

*This opinion is nonprecedential except as provided by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
A25-0183**

State of Minnesota,
Appellant,

vs.

Cody Logan Fohrenkam,
Respondent.

**Filed September 22, 2025
Appeal dismissed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-22-3336

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Senior Assistant County Attorney, Minneapolis, Minnesota (for appellant)

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Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

This pretrial appeal from appellant State of Minnesota follows this court's previous decision reversing respondent Cody Logan Fohrenkam's second-degree murder conviction and remanding for a new trial based upon the district court's failure to suppress

Fohrenkam’s custodial statement to police. *See State v. Fohrenkam*, No. A23-0703, 2024 WL 2721238, at *1 (Minn. App. May 28, 2024) (*Fohrenkam I*), *rev. denied* (Minn. Oct. 15, 2024). The state now challenges the district court’s decision, on remand, to refuse to hold a *Rasmussen* hearing¹ for the state to introduce additional evidence regarding the admissibility of Fohrenkam’s custodial statement. The state claims that the district court’s decision had a critical impact on its ability to prosecute the case and erroneously interpreted this court’s remand instruction to bar the district court from holding a *Rasmussen* hearing. Because the district court’s order did not have a critical impact on the state’s ability to prosecute its case, we dismiss the state’s appeal.

FACTS

This case stems from the 2022 shooting death of D.H., a 15-year-old boy. *Fohrenkam I*, 2024 WL 2721238, at *1. We recite those facts relevant to the issues in this appeal.

On February 9, 2022, surveillance footage captured D.H. walking past an individual wearing red pants and carrying a backpack. *Id.* This individual “stopped, pulled a gun out of his backpack, and fired three shots at D.H.,” killing him. *Id.*

The state presented evidence that Fohrenkam was present at Wally’s Foods, a nearby store whose external surveillance video captured the shooting, shortly before the shooting. At the store, Fohrenkam purportedly got into an altercation with another

¹ A *Rasmussen* hearing is a pretrial proceeding to determine the admissibility of evidence allegedly obtained in violation of a defendant’s constitutional rights. *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 14 (Minn. 1965).

individual, who punched Fohrenkam and robbed him of his cell phone. Fohrenkam was allegedly trying to find the individual who took his cell phone in the lead-up to the shooting.

In the investigation following the shooting, the Minneapolis Police Department became aware of Fohrenkam as a potential suspect after receiving a tip from another law-enforcement agency. *Id.* Two witnesses additionally identified Fohrenkam in a photographic lineup as the shooter. *Id.*

On February 16, 2022, one week after the shooting, law enforcement learned that Fohrenkam was in custody at the Carlton County Jail for an unrelated matter but was in the process of being released. *Id.* The same day, two officers went to the jail to interview Fohrenkam. After administering a *Miranda* warning to Fohrenkam, the officers interviewed him in an interview room at the jail while he was restrained with handcuffs. *Id.* The interview began at approximately 2:08 p.m.—after the Carlton County District Court had signed an order authorizing Fohrenkam’s release.

During the interview, Fohrenkam gave conflicting statements about his whereabouts during the shooting. *Id.* More specifically, Fohrenkam initially told the officers that he was in Hayward, Wisconsin, on the day of the shooting. After the officers told him that surveillance video captured him at Wally’s Foods, Fohrenkam admitted that he was in Minneapolis for most of the day and that he was near Wally’s Foods. Fohrenkam denied being involved in the shooting.

The state charged Fohrenkam with one count of second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2020), and one count of second-degree unintentional murder in violation of Minn. Stat. § 609.19, subd. 2(1) (2020). Fohrenkam

moved to suppress the statements made during the Carlton County Jail interview. *Id.* at *1. The district court denied the motion and the jury found Fohrenkam guilty of both counts. *Id.* The district court convicted Fohrenkam of second-degree intentional murder and sentenced him to 463 months in prison.

