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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0337**

State of Minnesota,
Respondent,

vs.

Kenyatta Devine Buckles,
Appellant.

**Filed May 1, 2023
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-19-12877

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

Mary F. Moriarty, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Kenyatta Devine Buckles appeals from judgments of conviction, following a jury trial, for first-degree criminal sexual conduct, kidnapping, first-degree aggravated robbery, unlawful possession of a firearm, and second-degree assault. He

argues that he is entitled to a new trial because (1) the district court erred by denying his motion to suppress evidence because the warrantless searches of his person, car, and apartment were unconstitutional; (2) the district court abused its discretion by admitting evidence of other crimes; and (3) the district court judges presiding over his case were not impartial. In the alternative, Buckles argues that his enhanced sentences for criminal sexual conduct and kidnapping must be reversed because the evidence is insufficient to prove that he did not release his victim in a safe place. We affirm.

FACTS

Incident

Respondent State of Minnesota charged Buckles with the crimes of which he was ultimately convicted based on the following incident. On March 18, 2019, officers responded to a report from A.D., who said she had been sexually assaulted and robbed at gunpoint. A.D. told officers that she received a message in response to her ad on a sex-work website from a person who identified himself as Adam. Adam sent a ride service to pick up A.D. in Little Canada and take her to an address in south Minneapolis. When she arrived at the residence to which Adam had directed her, A.D. knocked on the door and a child answered. Thinking she had the wrong address, A.D. apologized and turned away, and the child shut the door. A.D. then saw a man running toward her, wearing a hoodie and something covering his face and holding a silver gun. The man put his hand over A.D.'s mouth, held the gun to her, and demanded money. Then, putting the gun to her back, the man walked A.D. to an area next to the residential building where he forced her to take off her clothes and unlock her iPhone. The man penetrated her vagina with his penis while

wearing a condom and forced her to record the assault on her phone. The man then directed A.D. to lie on the ground and count to 100, and he ran away with her cellphone.

After counting to 56, A.D. ran two blocks to a theater and told security guards what had happened. The guards called 911 and reported that A.D. had been robbed and possibly assaulted by a Black male of medium build wearing a gray ski mask and a blue jacket and carrying a silver handgun. A.D. used a laptop computer at the theater to track her cellphone to an apartment building next to a gas station several blocks from the theater. The security guards relayed this information to the 911 operator.

Arrest and Searches

Police responded and ultimately encountered and arrested Buckles. They searched his person, the car he was in, and his apartment. The facts relating to these events are drawn from the district court's order denying Buckles's pretrial motion to suppress evidence obtained as a result of these searches.

Following the 911 call, two Minneapolis police officers drove to the area of the gas station and apartment building discussed in the call. While driving through the parking lot of the apartment building, they observed a man who roughly matched the suspect's description, sitting in a parked car. The officers ran the car's license plate and learned that it was registered to J.C., who had an outstanding gross-misdemeanor arrest warrant. The officers approached the vehicle and instructed the driver to exit. The officer asked the driver if he was the owner of the vehicle, and he said that he was. The officers then arrested the driver under the warrant for J.C. and searched his person. They found a small amount of marijuana and two unidentifiable pills that they suspected were a controlled substance.

One of the officers put the driver in the backseat of the squad car. The officer asked the driver if he was J.C. The driver said that he was not, and he identified himself as Kenyatta Buckles. Buckles said that he had recently purchased the car from J.C. and had not switched the vehicle's registration to his own name. Though Buckles had no form of identification, the officer located photos of J.C. and of Buckles in a database and verified Buckles's identity.

While Buckles was being questioned in the squad car, the other officer searched the vehicle. The officer found a used condom and a zippered bag containing 15 cellphones. The police called A.D.'s phone, but none of the 15 cellphones responded. Police also brought A.D. to the scene to see whether she could identify Buckles, but she could not. A.D. told the police that the phone-tracking application still showed her phone in the apartment building.

Although officers had learned that Buckles was not J.C, they proceeded with his arrest based on the contraband found on his person and took him to jail for booking. Believing the armed perpetrator might still be at large, the police continued their investigation. The police learned that Buckles lived in a unit in the apartment building where A.D.'s phone was still shown to be. Officers searched the exterior of the apartment building and the parking lot. They then entered the apartment building, approached Buckles's unit, and called A.D.'s phone. They heard what they believed might be a phone vibrating inside the unit as well as other "commotion." When they knocked on the door and announced their presence, the commotion ceased. Believing that someone might be trying to destroy evidence and that the suspect was still at large, officers entered the

apartment through an unlocked door. As they conducted a protective sweep, they saw a handgun matching A.D.’s description and A.D.’s phone, both in plain view.

Other-Crimes Evidence

Before trial, the prosecution sought to admit evidence of three other incidents—for which Buckles was facing separate charges—of sexually assaulting and robbing other escorts.¹ At trial, the district court admitted evidence of the three incidents to prove Buckles’s identity as A.D.’s attacker by showing a common scheme or plan. The trial evidence regarding these incidents is further described in Section II below.

