STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 9, 2001
v	No. 222564 Monroe Circuit Court
CHARLES WILLIAM MORRIS, Defendant-Appellant.	LC No. 97-028583-FC

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Defendant appeals by leave granted his conviction for contempt of court, MCL 600.1701. He was sentenced to thirty days in jail and a $250 fine. We reverse.

Defendant was held in contempt after he refused to answer questions in the murder trial of Frank Allen Little. Although defendant asserted his Fifth Amendment right against self-incrimination as a basis for refusing to answer the questions, the trial court found that defendant had waived that privilege.

Defendant argues that his contempt conviction should be reversed because he properly asserted his Fifth Amendment right not to incriminate himself. The trial court's determination that defendant was not entitled to assert the Fifth Amendment privilege will not be reversed unless there is "manifest error." *People v Kert*, 304 Mich 148, 157; 7 NW2d 251 (1943).

We agree with defendant that the trial court erred in ruling that defendant's invocation of the privilege was not valid because defendant had previously waived his Fifth Amendment rights. In order for a waiver of the right against self-incrimination to be effective, it must be made knowingly and voluntarily with sufficient awareness of relevant circumstances and likely consequences. *United States v Larry*, 536 F2d 1149, 1155 (CA 6, 1976), citing *Brady v United States*, 397 US 742, 756; 90 S Ct 1463, 25 L Ed 2d 747 (1970). The fact that a witness answers a question on a particular subject without invoking the privilege does not waive the right to invoke the privilege in response to a subsequent question on the same subject, unless the answer to the subsequent question would reveal no more incriminating information than was revealed in the response to the earlier question. *People v Guy*, 121 Mich App 592, 609; 329 NW2d 435 (1982). Moreover, a waiver of a witness's privilege against self-incrimination is limited to the particular proceeding in which the witness volunteers the testimony. *United States v Burch*, 490 F2d 1300,

1303 (CA 8, 1974). Thus, "'[t]he constitutional privilege attaches to the witness in each particular case in which he is called upon to testify, without reference to his declarations at some other time or place or in some other proceeding.'" *Ballantyne v United States*, 237 F2d 657, 665 (CA 5, 1956), quoting *Poretto v United States*, 196 F2d 392, 394 (CA 5, 1952).

Here, defendant did not waive the privilege simply because he gave a prior police statement concerning his conversation with Frank Little. First, when he made the police statement, there is no indication that he knowingly and voluntarily waived his right not to incriminate himself if called as a witness in a later trial. Thus, under *Larry*, the waiver did not apply to the later proceeding. Second, because the answers to the questions in this proceeding could possibly have revealed more incriminating evidence than was revealed in the prior questioning by police, defendant maintained the right to assert the privilege notwithstanding his previous statement. *Guy*, *supra*. Indeed, if defendant had lied to the police and testified that this was the case, he could have subjected himself to criminal charges, such as filing a false police report, MCL 750.411a. Third, under *Ballantyne* and *Burch*, the court should not have considered defendant's prior declarations to the police in determining whether the privilege applied to the Little trial. Therefore, the court erred in concluding that defendant had waived the privilege. In fact, as defendant points out, the prosecutor conceded that there was no waiver below.

Further, as defendant argues, when an individual relies in good faith upon his attorney's advice, he cannot be found guilty of criminal contempt because the element of an intentional violation of the court's order has not been established. *In re Contempt of Rapanos*, 143 Mich App 483, 495; 372 NW2d 598 (1985). Our review of the record convinces us that defendant did rely on his attorney's advice, stated repeatedly to the court, that defendant had a right to invoke the protection of the Fifth Amendment.

We reverse defendant's conviction. We need not consider defendant's arguments regarding sentencing.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Jeffrey G. Collins