STATE OF MINNESOTA

IN SUPREME COURT

A20-0127

Court of Appeals — Chutich, J.

In re B.H.,

Appellant,

State of Minnesota, intervenor,

Appellant,

vs.

Filed: July 29, 2020
Office of Appellate Courts

Cengiz Gino Yildirim,

Respondent.

Amy S. Conners, Katherine S. Barrett Wiik, Helen V. Sullivan-Looney, Best & Flanagan LLP, Minneapolis, Minnesota, for appellant B.H.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant Hennepin County Attorney, Minneapolis, Minnesota, for appellant State of Minnesota.

William J. Mauzy, Mauzy Law, PA, Minneapolis, Minnesota, for respondent.

Erica A Holzer, Melissa Muro LaMere, Jeremy Krahn, Maslon LLP, Minneapolis, Minnesota; and

Tracy Shoberg, Minneapolis, Minnesota, for amicus curiae Battered Women's Justice Project.

Lindsay J. Brice, Saint Paul, Minnesota, for amicus curiae Minnesota Coalition Against Sexual Assault.

Rana S. Alexander, Saint Paul, Minnesota, for amicus curiae Standpoint.

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S Y L L A B U S

1. When an alleged victim files a motion to quash or modify a subpoena under Minnesota Rule of Criminal Procedure 22.01, subdivision 5, the district court must consider whether compliance with the subpoena would be unreasonable under the totality of the circumstances.

2. In denying a motion to quash a subpoena, the district court's order requiring the alleged victim to turn over her cell phone to a defense-hired expert to extract data for in camera review was unauthorized by law. The district court also committed an error of law for which no adequate remedy exists and which would cause irremediable harm to the alleged victim when it failed to analyze whether compliance with the subpoena at issue was unreasonable under the totality of the circumstances.

Reversed; writ of prohibition issued.

O P I N I O N

CHUTICH, Justice.

This case considers when compliance with a subpoena seeking privileged or confidential material from a victim of an alleged crime is unreasonable and should be quashed or modified under Minnesota Rule of Criminal Procedure 22.01, subdivision 5. In March 2019, appellant State of Minnesota charged respondent Cengiz Gino Yildirim with

third-degree criminal sexual conduct. The district court granted Yildirim's motion for a subpoena requiring B.H., the alleged victim of the sexual assault, to produce her cell phone to a computer forensic expert hired by Yildirim.

B.H. filed a motion to quash the subpoena under Minnesota Rule of Criminal Procedure 22.01, subdivision 5, arguing that compliance was unreasonable. The district court denied the motion and ordered B.H. to produce her cell phone to Yildirim's expert or defense counsel; the expert would then extract applicable data that might be relevant to the case and provide it to the district court for in camera review. B.H. then filed a petition for a writ of prohibition with the court of appeals, and the State successfully moved to intervene. The court of appeals denied the petition. We granted the joint petition for expedited review filed by the State and B.H.

We conclude that in requiring B.H. to turn over her cell phone to a defense-hired expert to extract data for in camera review, the district court's order denying B.H.'s motion to quash was unauthorized by law. We also conclude that the district court committed an error of law for which no other adequate remedy exists and which would result in irremediable harm to B.H. when it failed to analyze whether compliance with the subpoena was reasonable under the totality of the circumstances. We therefore reverse the court of appeals and grant the petition for a writ of prohibition.

FACTS

On March 27, 2019, the State charged Yildirim with criminal sexual conduct in the third degree under Minnesota Statutes section 609.344, subdivision 1(d) (2018), for an

alleged assault taking place on December 9, 2018.[1] The complaint alleges the following facts. B.H. attended a concert with friends on the evening of December 8, 2018. After the concert, B.H. and her friends went to a bar, drank alcohol, and returned to one of the friends' apartment to sleep. B.H. awoke in the early morning hours to find Yildirim, who was a "friend of a friend," in bed with her and touching her. B.H. told him to stop, and she fell asleep again. She awoke two more times to Yildirim touching her; the last time, his fingers penetrated her vagina. When she woke up in the morning, Yildirim was gone, but his watch was on a nightstand near the bed, and B.H. discovered blood wiped on the bedsheets.

