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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-715**

State of Minnesota,
Appellant,

vs.

Faron Raymond Monroe,
Respondent.

**Filed August 24, 2010
Affirmed
Harten, Judge***

Hennepin County District Court
File No. 27-CR-09-42231

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Paul R. Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Sharon E. Jacks, Minneapolis, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and
Harten, Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Appellant State of Minnesota challenges the suppression of respondent's inculpatory statements, arguing that the district court erred by finding that the investigators did not scrupulously honor respondent's right to remain silent. Because we see no error in the district court's finding, we affirm.

FACTS

In June 2009, N.B. was assaulted. In August 2009, a police investigator, having received information that one of N.B.'s assailants was respondent Faron Raymond Monroe, arrested and interviewed him.

The interview transcript reads in relevant part:

[Officer]: . . . The incident that I am here to talk about is an assault that occurred back in June. Okay. In June and the address was 2900 block of 4th Street North.

[Monroe]: Okay.

[Officer]: But before we talk about that specific incident I do need to read you your Rights. Okay.

[Monroe]: Okay.

[Officer]: Have you had the done before? [sic]

[Monroe]: Not well yeah.

[Officer]: Okay. If you don't understand anything you can just stop me.

[Monroe]: Okay.

[Officer]: Let me know so.

[Monroe]: Okay.

[Officer]: Okay. . . . [T]he first one says you have the right to remain silent[. D]o you understand that?

[Monroe]: Yes.

[Officer]: The second one says anything you say can and will be used against you in court. Do you understand that?

[Monroe]: Okay.

[Officer]: The third one says you have the right to talk to a lawyer now and have a lawyer present now or at any time during questioning[. D]o you understand?

[Monroe]: Okay.

[Officer]: The fourth one says if you cannot afford a lawyer one will be appointed for you without cost[. D]o you understand?

[Monroe]: Okay.

[Officer]: Understanding each of these rights would you like to talk to me?

[Monroe]: No.

[Officer]: Okay.

[Monroe]: Oh you mean—

[Officer]: Yeah you want to talk?

[Monroe]: Right now?

[Officer]: Yeah.

[Monroe]: Um can I ask what I am being seen for 'cause I don't even somebody they told me about a riot ah something about an assault.

[Officer]: Okay.

[Monroe]: And—

[Officer]: That would be on a different probably a different case mine is an assault that occurred in June and it would have been the 2900 block of 4th Street North. Do you know anybody over there?

[Monroe]: I got one friend over there but I don't go over¹

Later in the interview, Monroe admitted participating in the assault.

He was charged with first-degree felony assault. At the omnibus hearing, Monroe moved to suppress his inculpatory statements, alleging that they were given after he had invoked his right to remain silent. The state argued that Monroe waived the right to remain silent. The district court, after concluding that Monroe unambiguously invoked his right to remain silent and that police reinitiated questioning without clarifying whether Monroe waived the right, suppressed his inculpatory statements. The district

¹ A recording of the interview shows that no pauses occurred between any of these exchanges.

court then continued the hearing, giving the parties a week to brief the caselaw on resumption of questioning.

At the continued hearing, the district court again suppressed Monroe's inculpatory statements but recommended that the state file this pretrial appeal.

D E C I S I O N

“[T]he admissibility of statements made after a suspect invokes the right to remain silent depends on whether that right was ‘scrupulously honored.’” *State v. Day*, 619 N.W.2d 745, 750 (Minn. 2000) (quoting *Michigan v. Mosley*, 423 U.S. 96, 104, 96 S. Ct. 321, 326 (1975)). The district court ruled that “[t]he officers did not take any steps to scrupulously honor . . . [Monroe’s] right to remain silent” and ordered his statements suppressed. In appealing a pretrial order, the state must clearly and unequivocally show that the ruling was erroneous and that the order will have a critical impact on its ability to prosecute. *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005). Monroe concedes that the order will have a critical impact; thus, the state must show only that the ruling was not erroneous.

