STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1768

State of Minnesota,
Respondent,

vs.

Juan Silva,
Appellant.

Filed December 28, 2020
Affirmed
Bratvold, Judge

Dakota County District Court
File No. 19HA-CR-17-2293

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

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

BRATVOLD, Judge

A jury found appellant guilty of second-degree assault. In this appeal from his judgment of conviction, appellant argues he is entitled to a new trial. Appellant contends

that the district court prejudicially erred by excluding medical opinion testimony on the cause of appellant's injury, which he proffered to support his self-defense claim. We affirm because appellant violated a discovery rule by failing to disclose the medical opinion testimony before trial, and because any error by the district court was harmless beyond a reasonable doubt.

FACTS

A jury found appellant Juan Silva guilty of second-degree assault, under Minn. Stat. § 609.222, subd. 1 (2016). The following summarizes the testimony and evidence received during Silva's four-day trial, viewing the evidence in a light favorable to the verdict.

Silva's girlfriend, M.A., lived in Lakeville with her niece and her niece's family. M.A.'s niece was "hooking up" with R.R., who she testified was a friend "with benefits." M.A. asked R.R. to get her cocaine. M.A. testified that she gave R.R. money, and R.R. gave her "fake drugs."

On Saturday, June 3, 2017, M.A. picked up Silva and they returned to her niece's house. M.A. asked Silva to "confront" R.R. about the fake cocaine and Silva agreed he would. When Silva and M.A. arrived, R.R. was with the niece in her basement bedroom. The witnesses disagree about what happened next and how R.R. was injured.

The state's witnesses

R.R. testified that Silva and M.A. entered the bedroom and Silva demanded that he return M.A.'s money for the fake cocaine. M.A. and her niece then left the bedroom. R.R. refused to pay M.A., and Silva took his iPad "for collateral." R.R. asked Silva to return

the iPad, R.R. reached for it, and they fought. R.R. testified that Silva punched him two or three times, he "punched [Silva] back two or three times," and then R.R. left running.

R.R. ran into the garage and tried to leave, but the overhead garage door was "three-fourths closed." M.A. and Silva entered the garage. R.R. testified that Silva lunged at him with a three-inch knife, "so [R.R.] ended up finding a bookshelf board, and [he] hit [Silva] with it." R.R. also testified that Silva "lunged forward to block [the board] with his body" and R.R. fell to the ground. Silva got on top of him and "that's when the slicing happened." According to R.R., Silva stabbed him in his neck, bicep, chest, and back. R.R. then tried to go behind a snowmobile, but Silva chased him, "[k]ind of doing duck duck gray goose." Silva attacked again, and R.R. ran out the now-open garage door.

R.R. testified he ran across the street, asked for help, and someone called the police. R.R. spoke to the 911 dispatcher and the district court received the transcript as exhibit 3A. R.R. told the dispatcher that Silva stabbed him, and that "I cut him open. I cut him open real good too because I ended up fighting him." In the same conversation, R.R. also told the dispatcher that "it was my fist. My fist cut him in the upper eye." R.R. later clarified these statements during trial, testifying that his "fist may have cut the bridge of [Silva's] nose." R.R. denied starting the fight or possessing a weapon. Medical evidence received at trial established that R.R. had a 6-8 inch laceration on his neck that required 27 stitches; R.R. also had other "superficial" wounds to his body and hand.

M.A.'s testimony generally aligns with R.R.'s.[1] M.A. testified that Silva started the fight in the bedroom when he "grabbed [R.R.'s] shirt" and "punched him" in the eye. M.A. testified that when she entered the garage, she saw that "[R.R.] had blood running down his face, and all over this shirt." She next saw Silva "coming towards [R.R.]" and tried "to help [R.R.] get to his feet," but he just "sat there for a minute" and said, "'[j]ust give me a breather.'" According to M.A., she got between R.R. and Silva and tried to "keep [Silva] from grabbing" R.R., allowing R.R. to flee.

