COURT OF APPEALS
DECISION
DATED AND FILED

November 18, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2549-CR **Cir. Ct. No. 2004CF3746**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ADAN MARTINEZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Adan Martinez appeals from a judgment of conviction entered after a jury found him guilty of one count of second-degree sexual assault of a child and one count of repeated acts of sexual assault of a child.

See WIS. STAT. §§ 948.02(2), 948.025(1)(b) (2003-04).[1] Martinez challenges only the circuit court's decision to admit his custodial statement into evidence. We affirm.

BACKGROUND

¶2 In 2004, Martinez was arrested following an accusation that he sexually assaulted a thirteen-year-old girl. While in custody, Martinez gave an inculpatory statement to Detective Justin Carloni. The State charged Martinez with: (1) one count of second-degree sexual assault of a child by use of force; (2) one count of second-degree sexual assault of a child; and (3) one count of repeated acts of sexual assault of a child.

¶3 Martinez moved to suppress his custodial statement on the ground that it was obtained in violation of ***Miranda v. Arizona***, 384 U.S. 436 (1966). Martinez did not deny that Carloni administered the warnings required by ***Miranda***.[2] Rather, Martinez contended that he is proficient only in Spanish and thus he did not understand what he was told when Carloni provided ***Miranda*** warnings in English.

¶4 At the suppression hearing, Carloni testified that he and Martinez spoke in English prior to the start of the custodial interview. Carloni observed that Martinez "spoke English fluently." According to Carloni, Martinez explained that

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[2] Before questioning a suspect in custody, officers must inform the person of, *inter alia*, the right to remain silent, the fact that any statements made may be used at trial, the right to have an attorney present during questioning, and the right to have an attorney appointed if the person cannot afford one. *See* ***Miranda v. Arizona***, 384 U.S. 436, 478-79 (1966).

he could neither read nor write in English. Carloni then orally advised Martinez of the ***Miranda*** rights, and Martinez stated that he understood.

¶5 Carloni testified that he and Martinez spoke only in English throughout the subsequent custodial interview. Martinez provided appropriate responses to questions about his family and background, his prior criminal record, and his probationary status. Martinez gave a lucid statement pertaining to the accusation of sexual assault, he spoke in full sentences, and "the conversation flowed." Carloni testified that he wrote down Martinez's statement and then read it aloud to Martinez, who signed it. According to Carloni, he had no difficulty understanding Martinez, and Martinez never indicated that he did not understand Carloni.

¶6 Martinez testified through a translator. He acknowledged that he came to the United States in 1991 and that he had worked as a cook in Milwaukee since 1999. He explained that he had a limited ability to speak English, sufficient to respond when asked about his name or his family.

¶7 Regarding the custodial interrogation, Martinez explained that he did not understand most of what Carloni said, including the ***Miranda*** advisements, because Carloni spoke only in English. Martinez testified that he could not make himself understood in English and, therefore, he said very little to Carloni. Martinez acknowledged that Carloni took notes during the interrogation, but Martinez explained that he did not know what the notes said, and he did not understand what he signed after Carloni read the notes back in English.

¶8 Martinez admitted that he was arrested once before and that he was advised of the ***Miranda*** rights in Spanish incident to that arrest. He testified that he had understood the Spanish-language ***Miranda*** advisements on that occasion.

¶9 Christina Green, a freelance interpreter and translator, testified that Martinez's trial counsel retained her to assess Martinez's proficiency in English. Green described her experience in performing such assessments, explaining that she had conducted three prior English-proficiency evaluations.

¶10 Green testified that she met with Martinez for approximately one hour while he was in custody. According to Green, Martinez's English was ungrammatical, he spoke only in the present tense, he omitted pronouns, and he did not understand many basic vocabulary words, such as "went." Green explained that Martinez's ability to communicate in English was limited to simple responses on familiar subjects. She concluded that Martinez did not understand Carloni during the custodial interview.

¶11 In rebuttal, the State called Martinez's workplace supervisor, Anthony Anderle. Anderle testified that he and Martinez worked together for two years prior to Martinez's arrest. According to Anderle, he spoke only English with Martinez, and Martinez "spoke English perfectly fine." Anderle testified that he used Martinez as an interpreter to communicate with employees who did not speak English.

¶12 At the conclusion of the hearing, the circuit court rejected Martinez's claims and denied the motion to suppress. The matter proceeded to trial, and the State introduced into evidence Martinez's inculpatory admission that he had sexual intercourse with the thirteen-year-old victim on multiple occasions. The jury acquitted Martinez of sexually assaulting a child by use of force, but

convicted him of second-degree sexual assault of a child and of repeated acts of sexual assault of a child. Martinez appeals.[3]

DISCUSSION

¶13 Martinez contends that he did not understand the English-language recitation of the ***Miranda*** rights that preceded his custodial statement. Therefore, he did not waive those rights voluntarily, knowingly, and intelligently.

