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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0493**

State of Minnesota,
Respondent,

vs.

Bryan Duane Arnesen,
Appellant.

**Filed March 3, 2025
Affirmed
Bjorkman, Judge**

McLeod County District Court
File No. 43-CR-23-53

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

Ryan Hansch, McLeod County Attorney, Glencoe, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his convictions of first- and third-degree criminal sexual conduct against his daughter, arguing that the district court abused its discretion by

precluding him from presenting alibi evidence as a sanction for failing to disclose the evidence before trial. He contends there was no discovery violation because the evidence rebutted his daughter's testimony and, even if there was a violation, the sanction was too severe. We affirm.

FACTS

Appellant Bryan Duane Arnesen married L.A.'s mother (mother) in 2009, when L.A. was two or three years old. Arnesen and mother have multiple joint children, and Arnesen adopted L.A. in December 2017.

In January 2023, mother told L.A. that she and Arnesen were getting divorced. Shortly thereafter, L.A. disclosed that Arnesen had been sexually abusing her for years. She told mother that the abuse started in 2018 and the last instance was on December 30, 2022. As L.A. told a police officer about Arnesen "rap[ing] her multiple times throughout the years," she was "sobbing uncontrollably."

Arneson was charged with two counts of first-degree criminal sexual conduct, one count of second-degree criminal sexual conduct, and one count of third-degree criminal sexual conduct. In preparation for trial, the state demanded disclosure of various information, including notice of defense witnesses and any alibi. Arneson identified six defense witnesses, including his neighbor (neighbor), but did not give notice of an alibi.

At trial, L.A. was the state's principal witness. She testified that Arnesen began abusing her in early 2018, when she had just turned 12. She described an incident in which Arnesen removed her clothes and "touched [her] in inappropriate places," including putting his fingers and his penis into her vagina. She testified that the abuse happened repeatedly

thereafter when mother was away and she and Arnesen were at home, generally in the same manner each time. She testified that similar incidents happened after she turned 13, occurring more than ten times per year when she was 13 and 14 years old. When asked about 2022—the year she turned 16—L.A. testified that “[i]t hadn’t happened for almost that entire year, and then it happened on December 30th.” She said that she remembered the date because one of the family’s dogs had puppies. L.A. explained that she was napping “early” that afternoon before an evening work shift and Arnesen came in and locked the door and began touching her, eventually putting his penis in her vagina. When asked why she did not report Arnesen’s conduct earlier, she testified that he is “scary to [her],” he said if she told anyone she would be sent away and nobody would believe her, and she did not want to be the cause of the family “being separated.”

Arnesen presented several defense witnesses, including neighbor. During his testimony, neighbor began talking about December 30, 2022, and his understanding of what Arnesen and the family were doing that day. The state objected, explaining that the defense’s disclosures related to neighbor indicated that he would discuss events from the summer of 2022 but “there was no other disclosure” about the events of December 30, despite the fact neighbor was apparently poised to testify that Arnesen’s semi-truck was not in front of the family residence, where he usually parked it, from morning into mid-afternoon that day. The state asserted that Arnesen was “clearly” setting up a previously undisclosed “alibi defense, trying to place him somewhere other than at that home.” Arnesen argued that he did not know until L.A.’s testimony “what time of day” the December 30 incident happened and therefore was unable to provide notice earlier. In

short, Arnesen contended that he did not know that he “had an alibi . . . until she testified.” The state countered that permitting the alibi testimony would be very prejudicial; the only way the state could rectify the prejudice would be to obtain Arnesen’s cell location data to refute it, which would require a warrant and more than a brief trial continuance. Ultimately, the district court precluded the testimony “regarding the semi” but permitted neighbor to testify about his communications and interactions with Arnesen on December 30.

The jury found Arnesen guilty of all charges. The district court entered convictions for the two first-degree offenses and the third-degree offense and sentenced him to prison.

Arnesen appeals his convictions.

DECISION

I. Arnesen committed a discovery violation by failing to disclose neighbor’s alibi testimony.

A defendant must, at the prosecutor’s request, make various disclosures before the omnibus hearing. Minn. R. Crim. P. 9.02, subd. 1. If the defendant “intends to offer evidence of an alibi,” these disclosures must include: “(a) the specific place or places where the defendant was when the alleged offense occurred; [and] (b) the names and addresses of the witnesses the defendant intends to call at the trial in support of the alibi.” *Id.*, subd. 1(7). Whether a discovery violation occurred is a question of law, which we review de novo. *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005).

