

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1206**

State of Minnesota,
Respondent,

vs.

Edgar Daniello Martinez-Montez,
Appellant.

**Filed November 12, 2024
Affirmed in part, reversed in part, and remanded
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-22-2947

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Britta Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Anders J. Erickson, Minneapolis, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

A jury found appellant guilty of aiding and abetting second-degree intentional murder, aiding and abetting second-degree felony murder, and aiding an offender by destroying or concealing evidence of a crime. The district court entered judgment of

conviction on all three guilty verdicts and sentenced appellant to serve 306 months in prison. Appellant challenges the district court's denial of his pretrial motion to suppress a custodial statement he made to the police when he was interviewed as a suspect in the murder, arguing that the state did not establish a valid waiver of his *Miranda* rights. Appellant also challenges the district court's entry of judgment of conviction on both second-degree-murder verdicts. Because the district court did not err in determining that appellant's *Miranda* waiver was valid, we affirm in part. But because the district court erred by entering judgments of conviction on both second-degree-murder verdicts, we reverse in part and remand for the district court to vacate the judgment of conviction for the lesser-included felony-murder offense.

FACTS

Respondent State of Minnesota charged appellant Edgar Daniello Martinez-Montez with aiding and abetting second-degree intentional murder, aiding and abetting second-degree felony murder, and aiding an offender by destroying or concealing evidence of a crime. The complaint alleged that the victim, MM, died after appellant and others tortured and beat him at a home in Hennepin County. The complaint further alleged that appellant and others disposed of MM's body in a culvert in Dakota County.

Prior to charging, appellant was arrested on an outstanding warrant and taken into police custody. While appellant was in custody, a police officer interviewed him regarding his role in MM's death and the disposal of MM's body. The officer initiated the interview by explaining that he had investigated MM's murder, and he showed appellant evidence that he had gathered, including video evidence implicating appellant in the murder. The

officer told appellant that he was a suspect, that he had not yet been charged, and that the officer wanted to hear appellant's "side of the story."

Before asking appellant any questions regarding his role in the murder, the officer read appellant his *Miranda* rights as follows:

OFFICER: Ok. Well, that - I'm, I'm gonna give you an opportunity to give me your side of the story, so I'm gonna read you your rights right now, ok [appellant]? [Appellant], the Constitution requires I inform you that you have the right to remain silent. Do you understand that?

APPELLANT: Hmm, little bit.

OFFICER: Do you understand when I say you have the right to remain silent? Do you understand what that means?

APPELLANT: A, a little bit, yeah.

OFFICER: A little bit?

APPELLANT: Mm-hmm.

OFFICER: What do you think it means?

APPELLANT: Uh, you say they're supposed to (Inaudible) like that.

OFFICER: So, what that means is you don't have to talk to me if you don't want to. You, you can be quiet if I ask you questions. That's what that means. Does that make sense now?

APPELLANT: Yeah, because I don't know, I don't know why (Inaudible) this.

OFFICER: Ok. Do you understand what it means now when I say you have the right to remain silent, that you don't have to talk to me? Do you understand that now?

APPELLANT: What happen?

OFFICER: Yes, or no?

APPELLANT: No, don't understand.

OFFICER: Ok.

APPELLANT: (Inaudible) I don't know.

OFFICER: [Appellant]. [Appellant].
APPELLANT: Yep.

OFFICER: Listen to me bud. This is very serious.
APPELLANT: Yeah, I don't know why my, my (Inaudible).

OFFICER: Ok. I'm, I'm asking you, I'm asking you a question right now. When I say you have the right to remain silent, do you understand me?
APPELLANT: Mm-hmm. That, that, what I say (Inaudible).

OFFICER: [Appellant]. Listen to my question.
APPELLANT: Uh-huh.

OFFICER: You have the right to remain silent. Yes, or no?
Do you understand what I just said?
APPELLANT: I don't do nothing.

OFFICER: No! Answer my question!
APPELLANT: Uh-huh.

OFFICER: I [am] asking you a question. You have the right to remain silent. Do you understand?
APPELLANT: Ok.

OFFICER: Yes, or no?
APPELLANT: Yeah, I understand.

OFFICER: You understand? Ok. Anything you say can and will be used against you in court. Do you understand?
APPELLANT: Yes, I understand.

OFFICER: You understand? Ok. You have the right to talk to a lawyer now and have the lawyer present now or at any time during questioning. Do you understand?
APPELLANT: Yeah, I understand.

