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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0798**

State of Minnesota,
Respondent,

vs.

Albert Charles Flores,
Appellant.

**Filed April 27, 2026
Reversed and remanded
Ross, Judge**

Dakota County District Court
File No. 19HA-CR-24-219

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

Kathryn M. Keena, Dakota County Attorney, Natalie Staeheli, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A Dakota County jury convicted Albert Flores of second-degree criminal sexual conduct after hearing witness testimony from the minor victim about Flores's abuse. Flores appeals his conviction, raising two arguments. He argues first that the district court

admitted, and the jury heard, statements from his interview with a child-protection investigator that are inadmissible under *Miranda*. He argues second that the district court improperly allowed the criminal complaint to be amended before jury deliberation. Because the admission of his interview statements was prohibited by *Miranda* and substantially affected the verdict, we reverse and remand for a new trial.

FACTS

The Lakeville Police Department received a report in February 2024 that Albert Flores had sexually abused his then nine-year-old granddaughter. We will call the granddaughter “June,” a name we have randomly chosen in the interest of protecting her privacy. Detective Scott Frame arrested Flores and took him to the police station intending to collaboratively interview him with Dakota County Social Services investigator, Ashley Rooney. But a collaborative interview did not occur. Detective Frame read Flores a *Miranda* warning, and Flores promptly invoked his right to an attorney.

Investigator Rooney, who was not present when Flores invoked his right to counsel, visited Flores in jail the next day to obtain his statement about the abuse report. She conducted the interview without law enforcement present and read Flores administrative warnings (Tennessee and HIPPA) about his disclosing private or confidential information to the state. Flores participated in Investigator Rooney’s interview for about 45 minutes, detailing his relationship with June. He said that he had caught June searching “sex, sex, sex” on YouTube and that she had let the family dog lick her vagina. Investigator Rooney questioned Flores about his sexual contact with June, asking, “[H]ave you ever put your mouth on any part of her [b]ody?” Flores answered, “No.” Investigator Rooney later

specified her question, “[H]ave you ever kissed her vagina?” Flores again said no. Investigator Rooney also asked about evidence that could substantiate June’s allegations: “[W]ould there be any reason if like any of her DNA would be in your bed?” Flores responded, “There shouldn’t be any DNA.” Flores denied having oral or digital sexual contact with June.

Investigator Rooney shared a recording of the interview with Detective Frame and gave him her assessment report. The state then charged Flores with two counts of first-degree criminal sexual conduct with a minor.

Flores moved the district court to suppress evidence of his interview statements based on *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The state opposed the motion, arguing that Investigator Rooney acted as a social worker rather than as an arm of law enforcement. Detective Frame testified at the motion hearing, stating that he coordinates with social services to interview child-abuse suspects in tandem but that he alone handles the “criminal side” of the interviews. Investigator Rooney testified that her investigations focused on the child’s well-being and that a Minnesota statute requires her to offer an “interview to an alleged offender.” The district court denied Flores’s suppression motion, reasoning that Investigator Rooney questioned Flores within her statutory role as a social worker and not as law enforcement.

June testified at trial that Flores, who lived with her family in their Lakeville home, had touched her vagina on 10 to 15 occasions. She also testified that he had “put his tongue on [her] vagina” while she lay in his bed and that she screamed and immediately left to clean herself. She said that Flores apologized and that they agreed to tell her parents when

she was “way older” after Flores was “out of the house.” June also said that Flores had simulated intercourse by getting on top of her and rubbing his penis against her vagina. Both of June’s parents testified that she isolated herself from the family just before moving to Minnesota but appeared to become more outgoing once Flores moved out. Investigator Rooney testified about her interview with Flores, and the state played a recording of it for the jury.

After the close of evidence, the state moved to amend the criminal complaint’s second count to second-degree criminal sexual conduct under Minnesota Statutes section 609.343, subdivision 1a(g) (2022). The district court granted the motion over Flores’s objection, reasoning that the amendment constituted a lesser-included offense of the original charge. The jury found Flores guilty on the amended charge. The district court entered a judgment of conviction and sentenced Flores to 36 months in prison, stayed for five years on probationary terms, including Flores’s registering as a predatory offender and participating in sex-offender treatment.

Flores appeals.

DECISION

Flores raises two arguments to challenge his conviction. He argues first that the district court erroneously refused to suppress statements he made during Investigator Rooney’s interview because she had questioned him after he invoked his right to counsel under *Miranda*. He argues second that the district court erroneously granted the state’s request to amend the criminal complaint. We resolve the appeal based on the first argument.