Trial and Sentencing

After a 14-day trial, the jury found Buckles guilty of all counts: (1) first-degree criminal sexual conduct (fear of great bodily harm), pursuant to Minnesota Statutes section 609.342, subdivision 1(c) (2018); (2) first-degree criminal sexual conduct (dangerous weapon), pursuant to Minnesota Statutes section 609.342, subdivision 1(d) (2018); (3) kidnapping to facilitate felony or flight, pursuant to Minnesota Statutes section 609.25, subdivision 1(2) (2018); (4) first-degree aggravated robbery, pursuant to Minnesota Statutes section 609.245, subdivision 1 (2018); (5) possession of a firearm by an ineligible person, pursuant to Minnesota Statutes section 624.713, subdivision 1(2) (2018); and (6) second-degree assault, pursuant to Minnesota Statutes section 609.222, subdivision 1 (2018). The jury also found that Buckles used a dangerous weapon to cause the victim to submit and that he did not release the victim in a safe place—findings relevant

¹ We use the term “escorts” because that is the term that the victims used to describe their work.

to sentencing for criminal sexual conduct and kidnapping. *See* Minn. Stat. §§ 609.3455, subd. 2(a)(1) (providing for an enhanced sentence for certain sexual-assault offenses if two or more heinous elements were present), .25, subd. 2(2) (providing for an enhanced sentence for kidnapping if the victim was not released in a safe place) (2018).

The district court sentenced Buckles to life in prison without release for the first count of first-degree criminal sexual conduct. The district court also imposed concurrent prison sentences of 60 months for unlawful possession of a firearm, 98 months for kidnapping, and 108 months for first-degree aggravated robbery.

Buckles appeals.

DECISION

Buckles argues that (1) the district court erred by denying his motion to suppress evidence because the searches of his person, vehicle, and apartment were unlawful; (2) the district court abused its discretion by admitting other-crimes evidence because the potential for unfair prejudice outweighed the probative value; (3) he is entitled to a retrial because the two judges presiding over his case lost their impartiality and were disqualified; and (4) the district court erred by enhancing his sentences for sexual assault and kidnapping because the evidence was insufficient for the jury to find that he did not release A.D. in a “safe place.” We address each argument in turn.

I. The district court did not err by denying Buckles’s motion to suppress.

Evidence obtained from illegal searches and seizures generally must be suppressed. *State v. Horst*, 880 N.W.2d 24, 36 (Minn. 2016). The Fourth Amendment of the United States Constitution and article I, section 10, of the Minnesota Constitution prohibit

unreasonable searches and seizures. “Warrantless searches and seizures are generally unreasonable unless they fall within a recognized warrant exception.” *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). Buckles argues that no exception applies to the warrantless searches of his person, car, and apartment, and thus the evidence obtained as a result of those searches should have been suppressed.

“When reviewing a district court’s pretrial order on a motion to suppress evidence, ‘we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.’” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quoting *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007)). Whether an arrest is supported by probable cause and whether a search is constitutional are questions of law, which an appellate court reviews de novo. *See State v. Horner*, 617 N.W.2d 789, 795 (Minn. 2000); *State v. Robb*, 605 N.W.2d 96, 99 (Minn. 2000).

A. The search of Buckles’s person incident to arrest was lawful.

Buckles asserts that the warrantless search of his person was unconstitutional. A search incident to a valid arrest is an exception to the warrant requirement. *State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998). An arrest is valid if it is supported by probable cause. *Ortega*, 770 N.W.2d at 150. The police have probable cause to arrest an individual without a warrant when an ordinary person, viewing the totality of the circumstances, “would entertain an honest and strong suspicion” that the individual has committed a crime. *Id.*

The district court determined that Buckles’s arrest before the search of his person was supported by probable cause because the police were acting on an outstanding arrest

warrant for J.C.—the registered owner of the car—and the police had a strong suspicion that Buckles was J.C.²

Buckles disputes that the officers had the necessary strong suspicion that Buckles was actually J.C. He compares this case to *State v. Olson*, 634 N.W.2d 224 (Minn. App. 2001), *rev. denied* (Minn. Dec. 11, 2001). In *Olson*, the police arrested a car passenger who was identified as “Michael Olson” after they determined that there were outstanding warrants for a “Michael Olson” and for a “Michael Joseph Olson,” with different dates of birth. 634 N.W.2d at 228. We held that the arrest was unlawful because the police had only a “mere suspicion”—not a “strong suspicion”—that the arrestee was one of the persons in the warrants. *Id.* Olson stated that he was not the person named in either of the warrants. *Id.* at 226. Even so, the officer did not ask Olson for his middle name, birthdate, or driver’s license before arresting him. *Id.* at 227. Buckles contends that the officers here similarly lacked a strong suspicion that he was the person on the arrest warrant because they did not ask Buckles for his name, his birthdate, or his driver’s license until after they arrested him.

