COURT OF APPEALS
DECISION
DATED AND FILED

May 29, 2019

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2018AP1350-CR **Cir. Ct. No. 2016CF3395**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ULANDA M. GREEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: THOMAS R. WOLFGRAM, Reserve Judge. *Affirmed.*

Before Brennan, Brash and Dugan, JJ.

¶1 BRENNAN, J. Ulanda M. Green appeals from a judgment of conviction, entered on her guilty plea, for receiving or concealing stolen property, a misdemeanor; and harboring/aiding a felon, a felony. She also appeals from the denial of her supplemental motion for postconviction relief.

¶2 The charges related to what Green did with credit cards stolen from a man in a street robbery on July 25, 2016. Green attempted to use the credit cards, and then threw them in a sewer grate. The issue on review is whether the trial court erred in denying Green's motion to suppress inculpatory statements she made to a law enforcement officer while in custody.

¶3 Green argues that one statement should have been suppressed because it was made during a custodial interrogation before she was given a ***Miranda*** warning.[1] Specifically, as the detective summarized the evidence prior to reading Green her ***Miranda*** rights, the detective stated that a person who lived with Green was also in custody. Green immediately interjected, "That's who I got the cards from." We conclude that the detective's initial questions and statements did not constitute custodial interrogation[2] because the statements and questions were not "reasonably likely to elicit an incriminating response" from Green. *See* ***Rhode Island v. Innis***, 446 U.S. 291, 300-01 (1980) (for purposes of applying Fifth Amendment law, interrogation is "express questioning" or its functional equivalent: police statements that are "reasonably likely to elicit an incriminating response from the suspect"). We conclude that the detective was summarizing the investigation and the evidence. *See* ***State v. Hambly***, 2008 WI 10, ¶57, 307 Wis. 2d 98, 745 N.W.2d 48 ("Confronting a suspect with incriminating physical evidence, or verbally summarizing the State's case against the suspect, does not

[1] ***Miranda v. Arizona***, 384 U.S. 436, 478-79 (1966).

[2] "Law enforcement officers must administer ***Miranda*** warnings at the first moment an individual is subjected to 'custodial interrogation.'" ***State v. Armstrong***, 223 Wis. 2d 331, 351-52, 588 N.W.2d 606 (1999) (citation omitted). ***Miranda*** warnings are required only when "the defendant was both 'in custody,' and under 'interrogation' by police." *See* ***State v. Mitchell***, 167 Wis. 2d 672, 686, 482 N.W.2d 364 (1992). The State does not dispute that Green was in custody at the time of the interview.

necessarily constitute the functional equivalent of express questioning."). Because this portion of the interview did not constitute interrogation, there was no ***Miranda*** violation and Green's statement is admissible.

¶4 Green also argues that incriminating statements after she was read her ***Miranda*** rights—admitting that she obtained the cards and threw them in the sewer grate—should have been suppressed because when she was given the ***Miranda*** warning and asked if she wished to make a statement, she unambiguously invoked her right to remain silent by saying, "No. I don't know nothing." After the detective asked "Just, we have to clarify that. Do you want to talk to me and clear your name, or, or--," she responded, "Yeah, I'll talk, but the only thing I can say is I ain't did nothing." We conclude that Green's statement was a "disclaimer of any knowledge" and "an exculpatory statement" and therefore is *not* an unambiguous invocation of her right to remain silent. ***State v. Kramar***, 149 Wis. 2d 767, 788, 440 N.W.2d 317 (1989) ("A defendant's disclaimer of any knowledge … does not constitute an invocation of the defendant's right to silence.") and ***State v. Cummings***, 2014 WI 88, ¶64, 357 Wis. 2d 1, 850 N.W.2d 915 (holding that the statement "I don't know nothing about this" is "an exculpatory statement proclaiming … innocence" and "[s]uch a proclamation of innocence is incompatible with a desire to cut off questioning" (emphasis omitted)). Because Green's first statement was a proclamation of innocence and a disclaimer of knowledge, it did not constitute an unambiguous invocation of her right to silence, and Green's waiver was valid. We therefore affirm.

BACKGROUND

The robbery.

