2022 WL 1617887
Only the Westlaw citation is currently available.

Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,
v.
Carlos Antonio Banegas RODRIGUEZ, Appellant.

A21-0875
|
Filed May 23, 2022

Pope County District Court, File No. 61-CR-20-341

Attorneys and Law Firms

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and Neil Nelson, Pope County Attorney, Glenwood, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

***1** The state charged appellant Carlos Antonio Banegas Rodriguez with first-degree criminal sexual conduct for abusing his 13-year-old daughter. [1] Appellant moved for a mistrial following the failure of interpreters to relay a portion of daughter's testimony to appellant, who speaks Spanish. The district court denied the mistrial motion. Appellant also sought to cross-examine his daughter—the lead witness—regarding her immigration status, but the district court ruled that testimony inadmissible. Because the interpretation error was harmless beyond a reasonable doubt and the district court properly limited the immigration testimony, we affirm.

FACTS

In August 2020, daughter, a 13-year-old child, reported that she was sexually abused by her father, appellant. The state charged appellant with criminal sexual conduct in the first degree (position of authority). [2]

Before trial, appellant moved to allow cross-examination of daughter regarding her immigration status. The motion alleged that daughter's testimony was biased and fabricated because of the "opportunity to apply for special immigration asylum visa status as victims of domestic and/or physical/sexual abuse," particularly the opportunity to apply for asylum. When asked by the district court for proof of daughter's awareness of such an immigration benefit, appellant's counsel replied that appellant's subjective belief was the sole foundation for the motion.

The district court stated that the "prejudice would be significant" if daughter was asked about her immigration status, but that there would be "some probative value" if appellant could elicit testimony that suggested a motive to fabricate the allegations. The district court then ruled that appellant could voir dire (outside of the jury's presence) daughter about her knowledge of the alleged immigration benefits.

During the voir dire, daughter testified that she told a social worker that she was concerned about reporting appellant's assaults due to her mother's lack of citizenship. And daughter stated to the social worker that she worried that she and her mother would be removed to Honduras if she spoke up. She denied any recollection of speaking to an immigration attorney in Minnesota but admitted to speaking to someone in Texas when she first arrived in the United States. And she testified that the Texas attorney told her she could get asylum in the United States if she was a victim of abuse. But daughter confirmed that she knew she had to have been assaulted in her home county—not the United States—to receive asylum. The district court then asked "Did anyone ever tell you that you could get asylum in the United States

for abuse that you suffered in the United States?" Daughter responded "No." Following that exchange, the district court ruled that any testimony before a jury regarding daughter's immigration status was inadmissible under Minnesota Rule of Evidence 403 as being highly prejudicial and possessing "very small probative value."

***2** Following voir dire, the jury re-entered the courtroom and the state began its direct examination of daughter. Because appellant speaks Spanish and daughter is bilingual, two translators were used for trial—one to translate the attorneys' questions and the other to translate the witnesses' answers. While daughter gave most of her answers in English during her direct testimony, she answered six questions in Spanish. The interpreters began interpreting her answers into English once she started to switch between languages. This continued for several minutes. But midway through the direct examination of daughter, the district court stopped the proceedings and asked if the translators were still interpreting the answers into Spanish for appellant. The interpreters, in a sidebar with the district court and counsel, acknowledged that they had ceased interpreting for appellant to concentrate on translating daughter's answers for the jury. When asked if he understood the testimony he missed, appellant said he did not understand most of it.

After dismissing the jury to discuss possible solutions for the error, appellant moved for a mistrial, claiming that the criminal complaint had to be dismissed with prejudice. The district court denied the motion and offered two possible remedies: (1) have an interpreter orally translate to appellant from a recording of daughter's testimony or (2) prepare a written transcript of the testimony for appellant to read. The roughly 30-minute recording was readily available, while the written transcript could take several days, so the district court ordered the interpreters to translate daughter's recorded oral testimony for appellant before resuming the direct examination of daughter. They immediately did so. Then, after a short lunch break, daughter's direct examination continued. There was no interruption of appellant's cross-examination of daughter.

During daughter's testimony, she explained that on August 20, 2020, she was at home with her two younger siblings. As she walked to the bathroom to take a shower, appellant pulled her into his bedroom and began to touch her. Eventually, he vaginally penetrated her, which she said "hurt [her] a lot." Daughter did not tell anyone because appellant threatened to "do something" to her mother or aunt if she did. Five days later she was again babysitting her younger siblings. When appellant came home, he went into daughter's bedroom and tried to remove her clothes. Daughter testified that she scratched appellant defensively in an attempt to escape but was unable to do so. Appellant again tried to remove her clothes and touched her. Daughter told her aunt about the assaults later that evening, who reported them to law enforcement. On cross-examination, daughter was asked a series of questions to clarify whether or not she closed her eyes and turned away during the alleged assault.