M.A. went into the kitchen with Silva and he "took his knife out of his pocket and washed the blood off in the kitchen sink." She testified that this was the first time she saw the knife. M.A. drove Silva to the hospital but, according to M.A., she was in "shock" and pulled over when she realized she was driving the wrong way. She called 911. According to M.A., Silva "coach[ed]" her "on what to say when [she] was on the phone with the 911 operator." Silva told M.A. that "he was the victim and he was trying to defend himself."

The district court received a transcript of M.A.'s statements to the 911 operator as exhibit 49A. M.A. told the 911 operator that R.R. "pulled a knife out" when he was fighting with Silva; M.A. stated four times that R.R. had the knife. When the operator asked M.A. where the knife was, she replied, "I am gonna look in my purse. I know I grabbed it." Police responded to M.A.'s 911 call, met them along the road, and took Silva to the emergency room.

[1] M.A. testified that the reason she asked Silva to confront R.R. was because he had sent her "flirty" text messages, not because of the fake cocaine. She thought the messages were inappropriate because R.R. was dating her niece.

M.A. testified that, while she was speaking to the 911 operator, Silva exited the car and she did not see what he did. According to M.A., a year later, Silva asked her to drive to the same place and he dug up a knife, which "still had some blood on it." The state charged M.A with aiding and abetting the assault of R.R. and she testified against Silva in exchange for a negotiated plea and sentence.

Silva's witnesses

Silva testified that M.A. told him about the fake cocaine and asked him to get her money from R.R.; she also asked him to beat up R.R. if he did not have the money. Silva replied that he would talk to R.R., but he's "not beating nobody up for [her]." According to Silva, M.A. led him to her niece's bedroom. Silva told R.R. he had "ripped [M.A.] off" and needed to make it right, but R.R. refused. M.A. and her niece left the bedroom, and Silva picked up R.R.'s iPad and told R.R. it was "collateral." According to Silva, R.R. then "quickly sucker-punched me and he rushed me at the same time. . . . And then [R.R.] ran up the stairs." Silva denied that he punched R.R. while they were in the niece's bedroom.

Silva testified that he went upstairs and tried to leave, but ended up in the garage. According to Silva, R.R. was waiting in the garage and holding a board, which he swung at Silva. Silva blocked the board with his shoulder and then punched R.R., knocking him down. Silva described how he stepped back, let R.R. stand up, and R.R. pulled out a knife and said he would kill Silva. Silva testified that R.R. "sliced [him] with the knife" "across the face."

According to Silva, he took the knife from R.R., but R.R. continued to threaten and advance. Silva testified that R.R. must have been cut as they struggled over the knife and,

at one point, R.R. rushed Silva with his head down, lunged into the blade, and cut his neck. R.R. then ran out the garage door. Silva testified that R.R. started the fight and stated, "I absolutely was defending myself. I believed that my life was in danger. Imminent danger."

Because he did not know whether R.R. would return, Silva told M.A. they needed to leave. Silva rinsed off his face in the kitchen sink and took a rag for his nose. He testified that he did not know where the knife was, but thought M.A. might have had it. Silva also testified that they planned to call 911 to report the assault.

Silva admitted leaving the car to urinate while M.A. called 911, but denied burying a knife and retrieving it a year later. No knife was ever found. According to Silva, he broke up with M.A. five months after the fight and, at that time, M.A. was upset and threatened to put him in prison.

Dr. Tracy Pepper treated Silva in the emergency room and testified about a laceration on the bridge of his nose. She testified that Silva told her he had been cut by a knife and head-butted. The wound required stitches. The scope of Dr. Pepper's testimony was discussed on the first day of trial and again before the doctor testified. The defense disclosed Dr. Pepper as a fact witness, but during trial sought to ask whether, in the doctor's opinion, Silva's injury was consistent with a knife wound. The district court ruled that Dr. Pepper's testimony would be limited to the information disclosed in Silva's medical records.

