STATE OF MINNESOTA

IN SUPREME COURT

A20-1476

Court of Appeals — Moore, III, J.

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

Appellant,

vs.

Filed: October 5, 2022
Office of Appellate Courts

State of Minnesota,

Respondent.

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

Keith M. Ellison, Attorney General, Saint Paul, Minnesota; and

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

S Y L L A B U S

Because a defendant does not have a right to counsel under the Fifth Amendment to the U.S. Constitution when interrogation by law enforcement officers is merely "imminent," the district court did not abuse its discretion by denying appellant's petition for postconviction relief.

Affirmed.

O P I N I O N

MOORE, III, Justice.

In 2018, a district court jury found appellant Justin Marshall Critt guilty of second-degree murder and first-degree arson for the 2016 death of M.W. after her body was found in a Moorhead house that had been set on fire.[1] The district court imposed consecutive sentences totaling 528 months in prison. In 2020, Critt filed a petition for postconviction relief, arguing that the district court committed a reversible error by denying a pretrial motion to suppress his statements to law enforcement officers. Critt asserted that he clearly invoked his Fifth Amendment right to counsel when he was held in custody on the night of June 28, 2016, and that officers violated *Miranda v. Arizona*, 384 U.S. 436 (1966) and *Edwards v. Arizona*, 451 U.S. 477 (1981), by initiating a custodial interrogation on the following afternoon, June 29, 2016, without his counsel present.

The district court denied Critt's request for postconviction relief, finding that he could not invoke his Fifth Amendment right to counsel on the night of June 28 because he was not subjected to custodial interrogation at that time. The court of appeals affirmed but on different grounds, concluding that Critt did not invoke his Fifth Amendment right to counsel on the night of June 28 because his "mere outbursts" about a lawyer were not clear invocations of counsel. *Charette v. State*, No. A20-1476, 2021 WL 2406686, at *3 (Minn. App. June 14, 2021). We agree with the district court that because no custodial

[1] According to court records, Critt's legal name is Mi-in-gun Justin Charette, but he commonly uses the surname Critt. The court of appeals opinion refers to appellant as Critt, and we will do the same in this opinion for consistency.

interrogation took place on the night of June 28, Critt could not invoke his Fifth Amendment right to counsel. Accordingly, we affirm the court of appeals but on different grounds.

FACTS

On June 28, 2016, law enforcement officers were dispatched to a fire at a Moorhead home. First responders battled the blaze and then found a woman, later identified as M.W., dead inside of the home. Critt, known to have been at the house earlier in the day, was a person of interest to law enforcement officers who began investigating the cause of the fire and death.

When Critt returned to the house around 9:30 p.m., law enforcement officers told him that he was being detained. They placed him in handcuffs and drove him to the local law enforcement center where he was placed in an interview room. After the officers left the interview room, Critt attempted to move his handcuffed hands from behind his back to the front of his body, which required the officers to intervene. Critt was extremely agitated, yelling and spitting. During this time, Critt twice asked: "Where's my lawyer?" The officers did not question Critt because, according to their testimony during an omnibus hearing, they believed that he was "intoxicated" or "impaired" and "quickly realized that [they] weren't going to make any attempts in speaking with him that night." The officers testified that "[a]t that point it was just waiting for [another agency] to get there" to investigate an unrelated assault and robbery that had occurred in Fargo, North Dakota, the previous day, for which Critt was a suspect. Critt was eventually taken out of the interview room and to the jail, where he was held overnight on the Fargo charge.

The next day, June 29, law enforcement officers brought Critt back into the interview room at approximately 4:30 p.m. Unlike the night before, Critt sat in a chair without handcuffs and acted in a calm manner. One of the detectives told Critt that the body of a woman who they believed was M.W. had been found inside of the burned-out house and that he was "on [their] list of people that [they] need to talk to" because he had been at the house with M.W. before the fire. The detective advised Critt that he was not under arrest in connection with the murder and arson investigation but that he was under arrest for the pending criminal charges out of Fargo. The detective read Critt his *Miranda* rights, explaining to Critt that it was "[b]ecause you're in custody and we're gonna ask some questions." When asked if he understood his rights, Critt responded, "Yeah." When asked if he "wish[ed] to talk to [them] about this," Critt responded, "Aaah, yeah, well, what do you wanna know? I mean, I don't have anything to tell you." Critt talked to the detectives for more than 30 minutes until he said, "Interview's over, please. I want, I want a lawyer."[2] The detectives then ended the interview.

