STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1739

State of Minnesota,
Respondent,

vs.

Justin Lee Ironhawk,
Appellant.

Filed December 24, 2018
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-16-2763

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

In this direct appeal from his conviction for first-degree criminal sexual conduct, appellant Justin Lee Ironhawk challenges the district court's denial of his pretrial motion

to suppress evidence on the grounds that the police searched his cell phone without a warrant in violation of the Fourth Amendment and the corresponding section of the Minnesota Constitution. Because the district court did not err in determining that, even if the phone were subject to an unconstitutional search, an exception to the exclusionary rule—the independent-source doctrine—applies, we affirm.

FACTS

Late in the evening of January 16, 2016, C.S. went to the apartment of Ironhawk's girlfriend to borrow a cigarette from Ironhawk. Ironhawk was drinking at the time, and C.S. joined him. When C.S. was going to leave, Ironhawk told her that she could stay in the basement. They both went to the basement and kept drinking. C.S. did not remember falling asleep, but she found herself on the basement floor when she awoke the next morning. Ironhawk was lying next to her, and they were both fully clothed. A few moments later, Ironhawk's girlfriend entered the basement, angry at seeing C.S. there. She yelled at C.S. to leave immediately and struck C.S. with a liquor bottle. Hurriedly running out of the apartment, C.S. mistakenly took Ironhawk's cell phone, which was lying on the floor. C.S. headed to her grandmother's house.

After she got to her grandmother's house, C.S. plugged the cell phone into a charger and realized that it was not hers. The phone, unlike hers, was locked with a passcode. Believing that she had accidently taken Ironhawk's phone and left hers at the apartment, C.S. went back out to retrieve her phone from Ironhawk, but she was unable to locate her phone. C.S. returned to her grandmother's house. She tried to unlock Ironhawk's phone by

guessing the passcode. She put in a four-digit number affiliated with a local gang that she knew Ironhawk "represented," and the phone unlocked.

In the cell phone, C.S. found videos that had been recorded in the early morning hours of that day. She knew she had been in the basement with Ironhawk at the time the videos were recorded but did not remember any filming. In the videos, C.S. was lying on the basement floor, unconscious and naked below her waist. Different objects, including a broomstick handle and a cucumber, were being used to penetrate her both anally and vaginally. C.S. recognized Ironhawk as the person using the objects because the videos showed his hand with the word "Ironhawk" tattooed on the knuckles. Ironhawk was also masturbating in the videos. C.S. was in shock and disgusted. She stopped watching the videos and caused her niece to call the police.

Officers Jennifer Merrill and Ryan Carrero were dispatched in response. From the 911 call, they knew that they were responding to a report of rape and that the victim had a video recording of the crime. Once the officers arrived, C.S. told them what happened starting from when she went to the apartment. But, at the point in her narrative in which she discovered the videos, she found it emotionally hard to explain further. She asked the officers to watch the videos for themselves.

C.S. pulled up one of the videos, started playing it, and handed the phone to the officers for their viewing. The video, however, was too dark to see anything. The officers handed the phone back to C.S., telling her the video was too dark. C.S. accessed a second video in which the officers could see a woman lying unconscious and naked from the waist down. From this point, C.S. forwarded through the video and brought up various portions

of it for the officers to watch. The officers held the phone at times, while, at other times, C.S. would take back the phone and forward to a specific point in the video. The officers saw in the video C.S., naked below the waist, being penetrated with different objects, and a hand with distinctive tattoos manipulating the objects. One of the officers testified that C.S. also showed them a picture of a man on the phone, who she said was her assailant and whose hand had identical tattoos. The officers seized the phone and referred C.S. to Hennepin County Medical Center for a sexual-assault examination.

