In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00165-CR
No. 07-16-00166-CR

COLEMAN ROBERTS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 371st District Court
Tarrant County, Texas
Trial Court Nos. 1407259D, 1435525R;
Honorable Mollee Westfall, Presiding

March 9, 2018

MEMORANDUM OPINION

Before QUINN, CJ., and PIRTLE, and PARKER, JJ.

Pursuant to a negotiated plea agreement, Appellant, Coleman Roberts, entered a plea of guilty to aggravated sexual assault, with a deadly weapon, in Cause Number

1407259D[1] and felon in possession of a firearm in Cause Number 1435525R.[2] Pursuant to that plea agreement, the trial court sentenced him to serve twenty years confinement in Number 1407259D, with a deadly-weapon finding, and five years confinement in Number 1435525R, with the sentences being served concurrently and with Appellant retaining the right to appeal the trial court's prior ruling on any written motion. On appeal, by four issues, Appellant asserts the trial court erred by denying his motion to suppress certain evidence obtained pursuant to a search warrant authorizing the search and seizure of his cell phone.[3] Specifically, he contends the warrant failed to describe the items to be seized with sufficient particularity to satisfy the requirements of the Fourth Amendment of the United States Constitution (issue one), Article I, section 9 of the Texas Constitution (issue two), and article 18.01(d) of the Texas Code of Criminal Procedure (issue three). He further contends that, because the evidence discovered pursuant to that search was the result of an improper search and seizure, the evidence was inadmissible under article 38.23(a) of the Texas Code of Criminal Procedure (issue four). We affirm.

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[1] *State v. Roberts,* No. 1407259D (371st Dist. Ct., Tarrant County, Tex. Mar. 2, 2016) (hereinafter "No. 1407259D"). *See* TEX. PENAL CODE ANN. § 22.021(a)(2)(B), (e) (West Supp. 2017) (an offense under this section is a first degree felony). Appellant's conviction of aggravated sexual assault in this proceeding is the subject of the appeal in Cause No. 07-16-00165-CR.

[2] *State v. Roberts,* No. 1435525R (371st Dist. Ct., Tarrant County, Tex. Mar. 2, 2016) (hereinafter "No. 1435525R"). *See* TEX. PENAL CODE ANN. § 46.04(a), (e) (West 2011) (an offense under this section is a third degree felony). Appellant's conviction of felon in possession of a firearm in this proceeding is the subject of the appeal in Cause No. 07-16-00166-CR.

[3] Originally appealed to the Second Court of Appeals, these appeals were transferred to this court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001 (West 2013). Should a conflict exist between the precedent of the Second Court of Appeals and this court on any relevant issue, these appeals will be decided in accordance with the precedent of the transferor court. TEX. R. APP. P. 41.3.

BACKGROUND

In May 2015, a five-count indictment was filed in Number 1407259D alleging that on or about March 15, 2015, Appellant intentionally or knowingly performed various sexual acts on K.V., a child younger than seventeen years of age (counts one through four) and did intentionally or knowingly threaten her with imminent bodily injury through the use of a deadly weapon, to-wit: a firearm (count five).[4] Counts one and two of the indictment also alleged that "by acts or words [Appellant] placed [K.V.] in fear that death or serious bodily injury would be imminently inflicted on [K.V.] and [Appellant] by acts or words occurring in the presence of [K.V.] threatened to cause the death of or serious bodily injury to [K.V.]".

In November 2015, an indictment was filed in Number 1435525R alleging that on or about March 15, 2015, Appellant intentionally or knowingly possessed a firearm and prior to said possession, he had been convicted of the felony offense of burglary of a building in July 2012, which was within five years of his release from confinement. This indictment also contained notice of a deadly-weapon finding; however, the State subsequently waived that allegation.

Prior to his plea, Appellant filed a motion to suppress certain evidence in each case. Specifically, he sought to suppress all evidence recovered from his cell phone,[5] including but not limited to videos, photographs, text messages, chat messages, social media messaging, call logs, and other evidence. He also sought to suppress evidence

[4] To protect the privacy of the minor child involved in these appeals, we will refer to her by her initials.

[5] One LG Phone, IMEI 014250-00-285790-7.

recovered pursuant to another search warrant issued for his car (wherein the cell phone was recovered).