The State charged Critt with second-degree intentional murder without premeditation under Minn. Stat. § 609.19, subd. 1(1) (2020), and first-degree arson of a dwelling under Minn. Stat. § 609.561, subd. 1 (2020). Critt filed a pretrial motion to suppress his statements to the officers during the June 29 interview, arguing that he clearly invoked his Fifth Amendment right to counsel by asking "[w]here's my lawyer?" on

[2] Critt did not directly incriminate himself when he talked to the officers on June 29, but he did provide the names of two witnesses who later testified for the State during the jury trial and contradicted Critt's statement. Critt argued that these witnesses were the illegal "fruits" of his statement and that their testimony should have been suppressed.

June 28 and that the officers violated his constitutional right by questioning him without an attorney present on June 29. The district court denied the suppression motion, finding that Critt did not have a Fifth Amendment right to counsel when he asked "[w]here's my lawyer?" because he was not subjected to custodial interrogation on the night of June 28. The case proceeded to a jury trial, and Critt was found guilty on both counts. The district court imposed consecutive sentences of 480 months in prison for second-degree murder and 48 months in prison for first-degree arson. Critt did not file a direct appeal.

In 2020, Critt filed a timely petition for postconviction relief, arguing that the district court committed a reversible error by denying the motion to suppress his statements. The district court denied the petition for postconviction relief, again finding that Critt did not have a Fifth Amendment right to counsel when he asked for a lawyer on the night of June 28 because he was not subjected to custodial interrogation. The district court also rejected Critt's claim that his request for a lawyer on the night of June 28 "should have carried over into this police interrogation" the next day because Critt "has cited to no case law, and this Court is unaware of any, that suggests the right to counsel attaches preemptively to any custodial interrogation." The district court observed that on the afternoon of June 29, when the detectives started to interrogate Critt, "he was read his *Miranda* rights, and made no indication that he wished to consult with an attorney until roughly 35 minutes into the interview."

Critt appealed, and the court of appeals affirmed. *Charette*, 2021 WL 2406686, at *5. After reviewing the record, the court of appeals concluded that Critt did not clearly invoke his Fifth Amendment right to counsel on the night of June 28 because his

"references to counsel were not responsive to interrogation or a *Miranda* warning but mere outbursts" and "were phrased as questions, not requests." *Id.* at *3. The court of appeals noted that Critt's statements to the officers on the night of June 28 "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." *Id.* The court of appeals did not address the issue of whether Critt had a Fifth Amendment right to counsel on the night of June 28. *Id.* at *3 n.2.

We granted Critt's petition for review on the issue of whether he had a Fifth Amendment right to counsel on the night of June 28.[3]

ANALYSIS

We review the district court's denial of Critt's postconviction petition for an abuse of discretion. *See Bolstad v. State*, 966 N.W.2d 239, 244 (Minn. 2021). We will reverse if the district court "exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

Under the Fifth Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment, a person subjected to custodial interrogation by law enforcement has the right to remain silent and the right to have an attorney present during an interrogation. *Miranda v. Arizona*, 384 U.S. 436, 439–40 (1966). These rights are

[3] Critt also raised an issue related to juror bias in his petition, but we did not grant further review of that issue.

meant to protect against compelled self-incrimination by acknowledging "the compulsion inherent in custodial surroundings." *Id.* at 458. When a suspect invokes their Fifth Amendment right to counsel, the police may not engage in a custodial interrogation unless the suspect initiates further conversations with police or has an attorney present. *Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981). Statements obtained in violation of a suspect's *Miranda* rights must be suppressed. *See Miranda*, 384 U.S. at 479.

Suspects do not have a Fifth Amendment right to counsel when "simply taken into custody, but rather where a suspect in custody is subjected to interrogation." *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980). Both "custody" and "interrogation" are required. And "[i]nterrogation . . . must reflect a measure of compulsion above and beyond that inherent in custody itself." *Id.* at 300 (internal quotation marks omitted); *see also State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998) (applying the *Innis* "interrogation" definition).