B.H. reported the alleged assault to friends and went to the hospital for a sexual assault examination. Two days later, she reported the alleged assault to the police. B.H. told the police that she recalled sending a text message around 2:30 a.m. on December 9, before falling asleep. She later awoke to find Yildirim in bed with her. B.H. also told the police that she used her cell phone the next morning to take pictures of the blood on the bedsheets and the watch on the nightstand. She further reported that she had communicated with Yildirim about the alleged assault on Instagram.[2]

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[1] "A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if . . . the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless . . . ." Minn. Stat. § 609.344, subd. 1(d).

[2] Yildirim responded, apologizing, saying that he was "super drunk" and that he did not remember much from that night. He also stated that he was feeling "ashamed and guilty," and that he "fe[lt] so bad."

On December 17, 2018, B.H. took her cell phone to the Minneapolis Police Department to provide documentary proof of her allegations. The police extracted a portion of the contents of B.H.'s phone and returned the phone to her that same day. On March 27, 2019, the State charged Yildirim.

Although the criminal case has yet to be tried, the procedural history is involved. Two months after charging, Yildirim moved for general disclosure of "books, papers, documents, photographs, law enforcement officer reports, [and] tangible objects which relate to the case" from the State under Minnesota Rule of Criminal Procedure 9.01. He later specifically requested that the State produce B.H.'s cell phone for independent forensic inspection and the forensic file that police downloaded from the phone. The State produced cell phone data in the format of a "Timeline"[3] from a four-day range: December 7, 2018 through December 10, 2018.

On November 14, 2019, Yildirim moved to compel production of B.H.'s cell phone for forensic analysis. After a chambers conference, the district court issued a Stipulation and Order Regarding Forensic Cell Phone Analysis, incorporating an agreement between

[3] The record does not reflect what exactly makes up the "Timeline" information. According to Yildirim's computer forensics expert, this information consisted of PDF files that condensed the data, organized it chronologically, and "summarize[d] the aggregated information using nine (9) fields: #, Type, Direction, Attachments, Locations, Timestamp, Party, Description, and Deleted."

the State and Yildirim.[4] The Stipulation and Order provided that cell phone data from November 9, 2018 through March 27, 2019,[5] should be provided to Yildirim.

According to Yildirim, following the Stipulation and Order, the State provided a CD-ROM containing cell phone activity from November 9, 2018, through December 17, 2018. The State maintained that this data was all of the data that it had in its possession from the download of B.H.'s cell phone on December 17, 2018.

Yildirim again moved to compel the State to produce B.H.'s cell phone and to comply with the Stipulation and Order. At a hearing on December 12, 2019, the district court granted Yildirim's motion and ordered the State to ask B.H. to provide her phone to the court. B.H. declined to do so.

Several weeks later, Yildirim moved for a court order to subpoena B.H.'s cell phone under Minnesota Rule of Criminal Procedure 22.01, subdivision 2(c). Specifically, Yildirim sought to provide the phone to his paid forensic expert to extract "cell phone activity" data from November 19, 2018, through March 27, 2019. The State opposed the motion and argued that Yildirim had failed to establish a reason to violate B.H.'s privacy

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[4] The Stipulation and Order was based on a template for "Videotaped Interviews." Certain portions of the template were crossed out with pen, and other information was added. Notably, B.H. was not a party to this Stipulation and Order.

[5] The record is unclear why these dates were selected, other than that they covered a month before the alleged incident up to the date of charging. At oral argument, Yildirim stated that he had asked for data over a longer time period, but settled on these dates as a result of negotiations with the State. The State believed that the date range was irrelevant because it only had the data collected on December 17, 2018.

rights. On January 10, 2020, the court granted the motion by e-mail and Yildirim served the subpoena on B.H.

