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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0698**

State of Minnesota,
Respondent,

vs.

Angela Lorraine Loose,
Appellant.

**Filed May 4, 2020
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-18-12318

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Minneapolis, Minnesota (for respondent)

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Considered and decided by Rodenberg, Presiding Judge; Smith, Tracy M., Judge;
and Slieter, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

In this direct appeal from the judgment of conviction for two counts of driving while
under the influence of a controlled substance (DWI) and one count of careless driving,

appellant Lorraine Loose argues that she is entitled to a new trial because (1) her due-process rights were violated when police officers informed her that she could be prosecuted for refusing a blood test without offering her the option of a urine test and (2) the district court erred by failing to suppress an incriminating statement obtained in violation of Loose's *Miranda* rights. In the alternative, Loose argues that the district court erred in entering judgments of conviction for two separate counts of DWI. We reject Loose's arguments for a new trial but agree that the district court erred by entering more than one conviction. We therefore affirm in part, reverse in part, and remand.

FACTS

Loose was driving eastbound on 44th Avenue North in Minneapolis when she drifted over to the opposite side of the street and struck a legally parked, unoccupied car on the westbound side. The collision caused heavy front-end damage to both vehicles and pushed the parked car up onto the curb. Minneapolis Police Officers Chorlton and Payne responded to the scene. When the officers arrived, a tow-truck driver greeted them and informed them that he had noticed a syringe on the seat in Loose's car and that he had taken a picture of the syringe with his cell phone.

Officer Chorlton went to speak with Loose, who was standing near the trunk of her car, and asked her if she was hurt. The officer's body-worn camera captured their interaction. The footage shows that Loose was very excited, was moving a lot, appeared nervous, and could not seem to calm down. Loose had placed her purse on the trunk of her car and was rummaging through it while she spoke with Officer Chorlton. Officer Chorlton asked her what was going on, asked about the syringe in her car, and asked whether she

was high. Loose replied that she was not high at that moment but that she was “struggling.” When Officer Chorlton asked what she meant, she replied that she suffered from heroin addiction and was in treatment. She explained that she collided with the parked car because she looked down at her phone while driving.

Officer Chorlton then began to put Loose in handcuffs. He testified at the *Rasmussen* hearing¹ in this matter that he did so out of concern for safety, as Loose was still rummaging through her purse at this point and he believed she was presently under the influence of a controlled substance based on her behavior, dilated pupils, and the information from the tow-truck driver about a needle in her car. The following exchange ensued, as captured on the body-camera footage:

OFFICER CHORLTON: Angela can you do me a favor and just put your hands behind your back for a second?

LOOSE: Okay.

*[Loose puts her hands behind her back]*²

OFFICER CHORLTON: Thank you. Just going to put you in handcuffs for right now because I happen to believe . . .

LOOSE: Why? Can you please tell me why?

OFFICER CHORLTON: Just put your hands behind your back.

LOOSE: Why? Why?

OFFICER CHORLTON: Just based on what I’ve seen, it seems like you are under the influence of something right now. And if you’re not, then you’ll be released. But we’re going to have some DREs³ come and check you out.

¹ See *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 13-14 (Minn. 1965) (establishing procedure to be followed when evidentiary issues arise in connection with searches and seizures, including a fact hearing on the admissibility of the evidence).

² Bracketed, italicized comments reflect our observations of the actions in the video footage.

³ According to Officer Chorlton, “DRE” stands for drug recognition expert.

[Officer Chorlton finishes putting handcuffs on Loose]
Okay, is there anything on you that I need to be concerned about? Needles?
LOOSE: Um, no. There is my purse, you can check.
OFFICER CHORLTON: There's a needle in your purse?
LOOSE: Yes.
OFFICER CHORLTON: Nothing on you?
LOOSE: No.
OFFICER CHORLTON: No needles?
LOOSE: No.
OFFICER CHORLTON: Okay. I'm just going to pat you down with the back of my hand.

Officer Chorlton then placed Loose in the back of a squad car to wait for paramedics to arrive to assess her injuries and possible substance use and to see if she needed to be hospitalized. When the paramedics arrived, they examined Loose, who was still handcuffed, in the ambulance with Officer Chorlton observing. The paramedics determined that Loose did not require hospitalization.