¶5 An elderly man was robbed of his wallet as he walked on North 66th Street in Milwaukee. Police found surveillance video from a gas station showing a man and woman repeatedly attempting to use the victim's stolen credit cards just a few hours after the robbery. After police identified the man in the surveillance video as Kevin Cowser, they brought him in for questioning. He told police he had been staying with Green and her boyfriend Michael Winzer, who had committed the robbery earlier and had come back to their house with the stolen cards. He said he agreed to go with Green to buy things with the credit cards. He identified Green as the woman in the video. He described their attempts to use the credit cards, and he told police that after they were unsuccessful, Green threw the cards in a sewer grate near the gas station. Officers located the credit cards in the sewer grate and obtained records that confirmed the unsuccessful attempts to use them. Officers then went to Green's home and arrested her and Winzer. The officers also found the stolen wallet in a bush one block from Green's home.

Green's custodial statements to police.

¶6 After her arrest, Green was brought into an interview room with a table and three chairs. The interview was videotaped but not transcribed.[3] Green

[3] No transcript of the video is in the record. Both parties stipulated to the admission of the videotape, and neither party provided additional testimony or evidence about the questioning. The parties' trial court filings did not dispute any factual matters. Both parties affirmed to the trial court at the pretrial hearing the findings of fact it had made were all that was necessary. This court has reviewed the video. We base our analysis on the findings of fact made by the trial court and postconviction court about Detective Reaves' and Green's statements on the video and assume that even absent express findings, the trial court made findings that would support the judgment. *See* ***Sohns v. Jensen***, 11 Wis. 2d 449, 453, 105 N.W.2d 818 (1960) ("The court on (continued)

was accompanied by Detective Nicole Reaves and another officer. After the other officer removed Green's handcuffs, Reaves introduced herself and started to describe the underlying investigation with Green:

> Reaves: Ulanda, they did a search warrant on your house and stuff today, right?
>
> Green: [audible non-verbal response]
>
> Reaves: Yes?
>
> Green: Mm-hmm.
>
> Reaves: Okay and uh you staying there with your uh boyfriend, Michael?
>
> Green: Um staying with his momma and all them, yeah?
>
> ….
>
> Reaves: Okay. Um. When they did the search warrant, I know they took you and uh your boyfriend Michael into custody.
>
> Green: Mm-hmm.
>
> Reaves: So, we have a, an incident that happened couple days ago, that uh, uh Michael has been identified in and, um it was a robbery and they were popping up with you at the property on video at the BP gas station on Highland. Okay?
>
> Green: Mm-hmm.

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appeal will also assume when a finding is not made on an issue which appears from the record to exist, that it was determined in favor of or in support of the judgment."). In lieu of having a professionally prepared transcript in the record, each party offers a partial transcript of the interview in its appellate brief. The representations of the interview differ in several places in their appellate briefs. However, neither party argues that the trial court's findings of fact concerning Reaves' and Green's statements on the video are clearly erroneous.

Reaves: We also have you dumping the uh, cards and stuff into the grid. Okay? Now, this is the thing. Just having the property, that ain't no big deal, okay? But as far as doing the robbery, um, we know you not the one that robbed 'em, but we know you know who did, okay? And it's not fair for us to try and put that on you if you ain't the one that did it, you, you feel, –

Green: [unclear]

Reaves: Just—just—just feel me, okay, you know what I'm saying –

Green: Yeah.

Reaves: It's not fair for us to do that if you ain't the one that did it, right?

Green: I don't know nothing about that though.

Reaves: Just, just hold on. That's just, just I'm just asking. It's not fair for us to do that, right?

Green: Mm-hmm.

Reaves: So. So basically that's why we got you down here and everything. Um, we talked with um, with Kevin [Cowser], uhh Kevin down here also, uhh, so—

Green: That's who I got the cards from.

Reaves: Okay, well.

Green: I don't know nothing about it.

Reaves: Hold on. Hold on.

Green: Nothing at all.

Reaves: You got rights, I don't want you to, I don't want to violate any of your rights, you know? Sister to sister, because we going to be fair about this, okay?

Green: Mm-hmm.

….

> Reaves: Okay. So, what's right is what's right. Okay, so. We gonna talk about this. We gonna talk about, you know, the robbery and the cards and using the cards and all that kind of stuff, okay? All right. So. Um, before we do that though, because you have rights, I'm going to read you your rights, all right? And, um, we'll go from there.
>
> Green: I don't know nothing though.
>
> Reaves: Okay. All right.

¶7 Reaves proceeded to read Green her ***Miranda*** rights and asked if she understood those rights. Green answered yes.

