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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0644**

State of Minnesota,
Respondent,

vs.

Zhiwei Wang,
Appellant.

**Filed June 17, 2008
Affirmed
Willis, Judge**

Anoka County District Court
File No. T0-06-27048

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Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and Harten,
Judge.*

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

UNPUBLISHED OPINION

WILLIS, Judge

Appellant challenges his conviction of domestic assault, arguing that court-appointed language-translation services were deficient and denied him a fair trial and that the district court abused its discretion by excluding character testimony. We affirm.

FACTS

On September 10, 2006, X.L. called 911 to report that she was being assaulted by her husband, appellant Zhiwei Wang. Police officers from the City of Blaine interviewed both X.L. and Wang at the scene. During the interviews, the officers saw a red mark on X.L.'s face, and Wang admitted that he had slapped X.L. Wang was arrested and charged with domestic assault and disorderly conduct.

Wang, proceeding pro se, pleaded not guilty to the charges. At a pretrial hearing, Wang, who is originally from China, told the district court that he (1) is an assistant professor at the University of St. Thomas; (2) has a Ph.D. in computer science and teaches software engineering in English to English-speaking students; and (3) has been in the United States or Canada as a student, lab instructor, or teacher since 1989. Wang also told the district court: "I can speak, generally speak English conversationally, but I don't know about legally term [sic] of English."

Despite Wang's general familiarity with the English language, the district court appointed two Mandarin Chinese interpreters to translate for him during the pretrial proceedings and the jury trial that followed. The interpreters were not "certified," but at least one was "on the roster" of interpreters maintained by the state court administrator.

Throughout the pretrial hearing and the jury trial, Wang at times spoke in English and at other times in Chinese.

The jury found Wang guilty of misdemeanor domestic assault and not guilty of disorderly conduct. Wang appeals.

D E C I S I O N

I. Wang was not denied his right to a fair trial.

Wang asserts that two deficiencies at trial deprived him of his due-process right to a fair trial. First, Wang contends that the district court failed to determine that the court-appointed interpreters were qualified to translate in court proceedings. Second, Wang claims that he was “denied due process to a fair trial because the language translation was inadequate and inaccurate and resulted in substantial prejudice.” We address these issues in turn.

A. Wang has waived his challenge to the qualifications of the interpreters.

Wang claims that, although the district court determined that the interpreters were “on the roster,” there was “no further attempt to ascertain their credentials, experience or even whether their particular dialect was the same as Wang’s.” Interpreters must meet certain statutory and rule requirements to ensure that they are competent. *See* Minn. Stat. § 611.33 (2006); *see also* Minn. R. Gen. Prac. 8.02. But we decline to consider Wang’s challenge to the qualifications of the interpreters on appeal because he did not make that objection at trial. *See State v. Her*, 510 N.W.2d 218, 223 (Minn. App. 1994) (holding that a litigant waives on appeal a challenge to the qualifications of an interpreter when he fails to object at trial), *review denied* (Minn. Mar. 15, 1994).

B. Wang has not demonstrated that the translation was inadequate and inaccurate.

Wang claims next that he was denied the right to a fair trial because the language-translation services provided to him by two court-appointed interpreters were “inadequate and inaccurate.”¹ When reviewing a claim that an error in translation denied a defendant a fair trial, we consider whether the translation was “on the whole adequate and accurate.” *State v. Mitjans*, 408 N.W.2d 824, 832 (Minn. 1987). Although “there is no clear standard for determining what is an ‘adequate’ translation,” the inquiry requires that this court examine the “effect of the translation errors on [a defendant’s] ability to present a defense.” *Her*, 510 N.W.2d at 222. And the defendant has the “burden of proving on appeal that the interpretation was inadequate.” *State v. Montalvo*, 324 N.W.2d 650, 652 (Minn. 1982). Additionally, even an “often incoherent” translation does not deny a defendant his right to a fair trial unless he can also show that tangible prejudice resulted from specific errors in translation. *See Her*, 510 N.W.2d at 222-23.