In November 2015, the trial court held a hearing on Appellant's suppression motions. At that hearing, Appellant's counsel represented that he was not proceeding on the motion to suppress evidence obtained pursuant to the search warrant issued concerning his car.[6]

SEARCH WARRANT AND AFFIDAVIT

The search warrant in question, Warrant Number 12-5-0560-15, sought permission to "search for, seize, [and] conduct a forensic analysis" of Appellant's cell phone. The warrant did not otherwise limit the nature and scope of the search to be conducted, nor did the "return and inventory" specify any electronic information obtained as a result of the forensic analysis conducted.

The attached affidavit in support of the warrant was sworn to and signed by Detective J. E. Chalifoux. In his affidavit, Detective Chalifoux stated that he was contacted by officers concerning a shooting involving a sixteen-year old girl named K.V., who told officers that Appellant had raped her. K.V. also reported to the officers that she had shot Appellant with his own gun. K.V.'s interview was conducted on the day of the alleged offense and on the following day.

During the interviews, as stated in the affidavit supporting issuance of the warrant in question, K.V. indicated that she met Appellant in January 2015, when he contacted

[6] Appellant does not raise any issue on appeal related to that search warrant.

her through Facebook. On March 15, 2015, Appellant called her on his cell phone at approximately 4:00 a.m. and invited her to go to a club with him. She climbed out her bedroom window and met Appellant. They drove to a club where they danced and drank alcoholic beverages. After they left the club, Appellant forced her to perform a sex act. He then drove her to his residence where he hit her face and body with his closed fist when she rebuffed his additional sexual advances. He subsequently took her clothing off and choked her until she passed out. After Appellant forced her to have sexual intercourse with him, he told her to get dressed. They then went out to his car where he pointed a gun to her head in an attempt to force her to perform yet another sex act. Fearful for her life, she complied. While these events were occurring, K.V.'s grandmother called her on her cell phone and Appellant told her to answer the call. During the conversation with her grandmother, K.V. was able to leave the car and began running away. Appellant fired his gun at her and forced her to return to his car. She still had her cell phone, but she had been disconnected from her grandmother. As Appellant was driving her to another residence, she dialed 911 and the operator was able to ascertain the address where the car stopped. Police were dispatched to that address.

After he stopped the car, Appellant attempted to force K.V. to perform another sex act and she resisted. He then pointed his gun at her and hit her. He set the gun down and hit her again. K.V. picked up the gun and told him to stop or she would shoot. They struggled over the gun and it fired, striking Appellant. When officers arrived at the car's location, K.V. ran to them wearing only her underwear.

That same day, Detective Chalifoux was able to obtain a search warrant for Appellant's car where he recovered Appellant's cell phone. Three days later, Detective

Chalifoux was contacted by K.V.'s grandmother. She had access to K.V.'s Facebook account and related that someone named Eastwood Lulu had sent a number for K.V. to call and a personal message that Appellant would pay K.V. to "leave this alone." Her grandmother compared the number on the Facebook message to a known phone number for Appellant's girlfriend and found that the numbers matched. She spoke with Appellant's girlfriend who admitted she had messaged K.V. through Facebook messenger. The affidavit concluded with a request by Detective Chalifoux for a warrant authorizing a forensic examination of Appellant's cell phone.

DETECTIVE ZACH MARTIN

Detective Zach Martin, a certified forensic computer examiner, was the State's sole witness on Appellant's motion to suppress evidence obtained pursuant to the search warrant issued pertaining to his cell phone. Detective Martin testified that after he reviewed the warrant and the attached affidavit, he conducted a forensic examination of Appellant's cell phone. He defined a forensic examination as "an analysis of the device utilizing the best practices in order to preserve evidence while still determining what the device has saved to it." He indicated that a forensic analysis included "communications about the offense, communications with the parties involved in the offense, [and] evidence of the offense itself." He testified that in conducting the forensic analysis, he "takes measures to stay to what might be authorized by the search warrant, after reading the affidavit" and "[t]akes measures that assure that his analysis does not exceed the scope of the warrant."

Detective Martin began his analysis by photographing the outside of the device and all the device's components including the SIM card.[7] He then placed the device in a radio isolation box that keeps the phone from accessing any cell phone signals or WiFi signals that would alter data on the device. By accessing the SIM card, he had access to data on the cell phone.

