

SUPREME COURT OF ARKANSAS

No. CR10-1241

JOSE LUIS MENDEZ

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 15, 2011APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT,
[NO. CR2009-792-1]
HON. WILLIAM A. STOREY, JUDGEREVERSED AND REMANDED.**KAREN R. BAKER, Associate Justice**

A Washington County jury found appellant Jose Luis Mendez guilty of rape, attempted murder, aggravated residential burglary, and aggravated assault and sentenced him to a total of sixty years' imprisonment. Appellant, who speaks only Spanish, asserts that the circuit court erred in admitting the State's translation of a statement he gave to the police in Spanish because it was not prepared by a qualified certified translator as required by Arkansas Rule of Evidence 1009 (2010). The circuit court ruled that the statement was admissible and that the translator's certification went to the weight, rather than the admissibility, of the statement. The court of appeals certified this case, and we accepted certification because the issues raised are novel and significant and involve the interpretation of a rule of evidence. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(b)(1), (4), and (6) (2011). We reverse and remand.

On May 13, 2009, Irma Guervara was assaulted. She testified at trial that she awoke that day to find her former boyfriend, appellant, in her apartment straddling and choking her.

She stated that appellant choked her until she lost consciousness and that when she awoke, appellant was gone and she was badly injured. She went to the apartment manager for help, and he called the police.

After an investigation, the police arrested appellant, and Detective Jared Pena interviewed him. The interview was conducted in Spanish and recorded. During the trial, the circuit court admitted the State's translation prepared by Joseph Thomas, an employee of the prosecutor's office who had taken and failed the translator's qualification exam, into evidence. Appellant offered into evidence a translation performed by Nicholas Durand, a state-certified translator. The salient difference between the two translations concerns an alleged admission from appellant that he grabbed Guervara's neck that appears in Thomas's translation and not in Durand's translation. The disputed statement came after Detective Pena asked appellant, "Did you try and kill her?" Appellant responded by asking why he would kill her. Detective Pena responded, "Grabbing her by the neck?" Thomas translated appellant's response as "I did that." Durand translated appellant's response as "I didn't do that." Thomas testified at trial that he did not believe the usage of "I did that" is particularly awkward. Durand testified at trial that he is a certified interpreter for the State of Arkansas. He stated that appellant's usage of the phrase that Thomas translated as "I did that" seemed awkward; so, he looked to alternative usages of that sentence structure elsewhere in appellant's statement to conclude that appellant did not admit to grabbing Guervara's neck. The circuit court admitted both translations, concluding that the question of which version to credit was a matter for the jury.

On appeal, appellant contends that the circuit court should have disallowed the State's translation because a translator who was not certified under the provisions of Arkansas Rule of Evidence 1009(a) provided the translation. The State argues that nothing in the rule precludes the admission of a translation provided by a nonqualified translator. Alternately, the State asserts that any error in admitting the evidence was harmless error.

The State correctly asserts that we review evidentiary rulings under an abuse of discretion standard, and we do not reverse absent a manifest abuse of that discretion and a showing of prejudice. *E.g., Morris v. State*, 358 Ark. 455, 193 S.W.3d 243 (2004). However, resolution of the issue on appeal requires this court to interpret Rule 1009 of the Arkansas Rules of Evidence. We construe court rules using the same canons of construction as are used to construe statutes. *JurisDictionUSA, Inc. v. Loislaw.com, Inc.*, 357 Ark. 403, 183 S.W.3d 560 (2004). The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction, and the analysis need go no further. *Id.* We review issues of statutory construction de novo as it is for us to decide what a statute means. *Id.* We are not bound by the decision of the trial court; however, in the absence of a showing that the trial court erred in its interpretation of the law, that interpretation will be accepted as correct on appeal. *Id.*

Rule 1009 of the Arkansas Rules of Evidence, provides, in relevant part, as follows:

(a) Translations. A translation of foreign-language documents and recordings, including transcriptions, that is otherwise admissible under the Arkansas Rules of Evidence shall

be admissible upon the affidavit of a “qualified translator,” as defined in paragraph (h) of this rule[.]