Fohrenkam appealed his conviction to this court, arguing that he was unconstitutionally detained at the Carlton County Jail for a custodial statement and that his statement made during that interrogation should therefore be suppressed. *Id.* at *2. In a nonprecedential decision, we reversed Fohrenkam's conviction and remanded for further proceedings, explaining that "Fohrenkam's statements must be suppressed as the product of an unlawful seizure" because the state "failed to satisfy its burden of showing that Fohrenkam's continued detention was lawful." *Id.* at *2, *6.

On remand, the state requested that the district court reopen the record by holding a *Rasmussen* hearing related to the suppression motion. Specifically, the state sought to introduce evidence which would demonstrate that Fohrenkam's continued detention was lawful because there was probable cause to arrest him for second-degree murder at the time of the interview. Fohrenkam objected to holding a *Rasmussen* hearing, claiming that the law-of-the-case doctrine prohibited any further litigation regarding the statement's admissibility. The district court agreed with Fohrenkam and rejected the state's request to hold the *Rasmussen* hearing and denied the state's motion to reconsider its order.

The state appeals.

DECISION

To obtain appellate review of a pretrial order, the state must provide notice of “how the district court’s alleged error, unless reversed, will have a critical impact on the outcome of the trial.” Minn. R. Crim. P. 28.04, subd. 2(2)(b). For the state to obtain pretrial relief under this framework, it “must show clearly and unequivocally that (1) the ruling was erroneous and (2) that the order will have a critical impact on its ability to prosecute the case.” *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) (quotation omitted). Because the critical-impact requirement is a “threshold issue,” *id.*, which resolves this appeal, we begin and end our analysis there.

To satisfy the critical-impact requirement, the state must show that the district court’s ruling “significantly reduces the likelihood of a successful prosecution.” *State v. Rambahal*, 751 N.W.2d 84, 89 (Minn. 2008) (quotations omitted). Although this requirement “is intended to be a demanding standard,” *id.*, the state does not need to show “that conviction is impossible after the pretrial order.” *State v. Underdahl*, 767 N.W.2d 677, 683 (Minn. 2009). Because the impact of excluding a piece of evidence “depends in large part on the nature of the state’s evidence against the accused,” appellate courts consider “the state’s evidence as a whole.” *State v. Zanter*, 535 N.W.2d 624, 631 (Minn. 1995).

Different Standards

The state suggests that our analysis in *Fohrenkam I* supports a conclusion that critical impact has been shown. We disagree. In *Fohrenkam I*, we analyzed the significance of the improperly admitted evidence under the harmless-beyond-a-reasonable-

doubt standard. *See* 2024 WL 2721238, at *5-6. Under this standard, “the state has the burden to show that the errors are harmless beyond a reasonable doubt by showing that the error did not contribute to the verdict obtained.” *State v. Conklin*, 444 N.W.2d 268, 275 (Minn. 1989). In contrast, the critical-impact standard, as we have explained, requires the state to show that the exclusion of the evidence “significantly reduces the likelihood of a successful prosecution.” *Rambahal*, 751 N.W.2d at 89 (quotations omitted). Given this distinction between these two standards, the unconstitutionally received custodial interview can sufficiently impact the verdict under the harmless-beyond-a-reasonable-doubt standard though its absence at a subsequent trial can fail to meet the critical-impact requirement. Therefore, although we explained in *Fohrenkam I* that “[t]he erroneously admitted evidence was a significant part of the state’s case,” 2024 WL 2721238, at *5, our critical-impact analysis in the present appeal is not dictated by our harmless-beyond-a-reasonable-doubt analysis in *Fohrenkam I* given the significant divergence between the two standards.

Critical-Impact Analysis

Caselaw is instructive in determining whether the state met the critical-impact requirement. The suppression of a confession, for example, generally satisfies the critical-impact requirement. *E.g.*, *State v. Ronnebaum*, 449 N.W.2d 722, 724 (Minn. 1990). Additionally, in *State v. Zais*, the supreme court concluded that exclusion of testimony of the defendant’s wife, who witnessed the conduct underlying the defendant’s disorderly-conduct charge, met the critical-impact requirement. 805 N.W.2d 32, 35-36 (Minn. 2011).

