COURT OF APPEALS
DECISION
DATED AND FILED

April 14, 2009

David R. Schanker
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. 2008AP1239-CR

Cir. Ct. No. 2006CF2099

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSE E. CONTRERAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: TIMOTHY WITKOWIAK, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Jose E. Contreras appeals from a judgment of conviction, entered upon a jury's verdict, for one count of delivery of cocaine, less than three grams, as party to a crime, as a second or subsequent offense. Contreras

asserts that the police lacked probable cause to arrest him. We reject this contention and affirm the judgment.

¶2 On April 20, 2006, Milwaukee Police Department Officer Sergio Rentas was undercover, conducting drug investigations. Around 5:00 p.m., he approached a Hispanic male, designated Eli, and asked if Eli "had anything," meaning, could Eli get him some drugs.[1] The entire conversation between Rentas, a native of Puerto Rico, and Eli was in Spanish. Eli asked if Rentas wanted "manteca," which has a literal translation of "lard" but is a street or slang term for heroin. Eli offered to call the guy with the best "manteca" in town.

¶3 Rentas gave Eli change for a pay phone and Eli placed a call. Eli indicated that they had to walk to meet the seller. After about fifteen minutes, they arrived at the designated location and, shortly thereafter, a purple Toyota RAV4 arrived. Rentas testified that Eli said, "There he is. That's my guy."

¶4 Rentas gave Eli two prerecorded twenty-dollar bills. An individual later identified as Contreras had exited the vehicle and was approaching Eli. Eli and Contreras walked about twenty feet away from Rentas, who observed Contreras reach into his right front pants pocket and retrieve several "clear plastic corner cuts" containing a brownish substance believed to be heroin. Rentas observed Eli hand Contreras "one or some" of the prerecorded money. Contreras returned to the vehicle, entered the front passenger seat, and the vehicle departed.

[1] Eli was what is referred to as an "unwitting." He did not know Rentas was an officer and did not know he was participating in an undercover drug buy. "Eli" is sometimes spelled "Ely" in the record, but we will use "Eli," as designated in the criminal complaint.

¶5 Eli returned to Rentas and gave him three corner cuts. Just after this exchange, Rentas gave a predetermined signal to his cover officer, Detective Terrance Wright, to indicate a completed drug transaction. As soon as Rentas was away from Eli, he got on his radio and advised the takedown squad car of Contreras's description, the vehicle description, and the direction of travel.

¶6 Christopher Navarette was assigned as one of the takedown officers. He was notified over a police radio, linked to Wright and Rentas, to seek a purple Toyota RAV4 and a Hispanic male, approximately five feet, nine inches tall, weighing two hundred pounds, and wearing a powder blue baseball cap, a black shirt, and blue jeans. Navarette found and stopped a vehicle matching that description and removed Contreras from the passenger seat. Contreras was later identified by both Wright and Rentas. Navarette recovered one of the prerecorded bills and an additional $173 from Contreras's front right pocket.

¶7 Contreras filed two suppression motions. His first motion sought to suppress his statements based on a ***Miranda***[2] violation, and sought to compel Rentas to create a record, in Spanish, of his conversations with Eli. The second motion complained that there was no probable cause, ostensibly because Eli was unreliable as a "confidential informant." The court concluded there was probable cause and denied the suppression motion. The court also denied Contreras's request to create a record in Spanish, stating that the case Contreras cited was inapplicable and any disputed meanings of words could be presented to the jury.

[2] ***Miranda v. Arizona***, 384 U.S. 436 (1966). The ***Miranda*** issue is not revisited on appeal.

¶8 Probable cause is essential to a lawful arrest. ***State v. Secrist***, 224 Wis. 2d 201, 212, 589 N.W.2d 387 (1999). Probable cause is "the quantum of evidence within the arresting officer's knowledge at the time of the arrest which would lead a reasonable police officer to believe that the defendant probably committed or was committing a crime." ***Id.*** There must be more than mere suspicion, but the evidence constituting probable cause need not be sufficient to prove guilt beyond a reasonable doubt, "nor even that guilt is more likely than not." ***Id.***

¶9 Whether probable cause exists in a given case depends on the particular facts. ***Id.*** Thus, when we review a motion to suppress evidence based on a challenge to probable cause, we uphold the trial court's factual findings unless clearly erroneous. *See* ***id.*** at 207. Whether the facts support a finding of probable cause is a question of constitutional fact, so we independently apply the facts found by the trial court. *See* ***id.*** at 208.

¶10 Here, Officer Navarette effected Contreras's arrest but, as takedown officer, he was out of Rentas's sight during the drug transaction. Thus, Navarette never observed any of Contreras's actions and could not have independently obtained probable cause. However, "[t]he police force is considered as a unit and where there is police-channel communication to the arresting officer and he acts in good faith thereon, the arrest is based on probable cause when such facts exist within the police department." ***State v. Mabra***, 61 Wis. 2d 613, 625-26, 213 N.W.2d 545 (1974). In other words, any information Rentas and Wright possessed about Contreras could be imputed to Navarette. *See* ***id.*** at 625 ("The arresting officer may rely on all the collective information in the police department."); *see also* ***State v. Orta***, 2000 WI 4, ¶20, 231 Wis. 2d 782, 604 N.W.2d 543 (Prosser, J., concurring).

