STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0912

State of Minnesota,
Respondent,

vs.

Darryl Taylor,
Appellant.

Filed March 26, 2018
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-CR-16-4347

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his multiple convictions for promoting prostitution and sex trafficking. He argues that (1) the district court erred by denying his motion to suppress

Appendix-A

the contents of his cell phone because the search warrant did not authorize such a search and was insufficiently particular and (2) the district court abused its discretion by admitting evidence that he assaulted one of the sex-trafficking victims. And he asserts other arguments in a pro se supplemental brief. We affirm.

FACTS

In late 2015, appellant Darren Taylor met three vulnerable women: G.J., a homeless 17-year-old runaway; E.C., a 22-year-old woman who was homeless and addicted to heroin; and F.B., a 33-year-old alcoholic who left her home after meeting Taylor. As he met them, Taylor encouraged each to pose provocatively while he and his girlfriend, LaQueshia Moran, took photos. Taylor used the photos to create advertisements on the website Backpage.com soliciting prostitution, and he communicated with the men who responded to the advertisements. Moran instructed G.J. to go to Taylor's residence to have sex with men, though it is unclear whether she actually did so. F.B. and E.C. stayed at Taylor's residence, and he demanded that they engage in sex acts for money, often four or five times per day. Taylor reinforced his demands with drugs and violence and took all of the money they received.

The Woodbury Police Department conducted an undercover investigation of Taylor in early 2016. With the information acquired in that investigation, they obtained a warrant to search Taylor, his residence, and the vehicle he was driving for evidence of his suspected sex trafficking and prostitution, including "[c]ellular phones and storage media." Police recovered six cell phones, including one that was on Taylor's person (Taylor's phone). Police examined all six cell phones and determined that Taylor's phone was associated

with the phone number that appeared in Backpage advertisements for F.B. and E.C. and with the email address that was used to post advertisements for all three women. Also on Taylor's phone, police found numerous messages and emails indicating that he created, posted, and maintained advertisements related to the women, and negotiated the arrangements for men to have sex with them.

Taylor was charged with first-degree promoting prostitution (G.J.); two counts of second-degree sex trafficking (E.C. and F.B.); and conspiring with Moran to commit second-degree sex trafficking. He moved to suppress the contents of his phone, arguing that "[p]olice searched [his phone] and text messages without a search warrant." He asserted that police should have obtained a second warrant specifically authorizing the search of the phone's contents and that the search warrant was insufficiently particular with respect to any search of his phone. The district court denied the motion. Taylor thereafter waived his right to a jury trial. The district court found him guilty as charged and sentenced him to 240 months' imprisonment. Taylor appeals.

DECISION

I. The district court did not err by denying Taylor's motion to suppress evidence obtained from the examination of his phone's contents.

"When reviewing a district court's pretrial order on a motion to suppress evidence, [appellate courts] review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted).

The Fourth Amendment to the United States Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches . . . shall not be violated." U.S. Const. amend. IV. Warrantless searches are generally unreasonable. *State v. Molnau*, 904 N.W.2d 449, 452 (Minn. 2017) (citing *Riley v. California*, 134 S. Ct. 2473, 2482 (2014)). Even with a warrant, police are not permitted to engage in "general or exploratory searches." *State v. Fawcett*, 884 N.W.2d 380, 387 (Minn. 2016) (quotation omitted). A search pursuant to a warrant must be limited to the scope of the warrant, *Molnau*, 904 N.W.2d at 452 (citing *Horton v. California*, 496 U.S. 128, 140, 110 S. Ct. 2301, 2310 (1990)), which itself must "particularly describe[] the place to be searched, and the persons or things to be seized," U.S. Const. amend. IV.

Taylor contends that the district court erred by denying his motion to suppress the evidence obtained from his phone because the warrant authorizes only the seizure of his phone, not the examination of its contents,[1] and the warrant is insufficiently particular. We address each argument in turn.

We first consider whether the search warrant encompasses an examination of the contents of Taylor's phone. The scope of a search warrant is dictated by its terms. *Horton*, 496 U.S. at 140, 110 S. Ct. at 2310. The test for determining whether a search has exceeded the scope of the warrant is one of reasonableness, considering the totality of the

[1] The state argues that Taylor did not preserve this argument. We disagree. The record confirms that Taylor raised various suppression arguments, including that a second warrant was required to access the contents of his phone, and the district court ruled on that argument.

circumstances, including the context provided by the warrant application. *Molnau*, 904 N.W.2d at 452-53.

