ORIGINAL

105191292

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JACKY CARDALE MAYFIELD,	)	
	)	
Appellant,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**Case No. F-2020-639**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 31 2022

JOHN D. HADDEN
CLERK

SUMMARY OPINION

ROWLAND, PRESIDING JUDGE:

Appellant Jacky Cardale Mayfield appeals his Judgment and Sentence from the District Court of Tulsa County, Case No. CF-2016-3502, for Murder in the First Degree (Counts 1 and 2), in violation of 21 O.S.Supp.2012, § 701.7, and Possession of a Firearm, After Former Conviction of a Felony (Count 3), in violation of 21 O.S.Supp.2014, § 1283. The Honorable Clifford Smith, District Judge, presided over Mayfield's non-jury trial, found him guilty, and sentenced him to life imprisonment on each of Counts 1 and 2 and ten years imprisonment on Count 3.[1] Judge Smith ordered the

[1] Under 21 O.S.Supp.2015, § 13.1, Mayfield must serve 85% of his sentence of imprisonment on Counts 1 and 2 before he is eligible for parole consideration.

Appendix A

sentences to run concurrently and concurrently with Case No. CF-2018-4205. Mayfield raises five claims for review:

(1) whether the district court erred in denying his motion to suppress and rejecting his claim that the search warrant was a prohibited general warrant;

(2) whether the search warrant affidavits established probable cause for the issuance of the search warrants;

(3) whether the district court erred by allowing prosecution witnesses to refresh their recollections with police reports;

(4) whether the district court erred in denying his request for disclosure of a confidential witness without a hearing; and

(5) whether he was denied a fair trial because he was shackled during trial.

We find relief is not required and affirm the Judgment and Sentence of the district court.

1.

Mayfield claims his Fourth Amendment right against unlawful searches and seizures was violated because the search warrant obtained by police for a data search of his cellular telephone authorized a general search prohibited by both the Oklahoma and United States Constitutions.

The challenged search warrant provided for the seizure and downloading of data contained in Mayfield's cell phone identified in the affidavit solely by its phone number:

> to include call detail records, text messages (including drafts), contacts, photographs and videos, GPS information, device identification number, *and all other data associated with the cellular phone.*

Mayfield moved before trial to suppress "all information and data obtained by and/or as a result of the execution of the June 20, 2016 general warrant purporting to authorize the boundary-free extraction of" the phone's contents listed in the warrant quoted above. Citing *Riley v. California,* 573 U.S. 373, 393-96 (2014), he quoted the Supreme Court's description of the modern-day cell phone with its ability to hold vast amounts of personal information about its user and asserted such devices merit stringent privacy protection. He argued the search warrant for his cell phone contained unlimited authorization for police to rummage through its contents and maintained the warrant's failure to place any restrictions on the officer's search required the fruits of the search to be suppressed. The district court denied Mayfield's motion to suppress evidence garnered from the search of his cell phone and rejected his claim that

the warrant lacked the necessary particularity required under the Fourth Amendment.

In reviewing the district court's denial of Mayfield's suppression motion, we view the evidence in the light most favorable to the State and accept the district court's factual findings unless clearly erroneous. *Smith v. State,* 2018 OK CR 4, ¶ 3, 419 P.3d 257, 259. We consider its legal conclusions concerning the reasonableness and constitutionality of the search *de novo. Id. See also Brigham City v. Stuart,* 547 U.S. 398, 403 (2006) (stating, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'"). Whether a warrant is overbroad is a legal question we review *de novo.*

It is well settled that general searches "violate fundamental rights." *Marron v. United States,* 275 U.S. 192, 195 (1927). At issue in this case is the effect of the language in the warrant, authorizing a search of "all other data associated with the cellular phone." The warrant described, with specificity, areas and/or items to be searched, but concluded with rather broad authorization language, which Mayfield argues failed to limit the scope of the search and to comply with the particularity requirement.

