STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2061

Cynthia Padilla,
Respondent,

vs.

Minneapolis Police Department,
Appellant.

Filed August 12, 2019
Remanded
Hooten, Judge
Concurring in part, dissenting in part, Johnson, Judge

Hennepin County District Court
File No. 27-CV-18-11126

Marnie E. Fearon, Gray, Plant, Mooty, Mooty & Bennett, P.A., Minneapolis, Minnesota; and

Lauren M. Weber, Felhaber Larson, P.A., Minneapolis, Minnesota (for respondent)

Susan L. Segal, Minneapolis City Attorney, Sarah C.S. McLaren, Assistant City Attorney, Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly, Judge.

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

HOOTEN, Judge

The district court granted respondent's petition under Minn. Stat. § 626.04 (2018) for the return of her cellphone. Appellant police department challenges the order, asserting

that it qualified for an exception to the statute because the cellphone could be evidence in a future matter and that respondent was required to proceed under Minn. Stat. § 590.01 (2018) rather than Minn. Stat. § 626.04. We remand for further findings.

FACTS

In October 2008, an 18 year old was killed and another teen was wounded in a drive-by shooting in Minneapolis. Eyewitnesses observed two men, one driving the vehicle and the other firing a gun. Edgar Barrientos-Quintana was suspected of being the shooter, and he was arrested approximately two weeks after the shooting. Among the items confiscated by police after Barrientos-Quintana's arrest was a Nokia-model cellphone. Although Barrientos-Quintana used the cellphone, records showed that his sister, respondent Cynthia Padilla, was the one who subscribed for the cellphone service through its carrier. And it is undisputed that Padilla is the owner of the cellphone. Police used a program to download the images, contacts, and text messages from the phone. Barrientos-Quintana went to trial on first-degree murder charges, and the cellphone, along with cellphone records, landline records, cell tower records, text messages, and location data were admitted into evidence at trial. Barrientos-Quintana was convicted of first-degree murder in June 2009, and his conviction was affirmed by the Minnesota Supreme Court in September 2010. *State v. Barrientos-Quintana*, 787 N.W.2d 603 (Minn. 2010). He later filed a petition for postconviction relief which was denied in January 2013.

In 2016, appellant Minneapolis Police Department allowed the Innocence Project to take pictures of the cellphone, which was still in appellant's possession. In July 2018, Padilla petitioned for the return of the cellphone, its sim card, and its battery under Minn.

Stat. § 626.04. Appellant opposed the petition, arguing that it required the cellphone as part of its ongoing investigation to find the driver of the vehicle used in the shooting, so that he too could be prosecuted. Following a hearing on the matter and supplemental briefing, the district court granted Padilla's petition in October 2018. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred in granting Padilla's petition for the return of seized property under Minn. Stat. § 626.04 and that the district court misinterpreted the statute in the process. We review the district court's findings of fact for clear error and its conclusions of law de novo. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). Reviewing for clear error requires us to examine the record to see if it contains reasonable evidence that supports the district court's findings. *Id.* In doing so, we must "view the evidence in the light most favorable to the verdict," and only overturn a finding when we are "left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted). In short, we afford "great deference" to a district court's findings of fact. *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

At the heart of this appeal is the question of how to properly apply Minn. Stat. § 626.04. The statute deals with the keeping and disposal of property seized by police officers. It explains that property seized by an officer "shall be safely kept by direction of court as long as necessary for the purpose of being produced as evidence on any trial." Minn. Stat. § 626.04(a). And "[a]fter the trial for which the property was being held as potential evidence, and the expiration date for all associated appeals, the property or thing shall, unless otherwise subject to lawful detention, be returned to its owner." Minn. Stat.

§ 626.04(b). The statute allows the owner of the property to file a petition to have the property returned, and it provides for a hearing on the issue. Minn. Stat. § 626.04(a). After the hearing, the district court shall not order the return of the property if it finds that: "(1) the property is being held in good faith as potential evidence in any matter, charged or uncharged; (2) the property may be subject to forfeiture proceedings; (3) the property is contraband or may contain contraband; or (4) the property is subject to other lawful retention." Minn. Stat. § 626.04(a).