¶8 Reaves then asked Green if she was willing to make a statement. Green answered: "No. I don't know nothing." Reaves then clarified whether Green wanted to invoke her right to remain silent:

> Reaves: Okay, so you're telling me you don't want to talk to me right now, you don't want to clear your name on this?
>
> Green: I ain't did nothing.
>
> Reaves: Ok, well, that's what I'm saying. Just, we have to clarify that. Do you want to talk to me and clear your name, or, or--
>
> Green: Yeah. Yeah, I'll talk but the only thing I can say is I ain't did nothing.

¶9 After this, Reaves stated for the record that Green had waived her rights. Green and Reaves then discussed the robbery for approximately one hour. Green stated she had received the credit cards from Cowser. She also stated that she threw the stolen credit cards into the sewer grate.

¶10 Green was charged with robbery with use of force, as a party to a crime.

The pretrial motion.

¶11 Green filed a pretrial motion, arguing that she had been interrogated before the ***Miranda*** warning and that the detective continued to interrogate her after she unambiguously invoked her right to silence.[4]

¶12 Green's pretrial motion included the following description of what was said on the video:

> Detective Reaves begins the interrogation with a question, "Ulanda, they did a search warrant on your house and stuff today, right?" Ms. Green's ambiguous response prompts Detective Reaves to ask "Yes?" for clarification. Her next question, "And you're staying there with your boyfriend, Michael?"
>
> ….
>
> Detective Reaves eventually reads the "State of Wisconsin Department of Justice Constitutional Rights" card to Ms. Green, ending with the question, "Realizing that you have these rights, are you now willing to answer questions or make a statement at this time?" There is no ambiguity or equivocation whatsoever in Ms. Green's response: *"No. I don't know nothing."*
>
> Detective Reaves' questioning of Ms. Green does not cease, however. Instead, she violates Ms. Green's right to remain silent by asking Ms. Green another question: "OK, so you're telling me that you don't want to talk to me right now? You don't want to clear your name on this?" Ms. Green replies, *"I ain't did nothing."* Detective Reaves acknowledges this, and tells Ms. Green that she needs to clarify, "Do you want to talk to me and clear your name?"
>
> … To the extent that *Ms. Green's response, "Yeah, I'll talk, but all I've got to say is I ain't did nothing,"* constitutes a ***Miranda*** waiver, it is obviously not a voluntary one.

[4] Green also argued that her statements were not voluntary. Because she has not renewed that argument on appeal, we do not further discuss the trial court's rulings on that issue.

(Emphasis added.)

¶13 The State's response brief noted that the facts were uncontested and summarized the facts as follows:

> The facts are uncontested. The State concedes that the defendant was in custody and was subject to custodial interrogation. Prior to the interrogation, Detective Reaves properly read the defendant the ***Miranda*** warnings from the State of Wisconsin Department of Justice Constitutional Rights card. Detective Reaves stated "realizing that you have these rights, are you now willing to answer questions or make a statement at this time?" The defendant responded "No. I don't know nothing." Detective Reaves states "OK, so you're telling me that you don't want to talk to me right now? You don't want to clear your name on this?" Green replies, "I ain't did nothing." Detective Reaves states "Do you want to talk to me and clear your name?" The defendant then agrees to talk to Detective Reaves.

¶14 Green and the State stipulated to the evidence of the videotaped interview. At a motion hearing the State informed the trial court, "We have reached a stipulation with regard to the facts of the ***Miranda-Goodchild*** motion. And the State is—the parties are going to agree to submit what I have marked as Exhibit 1, which is a taped interview with Ms. Green. I will file that with the court."[5]

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[5] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966), and ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

> As a rule, [***Miranda-Goodchild***] hearings are designed to examine (1) whether an accused in custody received ***Miranda*** warnings, understood them, and thereafter waived the right to remain silent and the right to the presence of an attorney; and (2) whether the admissions to police were the voluntary product of rational intellect and free, unconstrained will.

State v. Jiles, 2003 WI 66, ¶25, 262 Wis. 2d 457, 663 N.W.2d 798.

¶15 The trial court then asked defense counsel, "Counsel, is that correct, there's a stipulation as to the evidentiary basis for this motion?" Trial counsel responded, "Yes, the – the interrogation video, I think, speaks for itself and is the – I don't think there's any extraneous or other factors that go into that motion." There was no factual dispute about the content of Green's statements.