In this case, the State concedes that Critt was in custody on the night of June 28 when the officers placed him in the interview room. And Critt does not argue that he was subjected to interrogation at that time. Instead, Critt asks us to establish a new rule of law that suspects can invoke their Fifth Amendment right to counsel not only during custodial interrogation but also when custodial interrogation is "imminent."[4]

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[4] Critt claims that he is not asking for an extension of the law but rather is asking us to simply apply *Miranda* and *Edwards*. But Critt's argument requires an extension of existing law because we have never held that the Fifth Amendment right to counsel can be invoked when interrogation is imminent, and, as discussed below, it is not clear that the "context" of custodial interrogation includes when interrogation is imminent. *See McNeil v. Wisconsin*, 501 U.S. 171, 182 n.3 (1991). Critt provides no compelling justification for such an extension, especially in light of the lack of precedent from the U.S. Supreme Court on "imminent interrogation."

Notably, the U.S. Supreme Court has never held that defendants can assert their Fifth Amendment rights when interrogation is "imminent." But the Supreme Court seems to have recognized that interrogation need not be presently underway for a person to validly invoke their Fifth Amendment right to counsel. *See Miranda*, 384 U.S. at 470 ("An individual need not make a pre-interrogation request for a lawyer. *While such request affirmatively secures his right to have one*, his failure to ask for a lawyer does not constitute a waiver." (emphasis added)); *see also id.* at 444–45 ("If . . . [a defendant] indicates in any manner and *at any stage of the process* that he wishes to consult with an attorney before speaking there can be no questioning." (emphasis added)). As to the temporal proximity required between a suspect's invocation and an interrogation for *Miranda* purposes, the Supreme Court noted in *McNeil v. Wisconsin* that it has "in fact never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than 'custodial interrogation.' " 501 U.S. 171, 182 n.3 (1991). This case law suggests that there might be a distinction for *Miranda* purposes between an "anticipatory" invocation of the right to counsel and an invocation "pre-interrogation," but the Supreme Court has not yet defined these contours.

Some federal and state courts have interpreted these decisions to mean that defendants can invoke their Fifth Amendment rights when interrogation is "imminent." *See, e.g.*, *United States v. Grimes*, 142 F.3d 1342, 1348 (11th Cir. 1998) ("*Miranda* rights may be invoked only during custodial interrogation or when interrogation is imminent."); *United States v. LaGrone*, 43 F.3d 332, 339 (7th Cir. 1994) ("[I]n order for a defendant to invoke his *Miranda* rights the authorities must be conducting interrogation, or interrogation

must be imminent."); *United States v. Kelsey*, 951 F.2d 1196, 1199 (10th Cir. 1991) ("[T]he fact that Kelsey invoked his right to counsel before the police were required to inform him of that right is irrelevant."); *Ault v. State*, 866 So. 2d 674, 682 (Fla. 2003) (holding that the Fifth Amendment right to counsel may be invoked "either during custodial interrogation or when it is imminent" (quoting *Sapp v. State*, 690 So. 2d 581, 586 (Fla. 1997))); *State v. Appleby*, 221 P.3d 525, 548 (Kan. 2009) (considering whether a request for an attorney was made when interrogation was "imminent or impending" to determine if the request was unequivocal); *Gupta v. State*, 156 A.3d 785, 791, 803–04 (Md. 2017) (holding that some circumstances may exist in which a suspect in custody could invoke *Miranda* rights before interrogation, but declining to precisely define those instances because the facts showed that the defendant's request for a lawyer while in a holding cell "f[ell] well outside the scope of any permissible definition of 'imminence' in the sense of an impending interrogation"); *State v. Hambly*, 745 N.W.2d 48, 56 (Wis. 2008) (holding "that a suspect in custody may request counsel and effectively invoke the Fifth Amendment *Miranda* right to counsel when faced with 'impending interrogation' or when interrogation is 'imminent' and the request for counsel is for the assistance of counsel during interrogation").

Critt argues that we should follow these courts and adopt the "imminent interrogation" rule for two primary reasons. First, he argues that if a person already knows of their Fifth Amendment right to counsel and the *Miranda* warnings function solely as a reminder, the person should not have to wait until the warnings are read to invoke their right to counsel. And second, Critt claims that it is "counterintuitive" to make a suspect wait until questioning begins before the suspect can ask to have counsel present; a person

should be able to anticipate that questioning will begin soon and request counsel in advance.

