STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0701

State of Minnesota,
Appellant,

vs.

James Michael Oliver,
Respondent.

Filed September 12, 2022
Affirmed
Jesson, Judge

Wabasha County District Court
File No. 79-CR-21-480

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

Karrie S. Kelly, Wabasha County Attorney, Wabasha, Minnesota (for appellant)

Mark D. Nyvold, Fridley, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

JESSON, Judge

After police found a golf cart, two kayaks, and other stolen items in a shed, respondent James Oliver and his brother, Jeffrey, were charged with receiving stolen

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

property. Shortly after the theft, the victim reached out to a law enforcement investigator to inform them of a subsequent conversation with James about the incident while at a music festival.[1] But appellant State of Minnesota did not follow up with the victim to obtain details of the conversation. After the start of James's trial for receiving stolen property 11 months later, the state sought to introduce evidence of the contents of that conversation. But James moved to suppress the evidence, arguing that it was untimely in violation of discovery rules. The district court agreed and suppressed the evidence, including any reference to the content of the alleged conversation at the music festival. The state appeals. Because the state did not demonstrate that the suppressed evidence had a critical impact on its case, we affirm.

FACTS

Victim reported to law enforcement that someone entered his garage during the night and stole various items, including a golf cart, mini-bike, backpack with tools, framed marriage certificate, and two kayaks. Victim posted the list of stolen items on Facebook and heard from an individual in Wisconsin who had picked up the mini-bike at the home of Joseph Oliver, one of James's two brothers.

Law enforcement executed a search warrant at Joseph's house. None of the stolen items were there, but Joseph told officers that his brother Jeffrey had brought the mini-bike to Joseph's residence. According to Joseph, Jeffrey explained that he had stolen the items.

[1] For the sake of clarity, we refer to the Oliver brothers by their first names.

And Joseph told the police that the only remaining stolen item from victim was the golf cart, which was stored behind a shed at the home shared by James and Jeffrey.

Later that day, law enforcement executed a search warrant at James and Jeffrey's house where they located the golf cart, kayaks, backpack with tools, and a black stocking cap with eye and mouth holes cut into it.

On June 30, 2021, the state charged James with receiving stolen property in violation of Minnesota Statutes section 609.53, subdivision 1 (2020), which states any person "who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery" is guilty of a crime. Jeffrey was also arrested and charged.[2]

Five days before the charges were filed against James, victim sent three emails to law enforcement within the span of roughly an hour. In those emails, he explained that while he was at an outdoor concert after the theft, James approached him. The first email stated "Strange! Music under the bridge, James Oliver introduced himself to us. Said he wanted to talk to me about the garage burglary." The second email explained more of the encounter, stating:

> It appears that James came to my group of friends at music under the bridge basically to intimidate us. I was shocked to see the go-kart they traded for the pocket motorcycle they stole from me sitting in front of their house. When James introduced himself to me he introduced himself as "James". I finished that with "Oliver". He responded "Yes". Said he wanted to discuss our burglary. Other people in my group asked him where he lives. He indicated he lived

[2] Jeffrey entered a guilty plea to a felony charge of receiving stolen property.

> at [address]. Very uncomfortable situation. Should we be leaving for Rochester?

Half an hour later, victim wrote to law enforcement a third time and noted that he called dispatch, explaining:

> Wow! I called dispatch and reported that James Oliver came to intimidate us under the bridge. The dispatcher sounded bored and didn't seem to see a problem with it. He introduced himself both to [victim's friends] and others. As [one friend] told me, we have good insurance, leave it alone. I frankly was taken back by the dispatcher. Is sheone [sic] of the Oliver brother's girl friends? Listen to the recording of our conversation.

The officer responded to the emails saying he would forward the information to the investigator. The emails were part of discovery sent to James's attorney in November 2021.

In May 2022, James's trial began with jury selection. That same day, victim called the victim-witness coordinator in the Wabasha County Attorney's Office. Victim described the June 25 conversation with James. The county attorney emailed defense counsel noting the possibility of new information coming from the follow up conversation. The county attorney then sent an investigator to interview victim, who told the investigator that during the June 25 conversation, James admitted to committing the burglary.

The defense moved to have the admission suppressed, alleging that the state violated Minnesota Rule of Criminal Procedure 9.02 when it failed to comply with discovery rules governing the timely disclosure of information.[3]

[3] The defense also alleged that the prosecutor had a pattern of misconduct where they would not prepare witnesses for trial in order to "ambush" the defense with new information. The

The district court orally ruled to suppress the conversation between victim and James to ensure James had a "fair trial." In a written order, the district court concluded that the prosecution's lack of follow up to the June 25 emails justified excluding the evidence. But because the emails were part of discovery, the prosecution was not barred from mentioning that James approached victim.