We disagree. The officers knew there was arrest warrant for the registered owner of the vehicle that Buckles was in. Because Buckles was alone in the vehicle, sitting in the driver’s seat, it was reasonable for officers to infer that he was the registered owner. *See State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996). Moreover, the officers asked Buckles if he was the owner of the vehicle, and he said that he was. Unlike in *Olson*, the officers had no reason to question whether Buckles was in fact the person on the arrest warrant. That

² The district court also concluded that Buckles’s continuing arrest after the police learned his true identity was supported by the discovery of what appeared to be a controlled substance during the search incident to the initial arrest.

he turned out not to be does not invalidate the arrest. A reasonable mistake of fact about the identity of a suspect does not destroy probable cause to arrest. *Hill v. California*, 401 U.S. 797, 802-04 (1971) (upholding an arrest where the police officers had probable cause to arrest a suspect and reasonably mistook another for the suspect in good faith); *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (noting that “honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment”).

B. The search of Buckles’s car was a lawful search incident to arrest.

Buckles argues that, even if the search of his person was a lawful search incident to arrest, the search of his car was not.

The district court concluded that the search of Buckles’s vehicle was valid as a search incident to arrest. The district court reasoned that Buckles was lawfully searched incident to his arrest on the warrant for J.C., which led the officers to find drugs in his pocket, which provided probable cause to arrest Buckles for possession of illegal narcotics, which provided grounds to search his car incident to arrest. The district court relied on *State v. Ture*, 632 N.W.2d 621 (Minn. 2001). In *Ture*, the supreme court wrote, “Under the exception for searches incident to arrest, once a vehicle’s occupant is lawfully arrested the police may search the vehicle’s passenger compartment.” 632 N.W.2d at 628.

Buckles asserts the rule in *Ture* has been narrowed by the U.S. Supreme Court’s decision in *Arizona v. Gant*, 556 U.S. 332 (2009). He explains that *Gant* identified two circumstances in which the police may search a vehicle incident to a recent occupant’s arrest: (1) “when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search,” and (2) “when it is reasonable to believe evidence

relevant to the crime of arrest might be found in the vehicle.” *Gant*, 556 U.S. at 343 (quotation omitted). He contends that neither circumstance applies. First, he observes that he was secured within the squad car at the time of the search. Second, he contends that the police had no reason to believe that there would be drugs in the car since Buckles was not holding a large quantity of narcotics on his person and the officers saw no evidence of drugs in the car.

It is true that Buckles was not unsecured in the passenger compartment of his car at the time of the search. But the police did have reason to believe that evidence related to the crime of arrest might be found in the vehicle. In *Gant*, the Supreme Court explained that, “[i]n many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence.” 556 U.S. at 344. But the Supreme Court went on to say that, “in others, including *Belton* and *Thornton*, the offense of arrest will supply a basis for searching the passenger compartment of an arrestee’s vehicle and any containers therein.” *Id.* In *Belton* and *Thornton*, the Supreme Court held that a valid arrest for a drug offense supplied a lawful basis for searching the arrestee’s vehicle for evidence. *New York v. Belton*, 453 U.S. 454, 460, 462-63 (1981); *Thornton v. United States*, 541 U.S. 615, 618, 622-24 (2004). Buckles was validly arrested for a drug offense because the police found what appeared to be narcotics on his person when he was removed from the car. Under *Gant*, *Belton*, and *Thornton*, the search of Buckles’s car was incident to his lawful arrest.

We are not persuaded otherwise by Buckles’s argument that his case is different from *Belton* and *Thornton* because, here, the police found only a small quantity of narcotics

on Buckles and did not smell or see evidence in the car before searching it. Neither those cases nor *Gant* suggest that a certain amount of contraband must be found on the arrestee or that evidence of drugs must be observed in the vehicle before the arrestee's vehicle may be searched. On the contrary, *Gant* reaffirms that, as in *Belton* and *Thornton*, where the occupant of a vehicle is arrested for a drug offense, "the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein." *Gant*, 556 U.S. at 344.

C. The search of Buckles's apartment was justified by exigent circumstances.

Buckles argues that the warrantless entry into his apartment was unconstitutional. An exception to the warrant requirement allows police to conduct a warrantless, nonconsensual entry into a home when exigent circumstances exist. *Payton v. New York*, 445 U.S. 573, 587-88 (1980). There are two tests for determining the presence of exigent circumstances. *State v. Gray*, 456 N.W.2d 251, 256 (Minn. 1990). First, under the single-factor test, exigent circumstances may be established by any one of the following situations: (1) hot pursuit of a fleeing felon, (2) imminent destruction or removal of evidence, (3) need to protect human life, (4) likely escape of the suspect, or (5) fire. *Id.* Second, if none of the single-factor circumstances is clearly implicated, an exigency may still be established by the totality of the circumstances. *Id.* Under the totality-of-circumstances test, courts consider the following factors:

(a) whether a grave or violent offense is involved; (b) whether the suspect is reasonably believed to be armed; (c) whether there is strong probable cause connecting the suspect to the offense; (d) whether police have strong reason to believe the suspect is on the premises; (e) whether it is likely the suspect

will escape if not swiftly apprehended; and (f) whether peaceable entry was made.

