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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0796**

State of Minnesota,
Respondent,

vs.

Danny Carl Croon, Jr.,
Appellant.

**Filed April 13, 2026
Reversed and remanded
Ross, Judge**

Isanti County District Court
File No. 30-CR-22-379

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

Jeffrey R. Edblad, Isanti County Attorney, Nicholas J. Colombo, Assistant County
Attorney, Cambridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Smith,
John, Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Isanti County investigators arrested Danny Croon on suspicion of third-degree murder for selling fentanyl-laced pills that caused the decedent's death, and one investigator told Croon, "I would like to talk to you about what happened, because I don't believe you knew exactly what was happening . . . but I believe you're responsible. So, what I would like to do is talk to you, if you're willing." He then removed Croon from the squad car to a position where he told him, "Nobody can see us" and "I don't believe you had any idea that it was laced with fentanyl." Croon responded by admitting that he had given the decedent pills that he thought were Percocet. Croon unsuccessfully moved the district court to suppress his admission as fruit of a *Miranda* violation, and the district court relied on the admission to find Croon guilty in a stipulated-evidence trial. It later denied Croon's petition for postconviction relief based on ineffective assistance of counsel. We hold that the investigator's multiple inquisitive statements constituted a non-Mirandized interrogation because they were reasonably likely to elicit an incriminating response, and we also hold that the district court violated *Miranda*'s self-incrimination safeguards by admitting Croon's responsive statements as evidence. We therefore reverse Croon's conviction without reaching his other asserted bases for relief, and we remand for further proceedings.

FACTS

Alex Kotzenmacher's father found him deceased in his bed one morning in January 2022. Isanti County investigators seized a cellphone and a ziplock baggie containing bluish

green pills. A medical examiner determined that fentanyl caused Alex's death, and messages sent to and from his phone and video-surveillance footage from the Isanti VFW post led investigators to suspect that Danny Croon had delivered the fatal drugs to Alex the evening before his death. The state charged Croon in May 2022 with third-degree murder for causing Alex's death by selling him a controlled substance in violation of Minnesota Statutes section 609.195(b) (2020), and investigators obtained a warrant for his arrest.

Isanti County investigators Wayne Seiberlich and his partner went to Croon's workplace, placed him under arrest, and handcuffed him. Neither investigator advised Croon of his right to remain silent or warned him that anything he said could be used against him in court, as required for custodial interrogations by *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), and *State v. Crisler*, 438 N.W.2d 670, 672 (Minn. 1989). Croon asked the investigators about the arrest, "For what," and Investigator Seiberlich answered, "Homicide." When Croon asked if they were joking, Investigator Seiberlich replied, "It's not a joke," adding, "We'll talk about it, but this is not the place to do it."

Investigator Seiberlich told the handcuffed Croon, "Alex Kotzenmacher. You sold the drugs that killed him." Croon became openly emotional and denied killing anyone. Investigator Seiberlich replied, "This is not the place to talk about it We'll talk about it if you are willing to talk about it." Croon became noticeably distraught, referencing the possibility of prison. Investigator Seiberlich offered, "My guess is, obviously, you didn't know that—that it was laced with fentanyl, and that's what killed him, okay? We'll talk about it, but now is not the place for it." He escorted Croon outside his workplace and placed him in the back of a patrol SUV.

The investigators then drove Croon toward the Isanti County Jail. On the way, Croon asked the investigators what was going to happen to him. Investigator Seiberlich said that they were taking him to jail to be booked. He then told Croon, “I would like to talk to you about what happened, because I don’t believe that you knew exactly what was happening, but you’re—but I believe you’re responsible. So, what I would like to do is to talk to you, if you’re willing. But you don’t have to talk to me at all, okay?”

As the SUV pulled up to the jail, Investigator Seiberlich told Croon that he would try to find a lighter so Croon could smoke before going inside. Croon asked, “Didn’t you want to talk to me?” Investigator Seiberlich answered, “I would like to, if you’re willing to talk with me.” Croon asked, “Right now?” Investigator Seiberlich answered, “No, we have to, uh, I’ve got to put you in the computer system downstairs first.” Croon then asked, “Can I have a conversation with you right now, please, outside of this car?” Investigator Seiberlich said, “If you want to, you can, ok?”

