

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1795
A24-1797**

State of Minnesota,
Respondent,

vs.

Jamie Alden Godbout,
Appellant.

**Filed October 27, 2025
Affirmed in part, reversed in part, and remanded
Kirk, Judge***

Carlton County District Court
File Nos. 09-CR-23-1975; 09-CR-22-1785

Keith Ellison, Attorney General, Timothy C. Rank, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey L.H. Boucher, Carlton County Attorney, Carlton, Minnesota (for respondent)

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Considered and decided by Larson, Presiding Judge; Bentley, Judge; and Kirk,
Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

These consolidated appeals arise out of appellant's multiple convictions for first-degree criminal sexual conduct in two different files. In the first file—the tried case—appellant raises several challenges to his convictions and sentencing following a jury trial, including an erroneously included jury instruction. In the second file—the plea-agreement case—appellant contends that the district court erroneously convicted and sentenced him for the multiple offenses for which he pleaded guilty.

Regarding the tried case, we conclude that the district court committed reversible error by including an inapplicable jury instruction; we thus reverse and remand that file for a new trial. Regarding the plea-agreement case, we affirm the district court's entry of judgment of conviction and sentence based on appellant's plea agreement.

FACTS

These cases involve first-degree criminal-sexual conduct charges against two victims, KS and MH. In June 2022, law enforcement received a report of alleged sexual abuse of two minor children. After investigating the reports, law enforcement interviewed the suspected perpetrator, appellant Jamie Alden Godbout, and the two initial victims: KS and LG. Upon further investigation, law enforcement identified a third potential victim, MH. KS is the niece of Godbout's former girlfriend. LG and MH are both children of Godbout's former girlfriend, but Godbout is not their father. Godbout is not related to any of the victims by blood, marriage, or adoption.

Respondent State of Minnesota charged Godbout with multiple first-degree criminal-sexual-conduct offenses committed against victims KS, LG, and MH. The district court severed Godbout's charges such that it would hold three different trials for the charges corresponding to each victim.

Godbout proceeded to a jury trial on the charges the state brought against him for alleged criminal sexual conduct against KS. Over Godbout's objections, the district court permitted the other two alleged victims, LG and MH, to testify during this trial. The district court determined that LG's and MH's testimony was admissible under either Minn. Stat. § 634.20 (2024) or as *Spreigl* evidence.¹

KS was 18 at the time of Godbout's trial. During her testimony, KS explained that Godbout lived with her grandparents intermittently and with his parents intermittently. KS testified that as a child she went to Godbout's parents' house on weekends and sometimes during the week and that she experienced several instances of sexual abuse during this period.

KS first came forward with these allegations by telling Godbout's former girlfriend—KS's aunt—about the abuse. KS explained that she initially disclosed the abuse to Godbout's former girlfriend because she was going to send one of KS's younger cousins to spend time with Godbout. KS maintained that she did not want her younger cousins to

¹ “*Spreigl* evidence is evidence of a defendant's prior crimes, wrongs, or acts, which would otherwise be inadmissible, but which the state can seek to have admitted for the limited purpose of showing motive, intent, absence of mistake, identity, or a common scheme or plan.” *State v. Asfeld*, 662 N.W.2d 534, 542 (Minn. 2003); *accord* Minn. R. Evid. 404(b)(1); *State v. Spreigl*, 139 N.W.2d 167, 169-70 (Minn. 1965).

suffer any abuse. The record reflects that KS later messaged Godbout saying that she lied about these allegations. At trial, however, KS testified that Godbout pressured her to take back what she said because Godbout had told KS that “he was going to kill himself.”

LG and MH testified later during the trial. As explained above, LG and MH are KS’s cousins; however, none of the victims are related to Godbout by blood, marriage, or adoption. Like KS, both LG and MH testified that Godbout sexually abused them multiple times.

During trial, Godbout objected to a portion of the following jury instruction.

A “significant relationship” includes:

Any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

An adult who jointly resides intermittently or regularly in the same dwelling as the complainant.