¶11 Rentas and Navarette testified at the suppression hearing, offering the facts as recited above. In deciding Contreras's motion, the court summarized the officers' testimony, then stated: "Based upon all of that, the court will find that the officer's hand signal was sufficient to indicate to the officers suspicion and/or probable cause that a drug deal had occurred." On appeal, Contreras argues this determination is a clearly erroneous basis for denying his motion because of an issue he has with Rentas's testimony. At the suppression hearing, Rentas testified he gave the hand signal after Eli handed him the corner cuts. However, at trial, Rentas testified he gave the signal before Eli gave him the heroin. Contreras asserts this discrepancy undercuts any probable cause that might have existed at the time of his arrest. He is mistaken.

¶12 Contreras erroneously focuses on "the officer's hand signal" and not "all of that" in the court's pronouncement. As the State points out, the hand signal itself is irrelevant to probable cause. It was merely a method of communication between Rentas and Wright to indicate an arrest could be made. The facts here were that: (1) When Rentas approached Eli and asked if he had anything, Eli asked if Rentas was looking for "manteca," or heroin; (2) Eli offered to call the person with the best "manteca"; (3) Eli then made a phone call; (4) shortly thereafter, Contreras arrived and was identified by Eli as "my guy"; and (5) Rentas observed Eli give Contreras money in exchange for small packets of what appeared to be drugs. As soon as Rentas observed the money and drugs change hands, he had probable cause to believe Contreras was selling narcotics, irrespective of when he indicated that probable cause to the other officers.

¶13 To the extent that Contreras might be arguing that, until Rentas had the corner cuts in his possession, Rentas was not positive a drug deal had occurred, the argument would be meritless. Any reasonable police officer in Rentas's

position would believe he just watched Contreras complete a drug sale. If Rentas had failed to subsequently obtain the corner cuts from Eli, the State might have suffered a proof issue, particularly as to the type of narcotic.[3] However, a lack of the physical drug evidence would not negate the remaining facts, which are sufficient by themselves to justify arrest.[4] It is therefore irrelevant whether Rentas indicated probable cause before or after obtaining the corner cuts, and the court appropriately denied Contreras's suppression motion.

¶14 Contreras also complains that Rentas's conversations with Eli, which were in Spanish, "were never translated." This is vague and technically untrue; Rentas translated the conversation into English himself when he testified. What Contreras really complains about is that no transcript was made of Rentas's conversation in the original Spanish. He relies on ***State v. Santiago***, 198 Wis. 2d 82, 85, 542 N.W.2d 466 (Ct. App. 1995), where, "because the trial court prevented Santiago from preserving … the exact Spanish wording of the ***Miranda*** warnings given to him by the police, the appellate record [was] insufficient…."

¶15 The significant problem in ***Santiago*** was that, although the trial court had held the ***Miranda*** warnings given to the defendant were "substantially the same" as ones preprinted on a Spanish-language card, the officer who gave the warnings testified that the card was "in no way close" to the oral warnings he had given. ***Santiago***, 198 Wis. 2d at 87-88, 91. Indeed, the officer was unable to read

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[3] Contreras also complains that only one of the prerecorded bills was recovered. The fate of the prerecorded cash does not inform on probable cause.

[4] In any event, at the time of the suppression hearing, there was no contradictory evidence. Contreras does not show that, once Rentas gave his trial testimony, Contreras sought to have the court reconsider its suppression decision based on the inconsistency.

Spanish. ***Id.*** at 87. The court had refused to let the officer testify in Spanish with an interpreter, out of concern that the interpretation would become the official record, and the officer was unable to write in Spanish so he could not provide his own transcript. ***Id.*** at 86-87. Thus, because there was no record of the ***Miranda*** warnings actually given to Santiago, we concluded we could not review whether they were sufficient for him to understand and knowingly waive his rights. ***Santiago***, 198 Wis. 2d at 93-94.

¶16 Contreras asserts that ***Santiago*** is not limited in its scope, and that he is entitled to have a Spanish-language record of Rentas's conversation with Eli. First, we consider ***Santiago*** distinguishable in its scope; we are not dealing with a specifically scripted constitutional prerequisite. Even if ***Santiago*** were not distinguishable, the record there was incomplete because there was no documentation of the actual words used. Here, Contreras merely claims entitlement to a Spanish transcript; he does not explain why the record is insufficient without one.

¶17 Second, although his argument is woefully underdeveloped, Contreras's concern does not focus on Rentas's entire conversation with Eli but, rather, specific use of the slang term "manteca." Contreras appears to claim that the only translation of the word came from the police and, perhaps, it might not actually mean "heroin." However, the court permitted him to cross-examine Rentas about the use of that word, its literal meaning, and its street meaning.[5] Thus, the record is not incomplete as to this key fact. Further, Contreras had

[5] There was also a question about use of the word "algo" to mean "anything" when Rentas first approached Eli, but Contreras does not mention this on appeal.

eleven days between the suppression hearing and trial to find someone else to opine on the meaning of "manteca" if he thought Rentas's representation was erroneous.[6] ***Santiago*** does not justify, much less require, a Spanish-language transcript in this case.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

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[6] Also, trial counsel represented to the court that he spoke Spanish.