OFFICER: Ok. If you cannot afford a lawyer, one will be appointed for you without cost. Do you understand?
APPELLANT: So . . .

OFFICER: If you cannot afford a lawyer, one will be appointed for you without cost. That means if you can't afford a lawyer, the county will, uh, give you a public defender, and you don't have to pay for it. Do you understand that? You shake - you say yes, or no.

APPELLANT: Yeah.

At that point, the officer began questioning appellant about his role in MM's murder and the disposal of MM's body. Appellant initially claimed that he was not present when MM was beaten. Then, he acknowledged that he had been present. He largely denied any culpability but admitted that he held MM's hands behind his back while another man tied them together with a cord. Appellant also admitted that he pushed MM's body out of a car and watched as two other men pulled MM's body down towards the culvert.

Appellant moved to suppress his statement to law enforcement, arguing that the officer did not give a proper *Miranda* waiver given appellant's difficulties with the English language. Specifically, appellant argued that Spanish is his primary language, that his English comprehension is lacking, and that he did not understand the *Miranda* advisory.

The district court held an evidentiary hearing on appellant's motion to suppress. At the hearing, the officer who interviewed appellant testified and acknowledged that at times appellant was not responsive to his questions. However, the officer opined that appellant understood the questions and was simply trying to avoid answering them. The officer recognized that English was not appellant's primary language, but based on his observations and communications with appellant, the officer believed that appellant could understand English well enough to understand the advisory. Based on this assessment, the officer did not utilize an interpreter and continued to question appellant for over an hour in

English. At no point did the officer offer appellant an interpreter, and at no point did appellant request one. The district court denied appellant's suppression motion, concluding that during the custodial interrogation appellant "validly waived his *Miranda* rights and made all statements voluntarily."

The case proceeded to a jury trial, and the district court provided a Spanish-speaking interpreter for appellant at trial. Evidence showed that IC-S was the ringleader in MM's murder. IC-S brought MM to the house of BF and questioned him about whether certain people had talked to the police about IC-S's drug-dealing activities. IC-S, CM-A, "Maestro," AM-C, and appellant were present. They and others beat and tortured MM. IC-S used a power drill to drill into MM's knee. Another individual pounded a nail into MM's heel. MM was moved from BF's house, and MM ultimately died from his injuries while riding in the rear of IC-S's hatchback car. IC-S, appellant, VG, and Maestro drove MM to a rural area in Dakota County and disposed of his body in a culvert. MM's body was discovered approximately one month later, with a nail embedded in his heel.

IC-S recorded the individuals that were present during MM's beating and torture, so they would not go to the police. Three cell-phone videos admitted into evidence at trial showed appellant's presence in BF's home and a battered MM.

AM-C, an accomplice, gave testimony implicating appellant in the murder of MM. AM-C testified that appellant hit and kicked MM in BF's basement, held MM down while a drill was used on his knee, and tied him up. VG, an accomplice, testified that appellant assisted in the disposal and concealment of MM's body.

Appellant was captured on video at a gas station about an hour before MM's body was disposed of in the culvert; the video showed him buying a "Brisk" bottled beverage, and a similar "Brisk" bottle was recovered near MM's body.

The officer who interviewed appellant testified that appellant gave multiple versions of the events; he initially denied being present in the home during MM's beating, but he later acknowledged being present when others beat and tortured MM.

Appellant testified that he was under duress during the murder of MM and disposal of his body. He testified that on the day in question, he was at BF's house, he heard some noise downstairs, he went into the living room, and he saw IC-S, AM-C, CM-A, TM, and a man in a mask, likely Maestro, with MM, who "appeared to be beaten." Appellant claimed that IC-S carried a gun, appellant had once seen IC-S shoot a man in the foot, and on the day in question, IC-S shot near appellant to scare him. Appellant claimed that he was taken to another room and did not witness the beating of MM, though he could hear it happening. Appellant also claimed that Maestro held him at gunpoint.

Appellant testified that he was then forced into a car and told that MM had died. Appellant acknowledged that they stopped at a gas station, and stated that he was told to go in, but he was under the impression that if he tried to escape, he would be shot. Appellant acknowledged that he helped push MM's body out of the car, but he claimed that he was told to do so at gunpoint. He also claimed that the place where he helped to move MM's body from the car was not the place where MM's body was ultimately found. Instead, they put MM's body back in the car and took it to another location.