This instruction pertained to the “significant relationship” element of the type of first-degree criminal sexual conduct the state had charged Godbout with committing. *See* Minn. Stat. § 609.342, subd. 1(h)(iii) (2024). Godbout objected to the district court’s use of the “blood, marriage, or adoption” portion of this jury instruction on the ground that it did not apply to the state’s alleged facts because there was no evidence to support that Godbout was related to KS by blood, marriage, or adoption. The district court read the instruction over Godbout’s objection, however, and throughout the trial, the state argued that Godbout acted like an uncle to KS because of how long Godbout dated KS’s aunt. The

state even admitted a “family photo” of Godbout with KS’s aunt and children, presumably to support this significant-relationship theory.

Closing argument followed. At the beginning of the state’s closing argument, the record reflects that the prosecutor became emotional and may have started crying. Godbout objected, and the district court gave the parties a few minutes of break. After this short break the prosecutor restarted her closing argument. During her closing argument, the prosecutor compared KS to Jesus Christ:

And in [KS’s] 13, 14-year-old brain, she decided that she could be the protector, that she would just take it herself so that the younger girls didn’t have to. She would draw the attention off of her eight and ten-year-old cousins and she would take it. And in the words of Jesus himself, there is no greater love than to lay down one’s life for another.

Later in her closing argument, the prosecutor discussed how Godbout was effectively an uncle to KS:

Third, you’ve been provided an instruction on the definition of a significant relationship, and included in that is a guardian and an uncle. While Mr. Godbout never married [KS’s aunt] taking the title of uncle, he certainly functioned like a spouse to [KS’s aunt]. They were together for six or seven years, they lived together, spent all their time together, and we know from the testimony you heard from [the] interview of Mr. Godbout that they were together all the time. Again, for that period of time. They lived in the same place, they shared a child together. KS also testified that at one point she was in a family picture with Mr. Godbout and [KS].

Significant relationship can also be established, and just to be clear, it can be one or the other. It does not have to be both. So, the law provides, these are different ways that you can show significant relationship. One can be by any—I apologize. One can be by any of these relationships, or it could

be by jointly or intermittently residing together, which clearly was the case here.

There was testimony, I think from almost every witness, that they lived together . . . and also spent time together at the Godbout house. So, again, the State has met the third element by proof beyond a reasonable doubt.

The jury found appellant guilty of three counts of criminal sexual conduct against KS. Godbout subsequently pleaded guilty to two charges of criminal sexual conduct against MH. The state dismissed its charges of criminal sexual conduct against LG.

Godbout appeals.

DECISION

We first analyze the issues relating to Godbout’s trial and sentencing for the charges relating to KS—the tried case. We conclude that the district court made a reversible error by including inapplicable jury instructions related to the “significant relationship” element of Godbout’s criminal-sexual-conduct charges. We therefore reverse Godbout’s convictions for criminal sexual conduct against KS and remand for a new trial. We next analyze the sentencing issue related to Godbout’s convictions of first-degree criminal sexual conduct against MH—the plea-agreement case. Here, we affirm, concluding that the district court convicted Godbout of the offenses he pleaded guilty to, in accordance with his plea agreement.

I. The district court committed reversible error in Godbout’s trial for criminal sexual conduct against KS because it instructed the jury using an inapplicable definition of “significant relationship.”

We begin our review of the tried case by addressing Godbout’s claim that he is entitled to relief because of numerous errors that occurred, including (A) admission of other

crimes and bad acts evidence pursuant to Minn. Stat. § 634.20 (relationship evidence) and *Spreigl*, (B) an erroneous jury instruction, (C) prosecutorial misconduct, (D) admission of statements he made after an equivocal request for counsel, and (E) cumulative error.

A. The district court did not abuse its discretion when it admitted LG’s and MH’s testimonies pursuant to Minn. Stat. § 634.20.

Godbout argues that the district court abused its discretion by permitting LG and MH to testify. The state argues that the district court properly admitted LG’s and MH’s testimonies pursuant to the relationship-evidence rule in Minn. Stat. § 634.20, and pursuant to *Spreigl*. We first analyze whether the district court properly admitted LG’s and MH’s testimonies pursuant to Minn. Stat. § 634.20. Because we conclude that the district court properly admitted this testimony as relationship evidence under Minn. Stat. § 634.20 relationship evidence, we do not reach Godbout’s *Spreigl* argument.

