

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 3, 2009

David R. Schanker
Clerk of Court of Appeals

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Appeal No. 2008AP1137-CR

Cir. Ct. No. 2006CF796

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

v.

PAUL WA TOU XIONG,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Winnebago County:
BRUCE K. SCHMIDT, Judge. *Reversed and cause remanded with directions.*

Before Fine, Kessler and Brennan, JJ.

¶1 BRENNAN, J. The State of Wisconsin appeals from an order, which granted Paul Wa Tou Xiong's motion seeking to suppress statements he made to police. The State contends that the trial court erred in two respects. First, the State argues that Xiong was not "in custody" during his interview at the police

station; thus, any statements Xiong made were volunteered and not subject to suppression. Second, the State contends that even if Xiong was “in custody,” the statements need not be suppressed as he was properly advised of his *Miranda*¹ rights; thereafter, he knowingly, intelligently and voluntarily waived his rights. Because the record reflects that *Miranda* rights were properly given and Xiong knowingly, intelligently and voluntarily waived those rights, the trial court erred when it suppressed the statements. We reverse the trial court order suppressing Xiong’s statements made to police and remand for further proceedings consistent with this opinion.

BACKGROUND

¶2 On or about October 16, 2006, Menasha Police Investigator, Nick Oleszak, received a phone call from Blanca Ortiz, indicating that a student at the Menasha High School, identified as R.X. (d.o.b. 3/02/90), had reported that her father had been sexually assaulting her for several years. Oleszak then made contact directly with R.X., who indicated that her father, Xiong, had been having sexual intercourse with her starting in September 2000 (when she was in fifth grade) and continuing through June 2006.

¶3 On October 16, 2006, Oleszak and his partner went to Xiong’s residence to follow up on R.X.’s report. When the police investigators arrived, Xiong and his wife were at the residence. Oleszak told Xiong that they had come to talk about the alleged inappropriate sexual contact between Xiong and his daughter. Xiong, his wife and the investigators sat at the kitchen table conversing

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

in English for approximately ten to fifteen minutes. At that point, the Xiong children began arriving home from school and Oleszak asked Xiong if they could continue the conversation at the police station as he did not feel it would be appropriate to discuss the sexual-assault allegations with the children present. Xiong replied: "Sure. Can I get some shoes on?" to which Oleszak responded affirmatively.

¶4 After a few moments, Xiong returned to the kitchen and Oleszak took Xiong in the police vehicle to the station. Oleszak's partner remained at the Xiong residence with Xiong's wife for a little while. It is unclear from the record when Mrs. Xiong arrived at the police station or if Xiong knew she was there.

¶5 The ride to the police station was about five to eight minutes. During this time, Xiong was not handcuffed and was not told he was under arrest. No conversation occurred during the ride to the police station. Oleszak parked the vehicle in the back lot and he and Xiong walked into the police station through the employee entrance, proceeding to an interview room. The room was approximately eight feet by ten feet, containing a table and a couple of chairs, with a window opposite the door. The room had videotape equipment and that interview was in fact videotaped.

¶6 The first part of the interview involved background information and a conversation about work and whether Xiong needed a translator at work. When Oleszak observed that Xiong seemed to speak English very well, he asked Xiong if he understood English well. Xiong responded: "Not very much, no. At times, yeah." Xiong then told Oleszak he does not need a translator to function at his place of employment. Xiong had worked at McCain Foods for twelve years. Oleszak then told Xiong: "I want to read you this. Because ... we're not sitting in

your house, because I took you to the station here, even though I didn't handcuff you and stuff like that, I don't know if you feel comfortable walking out that door or not." Xiong responded: "Oh, no problem. I have problem, I have problem, so we need to talk, need to -- so we have to, you know, face my problem."

