

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 12, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP507-CR

Cir. Ct. No. 2004CF487

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH SCOTT GREENE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
ERIC J. LUNDELL, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 CANE, C.J. Joseph Greene appeals a judgment dismissing his motion for specific performance of an agreement he claims was made with the police. Greene argues he has an enforceable agreement to avoid felony drug charges and jail time in exchange for information he gave the police about methamphetamine labs operating in eastern Minnesota and western Wisconsin.

Greene also requests this court to adopt a rule requiring all custodial interrogations to be audio or video taped. Because the trial court's finding that there was no agreement between the State and Greene is not clearly erroneous, and we do not have the authority to create the rule for which Greene asks, the judgment is affirmed.

BACKGROUND

¶2 Joseph Greene was arrested in his car for shoplifting two compact discs from a New Richmond store. In his car, the police found eighteen boxes of pseudoephedrine, one hitter, marijuana, and a syringe containing methamphetamine residue.

¶3 Greene was taken to the New Richmond Police Department where he waived his *Miranda*¹ rights and agreed to talk with the police. Greene claims he agreed to provide information about methamphetamine labs operating in western Wisconsin in exchange for not being charged with a felony and not doing jail time. He disputes that detective Tony Milliron told him only that he would do everything he could to help him with the charges if his information was good.

¶4 Greene provided police with information about three methamphetamine labs operating in western Wisconsin and eastern Minnesota. This information led to the arrest of three people for methamphetamine related charges.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶5 Following his cooperation, the State filed felony drug charges against him.² Greene moved for specific performance of the deal he felt he arranged with Milliron. At the hearing on his motion, Greene testified the officers told him he would not be charged with a felony or serve jail time in exchange for his cooperation. In response, Milliron and investigator Daniel Breymeier testified there was no deal offered because they could not make a deal and they only agreed to make the district attorney aware of his cooperation. The trial court denied Greene's motion because it found there was no agreement between the police and Greene.

DISCUSSION

¶6 The core of Greene's argument is that he had an agreement with the State to avoid felony drug charges and jail time. The existence and terms of an agreement are questions of fact that this court will not set aside unless they are clearly erroneous. *State v. Williams*, 2002 WI 1, ¶5, 249 Wis. 2d 492, 637 N.W.2d 733; *see also Gerner v. Vasby*, 75 Wis. 2d 660, 661-62, 250 N.W.2d 319 (1977) (noting that whether parties enter into an oral contract presents a question of fact). Additionally, the trial court's determinations of credibility of witnesses will not be set aside unless they are also clearly erroneous. *Jacobson v. American Tool Cos.*, 222 Wis. 2d 384, 389-90, 588 N.W.2d 67 (Ct. App. 1998). If the trial

² Greene was charged with six crimes: conspiracy to commit manufacturing of methamphetamine, in violation of WIS. STAT. §§ 939.31, 939.50(3)(f), 961.41(1)(e)1; manufacturing of methamphetamine, in violation of §§ 939.50(3)(f) and 961.41(1)(e)1; methamphetamine possession, in violation of §§ 939.50(3)(i) and 961.41(3g)(g); marijuana possession, in violation of § 961.41(3g)(e); possession of drug paraphernalia, in violation of § 961.573(1); and misdemeanor theft, in violation of §§ 939.51(3)(a), 943.20(1)(a), and 943.20(3)(a).

All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

court did not expressly make credibility determinations, we assume that the court did so implicitly when analyzing the evidence. *Id.* at 390.

¶7 Here, the trial court found there was no agreement between the police and Greene in exchange for Greene’s cooperation. The trial court noted the diametrically opposed testimony of Greene and officers about the nature of their conversations. As such, the trial court found there was not a clear intent to form an agreement between the State and Greene. Implicit in this finding is the trial court’s finding the officers testimony more credible. Given our deference to trial court findings of credibility and fact, we conclude the trial court’s finding that Greene had no agreement with the State was not clearly erroneous.

¶8 Greene also asks this court to adopt a rule mandating all custodial interrogations must be taped. However, this court is not vested with the authority to create such a rule. See *In re Jerrell C.J.*, 2005 WI 105, ¶¶40-41, 283 Wis. 2d 145, 699 N.W.2d 110 (noting that the court’s holding was based on the supreme court’s constitutionally granted “supervisory power”). Additionally, the legislature has acted already to address taping of custodial interrogations. See WIS. STAT. § 968.073(2) as created by 2005 Wis. Act 60, § 31 (“It is the policy of this state to make an audio or audio and visual recording of a custodial interrogation of a person suspected of committing a felony”). Therefore, Greene’s request is denied, and judgment is affirmed.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.