

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0642**

State of Minnesota,
Respondent,

vs.

Cody Lynn Duncan,
Appellant.

**Filed March 2, 2026
Affirmed
Wheelock, Judge**

Polk County District Court
File No. 60-CR-24-815

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney,
Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Larkin, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from a judgment of conviction, appellant argues that he should be
granted a new trial because the district court erred in admitting improper hearsay evidence

and because the state failed to disclose potentially exculpatory evidence related to a search of one of his electronic devices. We affirm.

FACTS

Respondent State of Minnesota charged appellant Cody Lynn Duncan with felony engaging in electronic communication with a child relating or describing sexual conduct in violation of Minnesota Statutes section 609.352, subdivision 2a(2) (2022). The complaint alleged that Duncan engaged in sexually explicit messaging and exchanged nude photographs and videos with his 15-year-old sibling, Child A, in November 2023.

At the time of this offense, Duncan was on supervised release from prison following a 2014 conviction in Minnesota for criminal sexual conduct in the first degree involving penetration or contact with a person under 13 years of age. Duncan was first released from prison for that conviction in August 2020, and he was assigned a supervised-release agent in Minnesota (Minnesota agent), but at some point around 2021, he moved to Las Vegas to live with his mother and the State of Nevada took over supervision of his release.

When the state filed the complaint charging Duncan with the offense at issue in this appeal, it caused Duncan to be in violation of the conditions of his release for his 2014 conviction. He was subsequently transported to Minnesota and committed to the Minnesota Department of Corrections. Pursuant to a detainer agreement, Duncan requested a speedy disposition of the charge.¹ He waived his right to a jury trial, and the

¹ The Uniform Mandatory Disposition of Detainers Act (UMDDA), Minn. Stat. § 629.292 (2024), requires all untried complaints to be brought to trial within six months of the request unless good cause is shown. *State v. Miller*, 525 N.W.2d 576, 578 (Minn. App. 1994). The

case proceeded to a court trial. The following facts are derived from the evidence presented at trial.

Investigator M.J. of the Red Lake County Sheriff's Office received a request from Child A's father, who is also Duncan's father, to conduct a welfare check on Child A. Child A's father was contacted by Child A's mother, J.H., who informed him that Child A had been receiving sexually explicit messages on Child A's Facebook account. Investigator M.J. spoke with J.H., who said she had access to Child A's Facebook account and saw messages between Child A and Duncan. J.H. took screenshots of the messages, which totaled 78 pages, and investigator M.J. took photographs of the messages. All of the messages were admitted into evidence as exhibit 1. J.H. also downloaded several videos and photographs and provided them to the investigator; these were also admitted into evidence as exhibits 2-4.

Later, J.H. brought Child A to the Polk County Sheriff's Office to provide a statement. Child A sat in the lobby while J.H. gave a statement to a different investigator, J.S. While speaking with investigator J.S., J.H. logged into Child A's Facebook account and observed Facebook messages being sent in real time between Child A and a person whose account was identified as "Brotha." Child A sent a picture of the sheriff's office logo, and Brotha responded, "if they ask u pls say it wasn't me," and told Child A several

UMDDA was amended in 2024. 2024 Minn. Laws ch. 123, art. 8, § 26, at 2321-22. We cite the most recent version because the amendment and the UMDDA are not relevant to the issues in this appeal.

times not to say anything. Child A responded, “It’s hard when they got ur face.” Brotha then said, “Well yea but they gotta prov[e i]t was really me.”

At trial, J.H. testified that she knew Child A was messaging Duncan while she and Child A were at the sheriff’s office because J.H. previously had messaged with Duncan on Facebook, Duncan’s Facebook name was “Thor Randall,” and Child A had changed the name attached to the Thor Randall account to “Brotha” in her Facebook account. During previous conversations with J.H., Duncan had confirmed to her that the Thor Randall account belonged to him. In those messages, they also discussed Duncan’s and Child A’s father and J.H. informed Duncan that Child A was his younger sister. These messages were also admitted into evidence.

Duncan’s Minnesota agent, who had supervised him briefly in Ramsey County after he was released in August 2020, also testified. She stated that Duncan had violated his release conditions by possessing an undisclosed device and had created a Facebook account under the name “Cyler Randall” using the email address Vegaskingz6969@gmail.com.

