STATE OF MINNESOTA
IN COURT OF APPEALS
A11-0977

State of Minnesota,
Respondent,

vs.

Tajuden Ali Ahmed,
Appellant.

Filed July 9, 2012
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CR-10-45207

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan L. Segal, Minneapolis City Attorney, Heidi Johnston, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, St. Paul, Minnesota; and

William Ward, Hennepin County Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges his conviction of disorderly conduct, arguing that he was denied his due-process right to a fair trial because his testimony was erroneously translated to the jury, that the district court erred in failing to grant a mistrial for the same reason, and that the evidence was insufficient to support his conviction. Because the translation of appellant's testimony was on the whole adequate and accurate and because the evidence was sufficient to sustain his conviction, we affirm.

FACTS

Appellant Tajuden Ali Ahmed was charged with two counts of misdemeanor domestic assault and one count of misdemeanor disorderly conduct. The case was tried to a jury. According to the evidence presented at trial, appellant arrived in the United States from Ethiopia in 2002. His native language is Oromo. Appellant is married to M.J. On September 27, 2010, M.J. was preparing food for appellant. Appellant was displeased with the food and stated, "[i]s it food you provide to someone dead?" M.J. testified that as she gave appellant the food, appellant grabbed her and hit her multiple times. M.J. testified that she called the police because she "was afraid for [her] own life." Minneapolis Police Officer Joshua Stewart responded to the scene. He testified that M.J. told him that appellant was angry with her because she "didn't make dinner up to his standards and that he punched her with a closed fist once in her head, once on her hands and once on the back and that he left to get a weapon . . . so she went to the bathroom and locked herself in."

At the beginning of the trial, Hundetu Theophilos and Addissu Aedu were sworn in as Oromo interpreters. On the first day of testimony, appellant's attorney notified the district court that he was concerned regarding the interpretive services of Aedu. Counsel explained that as compared to Theophilos, Aedu appeared to paraphrase instead of interpret simultaneously. But appellant's attorney stated that appellant felt that "the interpreting has been good by both."

In response to defense counsel's concern, the district court questioned Aedu regarding his qualifications. Aedu informed the court that there are no certified Oromo interpreters in Minnesota. Aedu also informed the court that although Oromo is his native language, he is equally comfortable with Oromo and English, he has received training as an interpreter from the court and from the Minnesota Department of Health, and he has been interpreting in Minnesota for approximately six years. Aedu indicated that he has learned both simultaneous and consecutive interpreting methods. The district court concluded that as an interpreter on the statewide roster of approved non-certified interpreters maintained by state court administration, Aedu met the minimum requirements set forth for interpreters under the Minnesota Rules of General Practice and allowed him to continue as an interpreter at trial.

On the third day of trial, appellant moved for a mistrial, alleging that Aedu had erroneously interpreted a portion of his cross-examination by the prosecutor on the previous day. The allegation was based on the opinion of interpreter Theophilos, who brought the issue to defense counsel's attention. The district court took appellant's

motion under advisement because Aedu was not interpreting that day and was unavailable to answer questions regarding the alleged error.

The jury returned a verdict of guilty on the disorderly-conduct charge and of not guilty on the domestic-assault charges. After the verdict, appellant renewed his motion for a mistrial. Appellant also moved for a new trial or entry of a judgment of acquittal. The district court held hearings on the motions and denied each one. This appeal follows.

D E C I S I O N

I.

Appellant argues that he was denied his due-process right to a fair trial because his testimony was erroneously interpreted to the jury. Criminal defendants have a constitutional right to a fair trial. U.S. Const. amends. VI, XIV; *State v. Hogetvedt*, 488 N.W.2d 487, 489 (Minn. App. 1992). The constitutional guarantee of a fair trial does not require a perfect trial, but rather one that does not prejudice the substantial rights of the accused. *State v. Billington*, 241 Minn. 418, 427, 63 N.W.2d 387, 392-93 (1954). Whether a person has been deprived of due process is a legal question, which we review de novo. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005).

When reviewing a claim that an interpretation error resulted in denial of the due-process right to a fair trial, this court "asks whether the translation of trial testimony was 'on the whole adequate and accurate.'" *State v. Her*, 510 N.W.2d 218, 222 (Minn. App. 1994) (quoting *State v. Mitjans*, 408 N.W.2d 824, 832 (Minn. 1987)), *review denied* (Minn. Mar. 15, 1994). When the alleged interpretation error involves the defendant's testimony, a reviewing court considers whether "the essence of defendant's testimony

was adequately conveyed to the jury." *Mitjans*, 408 N.W.2d at 832. Although there is no clear standard for determining whether a translation was adequate, one of the relevant considerations is the "effect of the translation errors on [the defendant's] ability to present a defense." *Her*, 510 N.W.2d at 222. Appellant bears the burden of proving that the interpretation was inadequate. *See State v. Montalvo*, 324 N.W.2d 650, 652 (Minn. 1982) (concluding that a defendant failed to meet his burden of proving on appeal that an interpretation was inadequate).

Appellant alleges that the following cross-examination exchange was improperly interpreted.

