This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1602

State of Minnesota,
Respondent,

vs.

Skylar Edmond Labarge,
Appellant.

Filed October 3, 2022
Reversed
Slieter, Judge

Hennepin County District Court
File No. 27-CR-19-29095

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Charles F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from a conviction for aiding and abetting second-degree murder, appellant argues that the district court erred by failing to suppress incriminating statements he made during an interrogation that violated his right against self-

incrimination. Because law enforcement violated appellant's right against self-incrimination by failing to stop and clarify appellant's equivocal invocation for counsel, and because the parties stipulated that this issue is dispositive, we reverse appellant's conviction.

FACTS

Appellant Skylar Edmond Labarge's conviction for aiding and abetting second-degree murder arose from the disappearance and murder of W.A. (the victim). The following facts were stipulated to by the parties and derive from the factual basis provided by Labarge during his subsequently withdrawn guilty plea.

On November 15, 2019, Labarge and his half-brother Preston Scott Sharlow returned to Sharlow's home after visiting multiple bars in Bloomington. Sharlow shared the home with his girlfriend. The victim was also in a romantic relationship with Sharlow's girlfriend. Sharlow, using his girlfriend's phone, lured the victim into their home by suggesting he come to see her.

When the victim arrived, Sharlow immediately began attacking him. Labarge joined Sharlow and the two kicked, punched, and threw the victim against a wall until he died. Sharlow and Labarge eventually hid the body in a remote area in Woodbury.

Six days after the victim's murder, police arrested Labarge and Sharlow. Police brought Labarge to the Bloomington Police Department for questioning. Two police detectives provided Labarge the *Miranda* warning, after which Labarge began answering the detectives' questions. During the interrogation, Labarge twice made reference to an attorney. Approximately midway through the interrogation, Labarge stated that if he had

known he would be questioned about his involvement with a murder, he would have requested an attorney. The detectives continued to ask Labarge questions and Labarge gave many significant, inculpatory answers. Near the end of the interrogation, Labarge again questioned whether he should have asked for an attorney. Upon hearing this statement, the detectives immediately ceased questioning and told Labarge that if he asked for an attorney they would "stop the thing right now and let [him] have one." Labarge declined an attorney and continued to answer questions.

Respondent State of Minnesota charged Labarge with aiding and abetting second-degree intentional murder. The state later amended the complaint to include one count of aiding and abetting felony murder.

The district court denied Labarge's motion to suppress the statement he provided to the detectives. The district court then held, by agreement of the parties, a stipulated-evidence trial pursuant to Minn. R. Crim. P. 26.01, subd. 4, to preserve Labarge's right to appeal the district court's pretrial suppression order. The district court found Labarge guilty of both counts, convicted him of aiding and abetting second-degree felony murder, and sentenced Labarge to 200 months in prison. Labarge appeals.

DECISION

Labarge contests the denial of his motion to suppress his custodial statements to law enforcement.[1] Labarge argues that, because he made an equivocal request for counsel

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[1] Labarge also argues that the district court erred by determining that probable cause supported issuance of a search warrant for Sharlow's home, and that law enforcement articulated a reasonable suspicion to support authorizing a no-knock warrant. Because the

during his interrogation, the detectives were required to stop the interrogation and clarify whether Labarge was requesting an attorney. We agree. Because the detectives failed to stop and clarify Labarge's equivocal requests for counsel, the detectives violated his right against self-incrimination and Labarge's inculpatory statements must be suppressed.

The Fifth Amendment to the United States Constitution protects individuals from compelled self-incrimination. U.S. Const. amend. V; *see also* Minn. Const. art I, § 7 (providing that "[n]o person shall . . . be compelled in any criminal case to be a witness against himself"). One right protected by the Fifth Amendment is a defendant's right to counsel during a custodial interrogation, provided the defendant unambiguously asserts that right. *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966); *State v. Ortega*, 798 N.W.2d 59, 71 (Minn. 2011).

If a defendant agrees to proceed without counsel but later "makes an equivocal or ambiguous statement that could be construed as a request for counsel, investigators must cease questioning the suspect except as to 'narrow questions designed to "clarify" the accused's true desires respecting counsel.'" *Ortega*, 798 N.W.2d at 71 (quoting *State v. Robinson*, 427 N.W.2d 217, 223 (Minn. 1988)). "This 'stop and clarify' rule ensures that suspects are aware of their right to have counsel present during a custodial interrogation so that any subsequent waiver of this right is knowing and intelligent." *Id.* at 71-72. We review a district court's application of the stop-and-clarify rule *de novo* and its findings of fact for clear error. *See id.* at 70.

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parties agree that the suppression-of-the-custodial-statement issue is dispositive, and we conclude that the district court erred, we need not address the other issues.

It is undisputed that the detectives provided Labarge the *Miranda* warning and that Labarge voluntarily, knowingly, and intelligently waived his rights and began answering the detective's questions. The disputed issue is whether Labarge later made an "equivocal or ambiguous" invocation of his right to counsel such that the detectives should have stopped the interrogation and clarified his request.