Officers Chorlton and Payne radioed for assistance from a drug-recognition expert, and, though no one with that certification was available, Officer Schmidt and his partner arrived to assist. Officer Schmidt had more experience than Officers Chorlton and Payne with impaired driving cases, since he had been involved with approximately 150 arrests of impaired drivers. After Officer Schmidt questioned Loose, he applied for a search warrant to take a blood or urine sample from her. Officers Chorlton and Payne then drove Loose to a nearby hospital.

Officer Schmidt met them at the hospital after obtaining the search warrant to take a blood or urine sample. He gave the warrant to a lab technician and told Loose:

I have a search warrant here to draw the blood or urine from you. I do . . . I can advise you that you can refuse the blood test,

however, you will be charged with DWI refusal if you do so.
So, are you willing to submit to the blood test?

Officer Schmidt did not offer Loose a urine test. Loose asked several questions about the criminal consequences of refusing to submit to the blood test as opposed to submitting to it and facing DWI charges. Officer Schmidt explained that test refusal would result in a gross-misdemeanor charge, whereas a fourth-degree DWI is a misdemeanor. Loose expressed confusion over whether a DWI offense can be a felony, and Officer Schmidt answered that a first-time DWI offense is not a felony; it is a misdemeanor. After some additional back and forth about the levels of the potential offenses, and after Officer Schmidt again asked Loose whether she would take the blood test, Loose exclaimed, "Of course I'm going to do it, I'm just asking questions!" Officer Schmidt then told the lab technician to go ahead with the blood draw. About a minute later, Loose stated, "Wait, I'd rather get a gross misdemeanor than a DWI." She again expressed concern about a felony charge, and Officer Schmidt told her he had never suggested that as a possibility, and the technician proceeded with the blood draw. Loose asked a few more questions throughout the blood draw, which was completed and the sample sent to the Bureau of Criminal Apprehension (BCA) for analysis.

The blood sample tested positive for morphine at 0.033 mg/L. Morphine is a metabolite of heroin and is a schedule II controlled substance. The state charged Loose with three misdemeanors: (I) fourth-degree driving while under the influence of a controlled substance in violation of Minn. Stat. § 169A.20, subd. 1(2) (2016); (II) fourth-degree driving while under the influence of any amount of a schedule I or II controlled

substance in violation of Minn. Stat. § 169A.20, subd. 1(7) (2016); and (III) careless driving in violation of Minn. Stat. § 169.13, subd. 2 (2016).

Before trial, Loose moved to suppress any statements that she made as a result of a non-Mirandized custodial interrogation, any physical evidence resulting from the *Miranda* violation, and the results of the blood draw. As to the blood draw, she specifically argued that Officer Schmidt violated her right to counsel by failing to inform her that she had the right to speak with an attorney before deciding whether submit to the blood test. The district court held a *Rasmussen* hearing on October 10, 2018, where the officers involved with the case testified and the state entered the video footage from their body-worn cameras as evidence. On January 3, 2019, the district court granted Loose’s motion to suppress her statements “made during the course of her police interview” and to suppress the physical evidence located in her purse, but denied her motion to suppress the results of the blood test. The parties filed a joint request for clarification of the order, asking the district court “whether statements are suppressed where Ms. Loose tells Officer Chorlton that there are two syringes in her purse shortly after she is handcuffed by Officer Chorlton.” The district court filed another order on March 12 stating that Loose’s affirmative response to Officer Chorlton that she had needles in her purse was not suppressed because it was made before she was in custody for the purposes of *Miranda*.⁴

⁴ As we explain in section II, the parties agree, and the record demonstrates, that the district court’s finding regarding timing of the statement in relation to the handcuffing was clearly erroneous. Loose made the statement after she was handcuffed.

On March 13, 2019, Loose waived her right to a jury trial and had a bench trial on stipulated facts and evidence pursuant to Minn. R. Crim. P. 26.01, subd. 3. The parties entered two exhibits: (1) the stipulated facts and (2) a redacted transcript of the *Rasmussen* hearing. On April 5, 2019, the district court issued its findings of fact, conclusions of law, and order, finding Loose guilty of all three counts. The district court sentenced Loose to 30 days in jail, with execution of 28 days stayed, and ordered that the remaining two days be served within 180 days via the Sentencing to Serve work program.

