STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0586

State of Minnesota,
Appellant,

vs.

Jesse Alan Sexter,
Respondent.

Filed October 14, 2019
Reversed and remanded
Johnson, Judge

Steele County District Court
File No. 74-CR-18-944

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Daniel McIntosh, Steele County Attorney, Christy M. Hormann, Assistant County Attorney, Owatonna, Minnesota (for appellant)

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

S Y L L A B U S

A law-enforcement officer may seize an item pursuant to a search warrant if the item is described in the search warrant, if there is a strong relationship between the seized item and the things described in the search warrant, or if the seized item clearly and definitely relates to the suspected criminal conduct that gave rise to the issuance of the search warrant.

O P I N I O N

JOHNSON, Judge

Jesse Alan Sexter is charged with third-degree criminal sexual conduct and second-degree assault with a dangerous weapon. He filed a motion to suppress evidence that was found during a search that was conducted pursuant to a search warrant. The district court granted the motion in part by suppressing a blue-and-white striped towel on the theory that its seizure was not justified by the search warrant, which authorized law-enforcement officers to seize a "white dish towel-like cloth." The state challenges that part of the district court's ruling in this pre-trial appeal. We conclude that the district court erred by suppressing the blue-and-white striped towel because there is a strong relationship between the blue-and-white striped towel and the things described in the search warrant and because the blue-and-white striped towel clearly and definitely relates to the suspected criminal conduct that gave rise to the issuance of the search warrant. Therefore, we reverse and remand.

FACTS

In February 2018, Sexter lived on a farm in Steele County with his wife and three children, including a then-17-year-old girl. On February 27, 2018, the girl reported to her school's social worker that Sexter had sexually and physically abused her. Specifically, the girl stated that, two days earlier, Sexter had forced her to engage in oral sex.

The matter was reported to law enforcement. Sergeant Okins of the Steele County Sheriff's Office and a social worker interviewed the girl later that day. The girl described various incidents occurring over a period of several years. With respect to the incident

occurring two days earlier, the girl told Sergeant Okins that, when she and Sexter were in the cab of a truck for the purpose of plowing the driveway, he kissed her and forced her to manually stimulate his penis. The girl said that she and Sexter then went to a red shed on the farm, that he told her to get on her knees, and that he inserted his penis into her mouth. The girl said that Sexter then asked her to grab "a white cloth, similar to a dish rag" so that he could use it to wipe his penis. She said that she gave the item to him and that he threw it down when he was finished using it.

Sergeant Okins, Deputy Woltman, and Chief Deputy Hanson prepared an application for a warrant authorizing a search of Sexter's property and the taking of a sample of Sexter's DNA. A district court judge approved the application and signed the warrant. The search warrant authorized the seizure of three items or categories of items that were believed to be present on Sexter's farm, including a "white dish towel-like cloth used by suspect following the sexual assault which is believed to be located in the red shed."

Sergeant Okins, Deputy Woltman, and Chief Deputy Hanson executed the search warrant later that same day. They seized, among other things, four towel-like items: two that are entirely white, one that is white with a floral design, and one that is both light blue and white in a striped pattern. The officers observed but did not seize a red cloth. Later that evening, after Sexter was arrested, Sergeant Okins obtained a DNA sample from him. Forensic testing was conducted on the four cloth items that were seized. According to the complaint, forensic testing of the blue-and-white striped towel revealed the presence of semen that matches Sexter's DNA sample.

Three days after the warrant was executed, law-enforcement officers interviewed the girl a second time. In the second interview, the girl said that, before she and Sexter were in the truck plowing the driveway, Sexter held a green folding knife to her neck and threatened her. She said that the knife is kept on top of an electrical box in an animal barn. Based on this additional information, officers sought and obtained a second search warrant. Officers executed the second search warrant and seized a knife matching the description.