After accessing the SIM card, Detective Martin connected the cell phone to a small computer that performed a full physical extraction, i.e., it downloaded all the data on the device in one, single block. The data was then loaded into a computer program that parcels the data out into files. He then interpreted the data further into text message files, multimedia files, and third-party application files. He then attempted to go further into call logs, videos, and movies. From there, he conducted an examination for information pertaining to the warrant and put together a report that contained hyperlinks to the relevant portions of the cell phone's data.

On Appellant's cell phone, he accessed folders related to call logs, chats, and messages that went back to November 2014. He also accessed video files and identified three videos listed on the device itself. From the traditional Google browser, he accessed Facebook via the web browser, the Facebook application, and messages on Facebook messenger.

[7] The SIM card supplies the phone number and allows the phone to contact a network. The SIM card can be used to determine not only the phone number but also, through the service provider, account details, names, addresses, and other information affiliated with the device's account.

Of the three videos, two video files had potential evidentiary value because they were saved by default using the offense date.[8] Martin testified that these two videos were relevant to the warrant because they were created during a time frame relevant to the offense and could contain exculpatory evidence, corroborating evidence, or evidence of the offense itself. He also testified that if he had identified a video dated three months prior to the offense, then "just by looking at the times, you could be, okay, that's not from the offense date, that's not related. I'm not going to look." Based on a review of the warrant, the accompanying affidavit, and the testimony of Detective Martin, the trial court denied Appellant's motion to suppress.

ISSUES ONE, TWO, AND THREE—LEGALITY OF THE SEARCH

STANDARD OF REVIEW

Under *Carmouche v. State,* 10 S.W.3d 323, 327 (Tex. Crim. App. 2000), the standard of review we apply to a ruling on a motion to suppress is a bifurcated one. We give almost total deference to the trial court's ruling on questions of historical fact and application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor, but we review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor. *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *State v. Sanders*, 535 S.W.3d 891, 896 (Tex. App.—Fort Worth 2017, pet. filed). When the record is silent on the reasons for the trial court's ruling, as we have here, we imply the necessary fact findings that would support its ruling if the evidence, viewed in the light most favorable to the ruling, supports those findings. *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex.

[8] The trial court's statements during the suppression hearing and counsels' examinations of Detective Martin make it apparent that the primary thrust of the suppression motion was to exclude the two videos that were dated the day of the alleged offense.

Crim. App. 2008); *Wiede v. State*, 214 S.W.3d 17, 25 (Tex. Crim. App. 2007). We then review the trial court's legal ruling de novo unless the implied findings supported by the record are also dispositive of the legal ruling. *State v. Kelly*, 204 S.W.3d 808, 819 (Tex. Crim. App. 2006). Thus, we must uphold the trial court's ruling if it is supported by the record and correct under any theory of law applicable to the case even if the trial court gave the wrong reason for its ruling. *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex. Crim. App. 2003), *cert. denied*, 541 U.S. 974, 124 S. Ct. 1883, 158 L. Ed. 2d 469 (2004).

A trial court's ruling on a motion to suppress evidence is generally reviewed for an abuse of discretion and overturned only if its ruling is outside the zone of reasonable disagreement. *Martinez v. State*, 348 S.W.3d 919, 922 (Tex. Crim. App. 2011) (citing *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)). However, when reviewing a magistrate's decision to issue a warrant, appellate courts apply a highly-deferential standard of review because of the constitutional preference for searches conducted pursuant to a warrant over warrantless searches. *State v. McLain*, 337 S.W.3d 268, 271-72 (Tex. Crim. App. 2011).

When ruling on a motion to suppress evidence obtained pursuant to a search warrant, a trial court is limited to the four corners of the warrant and affidavit supporting the warrant. *Id*. at 271. The affidavit is interpreted in a non-technical, commonsense manner drawing reasonable inferences solely from the facts and circumstances contained within the four corners of the affidavit. *Bonds v. State*, 403 S.W.3d 867, 873 (Tex. Crim. App. 2013). "When in doubt, we defer to all reasonable inferences that the magistrate could have made" that are supported by the record. *Id. See Barrett v. State,* 367 S.W.3d

919, 922 (Tex. App.—Amarillo 2012, no pet.) (quoting *Rodriguez v. State*, 232 S.W.3d 55, 61 (Tex. Crim. App. 2007)).