Duncan’s Nevada supervised-release agent (Nevada agent) also testified. The Nevada agent explained that Duncan was subject to random searches as a condition of his supervised release and that, on November 29, 2023, she visited Duncan at his mother’s home in Las Vegas equipped with a body-worn camera. Several screenshots from the body-worn camera footage were received in evidence. The Nevada agent testified that the screenshots depicted Duncan’s bedroom, bathroom, and kitchen, as well as Duncan inside his bedroom and a tattoo on Duncan’s right hand.

The Nevada agent was then shown several of the videos and photographs that Child A received. She testified that, based on her observations and the body-worn camera screenshots from the November 2023 visit, the nude videos and photographs sent to Child A were of Duncan and were taken in various rooms in his mother's house. Specifically, the Nevada agent identified that, in one of the videos sent to Child A from the Thor Randall Facebook account, the bathroom was the same room she observed during her visit to Duncan based on the layout of rooms in the home, the flooring, and two shower curtains. She further testified that, in the videos sent to Child A from the Thor Randall Facebook account, a tattoo that was visible on the nude man's right hand matched a tattoo Duncan has on his right hand that extends down onto his right thumb. She also identified Duncan's bedroom from photographs sent to Child A from the Thor Randall Facebook account, explaining that she could tell it was Duncan's bedroom because the window covering, the picture on the wall, the TV, the gaming system, an "orange item," and the dresser were the same as those she had seen in the Las Vegas home. Additionally, she identified photographs sent to Child A from the Thor Randall Facebook account as depicting Duncan's kitchen because she recognized the stovetop and a "green Christmas tree spoon holder" from her visit to the Las Vegas home.

J.S. testified about his investigation, including the search warrants for which he applied and the trial exhibits—exhibits 14, 15, and 16—that resulted from the search warrants. In the search warrant J.S. sent to Meta (Facebook), he requested information from the accounts depicted in J.H.'s screenshots of the Facebook pages and their URLs.

In the search warrant J.S. sent to T-Mobile, he requested information on the IP addresses listed in the Facebook records.

During his testimony, J.S. stated that the Nevada agent mentioned to him that Las Vegas authorities searched a cell phone in Duncan's possession and found nothing on it. This information previously had not been disclosed to either the prosecutor or Duncan's counsel. The district court asked if Duncan would like a continuance to see if more information could be gathered about the phone that was searched. Duncan declined and argued that only a mistrial would be appropriate at that point due to the failure to disclose that information. The district court denied Duncan's motion for a mistrial.

The district court found Duncan guilty, convicted him, and imposed a sentence of 39 months' imprisonment.

Duncan appeals.

DECISION

Duncan asserts that he must be granted a new trial for two reasons. First, he argues that the district court erred by admitting Facebook and T-Mobile records into evidence at trial over his hearsay objection without determining that a hearsay exception applied. Second, he argues that the district court erred when it denied his request for a mistrial after

testimony was elicited at trial containing information that had not previously been disclosed to him. We address each argument in turn.

I. Any error in the admission of the challenged exhibits is harmless because Duncan was not prejudiced.

Duncan challenges the district court's admission of three exhibits: exhibit 14 containing Child A's Facebook account records; exhibit 15 containing the Thor Randall Facebook account records; and exhibit 16 containing T-Mobile records. He argues that the exhibits contain inadmissible hearsay, no hearsay exception applies, and the district court failed to address the hearsay objection.

Facebook provided all the documents in exhibits 14 and 15 in response to a search warrant J.S. sent; T-Mobile provided all the documents in exhibit 16 in response to another search warrant from J.S. Facebook and T-Mobile each provided a certificate for the documents it produced stating that the certificate is intended to comply with the state equivalents of Federal Rules of Evidence 803(6), 902(11), 902(13), and 902(14).

Exhibit 14 confirms J.H.'s testimony that Child A changed the name "Thor Randall" to "Brotha" in her Facebook account. Exhibit 15 provides circumstantial evidence that Duncan is "Thor Randall" because it shows that the Thor Randall Facebook account was exchanging messages with an individual to whom Duncan had referred as his wife, as well as messages and comments involving another individual that tie Duncan's wife and a vehicle Duncan owned to "Thor Randall." Exhibit 16 confirms that the T-Mobile customer associated with the IP address listed for the Thor Randall Facebook account is Duncan's mother and that the T-Mobile account was registered to Duncan's mother's street address

in Las Vegas, which was Duncan’s home at the time the Thor Randall Facebook account sent sexually explicit messages, photographs, and videos to Child A.