The state agrees that, by answering “No” when asked, “[W]ould you like to talk to me?”, Monroe clearly and unambiguously invoked his right to silence. But the state argues that Monroe then withdrew the invocation by saying “Oh you mean”, “Right now?”, and “Um can I ask what I am being seen for ’cause I don’t even” An officer’s claim that a suspect who invoked the right to silence and later withdrew it “must be analyzed in the context of whether the investigating officers scrupulously honored [the

suspect's] invocation of [the] Fifth Amendment right.” *State v. Marshall*, 642 N.W.2d 48, 53 (Minn. App. 2002)), *review denied* (Minn. 28 May 2002).

In *Marshall*, “[t]he state contend[ed] that, after invoking her right to silence, [the suspect] essentially withdrew it by saying ‘What am I . . . what am I’” *Id.* After the suspect, who had been arrested for welfare fraud, “said ‘No. I don’t wish to say anything,’ the investigating officers began to describe the charges underlying the arrest for welfare fraud. But the officers then abruptly changed the subject of the interrogation to the death of [the suspect’s 18-month-old son].” *Id.* at 54. The *Marshall* court concluded that the invocation had not been scrupulously honored because the officers continued questioning, albeit on a different topic. *Id.* “Investigating officers violate the accused’s right to remain silent when they refuse to stop the interrogation” *Id.*

Here, the investigator abruptly stopped answering Monroe’s question about which incident was involved to ask Monroe an incriminating question: “Do you know anybody over there?” That question violated Monroe’s right to silence unless a reasonable officer could have inferred from Monroe’s saying, “Oh you mean,” “Right now?” or “Um can I ask what I’m being seen for . . .” that Monroe had waived his right to silence. A reasonable officer would not have made such an inference. *See id.* at 53 (“The inquiry is whether the accused asserted his right in a way that a reasonable police officer in the same circumstances would understand the statement to be an invocation of the right to remain silent.”); *see also State v. Chavarria-Cruz*, 784 N.W.2d 355 (Minn. 2010) (holding that, in context of invoking right to counsel, issue is whether reasonable police officer in the circumstances would have understood accused’s statement to be request for

an attorney); *State v. Staats*, 658 N.W.2d 207, 213 (Minn. 2003) (in context of right to counsel, if accused's statement could reasonably be construed as an invocation of the right, police must stop interrogating except for narrow questions designed to clarify the accused's true desires). If the investigator, after identifying the assault incident by giving its location, had clarified whether Monroe had changed his mind and wanted to talk about that incident, Monroe's invocation of his right to silence would have been scrupulously honored. But, by instantly continuing her interrogation with an explanation culminating in the potentially incriminating question "Do you know anybody over there?", the investigator failed to scrupulously honor Monroe's invocation.

The state relies on *Berghuis v. Thompkins*, 130 S. Ct. 2250, 2264 (2010) (holding that "a suspect who has received and understood the *Miranda* warnings, and has not invoked his *Miranda* rights, waives the right to remain silent by making an uncoerced statement to the police"). But *Berghuis* is distinguishable: the suspect there had not invoked his right to silence before he made his uncoerced statement. Here, Monroe's initial "No" unequivocally invoked that right, and the officer could not reasonably infer waiver of the right immediately after its invocation.

The state also relies on *Oregon v. Bradshaw*, 462 U.S. 1039, 103 S. Ct. 2830 (1983). *Bradshaw* involved an accused who, after invoking the right to counsel, asked the officer, "Well, what is going to happen to me now?" 426 U.S. at 1042; 103 S. Ct. at 2833. This question was found to "evinced[] a willingness and a desire for a generalized discussion about the investigation" and therefore did not violate the rule prohibiting further interrogation of a suspect who has invoked his right to counsel. *Id.* at 1045-46;

103 S. Ct. at 2835. *Bradshaw* affirmed the trial court’s finding that “within a short time after requesting an attorney [the accused] changed his mind without any impropriety on the part of the police” and concluded, “under the totality of the circumstances, including the necessary fact that the accused, not the police, reopened the dialogue” that the accused had made a “knowing waiver of his right to remain silent.” *Id.* at 1046; 103 S. Ct. at 2835. But here, the first post-waiver reference to the incident was the investigator’s, not Monroe’s, and the investigator quickly followed it up with “Do you know anybody over there?” *Bradshaw*, like *Berghuis*, is distinguishable.

The district court did not err in concluding that, because the investigator failed to “scrupulously honor” Monroe’s right to silence, Monroe’s inculpatory statements must be suppressed.

Affirmed.