Arnesen does not dispute that neighbor’s proposed testimony about December 30 is alibi evidence. And he does not dispute that the state requested disclosure of alibi evidence under rule 9.02. Rather, he cites *State v. Yang* for the proposition that neighbor’s alibi

testimony was not subject to disclosure because it was rebuttal evidence, and “[d]isclosure rules do not apply to rebuttal evidence.” 627 N.W.2d 666, 677 (Minn. App. 2001), *rev. denied* (Minn. July 24, 2001). We are not persuaded. *Yang* addresses the state’s disclosure obligations and use of rebuttal evidence. *Id.* It does not address a defendant’s duty to disclose alibi evidence and therefore does not support Arnesen’s argument that alibi evidence is exempt from disclosure if it is used as rebuttal evidence. Nor does that argument withstand scrutiny. Rebuttal evidence is “that which explains, contradicts, or refutes” the other party’s evidence. *State v. Swaney*, 787 N.W.2d 541, 563 (Minn. 2010) (quotation omitted). Alibi evidence will always tend to contradict or refute the state’s evidence because “[a] successful alibi defense means the defendant was not in the location of the crime and thus the defendant is free of guilt.” *State v. Cruz*, 997 N.W.2d 537, 550 (Minn. 2023). That neighbor’s alibi testimony serves to contradict or refute L.A.’s testimony does not mean that Arnesen had no duty to disclose it. His failure to do so violated rule 9.02.

II. The district court did not abuse its discretion by precluding Arnesen from presenting neighbor’s alibi testimony as a sanction for the discovery violation.

If a party fails to comply with discovery rules, a district court may “grant a continuance, or enter any order it deems just in the circumstances.” Minn. R. Crim. P. 9.03, subd. 8. It may even exclude undisclosed evidence, but that is “a severe sanction which should not be lightly invoked.” *Cruz*, 997 N.W.2d at 547 (quotation omitted). In determining the appropriate remedy, a district court “should take into account: (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.” *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979). We will not disturb the district court’s imposition of sanctions for discovery violations absent an abuse of discretion. *Cruz*, 997 N.W.2d at 547. The *Lindsey* factors guide our review of the district court’s exercise of discretion, whether it articulated its reasoning as to those factors on the record or, as here, it did not. *See id.*

As to the first *Lindsey* factor, Arnesen contends he was unaware that he had an alibi for the December 30 incident until L.A. testified that it happened in the early afternoon. But he undisputedly had notice, from the beginning of this case, about an alleged incident on that day because the complaint references the incident. He also knew from L.A.’s January 2023 forensic interview that she described it happening when she was taking a nap—meaning, during the daytime. And defense counsel acknowledged in their opening statement—before L.A.’s testimony—that the state would seek to prove that the incident happened “in the afternoon, before [L.A.] went to work.” Even if Arnesen did not actually know before L.A.’s testimony that neighbor could supply an alibi for the December 30 incident, he had ample notice to investigate such a possibility. Accordingly, we conclude that the reason for nondisclosure weighs against Arnesen.

With respect to the second factor, Arnesen asserts there was minimal prejudice to the state because it knew neighbor would be a defense witness and had access to Arnesen’s cell phone and “presumably . . . would have been interested in Arnesen’s location” on that day. But because Arnesen gave no notice of an alibi, the state would have had no reason to investigate whether neighbor or Arnesen’s cell data might indicate that Arnesen was

anywhere other than at the family home that afternoon. It is prejudicial for the state to be “denied the opportunity to investigate an alibi.” *In re Welfare of M.P.Y.*, 630 N.W.2d 411, 418 (Minn. 2001) (observing that “[o]ne of the purposes of the disclosure of alibi rule is to avoid” surprise alibi testimony at trial). This factor also weighs against Arnesen.

As to the third factor, Arnesen argues that a “short continuance” could have rectified the prejudice to the state because it would have enabled the state to interview neighbor and prepare a cross-examination. Such a continuance may have yielded some value. But an alibi is a complete defense; it means he was not there, so he could not have done it. *See Cruz*, 997 N.W.2d at 550. It was therefore well within the district court’s discretion to determine that the most reasonable course for the state would be to pursue a similarly complete evidentiary response—obtain a search warrant for Arnesen’s cell site location information—and that doing so would not have been feasible with only a brief trial continuance. This factor weighs against Arnesen.

Finally, we consider other relevant factors. On this point, Arnesen contends that neighbor’s alibi testimony was “crucial to the defense.” The record defeats this contention. The alibi evidence concerned only the December 30 incident, which was the basis for only one of the four charges against Arnesen (the third-degree offense). And while a jury presented with an alibi for that incident might have found L.A. not credible in that respect, it does not mean that the jury would have rejected the rest of her testimony. Nor would the jury necessarily have believed the alibi testimony from neighbor, who readily acknowledged that he is “very, very close friends” with Arnesen.

In sum, the first three *Lindsey* factors all weigh against Arnesen, and he identifies no other countervailing considerations. On this record, we discern no abuse of discretion by the district court in precluding neighbor's alibi testimony as a sanction for Arnesen's discovery violation.

Affirmed.