Following daughter's testimony, the responding officer took the stand. He described the call to appellant's home on August 25, after which he arrested appellant. The officer noted a scratch on appellant's arm while at the police station.

The jury found appellant guilty. The district court sentenced appellant to the presumed sentence of 144 months plus ten years of conditional release.

This appeal follows.

DECISION

I. The translation error is reviewed as a trial error and it was harmless.

First, appellant argues that the lapse in translation during daughter's testimony violated his constitutional rights, in particular his right to confrontation. This alleged violation, he claims, amounts to structural error (as opposed to trial error) that requires us to reverse the conviction and grant a new trial without an evaluation of its impact on the verdict. We review this question of constitutional law de novo. *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009). To do so, we first address whether the lapse in translation should be reviewed as structural error or trial error, and then turn to whether that error was harmless.

Structural error or trial error?

***3** There are two types of error: trial error and structural error. *State v. Kuhlmann*, 806 N.W.2d 844, 850 (Minn. 2011). Generally, most errors are trial errors, which are reviewed under the harmless-error standard to determine the need for

a reversal and a new trial. *State v. Watkins*, 840 N.W.2d 21, 25-26 (Minn. 2013).

In contrast, structural errors are "defects in the constitution of the trial mechanism." *Kuhlmann*, 806 N.W.2d at 851 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991)). These errors are rare and automatically entitle a defendant to a new trial. *Id.* Examples of structural errors include denial of a public trial, *Waller v. Georgia*, 467 U.S. 39 (1984); absence of an impartial judge, *Tumey v. Ohio*, 273 U.S. 510 (1927); denial of counsel, *Gideon v. Wainwright*, 372 U.S. 335 (1963); failure to dismiss a biased juror, *State v. Logan*, 535 N.W.2d 320 (Minn. 1995); a conflict of interest in representation throughout the entire proceeding, *Holloway v. Arkansas*, 435 U.S. 475 (1978); and absence of counsel from an arraignment proceeding that affected an entire trial because defenses not asserted were irretrievably lost, *White v. Maryland*, 373 U.S. 59 (1963).

With this distinction in mind, we turn to Minnesota's statutes governing interpreters in court proceedings. It is the policy of the 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." Minn. Stat. § 611.30 (2020). Minnesota Statutes sections 611.30-.34 (2020) "provide a procedure for the appointment of interpreters to avoid injustice and to assist persons disabled in communication in their own defense." *Id.* We have held that these statutes establish that "entitlement to an interpreter depends not merely on whether the individual suffers a disability, but on whether a ... language barrier prevents that person from fully understanding the proceedings." *State v. Kail*, 760 N.W.2d 16, 19 (Minn. App. 2009).

We conclude that the lapse in interpretation here should not be viewed as structural error for four reasons. First, Minnesota caselaw is clear that errors in translation are trial errors. The Minnesota Supreme Court has stated that the right to an interpreter in Minnesota is not a constitutional right but instead a statutory right. *State v. Sanchez-Diaz*, 683 N.W.2d 824, 835 (Minn. 2004) (explaining requirements for a "qualified interpreter" under the sections 611.30-34 in challenge to uncertified interpreter). As it is not our role to weigh in where the supreme court has spoken, we will not create a constitutional right to an interpreter here. *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *rev. denied* (Minn. Dec. 18, 1987). Our refusal to do so is reinforced by Minnesota cases about analogous errors, particularly those involving a defendant's partial absence from trial. In such cases, the Minnesota Supreme Court has consistently recognized that any error in continuing a trial while a defendant is partially absent is not structural error, but instead is a trial error subject to the harmless-error standard. *See, e.g.*, *State v. Finnegan*, 784 N.W.2d 243, 251 (Minn. 2010); *State v. Powers*, 654 N.W.2d 667, 681 (Minn. 2003); *State v. Sessions*, 621 N.W.2d 751, 756 (Minn. 2001); *State v. Hudspeth*, 535 N.W.2d 292, 295 (Minn. 1995).

***4** Second, even if we were to find that a lapse in translation (as opposed to the right to an interpreter) is a constitutional error, the alleged constitutional error would be a violation of the Confrontation Clause. But it is well settled that "violations of the Confrontation Clause are subject to [a harmless-error] analysis." *State v. Courtney*, 696 N.W.2d 73, 79 (Minn. 2005).