¶16 At the motion hearing, the trial court stated that it had "review[ed] the audio and visual recording of the interview" on the previous day and asked if the parties wished to supplement their written submissions.[6] Neither party did. The trial court stated that "[t]he best evidence, of course, is the video that was provided by stipulation." It made findings concerning how the interview had been conducted and concluded that there was no violation of Green's right to remain silent because Green did not unambiguously invoke it. The trial court concluded that Green's "No, I don't know nothing," was ambiguous. The trial court described the detective's follow-up:

> Essentially she says, again, I'm paraphrasing, but "This is a chance for you to clear your name. This is a chance for you to tell your side of it," essentially. And in short order -- in a matter of seconds, Ms. Green's reply is, "Yes" or "Yeah, but all I can say is that I didn't do nothing["] or ["]anything," depending on how you look at it.

¶17 The trial court stated, "I don't find the follow-up question clarifying the initial statement that she made tainted the valid waiver of the ***Miranda*** warnings." However, the trial court made neither findings nor a ruling on the

[6] The April 11, 2017 motion hearing transcript reflects that the State had filed a response. A document titled "State's Response to Defendant's Motion to Suppress Statement," was filed with the court May 22, 2018, the day after Green filed her supplemental postconviction motion raising the same issue she had raised in her pretrial motion. It is signed by the prosecutor and dated January 20, 2017; it appears that the same document was filed in response to the pretrial motion and postconviction motion although the record is not conclusive.

claim of pre-***Miranda*** interrogation, and when the trial court asked each party if there were any other findings needed or "anything that I've missed[,]" neither party asked the trial court to address the issue.

Conviction and postconviction motions.

¶18 Pursuant to a plea agreement, Green pled guilty and was convicted of one count of harboring/aiding a felon and one count of receiving or concealing stolen property.

¶19 Green sought postconviction relief, asking that the postconviction court make findings of fact and rule on the pre-***Miranda*** interrogation claim raised in her pretrial motion but not decided by the trial court.[7] She attached her previously submitted pretrial motion that set forth the facts. The State submitted a response that stated that the facts were uncontested.

¶20 The postconviction court, in a written order, noted that no pretrial ruling had been made on the issue of whether Green had been subjected to pre-***Miranda*** questioning. It stated that in response to the supplemental postconviction motion it had "reviewed the briefs and the defendant's recorded interview[.]" It found that Green was in custody, as the State had conceded, and turned to the question of whether she had been subject to "interrogation." The postconviction court described what the video showed of the detective's "preliminary discussion" with Green. The postconviction court concluded that "[t]he detective's questions

[7] Green initially filed a motion seeking postconviction relief on the grounds that the plea colloquy was defective and that her sentence was harsh and excessive. Green's motion was denied. Green was subsequently permitted to file a supplemental postconviction motion that addressed the issues relevant to this appeal. On appeal, Green does not challenge the order denying her first postconviction motion.

did not call for an incriminating response or any response from the defendant other than a 'yes' or 'no.'" It concluded that "[t]he whole of the detective's pre-***Miranda*** discussion with the defendant was contextual—i.e., explaining to the defendant what the police were investigating and why she was being questioned." Therefore, the postconviction court concluded, there was no pre-***Miranda*** interrogation, and denied the motion.

DISCUSSION

I. Standard of review.

¶21 We employ a two-step process in reviewing a trial court's denial of a motion to suppress. *See* ***State v. Eason***, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625. First, we review the trial court's factual findings and uphold them unless they are clearly erroneous. *See* ***id.*** Second, we apply constitutional principles to those facts *de novo*, without deference to the trial courts initial consideration of the question. *See* ***State v. Mark***, 2006 WI 78, ¶12, 292 Wis. 2d 1, 718 N.W.2d 90 ("We also review, *de novo*, the application of constitutional principles to established facts."). "The court on appeal will also assume when a finding is not made on an issue which appears from the record to exist, that it was determined in favor of or in support of the judgment." ***Sohns v. Jensen***, 11 Wis. 2d 449, 453, 105 N.W.2d 818 (1960).

II. Green was not subjected to pre-*Miranda* custodial interrogation.

¶22 This case involves application of two rules interpreting the Fifth Amendment right against self-incrimination.

¶23 The first is the rule that a defendant must be given ***Miranda*** warnings prior to any "custodial interrogation." ***Miranda v. Arizona***, 384 U.S.