¶7 Oleszak proceeded to read Xiong his rights. First, Oleszak told Xiong: "I want you to understand that you don't have to talk to me. Okay? You do have the right to remain silent." Xiong replied: "Okay." Then, Oleszak completed a reading of the *Miranda* rights and warnings:

Anything that we talk about today or anything that you say can and will be used against you in court, if it goes to court. Okay? You have the right to consult a lawyer and to have them present with you while you are being questioned. If you cannot afford to hire a lawyer, one would be appointed to represent you before any questioning. You have the right to stop answering any questions at any time, okay, which means you can say, hey, I don't really want [to] talk about that, but it doesn't mean we have to stop talking. Okay?

Xiong answered affirmatively. When Oleszak asked: "Do you know and understand each of your rights which I have explained? Do you know and understand each of the rights which I have explained?" Xiong answered: "Not quite" and proceeded to ask whether he had to go to court. Oleszak then explained generally what the process would involve. After explaining the process, Oleszak asked: "Does that explain or answer your question that you had?" Xiong responded: "Yeah, pretty close."

¶8 Next, Oleszak said: "Understanding that you do have rights and that I can't like, you know, beat on you or anything to make you talk, will you answer questions?" Xiong nodded affirmatively. Oleszak then told Xiong he could re-read the rights and then sign his name indicating he understood his rights. Oleszak

then asked Xiong if he wanted Oleszak to re-read the rights to which Xiong said: “Yeah, read it to me again.” Oleszak once again read Xiong his *Miranda* rights:

Before we ask you any questions, please be advised you have the following rights: You have the right to remain silent. Anything that you say can and will be used against you in court. You have the right to consult a lawyer and to have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning. You have the right to stop answering any questions at any time.

At this point, Xiong interjected: “Go back to this one again. ... If I can not afford for lawyer, ... one will be appoint[ed] to represent me?” Oleszak provided an explanation regarding the appointment of counsel, concluding with: “So no matter what, you will have an attorney, either one of your own choosing or one that’s chosen for you that’s given to you for little to no cost to you. ... Okay?” Xiong responded: “Okay.”

¶9 Oleszak then showed Xiong the waiver of rights form, indicating that the form asked: “Do you know and understand each of your rights which I have explained? And I put yes. Understanding these rights, will you answer questions? And I put yes.” Xiong said: “Okay. So this paper I sign?” Oleszak said: “Yes, right by the X.” Xiong then asked: “There is nothing wrong with this paper, right?” Oleszak stated: “No. This is just that I read them to you, that’s all it’s saying. It’s not admitting any type of guilty or anything like that.” Xiong then signed by the X and a conversation began about Xiong’s repeated sexual assaults of his daughter.

¶10 The entire interview was in English. During the interview, Xiong admitted that he had sexual intercourse with his daughter repeatedly. He

explained that this occurred when his “bad mind” took control of him and that he could not stop himself.

¶11 The interview began about 3:18 p.m and concluded about 4:30 p.m. at which time, Xiong was allowed to speak with his wife who was also at the station to fill out paperwork. Xiong was then formally arrested and later charged by criminal complaint. The complaint contained two counts of repeated sexual assault of a child. The first count asserted that between September 2000 and March 1, 2003, Xiong committed three or more violations of WIS. STAT. § 948.02(1) or (2) with R.X., who had not yet attained the age of sixteen, contrary to WIS. STAT. §§ 948.025(1)(ar) and 939.50(3)(b) (2005-06).² The second count asserted that between March 2, 2003 and March 1, 2006, Xiong committed repeated sexual assaults of R.X., in violation of WIS. STAT. § 948.02(1), contrary to WIS. STAT. §§ 948.025(1)(b) and 939.50(3)(c).