We are persuaded by Flores’s contention that Investigator Rooney improperly elicited incriminating statements during a custodial interrogation after Flores invoked his right to counsel. The federal and state constitutions protect persons from state-compelled self-incrimination. U.S. Const. amend. V; Minn. Const. art. I, § 7. To vindicate these protections, police must inform individuals undergoing a “custodial interrogation” of specific rights or risk the exclusion from trial of incriminating statements the individual makes during the interrogation. *Miranda*, 384 U.S. at 444; *State v. Crisler*, 438 N.W.2d 670, 671 (Minn. 1989). We review the district court’s factual findings for clear error and its legal determinations *de novo*, including whether Flores 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). Our careful review of the law and record leads us to conclude that Flores was entitled to a *Miranda* warning before he was questioned in his child-protection interview.

We must determine whether Flores was subject to an interrogation under *Miranda* when Investigator Rooney questioned him the day following his arrest. To be sure, Flores cut off any in-custody interrogation with law enforcement the day earlier when he invoked his right to counsel after Detective Frame advised him of his *Miranda* rights. The United States Supreme Court has established that a person in custody who has invoked his right to counsel “is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” *Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981). The state supreme court has likewise stated that “[o]nce a person in custody invokes

his *Miranda* right to counsel, all police interrogation must cease.” *State v. Miller*, 573 N.W.2d 661, 671 (Minn. 1998). And police may not resume questioning unless the arrested person initiates further discussion and provides a knowing, intelligent, and voluntary waiver of his previously invoked right to counsel. *See Edwards*, 451 U.S. at 482; *State v. Munson*, 594 N.W.2d 128, 140 (Minn. 1999). Without dispute here, Flores never initiated further communication about the investigation after he invoked his right to counsel.

The central issue on appeal therefore narrows to whether Flores’s invocation of his *Miranda* rights bars not only official police questioning but also Investigator Rooney’s questioning. We are satisfied that the answer is yes, notwithstanding that Investigator Rooney was employed as a social worker rather than a police officer, to maintain the purpose of a *Miranda* warning. *Miranda* warnings safeguard a person’s Fifth Amendment right against self-incrimination during a custodial interrogation by law enforcement. *See State v. Horst*, 880 N.W.2d 24, 30 (Minn. 2016). Law enforcement includes anyone who uses the “power of the state” to induce an incriminating response. *State v. Tibiatowski*, 590 N.W.2d 305, 310 (Minn. 1999). In this case, Investigator Rooney fits that description.

Investigator Rooney qualified as law enforcement by acting as an arm of the state when she exercised her statutory duty as a social worker to obtain informative, incriminating interview statements from Flores after he was accused of sexually assaulting June. We focus on the investigator’s role and not merely her title when determining whether a *Miranda* warning must precede a government agent’s questioning. *Mathis v. United States*, 391 U.S. 1, 4–5 (1968). The *Mathis* Court held that *Miranda* applied to an IRS agent’s questioning of an incarcerated defendant in a civil investigation. *Id.* at 2–4.

Similarly in *Estelle v. Smith*, the Supreme Court held that *Miranda* applied to the statements an incarcerated defendant made to a court-appointed psychologist who testified for the prosecution. 451 U.S. 454, 462, 467 (1981). Minnesota expressly follows suit as “[t]he warning required by *Miranda* must be given by all those who use the power of the state to elicit an incriminating response from a suspect, regardless whether they are law enforcement personnel.” *Tibiatowski*, 590 N.W.2d at 310 (applying *Estelle*). We turn to whether this caselaw favors Flores’s argument on appeal.

Applying this federal and state precedent, we hold that Investigator Rooney used her investigative authority to facilitate Flores’s criminal prosecution in a manner that places Flores’s interview responses within *Miranda* protection. It is true, as the state maintains, that she was interviewing Flores in compliance with a statutory directive to review June’s allegations and provide Flores “an opportunity to make a statement.” See Minn. Stat. § 260E.20, subd. 2(d) (2024) (requiring child-protection services to investigate sex-abuse reports). More critical to our issue, she coordinated her investigation with law enforcement and directly shared her interview recording and assessment report with Detective Frame. Her questions were relevant to Flores’s guilt in the criminal proceeding, including his sexual contact with June and the issue of whether evidence of his DNA might be detected. Investigator Rooney acted as law enforcement, broadly defined, when she conducted the jailhouse interview. As a result, she could not lawfully reinstate the interrogation that Flores foreclosed when he invoked his right to an attorney with Detective Frame the previous day.