The erroneous admission of evidence over a valid Fourth Amendment objection is constitutional error. *Taunton v. State*, 465 S.W.3d 816, 824 (Tex. App.—Texarkana 2015, pet. ref'd).[9] If an error is of constitutional dimension, an appellate court must reverse the judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment. TEX. R. APP. P. 44.2(a). In applying the "harmless error" test, we ask whether there is a "reasonable possibility" that the error might have contributed to the conviction or punishment. *Love v. State*, No. AP-77,024, 2016 Tex. Crim. App. LEXIS 1445, at * 19 (Tex. Crim. App. Dec. 7, 2016) (citing *Mosley v. State*, 983 S.W.2d 249, 259 (Tex. Crim. App. 1998)).

SEARCH WARRANT

Appellant's first three issues contend that the search warrant violated his rights as guaranteed by the United States and Texas Constitutions and article 18.01 of the Texas Code of Criminal Procedure. *See* U.S. CONST. amend. IV; TEX. CONST. art. I, § 9; TEX. CODE CRIM. PROC. ANN. art. 18.01(c) (West Supp. 2017).[10] Specifically, he asserts the

[9] Both the United States and Texas Constitutions guarantee the right of the people to be secure against unreasonable searches of their persons, houses, papers, and effects. *See* U.S. CONST. amend IV; TEX. CONST. art. I, § 9.

[10] Appellant does not assert that the Texas Constitution or Code of Criminal Procedure offer broader protections than the United States Constitution. Accordingly, we will analyze this appeal under the Fourth Amendment. *See Roberts v. State*, 444 S.W.3d 770, 772 n.1 (Tex. App.—Fort Worth 2014, pet. ref'd), *cert. denied*, 136 S. Ct. 119, 193 L. Ed. 2d 94 (2015). *See also Limon v. State*, 340 S.W.3d 753, 757 n.15 (Tex. Crim. App. 2011); *State v. Toone*, 872 S.W.2d 750, 751 n.4 (Tex. Crim. App. 1994) (collected cases cited therein). Consequently, we do not offer any separate analysis related to Article I, section 9 of the Texas Constitution.

search warrant was overbroad, i.e., it authorized a general exploratory search of his cell phone. We disagree.

The Fourth Amendment mandates that "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." *See* U. S. CONST. amend. IV. "Probable cause exists when, under the totality of circumstances, there is a fair probability or substantial chance that contraband or evidence of a crime will be found at the specified location." *Bonds*, 403 S.W.3d at 873. It is significant to note that Appellant does not assert that the magistrate lacked probable cause to issue the search warrant, only that the warrant, as issued, was too broad.

Under the Fourth Amendment, law enforcement may not embark on "a general, evidence-gathering search, especially of a cell phone which contains 'much more personal information . . . than could ever fit in a wallet, address book, briefcase, or any of the other traditional containers'" for the storage of personal information. *State v. Granville*, 423 S.W.3d 399, 412 (Tex. Crim. App. 2014) (quoting *United States v. Wurie,* 728 F. 3d 1, 9 (1st Cir. 2013)); *Butler v. State*, 459 S.W.3d 595, 601 n.3 (Tex. Crim. App. 2015) (acknowledging that both the United States Supreme Court and the Texas Court of Criminal Appeals have recognized that cell phone users have a reasonable expectation of privacy in the content of their cell phones). *See Riley v. California*, 134 S. Ct. 2473, 2485, 189 L. Ed. 2d 430 (2014) (holding that except in exceptional circumstances, police may not search the digital content of a cell phone without first getting a search warrant). Accordingly, a search of a cell phone post-arrest that is stored in a property room requires a warrant; *Granville*, 423 S.W.3d at 417, which was obtained in this case.