¶12 Xiong retained counsel and filed a motion seeking to suppress all the statements he made to police, both in his home and at the police station. The trial court conducted a hearing on two separate dates. On the first date, the trial court heard the testimony of Oleszak. He testified consistently with the facts set forth above regarding his interactions with Xiong on October 16th. Oleszak also testified that Xiong was giving non-verbal cues in addition to the verbal responses that he understood his rights. After Oleszak testified, the State called three witnesses who worked with Xiong at McCain Foods. Lisa Stephenson stated that she had been Xiong’s line supervisor for the past year. Xiong worked as the head

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

mixer, which required him to read and follow routing slips listing different types of ingredients and measurements. She indicated that she spoke to Xiong in English and had no problem communicating with him.

¶13 Bill Wampler also testified that he supervised Xiong at McCain Foods for five years. During that time, Wampler spoke to Xiong in English and never had any trouble communicating with him. In fact, Wampler used Xiong as a translator when other Hmong employees were having conflicts which Wampler had to resolve. Finally, Kevin Muskevitsch testified. He was a co-worker of Xiong and indicated he had known Xiong for ten years. Muskevitsch said he spoke with Xiong using English and felt that Xiong spoke very good English.

¶14 When the suppression hearing was continued on the second date, Xiong presented two witnesses: Gwaub Thao and Sia Lo. Thao, who is a teacher and interpreter, spoke with Xiong to determine how well he spoke and understood English. The trial court ruled that Thao could not testify as an expert, but did allow him to give a lay opinion. Thao testified that Xiong was a farmer in Laos who moved to the United States in 1981. Xiong has been in the United States for twenty-seven years. He attended high school in Appleton for one-half of a year. (There is also a statement in the record that Xiong attended high school in Appleton for one and one-half years.) Thao testified that Xiong could understand “working or street or the street language, but not in this professional language like they use. ... [L]ike in court system, police system, and the school system.” He also reported that Xiong got forty percent correct on an English comprehension test. Thao testified that there were some things that Xiong understood easily in both Hmong and English and other concepts in both languages with which he had a lot of difficulty. The example Thao gave was that he asked Xiong what is the constitution and Xiong did not know, nor did he know the branches of

government. Thao did not go through the *Miranda* warnings with Thao to assess whether he understood the language used in the warnings.

¶15 Lo also testified at the suppression hearing. Lo is an attorney licensed in Minnesota who has worked as an interpreter for the State of Minnesota. The court found Lo was an expert in the area of law, but not an expert witness with respect to Xiong's ability to understand English. The court did allow Lo to give a lay opinion based on his conversation with Xiong and his observation of Xiong interacting with Thao. Lo testified that in Hmong culture, people tend to answer "yes" to authority. He stated that Xiong "has basic conversational understanding of English but he lacks the depth of understanding of certain words, especially difficult words." Lo did not go through the *Miranda* warnings line by line with Xiong to determine whether he understood them. Lo had spoken with Xiong for a couple of minutes. Lo told the court that Xiong did not understand that he had the right to have an attorney present during the police questioning, but rather, thought he only had the right to an attorney when he was actually in court.

¶16 After the conclusion of the hearing, the parties submitted briefs to the court. On April 4, 2008, the trial court issued its ruling:

[B]oth [parties] agree ... that the interview that took place at Mr. Xiong's house was not a custodial interview and did not need the *Miranda* warnings to be given to Mr. Xiong. He was at his own home, his family was around him, so I think it's clear that that was not a custodial interrogation and any statements that were made at that point in time were purely voluntary and did not need the *Miranda* warnings, so anything that was said at that time will be admissible.

The real question becomes the interview that was done at the police station and the statements given by Mr. Xiong during that interview, and the question becomes whether or not Mr. Xiong needed to be *Mirandised* at that point in time.

The trial court then weighed factors in support of and against whether Xiong was “in custody” during the interview at the police station. The trial court concluded that “a person in his situation would have felt that he was in custody.” The court proceeded to determine whether he was “being interrogated” thus requiring *Miranda* warnings. The trial court again concluded that this was an interrogation requiring *Miranda* warnings. The final determination involved “whether or not Mr. Xiong voluntarily waived his Miranda Warnings.” After considering the totality of the circumstances, the trial court ruled Xiong did not voluntarily waive his rights “because he didn’t understand what his rights were at that point in time.” Accordingly, the trial court ordered suppressed all statements made once Xiong arrived at the police station. A written order to that effect was entered. The State now appeals from that order.

