

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,

v.

ZACHARIAH LEE AVINA,
Appellant.

Opinion

No. 20240906-CA

Filed September 11, 2026

Fifth District Court, St. George Department
The Honorable Jay Winward
No. 231501538

K. Andrew Fitzgerald, Attorney for Appellant

Derek E. Brown and Jonathan S. Bauer,
Attorneys for Appellee

JUDGE RYAN M. HARRIS authored this Opinion, in which
JUDGES MICHELE M. CHRISTIANSEN FORSTER and JOHN D. LUTHY
concurred.

HARRIS, Judge:

¶1 A jury convicted Zachariah Lee Avina of various sex-related crimes—object rape, forcible sexual abuse, and lewdness—for acts he engaged in with his niece (Mary),¹ who is eleven years his junior. Those acts occurred between 2010 and 2013, when Mary was fourteen to sixteen years old. With regard to the object rape and forcible sexual abuse charges, the State’s theory of non-consent was that Avina—as Mary’s uncle—occupied a “position of special trust.”

1. A pseudonym.

¶2 Avina appeals his convictions, and he first asserts that the trial court erred when it denied his motion to dismiss the object rape and forcible sexual abuse counts; in that motion, Avina had argued that the statutes governing the State’s “position of special trust” theory of non-consent were unconstitutional, at least as applied to him. Second, he asserts that the court erred again when it denied a subsequent motion to dismiss, this one invoking rule 16 of the Utah Rules of Criminal Procedure and alleging discovery violations by the State.

¶3 We are not persuaded by Avina’s arguments. We reject his constitutional argument because in his opening brief, he assails only the current version of the applicable statutes, rather than the version that was in effect at the time he committed the acts in question. The version applicable to Avina’s case does not suffer from the potential infirmities Avina identifies, and Avina has not otherwise carried his burden of demonstrating unconstitutionality. And we reject his discovery argument because he has not demonstrated that the trial court abused its discretion in concluding that no discovery violation occurred. Thus, we affirm Avina’s convictions.

BACKGROUND²

¶4 Avina and Mary are related: Avina and Mary’s father are brothers, which makes Avina Mary’s uncle. Avina is eleven years older than Mary. The family relationship was relatively close, and Mary remembers that Avina was always “a part of [her] life,” even when she was a small child. Throughout her youth, Mary “loved [her] uncle,” “looked up to him,” and even had “a big

2. “We recite the facts in a light most favorable to the jury verdict. We present conflicting evidence only when necessary to understand issues raised on appeal.” *State v. Elton*, 2026 UT App 7, n.1, 586 P.3d 491 (cleaned up).

crush on him.” As Mary grew older, Avina would “favor[]” Mary over her brothers and cousins and would sometimes buy her gifts. Then, starting when Mary was about ten years old, and continuing off and on through her teenage years and into adulthood, Avina engaged in sexual activity with Mary; the specifics of that activity are set forth in more detail below, in connection with our description of Mary’s trial testimony. As adults, Avina and Mary exchanged emails in which they discussed their earlier sexual activity, including the events that occurred while Mary was a minor. The activity ceased only after Mary—as an adult—reported it to the police in response to Avina sending “roses to [her] home for [her] husband to see” and showing “all of [her] messages and [her] images to [her] dad and to [her] husband.”

¶5 In 2023, after the activity came to light, the State charged Avina with two counts of object rape (charged as first-degree felonies), two counts of forcible sexual abuse (charged as second-degree felonies), and one count of lewdness (charged as a class B misdemeanor).

¶6 The following year, before trial was set to begin, Avina filed a motion to dismiss the object rape and forcible sexual abuse counts. The basis for his motion was his contention that the non-consent portions of the relevant statutes were unconstitutional as applied to him because—as he saw it—those statutes allowed the State to prove non-consent simply by proving that he was Mary’s uncle. Specifically, Avina argued that, with regard to non-consent in this situation, the statutes do “not require acts to be proven, but rather direct[] the finder of fact to conclude that the fact of ‘without the consent of the victim’ is proved merely if the defendant is a member of any of the[] legally disfavored classes” listed in the statutory text. The provisions Avina was referencing are found in the *current* version of the relevant statutes. *See* Utah Code §§ 76-5-404.1(1)(a)(v), 76-5-406(2)(j).