Id. Here, the district court determined that the totality of the circumstances established a sufficient exigency.

Buckles disagrees. He argues that, if officers suspected that Buckles was the perpetrator of the armed robbery and assault, they could have sought a warrant since they already had him in custody and, if they did not suspect he was the perpetrator, they could have secured the apartment building while they sought a warrant. He also argues that evidence was not likely to be destroyed because the victim's cellphone was working, as demonstrated by the fact that it vibrated when called, and because it is unexplained how a person in the apartment could destroy a handgun.

We are not persuaded. The police were responding to the report of an armed robbery and sexual assault, which are grave and violent offenses. Based on the victim's report, officers had reason to believe the suspect was armed. Officers also had reason to believe the suspect may be in the apartment. Though police had Buckles in custody at the time, they did not know that he was the perpetrator of the assault and robbery, nor did they know if others were involved. A.D. had not identified Buckles in the show-up, and the search of the car led officers to believe that the registered owner may have been involved and still at large. Moreover, the phone-tracking application continued to show the victim's phone in the apartment building and officers heard vibrating inside the apartment when they called its number. The "commotion" that officers heard inside the apartment led them to

reasonably believe the suspect may be attempting to escape or to destroy that evidence.³ And, finally, the officers made peaceable entry through the unlocked door of the apartment. The totality of these circumstances established exigent circumstances.

In sum, because the arrest and the subsequent searches of Buckles's person, car, and apartment were lawful, the district court did not err by denying the motion to suppress.

II. The district court did not abuse its discretion by admitting other-crimes evidence.

“Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith,” but it may be admissible “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b). Evidence of other acts or crimes to be used for a permissible purpose is commonly referred to as *Spreigl* evidence. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). “A district court’s decision to admit *Spreigl* evidence is reviewed for an abuse of discretion.” *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). The defendant has the burden of showing that the district court erred and that the error had prejudicial effect. *Id.*

The district court uses a five-step procedure to properly admit *Spreigl* evidence:

- (1) the state must give notice of its intent to admit the evidence;
- (2) the state must clearly indicate what the evidence will be offered to prove;
- (3) there must be clear and convincing evidence that the defendant participated in the prior act;

³ The district court noted that the suspect was unlikely to escape given the significant police presence on the scene but concluded that the other factors supported the presence of exigent circumstances. We agree.

- (4) the evidence must be relevant and material to the state's case; and
- (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Tomlinson, 938 N.W.2d 279, 286 (Minn. App. 2019) (emphasis omitted), *rev. denied* (Minn. Feb. 26, 2020); *see also* Minn. R. Evid. 404(b)(2). Buckles argues only that the district court erred by admitting the evidence because its probative value was outweighed by its potential for unfair prejudice, the fifth step. We first summarize the evidence in question, and then evaluate the *Spreigl* evidence's probative value in comparison to its potential for unfair prejudice.

The first *Spreigl* incident was Buckles's assault and robbery of T.T. Evidence about the incident was provided via T.T.'s testimony about the incident and her identification of Buckles as her assailant, as well as through testimony from two police officers who investigated the assault. The district court gave the standard cautionary *Spreigl* instruction just before T.T.'s direct testimony. *See* 10 *Minnesota Practice*, CRIMJIG 2.01 (6th ed. 2022).

T.T. testified that she was working as an escort and had posted ads on a sex-work website. On February 19, 2018, she arranged by phone to meet a new client at a location across from the same gas station involved in this case. The client wore a black hoodie, black sweatpants, and a ski mask that covered the bottom of his face but not his eyes. After T.T. walked with the client a short distance, she turned and saw he had a gun in his hand. T.T. said that she asked the client if he wanted money and that "he said yeah, after he gets some pussy he will." The client then walked her, with the gun at her head, behind some dumpsters.

Once they were behind the dumpster, the client made T.T. unlock and reset her cellphone, pull her pants down, and face the dumpster. T.T. said that he then “rape[d] [her]” and recorded the assault using her phone. T.T. described the client forcing her to look at her phone, calling her “a filthy whore” and forcing her to repeat that, and ejaculating on her face and making her wipe off with her sweater. The client took the sweater, her phone, and her money, and then told her to turn around and count to 100 or he would “blow [her] head off.” Finally, T.T. identified Exhibit 34, a cellphone found in Buckles’s car, as her cellphone that had been taken during the assault. She testified that she identified Buckles in a photo lineup in May 2019. Two officers also testified about their investigation of the incident.