Appellate courts review a district court’s admission of relationship evidence pursuant to Minn. Stat. § 634.20 for an abuse of discretion. *State v. Barnslater*, 786 N.W.2d 646, 651 (Minn. App. 2010), *rev. denied* (Minn. Oct. 27, 2010). Minnesota Statutes section 634.20 relationship evidence is admissible if “(1) it demonstrates similar conduct by the accused; (2) the conduct is perpetrated against the victim of domestic abuse or against another family or household member; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.” *Id.*

Regarding the first element, the state sought to admit LG’s and MH’s testimonies because they both alleged that Godbout sexually abused them. Because this conduct constitutes similar conduct as to what KS described in her testimony, we conclude that the

district court acted within its discretion here. Regarding the second element, the state sought to admit LG's and MH's testimonies because they also intermittently lived with Godbout. Moreover, LG and MH are related to KS. Because LG and MH were household members, and related to KS, we conclude that the district court acted within its discretion here, too. Regarding the third element, the district court concluded that the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice. Specifically, the district court determined that the trial hinged on whether the jury believed KS's account of the incidents; thus, the district court determined that this evidence was more probative than it might be unfairly prejudicial. Because each of these three elements are met, we conclude that the district court properly exercised its discretion when it admitted this evidence as relationship evidence under Minn. Stat. § 634.20.

Godbout also argues that the district court erred by reading an objected-to portion of a Minn. Stat. § 634.20 cautionary instruction to the jury before KS, LG, and MH testified. “[W]hen a district court admits relationship evidence under Minn. Stat. § 634.20, over a defendant’s objection that the evidence does not satisfy section 634.20, the court must sua sponte instruct the jurors on the proper use of such evidence, unless the defendant objects to the instruction by the court.” *State v. Zinski*, 927 N.W.2d 272, 278 (Minn. 2019).

During trial, Godbout objected to the second paragraph of the below cautionary instruction.

So, ladies and gentlemen of the jury, you're about to hear evidence of alleged conduct by the defendant on one or more separate occasions. Evidence of other crimes or occurrences is being offered for the limited purpose of assisting

you in determining whether the defendant committed those acts with which the defendant is charged in the Complaint.

Evidence of other domestic conduct is being offered for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and the family or household members in order to assist you in determining whether the defendant committed those acts with which the defendant is charged in the Complaint.

The evidence is not to be used to prove the character of the defendant or that the defendant acted in conformity with such character. The defendant is not being tried for and may not be convicted of any behavior or offense other than the charged offenses. You are not to convict the defendant on the basis of conduct on a separate occasion. To do so might result in unjust or double punishment.

The district court overruled Godbout's objection.

We do not find Godbout's argument persuasive. *Zinski* provides that district courts must instruct jurors on relationship evidence "unless the defendant objects to *the* instruction." *Id.* (emphasis added). Here, Godbout only objected to a portion of the cautionary instruction. Godbout did not object to "the instruction." *See id.* We therefore conclude that Godbout's reliance on *Zinski* is misplaced. Moreover, even if *Zinski* supported Godbout's argument, we are not persuaded that the inclusion of this second paragraph constituted error by the district court.

Because we conclude that the district court permissibly admitted LG's and MH's testimonies pursuant to Minn. Stat. § 634.20, we decline to address Godbout's *Spreigl* arguments.

B. The district court committed reversible error by including an inapplicable “related by blood, marriage, or adoption,” paragraph in its definition of “significant relationship.”

Godbout argues that the district court erred by instructing the jury on a “significant relationship” theory that was factually inapplicable to him. The state agrees that Minn. Stat. § 609.341, subd. 15(2) (2024)—the “related to the complainant by blood, marriage, or adoption,” provision—does not apply to Godbout’s case but maintains that its inclusion was harmless. In its jury charge, the district court provided the following definition of “significant relationship” for the jurors:

Any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

An adult who jointly resides intermittently or regularly in the same dwelling as the complainant.

Godbout objected to this jury instruction, arguing that there is no evidence in the record to support a conclusion that Godbout is related to KS by blood, marriage, or adoption. In claiming this, Godbout contended that the jurors are going to be led “astray.” The state countered that Godbout “functioned as an uncle” to KS.