In May 2018, the state charged Sexter with third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(g)(iii) (2016), and second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2016). In October 2018, Sexter moved to suppress evidence found during the execution of the February 27, 2018 search warrant. The district court conducted a contested omnibus hearing in February 2019. The state called two witnesses: Deputy Woltman and Sergeant Okins. In a post-hearing memorandum, Sexter argued that the first search warrant was not supported by probable cause and that the seizure of the blue-and-white striped towel exceeded the scope of the search warrant. In response, the state argued that the first search warrant was supported by probable cause, that the seizure of the blue-and-white striped towel did not exceed the scope of the search warrant, and alternatively that the seizure of the blue-and-white striped towel is justified by the plain-view exception to the warrant requirement.

In April 2019, the district court filed an order in which it granted in part and denied in part Sexter's motion. The district court denied the motion with respect to Sexter's probable-cause challenge. The district court granted the motion with respect to the blue-and-white striped towel on the ground that "the seizure of the blue and white striped towel

violated the particularity and scope requirement of the warrant." The district court reasoned:

> If the blue and white striped towel were purely or mostly white like [the three other towels], the search warrant would easily cover the blue and white striped towel. If the victim had described the towel as "light colored" or simply as a towel, the towel would be admitted. . . . It is not, however, plain white as described in the warrant application.

The district court rejected the state's argument concerning the plain-view doctrine. The state appeals.

ISSUES

I. Would suppression of the blue-and-white striped towel have a critical impact on the state's prosecution of Sexter on the charge of criminal sexual conduct?

II. Was the seizure of the blue-and-white striped towel authorized by the first search warrant?

ANALYSIS

The state argues that the district court erred by granting in part Sexter's motion to suppress evidence with respect to the blue-and-white striped towel.

I.

Before considering the state's argument for reversal, we must consider a threshold issue: whether the state may challenge the district court's suppression ruling in a pre-trial appeal.

The state may file a notice of appeal to seek appellate review of a pre-trial order, but the state is not entitled to such review as a matter of right. *See* Minn. R. Crim. P. 28.04,

subd. 2; *see also* Minn. R. Crim. P. 28.04, subd. 1. To obtain appellate review of a pre-trial order, the state must demonstrate that, unless the district court's allegedly erroneous ruling is reversed, it "will have a critical impact on the outcome of the trial." *State v. Webber*, 262 N.W.2d 157, 159 (Minn. 1977). The state can satisfy the critical-impact standard if the challenged ruling either "'completely destroys' the state's case" or "'significantly reduces the likelihood of a successful prosecution.'" *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) (quoting *State v. Joon Kyu Kim*, 398 N.W.2d 544, 551 (Minn. 1987)). The state need not demonstrate that the challenged ruling will prevent it from establishing guilt on all charges; it is sufficient if "exclusion of evidence would prevent the State from successfully prosecuting one of the specific charges." *State v. Stavish*, 868 N.W.2d 670, 674 (Minn. 2015). In analyzing the issue of critical impact with respect to a district court's grant of a motion to suppress evidence,

> an appellate court should first examine all the admissible evidence available to the state in order to determine what impact the absence of the suppressed evidence will have. The analysis should not stop there however. The court should go on to examine the inherent qualities of the suppressed evidence itself, its relevance and probative force, its chronological proximity to the alleged crime, its effect in filling gaps in the evidence viewed as a whole, its quality as a perspective of events different from those otherwise available, its clarity and amount of detail and its origin. Suppressed evidence particularly unique in nature and quality is more likely to meet the critical impact test.

In re Welfare of L.E.P., 594 N.W.2d 163, 168 (Minn. 1999) (citations omitted).

In this case, the state argues that the district court's suppression of the blue-and-white striped towel would have a critical impact on its prosecution because the towel

contains DNA evidence. At oral argument, the prosecutor confirmed that the state would, if permitted, offer the towel as an exhibit and offer testimony by the person or persons who conducted forensic testing on the towel. In response, Sexter argues that the DNA evidence on the blue-and-white striped towel is of relatively little significance because identity is not at issue, unlike other criminal-sexual-conduct cases in which the suppression of DNA evidence was deemed to have a critical impact. *See State v. Alt*, 504 N.W.2d 38, 44-45 (Minn. App. 1993), *aff'd*, 505 N.W.2d 72 (Minn. 1993) (mem.); *State v. Stroud*, 459 N.W.2d 332, 334-35 (Minn. App. 1990). Sexter argues further that the complainant now is an adult and that her testimony will make "a very strong case" even without the introduction of the blue-and-white striped towel. Nonetheless, Sexter's attorney acknowledged at oral argument that Sexter intends to challenge the truthfulness of the girl's testimony at trial.