¶7 In his motion, Avina made no attempt to explain why the 2013 version of the relevant statutes—the version in effect at the time of the acts giving rise to the charged crimes—might be unconstitutional. That previous version of the statutes had been the subject of a Utah Supreme Court opinion—*State v. Watkins*—in which the court held, given the text of that version of the statute, that simply occupying “one of the positions listed in [the statute] . . . is insufficient, standing alone,” to constitute occupying a “position of special trust” and that “to establish that a defendant occupies a ‘position of special trust in relation to the victim,’ the State must establish that the defendant occupies ‘a position of authority’ in relation to the victim and must further establish that ‘by reason of that position [the defendant] is able to exercise undue influence over the victim.’” *See* 2013 UT 28, ¶ 2, 309 P.3d 209 (final alteration in original) (quoting Utah Code § 76-5-404.1(4)(h) (2013)), *superseded by statute as stated in Christensen v. Juab School Dist.*, 2017 UT 47, ¶ 14, 424 P.3d 108. Avina did cite *Watkins* in the memorandum supporting his motion, but he did not discuss the fact that *Watkins* was construing a previous version of the statute that contained language that was materially different from the (inapplicable) version he was challenging.

¶8 In response, the State resisted Avina’s assertion that the non-consent provisions were unconstitutional, and it noted that—by his citation to *Watkins*—Avina should be “well aware” that the State couldn’t prove non-consent simply by proving that Avina was Mary’s uncle and that, instead, the State had an “additional burden to show that, by virtue of [Avina’s] position as an uncle to [Mary], he was able to exercise undue influence over her.” After hearing oral argument on the matter, the trial court denied Avina’s motion to dismiss.

¶9 After that, the case proceeded to trial, where the State called as witnesses Mary, a police detective, and Mary’s father. During its presentation, the State submitted numerous emails between Mary and Avina, which were admitted into evidence and

given to the jury during its deliberations. The facts we describe in the next several paragraphs come from Mary's testimony, Mary's father's testimony, and the emails.

¶10 When Mary was ten years old, she and her immediate family were "living in the basement of [her] great-grandparents," who were also Avina's grandparents. From time to time, Avina would come to visit. During that summer, Mary, "[her] brothers[,] and some of [her] cousins . . . would sleep on the tramp[oline]" at night, and Avina "would sleep right next to [her]." On these occasions, Avina would "hold onto [Mary] and spoon [her] all night long." In an email written in 2023, in reference to these nights on the trampoline, Avina said to Mary, "[I] would always try and be next to you so i could cuddle with you. i loved you so much. i still do 💕 it was my fav too."³ He further explained that he had been "nervous to lay with" Mary out of fear someone might notice.

¶11 Eventually, Mary's family moved out of her great-grandparents' house and into a new house, where Avina would also sometimes come to visit. When Mary was "around 12 or 13" years old, Avina came to visit the family, "with his then wife," over Christmas. During that visit, Avina went into Mary's room "and he kissed [her] in there." During her trial testimony, Mary described Avina "breathing all on [her]." In a later email between the two, Mary described the kissing incident, stating, "[Y]ou came into my room while everyone was sleeping and you got super . . . close to kissing me. I think you were drinking. I remember smelling it on your breath when we finally did kiss each other." Avina responded, "[I] can't believe we've done stuff either 🤪🤪 we are so bad 💕👁️💕 . . . iv loved everything we've done. i vaguely remember that night. i think i was drinking a lot."