The police applied for a warrant to search Ironhawk's cell phone. The supporting affidavit detailed what Officers Merrill and Carrero saw in the video. It also explained the events leading up to the officers' viewing of the video, including that C.S. told the officers that she believed she had been sexually assaulted overnight; that C.S. drank alcohol with Ironhawk the night before and was awakened by a commotion in the morning; that, in her haste to leave, C.S. grabbed a phone that she later discovered to be Ironhawk's; that C.S. unlocked the phone by guessing the passcode; that C.S. found several videos recorded in the early morning hours when she had been sleeping or passed out at the place of the alleged assault; and that C.S. began to cry as she reached the part of the description of events when she had viewed the videos and handed the phone to the officers to watch for themselves. The warrant was issued and executed.

Ironhawk was charged with first-degree criminal sexual conduct. He filed a pretrial motion to suppress evidence, arguing that Officers Merrill and Carrero searched his cell phone without a warrant in violation of the Fourth Amendment when they watched the videos at C.S.'s request. The district court denied the motion on the grounds that, under the

prior-private-search doctrine, the police viewing of the videos was not a search under the Fourth Amendment, and that, even if it was a search, the independent-source exception to the exclusionary rule applied. Ironhawk requested reconsideration. After an evidentiary hearing, the district court issued another order denying Ironhawk's motion to suppress. Following a bench trial, Ironhawk was found guilty and was subsequently convicted and sentenced.

This appeal follows.

D E C I S I O N

"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). Also, "an error in admitting evidence, even if it is of constitutional magnitude, is a trial error that requires an assessment of prejudice as a precondition to granting relief." *State v. Horst*, 880 N.W.2d 24, 36-37 (Minn. 2016).

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10.[1] A search for purposes of the Fourth

[1] Article I, Section 10 of the Minnesota Constitution is "textually identical" to the Fourth Amendment. *State v. Carter*, 697 N.W.2d 199, 209 (Minn. 2005). Because of the textual similarity, the Minnesota Supreme Court does not "construe [the] state constitution as providing more protection for individual rights than does the federal constitution unless there is a principled basis to do so." *State v. Edstrom*, 916 N.W.2d 512, 523 (Minn. 2018) (quotation omitted). We see no such principled basis in this case.

Amendment occurs "when the government intrudes upon a person's reasonable expectation of privacy." *Edstrom*, 916 N.W.2d at 517. And searches are presumptively unreasonable when conducted without warrants. *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). The exclusionary rule bars admission of evidence obtained directly or indirectly due to an unreasonable search. *See State v. Lieberg*, 553 N.W.2d 51, 55 (Minn. App. 1996) (citing *Murray v. United States*, 487 U.S. 533, 536-37, 108 S. Ct. 2529, 2533 (1988)).

The exclusionary rule is not absolute, however. It does not apply if the state shows "that the evidence was obtained 'by means sufficiently distinguishable to be purged of the primary taint.'" *State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001) (quoting *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963)), *review denied* (Minn. Dec. 11, 2001). The independent-source doctrine outlines one way in which the taint of a Fourth Amendment violation is purged. *Lieberg*, 553 N.W.2d at 55. The doctrine allows "introduction of otherwise illegally-seized evidence if the police could have retrieved it on the basis of information obtained independent of their illegal activity." *State v. Richards*, 552 N.W.2d 197, 203 n.2 (Minn. 1996).

The district court found that, even if the cell phone was the subject of an unconstitutional warrantless search, the exclusionary rule did not apply under the independent-source doctrine. We begin with that issue.

The district court decided that the search of Ironhawk's phone pursuant to the search warrant, not a previous warrantless search, "was in fact a genuinely independent source of" the evidence obtained. *Murray v. United States*, 487 U.S. 533, 542, 108 S. Ct. 2529, 2536 (1988). When an affidavit in support of a warrant application includes information that was

obtained illegally, the district court must engage in a two-pronged analysis to determine whether the independent-source doctrine applies. *Lieberg*, 553 N.W.2d at 55. The court must decide "(1) whether the decision of the issuing magistrate was 'affected' by the tainted information, and (2) whether that information prompted law enforcement officials to seek the warrant." *Id.* We address each prong in turn.