The state's case likely will depend significantly on the girl's trial testimony about the alleged incidents of criminal sexual conduct. A witness's credibility generally is strengthened if her testimony is corroborated by physical evidence. Based on the facts alleged in the complaint and the record of the suppression motion, the blue-and-white striped towel appears to be the only physical evidence in the state's possession that corroborates the girl's report of criminal sexual conduct. The blue-and-white striped towel would enhance the state's case and make it more likely that the jury would believe the girl and find Sexter guilty of criminal sexual conduct. Without the blue-and-white striped towel, the state's case would be considerably weaker.

An analysis of the factors identified in *L.E.P.* supports the state's argument. The blue-and-white striped towel has a high degree of "relevance and probative force" because DNA testing gives a jury greater reason to believe that Sexter's semen is on the towel because he used it to wipe his penis. *See* 594 N.W.2d at 168. It has "chronological proximity to the alleged crime" because Sexter reportedly used the blue-and-white striped towel immediately after engaging in the alleged criminal conduct. *See id.* It provides a high degree of "clarity and amount of detail" because forensic testing revealed the presence of Sexter's semen. *See id.* And its "origin" lends strength to the state's case because the girl described the towel to Sergeant Okins before it was seized and tested. *See id.*

Furthermore, this case resembles the *McLeod* case, in which the defendant was charged with committing criminal sexual conduct against a teenager and the district court ruled that certain corroborating evidence was inadmissible. 705 N.W.2d at 779-82. The supreme court noted that "[t]he state's case appears to rest primarily on whether the jury believes" the teenager who reported the alleged criminal conduct and that "McLeod will attempt to show that [the teenager] is not credible." *Id.* at 785. The supreme court reasoned that the district court's exclusion of the state's corroborating evidence "would significantly reduce the state's chances of a successful prosecution." *Id.* Accordingly, the supreme court concluded that the state had satisfied the critical-impact requirement. *Id.* at 786-87.

Thus, we conclude that the district court's order suppressing the blue-and-white striped towel "'significantly reduces the likelihood of a successful prosecution.'" *Id.* at 784 (quoting *Joon Kyu Kim*, 398 N.W.2d at 551). Therefore, the state has satisfied the threshold requirement that the district court's allegedly erroneous ruling "will have a

critical impact on the outcome of the trial" unless it is reversed. *See Webber*, 262 N.W.2d at 159.

II.

The state argues that the blue-and-white striped towel is admissible on the ground that its seizure was authorized by the search warrant or, in the alternative, on the ground that its seizure was justified by the plain-view exception to the warrant requirement.

A.

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The Minnesota Constitution contains language that is nearly identical. *See* Minn. Const. art. I, § 10.

The second clause of each constitutional provision requires a search warrant to "particularly describ[e] . . . the . . . things to be seized." U.S. Const. amend. IV; Minn. Const. art. I, § 10. The particularity requirement "prohibits law enforcement from engaging in general or exploratory searches." *State v. Fawcett*, 884 N.W.2d 380, 387 (Minn. 2016). "By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging

exploratory searches the Framers intended to prohibit." *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S. Ct. 1013, 1016 (1987).

The district court in this case did not conclude that the warrant lacked particularity. Rather, the district court concluded that "[t]he seizure of the blue and white towel exceeded the scope of the search warrant." More specifically, the district court determined that the officers exceeded the scope of the search warrant by seizing things that are not described in the search warrant. The issue decided by the district court is different from the issue of particularity. An argument that a search warrant lacks particularity is a challenge to the validity of the warrant itself. *See Groh v. Ramirez*, 540 U.S. 551, 557, 124 S. Ct. 1284, 1289 (2004). But an argument that a seizure exceeded the scope of a search warrant is a challenge to the actions of the officers who executed the warrant. The two issues are somewhat interrelated in the sense that the degree of particularity of a search warrant may make it more or less likely that officers will seize items that are not described (or arguably not described) in the warrant, and a defendant conceivably could make either argument when moving to suppress evidence. *Cf. State v. Miller*, 666 N.W.2d 703, 712-14 (Minn. 2003); *State v. Bradford*, 618 N.W.2d 782, 795 (Minn. 2000).

