STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1476

Mi-in-gun Justin Charette a/k/a Justin Marshall Critt, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 14, 2021
Affirmed
Bjorkman, Judge

Clay County District Court
File No. 14-CR-16-3288

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Brian J. Melton, Clay County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the denial of postconviction relief, arguing that the district court (1) erred by denying his motion to suppress his statements to police, and (2) abused its discretion by denying his motion to strike a juror for cause. We affirm.

FACTS

On June 28, 2016, around 2:30 p.m., Moorhead police responded to a call about a disturbance at a home where M.W. was staying while the owners were away. M.W. had been arguing with appellant Mi-in-gun Justin Charette a/k/a Justin Marshall Critt, and she was "distraught." The officers told Critt to leave and watched him walk away. But about an hour later, M.W. called a friend and said, "He's back; he's here; he's outside of the windows and he's taunting me." Shortly thereafter, the fire department responded to a fire at the home and found M.W. dead from head trauma.

Around 9:40 p.m., officers investigating at the home saw Critt approaching. They had been instructed to detain him as a person of interest regarding the fire and as a possible suspect in a robbery and assault that occurred in Fargo, North Dakota the prior evening. The officers detained Critt and transported him to the law-enforcement center.

The officers decided not to question Critt that evening because he exhibited signs of impairment from alcohol or controlled substances, but they placed him in an interview room while they awaited word whether to arrest him related to the Fargo incident. As an officer secured him in the room, Critt demanded his phone. When the officer told him he could not have it, he said, "Where's my lawyer? I'm dummying up!" The officer replied that he was "not under arrest right now." Critt said, "I know," then demanded his phone again and stomped his feet. The officer left him alone in the room. Critt continued to yell for his phone. When two officers entered the room, he repeatedly shouted at them about his phone, stomped his feet, and spat at them. They left Critt alone again. He stood there for a couple minutes muttering to himself. At one point, he said, "Let me get my phone.

I'll call [the homeowners] right now." Then he tried to move his cuffed hands from behind his back. Officers restrained him and told him to keep his hands behind him. He replied, "I'm not arrested." An officer told him he was "being detained for the moment." He said, "And then? Where's my lawyer?" An officer responded, "We haven't asked you any questions yet." After several minutes, the officers received word to arrest Critt in connection with the Fargo incident, and they took him to jail. Critt was in the interview room a total of 10 to 15 minutes.

Around 4:30 p.m. the next day, the officers brought Critt back to the interview room. Critt said that he felt "good," had slept the whole time he was in jail, and had eaten lunch. The officers explained that M.W. was dead and they hoped Critt would help them figure out what happened. They provided a *Miranda* warning. Critt said he understood his rights and agreed to speak with them. During their conversation, Critt stated that he did not remember every place he went between 2:00 and 9:00 p.m. the previous day, but he did recall going to a friend's house where he drank beer with L.L. After approximately 30 minutes, Critt said, "Interview's over, please. I want, I want a lawyer. . . . The interview is done. Lawyer. I'm lawyering up."

Police subsequently interviewed L.L., who confirmed that he saw Critt on the afternoon of June 28. Critt told L.L., "I just killed someone." And he said L.L. should "watch the news" if he did not believe him and "it wouldn't be the first time [he] killed someone." L.L.'s neighbor was also present and recalled Critt saying "something along the lines of 'you'll hear about me in the news for this' or 'for what I've done.'"

Critt was charged with second-degree intentional murder and first-degree arson. He moved to suppress the statements he made to police, arguing that he did not validly waive his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966). The district court denied the motion, concluding that Critt yelling "Where's my lawyer?" on June 28 "was not an invocation of his *Miranda* rights" and that he validly waived these rights the next day before speaking with police. During jury selection, one prospective juror expressed his view that an innocent person would want to testify but stated that he could follow an instruction not to draw an inference from the defendant's decision not to testify. Critt moved to strike the juror for cause, which the district court denied. After a two-week trial, the jury found Critt guilty of both charges. Critt did not appeal.

