STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0717

State of Minnesota,
Respondent,

vs.

Christopher Donique Williams,
Appellant.

Filed February 25, 2013
Affirmed
Rodenberg, Judge

Clay County District Court
File No. 14-CR-11-2591

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

Brian J. Melton, Clay County Attorney, Jenny M. Samarzja, Assistant County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant challenges his conviction of multiple offenses, arguing that the district court erred in not suppressing evidence resulting from the seizure of his cell phone at the time of his arrest. We affirm.

FACTS

On the evening of July 30, 2011, appellant Christopher Donique Williams pushed his way into the apartment of his ex-girlfriend, J.E., and violently sexually assaulted her. During the assault, appellant threatened J.E. with a box cutter and a scissors. J.E. eventually called the police from a neighboring apartment.

The detective investigating the assault learned from J.E. that appellant had used his cell phone to make an audio recording during the assault.[1] J.E. also told the detective that, in the days after this assault, she and her family were receiving numerous phone calls and text messages from appellant's cell phone.

Appellant was charged with two counts of first-degree criminal sexual conduct, two counts of first-degree burglary, second-degree assault, terroristic threats, domestic assault by strangulation, domestic assault, and false imprisonment. A warrant issued for his arrest on August 2, 2011.

On August 5, 2011, the investigating detective and other police officers went to the home of appellant's mother to execute the arrest warrant. Appellant's mother allowed

[1] At trial, J.E. testified that appellant took out his phone while sexually assaulting her and had her record a statement to the effect that the sexual activity was consensual. This cell phone recording was never introduced at trial.

the officers into her home, where the police found appellant lying on a bed and arrested him.

The arresting officer observed appellant's cell phone on the bed where he was lying. The phone was plugged in and charging.[2] The cell phone was within appellant's reach. The detective immediately recognized the cell phone as belonging to appellant, and appellant admitted that the phone was his. The detective seized the cell phone and turned it to "airplane mode" so that its contents could not be erased. The initial seizure of the phone was warrantless. The detective did not look through the contents of the phone at that time. Instead, he later obtained a warrant authorizing a search of the contents of the phone.

Defense counsel moved to suppress the evidence obtained from appellant's cell phone, arguing that the warrantless seizure of the cell phone violated appellant's Fourth Amendment right to be free from unreasonable searches and seizures. Following a contested omnibus hearing, the district court denied the motion to suppress.

The state presented at trial evidence obtained from appellant's cell phone to impeach various aspects of his testimony. The day after the assault, appellant sent his coworker a text message stating, "Bro, I hope this girl can forgive me, I don't know, I think she will. I don't want her to leave me, Bro, or run from this bulls--t I did. I was only just being in love, Bro, can you understand that?" A few days later, appellant received a text message from a friend stating that law enforcement was looking for

[2] One of the arresting police officers testified at trial that appellant was "basically lying on" the phone.

appellant. That same day, appellant's mother sent him a text message stating, "Christopher, you need to start making better decisions for real. . . . [Y]ou're getting yourself in a . . . hole that you won't be able to get out of. Why won't you just leave that girl alone?" Appellant responded via text message, stating, "I was tripping Mom, and I know what I did was wrong. You want to talk with her Mom, or better yet, I'll call her tomorrow." Appellant sent another text stating, "I'm just really upset at myself, I don't have no one to blame but myself, I was doing so good, Mom." The state also presented evidence from appellant's phone records indicating that he called J.E. 115 times during a ten-hour period a few days before the assault.

The jury found appellant guilty on all nine counts. This appeal followed.

D E C I S I O N

Appellant argues that the warrantless seizure of his cell phone violated his Fourth Amendment right to be free from unreasonable searches and seizures. The district court concluded that the seizure was justified both as a search incident to arrest and to prevent the destruction or loss of evidence because of the possibility that the cell phone contents could be deleted from a remote location.

In reviewing pretrial orders on motions to suppress evidence, we review a district court's findings of fact for clear error. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). However, we review the district court's legal conclusions de novo to determine whether the district court erred in failing to suppress the evidence. *Id.*

Our federal and state constitutions guarantee "the right of the people to be secure in their persons, houses, papers, and effects" from "unreasonable searches and seizures."