To comply with the Fourth Amendment, a search warrant must describe the things to be seized with sufficient particularity to avoid the possibility of a general search. *Thacker v. State,* 889 S.W.2d 380, 389 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd), *cert. denied*, 516 U.S. 810, 116 S. Ct. 57, 133 L. Ed. 2d 21 (1995). *See* TEX. CODE CRIM. PROC. ANN. art. 18.01(c) (West Supp. 2017). The Fourth Amendment's particularity requirement prevents general searches, while at the same time assuring the individual whose property is being seized and searched of both the lawful authority and limits of the search itself. *Groh v. Ramirez,* 540 U.S. 551, 561, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004). "The constitutional objectives of requiring a 'particular' description of the place to be searched include: 1) ensuring that the officer searches the right place; 2) confirming that probable cause is, in fact, established for the place described in the warrant; 3) limiting the officer's discretion and narrowing the scope of his search; 4) minimizing the danger of mistakenly searching the person or property of an innocent bystander or property owner; and 5) informing the owner of the officer's authority to search that specific location." *Long v. State*, 132 S.W.3d 443, 447 (Tex. Crim. App. 2004). To meet those objectives, the particularity requirement may be satisfied through the express incorporation or cross-referencing of a supporting affidavit that describes the items to be seized, even though the search warrant contains no such description. *See United States v. Richards*, 659 F.3d 527, 537 (6th Cir. 2011), *cert. denied*, 566 U.S. 1043, 132 S. Ct. 2726, 183 L. Ed. 2d 84 (2012). *See also United States v. Triplett*, 684 F.3d 500, 505 (5th Cir. 2012) (the law permits an affidavit incorporated by reference to amplify the particularity required in a search warrant by the Fourth Amendment). The degree of

specificity required is flexible and will vary according to the crime being investigated, the item being searched, and the types of items being sought. *Richards*, 659 F.3d at 537.

The items to be seized must be described with sufficient particularity such that the executing officer is not left with any discretion to decide what items may be seized. *Thacker,* 889 S.W.2d at 389. However, "the requirements for the particularity of the description of an item may vary according to the nature of the thing being seized"; *id.* (citing *Gonzales v. State*, 577 S.W.2d 226 (Tex. Crim. App. 1979), *cert. denied*, 444 U.S. 853, 100 S. Ct. 109, 62 L. Ed. 2d 71, 100 S. Ct. 109 (1979)), and "[w]hen the circumstances of the crime make an exact description of the instrumentalities of a crime a virtual impossibility, the searching officer can only be expected to describe the generic class of items he wishes to seize." *Id.*

With these guidelines in mind, a warrant and supporting affidavit satisfies the Fourth Amendment when it recites facts sufficient to show (1) that a specific offense has been committed, (2) that the property or items to be searched for or seized constitute or contain evidence of the offense or evidence that a particular person committed it, and (3) that the evidence sought is located at or within the thing to be searched. *Sims v. State*, 526 S.W.3d 638, 645 (Tex. App.—Texarkana 2017, no pet.) (cell phone warrant); *Taunton*, 465 S.W.3d at 822. *See* TEX. CODE CRIM. PROC. ANN. art. 18.01(c) (West Supp. 2017). The recited facts in the affidavit must be "sufficient to justify a conclusion that the object of the search is probably [within the scope of the requested search] at the time the warrant is issued." *State v. Delagarza*, 158 S.W.3d 25, 26 (Tex. App.—Austin 2005, no pet.).

Regarding computers and other electronic devices such as cell phones, "case law requires that warrants . . . affirmatively limit the search to evidence of specific [ ] crimes or specific types of materials." *United States v. Burgess*, 576 F.3d 1078, 1091 (10th Cir. 2009), *cert. denied*, 558 U.S. 1097, 130 S. Ct. 1028, 175 L. Ed. 2d 629 (2009). If a warrant permits a search of all computer records without description or limitation, it will not meet Fourth Amendment particularity requirements. *Id.*

Here, the warrant sought to search Appellant's cell phone, a particular thing. Detective Chalifoux's affidavit attached to the warrant alleged that Appellant, a particular person, had committed certain specified offenses. That is, Appellant forced K.V., a person under the age of seventeen, to perform numerous sex acts and attempted to force her to perform a sex act while threatening her with a firearm. *See Sims*, 526 S.W.3d at 645. In his affidavit, Detective Chalifoux established a nexus between the item to be searched (the cell phone) and the offenses being investigated by stating that Appellant had contacted K.V. on his cell phone and invited her to go to a club. Prior to the call, Appellant had been contacting K.V. on Facebook (potentially via the use of his cell phone). In addition, K.V.'s grandmother indicated that her granddaughter had been contacted through Facebook messenger by Appellant's girlfriend who indicated that Appellant would pay if K.V. agreed to "leave this alone." Interpreting the affidavit within its four corners in a commonsense fashion, a magistrate could have reasonably inferred from these statements that evidence concerning the commission of the offenses being investigated would be found on Appellant's cell phone. *See Bonds*, 403 S.W.3d at 873 (affidavit established sufficient nexus between criminal activity, the things to be seized, and the place to be searched).

