

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0080**

State of Minnesota,
Respondent,

vs.

Tyree Earl Chapman,
Appellant.

**Filed April 20, 2020
Affirmed
Segal, Judge**

Hennepin County District Court
File No. 27-CR-17-13449

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Segal, Judge.

UNPUBLISHED OPINION

SEGAL, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct and the denial of his petition for postconviction relief, arguing that the district court erred by

denying part of his pretrial motion to suppress statements made to law enforcement after he invoked his right to counsel, that the police investigator for the case improperly testified about a suppressed statement, and that he is entitled to postconviction relief based on a witness's recantation and newly discovered evidence. We affirm.

FACTS

This case arises out of allegations that appellant Tyree Earl Chapman sexually assaulted his seven-year-old daughter. Chapman had lived with the child and the child's mother.¹ Chapman moved out after he physically assaulted mother, but they continued a romantic relationship. Chapman also spent time with the child.

In early May 2017, Chapman sent mother a text message and told her that he needed to speak with her about something serious. When Chapman and mother were together, he proceeded to tell her that he wanted to "express what happened" with the child and then said he "didn't know if [the child] did suck his dick." Chapman indicated that the incident happened a few years prior at mother's house but that he could not remember the exact date.

While mother was speaking with Chapman, the child was at her aunt's house. The child was having issues with fighting at school and was there to speak with her aunt about her behavioral issues. The aunt also decided that it would be an appropriate time to have a "good touch, bad touch talk" with the child. The child became upset during the conversation and eventually told her aunt that Chapman had touched her. The aunt asked

¹ The child and mother have the same initials. For clarity, we will refer to them as "the child" and "mother" throughout this opinion.

the child where Chapman had touched her, and the child replied her “butt” and her “coon,” which is what the child calls her vaginal area. The child also stated that Chapman’s “private part” had touched her butt and mouth. The aunt called child-protection services the next morning to report the sexual abuse.

The day after Chapman talked with mother about “what happened,” mother asked the child if there was anything that she should know that had gone on between the child and Chapman. The child started crying and said, “Yes, [Chapman] did this to me.” She then stated that Chapman had shown her pornography and forced his penis into her mouth. Mother asked the aunt to report what the child had said to the police.

Mother also took the child for a forensic interview at CornerHouse. During the interview, the child reported that Chapman had shown her his “private” on ten occasions. The child stated that, on one occasion, Chapman “took his private out” and “pushed it in [her] mouth,” which made her feel like she was choking. She reported she then felt “stuff” was “drinking in [her] neck” and had a gray and white substance in her mouth. The child also made allegations of both vaginal and anal penetration.

Respondent State of Minnesota charged Chapman with first-degree criminal sexual conduct. On June 1, 2017, a sergeant with the Minneapolis Police Department conducted a recorded custodial interview of Chapman. Chapman is hearing impaired and the interview was conducted with the assistance of two interpreters certified in American Sign Language. The sergeant asked Chapman if he knew why he had been arrested, and Chapman began to talk about the allegations made by the child. The sergeant then realized that he had not read Chapman the *Miranda* warning and proceeded to provide Chapman

with the warning. Chapman indicated that he would like to have a lawyer, and the sergeant stated that he was ending the interview. The sergeant then asked several questions about Chapman's personal and contact information and Chapman's relationship with the child's mother. Chapman began speaking about his strained relationship with mother, and then stated that one night after he and mother had sexual intercourse he fell asleep and woke up to the child "sucking on" his "private." The sergeant responded "that was something that should have been on the *Miranda*" and Chapman replied that he "better shut up." The sergeant reiterated that anything Chapman said could be used against him, and asked again if Chapman wanted a lawyer. After Chapman asked several questions about what charges he may face and how long he could spend in prison, the sergeant ended the interview and stopped the recording.

The sergeant then took Chapman to a holding area to wait until he could be brought back to the jail. While there, Chapman spontaneously said that he wanted to clear his conscience, "would never force his daughter to have sex with him" and, if he was going to jail, "it should be for selling weed and not rape."

Chapman moved to suppress the statements he made to the sergeant. He argued that the statements were obtained after he invoked his right to counsel and therefore should be suppressed. Following an evidentiary hearing, the district court granted the motion in part and denied it in part. The district court determined that Chapman invoked his right to counsel and therefore the statements he made during the custodial interview were inadmissible and granted the motion to suppress those statements, but determined that,

following the conclusion of the custodial interview, Chapman voluntarily reinitiated conversation in the holding area and denied the motion to suppress those statements.

