STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0866

State of Minnesota,
Respondent,

vs.

Jeffrey Scott Nelson,
Appellant.

Filed June 9, 2025
Affirmed
Bratvold, Judge

Carlton County District Court
File No. 09-CR-22-351

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Lauri A. Ketola, Carlton County Attorney, Carlton, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from the final judgment of conviction for fourth-degree assault, appellant challenges the denial of his motion for a mistrial. Appellant argues that the prosecuting attorney violated Minnesota Rule of Criminal Procedure 9.01 by failing to

disclose a victim's statement to an investigator. Because we conclude that the district court did not abuse its discretion when it denied the mistrial motion, we affirm.

FACTS

In March 2022, respondent State of Minnesota charged appellant Jeffrey Scott Nelson with fourth-degree assault under Minn. Stat. § 609.2231, subd. 3a(b)(2) (2020), alleging that he spat on or at L.W., an employee at a secure treatment facility. Four days before trial, the state filed an amended complaint adding a second count of fourth-degree assault under Minn. Stat. § 609.2231, subd. 3a(b)(2), and alleging that Nelson spat at or on D.F., another employee at the secure treatment facility. Both spitting incidents occurred on the same day, according to the amended complaint. The following summarizes the relevant facts based on the evidence received at Nelson's jury trial along with procedural history that helps our understanding of the issue on appeal.

Nelson is committed to the Minnesota Sex Offender Program (MSOP) in Moose Lake. On December 20, 2021, an MSOP nurse visited Nelson's room to inform him that she would be seeing him to address his medical request. When the nurse turned around, Nelson threw a food tray in her direction. The nurse reported the incident, and the emergency response team informed Nelson that he was restricted to his room for one day.

Nelson became upset and began hitting the door to his room with his wheelchair. Nelson refused to stop when asked to do so. Staff decided to move Nelson to a high-security area. Staff wore protective gear for the transfer and, because Nelson tried to slide out of his wheelchair, used wrist and other hospital restraints to keep Nelson in the wheelchair.

As they began to transport Nelson, the first staff member pushed Nelson's wheelchair, L.W. walked on Nelson's right, the second staff member walked on L.W.'s right, and the third staff member followed behind L.W. As they moved through the hallway, the first staff member saw Nelson "turn[] his head and [make] a spitting sound and . . . noticed spit come from [Nelson's] mouth onto [L.W.]." L.W. also heard Nelson spit and saw spittle on his arm, but L.W. did not see Nelson spit. L.W. lifted his arm and told Nelson not to spit on him. The second and third staff members testified that they heard Nelson make a spitting sound but did not see him spit.

As Nelson, L.W., and the three other staff members approached the end of the hallway, they passed D.F., who was walking toward them. D.F. heard Nelson say, "Quit your job, b-tch," and saw Nelson spit at him. D.F. saw the spit come from Nelson's mouth and realized it was directed at him; D.F. dodged the spit by arching his body to avoid it. The second staff member heard Nelson make a spitting sound in D.F.'s direction but did not see Nelson spit at D.F.

The district court received into evidence videos recorded by MSOP's surveillance system and the body cameras worn by the staff members who were transporting Nelson. All videos were consistent with the testimony at trial. One video showed L.W. and the three other staff members escorting Nelson in his wheelchair down the hallway and Nelson turning his head toward L.W., who then looked at his arm and said to Nelson, "Don't spit." This video also showed Nelson turning his head toward D.F. as he walked past Nelson.

An MSOP investigator, T.K., testified that he investigated the December 20, 2021 spitting incidents along with his partner, T.M., who retired before the trial and did not

testify. T.K. testified that, in their investigation, he and T.M. reviewed videos recorded by staff body cameras and the surveillance system. T.K. stated that the MSOP investigation office prepared an investigative report of this incident but that he did not prepare the report personally. The state did not submit any investigative reports as evidence.

