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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0347

State of Minnesota,
Appellant,

vs.

Long Phi Nguyen,
Respondent.

Filed August 12, 2013
Affirmed
Cleary, Judge
Concurring in part, dissenting in part, Hooten, Judge

Hennepin County District Court
File No. 27-CR-12-24661

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

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Considered and decided by Hooten, Presiding Judge; Kalitowski, Judge; and Cleary, Judge.

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

CLEARY, Judge

In this pretrial appeal, the state challenges the district court's suppression of respondent's statements to a detective. The state argues that the district court's

suppression will have a critical impact on the prosecution of the case and that the district court clearly and unequivocally erred by determining that respondent's *Miranda* waiver was invalid and that respondent's statements were not voluntary. Respondent argues that he was subject to interrogation and that all statements must be suppressed. Because the district court's factual finding that respondent is disabled in communication supports its legal conclusion that his statements were involuntary, we affirm.

FACTS

At around 6:00 a.m. on July 30, 2012, respondent Long Phi Nguyen allegedly shot his roommate because he was making too much noise while washing dishes. Respondent was arrested later that day and transported to the Brooklyn Park jail. He met with Detective Russell Czapar in an interview room. After a few preliminary questions, Detective Czapar attempted to ascertain respondent's grasp of English:

> Q: Do you understand English well?
> A: Not really.
> Q: Speak English well?
> A: Little bit.
> Q: Okay. If you have questions or concerns, ask me.
> A: Yeah.
> Q: If you don't understand somethin', we can repeat it.
> A: Yeah.

Detective Czapar then proceeded with more preliminary questions, such as the spelling of respondent's name, date of birth, phone number, and address.

Respondent then volunteered that he was unemployed. When Detective Czapar asked respondent to clarify his job-seeking status, respondent confessed that he shot his roommate:

Q: . . . Are you lookin' for work right now?
A: Yeah. . . . Over almost three year.
Q: Okay.
A: I don't have a job.
Q: Okay.
A: I have one eye. And my eye, it don't see. This eye don't see.
Q: Oh, so you have some problems with . . .
A: Only this one. It hard to find job one. And they got a little little (inaudible). I couldn't sleep on. But the guy, you know, holler, you know. You know. All the time when I wanted. I say no. I I I could sleep but, you know what? You don't sleep on the . . . Let me sleep? He open the door and he cook and he make a loud. (Inaudible) I say. You can't help me (inaudible). I say, Hey, don't (inaudible) me. That's why I shoot him.
Q: Okay.
A: (Inaudible) in right hand. (Inaudible) I shoot him. That's why I shoot him in the right hand for. He he open, you know. That's why? But he (inaudible) in the all the right under, you know. Five. Five-thirty. He cook and he wash the machine. He make a loud, you know.

Detective Czapar read respondent his *Miranda* rights in English. But respondent provided no response, stated that he did not understand, or provided an answer indicating an incomplete understanding. Respondent then requested an interpreter and indicated to Detective Czapar that he did not understand what the detective was saying: "You know. Not very well, you know. Just a little. Little. That's why I wanna really, you know." Detective Czapar responded that he would "[a]bsolutely" get an interpreter.

Detective Czapar secured a Vietnamese interpreter from LanguageLine, an over-the-phone interpretation service utilized by the Brooklyn Park Police Department. The interpreter translated Detective Czapar's reading of the *Miranda* rights from English to Vietnamese. Respondent indicated that he understood his rights and, with the aid of the

interpreter, stated that he wished to speak with Detective Czapar about the shooting. Without the aid of the interpreter, respondent described who was present in the house at the time of the shooting. At one point, Detective Czapar asked, "Do you need the translator anymore or are we okay?" Respondent stated, "Uh, some some I can do but some some I . . . ." Detective Czapar stated that he would have the interpreter hold "until we have problems." Respondent explained that his roommate attacked him by grabbing his wrist and neck and recalled shooting the roommate once or twice and then leaving the house.