> A ***Miranda*** waiver is voluntary if it is "the product of a free and deliberate choice rather than intimidation, coercion, or deception." For a ***Miranda*** waiver to be knowing and intelligent, it "must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Resolving the waiver question requires a case-by-case examination of all the facts and circumstances, including the suspect's background, experience, and conduct.

State v. Hambly, 2008 WI 10, ¶91, 307 Wis. 2d 98, 745 N.W.2d 48 (citations and footnotes omitted).

¶14 In reviewing a ***Miranda*** challenge, we are bound by the circuit court's factual and historical findings unless they are clearly erroneous. ***State v. Ross***, 203 Wis. 2d 66, 79, 552 N.W.2d 428 (Ct. App. 1996). We determine independently whether the facts resulted in a constitutional violation. ***Id.***

[3] Martinez's brief-in-chief does not comply with the rules of appellate procedure. The brief contains neither a table of contents with page references to the various portions of the brief, nor a table of cases, statutes, and other authorities cited. *See* WIS. STAT. RULE 809.19(1)(a) (2005-06). We admonish appellate counsel for failing to comply with the rules of appellate procedure, and we caution that future noncompliance is likely to result in sanctions.

¶15 Here, the circuit court found Carloni credible, and it described Anderle's testimony as "key." The court rejected Martinez's claim to have signed an admission without knowing what it said. The court observed that, if it accepted Martinez's testimony, then Carloni "made [up] the confession out of whole cloth, which I don't buy." This court defers to the circuit court's assessment of credibility. *See* ***State v. Plank***, 2005 WI App 109, ¶11, 282 Wis. 2d 522, 699 N.W.2d 235.

¶16 The circuit court stated that it disagreed with Green's analysis. Much of Martinez's brief is built around an assumption that the circuit court may not reject an expert's testimony by expressing disagreement with the expert's conclusions. Thus, Martinez suggests that the circuit court was required either to state that Green was "not credible" or to accept her testimony. Martinez is wrong. A circuit court is not required to use magic words when conducting its analysis. *See* ***State v. Gary M.B.***, 2004 WI 33, ¶26, 270 Wis. 2d 62, 676 N.W.2d 475. Further, the court of appeals defers to both express and implicit credibility findings of the circuit court unless those findings are "'based upon caprice, an [erroneous exercise] of discretion, or an error of law.'" ***Jacobson v. American Tool Cos.***, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (Ct. App. 1998) (citation omitted).

¶17 In this case, the circuit court's remarks reflect that it did not find Green's testimony persuasive. The circuit court's finding has ample justification in the record. First, Green had only limited experience in evaluating English proficiency. Second, her assessment did not comport with the credible evidence offered by Carloni and Anderle. Third, she based her conclusions on a single and relatively brief interview with Martinez. Accordingly, we defer to the circuit court's assessment of Green's testimony.

¶18 Martinez also argues that the circuit court was required to accept Green's conclusions because it "did not point to evidence that contradicted the expert's testimony." This contention is incorrect as a matter of both law and fact. As a matter of law, a circuit court is at liberty when resolving a disputed issue "'to accept or reject the testimony of any expert, including accepting only parts of an expert's testimony [] and to consider all of the non-expert testimony….'" *See* ***State v. Kienitz***, 227 Wis. 2d 423, 441, 597 N.W.2d 712 (1999) (citation omitted). The fact finder is never bound to the opinion of an expert. ***Id.*** at 440. As to the facts, Anderle and Carloni flatly contradicted Green's testimony that Martinez had only nominal English-language skills.

¶19 The circuit court's conclusion that Anderle and Carloni were credible includes the implicit finding that Martinez was sufficiently proficient in English to understand the ***Miranda*** warnings. *See* ***State v. Yang***, 201 Wis. 2d 725, 735-36, 549 N.W.2d 769 (Ct. App. 1996) (circuit court's finding of defendant's language proficiency may be implicit from its ruling). We must accept a circuit court's factual findings when they are supported by credible evidence. *See* ***State v. Owens***, 148 Wis. 2d 922, 929-30, 436 N.W.2d 869 (1989).

¶20 Martinez offered no alternative basis for suppressing his confession beyond his claim to have limited English-language skills. The circuit court did not believe that claim. On this record, we are satisfied that Martinez understood the ***Miranda*** warnings and that he voluntarily, knowingly, and intelligently waived his

rights. The circuit court properly refused to suppress Martinez's custodial statement.

By the Court.—Judgment affirmed.

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