3. For the most part, we have retained the original spelling and grammar found in the emails.

¶12 Around the same time, Avina was living with his parents (Mary's grandparents) in Las Vegas, Nevada. On occasion, Mary's family would visit and help her grandparents "fix up their home." When Mary was there, she "would pal around with" Avina. One "night when everybody was asleep," Mary "was in [Avina's] room and he licked [her] vagina." Years later, in an email, Avina described the incident. He said, "[S]haved reminds me of when you were young and couldn't grow hair down there yet 🍌 like when i went down on you when you were 12 or 13 🍌." ⁴

¶13 By the time Mary was fourteen, her family had moved to St. George, Utah; Mary recalls that Avina "came and helped [them] move in." During this time period, Avina sometimes "would stay over" at their house and "sle[ep] on the chaise in the living room." Mary remembered a time "late at night" when she and Avina "had been on the chaise kissing, and he put his finger up [her] butthole." Later, as adults, Avina reminisced about this incident in an email, and he said, "[H]ave i licked your booty before. i know iv stuck a finger in it." And he confirmed that this had occurred at Mary's "first house in st george" when Mary was "young" and that Avina had been "a bad bad boy."

¶14 After Mary's family was settled in their new home, Avina sometimes "would come visit [them]." During these visits, he would drive Mary around in his "big lifted black truck." Mary testified that, on one such occasion, she and Avina "went in the truck alone to go get some" fast food and "on the way home," Avina "pulled over and instructed [her] to get into the [rear cab] of the truck." She remembered that Avina told her "to turn around and [that] he had pulled down [her] pants and [her] panties." And she remembered "him unbuckling his belt and pulling down his [pants], and then getting right up behind [her]." But before anything further occurred, Avina "pulled back up his

4. This event was not the basis for any of the charges in this case, presumably because it occurred in Nevada.

pants” and said, “Oh, I’m not doing this.” Mary thought that Avina “was going to insert his penis into [her] vagina.” She was about fourteen to fifteen years old then. Avina and Mary later emailed about this event as well. In those emails, Avina recalled “pull[ing] [Mary’s] pants down” and that he had “wanted to” insert his penis into Mary “so bad that time.”

¶15 Another incident occurred at a movie theater when Mary was sixteen. That night, Mary’s family went to see a movie, Avina accompanied them, and she and Avina sat “right next to” each other. During the movie, Avina “pulled his penis out of his pants and let it just sit out exposed, and told [her] to grab it.” Mary stated that she “grabbed it” “[b]ecause [she] felt pressured.” In two later emails, Avina referred to a time “[w]hen [Mary] grabbed” his penis in the movie theater with her family around.

¶16 After the movie ended, Avina returned with Mary’s family to their house, where he had been sleeping on the couch. Of that night, Mary testified, “He was dry humping me and he had pulled up my shirt and was sucking on my breasts and he was holding me, one hand down the front of my pants and in my vagina, and the other one down the back in my buttohole.” She explained that “he position[ed] his hands” so that “[h]e was almost cradling [her] to where one of his fingers was in [her] vagina and the other one was in [her] buttohole.” At trial, the prosecutor asked Mary if she “recall[ed] how far [Avina’s finger] went into [her] vagina.” Mary responded, “It was all the way in.” In a corresponding later email, Avina said to Mary, “[R]emember when you were grinding me hardcore on the couch, and i was [grabbing] your boobs and sucking them real good.” And in two other emails referencing this incident, Avina admitted that he had inserted his fingers into Mary’s vagina and anus.

¶17 In another email written after Mary was an adult, Avina told her, “[I] don’t feel guilty about anything with you anymore. [A]nd i’ll be honest. [I] did feel bad about the things we did when

you were too young. . . . [I] didn't do that stuff with you because i'm a weirdo and i like little girls. [I] did it with you cuz i was in love with you." And in a separate email, Avina wrote, "[W]hat if i would've tried something or told you how i felt and it scared you and you ran and told your dad and my parents found out. [M]aybe they got the police involved. [I] would literally be in jail. [S]o i had to be careful. [I] did take chances."