The second *Spreigl* incident was Buckles’s assault and robbery of W.R. Evidence about that incident was provided via W.R.’s testimony about the incident, a video of the assault, and testimony from two police officers who investigated the assault. The district court gave a *Spreigl* instruction just before W.R.’s direct testimony.

Like T.T., W.R. explained that she was working as an escort and had posted ads online. On December 26, 2018, she agreed to meet a client in south Minneapolis. The client requested a “car date.” When W.R. met the client, she saw that he was Black and was wearing a black sweatshirt with the hood up.

After the client got into the car, he pulled out a gun and put it to W.R.’s head, then told her to give him all her money. The client then sexually assaulted W.R., by vaginal and anal penetration with his penis, and forced her to record the assault with her cellphone. After the client ejaculated, he stopped the assault and told W.R. to look down and not move

or he would kill her. He took her cellphone when he left. W.R. also identified a cellphone found in Buckles's car as hers and identified Buckles as her assailant on the stand. Two officers also testified about their investigation of the incident. Finally, the state presented a two-minute video of the sexual assault.

The third *Spreigl* incident was Buckles's assault and robbery of P.R., who at the time of her assault on January 20, 2019, was working as an escort in Minneapolis. Because P.R. had passed away before trial, evidence about that incident was provided via eight other witnesses. The district court gave a *Spreigl* instruction just before M.C., the first witness, testified.

M.C. testified that she lived in south Minneapolis on January 20, 2019. After she heard a woman screaming, she and her husband let P.R. into their house. P.R. did not have her purse or cellphone. P.R. told M.C. that she had been attacked and that her assailant told her "give me your money or give me pussy."

M.C. called 911. A transcript of the call was introduced at trial. In the 911 call, P.R. spoke with the dispatcher and reported that she had gone to pick someone up in her car. She let him into her car, and he put a knife up to her throat, demanded money, and wrestled her to get back in the car when she got out. The man was Black and in his early 20s, and he wore a white or yellow hat, a hood, and a scarf.

The state also presented testimony from the responding officer and paramedic, two forensic scientists, and two sergeants to connect Buckles to P.R.'s assault. This testimony established that P.R.'s cellphone was found in Buckles's car with messages between

Buckles and P.R. on the day of the assault and that DNA on a hat found in P.R.'s car matched Buckles's DNA.

Buckles argues that the district court erred by admitting evidence of these three incidents because its probative value was outweighed by its potential for unfair prejudice. When evaluating whether the potential for unfair prejudice outweighs the probative value, appellate courts "balance the relevance of the [*Spreigl* evidence], the risk of the evidence being used as propensity evidence, and the State's need to strengthen weak or inadequate proof in the case." *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009).

Buckles argues that the evidence had a high potential for unfair prejudice because it portrayed him as a sexual predator and thus was likely to be used as propensity evidence, the nature of the other-crime evidence was highly graphic, and the quantity of the other-crime evidence was "overwhelming." He further asserts that the cautionary instructions could not have prevented the jurors from misusing the evidence given its quantity and nature. The state responds that the similarity between the other-crimes evidence and the charged conduct diminished the likelihood that the evidence would be used for an improper purpose and that Buckles's own highly distinctive *modus operandi* was the reason for the graphic nature of both the charged conduct and the other-crimes evidence.

As Buckles correctly asserts, the other-crimes evidence was a significant part of the trial. Other-crimes evidence was presented during four of the seven days of trial, including live testimony from two victims, a video of one victim's assault, and extensive testimony from police investigators. But only three witnesses testified about the first two other-crimes incidents involving T.T. and W.R. Eight witnesses testified about the last other-crime

incident involving P.R., and much of that evidence was not particularly graphic. Because P.R. had passed away, there was more testimony about the investigation of the incident and how P.R.'s assault was tied to Buckles, rather than about the details of P.R.'s assault.

Buckles analogizes this case to *Ture v. State*, 681 N.W.2d 9 (Minn. 2004), in which the *Spreigl* evidence was “practically a retrial” of the other crime when 24 witnesses testified to the details of that crime for almost three of the twelve days of trial. The Minnesota Supreme Court stated that, although the state “had the right to present evidence of the details of the [other crime], courts should not allow the state, when presenting *Spreigl* evidence, to present evidence that is unduly cumulative with the potential to fixate the jury on the defendant’s guilt of the other crime.” *Ture*, 681 N.W.2d at 16. But the evidence here was not unduly cumulative or unnecessarily graphic. The number of other incidents and their graphic nature demonstrated Buckles’s distinctive modus operandi, which included forcing the victims to record themselves on their cellphones, using specific language during the assault, and telling the victims to look down or he would kill them while fleeing. Moreover, the district court provided a limiting instruction before evidence of each *Spreigl* incident was admitted, and we assume the jury understood and followed the jury instructions. *See State v. Campbell*, 861 N.W.2d 95, 103 (Minn. 2015).