The case went to trial and the jury found Chapman guilty of first-degree criminal sexual conduct. In its answers to special-verdict questions, the jury found beyond a reasonable doubt that Chapman “engaged in fellatio with” the child. But the jury did not find beyond a reasonable doubt that Chapman’s conduct involved sexual penetration on three or more occasions (a more serious offense) or that Chapman had engaged in four other specified sexual acts with the child. The district court entered judgment of conviction for first-degree criminal sexual conduct and sentenced Chapman to 201 months in prison.

On January 16, 2018, Chapman filed a notice of appeal. This court stayed the appeal to allow Chapman to pursue postconviction relief. On July 27, 2018, Chapman filed a petition for postconviction relief. He argued that he was entitled to a new trial based on witness recantation and newly discovered evidence. In support of his petition, Chapman submitted a letter from mother in which she recanted her trial testimony and stated that she had recently learned that the child was forced by her aunt to lie in retaliation for how Chapman treated mother during their relationship. Following an evidentiary hearing at which mother testified, the postconviction court denied the petition. This court then dissolved the stay and reinstated the appeal.

DECISION

I.

District Court Denial of Motion to Suppress Statement Made in the Holding Area

When reviewing a pretrial order on a motion to suppress, we review the district court's factual findings for clear error and the legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

The United States and Minnesota Constitutions protect criminal defendants from compelled self-incrimination. *State v. Risk*, 598 N.W.2d 642, 647 (Minn. 1999). To protect this right, our caselaw establishes that, if a suspect clearly invokes his right to counsel during a custodial interrogation, all questioning must cease until an attorney is present or the suspect reinitiates the conversation. *Id.* This rule is designed, in part, to prevent police from badgering a suspect into waiving his rights. *Davis v. United States*, 512 U.S. 452, 458, 114 S. Ct. 2350, 2355 (1994). If the interrogation does not cease, any evidence that is obtained after the invocation of the right to counsel is inadmissible. *Risk*, 598 N.W.2d at 647. Once it has been established that an individual invoked his right to counsel, “courts may admit responses to further questioning only on finding that the accused (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right invoked.” *State v. Munson*, 594 N.W.2d 128, 138-39 (Minn. 1999) (quotation omitted).

We review the district court's findings of fact regarding the circumstances surrounding a suspect's statement for clear error, but make “an independent subjective

determination as to whether the waiver was voluntary.” *State v. Earl*, 702 N.W.2d 711, 719 (Minn. 2005).

Here, it is undisputed that Chapman invoked his right to counsel. After Chapman invoked his right to counsel, he made a statement in the interview room that on one occasion he woke up and the child was “sucking on” his “private.” This is the statement suppressed by the district court. But the district court denied the motion to suppress the statement made in the holding area because the court determined that Chapman voluntarily reinitiated conversation with the sergeant after the formal interview ended. Chapman argues that the district court erred in denying his motion to suppress the statement made in the holding area. He argues he could not have voluntarily reinitiated conversation with the sergeant because the initial interview never stopped. We disagree.

The district court made the following findings regarding the circumstances surrounding Chapman’s statements. After Chapman invoked his right to counsel, the sergeant asked a series of routine booking questions that do not require a *Miranda* warning. *See State v. Widell*, 258 N.W.2d 795, 797 (Minn. 1977). During these questions, Chapman made an incriminating statement and the sergeant reiterated the *Miranda* warning, asked again if Chapman wanted an attorney, and formally ended the interview. The sergeant then prepared to return Chapman to jail, left the interview room, and walked to the holding area. The sergeant did not speak with Chapman or ask him any questions after the formal interview ended. While in the holding area, Chapman made a series of spontaneous statements. The sergeant did not respond or attempt to elicit further information. Based

on these circumstances, we agree with the district court that Chapman voluntarily reinitiated conversation with the sergeant while in the holding area.

Chapman next argues that, even if the holding area statement was voluntary, the district court erred by failing to determine whether he validly waived his right to counsel. The state argues that the district court was not required to determine that Chapman waived his right to counsel because he was not subject to interrogation at that time. In *Edwards v. Arizona*, the Supreme Court addressed the admissibility of statements made to law enforcement after a suspect invoked the right to counsel. 451 U.S. 477, 482, 101 S. Ct. 1880, 1883 (1981). The Supreme Court explained that “[t]he Fifth Amendment right identified in *Miranda* is the right to have counsel present at any custodial interrogation” and “[a]bsent such interrogation, there would have been no infringement of the right that [the suspect] invoked and there would be no occasion to determine whether there had been a valid waiver.” *Id.* at 485-86, 101 S. Ct. at 1885. Accordingly, a determination as to whether a suspect validly waives the right to counsel is only required when the suspect is subject to interrogation.