Critt filed a timely postconviction petition, arguing that (1) his statements to police on June 29 were obtained in violation of his Fifth Amendment right against self-incrimination because he invoked his right to counsel the night before, and (2) the district court abused its discretion by denying his motion to strike the biased juror. The district court denied relief, reasoning that Critt could not invoke his right to counsel on June 28 and that the challenged juror was rehabilitated.[1] Critt appeals.

DECISION

We review the denial of postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). A district court abuses its discretion when it

[1] The same judge presided over Critt's trial and the postconviction proceeding.

bases its decision on "an erroneous view of the law," or makes clearly erroneous factual findings. *Rhodes v. State*, 875 N.W.2d 779, 786 (Minn. 2016) (quotation omitted).

I. The district court did not err by denying Critt's motion to suppress his June 29 statements.

Under the Fifth Amendment, no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V; *see Malloy v. Hogan*, 378 U.S. 1, 8, 84 S. Ct. 1489, 1493-94 (1964) (incorporating Fifth Amendment protections into the Due Process Clause of the Fourteenth Amendment). To protect this right against self-incrimination, the United States Supreme Court has mandated certain procedural safeguards when police subject a suspect to custodial interrogation—among them, a right to consult with counsel before questioning and to have counsel present during questioning. *Miranda*, 384 U.S. at 469-70, 86 S. Ct. at 1625-26. If a suspect invokes his right to counsel, police cannot question him unless he first initiates contact. *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 1885 (1981). Evidence obtained in violation of these principles may be excluded. *State v. Doughty*, 472 N.W.2d 299, 305 (Minn. 1991).

Critt argues that he invoked his right to counsel on June 28, and the police violated his right against self-incrimination by initiating contact with and questioning him the following day without obtaining a valid waiver of his earlier request. He contends the district court therefore erred by not suppressing his statements to police and the information police obtained from L.L. and his neighbor. This argument is unavailing.

"The applicability of the rigid prophylactic rule of *Edwards* requires courts to determine whether the accused *actually invoked* his right to counsel." *Davis v. United*

States, 512 U.S. 452, 458, 114 S. Ct. 2350, 2355 (1994) (quotation omitted). To invoke this right, a suspect must "do more than make reference to an attorney." *State v. Ortega*, 798 N.W.2d 59, 71 (Minn. 2011). He must "unambiguously request the assistance of or access to counsel." *State v. Borg*, 806 N.W.2d 535, 546 (Minn. 2011). We apply an objective "reasonable police officer" standard to determine whether a suspect invoked his right to counsel. *State v. Chavarria-Cruz*, 784 N.W.2d 355, 362 (Minn. 2010) (quoting *Davis*, 512 U.S. at 458-59, 114 S. Ct. at 2355). Under this standard, we consider whether the suspect "articulate[d] his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Davis*, 512 U.S. at 459, 114 S. Ct. at 2355. Where, as here, the factual circumstances are undisputed, we review application of this standard de novo. *Ortega*, 798 N.W.2d at 70.

Our careful review of Critt's June 28 statements convinces us that he did not actually invoke his right to counsel. During the 10- to 15-minute period he spent in the interview room, he was often alone and fixated on his phone. He repeatedly demanded the phone. When the officers refused to give it to him, he shouted profanities at them and stomped his feet. He also tried to step over his cuffed hands to move them to the front of his body. And he spat at the officers. In the midst of this belligerent and agitated behavior, Critt twice yelled, "Where's my lawyer?"