The jury returned guilty verdicts on all three counts. The district court entered a judgment of conviction on each count and sentenced appellant to serve 306 months in prison on the conviction of aiding and abetting second-degree intentional murder. The district court did not impose sentences on the other two convictions.

This appeal follows.

DECISION

I.

Appellant argues that the district court committed reversible error by failing to suppress his custodial statement to law enforcement.

“When reviewing a district court’s pretrial order on a motion to suppress evidence, we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). “We may independently review facts that are not in dispute, and determine, as a matter of law, whether the evidence need be suppressed.” *Id.* (quotation omitted).

“The Fifth Amendment to the U.S. Constitution and Article I, Section 7 of the Minnesota Constitution protect persons from compelled self-incrimination,” and “[b]ecause of the coercion inherent in custodial interrogation,”¹ a criminal suspect must be warned, before questioning, “that he has the right to remain silent, that anything he says can be used against him in a court of law,” that he has the right to have an attorney present,

¹ The district court found that appellant was in custody when he was interviewed by the officer. There is no dispute that the officer’s interview constituted a custodial interrogation.

and that “if he cannot afford an attorney one will be appointed for him prior to any questioning.” *State v. Farrah*, 735 N.W.2d 336, 340 (Minn. 2007) (quoting *Miranda v. Arizona*, 384 U.S. 436, 479 (1966)).

“The defendant may waive his *Miranda* rights provided the waiver is made voluntarily, knowingly and intelligently.” *Id.* at 341 (quotation omitted). “The prosecution has the burden of proving a valid waiver by a preponderance of the evidence.” *Id.* “Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.” *Id.* (quotation omitted). “Factors commonly considered include age, intelligence and education, familiarity with the criminal justice system, physical and mental condition, and language barriers.” *Id.* “Findings of fact surrounding a claimed *Miranda* waiver are reviewed for clear error; legal conclusions based on those facts are reviewed de novo.” *Id.*

In denying appellant’s motion to suppress, the district court found, in relevant part, as follows:

First, this is not [appellant’s] first interaction with the criminal justice system. In 2017, he pleaded guilty in a gross misdemeanor case. [He] also has pending misdemeanor charges in Hennepin and Ramsey counties for allegedly giving a false name to a peace officer on two separate occasions, once in 2019 and again in 2021. . . .

Second, the audio recording of the interrogation supports [a] finding [that appellant] was able to understand English to the degree needed for a proper waiver, though it is apparent English is not [his] primary language. The main cause for concern is [appellant’s] response to being asked whether he understood his right to remain silent. Initially, he twice said he understood it a “little bit.” After [the officer]

explained the right in simple terms and again asked if [appellant] understood it, he says, “What happen?” then, “No, don’t understand.” It is unclear whether his statement, “No, don’t understand,” refers to whether he understands his right to remain silent or why he is being charged. [The officer] asked again whether [appellant] understood, but did not receive a clear answer. Finally, when [the officer] demanded a direct answer, [appellant] said he understood. When then asked whether he understood that his statements may be used against him, that he has the right to counsel, and that counsel may be provided for him, he quickly answered that he understood each of those rights.

(Footnotes omitted.)

The district court credited the officer’s testimony that “he believed [appellant] understood the question and was simply avoiding answering, a behavior he said is common amongst suspects being interrogated.” The district court carefully explained that “[w]hile the opinion of the interrogating officer is by no means dispositive, it is still relevant under the totality of the circumstances” and that

independent of [the officer’s] analysis, the [c]ourt finds it more likely that [appellant] was avoiding the question than failing to understand his right. In the hour of interrogation following the *Miranda* waiver, [appellant] generally has no issues communicating with [the officer]. The two carry on a conversation with very few interruptions due to misunderstandings. [Appellant] also did not hesitate to say he understood his other rights. Based on this lengthy conversation, the [c]ourt believes [appellant’s] English skills were proficient enough to understand the rights being read to him.

Finally, the [c]ourt recognizes that an understanding of basic situational questions does not equate to an understanding of questions about more complex legal principles. However, the right to remain silent is not an especially abstract idea and was effectively communicated by [the officer] in simple terms when he told [appellant], “you don’t have to talk to me if you don’t want to. You, you can be quiet if I ask you questions.”

[Appellant] also immediately acknowledged understanding the more complex concept that his statements could be used against him in court.

Because there is only one significant instance where [appellant] appears to not understand his rights, and because that lack of understanding is plausibly attributed to avoidance or denial of wrongdoing and because [appellant] has notable prior experience with the criminal justice system, the [c]ourt finds the state has shown, by a preponderance of the evidence, that [appellant] knowingly, intelligently, and voluntarily waived his *Miranda* rights by stating he understood them and continuing to talk with [the officer].