At trial, Duncan objected to the admission of each of these exhibits on the basis of hearsay,² asserting that the state failed to satisfy the business-records exception because the documents were prepared for litigation and the certificates were insufficient to lay foundation without a testifying witness from Facebook or T-Mobile. *See* Minn. R. Evid. 803(6) (setting forth the business-records hearsay exception). The state responded that the certifications properly authenticated the documents and that the documents were “nontestimonial.” The district court did not address hearsay; instead it agreed that the documents were nontestimonial and admitted them into evidence.

Duncan argues that the district court erred by admitting all three exhibits because they contain hearsay and no hearsay exception applies. We need not decide whether any error occurred, however, because any alleged error was harmless.

An evidentiary error to which an appellant objected is reviewed under the harmless-error standard. *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011). This standard requires that “a defendant who alleges an error that does not implicate a constitutional right must prove there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Id.* (quotations omitted). “We generally will not reverse a verdict even when improper [evidence] is presented to the [fact-finder] unless there is a reasonable possibility that the wrongfully admitted evidence

² Although Duncan objected to the admission of all three exhibits based on his confrontation rights at trial, he does not raise this argument on appeal.

significantly affected the verdict.” *State v. Jaros*, 932 N.W.2d 466, 472 (Minn. 2019) (quotation omitted).

Factors that assist our determination of whether this reasonable possibility exists include “(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence.” *State v. Smith*, 940 N.W.2d 497, 505 (Minn. 2020). Strong evidence of guilt undermines the persuasive value of wrongly admitted evidence. *See Matthews*, 800 N.W.2d at 634 (noting that the wrongfully admitted testimony was brief and not persuasive on the question of the defendant’s guilt and that other strong evidence of guilt overshadowed that testimony).

“This analysis is fact-specific, and not all the factors are relevant or persuasive in every case.” *State v. Bigbear*, 10 N.W.3d 48, 54-55 (Minn. 2024). The question is not whether the evidence was sufficient to support the conviction. *Id.* at 54. Instead, “to assess harmless error we must consider all the evidence introduced as well as other illuminating factors (including the non-exclusive factors set forth earlier) and ask whether there is a reasonable possibility that the error significantly affected the verdict.” *Id.* at 55. In some cases, these factors may not lead to a clear conclusion, but we may be aided in a court trial by the district court’s findings. *See State v. Holliday*, 745 N.W.2d 556, 568 (Minn. 2008) (holding that any error in admitting testimony under the hearsay rules was harmless when the district court indicated in its findings that the testimony did not affect its verdict).

Here, Duncan did not analyze these factors in his brief, and we do not find them conclusive in determining whether any error was harmless. However, Duncan’s argument

rests on the rationale that exhibits 14, 15, and 16 were the most impactful and conclusive evidence that Duncan was the individual who messaged Child A from the Thor Randall Facebook account. We note, however, that the photographs and messages sent to Child A from the Thor Randall Facebook account in exhibits 14 and 15 were also admitted through (1) a different exhibit that contained screenshots of those same communications and many more sexually explicit communications—exhibit 1 and (2) testimony from Child A’s mother and investigator M.J. And Duncan does not argue that exhibit 1 or the testimony were erroneously admitted. *See Matthews*, 800 N.W.2d at 634; *State v. Weaver*, 733 N.W.2d 793, 801 (Minn. App. 2007) (stating that evidence was highly persuasive when it was not merely cumulative of other evidence presented at trial), *rev. denied* (Minn. Sept. 18, 2007). The strength of other evidence that Duncan does not challenge greatly undermines the persuasive value of exhibits 14, 15, and 16. The diminished persuasive value of the challenged exhibits and the fact that much of their content was admitted via other unchallenged evidence compel a conclusion that the evidence in those exhibits did not significantly affect the verdict.