B.H. promptly retained counsel and moved to quash the subpoena under Minnesota Rule of Criminal Procedure 22.01, subdivision 5. B.H. argued that production of the contents of her cell phone was unreasonable because Yildirim had failed to show relevance, specificity, and materiality, which B.H. believed was the appropriate standard under analogous federal law. Yildirim opposed the motion, contending that he had properly sought district court approval to issue the subpoena under Minnesota Rule of Criminal Procedure 22.01, subdivision 2(c).

At the motion hearing, Yildirim argued that, based on the "limited records" in his possession already produced by the State, he knew that "B.H. continue[d] to discuss the case with the police officers, with friends, and others," and that the records contained "significant *Brady* material."[6] Yildirim also argued that B.H. gave "differing versions of what happened that evening." In denying B.H.'s motion to quash from the bench, the district court stated that it was "significant" that "there are texts and things related to this [incident] going back and forth including some . . . that would present different versions of this, of what she experienced, or her version of the story."

That same day, the court issued a one-page written order that stated, in part, that B.H.'s motion to quash was denied and that "B.H. shall provide her cell phone to [the

[6] *Brady* material is evidence favorable to the defendant that is "material either to guilt or to punishment" and must be disclosed when in the possession of the prosecution. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

defense-hired expert] or to defense counsel." The data was to remain subject to the non-disclosure terms of the previously signed Stipulation and Order. And the defense expert was to "provide the applicable cell phone data" to the district court for in camera review.

After the district court denied B.H.'s motion to quash, B.H. filed a notice of intent to appeal, stating that she was preparing a petition for a writ of prohibition to the court of appeals. Yildirim again asked the district court to require that B.H. turn over the phone, asserting that the intent to appeal did not result in an automatic stay. B.H. therefore moved to stay the district court order, which Yildirim opposed. At the hearing on the stay, Yildirim augmented his reasons for subpoenaing the cell phone data, citing "at least three instances" of B.H. making false allegations of sexual assault, possible *Spreigl* evidence, "numerous inconsistencies between B.H.'s original report" and her texts to friends, and communications with other friends about her conversations with Yildirim after the alleged incident.[7] Yildirim described this material as "classic cross-examination material." The court denied the motion to stay.

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[7] Yildirim's addendum to his brief before us contains a declaration of defense counsel outlining what he had found in the cell phone data from the original download of B.H.'s cell phone at the police department. This declaration first appeared in these proceedings when Yildirim opposed B.H.'s writ of prohibition before the court of appeals.

At oral argument before us, the parties discussed the timing of the various showings made by Yildirim during these proceedings, including this declaration. After oral argument in our court, Yildirim filed a letter that attempted to clarify what showing he had made at various hearings before the district court. B.H. and the State jointly moved to strike this submission from the record, asserting that it contained additional argument and was an "unauthorized sur-reply." We agree that Yildirim's letter improperly asserts additional argument and is not authorized by the Minnesota Rules of Criminal Procedure or the

B.H. then filed a petition for a writ of prohibition with the court of appeals, asking that the district court be prohibited from enforcing its written order stating that she was required to provide her phone to defense counsel or to the defense-hired expert. The State successfully moved to intervene, and the court of appeals later denied the petition for a writ of prohibition. The court of appeals concluded that the district court did not abuse its discretion by finding that Yildirim's "right to review potentially exculpatory evidence outweighed B.H.'s privacy concerns, and that in camera review will ensure that her privacy regarding information that is not relevant to the case is not disclosed." *In re B.H.*, No. A20-0127, Order at 4–5 (Minn. App. filed Feb. 18, 2020).

Three days after the court of appeals' decision, Yildirim moved to hold B.H. in contempt because she had not yet turned over her phone. We granted the State's emergency motion to stay the district court order and later granted the joint petition for expedited review filed by B.H. and the State.