We find the Severability Doctrine resolves any problem with the warrant in this case. *See Norris v. State,* 1982 OK CR 22, ¶ 13, 640 P.2d 1374, 1376 (adopting rule of severability); *see also United States v. Brown,* 984 F.2d 1074, 1077 (10th Cir. 1993) (observing that a majority of federal circuits have held that "where a warrant contains both specific as well as unconstitutionally broad language, the broad portion may be redacted and the balance of the warrant considered valid."). Under the severability doctrine, suppression is required only of those items confiscated under the overbroad portion of the warrant. *Norris,* 1982 OK CR 22, ¶ 12, 640 P.2d at 1376; *Brown,* 984 F.2d at 1078.

In reaching this conclusion, we observe that the search was limited to the areas of the phone authorized by the warrant, namely the call detail records, text messages, contacts, photographs and videos, GPS information, and the device identification number. We further observe that the officer executing the warrant limited his search when possible. *See United States v. Loera,* 923 F.3d 907, 916 (10th Cir. 2019) ("Our electronic search precedents demonstrate a shift away from considering what digital location was searched and

toward considering whether the forensic steps of the search process were reasonably directed at uncovering the evidence specified in the search warrant. Shifting our focus in this way is necessary in the electronic search context because search warrants typically contain few—if any—restrictions on where within a computer or other electronic storage device the government is permitted to search.").

We further note that Mayfield complains about the admission of only two text messages garnered from the search. The first was a text from Mayfield to his cousin, Rebecca Williams, less than four hours before the murder. The text informed Williams, who was looking for Mayfield, that he was in a meeting with one of the leaders of his street gang and would call her later. The lead detective found the text significant insofar as it raised the question of whether the gang put a "hit" on one of the victims which Mayfield then carried out. The second was a text conversation with one of his fellow gang members some three and a half hours after the murders in which Mayfield indicated he was "good" because "baby got the phones and clean up the house for me just now Bxmpbxmp no need to change number now." The State argued this text corroborated the testimony of

Mayfield's cousin, who testified Mayfield had her retrieve one of the victim's cellphones from the crime scene after the murders, resulting in a "clean up" of evidence at the scene. These two texts clearly fall within the scope of the valid portion of the search warrant and were properly admitted. Accordingly, we find no relief is required and deny this claim.

2.

Mayfield claims the probable cause affidavits supporting the June 20, 2016 search warrant requests for his cellular phone's data and cell site location information (CSLI) held by AT&T lacked sufficient detail to establish probable cause for the issuance of the two search warrants. The factual assertions in the affidavits that Mayfield challenges are identical.[2]

Mayfield raised this claim in his written pretrial motion to suppress, arguing the affidavits contained irrelevant, as well as misstated, descriptions of the killer, attributed admissions by Mayfield to unidentified and unknown informants without context or

[2] The affidavits differed in their respective introductory paragraphs identifying the data to be searched and seized.

facts for assessing the reliability of the alleged admissions, and omitted facts bearing on the trustworthiness of the unidentified informants. Defense counsel pressed his particularity complaint at trial, but did not address his complaint that the affidavits supporting the warrants lacked sufficient probable cause. The district court found the warrant for Mayfield's phone was not a general warrant and denied the motion to suppress without specifically addressing his probable cause complaint.

As previously stated, in reviewing the district court's denial of Mayfield's suppression motion, we will view the evidence in the light most favorable to the State and accept its factual findings unless clearly erroneous, and consider its legal conclusions *de novo. Smith,* 2018 OK CR 4, ¶ 3, 419 P.3d at 259. Moreover, Mayfield's failure to reurge his attack on the sufficiency of probable cause in the affidavits waives review of this claim for all but plain error. *See Jones v. State,* 2006 OK CR 5, ¶ 24, 128 P.3d 521, 536 (holding arguments in written suppression motion not raised at trial are waived). He has the burden in plain error review to demonstrate: 1) the existence of an actual error (i.e., deviation from a legal rule); 2) that the error was plain or

obvious; and 3) that the error affected his substantial rights, meaning the error affected the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. Even where this showing is made, this Court will correct plain error only where the error seriously affected the fairness, integrity or public reputation of the judicial proceedings or represented a miscarriage of justice. *Id.*