Third, federal law supports our conclusion. It views interpretation and translation errors through the lens of harmless error. [3] *See, e.g.*, *Mendoza v. United States*, 755 F.3d 821, 829 (7th Cir. 2014); *United States v. Gomez*, 908 F.2d 809, 811 (11th Cir. 1990); *United States v. Torres*, 793 F.2d 436, 443 (2d Cir. 1986).

Finally, while we are mindful of the concerns of a defendant not understanding trial proceedings due to a language barrier, the lapse in translation here was a far cry from the errors that are typically viewed as structural error. *See Watkins*, 840 N.W.2d at 25 (listing examples of structural error). Because the error here was promptly remedied and did not "affect the entire trial from beginning to end," we review it under the harmless-error standard. *Id.*

In sum, this error is not structural and should not receive an automatic reversal.

Harmless Error

Having determined that the lapse in interpretation was not structural error, we next consider whether the lapse was harmless.

Constitutional error is not reversible when the error is harmless beyond a reasonable doubt.[4] *State v. Cannady*, 727 N.W.2d 403, 409 (Minn. 2007). In reviewing whether the verdict was unattributable to the error, we examine the nature of the error in light of the entire record, including the evidence of the defendant's guilt. *Courtney*, 696 N.W.2d at 80. Defendants have a due-process right to a fair trial and a defendant "is entitled to a new trial if the errors, when taken cumulatively, had the effect of denying [a defendant] a fair trial." *State v. Keeton*, 589 N.W.2d 85, 91 (Minn. 1998).

When considering whether the error here had the effect of denying a fair trial, we are further guided by Minnesota Supreme Court decisions involving challenges to the accuracy of an interpretation on appeal. In *State v. Montalvo*, the supreme court held that an appellant has the burden of proving that the interpretation was "inadequate." 324 N.W.2d 650, 652 (Minn. 1982). And in *State v. Her*, this court stated that de minimis errors do not satisfy an appellant's burden in the absence of "tangible prejudice." 510 N.W.2d 218, 223 (Minn. App. 1994), *rev. denied* (Minn. Mar. 15, 1994).

***5** Here, only a portion of the direct examination was affected by the lack of interpretation, and appellant makes no claim that this error affected any of the testimony heard by the jury. The district court, recognizing the error before the parties or appellant, promptly excused the jury and sought input from the parties for a fair resolution. Crucial to the consideration of his ability to participate in the trial and confront the witness, appellant was not impaired or limited in his ability to cross-examine daughter. Indeed, appellant raises no argument that he was impeded in cross-examination. And the interpretation of daughter's direct testimony, although delayed, was accurate.

Additionally, the evidence against appellant was strong. The only elements necessary for first-degree criminal sexual conduct are a 13-year-old victim who is sexually penetrated by someone more than 48 months older. Minn. Stat. § 609.342, subd. 1(b). Daughter, a 13-year-old child, clearly described the sexual assault against her from her father. And although corroboration is not required, the responding officer corroborated the scratch daughter gave appellant during the assault. Accordingly, we conclude that the lapse in translation was harmless beyond a reasonable doubt and did not have any effect on the jury's verdict.

Still appellant contends that the district court's solution did not restore his ability to judge the witness's nonverbal cues simultaneously with her direct testimony. But as emphasized above, the error occurred during the middle of direct testimony. His ability to cross-examine daughter was not affected. And appellant does not point to any caselaw or rule establishing a constitutional protection for seeing simultaneous nonverbal cues.

In sum, the error of a lapse in translation is not a structural error, and here the error was harmless beyond a reasonable doubt.

II. The district court properly ruled that appellant could not cross-examine daughter about a possible immigration motive for reporting him.

Next, appellant contends that the district court improperly denied him the ability to cross-examine daughter about her alleged immigration motive to fabricate the allegations of assault against him.

We review a district court's evidentiary rulings for an abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). The appellant bears the burden of proving that evidence was improperly excluded and that it resulted in prejudice. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006).

Our review of the district court's evidentiary ruling begins by identifying the applicable rules of evidence. Generally, all evidence must meet threshold questions of relevance and prejudice to be admitted. Minn. R. Evid. 403. Relevant evidence tends to make the existence of any fact of consequence more or less probable and is admissible. Minn. R. Evid. 401. Evidence of bias of a witness is admissible to attack the credibility of a witness. Minn. R. Evid. 616. We recognize however that "not everything tends to show bias," including evidence that is "so attenuated as to be unconvincing." *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995). And the district court may exclude any evidence, although relevant, for which the danger of unfair prejudice or misleading the jury substantially outweighs its probative value. Minn. R. Evid. 403. The proponent of prejudicial testimony has the burden to provide additional evidence or proffer contradicting testimony to overcome rule 403. *State v. Brown*, 739 N.W.2d 716, 720 (Minn.

