2012 IL App (2d) 110668-U
No. 2-11-0668
Order filed October 31, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TIMOTHY F. SORN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Stephenson County. No. 09-CF-302 Honorable James M. Hauser, Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion to suppress his responses to custodial interrogation: defendant was advised of and understood his *Miranda* rights, and, although he refused to sign a written waiver, his refusal was not an unambiguous invocation of his rights, which, to the contrary, he impliedly waived by going on to answer questions.

¶ 2 Following a jury trial in the circuit court of Stephenson County, defendant, Timothy F. Sorn, was found guilty of burglary (720 ILCS 5/19-1(a) (West 2008)) and attempted armed robbery (720 ILCS 5/8-4(a), 18-2(a) (West 2008)) and was sentenced to concurrent 18-year prison terms. Evidence at trial included an audio recording of incriminating statements defendant made during

questioning by Andy Schroeder, a detective with the Freeport police department. The questioning occurred while defendant was in custody following his arrest. Prior to trial defendant unsuccessfully moved to suppress the statements on the basis that they were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). On appeal, defendant argues that the trial court erred in denying his motion to suppress and admitting his statements at trial. We affirm.

¶ 3 Prior to questioning defendant, Schroeder provided defendant with the following written form entitled "Statement of Constitutional Rights and Waiver":

"Before we ask you any questions, it is my duty to advise you of your rights:

1. You have the right to remain silent.

2. Anything you say can be used against you in court or other proceedings.

3. You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning.

4. If you cannot afford a lawyer, one will be appointed for you, free of any cost to you, before any questioning, if you wish.

***

WAIVER

I understand what my rights are, and I am willing to answer questions.

_____

Signature of Person Receiving Rights"

¶ 4 Schroeder read the above explanation of defendant's rights aloud and defendant confirmed that he understood those rights. Schroeder then told defendant that he "needed" to have him sign the form, adding, "all you're doing is you're just signing, indicating that I've read this form to you and that you understand its contents. That's all you're signing for." Defendant responded, "[it] says

here I'm willing to answer questions." Schroeder then told defendant that he did not have to answer any questions that he did not want to answer. Schroeder did not repeat his request that defendant sign the form. Instead, Schroeder wrote the word "refused" on the signature line. Schroeder proceeded to interrogate defendant for about 20 minutes. Defendant answered most (not all) of Schroeder's questions. Although defendant declined to answer certain questions, at no point did he express an unwillingness to speak with Schroeder.

¶ 5 In *Miranda*, the United States Supreme Court held that statements made in response to custodial interrogation by law enforcement officials must be suppressed unless the defendant was advised of, and waived, the right to remain silent and the right to have counsel present during questioning. *Id.*, at 478-79. When the defendant invokes the right to remain silent, all questioning must cease. *Id.* at 473-74. For purposes of this rule, however, the defendant must *unambiguously* assert the right to remain silent. *Berghuis v. Thompkins*, ___ U.S. ___, ___, 130 S. Ct. 2250, 2260 (2010).

¶ 6 In this case, there is no dispute that the statements defendant sought to suppress were made in response to custodial interrogation by Schroeder. Moreover, defendant concedes that, prior to the interrogation, Schroeder accurately advised him of his *Miranda* rights. Defendant further concedes that he understood those rights. Although defendant acknowledges that, under such circumstances, answering a police officer's questions is a sufficient manifestation of the waiver of the right to remain silent (*id.* at ___, 130 S. Ct. at 2262), he insists that, when he refused to sign the written waiver of his *Miranda* rights, the questioning should have ended. In this regard, defendant initially argues that "the sole *** issue is whether [defendant] *waived* his rights *before being interrogated*." (Emphases added.) Later, however, defendant identifies the *Miranda* violation as Schroeder's failure

to suspend the interrogation once defendant *invoked* his right to remain silent. Defendant does not explain how, precisely, he *invoked* the right to remain silent. Rather, he appears to be operating under the theory that not signing the written waiver of his *Miranda* rights effectively invoked those rights. In *United States v. Plugh*, 648 F.3d 118, 125-26 (2d Cir. 2011), the United States Court of Appeals for the Second Circuit rejected a similar argument, reasoning as follows:

