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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1434

State of Minnesota,
Respondent,

vs.

Biyalfew Fekado Meta,
Appellant.

Filed July 29, 2019
Affirmed
Ross, Judge

Ramsey County District Court
File No. 62-CR-17-3686

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bratvold, Judge.

U N P U B L I S H E D   O P I N I O N

ROSS, Judge

Forty-year-old senior-center employee Biyalfew Meta followed a sixteen-year-old coworker outside the workplace. Meta grabbed the teenager's penis and buttocks, kissed

him, and engaged in a humping action against his body. An investigating police sergeant testifying at Meta's trial for fifth-degree criminal sexual conduct spoke about a report he had written summarizing a meeting he had with the juvenile victim and supportive adults three months after the assault. The prosecutor had not known about the report and so had not provided it to Meta's attorney. The jury found Meta guilty. Meta argues on appeal that the district court should have ordered a mistrial for the discovery violation. We affirm because the violation did not prejudice Meta's defense or result from egregious conduct.

FACTS

In spring 2017, a sixteen-year-old boy began work at a St. Paul senior living center. One evening when he took out the garbage, fellow employee Biyalfew Meta followed him to the dumpster. Meta told the boy, "I love you," put his hand on his lower back, and told him that "everything is okay" and would "be all right." Meta grabbed the boy's penis over his clothes with one hand and grabbed his buttocks with the other. Meta then began a humping motion against the boy. The boy tried to push Meta away and open the door, but the door was locked. The boy banged on the door for help, and Meta kissed him several times on the lips. Meta said again, "Everything's gonna be all right." Meta pulled a key from his pocket and unlocked the door.

The boy left crying and reported Meta's conduct to family members, who contacted police. The state charged Meta with fifth-degree criminal sexual conduct under Minnesota Statutes, section 609.3451, subdivision 1(1) (2016). Meta pleaded not guilty.

The prosecutor presented the state's evidence at trial and rested. Meta called the lead investigator, Sergeant Darren Johnson, to testify. The sergeant testified about a report

he wrote summarizing a meeting three months after the incident with the boy, his mother, his uncle, and a victim advocate. The prosecutor had not known about the report and therefore had not provided it to the defense. Meta's counsel moved for a mistrial but told the district court that he was "an experienced attorney" who could "deal with this." The district court denied the motion. The jury found Meta guilty.

Meta appeals.

D E C I S I O N

Meta argues that the district court abused its discretion by failing to grant his motion for a mistrial based on the discovery violation. The state concedes that the prosecutor had a duty to disclose the report. *See* Minn. R. Crim. P. 9.01, subd. 1(3)(c) (requiring prosecutor to disclose police reports). But it defends the district court's decision not to order a mistrial as a remedy. We review a district court's decision whether to impose sanctions for discovery violations for an abuse of discretion. *State v. Scanlon*, 719 N.W.2d 674, 685 (Minn. 2006).

Meta argues that the violation prejudiced his case. Unless a defendant can show that he was prejudiced by a discovery violation, a new trial is generally unwarranted. *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005). And the defendant is not prejudiced unless there is a reasonable probability that the outcome of the trial would have been different had the violation not occurred. *State v. Spann*, 574 N.W.2d 47, 53 (Minn. 1998). The record supports the district court's finding that the violation caused Meta's defense no prejudice. The district court ordered a recess after the omission was revealed. Meta's counsel reviewed the previously undisclosed report, questioned the sergeant who wrote the report,

and cross-examined him about the information in the report. The district court concluded that the attorney then "aptly pointed out to the jury that some of this information was not produced previously." On this record, we hold that Meta has not shown any reasonable probability that the outcome would have been different had the state previously disclosed the report.

We are not persuaded otherwise by Meta's assertion on appeal that defense counsel might have taken a different approach when cross-examining the victim had the disclosure been timely. He identifies nothing in the report that suggests his questioning about it would have led to different testimony. He does imply that having the report sooner would have bolstered the "cultural misunderstanding" defense argued by trial counsel, but we see no basis for thinking so; the jury heard and implicitly rejected the defense, and Meta has not shown how an earlier disclosure would have added anything to the argument.

Meta argues that even if we find no prejudice, we should overturn his conviction in the interests of justice. We recognize that some violations are so unjust that, even without a showing of prejudice, reversing a conviction is fitting to curb the manifest bad faith of the prosecutor. *See, e.g.*, *State v. Kaiser*, 486 N.W.2d 384, 386–87 (Minn. 1992). This is certainly no such case. The prosecutor was unaware of the report, the report did not contain any apparently exculpatory information, and, by all accounts, the omission was inadvertent.

There being no prejudice or egregious prosecutorial concealment, we affirm the district court's refusal to order a mistrial.

Affirmed.