

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 25, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2872-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LAWRENCE P. SAJDIK,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Sauk County:
VIRGINIA A. WOLFE, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Dykman, J.

PER CURIAM. Lawrence P. Sajdik appeals from a judgment convicting him of burglary. He challenges the order denying his suppression motion,¹ claiming that his belief that he had been granted immunity prevented him from knowingly and intelligently waiving his *Miranda* rights.² Because he

¹ See § 971.31(10), STATS.

² See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

failed to raise that issue in the trial court, he has waived it. Therefore, we affirm.

While jailed in Burnett County on another matter, Sajdik knew that he was a crime suspect in Burnett and Sauk counties. Federal Agent William Baudhuin sought to interview Sajdik. Before agreeing to talk to Baudhuin, Sajdik consulted with counsel. Baudhuin assured Sajdik that he "would not pursue it federally." Sajdik believed that Baudhuin had promised him immunity from all charges. Baudhuin claimed that he agreed not to prosecute him on federal charges, but never mentioned prosecution on state law charges. Baudhuin then secured Sajdik's signature on a *Miranda* waiver form. After the line that read "[n]o promises or threats have been made to me," Sajdik wrote, "[Y]ou've already talked [to] my attorney"

During the interrogation, Sajdik told Baudhuin that if he continued, he would incriminate himself. Baudhuin testified that Sajdik wanted to "own[] up to and face[] the consequences of his crimes." Sajdik denied Baudhuin's version and testified that he continued because Baudhuin assured him that he "wasn't a target." After confessing, Sajdik was prosecuted on state burglary charges.

Sajdik moved to suppress his admissions, claiming that they were obtained by fraud and deceit. The suppression hearing focused on Sajdik's right to counsel and the voluntariness of his waiver. Sajdik never directly challenged whether his *Miranda* waiver was obtained knowingly and intelligently.

Miranda allows a defendant to waive the privilege against self-incrimination if the waiver is made voluntarily, knowingly and intelligently. *Miranda*, 384 U.S. at 444; see U.S. CONST. amend. V. The voluntary aspect of the waiver must be "the product of a free and deliberate choice rather than [compelled by] intimidation, coercion, or deception." *State v. Lee*, 175 Wis.2d 348, 356, 499 N.W.2d 250, 253 (Ct. App. 1993) (quoting *Colorado v. Spring*, 479 U.S. 564, 573 (1987)) (internal quoted source omitted). The intelligent-knowledge aspect requires that the waiver be "made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.*

Sajdik now claims that his waiver was induced by Baudhuin's offer of full immunity. That contention relates to voluntariness, not to intelligent knowledge.³ Sajdik did not challenge the intelligent-knowledge aspect of his waiver before the trial court. As we explained in *Lee*, "[I]ssues of intelligent knowledge are distinct from issues of voluntariness." *Id.* at 356, 499 N.W.2d at 254. We conclude that Sajdik waived the right to challenge whether his waiver was obtained with intelligent knowledge because he did not preserve that challenge in the trial court.⁴

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

³ Sajdik does not raise the voluntariness of his waiver on appeal.

⁴ Because the intelligent-knowledge issue was not raised in the trial court, the trial court does not directly address it. However, the trial court implicitly rejected that issue because it found that Baudhuin did not misstate his intended use of Sajdik's confession and that Sajdik was "sufficiently familiar with criminal procedures to have had an appropriate level of comprehension of the circumstances at the ... meeting." It found that Sajdik's "waiver of rights ... was made with the effective equivalent of an attorney's presence, and was made without coercion or misstatement of the intended use of the account."