436, 444 (1966). A failure to warn a defendant of his or her constitutional rights prior to custodial interrogation means that "no evidence obtained as a result" of the interrogation can be used. ***Id.*** at 479. Thus, warnings are required when a defendant is in custody for ***Miranda*** purposes and is subject to interrogation. *See* ***State v. Armstrong***, 223 Wis. 2d 331, 352, 588 N.W.2d 606 (1999). Interrogation is defined as "[e]xpress questioning," defined as questioning "designed to elicit incriminatory admissions[,]" *see* ***State v. Harris***, 2017 WI 31, ¶16, 374 Wis. 2d 271, 892 N.W.2d 663, or its "functional equivalent," which means "any words or actions on the part of the police … that the police should know are reasonably likely to elicit an incriminating response from the suspect." ***Innis***, 446 U.S. at 301 (footnotes omitted). "'Interrogation' … must reflect a measure of compulsion above and beyond that inherent in custody itself." ***Id.*** at 300. "Volunteered statements of any kind are not barred by the Fifth Amendment[.]" ***Miranda***, 384 U.S. at 478.

¶24 As noted, Green's statement that she had received the credit cards from Cowser was made during the detective's preliminary discussion prior to the ***Miranda*** warning. She argues that this discussion was interrogation and that her statement must therefore be suppressed.

¶25 In ***Hambly***, our supreme court addressed the question of what constitutes interrogation. ***Id.***, 307 Wis. 2d 98, ¶45. In that case, the defendant had been arrested and, as he walked to the squad car with the arresting officer, "said that he wanted to speak with an attorney." ***Id.***, ¶9. The officer told Hambly he could call an attorney once they arrived at the jail. ***Id.*** The following exchange then occurred:

> While in the squad car, the defendant told [the officer] that he did not understand why he was under arrest. [*The officer*] *responded that the defendant had sold cocaine to an informant ... on three occasions and that* [*the informant*] *had been cooperating with the police during those transactions.* The defendant again stated he did not understand what was going on and told [the officer] that he wanted to speak to him and to find out what his options were.

Id., ¶10 (emphasis added).

¶26 The officer then read the defendant his ***Miranda*** warnings, and the defendant signed a waiver form. ***Hambly***, 307 Wis. 2d 98, ¶11. On appeal, Hambly argued that the officer's statement after the defendant had invoked his right to counsel constituted interrogation. ***Id.***, ¶45. "The defendant assert[ed] that the interaction between himself and [the officer] was either an interrogation in the traditional sense (a question and answer format) or the functional equivalent of express questioning." ***Id.***, ¶50. The postconviction court noted that "[a] statement is not 'express questioning'" and therefore considered whether it was the functional equivalent of express questioning. ***Id.***, ¶¶51, 52.

¶27 The postconviction court considered cases in which defendants had made inculpatory statements in response to law enforcement comments. In ***Innis***, the defendant had revealed the location of a gun after two officers conversed in front of him about needing to find a discarded gun before children found the weapon and got hurt. ***Id.***, 446 U.S. at 294-95. The United States Supreme Court determined in that case that there was no interrogation because "a few off hand remarks" did not constitute interrogation. ***Id.*** at 303.

¶28 Similarly, the ***Hambly*** court noted, the Seventh Circuit had determined that it was not interrogation where an investigator had given "advice to the suspect, a prisoner, that investigators already 'had inmate testimony

[indicating] that [the suspect] and another individual were the ... perpetrators of [a] murder ... and that if convicted [of the murder], [the suspect] could be subject to the death penalty.'" ***Id.***, 307 Wis. 2d 98, ¶55 (citing ***Easley v. Frey***, 433 F.3d 969, 971, 974 (7th Cir. 2006)) (brackets and ellipses in original). The ***Hambly*** court held that "[c]onfronting a suspect with incriminating physical evidence, or verbally summarizing the State's case against the suspect, does not necessarily constitute the functional equivalent of express questioning." ***Id.***, ¶57.

