



not determine and preserve in the record the actual words used by Officer Sala to Mirandize Brown. Uncertainty as to the form of Sala's *Miranda* warning, however, does not render clearly erroneous the court's decision to credit Sala's testimony that Brown was notified of and understood his *Miranda* rights. The Supreme Court has held that the sufficiency of a *Miranda* warning depends upon the warning's substance, rather than the specific language used. *See Missouri v. Seibert*, 542 U.S. 600, 611 (2004).

Evidentiary rulings are reviewed for abuse of discretion. *United States v. Carney*, 387 F.3d 436, 452 (6th Cir. 2004). However, since Brown did not merely fail to object at trial to questioning and testimony regarding his criminal history, but expressly consented to it, he has waived his right to assert error on appeal. *United States v. Sloman*, 909 F.2d 176, 182 (6th Cir. 1990) ("An attorney cannot agree in open court with a judge's proposed course of conduct and then charge the court with error in following that course."); *see also United States v. Sharpe*, 996 F.2d 125, 129 (6th Cir. 1993). Even if Brown had not consented to the admission of criminal history evidence, his evidentiary challenges lack merit.<sup>1</sup>

We review de novo allegations of prosecutorial misconduct. *United States v. Tarwater*, 308 F.3d 494, 510-11 (6th Cir. 2002). Although Brown alleges three instances of misconduct in the

---

<sup>1</sup> First, Brown argues that Sala's testimony contained inadmissible hearsay. The Sixth Circuit, however, treats such explanatory testimony as nonhearsay. *See United States v. Gholston*, 10 F.3d 384, 388 (6th Cir. 1993) ("The detectives were simply asked to explain the background of the case and the reasons for their various actions. Accordingly, we detect no hearsay problem."). Second, Brown argues that the court erred in allowing Sala to read his felony-arrest report on redirect examination. Sala's reading, however, was permissible as rehabilitation of his testimony following efforts to impeach his credibility. *See United States v. Denton*, 246 F.3d 784, 789 (6th Cir. 2001).

No. 05-3430

*United States of America v. Brown*

government's closing arguments, he fails to demonstrate the impropriety of the government's statements. *See United States v. Forrest*, 402 F.3d 678, 686 (6th Cir. 2005). The government had properly introduced into evidence the matters it summarized during closing argument, *United States v. Drake*, 885 F.2d 323, 324 (6th Cir. 1989), and did not violate Brown's Fifth Amendment rights by asking the jury to consider hypothetically whether his postarrest statements were those of an innocent party, *United States v. Green*, 305 F.3d 422, 430 (6th Cir. 2002).

Brown argues that the court lacked authority to ask a jury that had returned a verdict to answer additional, sentence-related interrogatories. Any error in the request was harmless since the jury had already convicted Brown. *Cf. United States v. Thomas*, 167 F.3d 299, 305 (6th Cir. 1999) (finding no prejudice from postverdict delay in resentencing).

Although not raised as an independent issue, Brown argues at numerous points in his brief that his trial counsel provided him with ineffective assistance. The Sixth Circuit, however, generally does not accept ineffective assistance claims on direct review. *United States v. Frazier*, 423 F.3d 526, 539 (6th Cir. 2005). An insufficient record exists in the present case since only a trial transcript has been provided. *See United States v. Goodlett*, 3 F.3d 976, 980 (6th Cir. 1993); *see also Strickland v. Washington*, 466 U.S. 668, 681 (1984).

For the reasons stated, we AFFIRM the judgment.