The investigators removed Croon from the SUV. Investigator Seiberlich took the still-handcuffed Croon to the front of the car, saying, “We’ll just go up front, here, okay? Nobody can see us.” Croon and Investigator Seiberlich then had the following exchange, Croon distraught and weeping throughout it:

CROON: I don’t—I just can’t believe that Alex is like—I didn’t mean to.

SEIBERLICH: I believe that. I believe that 100%. Danny, I believe that 100%.

CROON: He was a friend.

SEIBERLICH: I know he was a friend of yours. I know that he reached out to you. I know he was asking for those, and you came through as a friend, and you gave it to him. And I don't believe—I don't believe you had any idea that it was laced with fentanyl. Or, if you did, I don't believe that you knew that what happened was going to happen.

CROON: I thought that—I thought that I just got Percs. Look, I'll tell you, like, whoever, like for real, like I need to know, though, like I'm not—when I made a deal, whatever, with Officer [indiscernible], he fucked me, and I didn't get anything out of it. Like, I need you to promise me that I can get out of here. Like please, I'll give—like, I have information. Like, I do.

Investigator Seiberlich continued this exchange with Croon outside the jail in sympathetic tones for about eight minutes. During it, Croon said, “I don't think I'll ever be able to forgive myself. He was a really good guy.” Investigator Seiberlich told Croon that he could not guarantee him a deal but said that he would disclose the evidence against him “when we talk, if you're willing to do that,” adding, “I hopefully can kind of fill in the pieces that I don't know.” He added that Alex's autopsy revealed that fentanyl had caused his death. Croon's overt distress intensified, and he admitted, “I should have never . . . got involved.” With eyes closed and still crying, Croon bemoaned, “I'm sorry Alex . . . I'm so sorry.” Investigator Seiberlich told Croon that he would enter him into the computer system and then talk to him again, if he was willing, but it “has to be recorded.” Croon asked, “Has to be?” Investigator Seiberlich confirmed so and advised, “If you talk to me, I just want to talk about Alex, what happened with Alex, okay? . . . But if you're willing to talk to me about the stuff specific to why we're here that's—I need your side of what happened.” The other investigator told Croon he would give him back his cigarettes but had to keep the

pills they found on his person during his arrest, to which Croon asked, “So, hold on. Wait a minute. Those that you got out of my pocket, they have fentanyl in them?” Investigator Seiberlich answered, “I don’t know. All I know is the ones that Alex had had fentanyl. And that was in January.” The investigators then escorted Croon inside the jail for booking.

After the booking process, Investigator Seiberlich read Croon a *Miranda* warning and attempted to elicit a further statement from him. Croon immediately invoked his right to remain silent by asking for an attorney, refusing to answer any questions. He later moved the district court to suppress the statements he had already made after his arrest, arguing that they resulted from a violation of the Supreme Court’s restrictions in *Miranda*.

The district court conducted a hearing on Croon’s motion. It received into evidence the body-camera footage of the two investigators, which had captured the events and the exchanges summarized above. Investigator Seiberlich acknowledged that the exchange had preceded his later *Miranda* warning, maintaining that he had not needed to provide the warning sooner because he never asked Croon any “formal questions.”

The district court denied Croon’s suppression motion. It found that he was in custody when he made his incriminating statements but held that Investigator Seiberlich’s statements did not constitute an interrogation because he had not expressly asked Croon any questions and had no reason to know that his statements would elicit incriminating responses. Croon waived his right to a jury trial and consented to the state’s presenting the case to the district court for a determination of guilt on stipulated evidence. The district court considered the state’s trial evidence, including Croon’s statements captured by the body cameras, and it found him guilty of third-degree murder. The district court sentenced

Croon to serve 134 months in prison after denying his motion for a downward dispositional sentencing departure.

Croon appealed from his conviction to this court, which stayed the appeal pending the district court's decision on his contemporaneous petition for postconviction relief on the grounds that he received ineffective assistance of counsel. The district court denied Croon's postconviction petition, and we now are asked to decide both his direct appeal and his appeal from the postconviction decision.