DISCUSSION

¶17 The State makes two arguments in this appeal. First, it contends that the interview at the police station was not custodial. It points out that if we agree with its first assertion, then we need not reach the *Miranda* issue as *Miranda* rights are not required unless a suspect is questioned while “in custody.” See *State v. Armstrong*, 223 Wis. 2d 331, 344-45, 588 N.W.2d 606 (1999). The second argument is that even if Xiong was “in custody,” the police complied with *Miranda* requirements and Xiong knowingly, intelligently and voluntarily waived those rights; thus, the statements made at the police station should not be suppressed. For disposition of this appeal, we address only the second issue. In doing so we assume, without deciding, that Xiong was in custody while being

interviewed by Oleszak at the police station.³ See *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the narrowest grounds).

¶18 In order for statements made by a suspect in custody to be admissible, two things must occur: (1) *Miranda* rights must have been properly given and understood; and (2) the suspect must have validly waived those rights. *Armstrong*, 223 Wis. 2d at 345-46. The State has the burden to prove both things occurred by a preponderance of the evidence. *Id.* at 349-50. “[T]he sufficiency of the *Miranda* warnings and waiver of *Miranda* rights are ultimate issues of constitutional fact,” which we review independently. *State v. Santiago*, 206 Wis. 2d 3, 18, 556 N.W.2d 687 (1996). Underlying findings of historical fact made by the trial court, however, will not be overturned unless clearly erroneous. *Id.* at 17 n.10. The same standard applies in reviewing a trial court’s suppression ruling. See *State v. Turner*, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987). Our review is based on a consideration of the totality of the circumstances. See *State v. Backstrom*, 2006 WI App 114, ¶17, 293 Wis. 2d 809, 718 N.W.2d 246.

A. Miranda Rights Were Sufficiently Given.

¶19 We address first whether the *Miranda* rights were properly and sufficiently given to Xiong. The record reflects that before Oleszak began asking about the sexual assault allegations, the following occurred. Oleszak told Xiong:

³ We agree with the State that Xiong’s initial statement: “Oh, no problem. I have problem, I have problem, so we need to talk, need to -- so we have to, you know, face my problem,” made after Oleszak said “I don’t know if you feel comfortable walking out that door or not,” was not elicited from custodial interrogation. Rather, the statement was volunteered and therefore admissible irrespective of any decision on *Miranda*.

“I want you to understand that you don’t have to talk to me. Okay? You do have the right to remain silent.” Xiong responded: “Okay.” Oleszak proceeded to read the *Miranda* rights to Xiong from the standard form. In addition, he also interjected more common language to further ensure Xiong was properly advised of his rights: “You have the right to stop answering any questions at any time, okay, which means you can say, hey, I don’t really want [to] talk about that, Okay?” Xiong indicated he understood. When Xiong did not quite understand whether he had to go to court, Oleszak further explained that to him. After a lengthy explanation, Oleszak asked: “Does that explain or answer your question that you had?” Xiong responded: “Yeah, pretty close.” Oleszak then asked Xiong if he would answer questions knowing that he had rights. Xiong nodded affirmatively. Oleszak then asked Xiong to sign by the X on the waiver of rights form to show that he understood he had rights. Xiong asked Oleszak to read his rights again, which Oleszak read from the standard form. Xiong then asked questions about the right to have a lawyer appointed. Oleszak explained that right to Xiong and proceeded to read the questions and the answers on the waiver of rights form: “Do you know and understand each of your rights which I have explained? And I put yes. Understanding these rights, will you answer questions? And I put yes.” Xiong immediately thereafter said: “Okay. So this paper I sign?” Xiong then asked Oleszak: “There is nothing wrong with this paper, right?,” which Oleszak interpreted to be a question related to whether the paper admitted guilt and advised Xiong the paper related only to his rights, not to his guilt. Xiong signed the waiver of rights form.