In addition, we have the benefit of the district court’s written findings. *See Holliday*, 745 N.W.2d at 568 (determining that any error was harmless because the district court explained the evidence did not affect its verdict but noting that the resolution might have been different had the appellant been convicted by a jury). As to the district court’s determination that Duncan was the user of the Thor Randall Facebook account, there is no

reasonable possibility that exhibits 14, 15 and 16 affected it because the district court said as much:

There is no mistaking the identity of the Defendant and the Child; the messages, images, photographs, and videos fully support the Court's findings and conclusions in this regard. This is especially true in relation to the Defendant; all of the backgrounds in the relevant images are of the Defendant's shower, bathroom, bed, bedroom and kitchen at his residence in Las Vegas, Nevada. There is no mistaking that the individual in the images is the Defendant.

Given this explicit finding, Duncan cannot meet his burden of demonstrating that a reasonable possibility exists that the challenged exhibits significantly affected the verdict. *See Smith*, 940 N.W.2d at 505. We therefore conclude that any error in the admission of the challenged exhibits was harmless.

II. Any discovery violation was harmless.

Duncan argues the district court abused its discretion when it denied his motion for a mistrial and asserts that, because the state committed a discovery violation when it failed to disclose the results of a search of his phone, he must be granted a new trial. Investigator J.S. testified that he recalled that the Nevada agent was going to search Duncan's phone. He also stated that the Facebook records indicated that the Thor Randall Facebook account was associated with a Samsung device and that his recollection was that the device seized was a different electronic device. The Nevada agent then testified that she had seized Duncan's phone as part of the investigation and that a forensic investigator searched the phone, but as far as she knew, "[t]here wasn't anything useful" obtained and no evidence of the Thor Randall Facebook account was found. She further testified that, in her

experience supervising sex offenders, they may have more than one cell phone and may not disclose to the agent their possession of other cell phones. She also said the information from the search of the phone was sent to Minnesota. However, neither the prosecutor's office nor Duncan's counsel recalled receiving that information.

After J.S.'s testimony about Duncan's phone, Duncan's counsel moved for a mistrial, arguing that the information from the phone was exculpatory and never disclosed to Duncan. The district court denied the motion but said it would consider the issue again in its overall consideration of the case. In written closing argument, Duncan's counsel argued that, under *Brady v. Maryland*, 373 U.S. 83 (1963), and Minn. R. Crim. P. 9.01, subd. 1(6), which addresses a prosecutor's duty to disclose exculpatory information, the state violated its duty to disclose material evidence favorable to Duncan and again requested a mistrial. In its final order, the district court determined that there did not appear to be a discovery violation and that it could not identify any facts that would support the request for a mistrial.

Minnesota Rule of Criminal Procedure 9.01 sets out the state's discovery obligations. "Under *Brady*, the suppression by the State, whether intentional or not, of material evidence favorable to the defendant violates the constitutional guarantee of due process." *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010) (addressing *Brady*). Evidence is material under *Brady* "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *State v. Hunt*, 615 N.W.2d 294, 299 (Minn. 2000).

Whether a discovery violation occurred is an issue of law that appellate courts review de novo. *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005). “Generally, without a showing of prejudice to the defendant, the state’s violation of a discovery rule will not result in a new trial.” *Id.* We review the district court’s ultimate decision to deny a motion for mistrial for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). “The trial judge is in the best position to determine whether an error is sufficiently prejudicial to require a mistrial or whether another remedy is appropriate.” *Id.* A district court’s determination of whether a prosecutor’s discovery violation warrants a new trial will be reversed only when the discovery violation, “viewed in the light of the whole record, appears to be inexcusable and so serious and prejudicial that [the] defendant’s right to a fair trial was denied.” *Palubicki*, 700 N.W.2d at 489.

Duncan modifies his argument on appeal, and based on investigator J.S.’s failure to disclose the verbal statements that the Nevada agent made to him about searching the phone, he asserts that the discovery violation occurred under Minn. R. Crim. P. 9.01, subd. 1(2), which addresses a prosecutor’s duty to disclose statements.³ Assuming, without deciding, that a discovery violation occurred, we conclude that, under either of subdivision 1’s disclosure requirements, any violation was harmless because Duncan has

³ A party cannot “obtain review by raising the same general issue litigated below but under a different theory.” *State v. Bailey*, 732 N.W.2d 612, 623 (Minn. 2007) (quoting *Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988)). However, a reviewing court “may affirm the district court on any ground, including one not relied on by the district court.” *State v. Martens*, 996 N.W.2d 249, 261 n.5 (Minn. App. 2023), *aff’d*, 18 N.W.3d 752 (Minn. 2025).

not established prejudice. And because there was no prejudice, we conclude that the district court did not abuse its discretion by denying Duncan's request for a mistrial.