¶18 When Mary was seventeen, she and her family had "a falling out" with Avina, and she had no contact with him for about four years. During that time, Mary got married and started a family of her own. Later, though, when Mary was about twenty-one, she and Avina reconnected at a family gathering at her grandparents' house, and that night Mary and Avina had sexual intercourse. A few years after that, when Mary was twenty-five, the two saw each other again at a family funeral, and at that point they began the email contact that resulted in the trial exhibits quoted above. This correspondence—which included "thousands of emails"—went on for about a "year and a half," until Avina "sent roses to [Mary's] home for [her] husband to see" and "sent all of [her] messages . . . to [her] dad and to [her] husband." After that, Mary reported the events to the police.

¶19 After the State rested its case, Avina's counsel (Counsel) made a motion to dismiss, pursuant to rule 16(a) of the Utah Rules of Criminal Procedure, alleging that the State had committed discovery violations. In particular, he argued that certain "witness statements" that he believed had been made before trial to the prosecution had not been provided to the defense and that the defense "did not become aware of them . . . until court." Further, Counsel asserted that the State's failure to disclose these statements had "deprived [Avina] of the opportunity to prepare his defense." When making his motion, Counsel did not specify which statements he believed had not been disclosed. But the court asked about this, and in response Counsel said that what had gone undisclosed was "essentially the level of detail"

involved in Mary's description, during her trial testimony, of some of the events in question. After further inquiry from the court, Counsel identified these specific things that he believed hadn't been disclosed: (i) that Mary "felt heavy breathing on her" during the Christmas incident, (ii) the "[c]radling of [Mary's] vagina with [Avina's] hand[s]" during the couch incident, (iii) "[t]he depth of penetration" during that same incident, (iv) Mary's "emotional state in one of the instances," and (v) "[t]he fact that [Mary] had moved from the front cab to the rear cab" during the truck incident. Based on this, Counsel asked the court to dismiss the case entirely, taking the position that no lesser sanction would suffice. In particular, Counsel argued that "an order compelling the discovery would be unavailing at this point, as would a continuance," because "the evidence ha[d] already been presented to the jury."

¶20 The court denied the motion. It offered its view that "[t]hose types of things are all things within the purview of the defendant" who "could tell that did or did not happen during the course of trial," and that "things are going to come out at trial, are going to be fleshed out at trial." The court also noted that the State "cannot anticipate every word, and [it] can't tell [Mary] what to say." In the end, the court found that there was not "anything exculpatory or anything that wasn't already previously provided or could have been anticipated by the prosecution."

¶21 Once the defense rested, the jury was given instructions, including elements instructions for the object rape and forcible sexual abuse charges. Those charges required the State to prove that Avina had "acted without [Mary's] consent." Consent was defined in a later instruction as follows:

An act of object rape or forcible sexual abuse is without consent of the victim under the following circumstances:

The victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim.

The prosecution must prove:

1. At the time of the act, [Mary] was younger than 18 years old; AND
2. [Avina] was [Mary's] uncle.

Another instruction defined "[p]osition of special trust" as meaning "an uncle or any individual in a position of authority that enables the person to exercise undue influence over the minor."

¶22 After deliberation, the jury convicted Avina on all five counts: two counts of object rape (for the digital penetration on the chaise and on the couch); two counts of forcible sexual abuse (for the movie theater incident and the breast touching on the couch); and one count of lewdness (for the truck incident). Later, the court sentenced Avina to consecutive prison sentences for the felonies and a short jail sentence for the lewdness charge.