D.F. testified consistently with the facts already summarized. On cross-examination, D.F. testified that he filled out an incident report after the spitting incident occurred and identified a document as the incident report he submitted.[1] D.F. agreed that an MSOP investigator, T.M., "reach[ed] out to [him] and ask[ed] to speak to [him]" about "a week after the [spitting] incident."

Outside the jury's presence, Nelson's attorney moved for a mistrial. Nelson's attorney acknowledged that, during discovery, he received the investigative report that T.K. had described in his testimony but stated that the investigative report did not "reference [D.F.] ever meeting with or speaking to" T.M. about a second spitting incident. The prosecuting attorney agreed with Nelson's attorney that the investigative report did not mention D.F.'s incident report or T.M.'s interview of D.F. The prosecuting attorney added that, shortly before trial, he learned of D.F.'s incident report and disclosed it to Nelson's attorney. The prosecuting attorney asked for a break so he could question the MSOP investigation office, which the district court granted.

After a break, the prosecuting attorney informed the district court that the MSOP investigation office did not have a record of D.F.'s interview or statement and neither did

[1] The incident report was not offered or admitted into evidence.

the state. The prosecuting attorney explained that he and Nelson's attorney questioned D.F. outside the presence of the jury and off the record. D.F. stated that, during his interview with T.M., he reported that Nelson spat at him but that the spit did not hit him.

Nelson's attorney renewed the motion for a mistrial, arguing that the state violated Minn. R. Crim. P. 9.01, subd. 1, and that the violation prejudiced Nelson. The prosecuting attorney opposed a mistrial and urged the district court to consider other remedies, including the state's dismissal of count two. The district court took the matter under advisement.

The next morning, outside the presence of the jury, the prosecuting attorney again proposed dismissing count two, urged the district court to give a cautionary instruction directing the jury to disregard evidence about the spitting incident with D.F., and asked the district court to allow the parties to redact the video exhibits to remove all parts showing D.F. Nelson did not oppose dismissal of count two, but argued that the remedies offered by the state were insufficient and that a mistrial was warranted.

The district court denied Nelson's mistrial motion and decided to "go forward as suggested by the State." The district court explained that "the curative measures . . . and procedures that the State is . . . proposing . . . will be sufficient at this time" and that "any prejudice . . . is not so fundamental or egregious as to require a mistrial." The district court directed that they would go off the record to discuss the curative instruction.

The trial resumed, and in the presence of the jury, the state moved to dismiss count two, which the district court granted. The district court then gave the jury the following instruction:

> [T]he charge of Fourth Degree Assault—Secure Treatment Facility—throw or transfer bodily fluid or feces, alleging Mr. Nelson spit on or at [D.F.], has been dismissed and will not be considered by you in your deliberations. I am ordering you, the jury, to disregard any evidence related to the allegation of spitting on or at [D.F.]. You are to disregard this evidence in your consideration related to the allegations of Mr. Nelson spitting on or at [L.W.]; in short, it is to play no role in your deliberation.

After the evidence was closed, the district court again instructed the jury to disregard the spitting incident with D.F. The video exhibits were redacted as proposed by the prosecuting attorney. The jury found Nelson guilty of count one for the fourth-degree assault of L.W. The district court sentenced Nelson to 12 months in prison and five years of conditional release.

Nelson appeals.

DECISION

Nelson contends that the district court committed reversible error by denying his motion requesting a mistrial as a sanction for the state's discovery violation. Nelson acknowledges that the state "did not intentionally withhold evidence of [D.F.'s] statement" but urges that "the discovery violation here is obvious clear" and "[t]he only real question is remedy." Nelson argues that, in denying his mistrial motion, the district court "vastly underestimated the prejudice to Nelson." Nelson concludes that, because "it is reasonably probable that the outcome of the trial would have been different," this court must grant a

new trial. The state disagrees, arguing that the district court acted within its discretion when it denied the mistrial motion and that the other remedial steps taken were sufficient to address any prejudice caused by the discovery violation.