"A warrant generally authorizes police to search all containers they reasonably believe could contain the items sought." *Id.* at 452. A cell phone, like a computer, contains data. *See State v. Johnson*, 831 N.W.2d 917, 924 (Minn. App. 2013) (describing a computer hard drive as "effectively a 'container' of [the sought] data"), *review denied* (Minn. Sept. 17, 2013). But a cell phone is not a "container" for Fourth Amendment purposes. *Riley*, 134 S. Ct. at 2491. In rejecting such a characterization, the *Riley* Court emphasized that a cell phone is unlike physical containers, such as a person's pockets or wallet, because it both contains and *affords access to* extensive and personal information. *Id.* at 2489-91; *see also State v. Barajas*, 817 N.W.2d 204, 216 (Minn. App. 2012) (noting that cell phones are capable of "the creation and storage of private data that the owner does not intend for others to view"), *review denied* (Minn. Oct. 16, 2012). Consequently, even when police are authorized to seize a person's cell phone, the owner continues to have a reasonable expectation of privacy in the contents of the phone—and police must get a warrant to access those contents. *Riley*, 134 S. Ct. at 2488, 2494-95.

The police had such a warrant here. It authorized the seizure of "[c]ellular phones and storage media." The phrase "and storage media" distinguishes the physical cell phone from its digital contents; by its terms the warrant authorizes police to seize both. We are persuaded that the only reasonable interpretation of what it means to "seize" a cell phone's digital contents is to access them. The detailed warrant application confirms this interpretation. *See Molnau*, 904 N.W.2d at 452. It avers that police had probable cause to

believe that Taylor's phone contained evidence of sex trafficking and prostitution, including photos, text messages, and connections to the Backpage advertisements,[2] and it states that police intended to "retrieve[] and record[] the electronic data" from the cell phones. Considering the totality of the circumstances, we conclude that the search warrant authorized police to seize Taylor's phone *and* to seize the storage media it contained by retrieving those digital contents and examining them for evidence of sex trafficking and prostitution.

We turn next to Taylor's two particularity challenges. A warrant must "particularly describe[] the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. This requirement is designed to prevent general or exploratory searches by "limiting the authorization to search to the specific areas and things for which there is probable cause to search." *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S. Ct. 1013, 1016 (1987). The warrant must leave "nothing . . . to the discretion of the officer executing the warrant." *State v. Miller*, 666 N.W.2d 703, 712 (Minn. 2003) (quotation omitted). A search conducted pursuant to a warrant that fails to conform to the particularity requirement is unconstitutional. *Groh v. Ramirez*, 540 U.S. 551, 557-58, 124 S. Ct. 1284, 1289-90 (2004). When determining whether a clause in a search warrant is sufficiently particular, a court must consider "the circumstances of the case" and "the nature of the crime under investigation and whether a more precise description is possible under the circumstances." *Fawcett*, 884 N.W.2d at 387 (quotation omitted).

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[2] Taylor does not dispute that the warrant application established probable cause to believe that his cell phone contained digital evidence of sex trafficking and prostitution.

Taylor principally argues that the warrant is not sufficiently particular because it refers to "cellular phones," rather than identifying specific phones by phone number or description. This argument is unavailing. Taylor cites no authority for the principle that a warrant must direct police to a specific cell phone based on description or phone number, and we are not persuaded that doing so was required here. The warrant authorized police to seize "cellular phones" on Taylor's person, in his residence, and in his vehicle. This description directed police to a specific set of objects, albeit of unknown number, located in specific places; it left nothing to the discretion of the officers executing the warrant. Moreover, as the state points out, had the warrant described the phone to be searched by reference to a particular phone number, permitting the seizure of only the phone attached to that number, it would have authorized the seizure of the very phone whose incriminating contents Taylor seeks to suppress.