The state charged respondent by amended complaint with attempted second-degree murder under Minn. Stat. §§ 609.19, subd. 1(1), .17 (2010), and first-degree assault under Minn. Stat. § 609.221, subd. 1 (2010). The district court held a contested omnibus hearing to determine whether to suppress respondent's statements. Detective Czapar testified that he did not utilize the interpreter throughout the interview "[b]ecause, during that questioning, we were able to understand each other and talk and get through our interview without any assistance. I left him on the line so, if we had problems again in our conversation, he would be there." The state played the videorecording of the interview, and respondent offered the transcribed version.

In a January 2013 order, the district court suppressed respondent's statements except those made before he indicated that he did "[n]ot really" understand English well and those made with the aid of the interpreter. The district court found that respondent is a person disabled in communication, that Detective Czapar should have realized this, and that Detective Czapar should have immediately obtained an interpreter. The district court

acknowledged that Detective Czapar obtained an interpreter, but did not utilize him throughout the interview, causing the district court to query, "While [respondent] may have indicated that he was fine answering some questions without the interpreter's assistance, one must ask the question of how was [respondent] to know what exactly Detective Czapar was asking if he had difficulty communicating?" The district court held that "once it is determined that a suspect is disabled in communication, an interpreter should be used throughout the *entire* statement." The district court concluded that respondent's language barriers and minimal contact and familiarity with the criminal-justice system rendered his statement involuntary and that respondent did not validly waive his *Miranda* rights.

The state moved the district court to reconsider its order. The district court denied the motion, but clarified that respondent was in custody at the time of the interview, was not subject to interrogation prior to the reading of his *Miranda* rights, and was subject to interrogation after being read his *Miranda* rights. The district court concluded that no *Miranda* violation occurred because "*Miranda* was read and ultimately understood." Still, the district court concluded that respondent's confession was involuntary, that use of it at trial would violate the Due Process Clause of the Fourteenth Amendment, and that:

> Due to the lack of interpretation throughout the entire interview, [respondent] was incapable of providing a knowing, voluntary, and intelligent waiver of his *Miranda* rights even though he was properly advised of them with the aid of an interpreter. Solely because [respondent] was read his *Miranda* rights with an interpreter does not mean that he

> understood what transpired in the questioning without the interpreter after *Miranda* was read.

This appeal follows.

D E C I S I O N

The state may appeal "any pretrial order" if it can establish that "the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial." Minn. R. Crim. P. 28.04, subds. 1(1), 2(1). We will reverse the district court only if the state demonstrates clearly and unequivocally that the district court erred in its judgment and that the error will have a critical impact on the outcome of the trial. *State v. Edrozo*, 578 N.W.2d 719, 722 (Minn. 1998).

I.

The state argues that the suppression of respondent's statements will have a critical impact on the prosecution of the case. "[T]he standard for critical impact is that the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *Id.* at 723 (quotation omitted).

The suppressed evidence, here, is respondent's confession and other inculpatory statements. Suppression of a defendant's confession has a critical impact on the state's case. *See State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998); *State v. Zanter*, 535 N.W.2d 624, 631 (Minn. 1995). The state meets the critical-impact standard.

II.

It is this state's policy "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 (2012). In enacting Minn. Stat. §§ 611.30–.34 (2012), the legislature explicitly intended to protect persons disabled in communication by requiring interpreters. *Id.* A person "disabled in communication" includes an individual who cannot fully understand the proceedings or charges against him because he has difficulty speaking or comprehending English. Minn. Stat. § 611.31. Prior to interrogating or taking a statement from a person disabled in communication, law enforcement "shall make available to the person a qualified interpreter to assist the person *throughout* the interrogation or taking of a statement." Minn. Stat. § 611.32, subd. 2 (emphasis added).

It is well-settled that Minn. Stat. § 611.32 does not create any new constitutional rights and that a violation of the statute does not require the suppression of a defendant's statement. *See State v. Sanchez-Diaz*, 683 N.W.2d 824, 835 (Minn. 2004); *State v. Dominguez-Ramirez*, 563 N.W.2d 245, 253 (Minn. 1997); *State v. Mitjans*, 408 N.W.2d 824, 830 (Minn. 1987). Here, the district court suppressed portions of respondent's interview with Detective Czapar after determining that his statements were involuntary.