"Pretrial discovery rules fulfill an essential role in the criminal justice system." *State v. Lindsey*, 284 N.W.2d 368, 372 (Minn. 1979). Discovery disclosure requirements "enhance the search for truth in the criminal trial by [ensuring] both the defendant and the State ample opportunity to investigate certain facts crucial to the determination of guilt or innocence." *Id.* (quotation omitted). The Minnesota Supreme Court has favorably cited the commentary to Minn. R. Crim. P. 9, which states that the purpose of the discovery rule is "to give the defendant and prosecution as complete discovery as is possible under constitutional limitations." *State v. Schwantes*, 314 N.W.2d 243, 245 (Minn. 1982).

We briefly discuss the discovery violation that occurred here. Under Minn. R. Crim. P. 9.01, subd. 1(2), the state must provide criminal defendants with (1) any "written or recorded statements"; (2) any "written summaries of oral statements"; and (3) "the substance of oral statements" if they "relate to the case," regardless of whether the speaker is a listed witness. The scope of this obligation extends to any "material and information in the possession or control of members of the prosecution staff *and of any others who have participated in the investigation or evaluation of the case* and who either regularly report, or with reference to the particular case have reported, to the prosecutor's office." Minn. R. Crim. P. 9.01, subd. 1a(1) (emphasis added). Rule 9.01 "confer[s] on prosecutors a continuing duty to disclose information learned in interviews with potential witnesses" and

extends to "summaries of witness' statements." *State v. Moore*, 493 N.W.2d 606, 608 (Minn. App. 1992), *rev. denied* (Minn. Feb. 12, 1993)

The district court did not expressly determine whether a discovery violation occurred. On appeal, Nelson argues that the state's failure to disclose D.F.'s statement was a discovery violation, and the state concedes this point. "Whether a discovery violation occurred is an issue of law which this court reviews de novo." *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005). The district court considered Nelson's mistrial motion and the parties' arguments before ultimately deciding that dismissal of count two, curative jury instructions, and modification of the evidentiary record was "a remedy to fix this." Because the district court found this remedy sufficient, we conclude that it implicitly found that the state's failure to disclose D.F.'s statement to the investigator was a discovery violation. *C.f. Palladium Holdings, LLC v. Zuni Mortg. Loan Tr. 2006-OA1*, 775 N.W.2d 168, 178 (Minn. App. 2009) ("Appellate courts cannot assume a district court erred by failing to address a motion, and silence on a motion is therefore treated as an implicit denial of the motion."), *rev. denied* (Minn. Jan. 27, 2010). We also conclude that, by failing to disclose D.F.'s statement to T.M., the state violated Minn. R. Crim. P. 9.01, subd. 1(2).

The sole issue on appeal is whether the district court abused its discretion by denying Nelson's motion requesting a mistrial as a sanction for the state's discovery violation. Appellate courts reviewing a district court's remedy for a discovery violation will generally defer to the district court. *Lindsey*, 284 N.W.2d at 373. Because "the trial court is in the best position to determine whether any harm has resulted from the particular violation and the extent to which this harm can be eliminated or otherwise alleviated," reviewing courts

"will not overturn its ruling absent a clear abuse of discretion." *Id.* "[T]he trial court has wide discretion in imposing sanctions" for discovery violations. *Moore*, 493 N.W.2d at 608.

Similarly, the district court's decision to deny a mistrial motion is reviewed for abuse of discretion. *Palubicki*, 700 N.W.2d at 489 ("[W]hether this court will grant a new trial due to prosecutorial misconduct is governed by no fixed rules but rests within the discretion of the trial judge, who is in the best position to appraise its effect." (quotation omitted)). "A mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different if the event that prompted the motion had not occurred." *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006) (quotation omitted).