ISSUES AND STANDARDS OF REVIEW

¶23 Avina now appeals, and he asks us to consider two issues. First, he argues that the trial court erred when it denied his motion to dismiss asserting the unconstitutionality of the non-consent portion of the object rape and forcible sexual abuse statutes. "A constitutional challenge to a statute presents a question of law, and we review the district court's decision on that question for correctness." *Lehi City v. Rickabaugh*, 2021 UT App 36, ¶ 11, 487 P.3d 453 (cleaned up). "Those who challenge a statute or

ordinance as unconstitutional bear the burden of demonstrating its unconstitutionality.” *Id.* (cleaned up).

¶24 Second, Avina asserts that the court erred when it denied his motion to dismiss alleging discovery violations, which motion had been filed pursuant to rule 16 of the Utah Rules of Criminal Procedure. “We review a trial court’s ruling on a rule 16 issue for abuse of discretion.” *State v. Miranda*, 2017 UT App 203, ¶ 23, 407 P.3d 1033.

ANALYSIS

I. Motion to Dismiss: Constitutionality

¶25 First, Avina challenges the trial court’s denial of his motion to dismiss in which he argued that the non-consent portions of the statutes underlying his object rape and forcible sexual abuse charges are unconstitutional. But as the State points out, Avina—in his opening brief—assails only the constitutionality of the *current* version of the relevant statutes rather than the materially different version that was in effect at the time of the acts that formed the basis for his charges. Because Avina—at least in his opening brief—does not even assert that the relevant statute was unconstitutional, he has fallen far short of surmounting his burden of persuasion on appeal.

¶26 We start with the noncontroversial premise that the relevant version of the statutes—when considering their constitutionality—is the version that was in effect at the time Avina committed the acts that led to the charges. As a general matter, courts “apply the law in effect at the time of the occurrence regulated by that law.” *State v. Clark*, 2011 UT 23, ¶ 11, 251 P.3d 829 (cleaned up). This is so because “the parties’ substantive rights and liabilities are determined by the law in place at the time when a cause of action arises, and not by a subsequently enacted statute.” *Id.* ¶ 12 (cleaned up). And in this specific context, “[w]e

apply the version of the [criminal] statute that was in effect at the time of the offense.” *State v. Pontiff*, 2026 UT App 117, ¶ 47 n.4; see also *Clark*, 2011 UT 23, ¶ 14 (“On matters of *substance* the parties’ primary rights and duties are dictated by the law in effect at the time of their underlying primary conduct (e.g., the conduct giving rise to a criminal charge . . .).”). Applying these principles here, we conclude that the statutes that apply to Avina’s case are the ones that were in effect from 2010 to 2013, when the acts underlying the charged criminal conduct occurred.

¶27 With regard to constitutionality, then, the only relevant question is whether *that version* of the statutes passes constitutional muster. And Avina doesn’t even attempt to raise that question. Instead, he asserts that the *current version* of the statute is constitutionally infirm. But—at least to the extent that the two versions of the statutes are materially different—questions about whether a later-enacted version of the statutes passes constitutional muster are not relevant, and our answering them would simply result in an advisory opinion. See *Farm Bureau Mutual Ins. Co. v. Weston*, 2025 UT 42, ¶ 54, 587 P.3d 936 (“Utah courts do not issue advisory opinions” (cleaned up)).

¶28 Here, not only are the two versions of the statutes materially different, but the alleged infirmities to which Avina points are present only in the current version of the statutes and not in the version in effect at the time of Avina’s crimes.

¶29 Avina’s grievance with the current version of the statutes is that the State can prove non-consent simply by showing that the defendant is the alleged victim’s uncle. Avina sees this as a constitutional problem, asserting that the statutes violate equal protection principles by creating “a separate category of individuals for which no evidence is required other than to show their ‘position’ in relation to the purported victim,” which puts the focus on the defendant’s “status” rather than on the alleged criminal activity. Indeed, Avina laments that, under the current

version of the statutes, if the defendant falls into one of several specific categories (including “uncle”), the State doesn’t even have to show that the defendant exercised “undue influence” over the alleged victim in order to show that the defendant was in a “position of special trust.” See Utah Code §§ 76-5-404.1(1)(a)(v), 76-5-406(2)(j). Avina even implicitly acknowledges that if the statutes *did* require the State to prove more than just that he was Mary’s uncle—for instance, that (in addition to being her uncle) Avina also exercised “undue influence” over Mary—then the statutes would not be unconstitutional.