When reviewing the voluntariness of a confession, we look to the totality of the circumstances. *State v. Farnsworth*, 738 N.W.2d 364, 373 (Minn. 2007). Relevant factors include the defendant's age, maturity, intelligence, education, experience, the ability to comprehend, the lack of or adequacy of warnings, the length and legality of the detention, the nature of the interrogation, and whether the defendant was denied physical needs and access to friends. *Id.* We look to whether the defendant's will was overborne at the time that he confessed. *Id.* We will not reverse findings of fact on voluntariness

unless they are clearly erroneous. *State v. Hardimon*, 310 N.W.2d 564, 567 (Minn. 1981). We independently determine the voluntariness of a statement on the facts found by the district court. *Dominguez-Ramirez*, 563 N.W.2d at 254.

A.

The district court concluded that the first sixteen lines of respondent's interview with Detective Czapar are admissible. This portion of the interview included the commencement of the interview up until respondent indicated that he did "not really" understand English well and that he only spoke English a "little bit." We agree with the district court that respondent's answers to Detective Czapar's preliminary questions do not indicate a lack of understanding or an inability to speak English, and were not the product of coercion or made involuntarily. The district court properly admitted these statements.

Respondent argues that this portion of his interview should be suppressed because he was subject to custodial interrogation without being read his *Miranda* warnings. The district court determined that no *Miranda* violation occurred here because respondent was not being interrogated. We agree.

Prior to custodial interrogation, an individual must be informed that he has the right to remain silent, that anything he says can be used in court, that he has a right to consult with an attorney, that he has a right to have an attorney present during interrogation, and that an attorney will be appointed if he is unable to afford one. *State v. Burrell*, 697 N.W.2d 579, 591 (Minn. 2005). A suspect is subject to interrogation if the questioning, words, or actions on the part of the police are such that the police are

reasonably likely to elicit an incriminating response. *State v. Tibiatowski*, 590 N.W.2d 305, 309 (Minn. 1999). Lengthy custodial interrogations prior to *Miranda* warnings are problematic. "If police are permitted to cure the illegality of a coercive unwarned custodial interrogation by merely providing the warning after they have already obtained inculpatory evidence, they would have little incentive to give the warning at the beginning of their custodial interrogation." *State v. Bailey*, 677 N.W.2d 380, 392 (Minn. 2004). Here, at this point during the interview, respondent was not subject to interrogation. Detective Czapar asked background and biographical questions akin to routine booking questions. *See id.* These questions were not reasonably likely to elicit incriminating responses. *See id.* Thus, no Fifth Amendment *Miranda* violation occurred.

B.

The district court suppressed respondent's statements made after he indicated his limited English-speaking and -comprehension abilities up until he was given his *Miranda* warning. The district court found that, at this point, respondent "presented to Detective Czapar as an individual who without a doubt had difficulty speaking or comprehending[ ] English" and that respondent "clearly meets the definition of disabled in communication." These findings are supported by the record.

Several of respondent's statements to Detective Czapar were generalized responses of "yeah." Other times he provided no response. For example, when Detective Czapar clarified respondent's address by asking, "That's where you get mail and everything?" respondent did not answer. Detective Czapar then encouraged respondent by saying, "Okay." Respondent answered, "Yeah. Now I live there." He explained, "At

yeah. I share a room in that . . . . Cause that's only for the for the you know. The guy kick me out and I don't have a room more and I go over there. . . . And I rent a room." When he explained that he had trouble seeing, respondent stated: "I have one eye. . . . It hard to find job one. And they got a little little (inaudible). I couldn't sleep on." Respondent's answers clearly indicate limited English-speaking and -comprehension skills.

These factual findings support the district court's legal conclusion that respondent's confession was involuntary. The district court did not clearly and unequivocally err by suppressing respondent's statements from the moment he made it known to Detective Czapar that he had limited English-speaking and -comprehension skills.

C.

The district court suppressed respondent's statements made after he was provided his *Miranda* warning in Vietnamese, with the exception of those questions and answers where the interpreter's services were used. The district court found no *Miranda* violation because respondent understood his rights and waived them with the aid of the interpreter. But the district court found that respondent's statements made later on without the aid of the interpreter clearly indicated, again, that he had difficulty communicating in and understanding English, rendering his statements involuntary. These findings are supported by the record.

