

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 23, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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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. 2012AP520-CR

Cir. Ct. No. 2010CF5837

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ADREAN L. SMITH,

DEFENDANT-APPELLANT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Adrean L. Smith appeals from a judgment of conviction, entered upon his guilty pleas, on three counts of armed robbery and one count of first-degree reckless injury with use of a dangerous weapon. Smith

contends that the circuit court erred in denying his motion to suppress incriminating statements he made while in custody. We affirm the judgment.

¶2 Detective Travis Guy was investigating a series of armed robberies and had occasion to conduct a custodial interrogation of Smith. Guy properly advised Smith of his *Miranda* rights, and Smith initially waived those rights.¹ During the interrogation, Guy asked Smith about a stolen van, prompting Smith to respond, in part, “I don’t want to talk about this.” Guy continued the interview and Smith subsequently gave incriminating statements in which he admitted to his involvement in a series of robberies, burglaries, and shootings.

¶3 As a result, the State charged Smith with eighteen various felonies. Smith moved to suppress the statements he had given during the custodial interrogation, claiming that he had unambiguously asserted his right to silence by saying, “I don’t want to talk about this,” but the invocation was not scrupulously honored. The circuit court ruled that Smith “did not clearly assert his right to remain silent” and denied the suppression motion.

¶4 Smith pled guilty to three counts of armed robbery and one count of first-degree reckless injury with a dangerous weapon. The remaining counts were dismissed and read in for sentencing. Smith was sentenced to a total of twenty-five years’ initial confinement and ten years’ extended supervision. Smith appeals.²

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

² “An order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a defendant may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty[.]” WIS. STAT. § 971.31(10).

¶5 A suspect’s right to remain silent encompasses two protections: “to remain silent unless the suspect chooses to speak in the unfettered exercise of his or her own will” and “the right to cut off questioning.” See *State v. Markwardt*, 2007 WI App 242, ¶24, 306 Wis. 2d 420, 434, 742 N.W.2d 546, 553. The key question is whether the suspect, having been informed of his rights, invokes any of those rights during police interrogation. *Id.*, 2007 WI App 242, ¶25, 306 Wis. 2d at 434, 742 N.W.2d at 553.

¶6 “A suspect must unequivocally invoke his or her right to remain silent before police are required either to stop an interview or to clarify equivocal remarks by the suspect.” *Id.*, 2007 WI App 242, ¶26, 306 Wis. 2d at 434–435, 742 N.W.2d at 554. That is, a suspect “must articulate his or her desire to remain silent or cut off questioning ‘sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be’ an invocation of the right to remain silent.” *State v. Ross*, 203 Wis. 2d 66, 78, 522 N.W.2d 428, 433 (Ct. App. 1996) (citation omitted).

¶7 Whether a person has sufficiently invoked the right to remain silent is a question of constitutional fact, reviewed under a two-part standard. *Markwardt*, 2007 WI App 242, ¶30, 306 Wis. 2d at 437, 742 N.W.2d at 555. We uphold the circuit court’s findings of historical fact unless clearly erroneous, but we independently apply constitutional principles to those facts. *Ibid.*

¶8 In his brief, Smith provided the text of the relevant portion of his recorded interview by Guy. The State responds that it does not dispute the accuracy of the transcription. Thus, the exchange we review is as follows:

Mr. Smith: See, I don't want to talk about, I don't want to talk about this. I don't know nothing about this.

Detective: Okay.

Mr. Smith: I don't know nothing. See, look, I'm talking about this van. I don't know nothing about no van. What's the other thing? What was the other thing that this is about?

Detective: Okay.

Mr. Smith: I don't even want to talk about – I don't know nothing about this, see. I'm talking about this van. This stolen van. I don't know nothing about this stuff. So, I don't want to talk about this.

Detective: I've got a right to ask you about it.

Smith asserts that his “statement that he did not want to talk about this anymore made it ‘sufficiently clear’ that he wanted to remain silent and the interrogation needed to stop.” We disagree.

¶9 Smith did not say, “I don't want to talk about this” and then stop talking.³ Instead, he kept talking. Police may continue an interrogation if a

³ The circuit court, in denying the motion to suppress, had ruled:

This is a very human interaction. Defendant sometimes is saying “I'll talk about this but I'll not talk about that,” or “I did some things, I am willing to do that but” -- He's asking “what are you all talking about?” He is engaging in a conversation. He is never clearly saying “I'm done talking, I do not want to speak to you,” nor is he saying “I won't speak to you unless I have a lawyer.”

Smith complains that these factual findings are clearly erroneous because he never expressly makes those statements, as evidenced by the recording. However, our reading of the circuit court's comments is that it was not attributing particular quotes to Smith but was simply characterizing the nature of the ambiguities within his statements.

defendant validly waives his right to remain silent and later initiates further conversation. See *Ross*, 203 Wis.2d at 74, 522 N.W.2d at 431. More importantly, Smith's continued conversation with the detective indicates not that Smith wanted to stop talking about everything but, rather, that he simply did not wish to discuss a stolen van about which he professed to have no information. "[R]efusals to answer specific questions do not assert an overall right to remain silent." *State v. Wright*, 196 Wis. 2d 149, 157, 537 N.W.2d 134, 137 (Ct. App. 1995).

¶10 Accordingly, we conclude that Smith failed to make an unequivocal invocation of the right to remain silent, so the detective was not required to terminate the interview. The circuit court thus properly denied the motion to suppress Smith's statement.

By the Court.—Judgment affirmed.

This opinion shall not be published. See WIS. STAT. RULE 809.23(1)(b)5.