This appeal follows.

DECISION

I. Loose forfeited her due-process challenge by failing to raise it in the district court.

Loose first argues that the district court erroneously denied her motion to suppress the results of the blood test because the officers advised her in a manner that violated her due-process rights. Loose concedes that she did not specifically raise a due-process challenge to the blood test in the district court but argues that the issue is not forfeited and that, even if it is, this court should consider it in the interests of justice. The state argues that Loose forfeited the due-process challenge and that this court should not consider it.

We begin by examining the challenge that Loose did raise to the blood test in the district court. Loose moved to suppress the results of the blood test but did so on the ground that Officer Schmidt violated her right to counsel by failing to inform her that she had the right to speak with an attorney before deciding whether to submit to the blood test. She argued that the Minnesota Supreme Court's decision in *Friedman v. Comm'r of Pub. Safety*

controlled. 473 N.W.2d 828, 831 (Minn. 1991). In *Friedman*, the supreme court held that suspected-impaired drivers have a limited right to counsel when deciding whether to submit to implied-consent testing. *See id.* at 835. Minnesota’s implied-consent law “mandates—as a condition of the privilege to drive in Minnesota—that any person who is in physical control of a motor vehicle within the state ‘consents . . . to a chemical test of that person’s blood, breath, or urine for the purpose of determining the presence of . . . an intoxicating substance.’” *State v. Rosenbush*, 931 N.W.2d 91, 95 (Minn. 2019) (quoting Minn. Stat. § 169A.51, subd. 1(a) (2018)). When officers request a chemical test under this law, they must give the person an implied-consent advisory consistent with Minn. Stat. § 169A.51, subd. 2 (2018).

Though Loose was asked to submit to a blood test pursuant to a search warrant—not pursuant to the implied-consent law—she argued that the *Friedman* holding extended to her and accordingly afforded her a limited right to counsel. The district court disagreed, holding that the limited right to counsel is specific to the implied-consent advisory context. After Loose filed her notice of appeal in this case, the supreme court issued its decision in *Rosenbush* that a suspected-impaired driver does not have a limited right to counsel when the driver is asked to submit to a blood test pursuant to a search warrant. 931 N.W.2d at 98. It reasoned, in part, that “the presence of a warrant fundamentally changes [a driver’s] encounter from the one at issue in *Friedman*.” *Id.* at 97.

Presumably in light of the intervening *Rosenbush* decision, Loose does not argue on appeal that the district court erred by declining to suppress her blood test results based on a violation of the right to counsel. Instead, she challenges the blood test on the ground that

the officers who took the blood sample violated her due-process rights by misinforming her about the consequences of refusal to submit to the test. Her argument is based on the principle that “[d]ue process does not permit those who are perceived to speak for the state to mislead individuals as to either their legal obligations or the penalties they might face should they fail to satisfy those obligations.” *McDonnell v. Comm’r of Pub. Safety*, 473 N.W.2d 848, 854 (Minn. 1991). Minnesota courts have found due-process violations in connection with implied-consent advisories when:

(1) the person whose license was revoked submitted to a breath, blood, or urine test; (2) the person prejudicially relied on the implied consent advisory in deciding to undergo testing; and (3) the implied consent advisory did not accurately inform the person of the legal consequences of refusing to submit to the testing.

Morehouse v. Comm’r of Pub. Safety, 911 N.W.2d 503, 505 (Minn. 2018) (quotation omitted).⁵

Appellate courts “generally will not decide issues which were not raised before the district court.” *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). This includes constitutional questions of criminal procedure. *Id.*; *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989). This rule exists both “to encourage the development of a factual basis for claims at the district court level,” *Johnson v. State*, 673 N.W.2d 144, 147 (Minn. 2004), and to “allow the [district] court to correct any alleged errors before a . . . verdict,” *State v.*

⁵ We note that *Morehouse* involved a challenge to a driver’s license revocation, not a suppression motion in a criminal case. See *Morehouse*, 911 N.W.2d at 506. Furthermore, it involved an implied-consent advisory, not a search warrant for blood or urine testing. *Id.* For the limited purposes of this opinion, we assume without deciding that the above standard would indeed apply in the context of this case.