ANALYSIS

"Prohibition is an extraordinary remedy and should be used only in extraordinary cases." *Thermorama, Inc. v. Shiller*, 135 N.W.2d 43, 46 (Minn. 1965). For a writ of prohibition to issue, three elements must be met: "(1) an inferior court or tribunal must be about to exercise judicial or quasi-judicial power; (2) the exercise of such power must be unauthorized by law; and (3) the exercise of such power must result in injury for which

Minnesota Rules of Civil Appellate Procedure. Accordingly, we grant the joint motion of the State and B.H. to strike it.

there is no adequate remedy." *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 208 (Minn. 1986).

The parties do not dispute that the first and third elements are met here, and we agree. The dispositive issue is whether the district court's exercise of power in denying B.H.'s motion to quash was unauthorized by law. We have previously concluded that a writ is the "proper means by which to challenge" a trial court order quashing a subpoena. *State v. Turner*, 550 N.W.2d 622, 626 (Minn. 1996). A writ of prohibition may issue "to correct an error of law in the [district] court where no other adequate remedy is available to the petitioner and enforcement of the trial court's order would result in irremediable harm." *Id.* We conclude that the writ is proper here.

I.

We first consider the meaning of "unreasonable" under Minnesota Rule of Criminal Procedure 22.01, subdivision 5, an issue we have never analyzed. We interpret the rules of criminal procedure de novo. *State v. Lee*, 929 N.W.2d 432, 438 (Minn. 2019).

The parties raise arguments regarding what the rules of criminal procedure require before a party may secure permission to subpoena records of a victim. Most relevant here, however, are those arguments addressing when compliance with a subpoena is unreasonable under Rule 22.01, subdivision 5. For her part, B.H. urges us to look to the parallel federal rule, Federal Rule of Criminal Procedure 17(c). That rule and accompanying case law adopt a three-part test that requires the party seeking a subpoena to show that compliance with the subpoena is not unreasonable because the information sought is relevant, admissible, and has been requested with specificity.

Yildirim counters that he need only make the "plausible showing" required by our decisions in *State v. Paradee*, 403 N.W.2d 640 (Minn. 1987), and *State v. Hummel*, 483 N.W.2d 68 (Minn. 1992), to extract the cell phone data and provide it to the court for in camera review, and that by doing so, compliance with a subpoena cannot be unreasonable. He maintains that we have long approved of the use of in camera review to examine a victim's confidential records and any discussion of the federal rule is unnecessary and unpersuasive.

Paradee established the process by which a district court could first review, in camera, confidential or privileged documents concerning a victim or witness to determine which records, if any, are relevant to the defense. In *Paradee*, a defendant charged with criminal sexual conduct sought access to confidential county welfare records dealing with an earlier incident involving the victim and another man; the defendant believed that the records might be of use to his defense. 403 N.W.2d at 640. The court of appeals held that defense counsel must be given access to the records. *Id.* at 641. We reversed, and instead concluded that in camera review of the documents by the district court was the appropriate means of balancing the interests of the defendant and the victim. *Id.* at 641–42 (discussing *Pennsylvania v. Ritchie*, 480 U.S. 39, 60–61 (1987)). We concluded that "[t]he in camera approach strikes a fairer balance between the interest of the privilege holder in having his confidences kept and the interest of the criminal defendant in obtaining all relevant evidence that might help in his defense." *Id.* at 642.

We affirmed this approach in *Hummel*, provided that a defendant make a preliminary showing justifying in camera review. There, a defendant appealed his murder

conviction, arguing that his due process rights were violated when the district court "declined his request to [subpoena and] conduct an *in camera* inspection of the victim's psychiatric [and] psychological records." 483 N.W.2d at 70. To review a confidential file, a defendant must " 'establish[] a basis for his claim that it contains material evidence.' " *Id.* at 72 (quoting *Ritchie*, 480 U.S. at 58 n.15). Specifically, the defendant "must make some 'plausible showing' that the information sought would be 'both material and favorable to his defense.' " *Id.* (quoting *Ritchie*, 480 U.S. at 58 n.15). We ultimately held that the defendant had failed to meet his burden because he provided "no theories" connecting the records to his defense or explaining how the records were "reasonably likely to contain information related to the case." *Id.*