The district court responding to a discovery violation may "permit the discovery, grant a continuance, or enter any order it deems just in the circumstances." Minn. R. Crim. P. 9.03, subd. 8. In *Lindsey*, the Minnesota Supreme Court explained that, in crafting remedies to address discovery violations, a district court must consider "(1) the reason why disclosure was not made; (2) the extent of prejudice to the opposing party; (3) the feasibility of rectifying that prejudice by a continuance; and (4) any other relevant factors." 284 N.W.2d at 373. Disregarding the *Lindsey* factors when determining sanctions for a discovery violation is an abuse of discretion. *State v. Sailee*, 792 N.W.2d 90, 95 (Minn. App. 2010), *rev. denied* (Minn. Mar. 15, 2011).

In its oral ruling on Nelson's mistrial motion, the district court did not explicitly address the *Lindsey* factors. The district court's statements from the bench, however, show that the first and third *Lindsey* factors were not contested and that the district court

considered the second and fourth *Lindsey* factors—the prejudice to Nelson because of the discovery violation and other relevant factors suggested by the state, such as whether dismissal of count two, a curative instruction, and redacted video exhibits appropriately corrected the discovery violation.

We address the parties' arguments about each *Lindsey* factor in turn.

A. The State's Reason for the Discovery Violation

The first *Lindsey* factor looks at the justification for the prosecuting attorney's failure to disclose and whether the discovery violation was "motivated by bad faith," *Lindsey*, 284 N.W.2d at 373, or was "the result of inadvertence," *State v. Kaiser*, 486 N.W.2d 384, 387 (Minn. 1992).

Nelson concedes that the state' s failure to disclose D.F.'s statement "may not have been intentional" but argues that "it is nonetheless inexcusable" because MSOP investigators collaborated with the prosecuting attorneys in producing materials for trial. Nelson argues that the MSOP investigators' "failure to document and transmit the part of its investigation that concerned" D.F. was not justified and warranted a mistrial. The state counters that the prosecuting attorney disclosed the MSOP investigation report to Nelson's attorney immediately after receiving it and that the MSOP investigators did not keep a record of or disclose D.F.'s statement to T.M. In other words, the state learned of D.F.'s statement during trial—at the same time Nelson's attorney did.

Nelson argues that "bad faith is not a necessary requirement" for a mistrial sanction. Nelson cites *Schwantes*, in which the supreme court reversed a conviction and held that a mistrial was required after the prosecuting attorney disclosed a copy of their file to the

defense and later received, but did not disclose, a statement from Schwantes's spouse discrediting his alibi. 314 N.W.2d at 244-45. Schwantes waived the marital privilege before trial; the prosecuting attorney called Schwantes's spouse and impeached her. *Id.* at 245. The supreme court reasoned that the prosecuting attorney "had reason to know that the file had been copied before the report was filed" so "the interests of justice" warranted a new trial. *Id.*

Schwantes does not help us analyze the first *Lindsey* factor for two reasons. First, while the supreme court in *Schwantes* reversed and ordered a new trial for a discovery violation, the opinion does not address whether the state acted in bad faith. *Id.* Rather, the supreme court concluded that the prosecuting attorney "should have contacted defense counsel in this case and told him about the oral report" because they "*should have known* that the information would be useful to [Schwantes] in deciding whether or not to waive the [marital] privilege." *Id.* (emphasis added). Second, the prosecuting attorney in *Schwantes* acted unreasonably when they did not disclose the oral report about the spouse's statement on the alibi defense that the state obtained before trial. *Id.* In contrast, the prosecuting attorney here did not disclose D.F.'s statement before trial because the state did not know it existed until D.F. testified. The two cases involve different reasons for the discovery violations based on when the state received the undisclosed evidence.

