Municipal Police Officers Education and Training Commission since that time. Through this training and experience the following is known[:]

Dominic Barbagallo had an online conversation with a group identifying themselves as [PP]. During this conversation, members of [PP] posed as a minor female child named Mandy. Barbagallo made sexually explicit comments to the subject[,], whom he believed to be a minor child. PP later confronted

Barbagallo in a face-to-face setting and recorded an interview with him in which he admits to possessing a significant amount of child pornography on his cellular telephone. Barbagallo also admitted to having the applications Telegram and Signal on his cellular phone, and through my training and experience, I know that these applications are often used to view, download, and disseminate child pornography. Barbagallo also admits to accessing the “dark web,” via his cellular device, which is also commonly used to view, download[,] and disseminate child pornography. Also, through my training and experience, I know that individuals who view child pornography often maintain the images for long periods of time, on [I]internet capable devices, for purposes of later viewing and/or sharing. They also may use these devices to record and document any hands-on sexual abuse of children, in which the subject was personally involved. As previously noted, Barbagallo’s cellular telephone is currently being held in evidence at the [PSP] barracks in Gettysburg. Through the above[-]detailed information, the affiant believes there is probable cause to believe that child pornography is being stored on Barbagallo’s cellular telephone and ask[s] that a search warrant be issued for the items listed on the face of this warrant.

Affidavit of Probable Cause, 1/2/24, at 2-3.⁸

Here, Barbagallo voluntarily agreed to speak with PP members, in their car, at a local convenience store parking lot, and specifically gave Rosen consent to record his conversation with them on December 18, 2023. Moreover, despite the fact that Barbagallo was told by Rosen that he could stop talking to him at any time and that he was free to leave, he continued

⁸ Barbagallo claims that “questioning by untrained vigilantes” like the PP calls into question the reliability of his own statements and any false confessions. **See** Appellant’s Brief, at 30. While we have uncovered no caselaw involving groups like PP supplying evidence for an affidavit of probable cause, it is well-established that an affidavit may be based on hearsay and need not reflect direct personal observations of the affiant, **see Commonwealth v. Klimkowicz**, 479 A.2d 1086 (Pa. Super. 1984), and that even information provided to police by an anonymous source can establish probable cause so long as it is corroborated by police investigation. **See Commonwealth v. Cramutola**, 676 A.2d 1214, 1216 (Pa. Super. 1996).

the conversation with Rosen for over an hour, even taking Rosen and other PP members back to his house to retrieve his cell phone for them. After that, the members of PP who directly interacted with Barbagallo handed over the video evidence to the police. The police took that evidence and gave it to investigators at the Adams County District Attorney's Office, who reviewed the entire December 18, 2023 video. Based on their review, Detective Guise, a 27-year veteran of the police force who was currently assigned to investigate child exploitation crimes, executed the application for the search warrant to conduct a forensic analysis of Barbagallo's cell phone.

After a review of the suppression record, we conclude that, based upon all the facts and circumstances set forth in the affidavit, including Detective Guises' experience in child exploitation investigations, the magistrate had a substantial basis for concluding that probable cause existed to issue a search warrant for Barbagallo's cell phone where there was a fair probability that contraband or evidence of a crime would be found on Barbagallo's phone.⁹ ***Gray, supra*** at 925 (anonymous tips from ordinary citizens, "when supplemented by independent police investigation, frequently contribute to the solution of otherwise 'perfect crimes'"); ***Cramutola, supra***. Thus, there is no merit to this claim.

In his final issue, Barbagallo contends that the trial court should have granted his motion to suppress based on a violation of the Wiretap Act and

⁹ The search of the phone ultimately revealed more than one hundred images and/or videos of suspected child pornography.

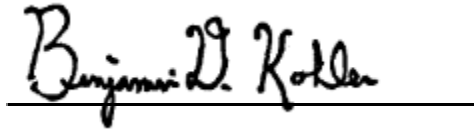
that any “derivative evidence from the alleged wiretap violation should [have] be[en] excluded from the search warrant.” Appellant’s Brief, at 7.

Pursuant to 18 Pa.C.S.A. § 5703, a person is guilty of a third-degree felony “if he intentionally intercepts . . . any . . . oral communication.” 18 Pa.C.S.A. § 5703(1). However, it is not illegal to intercept an oral communication “where all parties to the communication have consented to such interception.” ***Id.*** at § 5704(4).

Here, the trial judge correctly found that Barbagallo consented to Rosen recording their conversation. Despite the fact that Rosen told Barbagallo several times that their conversation was being recorded for everyone’s safety and that Barbagallo could stop the interview at any time, Barbagallo agreed and chose to participate in the more-than-one-hour conversation, never indicating that he did not want it recorded or that he wanted to stop the conversation at any point. Thus, the mutual consent exception to section 5703 contained in subsection 5704(4) applies. Therefore, the interception was legal and no derivative evidence from the taped conversation should have been excluded from the search warrant.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/14/2026