¶29 The portion of the interview that Green argues was interrogation is the following exchange:

> Reaves: Okay. Um. When they did the search warrant, I know they took you and uh your boyfriend Michael into custody.
>
> Green: Mm-hmm.
>
> Reaves: So, we have a, an incident that happened couple days ago, that uh, uh Michael has been identified in and, um it was a robbery and they were popping up with you at the property on video at the BP gas station on Highland. Okay?
>
> Green: Mm-hmm.
>
> Reaves: We also have you dumping the uh, cards and stuff into the grid. Okay? Now, this is the thing. Just having the property, that ain't no big deal, okay? But as far as doing the robbery, um, we know you not the one that robbed 'em, but we know you know who did, okay? And it's not fair for us to try and put that on you if you ain't the one that did it, you, you feel, –
>
> Green: [unclear]
>
> Reaves: Just—just—just feel me, okay, you know what I'm saying –
>
> Green: Yeah.
>
> Reaves: It's not fair for us to do that if you ain't the one that did it, right?

> Green: I don't know nothing about that though.
>
> Reaves: Just, just hold on. That's just, just I'm just asking. It's not fair for us to do that, right?
>
> Green: Mm-hmm.
>
> Reaves: So. So basically that's why we got you down here and everything. Um, we talked with um, with Kevin [Cowser], uhh Kevin down here also, uhh, so—
>
> Green: That's who I got the cards from.

¶30 This part of the interview consists of Reaves explaining what evidence the State has and the investigation to that point—the identification of Michael Winzer as the robber, the video showing Green, the fact that Green had "dumped" the credit cards in the sewer grate, and the fact that Cowser was in custody—and explains "that's why we got you down here and everything." Green then interjects an inculpatory statement. However, the fact that Green volunteered the statement does not change the nature of the comments and questions from Reaves. As in the cases reviewed above, the detective in this case was "[c]onfronting a suspect with incriminating physical evidence, or verbally summarizing the State's case[.]" *See* ***id.*** This permitted recitation of facts was not "reasonably likely to elicit an incriminating response from the suspect." *See* ***Innis***, 446 U.S. at 301 (footnote omitted). We therefore conclude that Green was not subject to custodial interrogation, and her statement "That's who I got the cards from" is admissible.

III. Green did not unambiguously invoke her right to remain silent.

¶31 The second rule at issue in this case is that a defendant can invoke the Fifth Amendment right to remain silent prior to questioning or after questioning has begun and that it must be invoked "unambiguously." *See* ***State v.***

Hampton, 2010 WI App 169, ¶46, 330 Wis. 2d 531, 793 N.W.2d 901. "If the suspect does not unambiguously invoke his or her right to remain silent, the police need not cease their questioning[.]" ***State v. Ross***, 203 Wis. 2d 66, 78, 552 N.W.2d 428 (Ct. App. 1996). "[A]n assertion that permits reasonable competing inferences demonstrates that a suspect did not sufficiently invoke the right to remain silent." ***State v. Markwardt***, 2007 WI App 242, ¶36, 306 Wis. 2d 420, 742 N.W.2d 546. Where "there are reasonable competing inferences to be drawn from them[,]" a defendant's comments "are equivocal as a matter of law[.]" ***Id.***

¶32 Where it is reasonable to infer that a defendant's statement is a "proclamation of innocence," the statement is not an unambiguous invocation of the right to remain silent, because "a proclamation of innocence is incompatible with a desire to cut off questioning." ***Cummings***, 357 Wis. 2d 1, ¶64.

¶33 Green argues that she invoked her right to remain silent when she was asked "Are you now willing to answer questions or make a statement at this time?" and she answered, "No, I don't know nothing." She argues that this statement cannot be reasonably understood as anything other than an unambiguous expression that she wished to shut down questioning. But controlling case law says otherwise. When she stated, "I don't know nothing[,]" Green could reasonably be understood to be asserting her innocence. *See* ***id.*** Our supreme court has held that "[s]uch a proclamation of innocence is incompatible with a desire to cut off questioning[.]" ***Id.***

¶34 As the State notes, "the police need not ask the suspect clarifying questions" when there has been no unambiguous invocation of the right. *See* ***Ross***, 203 Wis. 2d at 78. However, in this case, Reaves did ask Green clarifying questions. She did not proceed with questioning intended to "elicit an

incriminating response" but rather asked two clarifying questions to ascertain whether Green was willing to talk. Green again asserted that she did not know anything before agreeing, "Yeah, I'll talk but the only thing I can say is I ain't did nothing."

¶35 Under the holdings of ***Cummings*** and ***Markwardt***, when Green was given her ***Miranda*** warning and asked if she wanted to make a statement and she responded with "No, I don't know nothing," she did not unambiguously invoke her right to remain silent. Therefore, Green's subsequent incriminating statements to police were admissible.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.