The procedure set forth by these cases was later codified, in part, in subdivision 2(c) of Minnesota Rule of Criminal Procedure 22.01. *See* Minn. R. Crim. P. 22 cmt. ("The addition of paragraph (c) to Rule 22.01, subd. 2 is to formalize the process as set forth in [*Paradee* and *Hummel*]."). Subdivision 2(c) requires that a party seeking to subpoena a victim's "privileged or confidential records" may do so only by court order. Minn. R. Crim. P. 22.01, subd. 2(c). And "[b]efore entering the order, the court may require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object." *Id.* Subdivision 2(c) is the first step a defendant must follow when seeking to access privileged or confidential records of a victim.

The parties have spent much time arguing about this subdivision,[8] *Paradee*, and *Hummel*. This appeal, however, involves B.H.'s motion to quash under subdivision 5, which a victim may file in response to a subpoena request under subdivision 2(c). Subdivision 5 requires that the court determine whether compliance with the subpoena at issue is unreasonable. *Paradee* and *Hummel* make no mention of a motion to quash or to modify a subpoena under subdivision 5. Neither case addressed what a party seeking a subpoena must show when faced with a motion to quash or to modify. Although those cases remain good law, they do not resolve the issue before us today.

As a result, we consider the district court's denial of B.H.'s motion to quash under Rule 22.01, subdivision 5. "The court on motion promptly made may quash or modify a subpoena if compliance would be unreasonable." Minn. R. Crim. P. 22.01, subd. 5. Interpreting this rule, we hold that district courts must determine whether compliance would be unreasonable given the totality of the circumstances. A totality-of-the-circumstances test is helpful in a reasonableness analysis. *See, e.g.*, *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015) (applying a totality-of-the-circumstances approach to the reasonableness analysis used for warrant exceptions); *In re Welfare of M.L.M.*,

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[8] Relying principally on *Riley v. California*, 573 U.S. 373 (2014), the State asserts that a court order requiring a victim to produce her cell phone for forensic inspection is a Fourth Amendment event that invokes the protections against unreasonable searches and should require the party seeking the subpoena to make a showing of probable cause. The leap from the context of *Riley*—criminal suspects turning over cell phones to police at the time of arrest—to the context here—a criminal subpoena of a victim's cell phone—is a long one. The State is unable to cite any case law to support this novel argument that a court's order could violate the Fourth Amendment. We decline to be the first appellate court in the country to so hold.

813 N.W.2d 26, 31 (Minn. 2012) (noting that, in the context of a search and seizure, the totality-of-the-circumstances test "balances the State's interests against the intrusion into an individual's privacy").

We conclude that a factual analysis of the totality of the circumstances is appropriate here. District courts faced with a victim's motion to quash or to modify a subpoena that was sought under subdivision 2(c) must make a determination whether compliance is unreasonable given the totality of the circumstances.[9] The circumstances to be considered will depend on the case at hand and may include, but are not limited to: the relevance and materiality of the records sought; the specific need of the defendant for the records and whether they are otherwise procurable; the admissibility or usefulness of the records, including whether they can be used for impeachment of a material witness; whether the request is made in good faith and is not a fishing expedition; and the burden on the party producing the information, including the privacy interests of the victim.[10]

[9] If a district court determines that, based on the totality of the circumstances, compliance with the subpoena is not generally unreasonable, then the court may well need to review the requested information in camera to determine whether any of it should be produced to the defendant. *See Hummel*, 483 N.W.2d at 72; *Paradee*, 403 N.W.2d at 642.