In this case, the first search warrant described, among other things, a "white dish towel-like cloth." The question on appeal is whether the officers who executed the first search warrant properly seized the blue-and-white striped towel given the warrant's description of the things to be seized.[1] The supreme court has issued a series of opinions

[1]We are *not* concerned with the question whether the officers exceeded the scope of the search warrant because of a *search* of a *place* that was not described in the search

that provide guidance concerning what things may be seized by law-enforcement officers when executing a search warrant.

In *State v. Pietraszewski*, 172 N.W.2d 758 (Minn. 1969), police officers investigating a murder obtained a search warrant authorizing the seizure of, among other things, "a knife, surgical tape, a jacket . . . , and a tire iron." *Id.* at 760-62. While searching the defendant's home, officers seized certain papers on which the defendant had made written statements. *Id.* at 761. The district court suppressed the papers on the ground that the writings "were not specified in the search warrant." *Id.* at 762. On appeal, the supreme court noted, "It is settled law that general searches are unconstitutional, and that a search pursuant to a warrant does not entitle the executing officer to engage in a general search under the guise of a search warrant." *Id.* at 763. The supreme court also stated, "While it is sometimes permissible to seize things other than those described in the search warrant, the state, when challenged as here, must demonstrate a reasonable relationship between the search authorized by the search warrant and the seizure of the thing not described." *Id.* Applying that principle, the supreme court concluded, "The trial court was justified in its conclusion that the state failed to sustain this burden with respect to the writings found in defendant's bedroom." *Id.*

In *State v. Taylor*, 187 N.W.2d 129 (Minn. 1971), police officers investigated a report that the defendant and his wife had kidnapped a woman and forced her to engage in

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warrant. *See, e.g.*, *State v. Molnau*, 904 N.W.2d 449, 451-53 (Minn. 2017); *State v. Thisius*, 281 N.W.2d 645, 645-46 (Minn. 1978); *State v. Hill*, 918 N.W.2d 237, 241-42 (Minn. App. 2018).

prostitution. *Id.* at 130. The officers obtained a search warrant authorizing a search of the defendant's home and the seizure of numerous particularly described items. *Id.* Officers seized one item that was not described in the search warrant: a memorandum that "instructed defendant's wife on how to prepare and condition a young woman for service as a member of their stable of prostitutes." *Id.* at 131. On appeal from his conviction, the defendant argued that the memorandum was improperly seized on the ground that it was "not described in the search warrant" and, thus, was "not within the permissible scope of the search authorized." *Id.* The supreme court rejected the argument, reasoning that "the contents of the letter or memorandum found in defendant's apartment, among other items described in the search warrant, were clearly and definitely related to the criminal behavior which prompted the issuance of the search warrant, making the seizure of the letter reasonable." *Id.*

In *State v. Van Wert*, 199 N.W.2d 514 (Minn. 1972), officers investigating a check forgery ring obtained a search warrant authorizing a search of the defendant's home and the seizure of "[c]heck protectors and typewriters used in the preparation of forged checks; stolen printed blank checks of business firms; and identification, particularly Minnesota drivers' licenses, in names other than" those of the defendant and his wife. *Id.* at 515. In executing the warrant, officers seized certain items that were not described in the search warrant, "such as filled-in checks, an attorney's blank checks, and check stubs and registers." *Id.* at 516. The supreme court concluded that the seized items were "within the authorization of the warrant" and that "[a]bsolute exactness is not required if a strong relationship between the described and seized items exists." *Id.*

In *State v. Michaelson*, 214 N.W.2d 356 (Minn. 1973), police officers investigating a possible theft of an automobile obtained a search warrant authorizing a search of the defendant's home and the seizure of "registration papers for the automobile and other relevant correspondence from the Minnesota Highway Department." *Id.* at 357-58. While executing the search warrant, officers seized "a number of papers relating to the [automobile] which were not specifically mentioned in the warrant, such as repair slips . . . and a receipt for the engine." *Id.* On appeal, the supreme court synthesized its prior opinions as follows:

> The rule in Minnesota is that police executing a search warrant may seize items not described in the search warrant provided there is a strong relationship between the seized and described items. Phrased differently, it is proper if the seized items clearly and definitely relate to the behavior which prompted the issuance of the search warrant.