> THE STATE: And was it [M.J.'s] responsibility to prepare the meals?
> APPELLANT: If she doesn't want to, she can leave, or if she wants to, she can if she requests me to do it myself. I used to prepare myself too.
> THE STATE: Did you say that if she doesn't want to prepare meals she may leave?
> APPELLANT: Repeat for me. Can I repeat?
> THE STATE: Did you answer a minute ago that if she did not wish to prepare meals she could leave?
> APPELLANT: Yes. If she's tired, she can leave it. There is no obligation for her to prepare the food for me.

Relying on the opinion of Theophilos, appellant asserts that his actual response to the question regarding whether it was M.J.'s responsibility to prepare meals was, "she doesn't have to, I can cook for myself" and not "[i]f she doesn't want to, she can leave."[1]

[1] Appellant also asserts that Aedu erred in interpreting the prosecutor's questions. He relies on the following testimony of Theophilos:

> [T]he prosecutor then asked, [y]ou mean if she doesn't cook you food, she has to leave? When she asked that question, the question that the prosecutor asked was also misinterpreted

Because the court reporter's audio tape had elapsed, there is no recording of the relevant cross-examination. The state therefore argues that appellant is unable to meet his burden of proving that the interpretation was inadequate because "the only proof of an alleged translation error is a dispute between two court interpreters who both claim they were accurate in their translations" and because an "allegation by one interpreter that another interpreter made a mistake is not proof that there was an error in the translation."

Obviously, the lack of an audio recording negatively impacts a court's ability to determine whether an interpretation was erroneous. But we disagree that an allegation by one interpreter that another interpreter provided an erroneous translation is insufficient to establish an interpretation error in the absence of a recording, where both interpreters heard the disputed testimony first hand. In such circumstances, the relevant determination is, of necessity, based on the resolution of conflicting evidence—a process that occurs in courtrooms every day.

In this case, the district court considered the conflicting evidence regarding the accuracy of the translation. Aedu claimed that he accurately translated appellant's cross-examination by the prosecutor. Theophilos testified that an alternative interpretation would have been more appropriate. The district court concluded that "the disputed

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> because the question that was asked of [appellant] was, [i]f your wife does not cook you food then what happens was the question that was asked the second time. However, that was not what the prosecutor asked.

We observe that this testimony is confusing regarding the existence of error and that it therefore does not support a claim of reversible error.

testimony elicited from [appellant] during cross-examination was not patently incorrect," observing that language interpretation is an "art." We agree.

"Translation is an art more than a science, and there is no such thing as a perfect translation of a defendant's testimony. Indeed, in every case there will be room for disagreement among expert translators over some aspects of the translation." *Mitjans*, 408 N.W.2d at 832. Even if Aedu's interpretation was not perfect, his interpretation of appellant's testimony was on the whole adequate and accurate. Appellant's preferred translation and the actual interpretation of appellant's answer to the prosecutor's question regarding M.J.'s responsibility for meal preparation, when read in the context of the entire exchange, convey the essence of appellant's testimony: M.J. was not required to prepare food for appellant and appellant was capable of cooking for himself. *See id.*

Moreover, we disagree with appellant's contention that the translation was "inflammatory, prejudicial and inaccurate" and "could have left the jury with the impression that this controlling husband gave his wife a choice—either cook for me, or leave—the house or the country." Appellant's argument that the translation was prejudicial because it suggests that he is misogynistic and controlling is based on the subtle impact of the statement. When considering whether reversal is necessary based on an erroneous translation, "the broad standard we must apply is whether the translation was on the whole adequate and accurate." *Her*, 510 N.W.2d at 223 (quotation omitted). "[O]ur focus must be on the tangible effect of the translation errors shown," because trial interpretation is necessarily imperfect. *Id.*

Here, the prosecutor immediately asked appellant to clarify his purported "she can leave" response, and appellant stated "she can leave it. There is no obligation for her to prepare the food for me." This clarification reduced any risk of prejudice and reinforced the essence of appellant's testimony. We also observe that the prosecutor did not reference the "she can leave" response in her closing argument or argue that appellant would have forced M.J. to leave his home or the country if she did not cook for him. And as explained in the last section of this opinion, defense counsel presented a vigorous defense despite the alleged translation error. *See id.* at 222-23 (examining the effect of translation errors on the defendant's ability to present a defense and concluding that defense counsel nonetheless presented a vigorous defense).

In sum, even if Aedu's interpretation of the prosecutor's cross-examination of appellant was not perfect, the translation of appellant's testimony was on the whole adequate and accurate, it conveyed the essence of appellant's testimony, and it did not tangibly prejudice appellant. We therefore conclude that appellant was not denied his constitutional right to a fair trial.

II.

Appellant next argues that "the district court erred in failing to grant a mistrial when appellant's testimony was erroneously and prejudicially translated to the jury." The denial of a motion for a mistrial is reviewed for abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003). "A mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different if the

event that prompted the motion had not occurred." *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006) (quotation omitted).

In denying the motion, the district court explained that it was not convinced "that the outcome of the trial would have been any different if the alleged [interpretation] error had not occurred." We agree. As explained in the previous section of this opinion, the alleged error in Aedu's interpretation did not prejudice appellant.