Labarge argues that the invocation of counsel occurred approximately midway through the interrogation when detectives repeatedly asked Labarge whether he or Sharlow killed the victim. The relevant portion of the interrogation transcript reads:

> DETECTIVE: It's either you, it's either you or [Sharlow].
> LABARGE: I didn't murder nobody man. I didn't murder nobody.
> DETECTIVE: It's either you or [Sharlow].
> LABARGE: If I knew that you guys were going at me at murder in the beginning of this sh-t, *I would have asked for a lawyer to be present*.
> DETECTIVE: Dude listen you . . .
> LABARGE: *Why wouldn't I ask for a lawyer to be present if all this sh-t could bury me what I'm saying*. Me having his phone could bury him. Me having his necklace could bury me. You should have told me that sh-t before we started the interview man.
> DETECTIVE: I told you, what did I tell you at the beginning in . . .
> LABARGE: You didn't tell me it was for a murder.
> DETECTIVE: Listen I told you it was for a missing person and probably a homicide, did I not?
> LABARGE: What the fu-k man?
> DETECTIVE: I recorded it.
> LABARGE: No that's . . .
> DETECTIVE: It's recorded.
> LABARGE: Ok you record.
> DETECTIVE: It's recorded.
> LABARGE: You show me that you gave me my Miranda Rights.
> DETECTIVE: Yeah.

> LABARGE: And then told me that.
> DETECTIVE: Yeah.
> LABARGE: Show me. Bring it on.
> DETECTIVE: Yeah because I can't discuss the case before the Mirada [sic].
> LABARGE: Oblige me, please oblige me.

(Emphases added.) The detectives, instead of stopping to clarify if Labarge was requesting an attorney, continued the interrogation and attempted to convince Labarge that he had already waived his right to an attorney.

The state argues that Labarge did not make an equivocal request for counsel because Labarge used the past tense "*would have asked*" and "*why wouldn't I ask for a lawyer to be present*." Therefore, the state argues, the detectives were not required to stop the interview to seek clarification. The law compels our disagreement.

The stop-and-clarify rule is to be broadly applied. *See State v. Doughty*, 472 N.W.2d 299, 303 (Minn. 1991) (stating that the question, "Shouldn't I have an attorney so you don't ask me any illegal questions?" was subject to a reasonable construction that the defendant was requesting an attorney); *State v. Pilcher*, 472 N.W.2d 327, 332 (Minn. 1991) (concluding that the defendant made an equivocal request for counsel by asking whether the interrogating officer thought the defendant should have an attorney). And the Minnesota Constitution provides suspects greater protection against compelled self-incrimination than required under the U.S. Constitution. *State v. Risk*, 598 N.W.2d 642, 648-49 (Minn. 1999).

The state has presented no law, and we have found none, to support its contention that because Labarge's comments are stated in past tense, they are not "equivocal or

ambiguous" such that the stop-and-clarify rule would not here apply. And the cases the state cites are inapposite. *See Pilcher*, 472 N.W.2d at 332 (stating that "[b]oth sides agree that Pilcher made an equivocal request for counsel"); *State v. Hale*, 453 N.W.2d 704, 708 (Minn. 1990) (concluding that a defendant's fleeting, offhand, and midsentence comment during interrogation about a *future* need for an attorney was not an equivocal request for counsel).

Lastly, the state argues that even if Labarge's statements could be construed as an equivocal request for counsel, Labarge "immediately reengaged with police, which allowed for the interrogation to continue" and cites *State v. Ortega*, 813 N.W.2d 86, 95 (Minn. 2012) and *State v. Miller*, 573 N.W.2d 661, 672 (Minn. 1998), to support its argument. We are not persuaded. In *Ortega*, the supreme court analyzed whether the defendant reengaged with police after the defendant *unequivocally* invoked his right to counsel. 813 N.W.2d at 94-97. Moreover, after the defendant later equivocally invoked his right to counsel, police complied with the stop-and-clarify rule. *Id.* at 98. This did not occur here. In *Miller*, the request for counsel was also unequivocal and the police officers properly informed the defendant that the interview must cease unless the defendant waived the right to counsel. 573 N.W.2d at 672-73. And, before allowing reengagement by the defendant, the police officer "explained to [the defendant] that he could not talk to him unless [the defendant] reinitiated conversation, and [the defendant] stated explicitly, 'I'd like to exercise that option.'" *Id.* at 672. This also did not occur here.

We conclude that Labarge's statements are subject to a reasonable construction that Labarge was, in an "equivocal or ambiguous" way, requesting an attorney. At that point,

the detectives were obligated to stop and clarify Labarge's request. *Robinson*, 427 N.W.2d at 223. Because the detectives failed to do so, the admission of Labarge's statements during the interrogation was error.[2] *See Ortega*, 798 N.W.2d at 67 (discussing that custodial statements are inadmissible unless rights are properly waived).

The parties "acknowledge[d] and agree[d] that the court's ruling on [the *Miranda* issue] is dispositive of the case or that a trial will be unnecessary if [Labarge] prevails on appeal." *See* Minn. R. Crim. P. 26.01, subd. 4 (setting forth the procedure necessary for a defendant to obtain appellate review of an issue "[w]hen the parties agree that the court's ruling *on a specified pretrial issue* is dispositive of the case, or that the ruling makes a contested trial unnecessary" (emphasis added)). Because Labarge's right against self-incrimination was violated, we reverse his conviction.

Reversed.

[2] Because we determine that the detectives violated Labarge's right against self-incrimination by not clarifying his first equivocal request for counsel, we need not analyze the second such request.