After attorneys for both sides presented arguments to the district court outside of the presence of the jury, the district court decided to use the above instruction. Then, during closing argument, the state argued that the jury could find Godbout guilty using either definition of significant relationship—intermittently residing together, or relation by blood, marriage, or adoption. The prosecutor’s statements in reliance on the blood, marriage, or adoption language included the following: “While Mr. Godbout never married [KS’s aunt]

taking the title of uncle, he certainly functioned like a spouse to [KS's aunt]. . . . [KS] also testified that at one point she was in a family picture with Mr. Godbout and [KS]. Significant relationship . . . can be one or the other,” intermittently residing together or relation by blood, marriage, or adoption.

Appellate courts

review a district court's jury instructions for an abuse of discretion. A district court abuses its discretion if it fails to properly instruct the jury on all elements of the offense charged. A properly objected-to instructional error regarding an element of an offense requires a new trial only if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict.

State v. Torrez, 8 N.W.3d 674, 677 (Minn. App. 2024), *aff'd*, 21 N.W.3d 467 (Minn. 2025).

“The overwhelming evidence of guilt is a factor, often a very important one, in determining whether, beyond a reasonable doubt, the error has no impact on the verdict.” *State v. Juarez*, 572 N.W.2d 286, 291 (Minn. 1997). “[A]ppellate courts must look to the basis on which the jury rested its verdict and determine what effect the error had on the actual verdict.” “If the verdict actually rendered was surely unattributable to the error, the error is harmless beyond a reasonable doubt.” *State v. Jones*, 556 N.W.2d 903, 910 (Minn. 1996) (citation omitted).

Minnesota law defines a “significant relationship” as a relationship “in which the actor is” either (1) “the complainant’s parent, stepparent, or guardian,” (2) “related to the complainant by blood, marriage, or adoption,” or (3) “an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant’s spouse.” Minn. Stat. § 609.341, subd. 15(1)-(3) (2024).

Godbout argues that the district court's inclusion of the "blood, marriage, or adoption" definition of significant relationship was erroneous because there was no evidence offered to support that Godbout was related to KS by blood, marriage, or adoption. Godbout maintains that "this court cannot tell from the verdict that the error was not harmless beyond a reasonable doubt." We agree.

Upon review, we cannot determine whether the inclusion of this jury instruction had no significant impact on the jury's verdict. *See Torrez*, 8 N.W.3d at 677. The parties agree that Godbout is not related to KS by blood, marriage, or adoption, yet during trial the state furthered a theory that Godbout was functionally KS's uncle. During closing argument, the state argued that the jury could find Godbout guilty based on either definition of significant relationship.

Because the jury was not asked in the verdict form whether they found unanimously that Godbout was related to KS specifically or specifically lived intermittently with KS, the jury may have relied on an inapplicable jury instruction that suggested it could be either one or the other, when it had to be only lived intermittently with KS regarding this element of the crime. One or more jurors may have believed that Godbout was related to KS but not have been convinced beyond a reasonable doubt that the state proved that they lived together intermittently or regularly enough to satisfy the instruction on residing together. We conclude that Godbout is entitled to a new trial on the charges involving KS. *See State v. Olson*, 482 N.W.2d 212, 216 (Minn. 1992) (reversing and remanding for a new trial where it cannot be said beyond a reasonable doubt that the appellant would have been convicted without the erroneous jury instruction). Although we conclude that this issue is

dispositive, we address other arguments raised by Godbout relating to the tried case, to narrow the issues on remand for the new trial.

C. The prosecutor committed misconduct during closing argument, and, on appeal, the state did not show that the objected-to prosecutorial misconduct did not impact the jury's verdict.

Next, Godbout argues that counsel for the state committed prosecutorial misconduct during closing argument in two ways: (1) inappropriately displaying emotion and potentially crying in front of the jury and (2) comparing KS to Jesus Christ. At the beginning of the state's closing argument, the transcript shows that the prosecutor began, paused, and Godbout objected. After a brief break, the prosecutor proceeded with her closing argument.