These references to counsel were not responsive to interrogation or a *Miranda* warning but mere outbursts. *See State v. Hale*, 453 N.W.2d 704, 708 (Minn. 1990) (concluding that suspect's "fleeting, off-hand comment in mid-sentence about his future

need for a good attorney" was "not even arguably" an invocation of counsel); *cf. State v. Munson*, 594 N.W.2d 128, 139 (Minn. 1999) (concluding that statement, "I think I'd rather talk to a lawyer," immediately after *Miranda* warning, was unambiguous request for counsel). They were phrased as questions, not requests. *See Ortega*, 798 N.W.2d at 71 (concluding that suspect asking, "Am I suppose[d] to have a lawyer present?" did not request an attorney but "inquir[ed] as to whether he needed an attorney"). And they were vague—Critt did not even say that he wanted counsel to be present, let alone that he specifically sought counsel's assistance for purposes of some future interrogation as opposed to some more immediate purpose, such as securing his phone or his release on bail. *See State v. Risk*, 598 N.W.2d 642, 649-50 (Minn. 1999) (concluding that statements such as "I have to speak to my lawyer I guess," were not requests for counsel, and observing that one such statement merely sought counsel's aid in obtaining bail release). They also stand in stark contrast to the unambiguous request for counsel that he made when talking to the officers the next day: "I want a lawyer. . . . The interview is done. Lawyer. I'm lawyering up." In short, Critt knew how to invoke counsel; he did not do so on June 28.

Further, to the extent Critt's comments on June 28 constituted a *possible* request for counsel, the officers responded appropriately. When a suspect makes an ambiguous statement that may be construed as a request for counsel, Minnesota law requires police to "stop and clarify." *Ortega*, 798 N.W.2d at 72. The "key" to clarification is "proper recitation of the suspect's constitutional rights." *Id.* Consequently, providing "an accurate *Miranda* warning is sufficient as a matter of law to satisfy the 'stop and clarify' rule." *Id.* The officers did not question Critt on June 28. And they clarified his preference to speak

or not to speak to them the following day by providing a thorough and accurate *Miranda* warning. Critt chose, at that time, to speak to the officers without counsel. On this record, we conclude that the district court did not err by denying Critt's motion to suppress the statements he made to police on June 29 or the evidence obtained because of those statements.[2]

II. The district court did not abuse its discretion by denying Critt's motion to strike a juror for cause.

A criminal defendant has the right to an impartial jury. U.S. Const. amends. VI, XIV; Minn. Const. art. 1, § 6; *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001). Because a juror's bias undermines the integrity of the judicial system, permitting a biased juror to serve is structural error that requires automatic reversal. *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015). Whether a juror was biased is a question of fact that turns substantially on the district court's assessment of the juror's credibility, to which we defer. *State v. Logan*, 535 N.W.2d 320, 323 (Minn. 1995); *see also Skilling v. United States*, 561 U.S. 358, 386, 130 S. Ct. 2896, 2918 (2010) (observing that assessment of a juror's impartiality is influenced "by a host of factors impossible to capture fully in the record—among them, the prospective juror's inflection, sincerity, demeanor, candor, body language, and apprehension of duty").

We will not disturb the decision to seat a juror absent an abuse of discretion. *Ries v. State*, 889 N.W.2d 308, 314 (Minn. App. 2016), *aff'd*, 920 N.W.2d 620 (Minn. 2018).

[2] Because we conclude that Critt did not actually invoke his right to counsel, we decline to address his argument that he had a right to do so on June 28, when he was detained but not subject to interrogation.

In deciding whether the district court abused its discretion, we review the juror's voir dire answers in context to determine whether the juror expressed actual bias, and if so, whether the juror was "properly rehabilitated." *Fraga*, 864 N.W.2d at 623. The district court agreed with Critt that the juror's statements indicated actual bias against a defendant who chooses not to testify.[3] Accordingly, the sole issue is whether the district court abused its discretion by determining that the juror was rehabilitated.