¶20 From this recitation, we conclude that the State has satisfied its burden to establish Xiong was sufficiently advised of his *Miranda* rights. Oleszak read the *Miranda* rights to Xiong from the standard form two separate times. He

also further explained in simple or street terms what those rights meant. He did not use highly technical language, but instead used simplified language so that Xiong could comprehend what he was saying. He took time to answer Xiong's specific questions relating to certain rights to ensure that Xiong understood. Oleszak made special effort and took extra time to make sure Xiong understood these basic rights. Based on this record, Xiong was fully and fairly informed of his rights before Oleszak began to question him about the sexual assault allegations.

¶21 Xiong makes a brief and ineffective argument to the contrary. He does not assert which *Miranda* right was not read to him. Instead, Xiong asserts that his questions evidenced his inability to understand the rights and Oleszak's explanations made matters worse and more confusing. The record belies Xiong's assertions. Although it is true that Xiong responded "not quite" when asked if he understood the *Miranda* rights, the transcript reflects that Xiong actively spoke up and asked questions. The "not quite" response related to only one right and was further clarified for Xiong, who affirmatively indicated that his question had been answered. The contextual give and take and working through the questions Xiong had led to the final result that Xiong was read his rights, he understood those rights and he wanted to talk about his problem with Oleszak. Based on the totality of the circumstances and the entire interchange between Oleszak and Xiong, we conclude that Xiong was sufficiently advised of his *Miranda* rights.

B. Knowing and Intelligent Waiver of Rights.

¶22 The second question is whether Xiong understood and validly waived his rights. To be knowing and intelligent, "the 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.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986). The disputed issue here is whether Xiong could speak and understand English well enough to understand the rights he waived, which were only read to him in English. “When a suspect cannot communicate in English, law enforcement officers should give the *Miranda* warnings in a language the suspect understands in order to ensure that the suspect comprehends the *Miranda* warnings and can knowingly and intelligently waive the *Miranda* rights.” *Santiago*, 206 Wis. 2d at 13.

¶23 Whether Xiong understood and intelligently waived his rights presents questions of constitutional fact subject to independent review. *See id.* at 18. In reviewing the totality of the circumstances regarding the defendant’s understanding of English, the court may consider the defendant’s motive to minimize his understanding of English, *see State v. Yang*, 201 Wis. 2d 725, 736, 549 N.W.2d 769 (Ct. App. 1996), and the court may give greater weight to the intrinsic evidence in the record of the defendant’s level of understanding.

¶24 Here, we conclude that the intrinsic evidence, namely the transcript of the police interview, showed that Xiong understood English well enough to understand his *Miranda* rights. Any finding by the trial court to the contrary is clearly erroneous. Oleszak testified that they only spoke in English and were able to communicate, both at Xiong’s home and at the police station. The entire recorded interview was in English. The interview reflects that Xiong’s answers were responsive to Oleszak’s questions. It also reflects some fairly long narrative answers. Further, the suppression hearing contains testimony from three objective witnesses who worked with Xiong, all indicating that they conversed with him *only* in English and had no trouble doing so. Xiong, in fact, acted as an English/Hmong interpreter at work. It would be illogical to conclude that

someone who served as an interpreter at work does not speak English well enough to understand the *Miranda* rights.

¶25 Additionally, as noted by courts in other jurisdictions, the standard *Miranda* rights form is not complex, contains common words, and is readily understandable even to suspects who have only a rudimentary English-language competency. *United States v. Vasiliavitchious*, 919 F. Supp. 1113, 1119 (N.D. Ill. 1996) (“*Miranda* warnings are not complex or difficult to understand.”). The sentences in the standard *Miranda* rights form contain short, straight-forward declarative sentences. *See Liu v. State*, 628 A.2d 1376, 1380 (Del. 1993). “The vocabulary is what we could call high-frequency vocabulary, for the most part. There are also no difficult or seldom-used words here.”