Mayfield begins this claim by questioning the validity of the Court's holding in *State v. Marcum*, 2014 OK CR 1, 319 P.3d 681, in light of *Carpenter v. United States*, 138 S.Ct. 2206 (2018). In *Marcum*, the Court considered the narrow issue of whether a defendant had a reasonable expectation of privacy in cellular phone records seized from a third-party cellular provider for his co-defendant's cellular phone which contained text messages the two had exchanged. *Id.*, 2014 OK CR 1, ¶ 6, 319 P.3d at 683. We found there was no reasonable expectation of privacy in that situation and adopted "the reasoning of the courts which have concluded that there is no expectation of privacy in the text messages or account records of another person, where the defendant has no possessory interest in the cell phone in question, and particularly where, as here, the actual

warrant is directed to a third party." *Id.*, 2014 OK CR 1, ¶ 15, 319 P.3d at 687. Four years after our *Marcum* decision, the United States Supreme Court, in *Carpenter,* held that a person maintains a legitimate expectation of privacy in the record of his or her physical movements as captured through third party CSLI data. *Carpenter,* 138 S.Ct. at 2219-20.

Mayfield's argument about *Marcum* is undeveloped as it relates to his probable cause challenge. He contends simply that *Carpenter* "calls into question some of the language used in the *Marcum* holding." Nothing in *Carpenter* changed the narrow holding in *Marcum,* and we have continued to hold that a defendant does not have a reasonable expectation of privacy in cellular data held by a third-party for another person's cellular phone. *Fuston v. State,* 2020 OK CR 4, ¶¶ 40-41, 470 P.3d 306, 319, *cert. denied,* 141 S.Ct. 1400 (2021) (acknowledging, under *Carpenter,* a defendant has a reasonable expectation of privacy in at least seven days of CSLI data held by a third party for *that* defendant's phone). Because Mayfield challenges only data obtained from a third party for his device, any

discussion concerning the impact of *Carpenter* on *Marcum* would be dicta and we decline to consider that issue in this case.

The crux of Mayfield's claim is that the probable cause affidavits were insufficient because they omitted a witness's suspect description, misstated another witness's suspect description, and failed to include context and facts surrounding observations of unidentified and unknown "informants" bearing on the reliability of their observations as well as their trustworthiness.

We consider the totality of the circumstances in evaluating the sufficiency of a search warrant affidavit. *Smith v. State*, 2018 OK CR 4, ¶ 5, 419 P.3d 257, 259. "Under the totality of the circumstances approach, the task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him [or her], 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." *Marshall v. State*, 2010 OK CR 8, ¶ 49, 232 P.3d 467, 479. In making his or her determination, the magistrate may draw reasonable inferences from

the material provided in the warrant application. *Illinois v. Gates,* 462 U.S. 213, 240 (1983). For a valid finding of probable cause, the affidavit must provide enough underlying facts and circumstances to enable the magistrate to independently judge the affiant's conclusion that evidence of a crime is located in the place requested to be searched. *Marshall,* 2010 OK CR 8, ¶ 49, 232 P.3d at 479. On appeal, we review a sufficiency challenge to an affidavit to ensure that the magistrate had a substantial basis for concluding that probable cause existed and afford the magistrate's finding of probable cause great deference. *Id.*

The facts set forth in the warrant's supporting affidavit, under the totality of the circumstances, established probable cause to believe Mayfield's phone contained information relative to the murders. Mayfield's complaints about the sufficiency of the affidavits mistakenly focuses on individual pieces of information in isolation which is contrary to the totality of the circumstances approach we follow. We find the affidavits, considering the information as a whole, provided reason not only to believe Mayfield's cellular phone contained evidence related to the homicides, but also supplied

probable cause to support a search of its "CSLI" information to determine Mayfield's whereabouts at pertinent times identified in the affidavit. Because Mayfield has not shown the affidavit failed to establish probable cause, i.e. error, no relief is required and this claim is denied. *See Hogan,* 2006 OK CR 19, ¶ 39, 139 P.3d at 923 ("The first step in plain error analysis is to determine whether error occurred.")