Grunig, 660 N.W.2d 134, 136 (Minn. 2003). The rule is not absolute, though, and an appellate court may choose to examine a newly raised issue “when the interests of justice require consideration of such issues and doing so would not unfairly surprise a party to the appeal.” *Roby*, 547 N.W.2d at 357. Factors for determining whether the interests of justice weigh in favor of consideration include the opportunity of the party to raise the issue in the district court, whether the issue was implicit in the issues actually considered by the district court, and whether the factual record is sufficiently developed as to the issue. *See Johnson*, 673 N.W.2d at 148.

Loose argues that she did not forfeit the due-process challenge to the blood test because it “falls within the general challenge of the legality of her blood draw as obtained in violation of her right to refuse.”⁶ The state responds that the due-process issue was certainly forfeited and that an issue is not preserved merely because it *relates* to another issue that was raised—rather, the specific argument must have been raised. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (explaining that a party may not “rais[e] the same general issue litigated below but under a different theory”).

We conclude that the due-process challenge was forfeited. The proper inquiry is whether the issue was raised in the district court, not whether it relates to an issue raised in the district court. *Id.* Whether the newly raised issue relates to an issue actually raised in

⁶ She cites only *State v. Trahan*, 870 N.W.2d 396, 404 (Minn. App. 2015), *aff’d*, 886 N.W.2d 216 (Minn. 2016), in support of this proposition. *Trahan* does not discuss waiver, though, and at most shows that the due-process issue and the counsel issue regarding the blood test are related.

the district court may instead be relevant in the context of the interests-of-justice exception, which we turn to next.

Loose argues that this court should consider the due-process challenge in the interests of justice because it is legally related to the issue raised in the district court and the factual record is sufficiently developed for this court to consider it. The state responds that the interests of justice do not support consideration because, first, the right-to-counsel challenge and the due-process challenge are legally distinct, implicating different bodies of caselaw and divergent factual bases. The right-to-counsel argument was primarily a legal one and turned on the analysis in the *Friedman* line of cases. The due-process argument, by contrast, implicates another line of cases and a different standard, which asks whether the defendant “prejudicially relied” on statements by the officers. *See Johnson v. Comm’r of Pub. Safety*, 911 N.W.2d 506, 508-09 (Minn. 2018); *Morehouse*, 911 N.W.2d at 505.⁷ Further, the state argues, the factual record is insufficient to allow this court to consider Loose’s new legal theory. Loose would have had to have made a claim in the district court that she prejudicially relied on the officer’s advisory, and she did not do so. The state submits that the record contains no evidence regarding prejudicial reliance, such as “how [Loose] felt about the search warrant, concerns about her options, or that she would have

⁷ The state notes in its brief that it “questions whether *Morehouse* is even applicable in this case because [Loose] was subject to a search warrant and not an implied consent advisory.” It uses the *Morehouse* framework, though, for the purpose of showing that the legal and factual inquiries are different under the newly raised due-process issue than under the right-to-counsel issue argued in the district court. Again, this opinion does the same, as we do not reach the issue of *Morehouse*’s applicability in this context because it was not raised in the district court.

elected to take a urine test if offered.” And finally, the state argues that Loose had “every opportunity” to raise the due-process argument before the district court. The primary cases that Loose’s arguments rely on, *Morehouse* and *Johnson*, were decided by the Minnesota Supreme Court on May 2, 2018, and the *Rasmussen* hearing in this case occurred October 10, 2018. *See Johnson*, 911 N.W.2d 506; *Morehouse*, 911 N.W.2d 503.

