COURT OF APPEALS
DECISION
DATED AND FILED

October 21, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1384-CR **Cir. Ct. No. 2003CF7008**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM GEORGE MCKOY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

Before Curley, P.J., Fine, J., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. After his pretrial motion to suppress evidence was denied, William George McKoy pled guilty to possessing more than forty grams of cocaine and more than 10,000 grams of marijuana with the intent to deliver both drugs. The circuit court imposed consecutive sentences on McKoy that totaled a

minimum of seven years in initial confinement and a maximum of seven years on extended supervision. McKoy appeals *pro se* from the circuit court's denial of his suppression motion. Because we conclude that the circuit court's findings of fact are not clearly erroneous and support the suppression decision, we affirm the judgment of conviction.

¶2 Milwaukee police received information from a confidential police informant that a Mitsubishi Mirage with an Illinois license plate was parked in a Wal-Mart parking lot. The informant gave a description of the person in the automobile and told police the car contained a large quantity of marijuana.

¶3 Milwaukee police officers investigated. As they approached the car in the parking lot, they asked the occupant, who was subsequently identified as McKoy, whether he had any guns or drugs. McKoy answered that he had a gun in his jacket pocket. After police recovered the weapon, one officer asked McKoy "if he had anything else." McKoy responded that he had "about six pounds of weed in the car." Police recovered a substantial amount of marijuana from the vehicle. Although McKoy subsequently moved to suppress other drug evidence, he did not challenge police seizure of the gun or the marijuana from his car.

¶4 According to police testimony at the suppression hearing, police then told McKoy that he was in custody and gave him his ***Miranda*** warnings.[1] When the police asked McKoy whether he understood his rights, he nodded his head but gave no verbal answer. The officer testified that when police asked McKoy whether, "having those rights in mind," he wished to speak with them further, McKoy "put

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

his head down for a moment, and then … said, 'yes.'" In response to the officer's questions, McKoy then told the officers his address and he volunteered that he had additional marijuana at that address. When the officers arrived, they recovered approximately twenty pounds of marijuana and some hashish. On further questioning, McKoy told police of other places he kept drugs, and police subsequently recovered substantial amounts of marijuana and cocaine from those sites.

¶5 In his suppression motion, McKoy argued that nodding his head in response to the police was not a clear and explicit waiver of his constitutional rights and that he therefore did not knowingly, intelligently, and voluntarily waive his right to remain silent. The circuit court rejected this argument, reasoning that even though McKoy had not verbally consented to further questioning, he gave his consent by his continued cooperation with police. On appeal, McKoy renews his argument in support of suppression, and he also argues that the general environment in which he was questioned was coercive such that he did not knowingly, intelligently, and voluntarily waive his constitutional rights. First, we conclude that the circuit court properly denied the suppression motion, although we use slightly different reasoning than the circuit court. Second, we reject McKoy's argument that he was effectively coerced because the types of actions he describes as coercive do not remotely qualify as coercion.

¶6 The standards for determining whether a defendant's waiver of his or her protections against self-incrimination are well-settled. The State must prove that the accused was informed of his or her constitutional rights, understood those rights, and knowingly, intelligently, and voluntarily waived them. ***State v. Santiago***, 206 Wis. 2d 3, 18-19, 556 N.W.2d 687 (1996). The State must prove by a

preponderance of the evidence that the accused's waiver is knowing, intelligent, and voluntary. ***State v. Agnello***, 226 Wis. 2d 164, 181-82, 593 N.W.2d 427 (1999).

¶7 In ***State v. Woods***, 117 Wis. 2d 701, 720, 345 N.W.2d 457 (1984), the supreme court held that an accused's silence coupled with an understanding of his or her rights and conduct consistent with waiver supports finding a valid waiver. Thus, as the State argues, there is no requirement, constitutional or otherwise, that a defendant must orally or in writing expressly waive their right to remain silent. In this instance, however, the record establishes that McKoy orally agreed to continue speaking to police after he nodded that he understood his rights. Consequently, McKoy's contention that he did not knowingly and intelligently waive his right to remain silent is without merit.

¶8 We turn next to the question of whether McKoy's consent to speak with police was given voluntarily or was the subject of coercion. McKoy contends that he was coerced into relinquishing his rights because he had been handcuffed, he was being "barraged" with questions, and he was surrounded by police officers. In his brief, McKoy also describes having been coerced by the "gulf of blue surrounding the vehicle and the friendly chatter" of the officer questioning him.

¶9 Police coercion is a necessary prerequisite to finding that a defendant's statement was involuntary. ***State v. Clappes***, 136 Wis. 2d 222, 241, 401 N.W.2d 759 (1987). Nothing in the record suggests anything approaching police coercion. While McKoy may have felt nervous or intimidated by the surroundings, the record demonstrates that none of the officers present threatened McKoy or engaged in any improper police practices. McKoy himself admits that the officer who questioned him did so in a friendly way. McKoy's nervousness and sense of being overwhelmed was the product of normal police practice. If the behavior

police engaged in as described by McKoy can amount to police coercion, then police would no longer be able to question suspects in a criminal investigation.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).