3.

Mayfield argues the district court erred by allowing four prosecution witnesses to refresh their recollections with police reports, memorializing their statements to police during the investigation. This claim has been preserved for review and we review the district court's rulings for an abuse of discretion and find none. *See Tryon v. State,* 2018 OK CR 20, ¶ 38, 423 P.3d 617, 632 (reviewing trial court's decision admitting evidence for abuse of discretion); *Reynolds v. State,* 1979 OK CR 118, ¶¶ 17-19, 617 P.2d 1357, 1362 (reviewing trial court's decision involving refreshment of a witness's recollection for an abuse of discretion). This Court finds an abuse of discretion only where the district court's decision is

unreasonable or arbitrary and was made without proper consideration of the relevant facts and law. *Bramlett v. State*, 2018 OK CR 19, ¶ 19, 422 P.3d 788, 795.

Title 12 O.S.2011, § 2612 governs refreshing a witness's recollection with a writing. That section places no restrictions on the origin of the record used to refresh the witness's recollection nor does it require that the writing be created by the witness. The record shows the officers involved in the investigation of this case prepared written reports containing summaries of witnesses's statements. This case went to trial four years after the investigation. Understandably, the recollection of several witnesses required refreshing. The State refreshed each witness's recollection with the portion of the police report concerning that particular witness's statement. Based on this record, we find no abuse of discretion in permitting the State to use police reports to refresh the recollection of these witnesses. This claim is denied.

4.

Mayfield argues the district court erred by denying his request to disclose the identity of a confidential witness. He asks the Court

to remand the matter to the district court for an in camera hearing to determine whether disclosure is necessary. We review the district court's ruling denying disclosure of the informant's identity for an abuse of discretion. *See Morgan v. State,* 1987 OK CR 139, ¶ 6, 738 P.2d 1373, 1374 (reviewing for abuse of discretion district court's denial of motion to compel disclosure of informant); *Hill v. State,* 1979 OK CR 2, ¶ 16, 589 P.2d 1073, 1077 (same).

The district court considered the defense's request for disclosure prior to receiving evidence. Defense counsel argued that the confidential witness was a "key player, both in search and seizure areas and on the merits" of the charges. Counsel contended that the confidential witness was the reason police focused in on Mayfield and that the witness was with police when Mayfield was arrested. The State disagreed and, without challenge, noted that the witness contacted police after investigators had already run Mayfield's cellular phone information and discovered Mayfield was the last person the victim had contact with by phone minutes before his death. Police had also located the car that matched the description of the car leaving the crime scene. The prosecutor stated that the

informant was not a witness to the crime, but had "specific information" though the witness had not been certified as reliable. The court denied Mayfield's request, finding an insufficient showing that the information provided by the informant formed the primary basis for Mayfield's arrest or of the searches in the case. The district court informed defense counsel that the matter could be re-urged during trial if warranted by the trial testimony and evidence. Mayfield has not cited to the record where the identity of the informant was the subject of further discussion.

Generally, the State has a privilege of nondisclosure of the identity of an informer with a few enumerated exceptions. 12 O.S.Supp.2020, § 2510(C)(1)(2)&(3). *See also Hill,* 1979 OK CR 2, ¶ 16, 589 P.2d at 1077 (stating privilege to withhold identity of informer applies unless the informer's identity is necessary and relevant to the defense). The Court in *Hill* observed that the mere possibility that an item of undisclosed information "might have helped the defense, or might have affected the outcome of the trial, does not establish materiality in the constitutional sense." *Hill,* 1979 OK CR 2, ¶ 16, 589 P.2d at 1077.