¶30 But the flaw in Avina’s argument is that the 2013 version of the statutes—the one that governs this case—*did* require the State to prove undue influence and did not consider all uncles—simply by virtue of their status as such—to be individuals in a “position of special trust” regarding their nieces and nephews. Under that version of the statutes, a “position of special trust” meant a “position occupied by a person in a position of authority, who, by reason of that position [was] able to exercise undue influence over the victim, and include[d], but [was] not limited to, . . . [an] uncle.” *Id.* § 76-5-404.1(4)(h) (2013). Interpreting that statutory language, our supreme court held that the State could not prove that a defendant was someone in a “position of special trust” simply by demonstrating that the defendant “occupied” one of the “enumerated” categories. See *State v. Watkins*, 2013 UT 28, ¶ 17, 309 P.3d 209, *superseded by statute as stated in Christensen v. Juab School Dist.*, 2017 UT 47, ¶ 14, 424 P.3d 108. Instead, based on the relevant statutory text, “[p]roof that a defendant occupie[d] one of the . . . positions” enumerated in the statute, such as “uncle,” “suffice[d] to establish only that the defendant occupied a position of authority.” *Id.* ¶ 39. Thus, the State could not prove that a defendant occupied a “position of special trust” merely by showing that the defendant was a member of one of the enumerated categories; instead, the State also had to show that, under the facts of the particular case, the defendant’s “position of

authority”—for instance, as an uncle—“gave the defendant the ability to ‘exercise undue influence’ over the victim.” *Id.*

¶31 After *Watkins* was issued, our legislature amended the relevant statutes. As currently worded, any individual who falls within one of twenty-two categories—including “uncle”—occupies a “[p]osition of special trust,” simply by virtue of their inclusion in one of those categories. See Utah Code § 76-5-404.1(1)(a)(v)(U). The relevant statute includes a catch-all category for “any individual in a position of authority . . . which enables the individual to exercise undue influence over the child.” *Id.* § 76-5-404.1(1)(a)(v)(W). But that catch-all category specifically excludes “those individuals listed in” the other categories. *Id.* In other words, the post-*Watkins* statutory changes eliminated any necessity for the State to prove that an “uncle” (or a member of any other of the twenty-two categories), in order to be considered in a “position of special trust,” also exercises “undue influence over” the alleged victim. *Id.*

¶32 Avina now assails this current statutory scheme as unconstitutional because, now that it no longer requires the State (in most cases) to prove undue influence, it “categorically criminaliz[es] defendants [based] merely on ‘position’ rather than on facts and evidence.” We need not grapple with Avina’s argument here, however, because the version of the statutes that Avina assails is not the version applicable to this case, and because the applicable version—the one in effect when Avina committed the acts giving rise to the charges—doesn’t contain the language that Avina now assails as unconstitutional.

¶33 In order to carry his burden of demonstrating a constitutional infirmity, Avina needed to focus the arguments made in his opening brief on the version of the statutes that was in effect at the time of his allegedly criminal acts. He failed to do so; in his opening brief, Avina assailed only the current version of the relevant statutes. After the State, in its response brief, pointed

out the problem, Avina made some effort to address the 2013 version of the statutes in his reply brief. But this is insufficient. “It is well settled that issues raised in the reply brief that were not presented in the opening brief are considered waived and will not be considered by the appellate court.” *Monticello Wind Farm, LLC v. Public Service Comm’n*, 2019 UT 43, ¶ 80, 449 P.3d 128 (cleaned up); *see also State v. Hatch*, 2019 UT App 203, ¶ 47, 455 P.3d 1103 (“Because [the appellant] did not pursue this argument in his principal brief, but only developed it in his reply brief, we do not address it.”).