Buckles also argues that the probative value of the *Spreigl* evidence was minimal because the state had other evidence establishing Buckles as A.D.’s assailant. The state counters that the *Spreigl* evidence was highly relevant and that it met a probative need because A.D. could not identify her assailant and the evidence aided to refute any

contention—which Buckles later raised when he testified—that he had consensual sex with A.D. We agree with the state.

First, the *Spreigl* evidence established a common scheme or plan that was relevant and important to establishing Buckles’s identity as A.D.’s assailant. As Buckles acknowledges, A.D. never identified Buckles. The *Spreigl* incidents and the charged crime occurred within blocks of one another during a 13-month window. They shared a markedly similar modus operandi—the assailant (1) targeted escorts by responding to online ads and requesting outcalls; (2) used a weapon to coerce his victims, with two of the other crimes involving a gun and one involving a knife; (3) sexually assaulted his victims outside, either in a vehicle or in an alleyway; (4) in two of the other crimes and the charged conduct, forced the victim to record the assault with their own cellphones; (5) in two of the other crimes and the charged conduct, told the victims to look down or he would kill them while running away; and (6) stole the victims’ cellphones and money. Thus, the evidence of other crimes was highly probative to identify Buckles as A.D.’s attacker. *See Tomlinson*, 938 N.W.2d at 287 (“When there is a close relationship—in terms of time, place, or modus operandi—between the charged offense and the *Spreigl* offense, the evidence is relevant and material.”).

Buckles responds that the probative value was minimal because the state had other evidence to prove Buckles’s identity. Buckles is correct that there was DNA matching A.D. on Buckles’s underwear. But A.D. was unable to identify her assailant immediately after the assault, and much of the other evidence was circumstantial, such as the location of Buckles’s arrest and the communications between Buckles and A.D. Furthermore, as

Buckles concedes, the evidence about Buckles's identity "was not overwhelming." Given the centrality of identity to the state's case and the similarity of the other crimes, the *Spreigl* evidence had high probative value.

Second, the *Spreigl* evidence was probative of the common scheme or plan to establish that A.D. did not fabricate her assault and to refute any claim of consensual sex. Although the evidence was not initially admitted to prove lack of consent but rather the identity of A.D.'s attacker, the supreme court has recognized that, if the victim's consent is at issue in a sexual-assault case, "other-crime evidence show[ing] a pattern of similar aggressive sexual behavior by defendant against other women in the community" is "highly relevant," *State v. DeBaere*, 356 N.W.2d 301, 305 (Minn. 1984), and Buckles ultimately testified that he had consensual sex with A.D. Moreover, as the state argues, the other-crimes evidence was particularly important to corroborate the victim's testimony because of the concern that the jury would not believe her because she was engaged in sex work.

In sum, because the probative value of the *Spreigl* evidence was not outweighed by its potential for unfair prejudice, the district court did not abuse its discretion by admitting the evidence of Buckles's other assaults of escorts.

III. Buckles has not established judicial misconduct.

Buckles argues that two instances of judicial misconduct entitle him to reversal and remand. He argues that he is entitled to a new suppression hearing before a different judge because the judge who considered Buckles's motion to suppress evidence relied on facts outside the record. He also argues that he is entitled to a new trial before a different judge because the judge who presided over the jury trial, without explanation, paused the trial

and exited the courtroom during the testimony of one of the *Spriegl* victims. Buckles challenges the conduct of these two judges both on constitutional grounds and under the Minnesota Code of Judicial Conduct. We address Buckles's arguments in turn.

A. There was no violation of the constitutional right to an impartial judge.

Both the United States and Minnesota Constitutions guarantee criminal defendants the right to be tried by an impartial jury. U.S. Const. amend. VI; Minn. Const. art. 1, § 6. Although the right to a trial before an impartial judge is not specifically enumerated in the United States or Minnesota Constitution, this principle has long been recognized as a component of due process. *See Rose v. Clark*, 478 U.S. 570, 577 (1986); *see also Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004) (“[I]mpartiality is the very foundation of the American judicial system.”). The right requires that conclusions reached by the trier of fact be based upon the facts in evidence and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained beyond that adduced in court. *State v. Dorsey*, 701 N.W.2d 238, 249-50 (Minn. 2005). “Our judicial system presumes that judges are capable of setting aside collateral knowledge they possess and are able to ‘approach every aspect of each case with a neutral and objective disposition.’” *Id.* at 247 (quoting *Liteky v. United States*, 510 U.S. 540, 561-62, (1994) (Kennedy, J., concurring)).

We review whether a judge's conduct deprived a defendant of their constitutional right to a fair trial and an impartial fact-finder de novo. *Id.* at 249.