(Citation omitted.)

Appellant argues that his *Miranda* waiver was not valid because the officer did not provide him with an interpreter during his custodial interview and he therefore did not understand the *Miranda* advisory.

Appellant's English Language Proficiency

Minn. Stat. § 611.30 (2022) provides:

It is hereby declared to be the policy of this state that the constitutional rights of persons disabled in communication cannot be fully protected unless qualified interpreters are available to assist them in legal proceedings. It is the intent of sections 611.30 to 611.34 to provide a procedure for the appointment of interpreters to avoid injustice and to assist persons disabled in communication in their own defense.

A person who is “disabled in communication” includes a person who, “because of difficulty in speaking or comprehending the English language, cannot fully understand the proceedings or any charges made against the person.” Minn. Stat. § 611.31 (2022). “Under this policy, following the apprehension or arrest of a person disabled in communication, law enforcement has the obligation to obtain a language interpreter to assist the person

throughout custodial interrogation.” *Farrah*, 735 N.W.2d at 341. However, it is well-settled that the interpreter statutes do not create any new constitutional rights, and a violation of the statutes does not require the suppression of a defendant’s statement. *See State v. Sanchez-Diaz*, 683 N.W.2d 824, 835 (Minn. 2004); *State v. Dominguez-Ramirez*, 563 N.W.2d 245, 253 (Minn. 1997).

The district court found that appellant “was able to understand English to the degree needed for a proper waiver.” Caselaw treats determinations regarding the degree to which a criminal defendant understood English as findings of fact. *See Arredondo v. State*, 754 N.W.2d 566, 577 (Minn. 2008) (concluding that the record supported the postconviction court’s findings concerning the petitioner’s ability to understand English); *State v. Perez*, 404 N.W.2d 834, 838 (Minn. App. 1987) (“We have reviewed the transcript, and agree with the [district] court’s finding that [defendant] possessed sufficient command of English to assist in the presentation of his defense.”), *rev. denied* (Minn. May 20, 1987); *State v. Gany*, No. A17-0809, 2019 WL 272853, at *4-5 (Minn. App. Jan. 22, 2019) (stating that “whether a person is disabled in communication is a fact-specific inquiry” and applying the clear-error standard to a district court’s determination that defendant was not disabled in communication), *rev. denied* (Minn. Apr. 16, 2019); *see also* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that, although nonprecedential opinions are not binding authority, they may be cited as persuasive authority).

We review a finding of fact for clear error. *Gauster*, 752 N.W.2d at 502. A finding of fact is clearly erroneous if there is no reasonable evidence to support it or if this court is

left with the definite and firm conviction that a mistake was made. *State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006).

Admittedly, the evidence showing appellant's English proficiency is conflicting. On the one hand, the interview makes clear that English is not appellant's primary language. And during the interview, appellant said that he did not understand a portion of the *Miranda* rights advisory. On the other hand, during the interview, appellant demonstrated a reasonable understanding of the English language and was generally able to respond to the officer's inquiries without difficulty. And appellant was able to communicate a duress defense during the interview—in English—asserting that IC-S held him at gunpoint. Finally, although appellant's English was limited, he was able to communicate with the officer, answered all but one of the officer's questions in English, and responded in English when the officer showed him the evidence that had been gathered. For example, prior to reading appellant his *Miranda* rights, the officer showed appellant a picture of MM's body after it was removed from the culvert, and appellant exclaimed, "Oh my God." Given the record evidence that appellant was able to communicate with the officer in English during the custodial interrogation and asked for clarification when needed, the district court's finding that appellant's English was sufficient to provide a valid *Miranda* waiver is not clearly erroneous.

Appellant argues that the district court's determination regarding his ability to comprehend English is a conclusion of law that should be reviewed de novo, and not a finding of fact reviewed for clear error. Based on the caselaw cited above, we disagree. We also note that, in a case such as this, in which the district court was able to observe

appellant's communication abilities at the contested evidentiary hearing on his motion to suppress, the district court was in a far better position to assess appellant's English proficiency than we are.² See *Albertson v. Albertson*, 67 N.W.2d 463, 466 (Minn. 1954) ("Obviously the [district] court is in a far better position than we are to evaluate the various factors bearing on the credibility of the witnesses, such as their demeanor, disposition, and character."); *State v. Nolan*, No. A18-0663, 2019 WL 2167467, at *2 (Minn. App. May 20, 2019) (applying *Albertson* in an appeal challenging a criminal conviction), *rev. denied* (Minn. Aug. 6, 2019); see also *Perez*, 404 N.W.2d at 838 ("Based on testimony given at the omnibus hearing, the court determined appellant had a sufficient command of the English language to assist in his defense.").