Procedural history

The state charged Silva with one count of second-degree assault under Minn. Stat. § 609.222, subd. 1. During the trial, the state presented testimony from eight witnesses, including four responding officers, M.A., M.A.'s niece, R.R., and one neighbor who saw R.R. after the fight. Silva called one witness, Dr. Pepper, and also testified on his own behalf. The jury found Silva guilty. Based on the jury's findings and Silva's prior violent criminal convictions, the district court departed upward and imposed an executed sentenced of 84 months in prison. Silva appeals.

D E C I S I O N

Silva asks this court to reverse his conviction and remand for a new trial, arguing that the district court erred by excluding Dr. Pepper's opinion testimony, which prejudiced his defense. The state contends that the district court did not abuse its discretion by ordering that Silva could not ask Dr. Pepper whether Silva's injury was consistent with a knife wound because Silva had violated a discovery rule by not disclosing Dr. Pepper's opinion before trial. Alternatively, the state contends that any error was harmless.

"Evidentiary rulings rest within the sound discretion of the district court." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). This court will not reverse an evidentiary ruling absent a clear abuse of discretion. *Id.* "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

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) (citing *State v. Bailey*,

677 N.W.2d 380, 397 (Minn. 2004)). The imposition of sanctions for a discovery violation "is a matter particularly suited to the judgment and discretion of the trial court." *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979). We review a district court's imposition of sanctions for a discovery violation for abuse of discretion. *State v. Freeman*, 531 N.W.2d 190, 197-98 (Minn. 1995).

When a district court abuses its discretion by excluding evidence as a discovery sanction, this court will grant a new trial unless the error is harmless beyond a reasonable doubt. *Lindsey*, 284 N.W.2d at 374. Harmless beyond a reasonable doubt means, "the reviewing court must be satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized," a reasonable jury would have reached the same verdict. *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994).

Before sanctioning a discovery violation, the district court should consider several factors: "(1) the reason why disclosure was not made; (2) the extent of prejudice to the opposing party; (3) the feasibility of rectifying that prejudice with a continuance; and (4) any other relevant factors." *Lindsey*, 284 N.W.2d at 373. These factors are often called the "*Lindsey* factors." The third and fourth *Lindsey* factors require the district court to consider "other meaningful sanctions at its disposal." *Id.* at 374. Two cases guide our understanding of the *Lindsey* factors.

In *Lindsey*, the Minnesota Supreme Court reviewed an appellant's claim that the district court had erred by striking part of one witness's testimony and excluding another witness; the district court found that the appellant had failed to disclose either witness

before trial, as required by the Minnesota Rules of Criminal Procedure. *Id.* at 371.[2] The supreme court affirmed the conviction after considering the four factors discussed above. The supreme court reasoned that (1) the appellant gave no reason for failing to disclose the witnesses before trial; (2) the appellant's violation prejudiced the state because it lacked "notice that [the witnesses] might be called at trial"; and (3) that "it was too far into trial to consider a continuance." *Lindsey*, 284 N.W.2d at 373-74. The supreme court explained that the "values sought to be achieved through reciprocal discovery will be attained only if the rules are properly observed, and to this end the trial courts must have the ability to make those obligations meaningful." *Id.* at 374. Finally, the supreme court determined that, even if the district court abused its discretion, the error was harmless beyond a reasonable doubt because the excluded testimony would have been "cumulative." *Id.*

In *State v. Sailee*, this court relied on *Lindsey*, reversed an appellant's conviction for burglary, and remanded for a new trial after determining that the district court erred by excluding evidence offered by the appellant. 792 N.W.2d 90, 95 (Minn. App. 2010), *review denied* (Minn. Mar. 15, 2011). The appellant sought to introduce his own testimony about an alternative perpetrator to rebut the state's theory about "how [the appellant's blood] was found at the scene." *Id.* at 94. Because the appellant did not notify the state about his

[2] The district court relied on Minn. R. Crim. P. 9.02, subd. 1(3) (1978) ("The defendant shall supply the prosecuting attorney with the names and addresses of persons whom the defendant intends to call as witnesses at trial."). The wording of Minn. R. Crim. P. 9.02, subd. 1(3) has been amended since *Lindsey* was issued, although the amendments are not relevant to the issue in this appeal.

alternative-perpetrator defense before trial, a violation of Minn. R. Crim. P. 9.02, subd. 1(3)(a), the district court excluded the proffered evidence. *Sailee*, 792 N.W.2d at 94.