Wang identifies several excerpts of the trial transcript in support of his argument that the translation was inadequate and inaccurate. For example, Wang claims that a lengthy colloquy with the district court about his right to testify at trial shows that the translation was inadequate and inaccurate. Wang also identifies several instances in which he allegedly did not receive a translation of the district court’s comments. But Wang has shown no specific translation errors or that any portion of the proceedings was

¹ Wang raised this issue below by telling the district court that “[s]ometimes the interpreter seems to have difficult[y] telling me what you said.”

not translated for him. And even if we were to conclude that Wang has shown translation errors or that he did not receive the translation, he has not shown prejudice.

1. Wang has identified no translation errors.

An appellant must identify specific errors to facilitate this court's review of the adequacy and accuracy of the translation. *See Montalvo*, 324 N.W.2d at 652 (“We cannot presume . . . that the interpreter did not adequately interpret the trial . . .”). For unless an appellant identifies specific translation errors, this court is unable to determine whether the translation was “on the whole adequate and accurate.” *Mitjans*, 408 N.W.2d at 832. Appellants typically identify specific errors by offering expert testimony in the district court showing that the interpreters failed to adequately or accurately translate statements or testimony. *See, e.g., State v. Sanchez-Diaz*, 683 N.W.2d 824, 828-29 (Minn. 2004); *Her*, 510 N.W.2d at 220.

Although Wang asks this court to conclude that the translation here was inadequate and inaccurate, he has identified no specific translation errors or other deficiencies.² Because Wang has failed to identify specific errors at trial for this court to determine whether the translation that he received was adequate and accurate as a whole, he has not met his burden to show error, much less that any error denied him his right to a fair trial. Wang maintains, however, that the trial transcript is “replete with numerous

² Wang asserts that, on one occasion, he was denied a translation that he asked for. But the record does not support this assertion because the transcript does not show when the interpreter is speaking in Chinese. Wang also notes that, during his closing argument, a juror stated that Wang's interpreter was not speaking loudly enough. But this was an isolated occurrence.

examples of [his] confusion” and that this confusion provides this court with a sufficient basis to conclude that the translation was inadequate or inaccurate. We disagree.

First, Wang cites no authority for the proposition that confusion, without more, is sufficient to show that a defendant received a deficient translation. And no Minnesota appellate court has determined, on the basis of a defendant’s confusion alone, that translation errors were made.

Second, the mere fact that a defendant is confused does not establish that translation errors were the cause of the confusion. This is especially true in cases involving pro se litigants who are unfamiliar with legal concepts. Here, it is not clear from the record whether Wang’s “confusion” was the result of deficient translation or some other cause, such as a difficulty in understanding the nuanced legal concepts that the district court was explaining to him, or even Wang’s own inattentiveness. And although Wang stated once during jury selection that “[s]ometimes the interpreter seems to have difficult[y] telling me what you said,” this statement does not provide us with a basis to determine that Wang received a translation that was inadequate or inaccurate.

Finally, even if we were to conclude that confusion, without more, is a sufficient basis for this court to consider the adequacy or accuracy of the translation, it is unclear whether Wang was actually confused. Even in the transcript excerpts that Wang cites in support of his claim, he ultimately demonstrated an understanding of the translation. For example, Wang contends that he received a deficient translation of the district court’s explanation of Wang’s right not to testify and that the district court would instruct the jury that it could not make a negative inference based on Wang’s exercise of that right.

But after an extended colloquy, the record shows that Wang understood his rights and agreed to testify. And Wang provided sensible and intelligent answers to the questions asked by the district court throughout the trial.

2. Even if Wang showed translation errors, he has not shown tangible prejudice.

Even an erroneous translation does not require a reversal or a new trial in the absence of a showing of “tangible prejudice.” *See Her*, 510 N.W.2d at 223. Here, Wang has not identified how the allegedly deficient translation caused him tangible prejudice.

Wang cross-examined the state’s witnesses; testified on his own behalf, in part without the assistance of the interpreters; and gave an opening statement of ten transcribed pages and a closing statement of nine transcribed pages. The record shows that Wang was able to present a defense. *Cf. State v. Saldana*, 310 Minn. 249, 252-53, 246 N.W.2d 37, 39 (1976) (rejecting argument as “mere speculative assertion” that a defendant was prejudiced by a district court’s failure to appoint an interpreter when there was no “direct evidence” that the lack of an interpreter hampered the defendant in the presentation of his defense). It is also clear from the record that the district court took steps to slow the trial to accommodate the interpreters and thoroughly explained Wang’s rights to him. *See State v. Lee*, 494 N.W.2d 475, 481 (Minn. 1992) (finding no prejudice when the district court was aware of the risk of inaccurate translation and took steps to insure fair and accurate translation). Finally, Wang, a native Chinese speaker who is “conversationally” fluent in English, did not object to the translation at trial, which indicates that he was not prejudiced by it. *See Her*, 510 N.W.2d at 223 (noting that a

“native Hmong speaker fluent in English should have been able to assess the quality of the translation” and the failure to object shows that he was not denied his right to a fair trial). Therefore, even if we were to conclude that the record shows translation errors, Wang has not shown that he was prejudiced.