Without conceding that the district court's determination that appellant's "English skills were proficient enough to understand the rights being read to him" is a finding of fact, appellant argues that, to the extent it was a finding, it was clearly erroneous because the district court weighed the evidence incorrectly. That argument is unavailing because we do not reweigh evidence on appeal. See *State v. Lloyd*, 345 N.W.2d 240, 245 (Minn. 1984) ("The resolution of conflicting testimony is the exclusive function of the [fact-finder] because it has the opportunity to observe the demeanor of witnesses and weigh their credibility."); *State v. Washington*, 521 N.W.2d 35, 42 (Minn. 1994) ("The weight and

² We note that appellant's behavior at the suppression hearing demonstrated his ability to comprehend and communicate in English. At the beginning of the hearing, the prosecutor described the state's plea offer on the record. The district court asked appellant if he wanted to accept or reject that offer. Even though an interpreter was present for appellant's benefit, appellant answered the judge directly in English, saying "No, I don't accept. I'm not guilty."

credibility to be given disputed evidence are determinations to be made by the [fact-finder].”).

In sum, the district court’s finding that appellant’s “English skills were proficient enough to understand the rights being read to him” is not clearly erroneous.

Validity of Miranda Waiver

Given the district court’s finding regarding the proficiency of appellant’s English skills, we are not persuaded by appellant’s arguments that his *Miranda* waiver was invalid. Appellant argues that the circumstances here are comparable to those in *Farrah*, in which the supreme court held that “[t]he state did not meet its burden to prove that defendant knowingly and intelligently waived his *Miranda* rights.” 735 N.W.2d at 338. The supreme court explained:

Here, the record clearly indicates that Farrah’s primary language is Somali and that, as the prosecutor noted, he “speaks with a heavy accent.” At the beginning of the recorded police interrogation, Farrah told the officer that he did not speak English very well. Although the services of an interpreter were available, none were provided because the officer felt that Farrah had an adequate comprehension of the officer’s questions. The officer acknowledged, however, that at times he had difficulty understanding Farrah because of Farrah’s accent. Farrah’s cousin also testified that “[o]ne fact that we see as a family is that people are speculating Burhan knows English very well, and that is not true.”

Id. at 341.

Farrah is distinguishable in several significant ways. First, unlike in this case, the district court in *Farrah* did not make a specific finding regarding Farrah’s language skills, instead stating, “I don’t know right now Mr. Farrah’s proficiency in language.” *Id.* at 342.

Second, “Farrah told the officer that he did not speak English very well.” *Id.* at 341. Appellant did not express a similar concern to the officer during his interview. Third, unlike the circumstances in *Farrah*, appellant did not present testimony similar to that of Farrah’s cousin, which indicated that other people had previously overestimated Farrah’s ability to understand English. *Id.* And fourth, the district court in *Farrah* determined that Farrah made an equivocal request for counsel during his interrogation, “based on its finding that there was a legitimate lack of clarity on the officer’s part as to what Farrah had said.” *Id.* at 342. “In other words, the officer did not understand Farrah’s request because of Farrah’s poor language skills.” *Id.* The record in this case does not include any finding that the officer misunderstood any of appellant’s responses to the officer’s *Miranda* advisory.

The *Farrah* court concluded that “the totality of the circumstances surrounding the interrogation do not make known whether Farrah’s *Miranda* waiver was made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Id.* When examining the totality of the circumstances, each case is unique. *See id.* at 341 (citing caselaw for the proposition that the question of waiver requires consideration of the facts as found). Although there is some factual overlap between this case and *Farrah*, the circumstances described above support a different outcome in this case.

However, we remind the state of the supreme court’s advisory in *Farrah* that “prudent investigators would be wise to implement a system for the provision of language-interpreter services for persons disabled in communication.” *Id.* at 343; *see Sanchez-Diaz*,

683 N.W.2d at 835 (stating that prudent police investigators should comply with the statutory requirements for language services); *State v. Mitjans*, 408 N.W.2d 824, 831 (Minn. 1987) (stating that “[i]n the future, prudent police investigators . . . are advised to comply with the statutory requirements” for language services); *State v. Vu*, 339 N.W.2d 892, 898 (Minn. 1983) (stating that “the police and the [district] court would be wise to engage an interpreter before interrogation so that this issue need never arise again in Minnesota”).