We are not persuaded otherwise by the state’s argument that Investigator Rooney’s statutory duty to safeguard the “welfare of the maltreated child” distinguishes her role from law enforcement. *See* Minn. Stat. § 260E.20, subd. 1(a) (2024). Her state statutory duty to question a person accused of sexually harming a child does not override that person’s rights to the constitutional, or quasi-constitutional, protection afforded by the Supreme Court’s *Miranda* decision.

Our holding that *Miranda* bars the admission of Flores’s interrogation responses leads to the question of whether the district court’s erroneous admission of them requires us to reverse Flores’s conviction. We will reverse the conviction unless we determine that the error was harmless beyond a reasonable doubt. *State v. McInnis*, 962 N.W.2d 874, 886 (Minn. 2021) (analyzing the harmless-error standard in the evidence-suppression context); *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 jury *actually rested* its verdict.” *State v. Juarez*, 572 N.W.2d 286, 291–92 (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.* at 292. 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.*; *see also McInnis*, 962 N.W.2d at 886. We apply the harmless-error standard to analyze if there is a “reasonable possibility” that the admission of impermissible *Miranda* evidence

substantially affected the jury's verdict. *See State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024). Flores argues that the district court's error here requires reversal under this standard.

Four factors guide our harmless-error review: the evidence's manner of presentation, its persuasive value, its use in the state's closing argument, and its effective countering by Flores. *Id.* at 54. Our careful review leads us to conclude that the district court committed a reversible error.

The manner-presented (first) factor favors reversing. Presenting video evidence is improper if it shows a defendant's inconsistent statements as an attack on his credibility. *See State v. Al-Naseer*, 690 N.W.2d 744, 749–50 (Minn. 2005). Flores contends reasonably that the recorded interview improperly strengthened June's credibility because Investigator Rooney presented herself as an authority on forensic-interview techniques and because she framed her questions to strongly imply that children are incapable of fabricating sex-abuse allegations. This factor suggests reversing.

The persuasive-value (second) factor also favors reversing. Flores's interview statements made the state's allegations more conceivable. An inadmissible statement has high persuasive value when it elicits new information that impacts the verdict. *Biggear*, 10 N.W.3d at 57. The prosecutor characterized Flores's salacious reference about the family dog as an improbable substitute for his own conduct even though Flores never presented his statement as a substantive defense. This emphasis on an implausible argument that Flores neither raised nor suggested by evidence leads us to suspect that the statement likely influenced the jury. By contrast, the record lacks overwhelming evidence of guilt to countervail the persuasive impact of Flores's improperly admitted interview statements.

The state's other strong evidence of guilt can undermine the persuasive value of wrongly admitted evidence. *Id.* at 59–60. But the state's case rested on the credibility of June's testimony. Although a criminal-sexual-conduct conviction can rest on a single credible witness's testimony, Minn. Stat. § 609.347, subd. 1 (2024); *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004), Flores challenged June's credibility in his closing argument by emphasizing her volatile home environment, her impressionability for developing false allegations, and her inconsistent recollection of the reported sexual contact. The strength-of-evidence factor does not undermine the persuasive impact of the inadmissible interview statements.

We next observe that the closing-argument (third) factor also favors reversing. The prosecutor dwelt on Flores's statement about the dog's purported cunnilingus at the conclusion of her seven-page closing argument, drawing attention to it as Flores "com[ing] up with something" to explain June's report. The prosecutor highlighted Flores's explanation to exaggerate the absurdity of a defense that he did not raise. This factor favors Flores.

The opportunity-to-effectively-counter (fourth) factor is a closer question and slightly favors the state's position. Flores certainly had the opportunity to cross-examine Investigator Rooney about how the dog reference related to their conversation about June's precocious awareness of sex and her complaints about having an "itching" vagina. Flores reasonably asserts on appeal that he chose not to address the more salacious interview statements during his closing argument so as not to draw even more attention to them. But

because he had the opportunity to address his interview statements after the jury heard them, his tactical decision not to do so tips toward finding the error harmless.

On balance, these factors lead us to conclude that the state failed to prove that the inadmissible *Miranda* evidence was harmless beyond a reasonable doubt. We therefore reverse Flores's conviction and remand the case to the district court for further proceedings. Because of our decision that Flores is entitled to a new trial based on the erroneous admission of his statements under *Miranda*, we do not address his remaining argument.

Reversed and remanded.