The circumstances here are more comparable to those in *State v. Ramos*, in which this court concluded that the district court did not abuse its discretion in denying a motion for mistrial. 492 N.W.2d 557, 559-60 (Minn. App. 1992), *rev. denied* (Minn. Jan. 15, 1993). In *Ramos*, the prosecuting attorney failed to disclose a victim's statement to her

sexual-assault counselor. *Id.* at 559. During trial, the sexual-assault counselor testified that the victim told her about someone offering to pay the victim to "drop the charges." *Id.* The district court "did not specifically rule on Ramos's argument that the state violated discovery rules." *Id.* Ramos appealed the denial of his motion for a mistrial. *Id*.

This court determined that "it is arguable that the prosecutor had a duty under Rule 9.01 . . . to disclose to the defense the victim's statement" but that the district court "did not err in refusing to grant a new trial or otherwise sanction the state." *Id.* This court "deem[ed] it significant that the prosecutor was unaware of the information until the victim testified about it on cross-examination, and there [was] no evidence that the prosecutor intentionally obstructed attempts by the defense to obtain the information or exploited the effects of its nondisclosure." *Id.* at 560.

Like this court did in *Ramos*, we conclude here that the first *Lindsey* factor supports the district court's denial of Nelson's mistrial motion because the prosecuting attorney learned of D.F.'s statement during trial and nothing suggests that the state should have known of the evidence or that it inhibited disclosure of the evidence.

B. The Prejudice Caused by the Discovery Violations

"Generally, without a showing of prejudice to the defendant, the state's violation of a discovery rule will not result in a new trial." *Palubicki*, 700 N.W.2d at 489. Nelson argues that the district court "vastly underestimated the prejudice" to him because "[h]earing that Nelson spit at a *second* MSOP employee would have operated like *Spreigl* evidence for the

jury."[2] Nelson asserts that, "knowing that Nelson spat at [D.F.], the jury would have likely concluded that Nelson also spat" at L.W. The state counters that, even with "erroneously admitted *Spreigl* evidence," the appellate court "must determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict" and that the evidence as a whole proves Nelson's guilt of spitting on or at L.W.

We are not persuaded to analyze D.F.'s testimony or the video evidence before it was redacted as improperly admitted *Spreigl* evidence. When *Spreigl* evidence is admitted, the jury is instructed to consider *Spreigl* evidence for the limited purpose for which it is offered. *See* 10 *Minnesota Practice*, CRIMJIG 3.16 (Supp. 2021) (stating that evidence of other crimes or occurrences is "admitted for the limited purpose of assisting [the jury] in determining whether the defendant committed those acts with which the defendant is charged"). In contrast, the district court instructed the jury to disregard D.F.'s testimony, and we assume that the jury followed these instructions. *See State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998) ("Courts presume that juries follow the instructions they are given.").

Even if we assume that D.F.'s testimony was *Spreigl*-like, the erroneous admission of *Spreigl* evidence does not require a new trial unless it prejudices the defendant, meaning that it impacts the outcome of the trial. *See State v. Ness*, 707 N.W.2d 676, 691 (Minn.

[2] Evidence of a person's other crimes, wrongs, or acts is often called *Spreigl* evidence. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). Other-acts evidence is generally inadmissible to prove action in conformity with character; it may be offered for another purpose, as explained in Minn. R. Evid. 404(b).

2006) (stating that, when a district court has erroneously admitted *Spreigl* evidence, a reviewing court "must determine whether there is a reasonable possibility" that the evidence "significantly affected the verdict"). This prejudice test is similar to the second *Lindsey* factor, which evaluates prejudice according to whether there is a "reasonable probability that had the evidence been disclosed to the defense, the outcome of the trial might have been different." *Ramos*, 492 N.W.2d at 560. We conclude that the discovery violation did not impact the outcome in Nelson's case for two reasons.