Appellant makes three arguments why the district court erred in granting Padilla's petition. Appellant first argues that the district court should have denied Padilla's petition because the property was being held as potential evidence against the driver in the shooting. In making this argument, appellant is invoking the first of the four circumstances in which a district court must not order the return of property—when the district court finds that the evidence is being held in good faith as potential evidence in a matter, whether charged or uncharged. Minn. Stat. § 626.04(a)(1). The district court concluded that, "The facts of this case do not meet the requirements of the exception in Section 626.04(a)(1)."

To determine whether the district court erred by not concluding that the good-faith exception applied, it is necessary to clarify what is required to meet the exception. By the very wording of the statute, for this exception to apply the district court must affirmatively find (1) that the property is "potential evidence in any matter, charged or uncharged" and (2) that "the property is being held *in good faith*." Minn. Stat. § 626.04(a)(1) (emphasis added). It is clear from the record that there is an uncharged matter—the prosecution of

the driver—for which the evidence could be held, so appellant has met the first prong of the exception.

What is less clear is whether appellant met the second prong of the exception. In its order, the district court gave three reasons why appellant had not demonstrated that it met the requirements of the good-faith exception. First, the cellphone had been seized ten years prior to the district court's order, and this length of time, while not dispositive, undermined appellant's position that it needed the cellphone for an ongoing investigation. Second, the purpose of seizing the property—Barrientos-Quintana's prosecution—expired long ago. And third, appellant essentially wants to keep the cellphone indefinitely, as evidenced by: (a) the police's concession that it had "been unable to develop a case sufficient for submission" to the county attorney's office; (b) the fact that there was no plan to develop the case further; and (c) the fact that there was "no active or even remotely active investigation." While these findings do appear to be relevant to the question of good faith and are supported by the record,[1] the district court never made an explicit finding on the question of good faith. Accordingly, we, as a reviewing court, remand this matter back to the district court for a determination of whether the cellphone was being held in good faith.[2]

[1] The first two findings are obvious from the procedural history of the case. The third finding is supported by the hearing testimony from the officer assigned to the homicide.

[2] We also note that appellant compares this case to *State v. Ture*, 632 N.W.2d 621, 629–30 (Minn. 2001), in which a police department was allowed to retain evidence for 22 years, and argues that the district court erred in considering that ten years had passed since the drive-by shooting. The district court made it clear that the ten-year timeframe was not dispositive; it was simply a part of the district court's analysis of whether appellant met the requirements of the exception. We see nothing problematic with the district court's reasoning on this point. But we take the opportunity to emphasize that there is no time limit on the retention of evidence.

Appellant next argues that because Padilla admitted to wanting to conduct further forensic testing on the cellphone and that this might lead to another petition for postconviction relief from her brother, it should be allowed to hold onto the cellphone "as potential evidence in any matter" for the potential postconviction proceeding. Minn. Stat. § 626.04(a)(1). But this argument runs into two problems.

First, appellant's reading of the potential-evidence-in-any-matter exception ignores the language of the rest of the statute. We are required to "read a particular provision in context with other provisions of the same statute." *ILHC of Eagan, LLC v. Cty. of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005). The very first sentence of section 626.04 makes it clear that property may be held onto as evidence in "any trial." Minn. Stat. § 626.04(a). The second paragraph of section 626.04 then makes it clear that the statute specifically contemplates what happens after a trial by allowing for the evidence to be held onto until "the expiration date for all associated appeals." Minn. Stat. § 626.04(b). It is in this context that we must read the potential-evidence-in-any-matter exception which the state invoked.

The exception itself only allows for the continued retention of property if "the property is being held in good faith as potential evidence in any matter, *charged or uncharged*." Minn. Stat. § 626.04(a)(1) (emphasis added). The word "matter" is modified by the phrase "charged or uncharged." When read in the context of the first sentence of the statute, which allows for property to be held onto as evidence in "any trial," it is evident that "matter, charged or uncharged" refers to potential criminal prosecutions. Since a postconviction petition is civil in nature, and not criminal, *Deegan v. State*, 711 N.W.2d

89, 96 (Minn. 2006), it cannot be accurately described as a potential criminal prosecution.[3] The second paragraph's specific allowance of the retention of evidence for appeals—without any mention of postconviction petitions—reinforces our conclusion that "matter, charged or uncharged" refers to potential criminal prosecutions and does not include postconviction petitions. Had the legislature intended for the statute to cover postconviction proceedings, it could have done so in the same manner that it did for appeals.