At several points post-*Miranda*, respondent's statements were unintelligible or indicated a lack of understanding. For example, respondent's answer to Detective

Czapar's question, "Do you need the translator anymore or are we okay?" was, "Uh, some some I can do but some some I . . . ." Respondent next stated:

> Yeah. Yeah. Uh, no, and I couldn't sleep but because, you know, I get headache for, uh, one side. But he wake up early, you know, and he cook and he washing machine and he make for noise. How he harassing me all time. I I I I I tired. (Inaudible) Sue me. Sue me. Later one, you know? Later one. Later one. And you can do anything. But he say he say he's one. He can do anything. Why? He don't care about me, you know and . . . .

At another point, respondent explained the course of events, and stated:

> But he must be really mad one, you know. And I don't wanna kill him, you know. I'm really (inaudible) want to talk. He he try and harrounded me all time cause I really (inaudible). I don't have a food. I don't have a job. I don't have nothin' going, you know.

Toward the end of the interview, Detective Czapar asked respondent several leading questions about the incident: "And you were having problems, uh, because you weren't sleeping well because he was keeping you up at night?" Respondent answered, "Yeah. He he hard time. Probably late at night and, you know." Detective Czapar responded, "Okay." Respondent followed up, "Early morning, in the five-thirty and six almost six six, you know. He cook and he make loud. I I go tell him, 'Hey, if you don't, why don't you leave for a . . . .'"

We agree with the district court that no technical violation of *Miranda* occurred. Instead, Detective Czapar failed to utilize an interpreter "throughout the interrogation" even though one was available. It is clear that at several points during the interview respondent provides incomprehensible and uninformed responses. Again, the district

court's factual findings regarding this portion of the interview are not clearly erroneous and support the district court's conclusion that respondent's statements were involuntary.[1]

In sum, the district court did not clearly and unequivocally err by suppressing a portion of respondent's statements to Detective Czapar. We affirm the district court's order suppressing respondent's statements made after he indicated that he had limited English-speaking skills and comprehension except for those questions asked and answered that were rendered with the aid of the interpreter.

Affirmed.

[1] In so deciding, we are not holding that a due process violation occurs whenever an interpreter is requested and the interpreter "fails to interpret each and every question asked and answered," as suggested in the dissent. But where, as here, the respondent requests an interpreter and demonstrates a continuing inability to understand the language used, it is incumbent upon the law enforcement officer to continue to use the services of the requested interpreter throughout the interview.

HOOTEN, Judge (concurring in part, dissenting in part)

I specially concur in affirming the district court's suppression of respondent's statements made prior to receiving a *Miranda* warning. However, with regard to respondent's statements made after he received a *Miranda* warning, I respectfully dissent and would reverse the district court's suppression of the statements.

I.

The district court suppressed respondent's statements made prior to receiving a *Miranda* warning. In doing so, the district court found that no *Miranda* warning was necessary because respondent was not being interrogated at the point that he first confessed, but concluded that his confession was inadmissible because it was involuntary. I agree with the district court that any incriminating statements given by respondent prior to receiving a *Miranda* warning should be suppressed. However, I disagree with the district court's analysis that those statements were not the product of a custodial interrogation.

"Pursuant to the Fifth Amendment, statements made by a suspect during a custodial interrogation are admissible only if the suspect was informed of his *Miranda* rights." *State v. Scruggs*, 822 N.W.2d 631, 637 (Minn. 2012). A suspect is interrogated for purposes of *Miranda* if he is subject to express questioning or its functional equivalent. *State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998). "'[F]unctional equivalent' . . . means 'any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.'" *Id.* (quoting *Rhode Island v.*

Innis, 446 U.S. 291, 301, 100 S. Ct. 1682, 1689–90 (1980)). When determining whether police conduct is likely to elicit an incriminating response, we focus on the suspect's perceptions and consider the totality of the circumstances of the suspect's custody. *State v. Earl*, 702 N.W.2d 711, 719 (Minn. 2005).