To establish prejudice under Minn. R. Crim. P. 9.01, an appellant must show a reasonable probability that, had he been afforded access to the evidence in question, the outcome of the trial would have been different. *State v. Radke*, 821 N.W.2d 316, 326 (Minn. 2012). A discovery violation may be harmless when the evidence is not "of great importance" and other evidence weighs strongly against the defendant. *State v. Greenleaf*, 591 N.W.2d 488, 506 (Minn. 1999). When the testimony of the witness sought to be impeached by undisclosed evidence "was not the only damning evidence against defendant," the likelihood of prejudice decreases. *State v. Jackson*, 346 N.W.2d 634, 638 (Minn. 1984); *see also State v. Hathaway*, 379 N.W.2d 498, 506 (Minn. 1985) ("[I]n light of the other available evidence with which the defendants were able to impeach, this error [of withholding discoverable evidence from the defense] is harmless."). "Nondisclosure of evidence that is merely impeaching may not typically result in the kind of prejudice necessary to warrant a new trial." *Hunt*, 615 N.W.2d at 300-01. Appellate courts may also consider whether, if a new trial were granted, the new trial would be any different than the first one. *State v. Holmes*, 325 N.W.2d 33, 35 (Minn. 1982).

Duncan asserts prejudice in general terms, positing that his counsel could have more fully and completely prepared, cross-examined differently, and tailored a different strategy because the information "was potentially helpful." But he does not explain how having this information in a timely manner would have changed his defense strategy. Duncan's strategy at trial was to persuade the fact-finder that the state could not prove it was Duncan

who used the Thor Randall Facebook account to engage in communications of a sexual nature with and send nude photographs and videos to Child A, and he elicited testimony at trial about the phone to support that strategy.

The Nevada agent confirmed that the phone contained nothing incriminating and that the Thor Randall Facebook account was not found on it. On recross-examination, she confirmed that, prior to obtaining the phone, she did not have reason to believe that Duncan had two phones. At the most, obtaining the phone data merely would have corroborated what was already elicited—that nothing was found on the phone. The district court also found that the issue was “sufficiently fleshed out and made clear,” and therefore, the court was able to consider Duncan’s position that the phone provided no evidentiary support against him. This is the most Duncan would have been able to elicit if he had been provided the information prior to trial.

Further, the district court inquired about whether Duncan would like time to expand the record to see if more could be learned about the phone. Duncan responded that he did not want to sit around for months while it was investigated further and argued that a mistrial was the appropriate remedy. This further indicates that the data on the phone was not of “great importance.”

Duncan points to the value of the information to impeach the Nevada agent about the type of device searched, arguing that it “might have caused the court to conclude that the evidence as to Duncan had not been proven.” We are not persuaded because the district court explicitly concluded that the phone provided no evidentiary support for, and was therefore irrelevant as to, the charges against Duncan. Moreover, evidence that is merely

impeaching does not “typically result in the kind of prejudice necessary to warrant a new trial.” *See Hunt*, 615 N.W.2d at 300-01. Accordingly, the district court did not abuse its discretion when it denied Duncan’s motions for a mistrial.

To support his argument that a new trial should be granted on appeal, Duncan relies on opinions in which the supreme court, in exercising its supervisory powers over the district courts, granted new trials even though prejudice in the usual sense could not be shown. *State v. Kaiser*, 486 N.W.2d 384, 386 (Minn. 1992) (explaining that this line of cases includes *State v. Zeimet*, 310 N.W.2d 552 (Minn. 1981), and *State v. Schwantes*, 314 N.W.2d 243 (Minn. 1982)). But as an error-correcting court, it is not our role to exercise a “supervisory power” in the manner the supreme court does. *See In re Welfare of M.K.*, 805 N.W.2d 856, 865 (Minn. App. 2011) (“[T]his court, as an intermediate-appellate court, does not exercise supervisory powers reserved to the supreme court.”).

Because there is no reason to believe that a new trial would be any different than the first one, Duncan has not demonstrated the prejudice necessary for this court to grant a new trial, *see Holmes*, 325 N.W.2d at 35, and we discern no error in the district court’s decision to deny Duncan’s request for a mistrial as a sanction for the alleged discovery violation.

Affirmed.