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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1549

State of Minnesota,
Respondent,

vs.

Arron Whitney McDole,
Appellant.

Filed August 12, 2019
Affirmed
Cleary, Chief Judge

Hennepin County District Court
File No. 27-CR-16-22540

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Tyler Bliss, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Cleary, Chief Judge; and Cochran, Judge.

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

CLEARY, Chief Judge

In this direct appeal from a final judgment of conviction, appellant Arron Whitney McDole argues that the district court abused its discretion when it refused to conduct an in

camera review of D.M.'s school records. Because McDole did not make a plausible showing that the information sought would be material to his defense and his request was not reasonably specific, we affirm.

FACTS

This case arose after McDole's seven-year-old daughter, D.M., began having weekly meetings with a school social worker. At one of these meetings, D.M. told the social worker that she was feeling uncomfortable at home. When the social worker asked why she was uncomfortable, D.M. initially stated that McDole was sick, but as the conversation continued, she told the social worker about a time when McDole forced her to touch his penis. The social worker reported this allegation to Hennepin County Child Protection.

After an investigation, the state charged McDole with second-degree criminal sexual conduct. While preparing for trial, McDole moved the district court to review D.M.'s school records from her former and current elementary schools in camera. He argued that there was good cause to review the school records because they might reveal information about D.M.'s "state of mind concerning her home life and her family." McDole claimed that D.M. was supposed to give a school presentation about him, but she changed schools prior to the presentation. McDole asserted that this presentation and D.M.'s therapy records from school would be useful in determining her feelings toward him and would help show that he and D.M. had a positive, healthy relationship.

McDole also argued that the records would explain why the social worker began speaking with D.M. He explained that if the social worker had approached D.M. for

reasons other than concern for her home life, then that information would be useful to his defense. The state objected to the motion, calling it a "non-specific fishing expedition."

The district court denied McDole's motion, concluding that he failed to establish a sufficient basis for in camera review. It reasoned that McDole did not explain why D.M.'s state of mind was material to his defense. The district court also found that the "reasons behind D.M.'s involvement with counselors unrelated to the abuse [were] irrelevant," and that the school presentation "would not weigh on the central facts unless it [had] something to do with the alleged abuse." The case proceeded to trial. The first trial resulted in a hung jury, but after the second trial, the jury found McDole guilty.

D E C I S I O N

McDole argues that the district court erred when it failed to conduct an in camera review of D.M.'s school records. "Criminal defendants have a broad right to discovery in order to prepare and present a defense." *State v. Hokanson*, 821 N.W.2d 340, 349 (Minn. 2012). At the same time, educational data, including school and health data, are generally protected from disclosure by the Minnesota Government Data Practices Act. Minn. Stat. §§ 13.01, subd. 2, .32 subd. 1(a), subd. 2(a), subd. 3 (2018). In order to strike a balance between a criminal defendant's right to obtain evidence that may be helpful to his defense and an individual's interest in having her confidences kept, when a defendant seeks to discover confidential records, the district court may review the records in camera and disclose any relevant information it finds. *State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987).

A criminal defendant, however, does not have an absolute right to in camera review. *Hokanson*, 821 N.W.2d at 349. To obtain in camera review, a defendant must first make some plausible showing that the information sought will be material and favorable to his defense. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992). The request must also be reasonably specific. *State v. Lynch*, 443 N.W.2d 848, 852 (Minn. App. 1989), *review denied* (Minn. Sept. 15, 1989). Appellate courts review a district court's decision on the release and use of protected records for an abuse of discretion. *Hokanson*, 821 N.W.2d at 349.

We conclude that the district court did not abuse its discretion when it declined to conduct an in camera review of D.M.'s school records because McDole did not make a plausible showing that the information sought would be material. At the district court, he argued that it was "vital to learn as much as possible about [D.M.'s] state of mind around the time of the alleged assault," but as the district court found, McDole failed to explain why D.M.'s state of mind was relevant. He further suggested that the records may show that D.M. had positive feelings toward him, but he did not explain how these feelings would tie-in to a defense or weigh on the issues of the case.

McDole also argued that it would be helpful to know why the social worker reached out to D.M. in the first place. He speculated that the worker may have contacted D.M. because she was struggling in school, and not because of concerns over D.M.'s home life. He argued that if this was true, then this information would be useful to his defense. Here too, McDole failed to explain why the information would be useful to his defense or how it was relevant to the issues in the case. McDole "offered only argument and conjecture,"

which is insufficient to obtain in camera review. *State v. Evans*, 756 N.W.2d 854, 873 (Minn. 2008). What is more, McDole's request to have the district court review all of D.M.'s school records from two schools was not reasonably specific.

On appeal, McDole argues that the records would have "contextualized facts, provide[d] impeachment evidence[,] and provide[d] prior inconsistent statements." Specifically, McDole argues that the records could have allowed him to impeach D.M. and the social worker. These arguments were not presented to the district court, and we will not consider them. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating appellate courts "generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure"); *State v. Carroll*, 639 N.W.2d 623, 629 n.3 (Minn. App. 2002) ("A party may not obtain review by raising the same issue under a different theory.").

Affirmed.