Here, after a few preliminary questions, Detective Czapar advised respondent, who was in custody, of his purpose for the interview:

> Well, what I'm here to is I'm a detective. I got assigned the case. So, basically, what I'm here to do is talk to you and get your side of the story and figure out what happened, okay? Cause I have the victim's story and I got the homeowner's story who were there and the other two people. Nancy and them. So I talk to them; now I just need to talk to you.

It is clear from this advisory and the circumstances surrounding the interview that respondent was subjected to a custodial interrogation which would reasonably be likely to elicit incriminating responses. Responses to seemingly innocuous questions, such as "where do you live?" and "who lives with you?" can be incriminating if an attempted murder took place in a home shared by the suspect with the victim. In fact, soon after the Detective Czapar's advisory regarding the purpose for the interview, respondent, anxious to tell his version of the incident, blurted out that he had shot his roommate. Because the Detective Czapar failed to provide a warning prior to the custodial interrogation, respondent's incriminating statements prior to receiving a *Miranda* warning should have been suppressed for this reason.[2]

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[2] In support of its claim that these pre-*Miranda* statements were not given as part of a custodial interrogation, the state pointed us to *State v. Beckman*, 354 N.W.2d 432 (Minn. 1984) and *State v. Friend*, 385 N.W.2d 313 (Minn. App. 1986), *review denied* (Minn.

II.

I disagree, however, with the suppression of respondent's incriminating statements after he received a *Miranda* warning.[3] "Before a statement taken from a defendant during custodial interrogation can be admitted at trial, the state must prove: (1) that the defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights, and (2) that the defendant gave his statement voluntarily." *State v. Dominguez-Ramirez*, 563 N.W.2d 245, 252 (Minn. 1997). "The first requirement ensures that the defendant was aware of his right to remain silent. The second requirement protects the trustworthiness of the defendant's statement by ensuring that he was not coerced into giving an involuntary confession." *Id.* (citation omitted).

May 22, 1986) as supplemental authorities after oral argument pursuant to Minn. R. Civ. App. P. 128.05. *Beckman* is inapplicable because it involved a claim by defendant, who received a *Miranda* warning prior to questioning by police, that his confession was the product of an illegal arrest. 354 N.W.2d at 435–36. *Friend* is distinguishable because the requested suppression of unsolicited incriminating statements made to police occurred during a non-custodial interview. 385 N.W.2d at 321–22. We also held that defendant was not interrogated, explaining that "[s]imply informing [defendant] about the subject of the police inquiry before questioning was not an action that police should have known was reasonably likely to elicit an incriminating response." *Id.* at 321. But in *Friend*, detectives made a general statement that they were investigating a possible crime. *Id.* at 316. Here, Detective Czapar stated that it was his intention to elicit respondent's "side of the story and figure out what happened" and respondent was considered a suspect and had been arrested earlier in the day. And in *Friend*, defendant was not asked any questions before volunteering an incriminating statement, whereas here, Detective Czapar asked respondent several questions leading up to his confession.

[3] I note that concluding that respondent's pre-*Miranda* statements are inadmissible does not affect the admissibility of respondent's post-*Miranda* statements. *See Oregon v. Elstad*, 470 U.S. 298, 309, 105 S. Ct. 1285, 1293 (1985) ("Though *Miranda* requires that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn in these circumstances solely on whether it is knowingly and voluntarily made.").

The validity of a *Miranda* waiver and the voluntariness of a confession are reviewed de novo as questions of law based upon factual findings that are not clearly erroneous. *See State v. Farnsworth*, 738 N.W.2d 364, 373 (Minn. 2007) (reviewing voluntariness of a confession); *State v. Farrah*, 735 N.W.2d 336, 341 (Minn. 2007) (reviewing *Miranda* waiver). Whether an accused has validly waived his *Miranda* rights and whether he has voluntarily confessed are two separate issues, but the relevant factors to consider are similar. *State v. Merrill*, 274 N.W.2d 99, 106 (Minn. 1978). We look at the totality of the circumstances in both analyses, including the defendant's age, maturity, intelligence, education, experience, ability to comprehend, as well as the lack or adequacy of warnings, the length and legality of the detention, the nature of the interrogation, and whether the defendant was deprived of physical needs or denied access to friends. *See Farnsworth*, 738 N.W.2d at 373; *Farrah*, 735 N.W.2d at 341.