However, in *State v. Recio-Arecibia* we considered the impact of an inculpatory statement not involving a confession in which the defendant acknowledged being with his dog in the presence of the complainant but denied sexually assaulting her. 404 N.W.2d 853, 855 (Minn. App. 1987). Because the defendant was found at the scene of the assault, other witnesses identified him as being there, a witness stated he was with his dog, and police found him with a dog chain, we concluded that the state failed to show critical impact, noting that “[t]he statement . . . does not establish facts which cannot otherwise be reasonably developed.” *Id.*

The state does not dispute that the primary probative evidentiary purpose of presenting Fohrenkam’s custodial statement to the jury is to show his admission to being near the location of the shooting on the day of the shooting. Other evidence, however, provides similar information regarding Fohrenkam’s whereabouts. For example, an individual matching Fohrenkam’s description is present in surveillance footage on the morning of the shooting at Wally’s Foods. Like the footage in the shooting, this individual is wearing a backpack. And an article of red clothing, consistent with the red pants which the video demonstrates the shooter wearing, is present in the individual’s unzipped backpack. Evidence also showed that a photo was posted on a Facebook profile purportedly belonging to Fohrenkam, portraying a man matching his description and wearing similar clothing to the man in Wally’s Foods’ surveillance video.

Additionally, a witness testified to interacting with a man wearing a “black hoodie,” a backpack, and the distinctive red pants—matching the attire worn by the shooter—near the shooting location shortly before the shooting. A second witness similarly testified to

interacting with an individual matching this description, describing the person as wearing a “black jacket” and being near the location of the shooting shortly before the shooting. Further, this witness identified Fohrenkam in a photographic lineup as the individual with whom she interacted and also identified Fohrenkam in court. A third witness provided similar information at trial, describing the pants as “orange or reddish” and the individual as wearing a “grayish hoodie” and only having a bag, which the witness described as a “gymnastic bag,” after the shooting. This witness additionally identified Fohrenkam in a photographic lineup and in court. At trial, this witness testified that he was “100 percent certain” that this individual was Fohrenkam, Fohrenkam was looking for someone who stole his cell phone, and he saw Fohrenkam running away after the shooting. And a fourth witness testified to observing a man wearing red pants who was “ranting and raving” about having a cell phone stolen near the shooting location shortly before the shooting. Further, Fohrenkam’s then-girlfriend testified that she picked him up on the day of the shooting from downtown Minneapolis.

Although the exclusion of Fohrenkam’s custodial statement will likely have some impact on the state’s ability to prosecute Fohrenkam, this impact is not critical. The record contains substantial evidence, other than Fohrenkam’s custodial statement, which demonstrates his presence near the shooting.²

² The state separately argues that Fohrenkam’s custodial statements help identify Fohrenkam as the shooter by showing his distinctive speaking patterns, consistent with other witness testimony. Again, this argument focuses on the ability to show Fohrenkam’s location near the shooting. As explained, the record includes substantial other evidence of Fohrenkam’s presence in the vicinity of the shooting.

The state last contends that the custodial statement is relevant impeachment evidence, which shows that Fohrenkam, by making conflicting statements about his whereabouts and lying about his phone being broken, showed a “consciousness of guilt.” Fohrenkam’s mere “consciousness of guilt,” however, when considered in tandem with the state’s other inculpatory evidence, especially evidence regarding Fohrenkam’s location, does not add significant probative weight to the state’s case.

When considering the evidentiary value of Fohrenkam’s custodial statement, which we previously concluded should be suppressed, in tandem with the state’s other evidence, we conclude that the state failed to show how this evidence would “significantly reduce[] the likelihood of a successful prosecution.” *Rambahal*, 751 N.W.2d at 89 (quotations omitted). The state therefore failed to demonstrate that the alleged error of the district court, unless reversed, will have a critical impact on its ability to prosecute the case.

Appeal dismissed.