Interrogation includes both express questions and their “functional equivalent,” which includes actions on the part of police that are reasonably likely to elicit an incriminating response. *Earl*, 702 N.W.2d at 719. The “central question” is whether “the evidence in the record shows that the officers should have known” that their conduct “was reasonably likely to elicit an incriminating response from the suspect or to get the suspect to revoke his right to counsel.” *Id.* (quotations omitted). Here, the evidence in the record does not suggest that the sergeant should have known that his conduct was likely to elicit

an incriminating response. After the sergeant ended the formal interview and escorted Chapman to the holding area, he did not initiate conversation with Chapman or ask any questions. He merely stood in the holding area with Chapman, who made the statements spontaneously. After Chapman began speaking, the sergeant told him to stop and did not ask any follow-up questions or attempt to elicit further information. On these facts, we conclude that Chapman was not subject to interrogation when in the holding area. Consequently, the district court was not required to determine whether Chapman waived his right to counsel. Because Chapman voluntarily reinitiated conversation with law enforcement and was not subject to interrogation, the district court did not err by denying Chapman's motion to suppress the statements made in the holding area.

II.

Challenges to Sergeant's Trial Testimony

Chapman argues that the sergeant violated the pretrial suppression order by impermissibly referencing the suppressed statement. When a jury hears inadmissible evidence, an appellate court will not reverse a verdict unless "there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Jaros*, 932 N.W.2d 466, 472 (Minn. 2019). In the absence of constitutional error, the burden is on the appellant to establish "a reasonable possibility that the jury would have reached a different verdict had the wrongfully admitted testimony not come in." *Id.* When the evidentiary error transforms into a constitutional error, the burden of establishing that the error was harmless beyond a reasonable doubt shifts to the state. *Id.* at 472-74.

At trial, the sergeant was asked about the comments Chapman made to him in the holding area. He testified that Chapman “said that he wanted to talk to me, that he wanted to clear things up, and that he admitted to, uh, [the child] sucking on his penis.” The admission to “[the child] sucking on his penis,” however, was not made in the holding area, but rather was the statement suppressed by the district court that was made during the formal interview. On cross-examination, the sergeant was asked to review his report and conceded that the report did not state that Chapman admitted that the child sucked his penis. He also testified that his report was an accurate record of the statement made by Chapman in the holding area. On redirect, the prosecutor attempted to establish that the “incident” the sergeant testified about was Chapman’s statement to mother about the child sucking on his penis. But during this line of questioning, the sergeant stated, “[Chapman] had made a statement prior that he had woke up to [the child] suck” when his sentence was cut short because the district court ordered him to stop. The district court then instructed the jury to disregard the statement, and the prosecutor stated, “Sergeant . . . I want to be very clear here. [Chapman] had made a statement to [mother] about [the child] sucking on his penis, correct?” and the sergeant responded yes. After this testimony and outside the presence of the jury, defense counsel moved for a mistrial, which was denied.

We conclude that any error was harmless beyond a reasonable doubt. Chapman argues that the error was not harmless because the jury found him guilty only of “engag[ing] in fellatio” with the child, which was the very act referenced in the suppressed statement. The jury found Chapman not guilty of committing the other alleged sexual acts. But the evidence presented at trial establishes that Chapman reached out to mother, told

her he wanted to discuss something serious, and then stated that he “didn’t know if [the child] did suck his dick.” Chapman made this statement before the child disclosed the information to her aunt or mother. And while the child did make allegations of other sexual acts, her report that Chapman “pushed” his “private” into her mouth was significantly more detailed than the other allegations and remained consistent in her descriptions of the incident to mother, aunt, the forensic interviewer and at trial. The child’s allegations regarding the other sexual acts were vague and inconsistent.

Moreover, the potential prejudice from the improper testimony was mitigated through cross-examination and redirect. After the sergeant referenced the suppressed statement, defense counsel was able to effectively cross-examine the sergeant about the police report. During the cross-examination, the sergeant conceded the statement was not in the report and stated that his report was an accurate record of the statement Chapman made in the holding area. This lessened the prejudice of the sergeant’s testimony because the jury was unaware of the suppressed interview and could conclude that the lack of inclusion of the statement in the report reflected that Chapman had not made the statement. The prosecutor also emphasized and confirmed that the sergeant was referring to the statement Chapman made to mother, which was admissible and was corroborated by mother at trial. Finally, the district court gave a curative instruction for the jury to disregard the statement from the sergeant’s testimony, and this court assumes that the jury follows the district court’s instructions. *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998). On this record, any error was harmless beyond a reasonable doubt and Chapman is therefore not entitled to a new trial.