DECISION

Croon directly challenges his conviction and the district court's decision denying his postconviction petition. He argues that the district court erred by failing to suppress his postarrest statements, accepting his jury-right waiver despite his trial attorney's assurances that he would receive a downward sentencing departure and failing to recognize that he received ineffective assistance of counsel based on his attorney's failure to review the full autopsy report and assurance that the district court would grant his request for a sentencing departure. We address only one issue, *Miranda*, as our resolution of that issue removes the need to address the others.

Admitting Croon's statements as evidence was error under *Miranda*.

Croon argues that his conviction should be reversed because the district court erroneously admitted and relied on statements the investigators obtained in violation of the protections afforded to him under *Miranda*. The federal and Minnesota constitutions protect against compulsory self-incrimination. U.S. Const. amend. V; Minn. Const. art. I, § 7. To safeguard these protections, police must inform individuals undergoing "custodial

interrogation” of specific rights or risk the exclusion from trial of any incriminating statements obtained during the interrogation. *Miranda*, 384 U.S. at 444; *Crisler*, 438 N.W.2d at 671. We review the district court’s factual findings for clear error and its legal determinations *de novo*, including whether Croon was in custody and under interrogation. *State v. Heinonen*, 909 N.W.2d 584, 590 (Minn. 2018); *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010).

Caselaw has established what it means for a person to be “in custody” and what it means for police to be conducting an “interrogation.” No party questions whether Croon was in custody at the time he made his incriminating statements. Law enforcement officers have placed a person “in custody” for the purposes of a *Miranda* analysis if a reasonable person in that person’s situation would believe that his freedom was restricted to a degree equivalent to a formal arrest. *Stansbury v. California*, 511 U.S. 318, 322 (1994). This of course includes formal arrests. *See State v. Champion*, 533 N.W.2d 40, 43 (Minn. 1995). The investigators formally arrested Croon, informing him that he was the subject of an arrest warrant for homicide and placing him in handcuffs before Investigator Seiberlich first made any statement that allegedly began an interrogation. And when the investigator made additional statements that were also part of his alleged interrogation, he and his partner had already searched Croon, secured him in the back seat of their unmarked but caged squad SUV, and were driving him to jail. The district court correctly concluded, and the state correctly acknowledges, that Croon was in custody when he made his incriminating statements to the investigators.

This appeal turns instead on the disputed, second element: interrogation. Croon says he was the subject of an interrogation and the state says he was not. An “interrogation” for the purposes of applying *Miranda* involves not only actual police questions in the usual sense, but also the “functional equivalent” of actual questions. *Rhode Island v. Innis*, 446 U.S. 291, 300–01 (1980); *see also Charette v. State*, 980 N.W.2d 310, 318 (Minn. 2022). This includes “words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response.” *Innis*, 446 U.S. at 301. The focus is not on what the investigating officers intended by their words and actions but on what they should have reasonably expected to result from them. *See id.* The district court concluded that Croon was not being interrogated. We reach a different conclusion.

We hold that Croon was the subject of police interrogation. The undisputed facts, which are documented in the body-camera footage, inform us that Investigator Seiberlich should have known that his series of statements by themselves, and especially in the context of Croon’s emotional reaction to learning that he was being arrested for homicide, would have drawn Croon’s incriminating responses. Croon reacted in a shocked fashion when Investigator Seiberlich told him, “Alex Kotzenmacher. You sold the drugs that killed him.” Croon became immediately emotional and denied killing anyone. Investigator Seiberlich responded by introducing the idea of Croon’s giving his side of the story with, “This is not the place to talk about it We’ll talk about it if you’re willing to talk about it.” While an officer telling a detained suspect that he would like to “talk” with him may not on its own constitute an interrogation, *see United States v. Head*, 407 F.3d 925, 928–29 (8th Cir. 2005), we consider the totality of the circumstances surrounding such a request, *Heinonen*,

909 N.W.2d at 589–90. Beginning at that point and throughout the non-Mirandized exchange that ended when they entered the jail, at least 11 times Investigator Seiberlich expressly or implicitly referred to the notion of Croon’s “talk[ing]” about his conduct. After Croon reminded the investigator that he had expressed his desire for Croon to talk about the incident, Investigator Seiberlich invited again, “I would like to, if you’re willing to talk with me.” And when Croon asked whether he could talk “Right now?” the investigator first implied that the conversation should wait until after Croon’s processing inside the jail, but he then led Croon aside and encouraged him to “talk” after Croon urged, “Can I have a conversation with you right now, please, outside of this car?” More precisely, he told Croon he could talk right now “[i]f you want to,” escorted him to a purportedly inconspicuous spot at the front of the squad car, and he represented to Croon, “Nobody can see us.”