The State counters that adopting an "imminent interrogation" rule "would be nearly impossible to implement and would be a disservice to society." In addition, the State offers a list of illogical situations that would allegedly result if a suspect could invoke their right to counsel when interrogation is imminent, including that a person could invoke their right to counsel on social media or "shout out" a request for counsel when no officers are present.

Because the U.S. Supreme Court has never held that a suspect can invoke their Fifth Amendment right to counsel when interrogation is imminent, we are not inclined to expressly adopt an "imminent interrogation" rule at this time. The "imminent interrogation" rule poses serious practical difficulties that we must consider before adopting it as the law of Minnesota. Without defining when an interrogation becomes imminent, it will be difficult for a law enforcement officer to make that determination, particularly in evolving situations where the intent to interrogate may change based on the suspect's behavior (like here), the available evidence, or other circumstances, like the availability of holding cells or interview rooms. We also question whether "imminence" might dissipate based on signals from law enforcement that they no longer intend to interrogate a person and how this affects the ability to invoke the Fifth Amendment right to counsel. This lack of clarity is contrary to the Supreme Court's preference for "bright-line rules" in the *Miranda* context. *See Arizona v. Roberson*, 486 U.S. 675, 681–82 (1988) ("This gain in specificity, which benefits the accused and the State alike, has been thought to outweigh the burdens that the decision in *Miranda* imposes on law enforcement agencies

and the courts . . . ."). Notably, Critt does not offer any suggestions for how we would define "imminent interrogation" or apply the rule, except that interrogation might be imminent if a person knows that interrogation will happen the next day. Accordingly, under the facts of this case, we are not inclined to fashion such a rule when the Supreme Court has not yet done so.

Contrary to Critt's concern, persons subject to a custodial interrogation do not have to wait for the *Miranda* warnings to be read before invoking their right to counsel. If police fail to read the *Miranda* warnings before questioning, a person can still invoke their right to counsel and right to remain silent because the warnings are simply "procedural safeguards," *Innis*, 446 U.S. at 297, not the source of the constitutional rights themselves.

For the reasons explained below, we disagree with the rule advanced by the State that a person cannot invoke their Fifth Amendment right to counsel until after a question has been asked. But adoption of an "imminent interrogation" rule would require us to concur with Critt's contention that "a defendant should be able to anticipate imminent law enforcement questioning." We do not agree with this claim, particularly when the boundaries of "imminent" are not defined.

And finally, many of the courts that have adopted the "imminent interrogation" rule offer little analysis or justification for adopting the standard.[5] *See Kelsey*, 951 F.2d at

[5] Other courts, meanwhile, have provided rationales for not affirmatively adopting the "imminent" standard. *See, e.g.*, *Alston v. Redman*, 34 F.3d 1237, 1247 (3d Cir. 1994) ("It is only at the time that the state seeks to invade [a suspect's] citadel of individual liberty that these constitutional guarantees can be summoned to battle. . . . To require that the Government first act to compel an individual to incriminate herself before that individual

1198–1200 (holding that *Edwards* applied because the suspect asked for an attorney and the police questioned him some time after the request, without analyzing whether the request needed to be made in the context of custodial interrogation); *People v. Villalobos*, 737 N.E.2d 639, 646 (Ill. 2000) (holding that "the suspect must invoke the right to counsel during custodial interrogation or when custodial interrogation was imminent" without analyzing whether the "imminent" standard has a basis in U.S. Supreme Court *Miranda* jurisprudence). Some courts do not define what it means for interrogation to be "imminent" but merely recite the standard as part of the rule or hold that interrogation was clearly not imminent. *See, e.g.*, *Gupta*, 156 A.3d at 803. Other courts state the "imminent interrogation" rule but hold that a purported invocation by the suspect was anticipatory and therefore invalid. *See, e.g.*, *Grimes*, 142 F.3d at 1348–49; *LaGrone*, 43 F.3d at 339–40; *Ault*, 866 So. 2d at 682. With no holding from the Supreme Court compelling an "imminent interrogation" rule, little analysis or justification from other courts, and no clear guidance from Critt as to how we would define "imminent interrogation" or apply the rule, we decline to adopt such a rule at this time.