The prosecutor and defense counsel later made a record outside the presence of the jury. The prosecutor said that she felt as if she was going to get emotional, defense counsel objected, and the parties took a break. Defense counsel explained that he objected because he thought he saw the prosecutor beginning to cry. In explaining the objection, defense counsel asserted that "if a juror sees a prosecutor or a defense attorney crying and showing that type of emotion that would tend to inflame their passions and potentially align themselves unfairly with whichever side is making that very impassioned argument."

Although we cannot tell from the transcript whether the prosecutor was in fact crying, the district court implicitly acknowledged that the prosecutor was crying, stating, "I think the next issue we had was that [the defense] objected to . . . the emotion or the crying specifically." The prosecutor contended that she "was not crying at that moment." She acknowledged that she "could definitely feel emotion" and explained that she

sometimes became emotional during closing arguments. Even so, the prosecutor maintained that any emotion she showed during her closing argument in this case was not intentional.

Emotions are a natural part of trials, especially a trial involving an alleged crime against a child. The district court dealt with this issue appropriately by using a short break to allow the attorney to compose herself. The district court was in the best position to determine if this would merit a mistrial. *See State v. Graham*, 371 N.W.2d 204, 207 (Minn. 1985). We discern no error in this circumstance.

Shortly after resuming the state’s closing argument, the prosecutor compared KS to Jesus Christ:

And in [KS’s] 13, 14-year-old brain, she decided that she could be the protector, that she would just take it herself so that the younger girls didn’t have to. She would draw the attention off of her eight and ten-year-old cousins and she would take it. And in the words of Jesus himself, there is no greater love than to lay down one’s life for another.

Appellant objected. Away from the jury, the district court said that quoting Jesus was inappropriate. The district court attempted to cure this issue by “reread[ing] the statements of the attorneys, and the duties and the statements of the Judge . . . to the jury before” the district court excused the jury to deliberate.

Appellate courts review objected-to prosecutorial misconduct under a two-tiered harmless-error test.² *State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010). Under either

² The supreme court has questioned whether this two-tiered approach is still good law, while declining to decide the question. *See State v. Whitson*, 876 N.W.2d 297, 304 n.2 (Minn. 2016) (“Recent cases have questioned whether the two-tiered . . . standard for

tier, the defendant must first establish that prosecutorial misconduct occurred. *See id.* A prosecutor engages in misconduct by either violating established standards of conduct or caselaw. *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008). If the prosecutor engaged in misconduct, the standard we apply to determine whether reversal is required varies based on the “seriousness of the misconduct.” *McDaniel*, 777 at 749. We review “less serious” misconduct to determine “whether the misconduct likely played a substantial part in influencing the jury to convict.” *Id.* (quotation omitted). When reviewing “more serious” misconduct, we reverse “unless the misconduct is harmless beyond a reasonable doubt.” *Id.*

We conclude that the prosecutor engaged in misconduct. “A prosecutor is not permitted to appeal to the passions of the jury during closing argument.” *Nunn v. State*, 753 N.W.2d 657, 661-62 (Minn. 2008) (quotation omitted). And a prosecutor has a duty to avoid arguments that will “divert the jury from its duty to decide the case on the evidence.” *Id.* (quotation omitted). Here, we conclude that the prosecutor’s comparison of KS to Jesus Christ appealed to the passions of the jury and diverted the jury from its duty to decide the case based on the evidence. And, given that Jesus Christ is one of the most important historical-religious figures in Western History, we conclude that this misconduct falls into the “more serious” misconduct category.

reviewing objected-to misconduct remains viable.”). *See also State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012); *McDaniel*, 777 N.W.2d at 749. The two-tiered harmless-error approach comes from *State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974).

The state disagrees, arguing that the prosecutor did not engage in misconduct or, if it did, that the misconduct was not serious. Regarding the prosecutor’s comparison of KS to Jesus Christ, the state argues that, even if the statement was misconduct, the prosecutor’s statement was brief in the context of her whole closing argument, comparing this case to *State v. Benitez*, No. A14-2188, 2015 WL 9437512, at *1 (Minn. App. Dec. 28, 2015), *rev. denied* (Minn. Mar. 29, 2016).