We conclude that the interests-of-justice factors do not weigh in favor of considering the newly raised issue here. Loose had the opportunity to raise the due-process theory below. There were no procedural hurdles to her doing so, and she does not rely on any novel legal authority. *See Johnson*, 673 N.W.2d at 148 (determining, by contrast, that “[t]he procedural posture of this case provided little opportunity to raise the issue” earlier). The alleged due-process violation was not implicitly addressed by the district court’s decision on whether Loose had a limited right to counsel when confronted with a blood test. And the standard that Loose urges the court to apply asks whether she “prejudicially relied on the . . . advisory in deciding to undergo testing,” *Morehouse*, 911 N.W.2d at 505, but the record does not contain facts regarding prejudicial reliance, much less a factual finding on the issue. We accordingly decline to depart from the general rule that appellate courts will not decide issues that were not raised before the district court. *See Roby*, 547 N.W.2d at 357.

II. The district court did not commit prejudicial error by declining to suppress Loose’s statement about needles in her purse.

Loose next argues that the district court erred by declining to suppress her statement to Officer Chorlton that she had a needle in her purse because that statement was the

product of a custodial interrogation and the officers had not provided her a *Miranda* warning. “The issue of whether a suspect is in custody and therefore entitled to a *Miranda* warning presents a mixed question of law and fact qualifying for independent review.” *State v. Sterling*, 834 N.W.2d 162, 167 (Minn. 2013) (quotations omitted). “An appellate court reviews a [district] court’s findings of historical fact relating to the circumstances of the interrogation pursuant to the clearly erroneous test but makes an independent review of the [district] court’s determination regarding custody and the need for a *Miranda* warning.” *Id.* at 167-68 (Minn. 2013) (quotations omitted); *see also State v. Horst*, 880 N.W.2d 24, 31 (Minn. 2016). An appellant whose statement was admitted in violation of *Miranda* is not entitled to relief if the state can show beyond a reasonable doubt that the error was harmless. *State v. Farrah*, 735 N.W.2d 336, 343 (Minn. 2007).

The Fifth Amendment to the United States Constitution provides that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. To protect this right, “the United States Supreme Court has held that statements made by a suspect during a ‘custodial interrogation’ are admissible only if the police provided a *Miranda* warning before the statements were made.” *Sterling*, 834 N.W.2d at 168; *see Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S. Ct. 1602 (1966)). “Thus, a *Miranda* warning is required if a suspect is both in custody and subject to interrogation.” *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010). It is undisputed that Loose was not given a *Miranda* warning before making the statement at issue. We begin by examining whether the statement was the product of a custodial interrogation before turning to whether any error in admitting the statement was harmless beyond a reasonable doubt.

A. Custodial interrogation

An interrogation is custodial if, based on all the surrounding circumstances, “a reasonable person under the circumstances would believe that he or she was in police custody of the degree associated with formal arrest.” *Id.* (quotation omitted). In *State v. Vue*, the supreme court provided a non-exhaustive list of factors for determining custody:

Factors indicative of custody include (1) the police interviewing the suspect[] at the police station; (2) the suspect being told he or she is a prime suspect in a crime; (3) the police restraining the suspect’s freedom of movement; (4) the suspect making a significantly incriminating statement; (5) the presence of multiple officers; and (6) a gun pointing at the suspect. . . .

Alternatively, factors that may indicate the suspect is not in custody include (1) questioning the suspect in his or her home; (2) law enforcement expressly informing the suspect that he or she is not under arrest; (3) the suspect’s leaving the police station without hindrance; (4) the brevity of questioning; (5) the suspect’s ability to leave at any time; (6) the existence of a nonthreatening environment; and (7) the suspect’s ability to make phone calls.

797 N.W.2d 5, 11 (2011) (quotations and citations omitted). “‘On-the-scene’ questioning, where the officers are simply trying to get a preliminary explanation of a confusing situation, does not require a *Miranda* warning.” *State v. Walsh*, 495 N.W.2d 602, 604-05 (Minn. 1993). And the use of handcuffs as a restraint, by itself, does not necessarily mean that the person is in custody for the purposes of *Miranda*. *Id.* at 605.

Here, the district court’s initial suppression order indicated that Loose’s “custody began when she was placed in handcuffs and placed in the back of the squad car” and that any statements made after that point were suppressed. The parties jointly filed a motion

requesting clarification of that order, specifically asking whether Loose's statement that she had a needle in her purse was suppressed. In its order clarifying the ruling, the district court stated that it had previously made the following finding of fact:

Off. Chorlton testified he proceeded to ask [Loose] if she had any needles in her purse and [Loose] responded she [did]. Off. Chorlton testified that [Loose's] response made him uncomfortable and he then decided to put [Loose] in handcuffs and place her in the back of his squad car based on his safety concerns.