Given the inferences that could be drawn from the affidavit, the warrant was not overbroad simply because it did not specifically describe with particularity the accounts to be searched or the types of electronic data that might be stored on Appellant's cell phone. *Thacker,* 889 S.W.2d at 389-90 (that the warrant sought "financial records" and "case records" not overbroad). *See Triplett,* 684 F.3d at 505 (given the nexus between the affidavit and the items to be seized, warrant seeking the contents of an "electronic memory device" not overbroad when cell phone searched); *Richards*, 659 F.3d at 541-42 (warrant that identified a server and listed one of the items to be seized as "all contents of the justinsfriends.com and/or justinsfriends.net servers at Black Sun . . . including any computer files that were or may have been used as a means to advertise, transport, distribute, or possess child pornography" was not overbroad); *Burgess*, 576 F.3d at 1083 (warrant authorizing a search of "computer records" not overbroad when the warrant contained particularized language creating a nexus between the data stored on the device and the crime to be investigated). *See also United States v. Aleman*, 675 F. Appx. 441, 443 (5th Cir. 2017) (holding "description in warrant of the property being sought—i.e., devices capable of storing electronic data and the materials necessary to access and to view that data—supported the argument that the objective of the warrant was to review electronic media stored" on the device to be searched). Based upon the nexus between the offenses alleged in Detective Chalifoux's affidavit and Appellant's cell phone, a reasonable magistrate could have concluded that the warrant satisfied the Fourth Amendment requirement of sufficient particularity. *See Triplett*, 684 F.3d at 505.

Furthermore, Detective Martin testified that he limited his examination to "communications about the offense, communications with the parties involved in the

offense, [and] evidence of the offense itself." And, in conducting the examination, he took "measures to stay to what might be authorized by the search warrant, after reading the affidavit," in order to "assure that his analysis [did] not exceed the scope of the warrant." *See Burgess*, 576 F.3d at 1092 (limited scope of warrant reinforced by executing officer's understanding and respect for narrow scope authorized by search warrant).

Detective Martin also described his search protocol. He testified that his examination consisted of first photographing Appellant's cell phone and then placing the cell phone in an isolation box that prevented any further alteration of its data. He next accessed its SIM card and downloaded the data into a computer program that parcels out the data into files. He then interpreted the data further into text message files, multimedia files, and third-party applications. *See, e.g., Triplett,* 684 F.3d at 505-06 (describing a protocol similar to Detective Martin's protocol as a reasonable one for searching an "electronic memory device" or cell phone). When he accessed Appellant's video files, there were two files that were dated the day of the offense. Detective Martin had to go no further than the title of the video file itself to see that they were created during the time frame of the offense. *See Burgess*, 576 F.3d at 1091-92 (seizure of videos made on the day of the offense pursuant to a warrant authorizing the search of "computer records" did not violate Fourth Amendment).

A search warrant does not violate the requirement of being "sufficiently particular" merely because its execution might incidentally lead to the discovery of non-offense related evidence. Here, although the general object of the warrant (a "forensic analysis" of the electronic data stored on Appellant's cell phone) tacitly encompasses electronic data that might, upon a thorough forensic examination, be identified as being non-offense

related, the accompanying affidavit limits the search protocol to evidence of specific crimes described in detail in the affidavit. Accordingly, when the warrant and the affidavit are construed together, the warrant does not allow an unfettered and unlimited search of Appellant's cell phone.

The focused nature of the forensic examination is further reinforced by Detective Martin's testimony indicating that his search methods were reasonably directed toward discovering evidence of the offense itself. Accordingly, we find that the warrant augmented by the affidavit met the particularity requirements of the Fourth Amendment and the search was reasonable. Therefore, we overrule Appellant's first three issues.

ISSUE FOUR—38.23(a) OF THE TEXAS CODE OF CRIMINAL PROCEDURE

Because Appellant's fourth issue is predicated on a finding that the evidence discovered was pursuant to an improper and illegal search and seizure, a discussion of issue four is pretermitted. *See* TEX. R. APP. P. 47.1.

CONCLUSION

The judgments of the trial court are affirmed.

Patrick A. Pirtle
Justice

Do not publish.

Quinn, C.J., concurring in result.