¶34 For these reasons, we reject Avina’s assertion that the trial court erred by denying his motion to dismiss regarding the constitutionality of the statutory scheme.⁵ Avina has simply not carried his burden of demonstrating that the version of the statutes applicable to this case suffers from any constitutional infirmity or that the trial court made any error in denying the motion he filed on this subject. Accordingly, we affirm the court’s order denying that motion.

II. Motion to Dismiss: Discovery Violations

¶35 Next, Avina challenges the trial court’s denial of his motion to dismiss that was grounded in rule 16 of the Utah Rules of Criminal Procedure and in which he asserted that the State had committed discovery violations that warranted dismissal of the

5. The challenge to the court’s order denying his motion to dismiss is the only one Avina makes regarding this issue. In particular, he makes no argument, in his opening brief, that the State’s evidence was insufficient to support a conviction on the “undue influence” question. Nor does he assert, in his opening brief, that the trial court made any errors regarding its jury instructions on this issue, some of which—*see supra* ¶ 21—appear to have referenced the current version of the statutes rather than the 2013 version. We therefore do not further address these issues.

entire case as a sanction. In response, the State defends the court's order by asserting, among other things, that there was no discovery violation. We agree with the State.

¶36 Counsel raised this issue after the State had rested its case. After listening to Mary's trial testimony, Counsel asserted that some of the things Mary had said on the witness stand had been a surprise to him and had not been previously disclosed, and that the State's failure to disclose these things had "deprived [Avina] of the opportunity to prepare his defense." When the court pressed for more specificity, Counsel asserted that the problem was in "the level of detail" in Mary's descriptions of some of the events. In particular, Counsel pointed to these pieces of Mary's trial testimony: (i) that Mary "felt heavy breathing on her" during the Christmas incident, (ii) the "[c]radling of [Mary's] vagina with [Avina's] hand[s]" during the couch incident, (iii) "[t]he depth of penetration" during the same incident, (iv) Mary's "emotional state in one of the instances," and (v) "[t]he fact that [Mary] had moved from the front cab to the rear cab" during the truck incident. On appeal, Avina continues to maintain that the State had an obligation to disclose these details prior to trial, and he asserts that the State's failure to do so was a discovery violation severe enough to warrant dismissing the entire case. We disagree.

¶37 Rule 16 states that "[t]he prosecutor must disclose to the defendant . . . material or information directly related to the case of which the prosecution team has knowledge and control," including two different types of witness statements. *See* Utah R. Crim. P. 16(a)(1)(A), (D). First, with regard to statements made by the defendant or any codefendants, the rule requires the prosecutor to disclose all "written or recorded statements" as well as "the substance of any unrecorded oral statements made . . . to law enforcement officials." *Id.* R. 16(a)(1)(A). Second, with regard to statements made by witnesses other than the defendant or any codefendants, the rule requires the prosecutor to disclose all "written or recorded statements." *Id.* R. 16(a)(1)(D). In addition,

the rule requires the prosecutor to turn over all “evidence that must be disclosed under the United States and Utah constitutions, including all evidence favorable to the defendant that is material to guilt or punishment.” *Id.* R. 16(a)(1)(F); *see also State v. Alvarado*, 2014 UT App 87, ¶ 17, 325 P.3d 116 (“The prosecution bears a fundamental duty to disclose material, exculpatory evidence to the defense in criminal cases.” (cleaned up)). And if the prosecutor fails to comply with the rule’s disclosure requirements, the trial court has the discretion to impose sanctions, including exclusion of “evidence not disclosed” and including “such other relief as the court deems just under the circumstances.” Utah R. Crim. P. 16(e)(1)(C)–(D).