Benitez is a nonprecedential case, which is “not binding authority.” Minn. R. Vic. App. P. 136.01, subd. 1(c). Moreover, *Benitez* involved a prosecutor likening the general concept of criminal punishment for crimes against children to a quote attributed to Nelson Mandela. 2015 WL 9437512, at *5. In that case, the district court “determined that the prosecutor’s closing argument was ‘within the bounds of legitimate advocacy.’” *Id.* at *5. This was not the case in Godbout’s trial, in which the district court determined that the Jesus comparison was inappropriate.³

For these reasons, we conclude that the prosector engaged in serious misconduct during closing argument. But because we reverse and remand for a new trial on an independent basis, we need not determine whether this misconduct was harmless beyond a reasonable doubt.

³ Although district courts typically should not issue cautionary instructions sua sponte, *State v. Vance*, 714 N.W.2d 428, 443 (Minn. 2006), it may have been beneficial for the district court to explain that it sustained Godbout’s objection and to inform the jury that the prosecutor’s comments were inappropriate.

D. The district court erred by admitting statements Godbout made after making equivocal requests for counsel during a custodial interview.

Godbout argues that the district court erred by admitting a statement that was allegedly obtained in violation of his constitutional rights. Specifically, Godbout argues that although the district court cited the “stop and clarify” standard in its memorandum of law accompanying its order admitting portions of his custodial interview with law enforcement, the district court failed to apply this standard correctly.

Law enforcement interviewed Godbout about the allegations against him on July 29, 2022.⁴ Detective C.W. questioned him. Godbout waived his *Miranda* rights and decided to speak with law enforcement. His initial *Miranda* waiver is not at issue on appeal, and the parties stipulated that the interview constituted a custodial interview. Importantly, Godbout’s discussion of “his lawyer” during the interview may have been confusing because, at the time of this interview, Godbout had appointed counsel to assist him in a CHIPS⁵ proceeding relating to his son.

At the very beginning of the interview:

DETECTIVE: Are you willing to make a statement or answer questions at this time?

GODBOUT: Um I was actually going to ask you about that. Um I just found out who my attorney was today, so like, I don’t know if I am supposed to have an attorney with, or if I’m not. But I—I’m inno—I—the reason why I voluntarily—wanted to get the statement is because I’m innocent and I want my son back soon.

⁴The facts indicate that Godbout was interviewed in Superior, Wisconsin by a Superior, Wisconsin detective. Because we received no briefing on how this may change the analysis, we express no opinion on whether this fact has any relevance.

⁵ CHIPS is an acronym for “Child in Need of Protection or Services.”

DETECTIVE: Ok, so, . . . here's what I'm gonna say, . . . you've already talked—I'm gonna read you this ok, and then . . . I'll ask ya . . . I'll read you this and we'll talk afterwards, er we'll—um you're at least willing to let me go forward with . . .

The detective also gestured to the *Miranda* warning document and read the warning. Godbout said he did not have any questions about it, and the detective began interrogating Godbout.

Later, during the interview, Godbout said that his former girlfriend “made up these allegations” after a court hearing involving his son. The detective asked, “What kind of allegations?” Godbout replied, “Something about . . . molestation.” The detective asked, “Do you know who that involved?” Godbout initially replied that he did not know but later acknowledged that she was referring to KS.

Approximately 15 minutes later, Godbout was explaining the status of his son's CHIPS case when he exclaimed, “that's what I gotta call my attorney about because, like, [my ex-girlfriend] made that allegation yet it's totally bullsh-t.” The detective asked, “What allegation is that?” Godbout explained that he was talking about the “molestation” allegation.

Godbout moved the district court to suppress statements he made to law enforcement during this custodial interview because he referenced consulting an attorney and the detective did not cease the interrogation to clarify if he was requesting his right to counsel. The district court determined that Godbout did invoke his right to counsel at about 70 minutes into the interview by saying that he did not want to mention the “L word.” Thus, the district court suppressed all of Godbout's statements after this point.

“The validity of a suspect’s invocation of his constitutional right to remain silent presents a mixed question of fact and law.” *State v. McInnis*, 962 N.W.2d 874, 882 (Minn. 2021) (citation omitted). Appellate courts “review the factual issue of whether a suspect unequivocally and unambiguously invoked his right to silence for clear error. But we review the application of the reasonable officer standard to the facts of the case de novo.” *Id.* (citation omitted).