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can assert her right to remain silent is merely to recognize that the privilege against compelled self-incrimination acts as a shield against state action rather than as a sword, and that the shield may only be interposed when state action actually threatens."), *cert. denied*, 513 U.S. 1160 (1995); *Russell v. State*, 215 S.W.3d 531, 536 (Tex. Ct. App. 2007) (declining to adopt the standard because, although "[s]ome courts have held that the window of opportunity for invoking one's *Miranda* rights extends . . . to that time when an interrogation is imminent," the Supreme Court has yet to recognize that right). Because we share the analytical concerns other courts have raised, we decline to affirmatively adopt an "imminent" standard here and need not address whether the facts here would meet such a standard were it to be adopted.

We also, however, do not fully agree with the State's position in this case that a person cannot invoke their Fifth Amendment right to counsel until after a question has been asked. At oral argument, the State suggested that the Fifth Amendment right to counsel attaches when a person faces the first question from law enforcement officers. But the State's recitation of the rule does not comport with *Miranda*, which says that a pre-interrogation request for counsel may be valid.[6] *Miranda*, 384 U.S. at 470. And interrogation in the Fifth Amendment context is not limited to formal police questioning but also includes the "functional equivalent" of interrogation, that is, actions by law enforcement officers that "are reasonably likely to elicit an incriminating response from the suspect." *Innis*, 446 U.S. at 301 (footnote omitted); *see State v. Heinonen*, 909 N.W.2d 584, 589–94 (Minn. 2018) (applying *Innis* to determine whether police officers' actions amounted to interrogation). This "functional equivalent" of interrogation includes "psychological ploys" meant to induce a suspect into making incriminating statements without direct questioning from law enforcement, such as if officers "display an air of confidence in the suspect's guilt," "minimize the moral seriousness of the offense," or "cast

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[6] The State also argues that it is not reasonable to expect an officer who hears a suspect invoke the Fifth Amendment right to counsel to relay that invocation to all other officers who might later attempt to interrogate the suspect. Though we have never explicitly addressed this imputed-knowledge issue and do not do so here, we note that the U.S. Supreme Court has held that one officer's knowledge of a Fifth Amendment invocation is imputed to all officers who interact with the same suspect. *See Roberson*, 486 U.S. at 687 ("[W]e attach no significance to the fact that the officer who conducted the second interrogation did not know that respondent had made a request for counsel. . . . [C]ustodial interrogation must be conducted pursuant to established procedures, and those procedures in turn must enable an officer who proposes to initiate an interrogation to determine whether the suspect has previously requested counsel.").

blame on the victim or on society." *Miranda*, 384 U.S. at 450, 457; *Edrozo*, 578 N.W.2d at 724–25.

Rather than adopting the State's position, we instead adhere to the principle that the *Miranda* doctrine must "be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated." *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). In its Fifth Amendment right to counsel jurisprudence, the Supreme Court has focused on the "inherently compelling pressures [of a police-dominated atmosphere] which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Miranda*, 384 U.S. at 467.

Applying those principles here, Critt was not subjected to any compulsion or coercion in the interview room at the law enforcement center on the night of June 28, and so the concerns underlying *Miranda* are not implicated here. *See Illinois v. Perkins*, 496 U.S. 292, 297 (1990) ("It is the premise of *Miranda* that the danger of coercion results from the interaction of custody and official interrogation."). None of the officers present mentioned the fire or the deceased person found inside the burned-out house. Critt was not told that his cooperation would result in lenient treatment. There is no evidence of any "psychological ploys" wielded by the officers. None of the officers asked Critt any questions or tried to elicit an incriminating response about his involvement in a possible murder and arson. Indeed, it is notable that Critt made no incriminating statements whatsoever to law enforcement on the night of June 28. Considering these facts, we cannot say that Critt's mere presence in the interview room, after the officers told him that he was

being detained for questioning, "work[ed] to undermine [his] will to resist and to compel him to speak where he would not otherwise do so freely." *See Miranda*, 384 U.S. at 467.

Because Critt was not subjected to custodial interrogation on the night of June 28, he did not have a Fifth Amendment right to counsel at that time.[7] Critt's statements on June 29, then, were not obtained in violation of *Miranda* or *Edwards*, and so the district court did not err by denying Critt's motion to suppress them. Accordingly, the district court did not abuse its discretion by denying his request for postconviction relief.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

[7] Because we hold that Critt did not have a Fifth Amendment right to counsel on the night of June 28, we need not decide whether his statements were "clear and unequivocal" invocations of that right.