In addressing the first requirement, we must determine whether respondent knowingly, voluntarily, and intelligently waived his *Miranda* rights. "Ordinarily, the state is deemed to have met its burden [of proving that a defendant validly waived his *Miranda* rights] if it shows that the defendant was fully advised of his *Miranda* rights, indicated he understood his rights, and gave a statement." *Dominguez-Ramirez*, 563 N.W.2d at 252. Here, the district court found that "*Miranda* was read and ultimately understood" by respondent, but nonetheless determined that respondent was incapable of providing a knowing, voluntary, and intelligent waiver even though he was properly advised with the aid of an interpreter. This determination was based on the fact that

respondent communicated with Detective Czapar in English throughout most of the interview after receiving his *Miranda* warning in Vietnamese, his native language.

But a "defendant who does not understand English can give an effective waiver if the warnings were given in his native tongue." *Farrah*, 735 N.W.2d at 343 (quotation omitted). Because there is no evidence that respondent was under any mental or physical disability that would affect his ability to understand his *Miranda* rights, there is substantial evidence supporting the district court's finding that he understood his *Miranda* rights. But there is no evidence that, after receiving these rights in Vietnamese, respondent chose to remain silent, asked for an attorney, or misunderstood the instruction that anything he said could be used against him. Instead, when asked in Vietnamese if he wanted to talk, respondent responded affirmatively. Because there is no evidence that his consent to proceed with the interview without an attorney was coerced by the police, the district court's finding that respondent's waiver of his *Miranda* rights was coerced is clearly erroneous and contrary to law.

In considering the second requirement, whether the statements were voluntary, we consider Fourteenth Amendment principles prohibiting the admission of involuntary statements into evidence. *State v. Zabawa*, 787 N.W.2d 177, 182 (Minn. 2010). "'Coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment.'" *State v. Williams*, 535 N.W.2d 277, 287 (Minn. 1995) (quoting *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S. Ct. 515, 522 (1986)). "The rule that a confession must be voluntary is designed to deter improper police interrogation." *Id.* "'[T]he

question in each case is whether the defendant's will was overborne at the time he confessed.'" *Farnsworth*, 738 N.W.2d at 373 (quoting *Lynumn v. Illinois*, 372 U.S. 528, 534, 83 S. Ct. 917, 920 (1963)). "[O]ur inquiry examines whether [police] actions, together with other circumstances surrounding the interrogation, were so coercive, so manipulative, so overpowering that [the defendant] was deprived of his ability to make an unconstrained and wholly autonomous decision to speak as he did." *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991).

The district court concluded that respondent's statements were involuntary because the interpreter, while available, failed to interpret each and every question and response "throughout the *entire* interview." However, there is no authority under the statutes, caselaw, or the constitution that a suspect's failure to utilize an interpreter for each and every question during a custodial interrogation mandates suppression of his statement. The clear and unambiguous language of the interpreter statute provides that an officer is to "*make available* . . . a qualified interpreter to assist the person throughout the interrogation or taking of a statement." Minn. Stat. § 611.32, subd. 2 (2012) (emphasis added). The statute instructs "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 (2012) (emphasis added). And the supreme court has noted that "[t]he purpose of the provision relating to interrogation is not to create an unreasonable road-block to the interrogation of a suspect who is handicapped in English but to insure that such a suspect will be treated as fairly as one who speaks English fluently." *State v. Mitjans*, 408 N.W.2d 824, 829 (Minn. 1987).

It is well-settled that the interpreter statute does not create any new constitutional rights and that even a violation of the statute does not require suppression. *See State v. Sanchez-Diaz*, 683 N.W.2d 824, 835 (Minn. 2004); *Dominguez-Ramirez*, 563 N.W.2d at 253; *Mitjans*, 408 N.W.2d at 830. Here, a Vietnamese interpreter was made available at all times subsequent to the *Miranda* warning and was intermittently used. After obtaining an interpreter and asking respondent some general questions in English, to which respondent quickly answered in English, and just before questioning him about the incident, Detective Czapar asked "Do you need the translator anymore or are we okay?" When respondent stated that he understood some English, Detective Czapar responded "So let's have him be on hold until we have problems?" Respondent agreed and, in English, described the incident and answered Detective Czapar's questions.