¶26 The totality of the circumstances here show Xiong understood his rights and intelligently waived them. Xiong, although of Hmong descent, had been in the United States since he was a teenager, moving here in 1981. He had lived and worked here for twenty-seven years. He worked at McCain Foods, where English was spoken and the instruction sheets he followed were written in English. His job required managing a large variety of products and different ingredients and was not just a simple repetitive task. There was evidence indicating he was a very good employee and that his English was “very good.”

¶27 Xiong argues on appeal that although the interview reflects his ability to converse in English, it does not demonstrate his ability to comprehend what was being said to him. We disagree. The transcript reflects that Xiong gave contextually appropriate answers to the questions being asked. Xiong further contends that although he may speak English well enough to converse, hold a job, and get a drivers’ license, that he nonetheless lacks requisite knowledge and

experience to grasp the advanced concepts of rights, appointment and other legal terms. We are not convinced. As noted above, the terminology used in the *Miranda* warnings is not complex and uses common terms. A suspect, whether born in this country or another, does not need to have a full understanding of all of the justice system's legal concepts and vocabulary in order to understand and validly waive his rights.

¶28 Xiong argues on appeal that his question when asked to sign the waiver of rights form that “There is nothing wrong with this paper, right?” evidenced his lack of understanding. We cannot agree. The question, in context, does not suggest that Xiong did not understand his rights. Rather, it evidences his intent to be careful about signing a document that he may not have been able to read. Such action supports a finding that Xiong understood what he was doing, he carefully considered his rights, asked questions until he understood those rights and ultimately decided to waive his rights.

¶29 Without deciding whether the trial court properly received the opinions of the lay witnesses who testified on behalf of Xiong at the suppression hearing, we are not persuaded that either opinion supports the trial court's conclusion that Xiong's statements were not voluntary or knowing. Neither Thao nor Lo asked Xiong about the language contained in the *Miranda* rights or took the *Miranda* sentences line by line to assess his understanding of those rights. Moreover, Xiong attended high school in Appleton, has worked in an English speaking job where he translates for other Hmong workers, and understood forty percent on the English comprehension test. The factors in this case supporting a valid waiver far exceed what courts across the country have found to constitute a valid waiver of *Miranda* rights by defendants whose first language was not English. See *Le v. State*, 947 P.2d 535, 541-44 (Okla. Crim. App. 1997)

(Vietnamese defendant who had been in the United States for a few years and worked as a machinist responded “Not really” when asked if he spoke fluent English. Appeals court upheld valid *Miranda* waiver noting defendant’s answers demonstrated sufficient comprehension of English.); *Campaneria v. Reid*, 891 F.2d 1014, 1016-17, 1020 (2d Cir. 1989) (Spanish defendant validly waived his rights while in “critical condition” at hospital, spoke only in “broken English with an accent and occasionally lapsed into Spanish”); *State v. Nguyen*, 832 P.2d 324, 326-27 (Idaho Ct. App. 1992) (valid waiver of rights where Vietnamese defendant never requested an interpreter, interviewing officer did not feel interpreter was necessary and defendant “effectively communicated during the tape-recorded interview” conducted in English).

¶30 Based on the totality of the circumstances, we conclude that Xiong was able to communicate meaningfully in English, had the requisite level of comprehension of his *Miranda* rights and knowingly and intelligently waived them before speaking with Oleszak about the sexual assaults. *See State v. Woods*, 117 Wis. 2d 701, 720, 345 N.W.2d 457 (1984) (“It is not constitutionally required that a defendant either orally or in writing expressly waive his rights to counsel or to remain silent. Silence coupled with ... conduct consistent with waiver may support the finding of a valid waiver.”). Xiong acted consistently with a deliberate desire to waive his rights.

