Circuit Court for Worcester County
Case No. C-23-CR-20-000085

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 868

September Term, 2021

MARION E. F., SR.

v.

STATE OF MARYLAND

Arthur,
Shaw,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 4, 2022

Convicted by a jury in the Circuit Court for Worcester County of five counts of third degree sexual offense, sexual abuse of a minor, and incest, Marion E. F., Sr., appellant, presents for our review a single issue: whether the court abused its discretion in "refusing to exclude statements made by [appellant] that were not provided in discovery." For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called appellant's niece, K.W., who at the time was sixteen years old. K.W. testified that in December 2018, appellant moved into K.W.'s residence and shared a room with her. One evening, appellant told K.W. that "he didn't want to sleep in his air bed," and "that [K.W.'s] mom said [that] it was okay for [appellant] to sleep in the bed with" K.W. Appellant then rubbed his hands "[o]n top of [K.W.'s] clothes" and "back and forth" over her vagina and breasts. K.W. told appellant to stop, and "[h]e stopped."

Over the next "month or two months," appellant "groomed" K.W., meaning that "he just let [K.W.] get used to him touching on [her] butt, him touching on [her] breasts, . . . seeing his private areas." On one occasion, appellant "performed oral sex on" K.W. "using his tongue." On another occasion, K.W. and appellant "were watching sports together." When K.W. "got up to use the bathroom or . . . get snacks," appellant "put his fingers" underneath K.W.'s clothes and "in between [her] legs and like rubbed back and forth." On still another occasion, K.W. "got out of the shower" and discovered appellant "naked on [her] bed" and "masturbating." K.W. then gave appellant "oral sex," after which "he ejaculated in [K.W.'s] mouth."

K.W. subsequently testified that she and appellant had engaged in vaginal intercourse "[m]ore than ten times." The first such occasion "happened in [K.W.'s] room."

As K.W. "was about to go to sleep," appellant "was touching on [her] private areas" with his hands and penis. K.W. "remember[ed appellant] being on top of" her, and "putting his penis into [her] vagina." Appellant did not wear a condom during that occasion, but on subsequent occasions, K.W. "would use a condom," which he kept in "a three stackable drawer . . . under his socks."

Appellant contends that the court abused its discretion in "refusing to exclude" three statements. First, K.W. testified that when she "would say" to appellant that "this is wrong, and you're my uncle, and we shouldn't be doing things like this," appellant would respond: "[I]t's okay, it's our little secret. Your mom won't find out. . . . . If your mom finds out, she'll send you away and all that." Defense counsel objected on the ground that K.W. "was beginning to elaborate further beyond the scope of what was provided" in discovery. The prosecutor responded:

> Your Honor, in discovery, the State provided a report that indicated that both [appellant] and the victim had conversations about how she felt it was wrong. There's a quote about several – or about one line that she responded to [appellant]. [Appellant] told her it was okay. However, the discovery notes that there were multiple conversations. That there's flirtations that don't include every single line of every single conversation, I believe, is not sufficient for the objection, Your Honor. Again, I can't disclose every single line that happens. This is something that the defense was on notice about.

The court overruled the objection.

Later, K.W. testified that she could "remember a time when [her] mom was working late nights." After appellant "took a shower from cutting grass, he came in [K.W.'s] room, and . . . told [her] to sit on his penis." Defense counsel objected, but the court told the

prosecutor to "[a]sk another question." K.W. subsequently testified that she complied, and appellant, who was wearing a condom, "ejaculated in the condom."

Finally, K.W. testified that she and appellant discussed "pregnancies." When K.W. told appellant that she "didn't want to get pregnant and that he should be using a condom," appellant replied: "[O]h, well, I can get you pregnant, woo-woo-woo, I want to have a baby." Defense counsel again objected on the ground that there was "[n]othing about [appellant] wanting a baby" in the report produced by the State in discovery. The State responded: "The report reads, she told him she didn't want to get pregnant because it would mess up her life. Previously [appellant] had joked about getting [K.W.] pregnant." The court instructed the prosecutor to "move on," and stated: "Anything that's been touched on so far . . . I consider it appropriate leeway in response to the question."

Appellant contends that the court should have "sustain[ed] the defense objections," because the "State violated . . . Rule 4-263 by failing to disclose [appellant's] statements before trial." We disagree. It is true that "the State's Attorney shall provide to the defense . . . all oral statements of the defendant . . . that relate to the offense charged." Rule 4-263(d)(1). But, the "obligations of the State's Attorney . . . extend to material and information . . . that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case." Rule 4-263(c)(2). Here, there is no evidence that the specific statements to which appellant objected were in the possession or control of the State's Attorney, members of the State's Attorney's staff, or any other person who either reports regularly to the State's Attorney's office or has

reported to the State's Attorney's office. Moreover, appellant does not dispute that prior to trial, the State disclosed to him reports that stated that he had told K.W. that what was happening between them "was okay," and that he "had joked about getting [K.W.] pregnant." Appellant does not cite any authority that required the State to disclose his statements with respect to these subjects *verbatim*, and hence, the court did not abuse its discretion in admitting the statements.

JUDGMENTS OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.