1. Motion to Suppress—Omnibus Judge

The suppression hearing was held before the omnibus judge, during which the district court received testimony from the two arresting officers and several exhibits. Following the hearing, the omnibus judge denied Buckles's suppression motion.

Buckles argues that this case must be remanded for a new suppression hearing by a different judge because the omnibus judge relied on facts outside of those developed at the suppression hearing. Buckles relies on *Dorsey*, where the supreme court reversed the appellant's conviction and remanded for a new trial when the district court judge at a bench trial "independently investigated a fact not introduced into evidence, violating [the judge's] obligation as the finder of fact to refrain from seeking or obtaining evidence outside that presented by the parties." *Id.* at 250. Buckles asserts that the district court's order denying Buckles's suppression motion demonstrates that the omnibus judge did the same here.

Buckles points to information at the beginning and the end of the district court's order regarding other cases pending against Buckles, as well as the description of A.D.'s account of the assault that was drawn from an earlier order in this case. Although this information was known to the omnibus judge from the record in this case, it is true that it did not derive from the suppression hearing. Nevertheless, Buckles's assertion of error fails. As a review of the order denying suppression shows, the district court's extensive substantive analysis of the lawfulness of the challenged searches cites and relies entirely on the record evidence from the suppression hearing. The omnibus judge thus did not improperly rely on evidence outside of the record.

2. Recess During Trial and Denial of Mistrial—Trial Judge

The trial was held before a different judge from the judge who presided over the omnibus proceedings. During testimony from W.R. (the victim of the second *Spreigl* incident), the trial judge left the bench for approximately ten minutes and directed everyone else to remain in the courtroom. The transcript reads, in relevant part, as follows:

[STATE]: When you were sitting in the car following his orders, how long would you say you sat there before you ultimately moved?

[WITNESS]: Man. Probably at least a good 10, 15 minutes.

[STATE]: What was going on in your mind?

[WITNESS]: A lot of things. Really, really mainly I was -- I was very angry. I was mostly angry at myself. You know, there were so many red flags. I mean, I shouldn't even have been there in the first place, but after that, it was just -- then I was mad at him, like what the -- like what the hell, you know.

THE COURT: Let's take a brief recess, please.

(The court and law clerk exit the courtroom.)

(Clerk enters courtroom.)

THE CLERK: Everyone just stay here.

(Pause)

(Judge enters courtroom.)

THE COURT: Thank you. Please continue.

[STATE]: Thank you, Your Honor. [W.R.], you testified you did not have your cellphone with you; is that right?

The recess lasted approximately 10 minutes. The next day, Buckles moved for a mistrial based on the recess and the district court denied the motion.

Buckles argues that the trial judge, by abruptly departing the courtroom without explanation, allowed her “personal feelings and emotional response to [W.R.’s] victimization by Buckles override her duty to remain an impartial arbitrator of the facts at Buckles’ trial.” The argument is unconvincing.

As the state points out, Buckles merely speculates as to the reason for the trial judge’s exit. Although Buckles’s trial attorney asserted, when moving for a mistrial, that a spectator inferred that the district court judge was uncomfortable with the testimony, Buckles cites to nothing in the transcript suggesting that the judge was experiencing, much less conveying, an emotional response to W.R.’s testimony. We disagree that this brief recess, absent any other facts, calls into question the judge’s impartiality.

In sum, Buckles was not denied his constitutional right to a fair trial before an impartial decision maker.

B. The judges were not disqualified under the Code of Judicial Conduct.

We turn to Buckles’s argument that the conduct described above by the omnibus judge and the trial judge disqualified them under the Code of Judicial Conduct. “A judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct.” Minn. R. Crim. P. 26.03, subd. 14(3). “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Minn. Code Jud. Conduct Rule 2.11(A).

When, as here, the defendant did not seek to disqualify the judge, an appellate court will reverse only if the judge’s failure to recuse themselves was plain error that affected the defendant’s substantial rights. *State v. Schlien*, 774 N.W.2d 361, 365 (Minn. 2009).

Under the plain-error analysis, we first consider whether (1) there was an error, (2) that was plain, and (3) that affected the defendant’s substantial rights. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If these prongs are satisfied, we then consider whether to address the error to ensure the fairness and integrity of the judicial proceedings. *Id.* An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). An error affects substantial rights if it is “prejudicial and affect[s] the outcome of the case.” *Griller*, 583 N.W.2d at 741. Whether a judge has violated the Code of Judicial Conduct is a question of law, which we review de novo. *See Powell v. Anderson*, 660 N.W.2d 107, 116 (Minn. 2003).