First, the failure to disclose D.F.'s statement did not impact the outcome of Nelson's trial because the state dismissed count two, the spitting incident involving D.F. Second, Nelson fails to articulate how the state's discovery violation affected the outcome on count one involving L.W. and, based on this record, we discern no prejudice. Nelson argues that, had he received D.F.'s statement before trial, "[t]he defense could have more fully and completely prepared its case" and "cross-examined [D.F.] differently." Nelson also claims that his attorney would have impeached D.F. and persuaded the jury "to conclude" that the incident with L.W. "had not been proven beyond a reasonable doubt." Because Nelson does not explain how his case or D.F.'s cross-examination would have been different and because the jury was instructed to disregard D.F.'s testimony, these arguments are unavailing.

Simply put, Nelson's claim of prejudice to him on count one does not stand up to a close analysis. Nelson's brief to this court recognizes that the state had to prove that spit left Nelson's mouth in L.W.'s direction; it did not have to prove that spit landed on L.W., only that Nelson spit or otherwise threw bodily fluids at L.W. *See* Minn. Stat. § 609.2231,

subd. 3a(b)(2) (describing fourth-degree assault as "intentionally throw[ing] or otherwise transferr[ing] bodily fluids" at secure treatment facility personnel). Through the testimony of L.W., three other staff members escorting Nelson, and the video recording, the state presented a strong case of Nelson's guilt on count one. L.W. saw spit on his arm after hearing Nelson spit, and the second and third staff members heard Nelson spit, although they did not see him spit. Finally, the first staff member, who was pushing Nelson's wheelchair, testified that they saw Nelson spit on L.W. The video evidence is consistent with the trial testimony.

Where there is "overwhelming evidence" showing an appellant's guilt and there is no "reasonable probability" that the jury would have rendered a different verdict, a discovery violation does not warrant a new trial. *State v. Williams*, No. A23-1089, 2024 WL 3320582, at *3-4 (Minn. App. July 8, 2024) (stating that "the prosecution's failure to disclose" the victim's voice-identification statement "resulted in only minimal, if any, prejudice" to Williams because, "[s]etting aside [the victim's] voice identification of Williams, there was overwhelming evidence of Williams's identity"), *rev. denied* (Minn. Oct. 15, 2024).[3] We conclude that the state's failure to disclose D.F.'s statement did not prejudice Nelson as to count one and that, therefore, this factor supports the district court's decision not to grant a mistrial.

[3] While nonprecedential opinions are not "binding authority," they may be cited as "persuasive authority." *State v. Monyak*, 14 N.W.3d 210, 215 n.2 (Minn. App. 2024) (quoting Minn. R. Civ. App. P. 136.01, subd. 1(c)). *Williams* is persuasive because it applies *Lindsey* to determine the prejudice caused by a discovery violation for the state's failure to disclose a victim's statement. 2024 WL 3320582, at *3-4.

Still, as Nelson points out, the supreme court has recognized its "power to overturn a verdict based on discovery violations even if prejudice is not explicitly shown." *State v. Scanlon*, 719 N.W.2d 674, 687 (Minn. 2006) (holding that appeal did not "qualify for reversal" for state's discovery violations that were not prejudicial and "appear to be the result of oversight or mistake, not deliberate attempts to hide facts or surprise the defense" and "the information would not have prompted a change in trial strategy, nor was it exculpatory"). But in cases granting a new trial without a showing of prejudice, the other *Lindsey* factors, such as the reason for the prosecuting attorney's discovery violation, must warrant a mistrial. *See, e.g.*, *Kaiser*, 486 N.W.2d at 387 (vacating judgment and remanding for new trial when "the defense was [arguably] not prejudiced" but the prosecuting attorney actively prevented disclosure); *State v. Zeimet*, 310 N.W.2d 552, 553 (Minn. 1981) ("[B]earing in mind the lack of justification for the prosecutor's failure to disclose, we reverse and remand for a new trial."). Thus, we continue on to consider the remaining *Lindsey* factors.