III.

Denial of Petition for Postconviction Relief

Chapman argues that the district court abused its discretion by denying his petition for postconviction relief because he is entitled to relief based on mother's recantation and newly discovered evidence. We address each argument in turn.

We review the denial of a petition for postconviction relief for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We apply a clear-error standard of review to determine "whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Id.* (quotation omitted). The petitioner bears the burden of establishing that he is entitled to relief. *Pippitt v. State*, 737 N.W.2d 221, 226 (Minn. 2007).

A. *Witness Recantation*

Chapman argues that he is entitled to postconviction relief based on mother's recantation. If a criminal offender seeks a new trial based on a witness's recantation of trial testimony, a postconviction court should grant a new trial if:

(1) the court is reasonably well-satisfied that the testimony given by a material witness is false; (2) without it the jury might have reached a different conclusion; and (3) the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.

Ortega v. State, 856 N.W.2d 98, 103 (Minn. 2014) (citing *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928)). "While the first two prongs must be met for the petitioner to be entitled to a new trial, the third prong is a relevant factor to be considered,

but not an absolute condition precedent for granting a new trial.” *Ferguson v. State*, 779 N.W.2d 555, 559 (Minn. 2010) (quotation omitted). “The first prong . . . is met only when the court is reasonably certain that the recantation is genuine.” *Id.* at 559-60 (quotation omitted). The circumstances surrounding a recantation may be considered when determining whether the recantation is genuine. *See State v. Walker*, 358 N.W.2d 660, 661 (Minn. 1984).

Here, the postconviction court determined that mother’s recantation was not genuine. The court considered the circumstances surrounding the recantation and found that mother’s testimony at the evidentiary hearing was not credible. The court noted that after mother submitted the letter, but prior to the evidentiary hearing, she told a social worker and victim witness advocate that she only wrote the letter due to pressure from Chapman’s family and fear for her safety. She also gave inconsistent testimony at the hearing about whether she intended to pursue a future relationship with Chapman. Finally, the postconviction court noted that neither the child nor the aunt recanted or provided any evidence to corroborate mother’s recantation.

Chapman argues that the postconviction court erred by determining that mother’s recantation was not genuine. But “our standard of review reminds us that the postconviction court is in a unique position to assess witness credibility, and we must therefore give the postconviction court considerable deference in this regard.” *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006). The record reflects that the postconviction court properly considered the circumstances surrounding mother’s recantation, including inconsistencies in her statements and possible motivations for fabricating the recantation.

Because the postconviction court was in “a unique position” to evaluate mother’s testimony and credibility, we defer to the postconviction court’s determination that mother was not credible and as a result her recantation was not genuine. Accordingly, Chapman failed to establish the first prong of the test, and he is therefore not entitled to postconviction relief based on witness recantation.

B. Newly Discovered Evidence

Chapman also argues that he is entitled to postconviction relief based on newly discovered evidence. He argues that mother’s letter submitted in support of his petition for postconviction relief contains newly discovered evidence that the child and her aunt fabricated the allegations against him in order to retaliate against him for how he treated mother during their relationship.

To obtain a new trial based on newly discovered evidence, the petitioner must establish:

(1) the evidence was not known to the petitioner or counsel at the time of trial; (2) the failure to learn of the evidence before trial was not due to a lack of diligence; (3) the evidence is material, not merely impeaching, cumulative, or doubtful; and (4) the evidence would probably produce either an acquittal or a more favorable result.

Roby v. State, 808 N.W.2d 20, 26 n.5 (Minn. 2011) (citing *Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997)). A petitioner bears the burden of establishing each of the four prongs in order to be entitled to relief. *Miles v. State*, 840 N.W.2d 195, 201 (Minn. 2013).

The district court determined that Chapman failed to establish the third and fourth prongs of the test—that the evidence was material and likely to produce an acquittal or

more favorable result. Chapman argues that the district court erred in these determinations. But “[t]o meet the materiality requirement, the evidence submitted must be credible.” *Bobo v. State*, 860 N.W.2d 681, 684 (Minn. 2015). And as discussed above, we defer to the postconviction court’s credibility determinations. *Ospahl*, 710 N.W.2d at 782. Here, the evidence that the child and aunt fabricated the allegations against Chapman is supported only by mother’s letter and hearing testimony, which the postconviction court determined was not credible. Because the evidence submitted is not credible, it is not material. *Bobo*, 860 N.W.2d at 684. Chapman therefore cannot establish all four prongs of the test, and is not entitled to postconviction relief based on newly discovered evidence.

Affirmed.