¶38 In this case, rule 16 did not require the State to disclose any of the things Avina identifies. None of those items are statements made by Avina or any codefendant, and therefore subsection (a)(1)(A) of rule 16—including its reference to “the substance of any unrecorded oral statements”—is inapplicable here. *See id.* R. 16(a)(1)(A). With regard to statements made by witnesses other than the defendant (or a codefendant), the rule requires disclosure of only “written or recorded statements.” *See id.* R. 16(a)(1)(D). And because none of the five items Avina identifies come from written or recorded statements Mary made, that subsection likewise has no application here. Finally, none of the items Avina identifies can plausibly be described as exculpatory or otherwise “favorable to” Avina. *See id.* R. 16(a)(1)(F). Thus, rule 16 simply does not require the State to have disclosed, prior to trial, any of the identified detail-level items Mary testified about during her trial testimony. Witnesses sometimes use different words to describe incidents than they used previously, and they sometimes include a little more detail in their trial testimony than they included in previous statements. Such matters are simply part of the variability of trial, and—absent circumstances not present here—the State need not trouble itself to disclose these kinds of minor changes in a witness’s account of relevant events.

¶39 Avina pushes back on this conclusion by making two points. First, although his argument is somewhat unclear, he appears to assert that even inculpatory evidence should be disclosed under the rule. He cites *State v. Kallin*, a case in which our supreme court stated that “[t]he practice in this state, at least in some districts, is for the prosecutors to make all inculpatory evidence available to the defense on request.” *See* 877 P.2d 138, 143 (Utah 1994). But by making this statement, the court was not purporting to offer an interpretation of rule 16; instead, the court was merely making an observation about how some prosecutorial offices in Utah apparently operated. *See id.* Indeed, just prior to the statement Avina cites, the court noted that “the State has two independent obligations to provide evidence to the defense,” the first being its constitutional obligation to disclose “all exculpatory evidence” and the second being its obligation to “disclose evidence pursuant to [r]ule 16.” *See id.* Stated another way, the court did not hold that prosecutors have an *obligation* to disclose inculpatory evidence beyond what rule 16 requires. *See id.*; *see also State v. Rugebregt*, 965 P.2d 518, 522 (Utah Ct. App. 1998) (stating that when evidence is “inculpatory rather than exculpatory,” “the prosecutor’s discovery duty [i]s limited to disclosures under [r]ule 16”); *cf. State v. Suhail*, 2023 UT App 15, ¶ 101 n.17, 525 P.3d 550 (stating that “the relevance of the Due Process Clause” was indiscernible where the defendant’s claim was that the “evidence was inculpatory, not exculpatory”).

¶40 Second, Avina argues that rule 16(a)(1)(A)—the subsection that applies only to statements made by the “defendant or any codefendants”—should also apply to Mary’s testimony, asserting simply that this section “would presumably also apply to witnesses, particularly purported victims.” We find no merit in this argument. “When we interpret a procedural rule, we do so according to our general rules of statutory construction. Thus we read the plain language of the rule as a whole, and interpret its provisions in harmony with other rules.” *Gardiner v. Taufer*, 2014 UT 56, ¶ 26, 342 P.3d 269 (cleaned up). The plain language of the

applicable subsection states that it applies only to statements made by the “defendant or any codefendants.” *See* Utah R. Crim. P. 16(a)(1)(A). We will not presume the rule’s application to other witnesses—even to the State’s complaining witnesses—when its plain text does not allow for that interpretation.

¶41 For these reasons, we reject Avina’s contention that the State had an obligation to make a pretrial disclosure to Avina that included the five items of detail that he identifies. Because the State had no such disclosure obligation, the trial court did not abuse its discretion in denying Avina’s motion to dismiss the case for asserted discovery violations.

CONCLUSION

¶42 Avina has not carried his burden of demonstrating that the non-consent statutes applicable to this case suffer from any constitutional infirmity. Nor has he persuaded us that the State had any obligation to disclose to him, prior to trial, any of the five items of detail that he identifies. For these reasons, we affirm the court’s orders denying both of Avina’s motions to dismiss, and we accordingly affirm his convictions.