[10] Although we do not adopt the multi-factor test from federal case law that B.H. endorses, federal courts have analyzed similar factors when determining whether compliance with a subpoena is reasonable. *See, e.g.*, *United States v. Nixon*, 418 U.S. 683, 699–700 (1974); *United States v. Rand*, 835 F.3d 451, 462 (4th Cir. 2016); *United States v. Hardy*, 224 F.3d 752, 755 (8th Cir. 2000).

This case demonstrates why considering the privacy interests of the victim is critical.[11] Here, Yildirim demands over 4 months of cell phone data, including data generated a month before the alleged assault occurred. "Cell phones differ in both a quantitative and a qualitative sense from other objects" that a person might possess. *Riley v. California*, 573 U.S. 373, 393 (2014). For example, "[t]he sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions." *Id.* at 394. "A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is." *Id.* at 396–97.

Cell phones can also track a person's location, which when tracked can "achieve[] near perfect surveillance, as if it had attached an ankle monitor to the phone's user." *Carpenter v. United States*, 585 U.S. ___, ___ 138 S. Ct. 2206, 2218 (2018). Data that tracks a person's location can reveal "not only his particular movements, but through them his familial, political, professional, religious, and sexual associations." *Id.* at ___, 138 S. Ct. at 2217 (citation omitted) (internal quotation marks omitted). These types of records " 'hold for many Americans the privacies of life.' " *Id.* (quoting *Riley*, 573 U.S. at 403). As part of the determination of reasonableness under subdivision 5, and given the privacy

[11] Minnesota Rule of Criminal Procedure 22.01, subdivision 2(c), explicitly recognizes the importance of protecting a victim's privacy rights by requiring that a party seeking a subpoena of the victim's confidential records may only do so by court order. The rule also states that the court may require giving notice to the victim so that the victim can move to quash or modify, or object to, the subpoena. Minn. R. Crim. P. 22.01, subd. 2(c).

concerns associated with cell phone data, we expect district courts to carefully examine subpoenas for such data, particularly those seeking data of an alleged sexual assault victim.

The parties raise other arguments, especially about the provisions of Minnesota Rule of Criminal Procedure 9 and the disclosure obligations of the prosecutor under that rule. But all agree that the State has disclosed all information that it had obtained from B.H.'s cell phone on December 17, 2018. Any arguments about the State's obligation under Rule 9 do not apply because the dispute arises under Rule 22.01, subdivision 5, not Rule 9.

Nor is *State v. Lee* helpful here. There, we held that, under Rule 9.01, "the State cannot be required to allow the defense to inspect a location that is under the control of a third party." 929 N.W.2d at 440. *Lee* did not discuss or apply Rule 22.01, and provides little guidance in this matter.

Finally, Yildirim's argument that B.H. somehow waived her privacy interest in all of her cell phone data by voluntarily bringing her phone to the police fails. "Waiver is the voluntary relinquishment of a known right." *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009). B.H. brought her phone to the police to assist in the investigation and to offer a limited amount of data directly related to the alleged assault, including photos of the watch and the blood on the bedsheets, and an electronic exchange with Yildirim right after the event. By doing so, she did not knowingly and voluntarily waive her right to privacy in all other data contained on all applications on her phone for other time periods. We agree, as B.H. argues, that a holding otherwise would have a chilling effect on the reporting of crimes, especially those involving sexual assault.

II.

Having established the totality of the circumstances standard under subdivision 5, we determine whether we should grant the writ of prohibition and restrain the district court from enforcing its order denying B.H.'s motion to quash. Specifically, we must determine whether the district court acted in a way that is unauthorized by law. *Minneapolis Star & Tribune Co.*, 392 N.W.2d at 208. A writ of prohibition may issue "to correct an error of law in the [district] court where no other adequate remedy is available to the petitioner and enforcement of the trial court's order would result in irremediable harm." *Turner*, 550 N.W.2d at 626. The writ is "reserved for preventative rather than corrective needs." *Id.*

The State and B.H. assert that Yildirim failed to make the necessary showing that would require B.H. to turn over the entire contents of her cell phone to a defense expert and that compliance with the subpoena is therefore unreasonable. In particular, B.H. states that Yildirim's blanket request was based on a "shaky speculation that there 'might' be exculpatory data in 'phone applications' or communications," and he failed to show how the additional 3½ months of data with no limitation would be relevant or material to his defense. B.H. asserts that the district court erred because it failed to apply the reasonableness standard of subdivision 5 and because it required her to turn over her phone to a private, defense-hired expert.