1. Motion to Suppress—Omnibus Judge

Buckles asserts that the omnibus judge plainly erred under the Judicial Code of Conduct by failing to recuse himself from presiding over the suppression hearing. Buckles contends that an objective layperson would question the omnibus judge’s impartiality because the judge, before determining that the searches in this case were lawful, “investigated and considered facts beyond the record that was made by the parties at the suppression hearing.” This argument fails because, as explained above, the omnibus judge did not conduct an independent investigation of the facts or consider facts outside the suppression record in denying Buckles’s suppression motion.

2. Recess During Trial—Trial Judge

Buckles asserts that the trial judge plainly erred by failing to recuse herself from presiding over the trial after taking an unexplained recess during W.R.’s testimony. He argues that an objective layperson would question the trial judge’s impartiality because her

conduct demonstrated sympathy for this victim of an assault by Buckles. This argument likewise fails because, as explained above, though Buckles characterizes the trial judge's departure as abrupt and due to emotion, the record is insufficient to conclude that any error occurred and we do not presume error. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944).

IV. The evidence is sufficient for a jury to find that Buckles did not release A.D. in a “safe place.”

Lastly, we turn to Buckles's challenge to his sentences. If “the factfinder determines that two or more heinous elements exist,” a person convicted of first-degree criminal sexual conduct shall be sentenced to life without the possibility of release. Minn. Stat. § 609.3455 subd. 2(a)(1). Similarly, a person who is convicted of kidnapping, in violation of Minnesota Statutes section 609.25, subdivision 1, can be sentenced to an enhanced sentence of up to 40 years if the factfinder determines that “the victim is not released in a safe place.” Minn. Stat. § 609.25, subd. 2(2). The district court sentenced Buckles to life in prison without the possibility of release for first-degree sexual conduct and to a concurrent sentence of 98 months for kidnapping based upon two of the jury's findings—that Buckles was armed with a dangerous weapon that he used to cause the victim to submit, and that Buckles did not release A.D. in a safe place. *See* Minn. Stat. §§ 609.3455, subd. 1(d)(5), (8), .25, subd. 2(2). Buckles challenges the latter finding, arguing that his sentences must be reversed and he must be resentenced because the state failed to prove beyond a reasonable doubt that he did not release A.D. in a safe place.

Because the challenged finding is supported by direct evidence, our review is limited to a painstaking analysis of the record to determine whether the evidence, when

viewed in the light most favorable to the conviction, is sufficient to have allowed the jurors to reach the finding that they did. *See Horst*, 880 N.W.2d at 40. The reviewing court must assume “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

To the extent Buckles challenges the district court’s interpretation of a statute, our review is de novo. *See State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). Appellate courts give statutory words and phrases their ordinary and plain meaning. *State v. Fleming*, 883 N.W.2d 790, 795 (Minn. 2016). “If the Legislature’s intent is clear from the plain and unambiguous statutory language, [appellate courts] do not engage in any further construction.” *Id.*

The term “safe place” is not defined in the statute, nor has it been defined by caselaw. Because “safe place” was not defined, the district court instructed the jury to use the common, ordinary meaning of the term. Although dictionaries do not define the phrase “safe place,” *Black’s Law Dictionary* defines “safe” as “[n]ot exposed to danger.” *Black’s Law Dictionary* 1602 (11th ed. 2019). We conclude that “safe place” is unambiguous and, as a commonly understood term, does not require further construction.

Buckles argues that the evidence is not sufficient to show that A.D. was in an unsafe place; instead, he asserts, the evidence shows only she that she felt unsafe. We are unpersuaded. First, Buckles fails to provide any authority for the proposition that A.D.’s subjective belief is irrelevant. Second, in any event, the evidence is sufficient to have allowed the jurors to determine that Buckles did not release A.D. in an objectively “safe place.” Buckles sent a rideshare car to Little Canada to pick up A.D. and bring her to

Minneapolis. Buckles sexually assaulted A.D. and left her in an alley in what the police testified was a “high crime” area at approximately 7:30 p.m.⁴ After he assaulted her, Buckles forced A.D. to look at the ground and count to 100 so she could not see where Buckles went and she was unsure if he would return and further harm her. A.D. was not dressed appropriately to be left outdoors on an evening in March. Buckles took A.D.’s phone, leaving her with no means to call for help. She did not have a car to go home, leave, or get help. She was alone in a dark alley, and no one was nearby for her to ask for help. She ended up running two blocks for assistance.

The evidence, when viewed in the light most favorable to the factfinder’s determination, is sufficient to have allowed the jurors to find that Buckles did not leave A.D. in a safe place. Buckles’s challenge to his criminal-sexual-conduct and kidnapping sentences therefore fails.

Affirmed.

⁴ Buckles challenges the officer’s testimony that the area was a “high crime” area on various grounds. Buckles also challenges A.D.’s testimony about the presence of other people near the alley that could have assisted her. However, on review for sufficiency of the evidence, this court accepts the state’s evidence as true. *See Moore*, 438 N.W.2d at 108. Thus, these arguments challenging the truthfulness of the state’s witnesses’ testimony are unpersuasive.