

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 25, 2014

Diane M. Fremgen
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. 2012AP2006-CR

Cir. Ct. No. 2008CF1172

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ABDIWAHAB M. HUSSEIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: CARL ASHLEY, Judge. *Affirmed.*

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

¶1 PER CURIAM. Abdiwahab M. Hussein appeals a judgment convicting him of one count of kidnapping, as a party to a crime, and four counts of first-degree sexual assault aided by others, three of which were charged as a party to a crime. Hussein also appeals an order denying his motion for

postconviction relief. He argues: (1) that the circuit court should have suppressed the statement he made to the police because he did not knowingly and intelligently waive his *Miranda*¹ rights; and (2) that his trial lawyer ineffectively represented him. We affirm.

¶2 Hussein first argues that his statement to the police should have been suppressed because he did not fully understand the *Miranda* warnings the police gave him due to his poor command of English. Government officials are required to give *Miranda* warnings prior to questioning a suspect to help ensure that the “the coercive nature of confinement [does not] extract confessions that would not be given in an unrestrained environment.” *State v. Hambly*, 2008 WI 10, ¶48, 307 Wis. 2d 98, 745 N.W.2d 48 (citation and quotation marks omitted). The warnings inform a suspect about the constitutional privilege against compelled self-incrimination. *State v. Grady*, 2009 WI 47, ¶14, 317 Wis. 2d 344, 766 N.W.2d 729.

¶3 “When the State seeks to admit into evidence an accused’s custodial statement ... the State must prove that the accused was adequately informed of the *Miranda* rights, understood them, and knowingly and intelligently waived them.” *State v. Santiago*, 206 Wis. 2d 3, 18, 556 N.W.2d 687 (1996). “[T]he waiver 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.” *Id.* at 18-19 (citation omitted, brackets in original). We look at the totality of the circumstances to determine whether a defendant was properly given *Miranda* warnings and understood them. *Grady*, 317 Wis. 2d 344, ¶15.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶4 At the suppression hearing, Milwaukee Police Detective Matthew Quist and Detective Lucrecia Thomas both testified about their interactions with Hussein. Quist testified that he and Hussein communicated in English during the interview and Hussein did not appear to have any trouble understanding him. Quist also testified that he has been a Spanish/English interpreter for many years, so he has extensive experience talking to non-native English speakers and is aware of the potential problems they face. The prosecutor asked Quist about Hussein's comprehension of his rights:

[Detective Quist]: Well, I could tell that he was understanding me because his responses to my questions were appropriate. They were logical. He was asking questions that were appropriate, and then what really did it for me is when he was able to explain himself with very complex technical legal terminology that is very rare for me to see people that are Spanish/English speakers able to use in the English language when they are learning English for the first time. Typically, when someone learns-- Well, I know when I learned Spanish technical legal terminology was the last types of things that people typically learn.

[Prosecutor]: In particular there was a point in the interview where Mr. Hussein discussed with you that if someone was accusing him of having intercourse with the girl, then his DNA should be checked because it would verify that he did not have sex with her; is that right?

[Detective Quist]: Right. And at that point I realized that he could not only speak English, but he could think and explain himself in the abstract and use legal terminology to explain how he might defend himself or how he might prove that he was innocent of the crime.

[Prosecutor]: Throughout the course of the time that you were talking with Mr. Hussein, did he ever complain to you that he was not understanding what you were saying to him?

[Detective Quist]: No.... There is usually many different ways to say something in any language, and I told him, I believe, like I usually tell someone that if you don't understand, please let me know right away so I can think of another way of telling you or another way of explaining it.

Some times there are many ways to explain the same thing,
but it wasn't difficult for us to communicate.

¶5 Detective Thomas testified that she conducted a brief interview with Hussein the night before Quist's interview with Hussein. She testified that she read him his rights and he indicated in English that he understood them. He told her he wanted to hire a lawyer, so she stopped the interview immediately. Thomas testified that Hussein did not appear to have any trouble understanding her during their interactions and she did not have any difficulties understanding him. The recording of the interview shows that Thomas specifically raised the issue of Hussein's ability to speak English by noting that he seemed to have some type of accent and asking him if he could speak English well. He indicated that he was able to speak English and that he understood everything she was saying, which is corroborated by the fact that he asked to hire a lawyer immediately after his rights were read to him.

¶6 In addition to the testimony of the two detectives, the State played audio-recordings of the detectives' interviews with Hussein. The recordings show that Hussein asked cogent questions during the interviews. Hussein told Quist when he did not fully understand what was being asked of him and his responses showed that he had a very good grasp of the language. Based on Hussein's questions and responses during the interviews, the detectives' testimony about their interactions with Hussein and Hussein's immediate request for a lawyer after Thomas read him his rights, we conclude Hussein understood the *Miranda* warnings the detectives gave him and validly waived his rights.

¶7 Hussein contends that he did not knowingly and intelligently waive his *Miranda* rights because Quist did not adequately define what a lawyer is. Quist said, "Okay, What's a lawyer? Somebody that works with the law?" and

Hussein responded, “With the law, yeah.” Although Quist’s question to clarify Hussein’s understanding on this point was cursory, Hussein clearly knew what a lawyer was because he told Thomas that he wanted to hire a lawyer the prior evening, thus terminating the interrogation.

¶8 As another example, Hussein points to the fact that when Quist asked him to explain the meaning of “the right to remain silent,” he responded, “Well, as time does I may say I have a right to be silent where I don’t understand.” He argues his response shows confusion because he had a right to remain silent regardless of whether he understood what was being asked of him. Hussein’s argument ignores Quist’s subsequent explanation. After the exchange, Quist again asked Hussein if he knew what it meant to “remain silent,” and Hussein said, “[b]e quiet.” Quist then clarified, “Right, so that means you don’t have to say anything if you don’t want to.” Quist then told Hussein, “you can change your mind at any point” and that he could assert his right to remain silent if “at some point in time if you decide, you know what, I changed my mind, I don’t want to talk anymore.” Quist clearly and simply explained to Hussein that he could assert his right to remain silent at any point in the interview and told Hussein that he was not required to say anything if he did not want to.

¶9 As a final example, Hussein contends that Quist did not adequately ascertain that he understood that the statement he gave to the police could be used against him. Again, the record of the interview undermines this claim. Hussein was plainly told more than one time by the police that, “[a]nything you say can and will be used against you.” Hussein understands English and there is nothing in the record that suggests that he did not understand this information. *Miranda* requires that the police inform a suspect of this information before an interrogation, but does not mandate that an in-depth colloquy be conducted

between the police and a suspect regarding a suspect's understanding of each right. We therefore reject Hussein's argument that he did not knowingly and intelligently waive his *Miranda* rights.

¶10 Hussein next argues that his trial lawyer ineffectively represented him because he failed to argue that Hussein did not understand the *Miranda* warnings. To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We have concluded that Hussein understood the *Miranda* warnings and knowingly, intelligently and voluntarily waived them. If Hussein's lawyer had brought a motion to suppress the statements, it would not have been successful. Failing to raise an argument that does not have merit does not constitute ineffective assistance of counsel. *See State v. Harvey*, 139 Wis. 2d 353, 380, 407 N.W.2d 235 (1987).

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