We determined that the district court abused its discretion by failing to "consider alternative ways of rectifying the prejudice to the state from the lack of notice, or the other *Lindsey* factors, when making its decision to preclude appellant's alternative-perpetrator testimony." *Id.* at 95. This failure prejudiced the appellant's defense because "[w]ithout an alternative explanation for the presence of his blood, it would have been unreasonable for the jury to acquit appellant." *Id.*

A. Facts relevant to the exclusion of Dr. Pepper's opinion testimony

Silva listed Dr. Pepper as a fact witness, disclosing that she had treated Silva for a laceration on his face following the fight. The state received Silva's medical records from June 3, 2017, but Silva did not provide a written summary of any expert opinion testimony anticipated from Dr. Pepper.

The state moved in limine to exclude Dr. Pepper's testimony about Silva's statements during treatment, as reflected in the medical records. On the first day of trial, the state argued that Silva's statements were unrelated to diagnosis under Minn. R. Evid. 803(4) and should be excluded as inadmissible hearsay. During the in limine hearing, defense counsel made an offer of proof, saying Dr. Pepper would testify that "the injury Silva suffered was consistent with a knife wound" and Silva told Dr. Pepper "it was a knife cut." The district court ruled that it would allow Silva's statement that he suffered a "knife cut" under rule 803(4), but added that it was a "separate inquiry" whether to admit the doctor's opinion "that the injury is consistent with a knife wound." But the district court

did not rule on the admissibility of Dr. Pepper's opinion testimony during the in limine hearing.

On the fourth day of trial, the state asked the district court to direct defense counsel to produce any notes about what Dr. Pepper would testify to, given the earlier offer of proof. Defense counsel stated he had "no notes," he had subpoenaed the doctor, and had not spoken to her about her testimony. The district court stated it would be the court's "expectation that [Dr. Pepper's] testimony would be limited to what's in" the medical records.

Just before the defense called Dr. Pepper, counsel stated that he wanted to ask Dr. Pepper if Silva's injury was consistent with a knife wound. The district court asked defense counsel if he had discussed the question with Dr. Pepper, and defense counsel responded, "[s]he didn't answer, didn't have a chance to respond. So I don't actually know the answer." The district court ruled that it would exclude any opinion testimony by Dr. Pepper because the state had not received notice about her opinion and therefore had no opportunity to consult with another medical professional about the proffered opinion.[3]

On appeal, Silva argues that the district court erred because he did not violate the discovery rules. Alternatively, if he violated the discovery rules, Silva contends that the district court erred by not considering the *Lindsey* factors, and specifically failed to consider alternatives to excluding testimony. Finally, Silva argues that the exclusion of

[3] The district court ended its ruling by saying, "So I'm inclined to say no, unless you give me a really good reason that I should say yes." Defense counsel responded, "All right then. I will simply limit it to that particular paragraph, what Mr. Silva disclosed."

Dr. Pepper's opinion testimony prejudiced the trial outcome. We address each argument in turn.

B. Discovery violation

The district court excluded Dr. Pepper's expert testimony after finding that the state lacked notice about her opinion. Silva argues that he did not violate any discovery rule; the state did not object to Dr. Pepper's opinion testimony and did not ask to exclude it. The state argues that Silva failed to provide a summary of Dr. Pepper's opinion testimony before trial and therefore violated a discovery rule.

Minnesota's Rules of Criminal Procedure provide:

> [A] person who will testify as an expert but who created no results or reports in connection with the case must provide to the defense for disclosure to the prosecutor a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications.