Taylor also asserts that the warrant is insufficiently particular in describing the contents of the phone to be searched. He contends that a warrant must specify the type of data to be searched (such as call logs, text messages, and emails) or it impermissibly allows police "to search the entirety of the phone without any limitations or expectations." We are not persuaded. Fourth Amendment jurisprudence recognizes that such a level of specificity is not always possible. *See Fawcett*, 884 N.W.2d at 387 (requiring consideration of "whether a more precise description is possible under the circumstances" (quotation omitted)). Contrary to Taylor's argument, police had specific "expectations" in examining the digital contents of his cell phone—they sought evidence of sex trafficking and prostitution. A search for such evidence on a cell phone predictably encompasses the

standard communication elements of the phone, including text messaging and call logs. But it also encompasses a wide range of evidence specific to the offenses under investigation, as the language of the warrant demonstrates. The warrant authorized police to seize photos, social-media information, financial information, contact information, and "lists linked to prostitution"; that police examined the contents of Taylor's phone for such evidence was not only reasonable but predictable. We conclude the warrant particularly identified the cell phones to be seized and the digital evidence to be accessed from those phones.

Finally, Taylor has not demonstrated that any error warrants reversal. A constitutional error does not require reversal if it was harmless beyond a reasonable doubt. *State v. Caulfield*, 722 N.W.2d 304, 314 (Minn. 2006). When a district court erroneously fails to suppress evidence, we consider the impact of the challenged evidence and do not reverse if the "verdict is surely unattributable to the erroneously admitted evidence." *Barajas*, 817 N.W.2d at 220 (quotation omitted). That standard is met here. The evidence obtained from Taylor's phone corroborated F.B.'s and E.C.'s testimony about Taylor's use of Backpage advertisements and how he communicated with men who responded to those advertisements. But that is not the only corroborating evidence. F.B. and E.C. detailed their experience being photographed for the advertisements, offered for prostitution, and threatened and manipulated into performing sexual acts for money. Law enforcement officers also described their months of undercover investigation, which otherwise confirmed numerous details of Taylor's operation, including the link between his phone number and numerous Backpage prostitution advertisements. Because ample independent

evidence supports the district court's findings of guilt, we conclude that they are surely unattributable to the admission of evidence from his phone.

II. The district court did not abuse its discretion by admitting evidence that Taylor assaulted F.B.

We review a district court's admission of evidence for abuse of discretion. *State v. Hormann*, 805 N.W.2d 883, 888 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012). To warrant reversal, the appellant must demonstrate both abuse of discretion and resulting prejudice. *Id.*

"Minnesota has long adhered to the common-law rule excluding evidence of prior bad acts except where the evidence fits within a specific exception." *State v. Riddley*, 776 N.W.2d 419, 424 (Minn. 2009); *see also* Minn. R. Evid. 404(b) (prohibiting bad-acts character evidence). One exception to this general rule is "immediate-episode evidence." *State v. Washington-Davis*, 867 N.W.2d 222, 239 (Minn. App. 2015), *aff'd*, 881 N.W.2d 531 (Minn. 2016). This exception permits the state to "prove all relevant facts and circumstances which tend to establish any of the elements of the offense with which the accused is charged, even though such facts and circumstances may prove or tend to prove that the defendant committed other crimes." *Riddley*, 776 N.W.2d at 425 (quotation omitted). To be admissible, the other crime need not prove an element of the charged offense but must be linked to the charged offense in time and circumstances, "so that one cannot be fully shown without proving the other," or where evidence of the other crime constitutes part of the events at issue. *Id.* (quotation omitted). This exception has permitted evidence of drug possession in a prosecution for a drug-store robbery and of a kidnapping

that motivated a charged murder. *Id.* at 426-27 (collecting cases). And we recently affirmed the admission of immediate-episode evidence that a defendant charged with sex trafficking and promoting prostitution used violence and threats of violence to "coerce their continued participation in the prostitution scheme." *Washington-Davis*, 867 N.W.2d at 240.

The district court admitted such evidence here. F.B. testified that Taylor assaulted her on March 16, 2016, after she asked him not to post her Backpage advertisement, argued with him, and indicated that she wanted to leave. Taylor beat her and used scissors to cut off her hair. He also struck her head against the corner of a window, drawing blood. F.B. suffered a concussion, black eyes, and bruises. This episode is consistent with and corroborates F.B.'s and E.C.'s testimony that Taylor beat them to keep them from leaving and compel them to continue to engage in sex acts for his monetary benefit. Because the assault was temporally and causally linked to the sex-trafficking of F.B. and the other offenses with which Taylor was charged, the district court did not abuse its discretion by admitting the evidence. Moreover, given the substantial unchallenged testimony from F.B. and E.C. about Taylor's use of violence, threats, and drugs to coerce their continued prostitution, we discern no harm from the admission of the assault evidence.[3] Because

[3] In a pro se supplemental brief, Taylor also argues that G.J. was not credible, the district court erred by failing to give itself an accomplice-liability instruction, and the evidence is insufficient. We have carefully reviewed the record and applicable law and conclude Taylor is not entitled to relief on any of these grounds.