The district court then explained that it would not suppress the statement about the needle because "[t]his admission was made prior to [Loose] being placed in police custody."

Both parties agree that the district court's finding that Loose made the statement about the needle before she was handcuffed is clearly erroneous.⁸ The record supports this agreement. The body-camera footage shows that Loose was handcuffed before she made the statement. The state argues, though, that the district court nonetheless properly ruled that the statement about the needle was not made as part of a custodial interrogation.

The record, specifically Officer Chorlton's body-camera footage, shows that when the officers arrived on the scene of the crash, they immediately learned from the tow-truck driver that there was a syringe in Loose's car. Officer Chorlton immediately went to speak with Loose, who appeared very nervous and was digging through her purse. Loose admitted to struggling with heroin addiction, and Officer Chorlton stepped away from her briefly and asked the tow-truck driver where he had seen the needle and whether Loose had moved

⁸ We note that, while the parties jointly requested clarification of the suppression order, neither explicitly drew the district court's attention to the fact that this finding conflicts with the body-camera footage.

it. The tow-truck driver indicated it had been on the seat and he thought that she moved it. Officer Chorlton returned to Loose, who gave an account of how the crash occurred, and that is when Officer Chorlton asked her to put her hands behind her back. When Loose repeatedly asked why she was being handcuffed, he explained that she seemed to be under the influence of something and that he was going to have DREs check her out. He then asked her if there was anything on her that he needed to be concerned with, and Loose responded, “No,” but that there was a needle in her purse.

We apply the factors from *Vue* to determine whether Loose was in custody for the purposes of a *Miranda* warning when she made the statement at issue. *See Vue*, 797 N.W.2d at 11. The following factors suggest that she was not in custody: Officer Chorlton’s questioning leading up to the statements about the needle was brief, and Loose was never expressly told that she was under arrest.

Other factors, however, do suggest custody. Loose’s freedom of movement was restrained because her hands were handcuffed behind her back. *See id.* Loose made a “significantly incriminating” statement by revealing that there was a needle in her purse, given Officer Chorlton’s previous questioning about the needle in her car and whether she was “high.” *See id.* While Loose was not specifically told that she was the “prime suspect in a crime,” she had revealed that she was driving and had hit a car parked on the opposite side of the street, nearly head-on, and it was against this backdrop that Officer Chorlton told her that he believed “she was under the influence of something.” Officer Chorlton also told Loose that the “DREs” were going to come check her out—without explaining that acronym—and said that if she was not under the influence, she would be released. The

officer's statements, under the circumstances, would lead a reasonable person in Loose's position to believe that she was suspected of the crime of driving while under the influence of a controlled substance. *See Thompson*, 788 N.W.2d at 491 (explaining that the inquiry for whether an interrogation is "custodial" turns on what a reasonable person under the circumstances would understand as to their custody status). The totality of the circumstances leads us to conclude that Loose was in custody for the purposes of a *Miranda* warning.

The supreme court's decision in *Walsh* does not change our custody determination. *See Walsh*, 495 N.W.2d at 604-05. The state argues that Loose's case is like *Walsh* in that the paramount interest at the time of the handcuffing was officer safety. *See id.* In *Walsh*, two officers were dispatched to a home after two 911 callers simultaneously reported that a murder had occurred there. *Id.* at 603. The officers found the garage door "busted out" and Walsh in the house, still on the phone with the 911 operator. *Id.* One of the deputies handcuffed Walsh, explicitly telling him that he was not under arrest but was being handcuffed for officer safety and to determine what had happened. *Id.* While one officer went upstairs, the other asked Walsh about what had happened. When the upstairs officer found the victim's body and yelled down to the questioning officer, the questioning officer moved Walsh and handcuffed him to a railing. *Id.* The Minnesota Supreme Court held that Walsh was not in custody for the purposes of *Miranda* until he was moved to the railing. *Id.* at 605. The initial questions and corresponding answers were admissible as part of a preliminary investigation, where the "the deputies had just arrived on a confusing and gory crime scene in response to two nearly simultaneous 911 calls from different callers" and it

was “reasonable the officers should be allowed to ask the relatively general questions they asked without a *Miranda* warning.” *Id.*