Mayfield relied on the third exception in Section 2510(C). Under Section 2510(C)(3), an exception to the State's privilege exists "[i]f information from an informant is relied upon to establish the legality of the means by which evidence was obtained and the court or the defendant is not satisfied that the information was received from an informant reasonably believed to be reliable or credible...." The district court found this exception inapplicable based upon the prosecutor's account that the investigation was zeroing in on Mayfield by the time, and independent of, the informant's contact with police. That ruling is supported by the record. Accordingly, we cannot find that the district court erred in finding that Mayfield failed to show that disclosure of the confidential informant's identity was necessary and relevant to his defense.[3] The informant's connection to the case was collateral to other utilized investigative measures, making disclosure of the informant's identity unnecessary. Because

[3] Mayfield contends, without any record citation, that the informant observed the offense of possession of a firearm, for which he was charged and convicted and thus the privilege of non-disclosure does not apply. Defense counsel did not make this claim below and we observe that Mayfield admitted he had a gun in his possession when arrested, making the identity of the informant with regard to that offense of no consequence.

there was no error, we deny Mayfield's claim, including his request to remand this matter for an evidentiary hearing.

5.

Mayfield argues his statutory rights under 22 O.S.2011, § 15 were violated when he was shackled during trial without a *Sanchez* hearing.[4] He contends the error was further exacerbated by his placement in the jury box at the opposite end of the courtroom from his attorneys.[5] He maintains his shackling undermined his presumption of innocence.

The plain text of Section 15 shows the prohibition against physical restraint or shackles applies only to jury trials. We so held in *Application of Mitchell,* 1964 OK CR 20, ¶ 7, 389 P.2d 647, 648 (rejecting petitioner's claim that he was improperly shackled before the court at sentencing). The Court stated that Section 15 applied "only to trials before a jury" and held that Section 15 had no application in a formal sentencing hearing conducted before a judge.

---

[4] *Sanchez v. State,* 2009 OK CR 31 ¶ 34, 223 P.3d 980, 994 (requiring district courts to make specific findings justifying the need for restraint before permitting a defendant to be tried before a jury in shackles or other forms of restraint).

[5] The record shows Mayfield was seated in the jury box for social distancing purposes because the trial was in July 2020 during the Covid-19 pandemic.

Mayfield opted for a bench trial making the requirements of Section 15 and *Sanchez* inapplicable. For these reasons, we find no error and deny this claim.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE CLIFFORD SMITH
DISTRICT JUDGE

APPEARANCES AT TRIAL

CORBIN BREWSTER
CHIEF PUBLIC DEFENDER
423 S. BOULDER AVE.
SUITE 300
TULSA, OK 74103

JOHN ECHOLS
ATTORNEY AT LAW
MANNING LAW FIRM
624 S. DENVER AVE.
SUITE 201
TULSA, OK 74119
COUNSEL FOR DEFENDANT

APPEARANCES ON APPEAL

STUART W. SOUTHERLAND
TULSA COUNTY PUBLIC
DEFENDER'S OFFICE
423 S. BOULDER AVE.
SUITE 300
TULSA, OK 74103
COUNSEL FOR APPELLANT

KENNETH ELMORE
BRETT MIZE
ASST. DISTRICT ATTORNEYS
TULSA COUNTY COURTHOUSE
500 S. DENVER AVENUE
TULSA, OK 74103
COUNSEL FOR STATE

JOHN M. O'CONNOR
ATTORNEY GENERAL
OF OKLAHOMA
JULIE PITTMAN
ASST. ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
COUNSEL FOR APPELLEE

OPINION BY: ROWLAND, P.J.
HUDSON, V.P.J.: Concur
LUMPKIN, J.: Concur
LEWIS, J.: Concur

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