As the supreme court indicated in *Farrah*, simply providing an interpreter can prevent issues like the one presented here. *Cf. State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994) (“[I]n the exercise of our supervisory power to [e]nsure the fair administration of justice, we hold that all custodial interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention.” (footnote omitted)).

Appellant also argues that the fact that the officer raised his voice when instructing appellant on his *Miranda* rights is significant. When the officer asked appellant if he understood his right to remain silent, appellant responded, “I don’t do nothing,” and the officer then stated, “No! Answer my question!” However, the officer’s forceful demand was limited, and it appears that the officer was merely trying to get appellant to focus on and answer the question that had been asked. Additionally, as the district court found, it appears that appellant was trying to avoid answering questions regarding his *Miranda* rights. The district court found the officer’s testimony on this point credible, and we defer to that credibility determination. *See State v. Miller*, 659 N.W.2d 275, 279 (Minn. App.

2003) (“Because the weight and believability of witness testimony is an issue for the district court, we defer to that court’s credibility determinations.”), *rev. denied* (Minn. July 15, 2003). Thus, we are not persuaded that the officer’s raised voice in response to appellant’s failure to answer one question invalidates appellant’s *Miranda* waiver.

Finally, appellant argues that he never expressly waived his *Miranda* rights. But an express waiver is not required; instead, “[a] waiver may be inferred from the totality of the circumstances.” *State v. Fox*, 868 N.W.2d 206, 213 (Minn. 2015). The state has the burden of proving a valid waiver, and ordinarily, the state satisfies this burden by showing that “(1) *Miranda* warnings were given, (2) the defendant stated that he or she understood those warnings, and (3) then the defendant gave a statement.” *Id.* Given the totality of the circumstances, appellant implicitly waived his *Miranda* rights. *See id.* at 214.

In sum, we conclude that the state met its burden to establish that appellant validly waived his *Miranda* rights and that the district court did not err by denying appellant’s motion to suppress. We emphasize that our decision is heavily influenced by the district court’s finding that appellant’s “English skills were proficient enough to understand the rights being read to him.” A finding is not clearly erroneous simply because an appellate court might have resolved the question differently. *See Stiff v. Associated Sewing Supply Co.*, 436 N.W.2d 777, 779 (Minn. 1989) (“An appellate court exceeds its proper scope of review when it bases its conclusions on its own interpretation of the evidence and, in effect tries the issues anew and substitutes its own findings for those of the trial judge.”). Instead, the clear-error standard means that the finding below will stand unless it “is not reasonably supported by the evidence as a whole.” *EOP-Nicollet Mall, L.L.C. v. County of Hennepin*,

723 N.W.2d 270, 284 (Minn. 2006) (quotation omitted); see *Miles v. City of Oakdale*, 323 N.W.2d 51, 54 (Minn. 1982) (“We have defined a clearly erroneous finding variously to mean palpably and manifestly against the weight of the evidence or not reasonably supported by the evidence as a whole.”). Again, the district court’s finding is reasonably supported by the evidence as a whole, and we do not disturb it.

II.

Appellant argues that the district court erred by entering judgments of conviction on both of the second-degree-murder offenses because both convictions were the result of a single act. The state agrees with appellant on this point and asks this court to “remand to the district court with instructions to vacate Count II, the felony-murder conviction, and to amend the warrant of commitment.”

Under Minn. Stat. § 609.04, subd. 1 (2022), a defendant “may be convicted of either the crime charged or an included offense, but not both.” Whether one offense is a lesser-included offense of another is a legal question, which we review de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012). In *State v. Lory*, this court held that “[s]econd-degree felony murder is a lesser-included offense of second-degree intentional murder.” 559 N.W.2d 425, 426 (Minn. App. 1997), *rev. denied* (Minn. Apr. 15, 1997). Thus, the district court erred in entering both convictions.

When a district court erroneously enters a conviction for an included offense, the appellate court remands to the district court to vacate the conviction for the included offense, “but otherwise leave the guilty verdicts for those counts in place.” *State v.*

Balandin, 944 N.W.2d 204, 222 (Minn. 2020). We therefore remand for the district court to vacate the felony-murder conviction and to amend the warrant of commitment

Affirmed in part, reversed in part, and remanded.