A reasonable person in Investigator Seiberlich’s shoes should have known that his repeated references to Croon’s “talk[ing] to” him about Croon’s involvement in Alex’s death would have drawn Croon’s incriminating responses. Immediately following up on Croon’s first incriminating statement (“I just can’t believe that Alex is like—I didn’t mean to.”), Investigator Seiberlich made another seemingly (and perhaps genuinely) sympathetic statement that he should have known would likely draw additional inculpatory responses from Croon: “I believe that. I believe that 100%. Danny, I believe that 100%.”

We believe that, by this point in the dialogue, the investigator had already crossed the line into interrogation by means of statements that were functionally equivalent to questions. But the exchange that followed leaves no doubt. The *Innis* Court taught that police statements that involve “psychological ploys, such as . . . posi[ting] the guilt of the

subject, . . . minimiz[ing] the moral seriousness of the offense, and . . . cast[ing] blame on the victim or on society” are the sort of statements that constitute interrogation. 446 U.S. at 299 (quotations omitted). In that vein, the investigator’s earlier enticement, “I would like to talk to you about what happened because I don’t believe you knew exactly what was happening,” was already interrogative. He maintained the interrogation using the same tactic outside the jail when he replied to Croon’s tearful comment about Alex, “He was a friend.” Investigator Seiberlich replied in a manner that would almost certainly draw an answer under these circumstances:

I know he was a friend of yours. I know that he reached out to you. I know he was asking for those, and you came through as a friend, and you gave it to him. And I don’t believe—I don’t believe that you had any idea that it was laced with fentanyl. Or, if you did, I don’t believe that you knew that what happened was going to happen.

Croon immediately responded with his clearest incriminating statement: “I thought that I just got Percs I need you to promise me that I can get out of here I have information.” Given the investigator’s words, the circumstances in context, Investigator Seiberlich’s repeated invitations to “talk” if Croon wanted to, and Croon’s distraught, emotionally overwhelmed demeanor, we have no difficulty concluding from the totality of the circumstances that the investigator’s statements constituted an interrogation. We do not say that he intended his words as a ploy to evoke Croon’s guilty response, but we say that they constitute interrogation because they were reasonably likely to achieve that result. While the investigator later characterized his words accurately as not “formal questions,” they were, as far as *Miranda* and *Innis* are concerned, part of a psychological ploy that

drew a response by minimizing the seriousness of Croon's offense and playing the morally-defensible-because-you-were-just-helping-a-needy-friend card. They were interrogatory statements.

We are not persuaded otherwise by the state's observation that Croon himself several times asked Investigator Seiberlich to speak with him. Croon asked to speak with Investigator Seiberlich only after the investigator began making repeated requests to hear from Croon. And he gave the investigator the most incriminating details of his culpability only after the investigator's sympathetic nudging coaxed them out. *See State v. Tibiatowski*, 590 N.W.2d 305, 310–11 (Minn. 1999). The state also tries to characterize Investigator Seiberlich's statements as "routine booking questions," which do not require police to Mirandize their subject beforehand. *See State v. Widell*, 258 N.W.2d 795, 797 (Minn. 1977). But routine booking questions generally concern biographical details, like the suspect's name, weight, and height. *See Collins v. State*, 385 N.W.2d 52, 54 (Minn. App. 1986), *rev. denied* (Minn. May 29, 1986). Investigator Seiberlich's statements by contrast invited Croon to discuss his conduct in substance. The routine booking answers that would occur later inside the jail are not the ones the investigator probed for in the supposedly discreet place where "[n]obody [could] see" them discussing Croon's criminal behavior.

Because Investigator Seiberlich subjected Croon to custodial interrogation without advising him of the warnings required by *Miranda* after taking him into custody for homicide, the district court erred by failing to suppress the statements that resulted from the interrogation. We turn to the question of remedy.

The state waived the opportunity to argue that the error was harmless.