The second problem is that appellant's reading of the statute would essentially render it meaningless. Unlike direct appeals, which expire, a defendant can bring a petition for postconviction relief at any time provided he can establish the existence of newly discovered evidence. Minn. Stat. § 590.01, subd. 4(b)(2). Adopting appellant's reading of Minn. Stat. § 626.04 would mean that the state would never have to relinquish evidence to its rightful owner because the evidence could, hypothetically, be forensically tested and potentially lead to a subsequent petition for postconviction relief on the basis of newly discovered evidence. Appellant's second argument fails.

Finally, appellant argues that Padilla is proceeding under the wrong statute. Appellant claims that Padilla should have brought a motion for forensic testing under Minn. Stat. § 590.01, subd. 1a, instead of using Minn. Stat. § 626.04 to recover the cellphone.

[3] It is also important to note that a postconviction petition cannot be said to be a trial. A trial is defined as a "formal judicial examination of evidence and determination of legal claims in an adversary proceeding." *Black's Law Dictionary*, 1735 (10th ed. 2014). But the resolution of a postconviction petition does not require the same formality as a trial. For example, a postconviction petition may be decided without a hearing, and affidavits can be used in lieu of testimony. Minn. Stat. § 590.04, subd. 3 (2018).

But Padilla never asked the district court to order forensic testing. If she had, then appellant might be correct that Padilla would be required to bring a motion under section 590.01. And while appellant focuses on Padilla's "intention for gaining possession of the Cell Phone," section 626.04 is silent as to the impact of a petitioner's intentions. Appellant points to no authority explaining why a petitioner's property rights should be limited by the fact that she wishes to have her property undergo forensic testing.

This argument is also a red herring since Padilla does not have standing to bring a motion for testing under the statute. *See* Minn. Stat. § 590.01, subd. 1a(a) (stating that a "person convicted of a crime" is allowed to make this kind of motion). Barrientos-Quintana is the one who would have to make this motion before the district court. Moreover, the statute only allows for "fingerprint or forensic DNA testing," *id.*, and it appears from the record that the cellphone would undergo a different sort of testing, making the statute inapplicable. Accordingly, appellant's third argument also fails.

Because the district court did not make an explicit finding on the question of good faith regarding a potential prosecution of the driver, we remand to the district court for further findings.

Remanded.

JOHNSON, Judge (concurring in part, dissenting in part)

A police department may lawfully hold seized property "in good faith as potential evidence in any matter, charged or uncharged." Minn. Stat. § 626.04(a)(1) (twelfth sentence). The City of Minneapolis, on behalf of its police department, has asserted two reasons for holding petitioner's cellular telephone as potential evidence. I agree with the opinion of the court insofar as it remands for a finding as to whether the city is holding the telephone in good faith or bad faith with respect to the city's first reason. I respectfully disagree with the opinion of the court insofar as it concludes that the city's second reason is invalid as a matter of law. I agree with the opinion of the court insofar as it rejects the city's additional argument that petitioner's rights under section 626.04 are superseded by chapter 590. Therefore, I concur in part and dissent in part.

A.

The primary issue for the district court was whether the city is holding petitioner's telephone "in good faith as potential evidence" in an as-yet-uncharged prosecution of the driver of the vehicle from which petitioner's brother shot and killed a person. *See* Minn. Stat. § 626.04(a)(1). The statute requires a district court to make a finding as to whether property is being held in good faith. *See* Minn. Stat. § 626.04(b) (first sentence) ("The court shall make findings on each of these issues as part of its order."). The district court's order notes that the city argued "that the Court should not order the return of the cell phone because the property 'is being held in good faith as potential evidence' against a potential accomplice that may or may not have been involved in Mr. Barrientos-Quintana's criminal matter." Yet the district court did not make a finding as to whether the city is holding the

telephone in good faith or in bad faith. The district court erred by not making a finding of fact that it was required to make. *See id.*