Appellant also argues that the district court erred by delaying its ruling on his mistrial motion until after the trial, arguing that "because there was no actual tape of the original testimony, and the court had previously been alerted to problems with Mr. Aedu's interpreting services, the court should have declared a mistrial when defense counsel made the motion, during the trial." Appellant further argues that "at the very least, a hearing and prompt ruling on this issue should have been decided at the time it was raised."

When appellant initially moved for a mistrial, the district court left the record open on the issue and reserved its ruling. In doing so, the district court reasoned that at the time of the motion, there was an inadequate record to decide the issue because the interpreter who allegedly erred was not present. The district court explained, "we do not have the input from the interpreter who is being accused of misinterpretation, and I'm not going to rule without having the record contain that interpreter's input." The district court also stated that appellant "has been out of custody. He'll remain out of custody if he's convicted and we will give this motion for a mistrial a fuller record and rule on it and he'll remain out of custody until that time."

Appellant provides no legal argument or authority indicating that the district court's approach was inappropriate, impermissible, or an abuse of discretion, and we discern no obvious prejudicial error. *See State v. Wembly*, 712 N.W.2d 783, 795 (Minn. App. 2006) ("An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." (quotation omitted)), *aff'd on other grounds*, 728 N.W.2d 243 (Minn. 2007).

III.

Appellant last argues that the evidence was insufficient to sustain his disorderly-conduct conviction. In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Disorderly conduct is defined as follows:

> Whoever does any of the following in a public or private place, . . . knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor: . . . engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others.

Minn. Stat. § 609.72, subd. 1(3) (2010).

Both M.J. and appellant testified at trial. M.J. testified that appellant criticized the food that she had provided and then hit her. Appellant testified that he did not remember criticizing the food as M.J. alleged. He also denied that he slapped, punched, touched, or harmed M.J. There were no witnesses to the incident, and there was no physical evidence to corroborate M.J.'s accusation. Thus, in closing argument, defense counsel argued that M.J.'s accusation was a "naked allegation" because "it's not supported by the facts. It exists on its own and there is nothing corroborating it."

Defense counsel vigorously defended the case, emphasizing the inconsistencies in M.J.'s statements and her motivation to fabricate a domestic-assault allegation that would allow her to remain in the country. Defense counsel thoroughly cross-examined M.J. along these lines. In closing argument, defense counsel argued that the only way the state could prove its case was if the jury relied on what M.J. said and the jury could not do that because "she has made different statements to different people." Defense counsel reviewed all of the inconsistencies in detail and argued that "[a]ll those things go to the unreliability of the testimony that you heard from [M.J.]." Defense counsel also argued that M.J. had "a motive to create this story. She wants to stay in the United States. She

doesn't want to stay with [appellant.] The only way that she can do that is by claiming to be a victim in this case." Defense counsel further argued that appellant's testimony and version of the events was more consistent and more believable. Lastly, defense counsel appropriately argued that appellant's alleged criticism of the food that M.J. served him, in and of itself, could not constitute disorderly conduct. *See State v. McCarthy*, 659 N.W.2d 808, 810-11 (Minn. App. 2003) (stating that a disorderly-conduct conviction cannot be based on a person's words unless those words are fighting words). In sum, the jury was presented with diametrically opposing versions of the charged incident and all of the reasons that it should not believe M.J. The jury obviously rejected appellant's testimony that he engaged in no offensive physical conduct, which was its prerogative. *See Moore*, 438 N.W.2d at 108 (stating that the reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary").

Appellant contends that because the jury acquitted him of the domestic-assault charges, it could not have found him guilty of the disorderly-conduct charge. But the elements of the crimes are different, and appellant's acquittal of domestic assault does not preclude his conviction of disorderly conduct. *Compare* Minn. Stat. § 609.2242, subd. 1 (2010) (stating that misdemeanor domestic assault requires "an act with intent to cause fear in another of immediate bodily harm or death" or the "intentional[] inflict[ion] or attempt[] to inflict bodily harm upon another") *with* Minn. Stat. § 609.72, subd. 1(3) (stating that disorderly conduct requires offensive, obscene, abusive, boisterous, or noisy conduct that the actor knows or has reasonable grounds to know "will tend to alarm, anger or disturb others"). It is possible that the jury concluded that appellant engaged in

offensive conduct but that he did not cause M.J. to fear immediate bodily harm or death, or inflict or attempt to inflict bodily harm on M.J. Moreover, "a defendant who is found guilty of one count . . . is not entitled to a new trial or a dismissal simply because the jury found him not guilty of the other count, even if the guilty and not guilty verdicts may be said to be logically inconsistent," because the jury's decision could have been an exercise "of its power of lenity." *State v. Juelfs*, 270 N.W.2d 873, 873-74 (Minn. 1978) (quotation omitted).

Viewing the evidence in the light most favorable to the conviction and deferring to the jury's assessment of witness credibility, because the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that appellant was guilty of disorderly conduct, we will not disturb the verdict.

Affirmed.