When a *Miranda* violation occurs, Minnesota courts apply the harmless-error review standard of the United States Supreme Court, under which the state bears the burden of proving that the error was harmless beyond a reasonable doubt. *State v. McInnis*, 962 N.W.2d 874, 886 (Minn. 2021); *State v. Shoen*, 598 N.W.2d 370, 377 n.2 (Minn. 1999) (“[T]he burden of showing that an error is harmless properly falls on the state.”). Specifically, Minnesota recognizes that “[h]armless-error review looks . . . to the basis on which the [fact-finder] *actually rested* its verdict.” *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997) (quoting *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993)) “The inquiry, in other words is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.” *Id.* (emphasis omitted) (quotation omitted). Applying this standard on appeal, “[i]f the verdict rendered is ‘surely unattributable’ to the error, then the error is harmless beyond a reasonable doubt and the conviction stands.” *Id.* Croon argues that the district court’s error here fails under this standard.

To analyze Croon’s argument that the error was not harmless, even in this stipulated-facts trial we would generally consider the way the state presented the unconstitutionally admitted evidence, whether the evidence was highly persuasive, whether it was used in closing arguments, whether the defendant effectively countered it, and whether the state presented overwhelming evidence of guilt. *McInnis*, 962 N.W.2d at 886. But in this case, despite the state’s bearing the burden of proving that the error was harmless beyond a reasonable doubt and despite Croon’s argument giving reasons why the

error was not harmless, the state’s responsive brief provides no argument—not even the assertion—that the error was harmless. The state does not so much as mention the term “harmless.” We have previously warned that, when the state bears the burden to establish an error’s harmlessness in a direct appeal, its “failure to assert a harmless-error argument in its responsive brief is a waiver of the harmlessness issue, unless it is obvious that the district court’s error was harmless.” *State v. Porte*, 832 N.W.2d 303, 313 (Minn. App. 2013) (quotation omitted). Given the state’s apparent concession in this case by its failure to attempt to carry its burden, we need not deeply explore whether the error was harmless.

The state’s waiver leaves us only with the question of whether the district court’s error of admitting Croon’s statements into evidence was *obviously* harmless, or, in other words, whether it is obvious to us that the guilty verdict was surely unattributable to the error. *See id.*; *Juarez*, 572 N.W.2d at 292. The district court’s express findings of fact and conclusions of law, which led to its guilty verdict, prevent us from concluding that the error was obviously harmless. The district court’s fact findings quote extensively from Croon’s postarrest statements that we have outlined above. And in its conclusions of law, which build on those findings, the district court expressly relied on Croon’s statements. For example, the district court considered “the second, third, fourth, and fifth elements of [the third-degree-murder] offense together,” finding that “the State has also proven beyond a reasonable doubt, that Mr. Croon intentionally and without lawful authority delivered pills to Alex Kotzenmacher which Mr. Croon believed to be a controlled substance.” Regarding the fourth element specifically, the state needed to prove that Croon gave Alex a controlled substance knowingly. *See* Minn. Stat. § 609.195(b); *see also* 10 *Minnesota Practice*,

CRIMJIG 7.16 (2025). Among the other evidence the district court relied on to deem these elements proved, and the only evidence it relied on to establish the knowingly element, it reasoned specifically as follows:

In his voluntary conversation with Inv[estigator] Seiberlich at the Isanti County Jail, Mr. Croon stated he ‘didn’t mean to’ and believed he had ‘just got Percs.’ Regardless of whether Mr. Croon was aware the pills he provided to Alex were laced with fentanyl, these statements suffice to prove he at least knew they contained oxycodone, a Schedule II controlled substance.

It is obvious to us from the district court’s analysis that it relied on the fruit of the *Miranda* violation, not that it did not, in determining a critical element of the offense and finding Croon guilty. The supreme court reflected nearly 20 years ago, “[W]e do not have a single case where we have held that the admission of direct and persuasive evidence on an element of the crime is harmless because other less direct and less persuasive or largely circumstantial evidence is strong.” *State v. Caulfield*, 722 N.W.2d 304, 317 (Minn. 2006). This observation remains accurate today.

In sum, we cannot say that the verdict was surely unattributable to the *Miranda* error. We therefore reverse Croon’s conviction and remand for a new trial despite the abundance of properly admitted evidence that made out a strong case of his guilt.

Reversed and remanded.