Id. at 359 (citing *Van Wert*, 199 N.W.2d 514; *Taylor*, 187 N.W.2d 129; *Pietraszewski*, 172 N.W.2d 758). The supreme court concluded that "this is such a case and that the police were therefore justified in seizing the items." *Id.*

B.

The state contends that, considered in light of "the totality of the circumstances and with reasonable flexibility, the blue and white striped towel falls within the description of what could be lawfully seized under the warrant." The circumstances to which the state refers are the girl's statement, the similarity between her description of the towel and the actual features of the blue-and-white striped towel that was seized, and the fact that the girl perceived the towel during a traumatic event.

We need not determine whether the blue-and-white striped towel actually is within the search warrant's description of the things to be seized.[2] The relevant caselaw is broad enough to compel the conclusion that the blue-and-white striped towel was properly seized even if it was not described by the search warrant. *See id.*

The search warrant authorized the seizure of, among other things, a "white dish towel-like cloth used by suspect following the sexual assault which is believed to be located in the red shed." Officers searched a red barn and saw at least five items made of cloth that are towels or similar to towels. The officers did not seize a towel that was completely red, but they seized four towels that are completely white or white in significant part. Sergeant Okins testified at the suppression hearing that he believed at the time of the search that the blue-and-white striped towel was "within [the] general description of what was included in the warrant." Deputy Woltman similarly testified that she believed at the time of the search that all of the items seized from the red barn were "within what was contained in

[2]The district court stated in its memorandum that the blue-and-white striped towel is not "mostly white," which indicates that the district court deemed it to be either mostly blue or equally blue and white. We question the district court's characterization after carefully reviewing Exhibit 4, the only photograph of the blue-and-white striped towel, which shows it crumpled up and lying on top of other items in a large blue garbage receptacle. The blue portions of the towel are of a very light hue and provide little contrast to the white portions. Near a hem, the towel appears to be speckled with equal amounts of white and light blue fibers. The other visible portions of the towel, which are striped, appear to be more white than blue. Neither witness testified about any other observations of the blue-and-white striped towel other than their observations of it when it was seen in the blue garbage receptacle. If the district court's statement that the blue-and-white striped towel is not "mostly white" were treated as a finding of fact, we likely would conclude that the finding is erroneous, regardless whether a clear-error standard of review or a *de novo* standard of review were to apply. *Cf. State v. Chavarria-Cruz*, 784 N.W.2d 355, 362-65 (Minn. 2010).

the search warrant." Having reviewed all the evidence in the record, we conclude that, if the blue-and-white striped towel was not described in the search warrant, there is, at the very least, a "strong relationship between" the blue-and-white striped towel and the "white dish towel-like cloth" that was described in the warrant. *See id.*

Furthermore, the blue-and-white striped towel was seized by Sergeant Okins shortly after he had interviewed the girl. He had heard her describe the incident that allegedly occurred in the red barn. His written report of the interview states that the girl said that Sexter "asked for her to grab a white cloth, similar to a dish rag, to wipe his penis off." Sergeant Okins testified that he seized the blue-and-white striped towel because he believed that it was consistent with what the girl had described. Given Sergeant Okins's first-hand knowledge of the facts that had been revealed by the investigation at that point in time, it was reasonable for him to conclude that the blue-and-white striped towel "clearly and definitely relate[s] to the behavior which prompted the issuance of the search warrant." *See id.*

Thus, the seizure of the blue-and-white striped towel was authorized by the first search warrant. Therefore, the district court erred by concluding that the seizure of the blue-and-white striped towel exceeded the scope of the search warrant. Because the state's primary argument for reversal is meritorious, we need not consider the state's alternative argument that the seizure of the blue-and-white striped towel is justified by the plain-view exception to the warrant requirement.

D E C I S I O N

In sum, the district court erred by granting in part Sexter's motion to suppress evidence.

Reversed and remanded.