The first prong of the independent-source analysis may be performed "by determining whether a sanitized affidavit would establish probable cause." *Id.* A "sanitized affidavit" is a redacted version of a warrant affidavit, cutting out any unlawfully obtained information. The district court concluded that a sanitized affidavit—one that excludes the officers' description of the contents of the videos they saw—would establish probable cause for a warrant to search Ironhawk's cell phone.

"When reviewing a determination of probable cause, our function is only to decide whether the issuing court had a substantial basis for its decision." *Id.* A substantial basis in this context means a "fair probability," given the totality of the circumstances, "that contraband or evidence of a crime will be found in a particular place." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). Ironhawk argues that no such probability can be ascertained from the sanitized affidavit because the sanitized affidavit does not link the sexual assault to Ironhawk's phone.

According to the chain of events detailed in the sanitized affidavit, C.S. told responding officers the following: (1) C.S. believed that she was sexually assaulted overnight at Ironhawk's girlfriend's residence; (2) C.S. and Ironhawk had been drinking alcohol together at the residence during the night and she had slept over in the basement at

Ironhawk's request; (3) she did not remember anything between 3:30 a.m. and when she awoke at 7:00 a.m.; (4) when she awoke, she was fully clothed; (5) Ironhawk's girlfriend started assaulting C.S., and C.S. mistakenly grabbed someone else's cell phone as she fled; (6) after she realized her error, she attempted to retrieve her phone and purse, but only recovered her purse; (7) later in the day, C.S. tried to use the cell phone, but it was locked, so she guessed a code related to a gang she believed Ironhawk was part of and it opened; and (8) C.S. then noticed there were videos on the phone from around 4:55 a.m. that morning, which was when she was passed out or asleep. The sanitized affidavit further states that "as [C.S.] told the responding officers about the incident she began to cry as she reached the part of the description of events when she looked at the videos. [C.S] then handed the phone to the responding officers and asked them to watch the videos."

While the sanitized affidavit does not explicitly state that the videos C.S. found in the cell phone were recordings of a sexual assault, the only reasonable inference is that the videos on the phone depicted the sexual assault. *Cf. State v. Yarbrough*, 828 N.W.2d 489, 491 (Minn. App. 2013) ("[I]ssuing judge[s] may draw common-sense and reasonable inferences from the facts and circumstances set forth in an affidavit.") (quotation omitted). C.S.'s belief she had been sexually assaulted, her description of drinking with Ironhawk and waking up next to him, her account of accessing the phone and finding videos from when she was passed out or asleep, and her strong emotional reaction when she discussed the videos and asked the police to watch them, together, established more than a "fair probability" that video evidence of sexual assault was in Ironhawk's cell phone. The district court did not err in deciding that the first prong of the *Lieberg* standard was met.

Under the second prong of *Lieberg*, the district court must decide whether "the police would have sought a warrant even in the absence of the information generated by the unlawful search." *Lieberg*, 553 N.W.2d at 58. This is a factual determination for the district court. *Id.* We do not "set aside [a district court's findings of fact] unless clearly erroneous." *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008). Findings of fact are not clearly erroneous if there is "reasonable evidence to support the district court's findings of fact." *Id.* (quotation omitted).

In this case, the district court decided that the police would have applied for a search warrant for the phone even without having watched the videos themselves, for the same reasons it found probable cause based on the sanitized affidavit. C.S.'s account of the events, including taking Ironhawk's phone; her belief she was sexually assaulted; and her emotional reaction when she was about to describe what she saw on the videos all led the district court to find that "the police would have obtained a warrant to search Ironhawk's phone." C.S.'s words and actions strongly suggested to the officers that there was evidence of sexual assault in the phone. The district court did not make a clear error in finding that the police would have sought a search warrant for Ironhawk's phone even without the allegedly unconstitutional search. Because the district court did not err in finding that both prongs of the *Lieberg* analysis are satisfied, it did not err in concluding that the independent-source doctrine applies.

Because the independent-source doctrine applies, we need not address whether the district court erred in deciding that there was no Fourth Amendment violation under the prior-private-search doctrine. Even if the district court erred in that regard, the error did

not prejudice Ironhawk because the exclusionary rule did not mandate suppression of the evidence.

Affirmed.