At the end of the interview, Detective Czapar enlisted the assistance of the interpreter and to ask respondent if his statements were true and correct to the best of his knowledge. Respondent answered, "Yes," in Vietnamese. Then, in Vietnamese, respondent was asked if he had been "promised, threatened or induced in any manner to give this statement." Respondent, in Vietnamese, answered, "No." He was also asked in Vietnamese if he would be willing testify to the facts as they were set out in the statement, to which he responded, "Yes, I will." Under these circumstances, when it is undisputed that an interpreter was made available at all times during respondent's post-*Miranda* statements, there is no violation of the interpreter statute.

The issue, then, is whether Detective Czapar, by continuing the post-*Miranda* interview in English, was so coercive, so manipulative, or so overpowering that

respondent was coerced into making involuntary and incriminating statements. The only witness called at the contested-omnibus hearing was Detective Czapar, who testified that he and respondent were able to understand each other during the interview. The only record evidence in this case includes a transcript and video recording of the interview.

The duty of an appellate court "is performed when we consider all the evidence . . . and determine that it reasonably supports the findings." *Wilson v. Moline*, 47 N.W.2d 865, 870, 234 Minn. 174, 182 (1951). We satisfy our duty by considering "[t]he papers filed in the [district] court, the exhibits, and the transcript of the proceedings." Minn. R. Civ. App. P. 110.01; *cf. State v. Sterling*, ___ N.W.2d ___, ___, 2013 WL 3816102, at *7–11 (Minn. July 24, 2013) (analyzing a video recording of a police interview with a defendant in the context of a Fifth Amendment challenge). My review of the record indicates no evidence that Detective Czapar tried to confuse or trick respondent or that he prohibited respondent from utilizing the interpreter's services. In fact, the district court found that Detective Czapar "created a friendly interviewing atmosphere and even presented to the Court an affable, completely credible in-court witness testimony." Rather, the district court cited to Detective Czapar's failure to utilize the interpreter throughout the interview to find that respondent's will had been overborne.

Soon after receiving his *Miranda* warning, respondent began responding in English before the interpreter could translate. Detective Czapar and respondent then both began speaking in English. In follow-up to respondent's complaint that the alleged victim was "harassing" him, the following exchange took place in English:

Q: Okay.

A: And he's round me. He yell at me. He (inaudible). I say, "Don't don't don't do that."
Q: Well
A: He tell me (inaudible). Attack me, you know.
Q: What'd he do?
A: He attack me.
Q: How did he attack you?
A: He by grabbing with, you now?
Q: He grabbed you?
A: Yeah.
Q: Where?
A: In the in the in the in the in my da room.
Q: In your room?
Y: Yeah.
Q: Where'd he grab you?
A: Right here and right here.
Q: So he grabbed you in your left wrist?
A: Right here. That's why I shoot it right here. I say, "You let me go or make me out."
Q: Okay.
A: That's why.
Q: So he grabbed you.
A: I I don't wanna kill him, you know. That's why I warn him, "Don't touch me here. Don't harass me," you know?
Q: So he grabbed your left wrist and neck?
A: Yeah.
Q: Then what happened?
A: Yeah. That why shoots shoots for him be here. For he he let out, you know?
Q: You shoot him [.] You shoot him twice? Three times?
A: I think it's only one. I only remember one because he he grab me, you know?
Q: There's
A: (Inaudible)
Q: Twice? That's (inaudible)
A: Once or twice, I don't know. But I only remember one.
Q: So, once for sure. Maybe twice?
A: That's right.
Q: How far away from you was he when you shot him.
A: He was about right [w]as about right there.
Q: He was there? That close?
A: He go [g]o like this. Do you wanna have a gun right here? That why I go like this.