The state appeals.

DECISION

Because this is a pretrial appeal, we must determine, as a threshold issue, whether we will reach the merits of the state's appeal.

In order to prevail on a pretrial appeal, the prosecution "must show clearly and unequivocally (1) that the district court's ruling was erroneous and (2) that the ruling will have a 'critical impact' on the State's ability to prosecute the case." *State v. Underdahl*, 767 N.W.2d 677, 683 (Minn. 2009) (quoting *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005)). If the state cannot show that a pretrial order had a critical impact on its case, we will not review that order. *McLeod*, 705 N.W.2d at 784. To show a critical impact, the state must demonstrate that the suppression order "significantly reduces the likelihood of a successful prosecution." *Id.* This showing "depends in large part on the nature of the state's evidence against the accused," *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995), and requires examination of "all of the state's admissible evidence as a whole." *McLeod*,

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prosecutor admitted that "it is a strategy move actually on my part to prep witnesses in a certain way or not prep witnesses."

705 N.W.2d at 785. The state only needs to show that the likelihood of success is "seriously jeopardized." *Underdahl*, 767 N.W.2d at 683.

Here, the prosecution believed it had enough evidence to convict James before learning about the details of the conversation between victim and James. Recall the elements of the receiving-stolen-property statute—the prosecution only needed to show that James was in possession of stolen property that he knew or reasonably knew was stolen. Law enforcement found a golf cart, two kayaks, and a backpack full of tools at James's property. And even if the property had all been burgled by his brother Jeffrey, it is unreasonable to believe that James came into possession of that quantity of large items legally without the specific knowledge that they were stolen.

The prosecution believed this evidence was sufficient to prove its case beyond a reasonable doubt when it signed the criminal complaint without the evidence of the music-festival conversation. Certainly, it must have maintained this belief when it began trial *before* it learned of the alleged confession by James. Recall that the prosecution was unaware of the alleged admission to victim until after jury selection started. Given the admissible evidence relating to the receipt of stolen property as a whole, the suppression of the admission did not have a critical impact.

This situation is a far cry from other critical-impact cases where the state, in the complaint, relied almost exclusively on the suppressed evidence. *See, e.g.*, *State v. Stavish*, 868 N.W.2d 670, 674 (Minn. 2015) (blood test in driving case); *State v. Dressel*, 765 N.W.2d 419, 423 (Minn. App. 2009) (comments given to detective about sexual abuse), *rev. denied* (Minn. Aug. 11, 2009); *State v. Eggler*, 372 N.W.2d 12, 14 (Minn. App.

1985) (additional marijuana from other rooms in the apartment), *rev. denied* (Minn. Sept. 19, 1985). Here, the state filed the complaint without the prosecution's knowledge of the content of the conversation.

To convince us otherwise, the state argues that James's admission to victim is "unique evidence" of intent that cannot be obtained any other way. While the evidence is good for the prosecution, because there is sufficient evidence to support the charge, the prosecution has not demonstrated that the suppression of the conversation between James and victim will critically impact the case. *See State v. Schnorr*, 403 N.W.2d 719, 720 (Minn. App. 1987) (concluding pretrial suppression of controlled substance obtained during unlawful search of driver did not have critical impact because the state had other lawfully obtained evidence that sufficiently supported charges); *State v. Hendrickson*, 395 N.W.2d 458, 462 (Minn. App. 1986) (concluding pretrial suppression of defendant's tape-recorded statement did not have critical impact when the state failed to show how suppressed evidence would affect trial and eyewitness was available to testify to what defendant said in the recording and could use it to refresh his recollection).

Still, the state contends that the suppressed evidence gained critical weight because days before James's trial, his brother Jeffrey allegedly testified that James had no knowledge of the stolen items. Jeffrey stated during his guilty plea to receiving stolen property: "I got the items from somebody in Wisconsin to store. I stored them at my house or my brother's house. *My brother knew nothing about it*." (Emphasis added.) But Jeffrey has two brothers. James—appellant here—shares a house with Jeffrey. The other brother Joseph had a separate house—a house where a stolen mini-bike apparently was stored.

Considering the quote in context, Jeffrey was more likely talking about his other brother Joseph, not James, when stating, "[m]y brother knew nothing about it." This testimony is not evidence that James lacked knowledge of the stolen items.

In sum, given the evidence supporting the conviction that the state had before trial began, the suppression of the admission did not seriously jeopardize the state's case. Therefore, the state did not demonstrate a critical impact.

Affirmed.