Minn. R. Crim. P. 9.02, subd. 1(2)(b). Before calling her to the stand, Silva had not provided either a report or a written summary of Dr. Pepper's opinion testimony. Silva first argues that most of Dr. Pepper's testimony was reflected in Silva's medical records, which the state received.[4] We disagree because Silva's medical records did not disclose any opinion about Silva's wound.

Silva next argues that the state received notice before trial that Silva would call the doctor as a fact witness, and contends that "therefore [the state] had the opportunity to

[4] Dr. Pepper testified that, based on her notes, "[Silva] presented because he had sustained a laceration, a cut to his nose. He told me that this had occurred from a knife. And he stated that he had been headbutted by someone else."

consult or call its own medical expert . . . .” Silva’s conclusion is incorrect because it conflates expert witnesses with fact witnesses and the rules of criminal procedure delineate between the two. *Compare* Minn. R. Crim. P. 9.02, subd. 1(3) (requiring notice of the names and addresses of defense witnesses) *with* Minn. R. Crim. P. 9.02, subd. 1(2)(b) (requiring production of expert reports or a summary of expert opinions).

The state received notice that Silva would call Dr. Pepper as a *fact* witness—one who would testify about Silva’s medical treatment, as described in the medical records. But the state had no notice before trial that Silva would call Dr. Pepper as an *expert* witness to provide opinion testimony about the nature or cause of Silva’s injury. *See Lindsey*, 284 N.W.2d at 373-74 (explaining the rationale behind notice is so opposing counsel can independently investigate potential testimony). We agree with the district court’s conclusion that Silva violated a discovery rule by failing to provide a summary of Dr. Pepper’s opinion testimony, as required by Minn. R. Crim. P. 9.02, subd. 1(2)(b).

C. The *Lindsey* factors

Silva argues that the district court erred by not considering the *Lindsey* factors before excluding Dr. Pepper’s testimony. The state contends that although the district court did not explicitly refer to the *Lindsey* factors, the record establishes that the court sufficiently addressed each *Lindsey* factor.

Sailee clearly states that a “failure to consider the *Lindsey* factors is an abuse of discretion.” *Sailee*, 792 N.W.2d at 95. Here, the district court did not explicitly discuss the *Lindsey* factors. Still, the state asks us to “infer from the record” that the district court implicitly addressed (1) the reason Silva did not disclose Dr. Pepper’s opinion testimony;

(2) the prejudice to the state; and (3) the feasibility of remedying any prejudice by granting a continuance or other alternative remedies. *See Lindsey*, 284 N.W.2d at 373-74. The state's argument finds some support in the record.

First, the record establishes that defense counsel candidly admitted he did not know Dr. Pepper's opinion. Thus, the district court likely inferred this was the reason for the discovery violation.

Second, the district court stated it was "concerned about the last minute" effects of Silva offering an expert opinion with no prior disclosure. The district court explained that, had the disclosure occurred, "the State would have had the opportunity to talk with another medical professional," and because "it's late," the state lacked "the opportunity to have someone else think about that opinion." Thus, the district court likely inferred that the state would be prejudiced by Silva's violation of the discovery rule. The prejudice to the state is underscored by defense counsel's statement that, when they sought to offer Dr. Pepper's opinion, the defense did not know what she would say.

Third, Dr. Pepper did not arrive on time for her anticipated testimony and the district court heard arguments about proceeding without her, during which the state objected to another continuance because four had previously been granted. From this, the district court may have implicitly found that it was not feasible to remedy the prejudice by granting another continuance because the parties were midtrial and the district court had granted four prior continuances. *Lindsey* considered a similar situation in which the defense disclosed witnesses after the state had rested. *Lindsey*, 284 N.W.2d at 373. There, the supreme court reasoned that "it was too far into trial to consider a continuance." *Id.*

But the district court did not discuss whether alternative remedies were available. Rather, the district court asked defense counsel for "a really good reason" to allow Dr. Pepper's opinion testimony. Defense counsel did not give a reason or request an alternative remedy. The defense acquiesced, stating, "[a]ll right then. I will simply limit it to that particular paragraph, what Mr. Silva disclosed."