II. The district court did not abuse its discretion by excluding character evidence.

Wang argues next that the district court abused its discretion by excluding evidence of his “character for peacefulness” and his “character for truthfulness.” An appellate court will not reverse an evidentiary ruling absent a clear abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). And a defendant has the burden to show that he was prejudiced by such an abuse of discretion. *Id.* Under this standard “[r]eversal is warranted only when the error substantially influences the jury’s decision.” *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997). That is, appellate courts will reverse when there is a reasonable possibility that, had the erroneously excluded evidence been admitted, the verdict might have been more favorable to the defendant. *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994).

At a pretrial hearing, Wang indicated his intention to introduce the testimony of his girlfriend, and he made the following offer of proof: “She will testify I am a nice person. . . . I am really nice to my wife. I play games, ride bicycle together. She will testify I am an honest person.” The prosecutor then said that he would “object to anything that’s not pertaining to [Wang’s] character or [sic] truthfulness.” The district court then ruled that Wang’s girlfriend could testify but that she would be allowed to

testify only to Wang's "character for truthfulness or untruthfulness." After the state rested its case, Wang attempted to call his girlfriend to the stand. The district court then asked Wang for another offer of proof, to which Wang responded: "She can prove . . . I am an honest person." Wang did not tell the district court that his girlfriend would testify about his character for peacefulness and added that "I don't know anything else she can prove." The district court excluded Wang's girlfriend's testimony for any purpose, explaining that because the prosecutor had not attacked Wang's character for truthfulness, Wang could not offer evidence of his character for truthfulness.

A. Wang has waived his challenge to the district court's exclusion of testimony regarding his character for peacefulness.

On appeal, Wang asserts that the district court should have permitted his girlfriend's testimony under Minn. R. Evid. 404, which allows an accused to introduce evidence of a "pertinent" character trait. *See* Minn. R. Evid. 404(a)(1). Wang claims that his initial assertion that his girlfriend would testify that he was a "nice person" went to his character for peacefulness and showed that he "was a peaceful person, not an aggressor." Although Wang stated at the pretrial hearing that his girlfriend would testify to his character for peacefulness and truthfulness, when asked by the district court at trial about the content of her testimony, Wang said that his girlfriend would testify only about his character for truthfulness. Because Wang argued in the district court that his girlfriend would have testified only about his character for truthfulness, he has waived the issue of whether his girlfriend should have been permitted to testify about his character

for peacefulness. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (concluding that matters not argued or considered in the district court are waived on appeal).

B. The district court did not abuse its discretion by excluding evidence of Wang’s character for truthfulness.

Wang challenges finally the exclusion of his girlfriend’s testimony, arguing that the district court should have allowed the girlfriend to testify regarding his character for truthfulness.

Minn. R. Evid. 608(a) provides:

The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

It is undisputed that the state had offered no “opinion or reputation” evidence of Wang’s character for truthfulness. Wang claims, rather, that because the prosecutor cross-examined him about inconsistencies in his testimony, the prosecutor attacked his character for truthfulness.

Wang’s argument is without merit. First, it is undisputed that Wang’s character for truthfulness had not been attacked at the time that he attempted to offer his girlfriend’s testimony. And even after Wang had testified, the prosecutor did not call Wang’s character for truthfulness into question. Rather, the prosecutor challenged Wang’s credibility as it related to his version of the events of the incident. And despite Wang’s claim that “any cross-examination whatsoever is, essentially, an attack on the

witness's character for truthfulness," he cites no authority for that proposition. Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked, and because the state did not put Wang's character for truthfulness at issue, the district court did not abuse its discretion by excluding the girlfriend's testimony.

Affirmed.