STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1666

State of Minnesota,
Respondent,

vs.

Bindouenou Boutouli,
Appellant.

Filed January 9, 2012
Affirmed
Halbrooks, Judge

Dakota County District Court
File No. 19WS-CR-09-25630

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

William L. Bernard, Grannis & Hauge, P.A., Eagan, Minnesota (for respondent)

Bindouenou Boutouli, Eagan, Minnesota (pro se appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Worke, Judge.

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

HALBROOKS, Judge

Appellant, pro se, challenges his convictions of two counts of fifth-degree domestic assault and one count of disorderly conduct, arguing that (1) the police and the district court violated his rights under Minn. Stat. §§ 611.30, .32 (2010), Minnesota's

interpreter statute; (2) the district court abused its discretion by permitting the jury to hear a recorded interview with the victim; (3) the district court abused its discretion by allowing the prosecutor to object during appellant's closing argument; and (4) the district court improperly distributed a preliminary set of jury instructions to the parties. We affirm.

FACTS

On September 29, 2009, at 11:30 p.m., Eagan police officers responded to an emergency 911 call involving a domestic dispute. When they arrived, appellant Bindouenou Boutouli answered the door; he was visibly upset and had a scrape on the left side of his face and left ear. While two officers went upstairs to talk to H.B., appellant's wife, Officer Benjamin Koenke asked appellant what happened. Appellant stated that he had a conversation with his wife while in bed about how he was not happy with her behavior. He claimed that H.B. was not receptive to these comments and got out of bed. When appellant demanded that she come back to bed, she scraped him on the left side of his face and ear, and he slapped her twice. Appellant stated that H.B. told him that she was going to call the police, and he did not object.

Appellant's first language is French, but Officer Koenke had little difficulty understanding him. Officer Koenke testified, "It's pretty clear what he was telling me[,] and after what he told me, I reiterated to him exactly his story and he said, '[Y]es, that is exactly what happened.'"

Officer Karin Engen interviewed H.B. and recorded her statement. H.B. told Officer Engen that, after refusing appellant's repeated and persistent sexual advances, she

left the bedroom to sleep with the couple's children or on the couch. Appellant told H.B. that she still had a duty to him and started to slap her and pull her by her head. He then said, "Today I will kill you" multiple times. H.B. recounted that appellant slapped her with an open hand, hit her with a closed fist, pulled her hair, and kicked her. At one point during their fight, H.B. was able to reach their seven-year-old daughter's bedroom. Appellant pulled her out of the bedroom. Soon after, she called 911.

Officer Dave Streeland talked to the couple's daughter. She told police that when she woke up, she saw H.B. crying on the floor and appellant kicking H.B. in the side of the abdomen area. She then saw appellant drag H.B. out of the room. This interview was also recorded.

Appellant was arrested and charged with two counts of fifth-degree domestic assault and one count of disorderly conduct. Appellant opted to represent himself at trial, and the district court provided him with a French interpreter. Appellant demonstrated an ability to understand and speak English, making legal arguments, fully participating in his defense, and engaging in several exchanges with the judge. After a one and one-half day jury trial, appellant was found guilty on all counts. This appeal follows.

D E C I S I O N

I.

Appellant argues that the Eagan police and the district court violated his rights under Minn. Stat. §§ 611.30, .32, the interpreter statute. Specifically, appellant contends that the police violated his rights by denying him a translator before his arrest; that the district court erred by not providing him with written and oral translations of various key

trial documents and by allowing him only one night to review the transcript of a witness interview; and that the district court erred by permitting simultaneous translation during testimony, which created unnecessary noise and confusion.

Whether appellant's rights were violated under the interpreter statute is a question of law, which this court reviews de novo. *See State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996). Minnesota law requires the appointment of an interpreter when a defendant is "disabled in communication," including when the defendant has difficulty comprehending the English language. Minn. Stat. §§ 611.30, .31 (2010); *State v. Cham*, 680 N.W.2d 121, 126 (Minn. App. 2004), *review denied* (Minn. July 20, 2004). The district court must appoint a qualified interpreter "to assist the defendant throughout the proceedings. The proceedings that require a qualified interpreter include any proceeding attended by the defendant." Minn. R. Crim. P. 5.02.