2007) (affirming limitation of cross-examination because the proponent of the evidence made no offer of proof establishing relevancy).

Turning next to caselaw, we are guided by the Minnesota Supreme Court decision to uphold the exclusion of evidence in a similar case involving a witness's immigration status. In *State v. Larson*, the defendant sought to attack the credibility of a witness on the ground that he was "an illegal immigrant" and exchanged testimony against Larson for a favorable removal hearing. 787 N.W.2d 592, 598-99 (Minn. 2010). But the record did not establish that the witness's testimony was given in consideration for any leniency in his removal hearing or a lack of charges against him. *Id.* The supreme court concluded the testimony was properly excluded because its prejudicial nature substantially outweighed its probative value. *Id.*

***6** Similarly here, a defense inquiry about the immigration status of daughter before a jury would clearly be prejudicial, but there could be some probative value in the alleged bias of daughter. Based on the guidance of *Larson*, the defense would have to elicit testimony about the alleged motive to clear the high bar of rule 403. *Id.* Appellant did not do so. There was no testimony during the voir dire of daughter that she had applied for asylum or a U-Visa or that she intended to do so.[5] Daughter testified that she was unaware of any possible immigration benefits of reporting appellant because the incident took place in the United States and not her home country, making it unlikely that her testimony was a product of bias and, further, making her immigration status nonprobative. In sum, appellant did not meet his burden to show daughter knew about any immigration benefit, and the district court did not abuse its discretion when it limited cross-examination to exclude evidence of daughter's immigration status.

To convince us otherwise, appellant cites to *Davis v. Alaska* to argue that a witness's motivations are "always relevant." 415 U.S. 308, 316 (1974) (quotation omitted). But as explained above, the Minnesota Supreme Court has recognized that this general rule has limits, clarifying that "not everything tends to show bias, and courts may exclude evidence that is only marginally useful for this purpose." *Lanz-Terry*, 535 N.W.2d at 640-41 (affirming district court's decision to limit cross-examination and exclude extrinsic evidence). Appellant's argument is not persuasive.

Appellant also contends that daughter does not need to have subjectively known that her allegation of sexual assault could provide an immigration benefit and that so long as she *may have been eligible* for a benefit, her testimony is sufficiently probative to outweigh any prejudice under rule 403. This assertion runs headlong into *Larson*, which requires some evidence of the connection between the alleged bias and the prejudicial testimony before the testimony may be heard before a jury. 787 N.W.2d at 598-99. And in light of *Larson*, we note that here the record did not establish that when daughter—through her aunt—contacted authorities she was aware of any path to citizenship that could be gained by reporting the assault. Appellant fails to connect daughter to any possible immigration benefit regardless of her knowledge of those benefits.

In sum, the district court did not abuse its discretion when it limited cross-examination to exclude evidence of daughter's immigration status.

Affirmed.

All Citations

Not Reported in N.W. Rptr., 2022 WL 1617887

Footnotes

1 The state refers to appellant's last name as Banegas Rodriguez, but he often goes only by Banegas. We refer to him as appellant.

2 Minn. Stat. § 609.342, subd. 1(b) (2020).

3 Appellant contends that the Confrontation Clause requires a contemporaneous and continuous interpretation. However, he cites only to a handful of federal cases that interpret the Court Interpreters Act, 28 USC § 1827 (2018), which governs federal court proceedings, not state proceedings. *See, e.g.*, *United States v. Tapia*, 631 F.2d 1207, 1209 (5th Cir. 1980); *United States v. Osuna*, 189 F.3d 1289, 1291-93 (10th Cir. 1999).

4 For trial errors that do not involve a defendant's constitutional rights there is a lower threshold in which a new trial may only be ordered if the error substantially influenced the verdict. *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). But we do not need to decide whether the error implicated appellant's constitutional rights if the error is harmless beyond a reasonable doubt. *State v. Lee*, 929 N.W.2d 432, 440 (Minn. 2019).

5 Appellant claims on appeal that daughter might have been eligible for a U-Visa. But this is the first time he has made this argument. In district court he argued only about her possible asylum eligibility. This is not an argument proper for our review. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).