U.S. Const. amend. IV; *see also* Minn. Const. art. 1, § 10. The touchstone of the Fourth Amendment is reasonableness. *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 1947 (2006). Warrantless searches and seizures are unreasonable unless they fall within a recognized exception to the warrant requirement. *State v. Dickerson*, 481 N.W.2d 840, 842 (Minn. 1992). The state has the burden of establishing an exception to the warrant requirement, and unless the state satisfies that burden, evidence obtained through an unlawful search or seizure is inadmissible. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007); *State v. Barajas*, 817 N.W.2d 204, 217 (Minn. App. 2012), *review denied* (Minn. Oct. 16, 2012).

Under the facts of this case as found by the district court, the state has established that the seizure of the cell phone was justified under two warrant exceptions: plain-view and search and seizure incident to arrest.

I.

The state persuasively argues that, in addition to being justified for the reasons found by the district court, the seizure of the phone was justified by the plain-view exception to the warrant requirement.[3] This exception permits the warrantless seizure of incriminating items in plain view when police are lawfully in a location to see them. *State v. Smith*, 261 N.W.2d 349, 351 (Minn. 1977). Thus, if police officers perceive a suspicious object while lawfully in an area with access to the object, "they may seize it

[3] The state did not specifically raise this argument below, but only broadly argued that the seizure was justified incident to arrest. We may review and uphold the validity of a search on grounds other than those addressed by the district court. *State v. Bauman*, 586 N.W.2d 416, 422 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999). We elect to do so.

immediately." *Texas v. Brown*, 460 U.S. 730, 739, 103 S. Ct. 1535, 1542 (1983). The rationale for this exception is to avoid the possible destruction of evidence that might occur if the officers were required to obtain a warrant for such plainly incriminating evidence even though they already had a Fourth Amendment justification for viewing it. *Smith*, 261 N.W.2d at 351.

The plain-view exception requires that the state must satisfy three elements: (1) the police officer must legitimately be in a position to view the object; (2) the officer must have a lawful right of access to the object; and (3) the object's incriminating nature must be immediately apparent. *Dickerson*, 481 N.W.2d at 844–45. In this case, it is undisputed that the police officers were lawfully in appellant's bedroom pursuant to a warrant for his arrest. The cell phone was readily visible on the bed where appellant was lying. Thus, the first and second elements have been satisfied.

The third element requires that the police officers have probable cause to believe the items in plain view are incriminating. *State v. Zanter*, 535 N.W.2d 624, 631 (Minn. 1995). There must be a nexus between the items seized and criminal behavior and it is sufficient that the items are "immediately and facially recognized as evidence which would connect" the arrestee to the crime. *Smith*, 261 N.W.2d at 351 (quotations omitted). In forming probable cause, the officer may rely on any background information which "casts light on the nature of the property." *Zanter*, 535 N.W.2d at 632 (quotation omitted). The question is whether "the facts available to the officer would warrant a man of reasonable caution in the belief that [the seized] items may be . . . useful as evidence of a crime." *Brown*, 460 U.S. at 742, 103 S. Ct. at 1543 (quotation omitted).

The detective testified that he knew that, based on his prior investigation, the cell phone would contain evidence of the crime for which appellant was being arrested. Specifically, J.E. told the officer that appellant had used the cell phone to make an audio recording during the assault. The detective also knew that appellant was alleged to have used the cell phone to repeatedly call and text J.E. and her family. At the omnibus hearing, the detective testified that he immediately recognized the cell phone as the one belonging to appellant, and appellant admitted ownership of the phone. Thus, the cell phone was immediately and facially recognizable as evidence connecting appellant to the assault. *See Smith*, 261 N.W.2d at 351.

The seizure of the cell phone was amply justified under the plain-view exception to the warrant requirement. The district court therefore did not err in denying appellant's motion to suppress the cell phone evidence.

II.

We also conclude that the warrantless seizure of appellant's cell phone was justified as incident to appellant's arrest. As noted above, police were in possession of a warrant directing that appellant be arrested. The phone was seized at the time of appellant's arrest.