C. Due Process Coercion.

¶31 Xiong also contends that Oleszak utilized trickery and coercion in order to get Xiong to sign the waiver of rights form, rendering the waiver involuntary and in violation of due process. We are not persuaded.

¶32 Due process allows the use of a criminal defendant's statements to be used to prove guilt only if they were given voluntarily. *State v. Jerrell C.J.*, 2005 WI 105, ¶17, 283 Wis. 2d 145, 699 N.W.2d 110. A voluntary statement has been defined as one which is “the product of a free and unconstrained will, reflecting deliberateness of choice, as opposed to the result of a conspicuously unequal confrontation in which the pressures brought to bear on the defendant by representatives of the State exceeded the defendant's ability to resist.” *Id.*, ¶18 (citations omitted). A statement is “involuntary” only if it was “compelled by coercive means or improper police practices.” *State v. Franklin*, 228 Wis. 2d 408, 413, 596 N.W.2d 855 (Ct. App. 1999).

¶33 We conclude based on the record before us that there is no indication of coercion or improper police practices. The interview reflects a cordial atmosphere during which Xiong's needs were accommodated. He was not handcuffed or deprived of any creature comforts. The interview was done during the day and was not excessively long. The trial court indicated that the statements Xiong made were involuntary because an interpreter was not brought in and because of Oleszak's explanatory comment regarding the waiver of rights form. We are not convinced that either instance transformed Xiong's willing intent to discuss his conduct into something that was illegally compelled.

¶34 First, Xiong showed a sufficient understanding of English so as to not require an interpreter. Communication between Oleszak and Xiong, as evidenced by the record itself shows that the two were able to communicate competently in English. Xiong, himself, was a Hmong/English interpreter and Xiong never asked for an interpreter. Certainly, this was not a situation where a defendant sat timidly by without any understanding of what was being said. Xiong actively and repeatedly asked questions until he understood the rights that

had been read to him. He communicated in English his thoughts and questions until he had answers to those questions. His statements in English were responsive and evidenced his ability to speak and comprehend English. He purposely and intently indicated that he wanted to talk about what he had done.

¶35 Second, we are not convinced that Oleszak's statement about the waiver of rights form being simply a document acknowledging "just that I read them to you, that's all it's saying" was an intentional misrepresentation to trick Xiong into signing the form. Our review of voluntariness involves considering the totality of the circumstances, *see Franklin*, 228 Wis.2d at 413, rather than plucking individual sentences out of context to be considered in isolation.

¶36 Under this standard, we conclude that Xiong's waiver was voluntary and his due process rights were not violated. Oleszak's statement, viewed in isolation, was not a correct statement. The form was not simply an acknowledgement of rights, but also constituted a waiver of those rights. The incorrect comment, however, when put into context together with all that came before and what was said after, demonstrates that Xiong understood his rights and made a deliberate decision to sign the waiver and speak with Oleszak about the sexual assault allegations. There is nothing in the recorded interview to suggest that Oleszak was trying to trick Xiong into waiving his rights or that any threats or coercion forced Xiong to involuntarily waive his rights. Xiong's conduct and actions were clear. He wanted to talk about what he had done. He wanted to get help for his problem.

¶37 Based on the foregoing, we conclude that the trial court erred in granting Xiong's motion seeking to suppress his statements made at the police station. We hold that Xiong was properly advised of his *Miranda* rights, that he

understood those rights and knowingly, intelligently and voluntarily waived his rights before speaking to Oleszak about the sexual assaults. Accordingly, the order granting the motion to suppress is reversed and this case is remanded to the circuit court with directions to allow Xiong's statements made on October 16, 2006 to be admitted into evidence at the trial in this matter.

By the Court.—Order reversed and cause remanded with directions.

Not recommended for publication in the official reports.