A.

Appellant contends that the state should have appointed an interpreter for him during the initial investigation that culminated in his arrest. Minn. Stat. § 611.32, subd. 1, provides:

> In any proceeding in which a person disabled in communication may be subjected to confinement, criminal sanction, or forfeiture of the person's property, and in any proceeding preliminary to that proceeding, including coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the person disabled in communication . . . throughout the proceedings.

The statute continues:

> Following the apprehension or arrest of a person disabled in communication for an alleged violation of a criminal law, the arresting officer, sheriff or other law enforcement official shall immediately make necessary contacts to obtain a qualified interpreter and shall obtain an interpreter at the earliest possible time at the place of detention.

Minn. Stat. § 611.32, subd. 2.

The clear language of the statute provides for an interpreter only "following" apprehension or arrest. *Id.* The types of "preliminary proceedings" identified in subdivision 1—a coroner's inquest, grand-jury proceedings, and mental-health commitments—all occur after an initial investigation. Because pursuant to the clear language of the statute appellant was not entitled to an interpreter during discussions with the police in his own home prior to his arrest, the police did not violate appellant's rights under Minn. Stat. §§ 611.30, .32. *See State v. Farrah*, 735 N.W.2d 336, 341 (Minn. 2007) (noting police must obtain an interpreter to assist during "custodial interrogation").

B.

Appellant contends that the district court violated Minn. Stat. § 611.30 by denying his request for oral and written translations of the police interviews and jury instructions. Minn. Stat. § 611.30 states that the policy for providing an interpreter for those disabled in communication is to "avoid injustice and to assist persons disabled in communication in their own defense."

Appellant's argument is unpersuasive because the record indicates that his grasp of English is sufficient to permit him to understand the documents in question for the

purpose of defending himself. Moreover, the district court took special care to ensure that appellant understood all of the proceedings. First, appellant had copies in English of the interviews and appeared to at all times understand their substance. Appellant's familiarity with their contents was evident from his substantive discussion of the interviews at trial. He has not demonstrated that he was prevented from defending himself or was subject to any injustice by the district court's refusal to provide him with transcripts in French.

Second, with respect to the jury instructions, the district court gave the parties one day to review the preliminary jury instructions and then reviewed each proposed instruction with the parties, explaining the legal terms to appellant. Appellant did not object to the instructions or suggest any additions or corrections. He selected the instructions that he wanted to be read to the jury. Because appellant fully participated in the jury-instruction-selection process, with no indication that he failed to understand it, there is no basis in this record to conclude that the district court violated appellant's right to an interpreter by providing him with written jury instructions in English.

C.

Appellant contends that the district court violated Minn. Stat. § 611.30 by allowing simultaneous translation, which, he claims, created noise and confusion and prevented him from being able to fully understand the proceedings. Appellant raised this issue at various points throughout his trial, observing that the interpreter, translating simultaneously, was sometimes speaking at the same time as the witness. But appellant does not provide any support from the record to demonstrate that he was prejudiced or

confused by the district court's alleged failure to adequately manage the interpreter. The record reflects that both appellant and the interpreter periodically requested that the proceedings be stopped or that a witness repeat something in order to ensure a precise translation. The district court granted those requests and otherwise made a concerted effort to guarantee that appellant understood the process. The district court did not violate the interpreter statute by allowing simultaneous translation.

II.

Appellant argues that H.B.'s recorded statement should not have been played for the jury. "[E]videntiary and procedural rulings generally rest within the [district] court's discretion and will not be reversed absent a clear abuse of discretion." *State v. Glaze*, 452 N.W.2d 655, 660 (Minn. 1990).