If a defendant initially agrees to speak with law enforcement without counsel, but later “makes an equivocal or ambiguous statement that could be construed as a request for counsel, investigators must cease questioning the suspect except as to ‘narrow questions designed to “clarify” the accused’s true desires respecting counsel.”” *State v. Ortega*, 798 N.W.2d 59, 71 (Minn. 2011) (quotations omitted). “This ‘stop and clarify’ rule ensures that suspects are aware of their right to have counsel present during a custodial interrogation so that any subsequent waiver of this right is knowing and intelligent.” *Id.* at 71-72.

Upon our de novo review, we agree with Godbout that statements made after the 37-minute point in the interview should have also been suppressed. At that point in the interview, Godbout exclaimed, “that’s what I gotta call my attorney about because, like, [my ex-girlfriend] made that allegation yet it’s totally bullsh-t.” Rather than asking for clarification about whether Godbout was invoking his right to counsel, the detective asked, “What allegation is that?” Godbout replied, “[M]olestation.”

Instead of suppressing Godbout’s statements from this point onward, the district court admitted these statements and suppressed Godbout’s statements after “around

70 minutes into the interview.” To the extent that it is helpful upon remand, we conclude that Godbout unequivocally invoked his right to counsel when he said “that’s what I gotta call my attorney about” because this statement could have been construed as a request for counsel. In drawing this conclusion, we also observe that Godbout referenced an attorney several times during his interview, rather than just twice.

E. Cumulative errors denied Godbout a fair trial.

Finally, Godbout argues that the cumulative effect of the errors in his trial merit reversal. “An appellant may be entitled to a new trial in rare cases where the errors, when taken cumulatively, have the effect of denying the appellant a fair trial.” *State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017) (quotation omitted). Although the jury-instruction error is an independent basis to reverse and remand, we conclude that this is a rare case where the cumulative effect of all the errors provides another basis for reversal and remand for a new trial.

II. The district court permissibly convicted and sentenced Godbout to two consecutive 144-month terms of imprisonment for two counts of criminal sexual conduct against MH.

After the jury returned their findings of guilt on the charges against KS, Godbout pleaded guilty to two counts of first-degree criminal sexual conduct against MH. On appeal, Godbout argues that the district court erroneously convicted and sentenced him for two offenses because the state did not prove separate acts or behavioral incidents. Specifically, Godbout argues that, because the date ranges for the counts are the same, the state charged him with alternative legal theories for committing a single act of first-degree criminal sexual conduct, not separate acts of criminal sexual conduct. We review this issue

de novo. *State v. Patzold*, 917 N.W.2d 798, 809-10 (Minn. App. 2018), *rev. denied* (Minn. Nov. 27, 2018).

A criminal defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2024). Section 609.04 prohibits district courts from entering multiple convictions under different sections of a statute for a single criminal act. *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). Section 609.035 “prohibits the imposition of multiple sentences for offenses arising from a single behavioral incident in most cases.” *Patzold*, 917 N.W.2d at 810. Whether multiple offenses arose from a single behavioral incident “depends on the facts and circumstances of the case.” *Id.* (quotation omitted). Generally, offenses are part of a single behavioral incident “if the offenses occurred at substantially the same time and place and were motivated by a single criminal objective.” *Id.* (quotation omitted).

Although the date range for the two counts is the same, the counts do not describe a single criminal act. Count 1 alleges first-degree criminal sexual conduct involving a single act of sexual penetration when the victim is under age 13 and the actor is more than 36 months older. Count 2 alleges a single act of first-degree criminal sexual conduct involving sexual penetration when the victim is under 16 and the actor has a significant relationship to the victim. Moreover, in the factual basis for the guilty pleas, Godbout admitted that criminal sexual conduct occurred multiple times.

Based on this record, and in compliance with his plea agreement, Godbout admitted to perpetrating multiple acts of criminal sexual conduct upon MH. We are not persuaded by Godbout’s argument that he did not admit to engaging in two separate incidents of

criminal sexual conduct, warranting separate convictions and sentences. We therefore reject this argument and affirm the district court's entry of judgment of conviction for two counts of first-degree criminal sexual conduct and imposition of permissive consecutive sentences.

Affirmed in part, reversed in part, and remanded.