Instead of making a finding of good faith or bad faith, the district court made three other findings: that the murder occurred more than ten years ago, that the prosecution of petitioner's brother has reached final judgment, and that the city presently is not actively performing an investigation into the identity of the driver of the vehicle from which petitioner's brother shot and killed a person. This court's opinion states that the district court's three findings "appear to be relevant to the question of good faith." *Supra* at 5. I respectfully disagree. None of the district court's three findings is relevant to the exception in section 626.04(a)(1), which does not refer to the length of time since a crime was committed, whether a prosecution has reached final judgment, or whether an investigation presently is being actively performed. The supreme court has defined the term "good faith" to mean "'[a] state of mind consisting in (1) honesty in belief or purpose [or] (2) faithfulness to one's duty or obligation.'" *J.E.B. v. Danks*, 785 N.W.2d 741, 749 (Minn. 2010) (quoting *Black's Law Dictionary* 762 (9th ed. 2009)). Sergeant Gaiters, an officer in the homicide unit, executed an affidavit in which he described the unit's general approach as follows:

> In homicide cases, MPD obtains leads or additional information over time. When a person is arrested and in custody, and MPD investigators believe that the person may have information related to the investigation, MPD investigators will attempt to question that person. Over time, a homicide could be solved after exploring leads and talking to new witnesses. This approach has been used in the past with other homicide cases, sometimes resulting in sufficient leads

> to make an arrest. There is no statute of limitations for a homicide.

With respect to the murder at issue in this case, he stated, "Information was developed as to a potential suspect as the driver, but at this time MPD has been unable to develop a case sufficient for submission to the Hennepin County Attorney's Office." At the hearing, Sergeant Gaiters testified, "We're currently waiting for something to develop, which typically does, in homicide cases over the years[,] that will at least corroborate information where we can resubmit it to the county attorney's office." On remand, the district court should determine whether the evidence indicates that Sergeant Gaiters and other the persons in the city's police department are honest in their belief or purpose, or faithful to their duty or obligation, in holding the telephone as potential evidence in the uncharged matter of the investigation into the identity of the driver of the vehicle from which petitioner's brother shot and killed a person. The district court may find it helpful to elicit additional information from the officer on an *ex parte* basis, as permitted by statute and suggested by the city's attorney at the hearing. *See* Minn. Stat. § 626.04(a) (ninth, tenth, and eleventh sentences).

This court's opinion also states that there is "nothing problematic" with the district court's consideration of the fact that the murder occurred more than 10 years ago. *Supra* at 5 n.2. Again, I respectfully disagree. To the extent that the district court considered the length of time that the city has been holding the telephone as a factor favoring petitioner, the district court's reasoning is inconsistent with the supreme court's opinion in *State v. Ture*, 632 N.W.2d 621 (Minn. 2001). In that case, police seized evidence from a person's

car four days after a quadruple murder and held the evidence for more than 20 years until they obtained additional evidence, which led to the person's indictment on four counts of first-degree murder. *Id.* at 624-26. Before trial, the defendant moved to suppress the evidence on the ground that police had unlawfully held the evidence for an unusually long period of time. *Id.* at 625-26. The supreme court concluded that the district court did not err by denying the defendant's motion. *Id.* at 629-30 (citing Minn. Stat. § 626.04 (1978)). The supreme court reasoned, "because Ture continued to be a suspect in the . . . murders, . . . but had not been tried for any of them, retention of the items for the purpose of introducing them at a future trial was proper." *Id.* at 630. Petitioner is correct in asserting that the *Ture* court applied a prior version of section 626.04, which did not include the four clauses in the twelfth sentence of section 626.04(a), including the "good faith" language on which the city now relies. *See id.* (citing Minn. Stat. § 626.04 (1978)). Regardless, the *Ture* opinion focused on the first sentence of the statute, which is essentially unchanged. *See id.* at 630 n.2; *see also* 2005 Minn. Laws ch. 136, art. 14, § 17, at 1099-1100. The first sentence of the statute states that seized property "shall be safely kept . . . *as long as necessary* for the purpose of being produced as evidence on any trial." Minn. Stat. § 626.04(a) (emphasis added). Despite the amendment of the statute, the *Ture* opinion demonstrates that section 626.04 imposes no limit on the length of time that police may hold seized property as potential evidence in an investigation of a crime for which there is no statute of limitations. *Cf. Department of Pub. Safety v. $6,276 in U.S. Currency*, 478 N.W.2d 333, 337 (Minn. App. 1991) (concluding that owner of cash was entitled to its return under section 626.04 after criminal trial and expiration of statute of limitations for

civil-forfeiture action), *review denied* (Minn. Jan. 30, 1992). Given the supreme court's approval of the police conduct in *Ture* over a period of more than 20 years, any finding of bad faith based on the fact that the murder in this case occurred more than 10 years ago would be clearly erroneous.