The state argues that the road-side situation with Loose was similarly dangerous because Officer Chorlton did not know where the needle that the tow-truck driver reported was located, and the needle’s unknown whereabouts created a “confusing situation.” Officer Chorlton had been speaking with Loose for several minutes before deciding to handcuff her, though, and she had not exhibited any threatening behaviors. And the suspected crime was driving while under the influence of a controlled substance, not murder. Further, the court must consider the totality of the circumstances in deciding whether an individual is in custody for the purposes of *Miranda*, and the *Vue* factors, as explained above, weigh in favor of custody. *See Vue*, 797 N.W.2d at 11.

The custody determination does not end the inquiry though. As the state points out, Loose was only entitled to the protections of *Miranda* if she was subject to custodial *interrogation*. The test for whether a person was subjected to interrogation is “whether it was first, questioning initiated by law enforcement officers, and second, whether under a totality of circumstances it would be reasonably likely to elicit an incriminating response.” *State v. Tibiatowski*, 590 N.W.2d 305, 310-11 (Minn. 1999) (quotations omitted). It is uncontested that the question about whether Loose had needles on her person was initiated by a law enforcement officer. The state contends, though, that the question was intended to protect officer safety, and not to elicit an incriminating response.

After handcuffing Loose, Officer Chorlton asked, “Okay, is there anything on you that I need to be concerned about? Needles?” Whether he thereby subjected Loose to an

interrogation within the meaning of *Miranda* is a close question. On the one hand, it could be construed as an “appropriate on-site general question under the circumstances presented.” *State v. Werner*, 725 N.W.2d 767, 771 (Minn. App. 2007). On the other, Loose had just caused a car accident, and Officer Schmidt was trying to determine whether she did so because she was under the influence of a controlled substance. We need not decide, though, whether Loose was subject to an interrogation within the meaning of *Miranda* if any erroneous admission of evidence was harmless, which we turn to next.

B. Harmless error

Even if the district court erroneously admitted Loose’s statement that she had needles in her purse, “reversal is not warranted if the error was harmless beyond a reasonable doubt.” *State. v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015) (quotation omitted). “We determine whether an error is harmless beyond a reasonable doubt by analyzing whether the error reasonably could have impacted upon the . . . decision.” *See id.* (quotation omitted).

Because Loose opted for a bench trial rather than a jury trial, the district court made explicit statements about the bases for its decisions. As to the first count, driving while under the influence of a controlled substance, the district court found:

The record shows there were several indications [that] Ms. Loose was impaired. First, Ms. Loose hit a legally parked vehicle located on the opposite side of the street she was driving on, causing heavy damage to both vehicles. Second, Officer Chorlton was shown a picture of a syringe located on the seat in Ms. Loose’s vehicle by the tow truck driver on the scene. Third, Officer Chorlton noted Defendant’s pupils were constricted, she continuously moved in an anxious excited manner and was unable to calm down. Fourth, Ms. Loose

admitted to having two syringes in her purse, informed Officer Chorlton that she does have an addiction to heroin which she is struggling with and in treatment for.

As to the second count, driving while under the influence of any amount of a schedule I or II controlled substance, the district court found:

[T]he BCA report shows a finding of .033mg/L of morphine in Ms. Loose's blood. . . . Further, a consideration of the totality of the circumstances lead the Court to conclude Ms. Loose was driving under the influence of a schedule I or II controlled substance or its metabolite in her body. Those circumstances include: (1) the BCA report; (2) the syringe seen in the photograph and those located in her purse;⁹ (3) Officer Chorlton's observations of Ms. Loose's mannerisms, behaviors and constricted pupils; (4) the extent of damage sustained by both vehicles and; (5) Ms. Loose's statement that she was struggling with an addiction to heroin.

The district court did not reference needles in its findings on careless driving.