Even so, the district court abused its discretion by failing to explicitly consider the *Lindsey* factors before it excluded Dr. Pepper's opinion testimony. The district court never mentioned the *Lindsey* factors and the record only indirectly suggests that the district court might have considered one alternative remedy—a continuance. Under *Sailee*, the district court abused its discretion. *See Sailee*, 792 N.W.2d at 95.

D. Prejudice to Silva

Silva argues that the district court's error was prejudicial because Dr. Pepper's opinion testimony would have been "significant corroborating evidence." Silva claims, "Dr. Pepper's testimony would have supported Silva's self-defense claim overall and specifically supported his assertion that he was not the first aggressor and that he acted with reasonable force when he used [R.R.'s] knife against him." The state responds by pointing out that Silva never learned or made a record of Dr. Pepper's opinion so we do not know whether she would have opined that Silva's injury was consistent with a knife wound. Alternatively, the state contends that Dr. Pepper's testimony would not have changed the jury's verdict.

We agree with the state that, even assuming Dr. Pepper would have opined Silva's injury was consistent with a knife wound, the trial outcome would not have been different.

First, Silva's own testimony refuted his self-defense theory. The elements of self-defense are: (1) the absence of aggression or provocation by the party claiming self-defense; (2) the party's actual and honest belief that great bodily harm could otherwise result; (3) a reasonable basis for this belief; and (4) the lack of reasonable means to retreat or avoid the physical conflict. *State v. Soukup*, 656 N.W.2d 424, 428 (Minn. App. 2003), *review denied* (Minn. Apr. 29, 2003) (citing *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997)). To disprove a claim of self-defense, the state need only demonstrate that one of the four elements of the defense has not been met. *Soukup*, 656 N.W.2d at 429. Silva testified that he confronted R.R., took R.R.'s iPad as "collateral," and remained in the garage after he took the knife from R.R. Thus, Silva's own testimony suggests he was the aggressor and did not retreat when he had the chance.

Second, the jury did not credit Silva's testimony that R.R. was the aggressor and Dr. Pepper's testimony would not have persuaded the jury otherwise. According to Silva's counsel, Dr. Pepper would have testified that Silva's injury was consistent with a knife wound. This proffered opinion, however, provides no evidence about *who* cut Silva or *how* he was cut. Silva could have been cut by the knife no matter who had the knife or who was the aggressor. Unlike *Sailee*, where the excluded evidence directly contradicted the state's theory, 792 N.W.2d at 95, Silva's proffered testimony would not have contradicted the state's theory that he was the aggressor.

Lastly, M.A.'s and R.R.'s statements to the 911 operators provided evidence more supportive of Silva's self-defense theory than Dr. Pepper's proffered opinion testimony. Both 911 statements asserted that R.R. had the knife. M.A. told the 911 operator that R.R.

had the knife and R.R. told the operator that he "cut [Silva] open real good." Thus, the record established the point that Silva claims he would have proven with Dr. Pepper's excluded opinion. Still, after evaluating the evidence, the jury rejected Silva's claim that R.R. was the aggressor. Because Dr. Pepper's proffered opinion did not identify who had the knife and other evidence purportedly proved that R.R. had the knife, we conclude any error was harmless. To echo the holding in *Lindsey*, Dr. Pepper's testimony "would have been quite unimportant and cumulative." *See Lindsey*, 284 N.W.2d at 274.

In sum, Silva violated the discovery rule requiring the disclosure of expert opinion testimony before trial. We determine that the district court abused its discretion by not explicitly considering the *Lindsey* factors before excluding Dr. Pepper's opinion testimony. But we also determine that the error was harmless beyond a reasonable doubt because admitting Dr. Pepper's opinion would not have changed the jury's verdict.

Affirmed.