Taylor has not demonstrated abuse of discretion or prejudice, his evidentiary challenge fails.

Affirmed.

Filed in Second Judicial District Court
1/23/2017 3:37:03 PM
Ramsey County, MN

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota,

Case No. 62-CR-16-4347

Plaintiff,

v.

GENERAL FINDINGS PURSUANT TO MINN. R. P. 26.01 SUBD. 2

Darryl Taylor,

Defendant.

The above-entitled matter came before the Honorable Leonardo Castro, Judge of Second Judicial District, on January 9, 2017 for trial without a jury, pursuant to Rule 26.01, Subd. 2 of the Minnesota Rules of Criminal Procedure. The Defendant waived his right to a trial by jury in writing and on the record consistent with the proceedings under Rule 26.01, Subd. 1.

Sarah Cory, Assistant Ramsey County Attorney, appeared on behalf of the State of Minnesota. Edith Brown, Assistant Ramsey County Public Defender, appeared on behalf of the Defendant. The Defendant was charged by complaint in Ramsey County with the offenses of one (1) Count of Promotion of Prostitution in the First Degree, in violation of Minnesota Statute § 609.322.1(a) (2); two (2) Counts of Engaging in Sex Trafficking in the Second Degree in violation of Minnesota Statute § 609.322.1a (4); and one (1) Count of Conspiracy to Commit Sex Trafficking in the Second Degree in violation of Minnesota Statute § 609.322.1a (4).

Appendix-B

Filed in Second Judicial District Court
1/23/2017 3:37:03 PM
Ramsey County, MN

Based upon the facts, exhibits, files, records, testimony and proceedings herein, the Court makes the following:

General Findings

1. The Defendant, Darryl Taylor, is **GUILTY** of Promotion of Prostitution in the First Degree, in violation of Minnesota Statute § 609.322.1(a) (2).
2. The Defendant, Darryl Taylor, is **GUILTY** of Engaging in Sex Trafficking in the Second Degree in violation of Minnesota Statute § 609.322.1a (4).
3. The Defendant, Darryl Taylor, is **GUILTY** of Engaging in Sex Trafficking in the Second Degree in violation of Minnesota Statute § 609.322.1a (4).
4. The Defendant, Darryl Taylor, is **GUILTY** of Conspiracy to Commit Sex Trafficking in the Second Degree in violation of Minnesota Statute § 609.322.1a (4).

ORDER

1. The Defendant shall be held without bail pending sentencing.
2. The Defendant shall cooperate with Ramsey County Probation to complete a Pre-Sentence Investigation.
3. The Defendant shall appear for Sentencing on March 16, 2017, at 1:30 PM, Ramsey County Courthouse, 15 W. Kellogg Blvd, St. Paul, MN 55102.

BY THE COURT:

Dated: January 23, 2017

The Honorable Leonardo Castro
Judge of Second Judicial District

FILED

May 29, 2018

OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN SUPREME COURT

A17-0912

State of Minnesota,

Respondent,

vs.

Darryl Taylor,

Petitioner.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Darryl Taylor for further review be, and the same is, denied.

Dated: May 29, 2018

BY THE COURT:

Lorie S. Gildea
Chief Justice

Appendix - C

STATE OF MINNESOTA

COURT OF APPEALS

JUDGMENT

State of Minnesota, Respondent, vs. Darryl Taylor, Appellant

Appellate Court # A17-0912

Trial Court # 62-CR-16-4347

Pursuant to a decision of the Minnesota Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Ramsey County District Court, Criminal Division herein appealed from be and the same hereby is affirmed and judgment is entered accordingly.

Dated and signed: May 31, 2018

FOR THE COURT

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: [signature]
Assistant Clerk

Appendix - D

STATE OF MINNESOTA

COURT OF APPEALS
TRANSCRIPT OF JUDGMENT

I, AnnMarie S. O'Neill, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my signature at the Minnesota Judicial Center,

In the City of St. Paul May 31, 2018
Dated

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: _____
Assistant Clerk

Additional material from this filing is available in the Clerk's Office.