We note as a threshold matter that appellant consented to admission of the recording. Failure to object to the admission of evidence "generally constitutes a waiver of the right to appeal on that basis." *State v. Martinez*, 725 N.W.2d 733, 738 (Minn. 2007). Although this court may review alleged errors that were not objected to at trial, we do so only when such errors are plain and affect substantial rights. Minn. R. Crim. P. 31.02. Appellant has not argued that admission of the recording constituted plain error.

But even if we were to review this issue under a plain-error standard, appellant has not demonstrated plain error. Based on our review of the record, the district court acted well within its discretion by admitting the recording. H.B. indicated from the moment that she took the stand that she had no intention of testifying. The prosecutor attempted in vain to establish a simple foundation and elicit basic answers from H.B. before the

district court stopped the proceedings to determine whether H.B. would testify at all. The district court reminded H.B. that she was under subpoena and could be held in contempt and incarcerated should she continue to refuse to testify. When the district court discussed with H.B. whether she was going to testify, he explained to her:

> You have been subpoenaed to testify about what happened that night. You have clearly sent a message to me that you are not interested in testifying about what happened that night. [The state] gave you the opportunity to review your statement and I watched you and you sat there and you didn't even look at it, which tells me you are not interested in reviewing the statement.

When the district court asked, "You can't repeat what happened that night?," H.B. answered, "No." The district court found H.B. to be an unavailable witness and reasoned,

> I think that I have . . . made a sufficient record . . . as to the basis for playing the recording. [H.B.] clearly doesn't want to testify. She had been given an opportunity to testify and essentially she indicates that she doesn't remember anything about that night, at least as it relates to the incident.

The district court asked appellant if he had any objections to the playing of the recording. He responded, "I agree that we play the recording. I want for the jury to hear the content of this recording." After the recording was played for the jury, appellant had an opportunity to cross-examine H.B., thereby protecting his rights under the confrontation clause. On this record, the district court's decision to admit the recording was not error.

III.

Appellant argues that the district court erred by allowing the prosecutor to object during his closing argument. This is a procedural ruling, which this court reviews for a clear abuse of discretion. *Glaze*, 452 N.W.2d at 660.

The prosecutor objected eight times during appellant's closing argument—seven times on the basis of stating facts not in evidence and once for inflaming the jury. The district court overruled five objections and sustained three. After the sixth objection, appellant stated, "I understand the other side, their tactic is to break me down by stopping me from time to time but I am not going to let that happen." The district court instructed the jury to disregard that statement. Appellant's assertion that the prosecutor was trying to "break him down" is the basis for his appeal.

The record does not support appellant's allegation. All of the prosecutor's objections had a basis in the law. In response to the first objection for stating facts not in evidence, the district court overruled the objection, but encouraged appellant to "stick to the facts." In response to a subsequent objection, the district court sustained it, telling appellant that he "need[ed] to confine [his] arguments to the testimony that has been presented." The district court overruled a later objection, but again told appellant to "keep [his] arguments confined to the facts that have been offered in testimony."

The district court went on to explain to the jury that "just because [appellant] may have asked a question on [a particular issue], if that question wasn't answered, it doesn't mean that it's in the facts. [Appellant's] question is not part of the facts." The prosecutor's objection for inflaming the jury occurred when appellant stated that finding

him not guilty was tantamount to finding "that the state isn't above the law." Because none of the prosecutor's objections was improper or made with the purpose of disrupting appellant's closing argument, we conclude that the district court acted within its discretion with regard to its rulings on objections to appellant's closing argument.

IV.

Appellant argues that the district court erred by distributing proposed jury instructions prior to the close of the state's case. We review a district court's procedural decisions for abuse of discretion. *Glaze*, 452 N.W.2d at 660. Minn. R. Crim. P. 26.03, subd. 2, governing the requirement that the district court provide jury instructions, is silent with respect to timing, other than to require that they are provided before closing arguments. Because the district court complied with the rule by providing the proposed instructions prior to closing arguments, we see no abuse of discretion.

Affirmed.