B.

The city also argued to the district court that it should be permitted to hold petitioner's telephone as potential evidence in light of petitioner's attorney's voluntary disclosure that petitioner's brother intends to file a post-conviction action and hopes to extract electronic information from the telephone for purposes of the post-conviction action. The district court did not expressly consider the city's second reason for holding the telephone. This court concludes that the city's second reason is invalid as a matter of law.

As a general rule, property that was seized and held as evidence or potential evidence in a criminal trial must be returned after the trial and the time for a direct appeal. *See* Minn. Stat. § 626.04(b) (fourth sentence). But the general rule is subject to an exception: "unless otherwise subject to lawful detention." *Id.* That exception allows a police department to continue to hold property pursuant to the twelfth sentence of section 626.04(a), which states that a district court "shall not order the return if it finds that . . . the property is being held in good faith as potential evidence in any matter, charged or uncharged." *See* Minn. Stat. § 626.04(a)(1).

This court's opinion reasons that the word "matter" in the twelfth sentence of section 626.04(a) is limited by the word "trial" in the first sentence of that section. *Supra* at 6-7.

But the first sentence of section 626.04(a) is irrelevant in this case because it is concerned with the duty to safely keep seized property *before trial*. *See* Minn. Stat. § 626.04(a). The duty to return seized property *after trial* is expressed in the fourth sentence of section 626.04(b), which includes the previously mentioned exception, "unless otherwise subject to lawful detention," Minn. Stat. § 626.04(b), which encompasses the legal authority to hold property "in good faith as potential evidence in any matter, charged or uncharged," *see* Minn. Stat. § 626.04(a)(1). The circumstances of this case are unusual in that petitioner's attorneys have clearly stated that they hope to extract electronic information from the telephone for use in a post-conviction action. But these circumstances are within the plain language of the statute. The word "matter" is broad enough to include a case that has reached final judgment but is likely to be the subject of a post-conviction action, and the modifying phrase "charged or uncharged" is broad enough to encompass a matter that has been charged, tried, and affirmed on appeal.

Thus, the city's second reason for holding the telephone is not invalid as a matter of law. The city's second reason for holding the telephone is, quite naturally, to assist the state's defense of the forthcoming post-conviction action of a person who was arrested by the city's police department and thereafter was convicted of first-degree murder and attempted first-degree murder and given a life sentence without the possibility of parole and a consecutive sentence of 192 months of imprisonment. *See State v. Barrientos-Quintana*, 787 N.W.2d 603, 614 (Minn. 2010). Petitioner does not specifically argue that the city's second reason is not asserted in good faith. The city is entitled to a finding as to whether its second reason for holding the telephone is a matter of good faith or bad faith.

C.

The city last argues that, because petitioner's brother intends to file a post-conviction petition, the exclusive remedy for the return of the telephone is in chapter 590 of the Minnesota Statutes. This court rejects the argument. I agree. There is nothing in the text of chapter 590 that could reasonably be interpreted to provide that chapter 590 supersedes section 626.04 in these circumstances. Nonetheless, it must be noted that this action obviously is motivated by petitioner's brother's intention to seek post-conviction relief, not by petitioner's property interests. The telephone at issue has no economic value to petitioner, at least not as a working telephone. The telephone last was used in 2008, when petitioner's brother was arrested. *See id.* at 606-07. At the hearing on the petition, the city offered to purchase petitioner a new cellular telephone, but she and her attorneys apparently have declined that offer. Thus, what is at stake in this action is possession of a potential source of evidence in a forthcoming post-conviction action challenging convictions of first-degree murder and attempted first-degree murder.