Rehabilitation requires more than a juror stating that he will try to set aside his bias, or that he thinks or guesses he could do so. *See Ries*, 889 N.W.2d at 314 (collecting cases). A juror is considered rehabilitated if he "states unequivocally" that he "will follow the district court's instructions and will set aside any preconceived notions and fairly evaluate the evidence." *Fraga*, 864 N.W.2d at 623 (quotation omitted).

Here, the challenged juror repeatedly expressed his willingness to follow the court's instructions regarding a defendant's right not to testify and to render an impartial verdict based on the evidence. Even while voicing his own opinion that "if you're innocent you should get up and . . . state your case," the juror repeatedly acknowledged that "it's [the defendant's] right" not to do so, and that he would have to abide by any instruction from the court regarding that right. When the prosecutor asked the juror if he could be impartial, he said, "Yeah, I think I could be as fair as possible, yes." And upon further questioning, he confirmed that ability:

[3] The juror made several statements like "I don't know if I really agree with" a defendant invoking his Fifth Amendment right to remain silent and "I've always said, if you're innocent you should get up and, you know, state your case."

> PROSECUTOR: And if the Judge instructs the jury that the jury is to take no inference from the fact that the defendant chooses not to testify, could you follow the law in that regard?
>
> JUROR: Yes.
>
> PROSECUTOR: Is that true, despite your general feeling about an individual should tell their story?
>
> JUROR: Yes, I could be, you know, I could weigh both sides and do what needs to be done.
>
> PROSECUTOR: So you could decide this case based upon the testimony and evidence that the State presents, regardless of what the defense does, knowing the State is the one who has the burden of proof in this case?
>
> JUROR: Yes.

Based on these responses, the district court found that the juror was rehabilitated, noting that he was "firm" in his affirmation that he would follow the court's instruction and his body language indicated no "hesitation or doubt."

Critt argues that the district court abused its discretion in three respects by permitting the challenged juror to serve. First, he contends the rehabilitation attempt was insufficient because the juror never stated that he would "set aside" his ideas about the decision whether to testify. *See id.* at 625 (stating that "to be rehabilitated, a prospective juror must state unequivocally that the juror will set aside preconceived notions and be fair" (quotation omitted)). We disagree. The juror did not say those exact words, but he articulated the operative concept by affirming that he could follow the court's instructions "despite [his] general feeling about an individual should tell their story."

Second, Critt asserts that the juror's responses were equivocal because he "provided two conflicting answers," initially stating that a defendant's choice not to testify would "sway [him] a little bit," then stating that he could follow the court's instruction. But Critt cites no authority for the proposition that a facially unequivocal statement—like the juror's responses to the prosecutor's questions—is necessarily rendered equivocal by a *prior* contrary statement. *Cf. Logan*, 535 N.W.2d at 324 (concluding district court abused its discretion in determining juror was rehabilitated when juror expressed bias, then responded only that he would "try" to follow court instructions, then "given the opportunity . . . to again express himself in his own words, the juror reverted to" expressing bias). To the contrary, the concept of rehabilitation recognizes that a juror who expresses biased views may yet be an impartial juror if he subsequently affirms, in unequivocal terms, that he will follow the court's instruction. We are not persuaded that the district court abused its discretion by crediting the juror's final words on the subject—repeated unqualified agreements to decide the case impartially.

Finally, Critt asserts that the answers the court found to be unequivocal are insufficient to establish rehabilitation because they were merely responses to leading questions, not the juror's own words. A district court may "bear in mind" the use of leading questions and what a juror chooses to say in his own words in assessing rehabilitation. *Id.* at 323-24. But no authority requires that a juror volunteer an unequivocal rehabilitative statement in his own words. Further, Critt bore the burden of demonstrating the juror's bias. *State v. Munt*, 831 N.W.2d 569, 577 (Minn. 2013). If he retained doubts that the juror was rehabilitated after the prosecutor's questioning, he could have questioned the

juror again and invited him to respond in his own words. On this record, we discern no abuse of discretion in the district court's determination that the juror was rehabilitated.

Affirmed.