....

(d) Effect of Objections or Conflicting Translations. In the event of conflicting translations under paragraph (a), or if objections to another party’s translation are served under paragraph (b), the court shall determine whether there is a genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact.

....

(h) Qualified Translator. A “qualified translator” is an interpreter satisfying the requirements established by the Arkansas Supreme Court in *In Re: Certification for Foreign Language Interpreters in Arkansas Courts*, 338 Ark. App’x 827 (1999) and Administrative Order Number 11.

Ark. R. Evid. 1009 (2011).

We review the interpretation of the rule of evidence de novo. Looking first at the rule, paragraph (a) provides that a translation of a foreign-language transcription “shall be admissible upon the affidavit of a ‘qualified translator,’ as defined in paragraph (h) of this rule[.]” Ark. R. Evid. 1009(a). Thus, the plain language of the rule unambiguously states that a transcription is admissible so long as the statement is otherwise admissible under the Arkansas Rules of Evidence, and a “qualified translator” submits an affidavit attesting to the accuracy of the transcription. The rule goes on to address what happens when a party objects to the accuracy of the translation or offers a conflicting translation.

Here, appellant offered a translation provided by a qualified translator. The date of the letter sending Durand’s translation is March 22, 2010, and the letter includes Durand’s certification. On May 11, 2010, the State filed a motion in limine objecting to the use of Durand’s translation, specifically objecting to the translation described above as “I didn’t do that.” At the motion hearing, appellant argued that the best-evidence rule required Durand’s

translation control over Detective Pena's and that the State's translation was inadmissible because Thomas was not a qualified translator. The State argued that Rule 1009 did not preclude admission of Thomas's translation.

On appeal, the State contends that the situation in the present case arises under the conflicting-version provision, paragraph (d) of Rule 1009, which provides that the court has the discretion to determine whether there is a genuine issue of fact. We must first look to what the plain language of paragraphs (a) and (h) requires to admit a conflicting translation. Paragraph (a) determines when a translation is admissible, and it plainly bases admission on the submission of the affidavit of a "qualified translator" under paragraph (h). To be a qualified translator, an interpreter must satisfy the requirements set forth in this court's decision in *In re Certification for Foreign Language Interpreters in Arkansas Courts*, 338 Ark. App'x 827 (1999) (per curiam) and Administrative Order Number 11. Ark. R. Evid. 1009(h).

Neither party asserts that Durand was not a qualified translator or that appellant's offer of his translation was improper or untimely under Rule 1009(a). The only question is whether Thomas's translation should have been admitted. Paragraph (d) provides that in the event conflicting translations are served under Rule 1009, the court shall determine whether a genuine issue of material fact exists. Although the State relies on the second part of paragraph (d), the only way that such a conflicting translation can be admitted is under paragraph (a). A plain reading of the rule leads to no other conclusion. To offer a competing translation, the translation must pass the admissibility standard set forth in paragraph (a). Only where two qualified translations are offered does the court determine whether there is a

genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact. See, e.g., *Leal v. State*, 782 S.W.2d 844 (Tex. Crim. App. 1989) (holding that it was error for the trial court to use a party's unsworn translation to aid the jury). Here, not only was the State's translator uncertified, he had taken and failed the certification exam. Accordingly, the State's translation should not have been admitted.

Although appellant has proved error, where the evidence of guilt is overwhelming and the error is slight, we can declare that the error was harmless and affirm. *Barr v. State*, 336 Ark. 220, 984 S.W.2d 792 (1999). In this case, we cannot say the error was slight where an unqualified translation of appellant's statement was introduced as an admission of guilt; therefore, the introduction of the noncertified translation was not harmless.

Reversed and remanded.