> "[A] refusal to *waive* rights, however unequivocal, is not necessarily equivalent to an unambiguous decision to *invoke* them. Indeed, the Supreme Court has made clear that '[i]nvocation and waiver are entirely distinct inquiries, and the two must not be blurred by merging them together.' [Citation.] Accordingly, invocation and waiver are governed by different standards [citation] and carry critically different consequences [citations].
>
> Consistent with *Miranda*, all criminal defendants must be apprised of certain rights before a custodial interrogation may begin, including, of course, the right to remain silent and be afforded the assistance of counsel. But once those warnings are properly administered—as they, without question, were in this case—a defendant is left to make his own choice as to how best to proceed. [Citation.] Without question, the most legally remarkable and distinct choices a defendant can make are to (1) unambiguously invoke those rights and thereby cut off further questioning or (2) knowingly and voluntarily waive those rights and cooperate fully. But between those two analytic end posts is a significant middle ground—one all too familiar to those with law enforcement experience—occupied by those suspects who are simply unsure of how they wish to proceed. With respect to these defendants, *Miranda* and its progeny impose no further burdens on law enforcement officers

because once a defendant has been fully apprised of his rights, 'the law has no preference as between invocation and waiver.' [Citations.]

[The defendant's] conduct, on the whole, makes clear that he found himself in that middle ground. While his refusal to sign the form presented to him upon arrest may have unequivocally established that he did not wish to waive his rights *at that time*, his concurrent statements made equally clear he was also not seeking to *invoke* his rights and thus cut off all further questioning at that point. Those statements *** bespoke indecision—i.e., ' "I am not sure if I should be talking to you" '—and contemplation—*i.e.*, ' "I don't know if I need a lawyer." ' [Citations.] [The defendant] then continued to express uncertainty about how he wished to proceed by repeatedly asking the agents, during the drive to the FBI field office, for advice on what to do.

Critically, at no point did [*the defendant*] *unambiguously inform the custodial officers that he wished to invoke his right to remain silent or his right to speak with an attorney, nor was his course of conduct such that the officers should reasonably have been put on notice that *** no further questioning could occur*. We note, in this respect, that the Court has long made clear that the purpose of *Miranda* in the first place was to create 'clearcut' rules that could be readily understood and administered by officers [citation]. In particular, because 'it is police officers who must actually decide whether or not they can question a suspect,' the law should avoid forcing them to make 'difficult judgment calls about whether the suspect in fact wants [to invoke his rights], even though he has not [expressly] said so, with the threat of suppression if they guess wrong' [citations]. Consistent with those principles, and because [the defendant's] conduct and statements were,

on the whole, unclear, conflicted, and ambiguous, we cannot conclude that he invoked his rights in a manner sufficient to cut off all further questioning." (Emphasis in original and added.)

¶ 7 Unlike in *Plugh*, defendant did not equivocate about whether to answer questions. Nor, however, did he unambiguously invoke his *Miranda* rights, as is required under *Berghuis* to terminate questioning. That Schroeder was unable to secure defendant's signature on the written waiver did not foreclose Schroeder from questioning defendant. Because, as defendant concedes, *Miranda* warnings were properly administered and he understood them, defendant impliedly waived the right to remain silent by providing uncoerced answers to Schroeder's questions. *Berghuis*, ___ U.S. at ___, 130 S. Ct. at 2262.

¶ 8 Defendant emphasizes that, when asking defendant to sign the written waiver, Schroeder indicated that the form was designed to verify that defendant understood his *Miranda* rights, but he neglected to mention that the form also stated that defendant was willing to answer questions. Defendant submits that Schroeder was trying to trick him into signing the waiver. Even to the extent that Schroeder arguably was attempting to deceive defendant, the attempt was unsuccessful: defendant did not sign the waiver. We fail to see how Schroeder's description—however misleading—of a form that defendant did not sign has any bearing on the validity of his subsequent implied waiver of the right to remain silent.

¶ 9 For the foregoing reasons, the judgment of the circuit court of Stephenson County is affirmed.

¶ 10 Affirmed.