As to the first count, there is substantial evidence, without Loose's statement about the needles, to support the conviction for driving while under the influence of a controlled substance. In addition to Loose's driving conduct and behavior suggesting intoxication, the district court also relied on the picture of the syringe taken by the tow-truck driver and Loose's statement that she is addicted to heroin. Ultimately, that Loose had needles not only in her car, but also in her purse, has little practical import under these circumstances where Loose was the sole person in the vehicle at the time of the collision and admitted to struggling with heroin addiction. As to count two, driving while under the influence of any amount of a schedule I or II controlled substance, the district court's decision indicates that

⁹ As the parties point out, this finding ought to have been excluded because the actual needles found in Loose's purse were suppressed.

it rests primarily on the BCA results, which showed that Loose had 0.033 mg/L of morphine, a metabolite of heroin, in her blood. The statement about the syringes located in her purse appears as part of an additional “totality of the circumstances” analysis and is made in reference to the “syringe seen in the photograph.” Again, the fact of consequence to the district court appears to be that Loose—who admittedly suffered from heroin addiction—had a syringe or needle accessible, and the statement that she made about needles in her purse is not particularly significant when a needle was also photographed on her car seat. We accordingly conclude that any error in the admission of Loose’s statement about the needles in her purse was harmless beyond a reasonable doubt.

III. The district court erred by entering judgments of conviction and sentences for two counts of DWI and by sentencing Loose for all three counts.

Loose also argues that the district court committed reversible error by convicting her of two counts of DWI because those counts were part of a single behavioral incident. “[I]f a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses.” Minn. Stat. § 609.035, subd. 1 (2016); *see also* Minn. Stat. § 609.04, subd. 1(2016). “The test for determining if violations of two or more traffic statutes result from a single behavioral incident [is whether] they occur at substantially the same time and place and arise out of a continuous and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment.” *State v. Reimer*, 625 N.W.2d 175, 176-77 (Minn. App. 2001) (quotation omitted). The state bears the burden to prove that the offenses were not part of a single behavioral incident. *Id.* at 177. “When the facts are not in dispute, the question of

whether multiple offenses are part of a single behavioral incident is one of law that [appellate courts] review de novo.” *State v. Fichtner*, 867 N.W.2d 242, 253 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

Here, both parties agree that Loose’s two driving-under-the-influence convictions resulted from a single behavioral incident. Loose cites *State v. Clark*, 486 N.W.2d 166 (Minn. App. 1992), as controlling. In *Clark*, the district court convicted Clark of both (1) driving with an alcohol concentration of 0.10 and (2) driving under the influence of alcohol. 486 N.W.2d at 170. This court vacated Clark’s conviction for driving with an alcohol concentration of 0.10, noting that, while “[d]riving under the influence of alcohol and driving with a blood alcohol concentration of .10 do not necessarily rest upon the same proof and are not lesser-included offenses of each other,” section 609.04 nonetheless forbids “multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.” *Id.* at 170-71 (quotation omitted). Here, Loose was similarly convicted of both (I) fourth-degree driving while under the influence of a controlled substance in violation of Minn. Stat. § 169A.20, subd. 1(2), and (II) fourth-degree driving under the influence of any amount of a schedule I or II controlled substance in violation of Minn. Stat. § 169A.20, subd. 1(7). Accordingly, one of her convictions must be vacated.

The state also correctly notes that the district court erred by *sentencing* Loose on all three counts. If careless driving is charged as a lesser-included offense or is part of the same behavioral incident as a DWI offense, Minn. Stat. § 609.035, subd. 1, prohibits imposing multiple sentences. *State v. Gladden*, 144 N.W.2d 779, 783 (Minn. 1966). Here,

like in *Gladden*, Loose’s “careless driving and driving while under the influence occurred during a continuous and uninterrupted operation of [her] car,” and “[b]oth offenses manifest the requisite indivisible state of mind.” *Id.* at 783. Accordingly, Loose should have been sentenced on only one count, and no sentences should have been pronounced on the other two. We accordingly remand to the district court to (1) vacate one of the DWI convictions and (2) resentence Loose on only one of the remaining convictions.

Affirmed in part, reversed in part, and remanded.