A search incident to a lawful arrest does not require a warrant. *Preston v. United States*, 376 U.S. 364, 367, 84 S. Ct. 881, 883 (1964). "Unquestionably, when a person is lawfully arrested, the police have the right, without a search warrant, to make a contemporaneous search of the person of the accused for weapons or for the fruits of or implements used to commit the crime." *Id.* at 367, 84 S. Ct. at 883. The search may

extend not only to the arrestee's person, but also to "the area into which an arrestee might reach in order to grab a weapon or evidentiary items." *Chimel v. California*, 395 U.S. 752, 762–63, 89 S. Ct. 2034, 2040 (1969). The rationale for this rule includes the need to prevent the destruction or concealment of evidence that is within the arrestee's immediate reach or control. *Preston*, 376 U.S. at 367, 84 S. Ct. at 883; *see also United States v. Robinson*, 414 U.S. 218, 234, 94 S. Ct. 467, 476 (1973) ("The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial.").

Here, appellant does not dispute that his arrest was lawful. Thus, the police officers were lawfully entitled to make a contemporaneous search or seizure of the evidentiary items within appellant's immediate control. *See Preston*, 376 U.S. at 367, 84 S. Ct. at 883.

The cell phone was within appellant's immediate reach. The detective testified at the omnibus hearing that the cell phone was lying on the bed where appellant was located. Appellant himself testified that the cell phone was within his reach. The district court accordingly found that the cell phone was in an area under appellant's "exclusive use and control," and that it was in his constructive possession.

Although the cell phone was not a weapon, the record demonstrates that police knew that the phone would likely contain evidence of the assault. The cell phone was therefore evidence of the crime, and the detective testified that he seized it because of its evidentiary value.

Appellant argues that the cell phone was not *destructible* evidence because the detective testified only that it would be "difficult to retrieve" deleted information, but not impossible to do so. On cross-examination, however, the detective denied that deleted information would only be "harder to retrieve . . . but not impossible," stating, "That's not what I've been told." The detective testified that cell phone data may be erased from remote locations, and even from a jail phone. Thus, the detective seized the phone and placed it in "airplane mode" in order to secure its contents from being destroyed.

The search-incident-to-arrest exception is not limited to irretrievably destructible evidence.[4] The U.S. Supreme Court has recognized that the doctrine permits the seizure of "the fruits of or implements used to commit the crime." *Preston*, 376 U.S. at 367, 84 S. Ct. at 883. Police officers may seize such evidence "in order to prevent *its concealment* or destruction." *Chimel*, 395 U.S. at 763, 89 S. Ct. at 2040 (emphasis added). Moreover, police officers may reasonably expect the arrestee to "attempt to destroy any incriminating evidence" in his possession or within his reach at the time of

[4] In raising the destructible-evidence argument, appellant appears to be referencing the exigency exception to the warrant requirement. Under that exception, easily destructible or "evanescent evidence" may be seized without a warrant due to its fleeting nature. *See Cupp v. Murphy*, 412 U.S. 291, 296, 93 S. Ct. 2000, 2004 (1973) (upholding the justification for a limited intrusion to obtain scrapings beneath the suspect's fingernails as necessary to preserve "highly evanescent evidence"); *State v. Richards*, 552 N.W.2d 197, 203 (Minn. 1996) (observing that a warrantless search is permissible when "the delay necessary to obtain a warrant might result in the loss or destruction of the evidence"). Here, the district court found that the destructible nature of the cell phone data provided an "additional justification" for the seizure, but it did not expressly reference the exigency exception. It appears that no binding caselaw addresses whether cell phone data constitutes "evanescent evidence" within the meaning of the exigency exception. Because the search-incident-to-arrest and plain-view exceptions amply justify the seizure in this case, the panel need not reach that apparent issue of first impression.

arrest. *Cupp*, 412 U.S. at 295, 93 S. Ct. at 2003–04. Thus, the detective in this case was justified in his belief that the cell phone data could have been readily destroyed if the phone was not immediately secured.

The record establishes that the seizure of appellant's cell phone was justified as part of a search incident to arrest. The police knew that the cell phone would likely contain evidence of the crime and seizure was necessary to prevent its concealment or destruction. Accordingly, the district court did not err in denying appellant's motion to suppress the cell phone evidence as a seizure incident to appellant's arrest.

Affirmed.