Yildirim maintains that his offer of proof was sufficient, claiming that it contained "useful information for cross-examination" and exculpatory and impeachment material. According to him, the data to which he has access includes evidence of prior false

allegations, inconsistencies in B.H.'s recall of the alleged incident, communications with police, and communications with Yildirim himself. He argues that, based on this information, B.H. surely continued to discuss the alleged assault in the months leading up to charging. Yildirim asserts that the district court did not err because it properly followed the procedure set forth in *Paradee* and *Hummel*.

We agree with B.H. and the State that the district court acted in a way that was unauthorized by law when it denied B.H.'s motion to quash, for two reasons. First, the district court ordered B.H. to give her cell phone to a defense-hired expert or defense counsel to review all information on the phone from the relevant time period and extract possibly relevant data and then give that data to the district court for in camera review. No law authorizes a defense-hired expert to have access to a victim's confidential information *before* a district court conducts in camera review. *See Paradee*, 403 N.W.2d at 642 (requiring in camera review by the *trial court*). Requiring the alleged victim to disclose her cell phone data directly to a defense-hired expert[12] would undercut her right to privacy and fail to properly balance this right with the defendant's right to present a defense, as provided for in *Paradee* and *Hummel*. And in *Paradee*, we expressly held that defense

[12] We understand that district courts cannot extract cell phone data without assistance, and when such review is appropriate, they will need an expert to do so before in camera review may occur. Different options may exist for selecting an expert, such as a neutral court-appointed expert. Or the parties, including the target of the subpoena, may reach another solution by stipulation. We do not endorse a particular method here. We only note that a defense-hired expert should not be given free rein to determine from the entire contents of a cell phone what is relevant data before the court conducts in camera review.

counsel could not receive a victim's confidential records without those records first being reviewed in camera by the district court. 403 N.W.2d at 642.

Second, the district court committed an error of law that would result in irremediable harm to B.H and for which no adequate remedy exists. As we have now stated, district courts must determine whether compliance with a subpoena would be unreasonable based on the totality of the circumstances. Here, the district court made no mention of the reasonableness of compliance in its order denying B.H.'s motion to quash. At the hearing on the motion to quash, the court briefly considered the victim's privacy interests, but did not consider whether the breadth of the request, in terms of timeframe or the type and quantity of material sought, was unreasonable or could be modified.[13] Yildirim sought all contents of the cellphone from a 4½ month period that includes one month before the alleged assault even occurred, extending up until the time that he was charged. Although Yildirim asserts that the selected date range was a result of negotiations before the Stipulation and Order was issued, those negotiations did not include B.H. and the dates selected appear arbitrary. Nor did Yildirim narrow his request to any specific text threads or applications, for example.

In sum, all three elements for a writ of prohibition are met, and issuance of the writ is necessary to prevent irremediable harm to B.H. We therefore reverse the court of appeals

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[13] The district court noted that it did not know what the cell phone data would reveal, recognizing that it could be voluminous, and leaving it to the defense-hired expert to pare the data down. In an apparent contradiction, the court stated that the expert was not "going to make any determination of relevance, they are simply going to decide what they believe is related here to the case." The court then reiterated that it wanted to "make sure that we are being mindful of the victim's privacy rights."

and grant B.H.'s petition for a writ of prohibition. We do so without prejudice to Yildirim's right to request a new subpoena that conforms to the principles that are set forth today.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and grant B.H.'s petition for a writ of prohibition.

Reversed; writ of prohibition issued.