C. The Feasibility of a Continuance

The third *Lindsey* factor—"the feasibility of rectifying that prejudice by a continuance"—does not bear upon the district court's denial of Nelson's mistrial motion. *Lindsey*, 284 N.W.2d at 373. The parties did not discuss a continuance during trial. On appeal, Nelson does not discuss this factor. The state argues that this factor does not apply. We agree with the state that the third *Lindsey* factor is inapplicable here. Nelson did not request a continuance during trial, and in his brief to this court, he does not argue that he should have received a continuance.

D. Other Corrective Measures

Courts apply the fourth *Lindsey* factor as a catch-all provision under which the court evaluates other aspects of the case to determine whether the district court's remedy for the discovery violation was appropriate. *See, e.g.*, *State v. Patterson*, 587 N.W.2d 45, 51, 53 (Minn. 1998) (affirming conviction, concluding that district court did not abuse its discretion in sanctioning the appellant's discovery violation by excluding testimony of an undisclosed witness, and analyzing whether the excluded testimony was "crucial" to the defense); *State v. Scott*, No. A17-1556, 2018 WL 4289387, at *9 (Minn. App. Sept. 10, 2018) (upholding district court's denial of the appellant's motion for a mistrial and reasoning that "less drastic measures," such as "the potential for a curative instruction to be given to the jury," could "rectify" the state's discovery violation), *rev. denied* (Minn. Nov. 27, 2018).[4]

The district court denied Nelson's mistrial motion after concluding that the curative "measures and procedures that the State" proposed would "be sufficient at [that] time." The state dismissed count two relating to D.F., the district court substituted redacted video exhibits excluding the evidence that Nelson spit at D.F., and the district court gave curative instructions to the jury.

On appeal, Nelson and the state focus on the curative jury instructions. The district court instructed the jury "to disregard any evidence related to the allegation of spitting on

[4] *See supra* note 3 discussing nonprecedential opinions as persuasive authority. *Scott* is persuasive authority because it considers whether a curative jury instruction can remedy a discovery violation. 2018 WL 4289387, at *9.

or at [D.F.].” Generally, “[c]ourts presume that juries follow the instructions they are given.” *Ferguson*, 581 N.W.2d at 835. This presumption can be rebutted, depending on (1) “the likelihood that the jury will disregard the instruction,” (2) “the probability that the jury’s disregard will have a devastating effect on the case,” and (3) “the determinability of the facts before trial.” *Id.* (quotation omitted).

Nelson argues that he has rebutted the presumption because “[e]ven the most conscientious juror would find it difficult to put the evidence related to [D.F.] out of their mind.” We are not persuaded for several reasons—the state dismissed count two involving D.F., the district court redacted the video evidence to exclude the incident involving D.F., and the verdict form and jury instructions asked the jury to consider solely whether Nelson spat at L.W. Also, ample evidence supports the jury’s verdict that Nelson spat at L.W. Finally, a reasonable juror would understand the distinction between determining whether Nelson spat at L.W. and whether Nelson spat at D.F. We therefore conclude that the presumption that the jurors followed the district court’s curative instruction has not been rebutted here. Thus, the fourth *Lindsey* factor supports the district court’s decision to deny the mistrial motion.

In summary, based on the *Lindsey* factors, we reject Nelson’s argument that the district court abused its discretion by denying his motion requesting a mistrial to remedy the state’s failure to disclose D.F.’s statement. First, the state’s discovery violation was inadvertent; the prosecuting attorney learned of D.F.’s statement during trial and at the same time as Nelson’s attorney, and the discovery violation was not in bad faith. Second, Nelson was not prejudiced by the discovery violation because there was no reasonable

probability that the violation affected the outcome of the jury's verdict on count one, the spitting incident related to L.W. Third, a continuance does not apply here. Fourth, other corrective measures were taken—count two was dismissed, the video evidence was redacted, and the district court gave curative instructions. These measures support the district court's determination that a mistrial was not warranted.

Affirmed.