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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1340**

State of Minnesota,
Appellant,

vs.

Gerald Duane Skolte,
Respondent

**Filed January 22, 2019
Affirmed
Klaphake, Judge***

Otter Tail County District Court
File No. 56-CR-15-2672

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Considered and decided by Halbrooks, Presiding Judge; Bratvold, Judge; and
Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

The state appeals from a pretrial order suppressing respondent Gerald Duane Skolte's statements, arguing that the district court erroneously determined that Skolte made an unambiguous request for counsel. Because a reasonable officer would have understood Skolte's statement to be a request for counsel, we affirm.

DECISION

To appeal a pretrial order, the state must show that the district court's alleged error will have a critical impact. Minn. R. Crim. P. 28.04, subd. 2(2)(b). As a threshold matter, this court must determine if the district court's pretrial order will have a critical impact on the state's ability to successfully prosecute Skolte. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

Although critical impact is a "demanding standard," critical impact is met if the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution. *State v. Edrozo*, 578 N.W.2d 719, 723 (Minn. 1998). In analyzing critical impact, the court must consider all the evidence available to the state as well as the qualities of the suppressed evidence itself, including its probative value, proximity to the alleged crime, effect on the evidence as a whole, clarity, amount of detail, and origin. *In re Welfare of L.E.P.*, 594 N.W.2d 163, 168 (Minn. 1999).

We conclude that the state has shown critical impact. The district court's order will suppress Skolte's statements that he shot M.M. and other statements that relate to his state of mind. Although the state has other substantial evidence of guilt, it must prove specific

intent. In doing so, Skolte's own words will be directly relevant and highly probative of his state of mind. *Edrozo*, 578 N.W.2d at 723; *see also State v. Ault*, 478 N.W.2d 797, 799 (Minn. App. 1991). (A defendant's confession may have a critical impact even though the state has other substantial evidence of guilt.) (quotation omitted)).

Having found critical impact, we turn to the substance of the state's appeal. The state argues that the district court erred in suppressing statements made during a custodial interview. The United States and Minnesota Constitutions protect criminal defendants from compelled self-incrimination. *State v. Risk*, 598 N.W.2d 642, 647 (Minn. 1999). In order to protect this right, the Supreme Court has established that if a suspect unambiguously 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.* (citing *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602, 1630 (1996)). If the questioning does not cease after a suspect invokes his right to counsel, then any evidence obtained as a result of the interrogation is inadmissible. *Id.* However, (citing *Miranda*, 384 U.S. at 479, 86 S. Ct. at 1630) this rule only kicks in when a suspect makes an unambiguous request for counsel; if the request is ambiguous, then the interrogation does not have to stop.¹ *Davis v. United States*, 512 U.S. 452, 459, 114 S. Ct. 2350, 2355 (1994). A request is unambiguous if the suspect articulates his desire for counsel such that a "reasonable police

¹ The Minnesota Constitution provides additional protections when a suspect makes an ambiguous request for counsel. *See Risk*, 598 N.W.2d at 648-49. Because we conclude that Skolte's request was unambiguous, we need not discuss those protections.

officer in the circumstances would understand the statement to be a request for an attorney.” *Id.*

Here, the court must determine if Skolte’s statement “[y]eah, if I talk I should have a lawyer here, though” is an unambiguous request for counsel. We review the district court’s factual determinations for clear error and the determination that a reasonable officer would find Skolte’s statement to be a request for counsel de novo. *State v. Chavarria-Cruz*, 784 N.W.2d 355, 363 (Minn. 2010).

After review of the interrogation video, we conclude that a reasonable officer in these circumstances would have understood Skolte’s statement as a request for counsel. It is clear that there is a pause in the middle of Skolte’s statement, which indicates that the statement is actually two sentences. He first says “Yeah, if I talk” But Skolte does not finish this sentence. Instead, he trails off, pauses a moment, and then starts a new sentence: “I should have a lawyer here though.” This statement, “I should have a lawyer here though,” is an unambiguous request for an attorney. *Cf. State v. Hannon* 636 N.W.2d 796, 804-05 (Minn. 2001) (finding the statement “[c]an I have a drink of water and then lock me up—I think we really should have an attorney” to be an unambiguous request for counsel).

Additionally, the statement came immediately after the detective asked if Skolte was familiar with the *Miranda* warning. This supports the conclusion that Skolte was requesting an attorney. *See State v. Munson*, 594 N.W.2d 128, 139 (Minn. 1999) (determining that defendant’s statement, “I think I’d rather talk to a lawyer,” coming immediately after he was read the *Miranda* warning, was an unambiguous request for

counsel). Although on paper it may appear that the statement was merely a response to the question, a reasonable officer would have heard Skolte's vocal inflections, including the pause after "if I talk," and ruled out that interpretation.

The detective's reaction further supports the district court's finding that a reasonable officer would have found Skolte's statement to be a request for counsel. Although this is an objective inquiry, the supreme court has previously considered that an officer's reaction to a suspect's statement is relevant to determining if the statement was ambiguous. See *Hannon*, 636 N.W.2d at 805 ("[T]he detective's reaction following appellant's request for counsel further supports the objective sufficiency of appellant's invocation of his right to counsel."); *Munson*, 594 N.W.2d at 139 ("The objective sufficiency of Munson's invocation of his right to counsel is further supported by the reaction of Officers' [sic] Kosloske and Bratsch to Munson's request.").

Here, the detective's reaction shows that he did not consider Skolte's response to be ambiguous. Rather than treating the statement as ambiguous and asking for clarification, the detective responded "Ok. Let's read you the *Miranda* and then you decide, ok?" and "So, one step at a time here." As the district court found, this was not an attempt to clarify the statement. Instead, the detective was trying to dissuade Skolte from invoking his right to counsel until after being read his *Miranda* rights.

In sum, the words used by Skolte, the manner in which he said them, and the surrounding circumstances show that a reasonable officer would have understood Skolte's

statement as a request for counsel. Accordingly, we agree with the district court that Skolte successfully invoked his right to counsel.

Affirmed.