> Q: Okay.
> A: And it shoot for me. Where his left arm.
> Q: Okay. What did he say when you shot him?
> A: Huh?
> Q: What did he say when you shot him?
> A: He say he say, "Just shoot one. Shoot one. I don't care." And that's what he said.
> Q: So, before you shot him, he said, "Just shoot me. I don't care"?
> A: Yeah. Before one. What's why when he still he still grab me, you know?
> Q: And then you shot him.
> A: Yeah.
> Q: And you didn't wanna kill him, you said?
> A: Nope. No. I don't want. I just I just let him, you know. Don't grab me and don't don't, you know don't attack me, you know? That all I do.

The video recording of the interview shows that as this exchange took place, respondent demonstrated how the alleged victim had grabbed him.

Respondent stated that he did not know answers to certain questions not for lack of understanding, but for lack of knowledge. For example, when Detective Czapar asked, "When you shot him once, did you double-tap it or did you go shoot once and shoot again?" respondent answered, "I don't know. I don't remember." When Detective Czapar informed respondent that the victim had two bullet wounds, respondent again answered that he did not know about the number of wounds and did not recall how many times he shot because he had been grabbed.

Respondent corrected Detective Czapar on several occasions. For example, Detective Czapar pointed out respondent's location at the time of the shooting on a hand-drawn floorplan of the house. Respondent responded, "No. I shot right there," pointing to the kitchen. When Detective Czapar pointed to the floorplan to indicate his location a

second time, stating, "So, this is you here," respondent again corrected him: "No. I'm here. Right there. I'm here over here," pointing to the floorplan. Respondent even took Detective Czapar's pen and made corrections and additions to the floorplan and indicated his and the victim's locations prior to and during the shooting.

And, most revealingly, respondent explained the course of events leading up to the shooting, the reasons why he shot his roommate, what he did after the shooting, and why he left the scene. Respondent gestured to describe how the alleged victim grabbed him. Respondent repeated throughout the interview that he had no intention of killing anyone, but that he merely wanted the alleged victim to stop attacking him.

Under the totality of circumstances, I would hold that the district court's finding that respondent's post-*Miranda* statements were involuntary is clearly erroneous. There is no evidence indicating that the actions of Detective Czapar, in conducting part of the interview in English with an interpreter available, was so coercive, manipulative, or overpowering that respondent's will was overborne so that he was deprived of an ability to make an autonomous decision to speak.

Furthermore, I would hold that the district court erred as a matter of law by finding a due process violation when an interpreter is requested for an interview with the police and the interpreter fails to interpret each and every question asked and answered. Our supreme court in *Dominguez-Ramirez* upheld the validity of statements during an interrogation in which a police officer served as an interpreter, even though he was not trained, but happened to know some Spanish. 563 N.W.2d at 252–256. Significantly, the defendant claimed that he did not understand the officer because he spoke a different type

of Spanish. *Id.* at 254. As a result, the defendant claimed that he could not understand the officer's Spanish because of his pronunciation, and that the officer gave a different meaning to his responses by omitting portions of his responses, changing words or phrases, and adding information to his responses. *Id.* While acknowledging that the use of the officer as an interpreter was a violation of the interpreter statute, the supreme court nonetheless affirmed the district court's finding that "there was no evidence that the police used an interrogation technique that was unduly coercive, deceptive, or stress-inducing." *Id.* at 253, 256.

Because respondent validly waived his *Miranda* rights, and because there is no evidence that his post-*Miranda* statements were a product of police coercion, I would conclude that respondent's statements made after his *Miranda* waiver are admissible.[4]

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[4] Nothing contained in this analysis, which addresses due process rights, prohibits a defendant from objecting to the admissibility of individual statements which, because of a combination of translation errors and an inarticulate use of English, may be so incomprehensible as to be non-probative. *See Sanchez-Diaz*, 683 N.W.2d at 835–37 (reviewing whether district court abused its discretion by admitting defendant's statements containing interpretation errors); *cf. Connelly*, 479 U.S. at 167, 107 S. Ct. at 521–22 (acknowledging admissibility of evidence may be governed by constitutional standards or evidentiary rules); Minn. R. Evid. 401 (defining relevant evidence); Minn. R. Evid. 402 (excluding irrelevant evidence); Minn. R. Evid. 403 (allowing the exclusion of relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury).