STATE OF MINNESOTA

IN SUPREME COURT

A17-0609

Court of Appeals — Gildea, C.J.
Dissenting, Hudson, Lillehaug, Thissen, JJ.

State of Minnesota,

Respondent,

vs.

Cesar Rosario Lopez-Ramos,

Appellant.

Filed: June 12, 2019
Office of Appellate Courts

Keith Ellison, Attorney General, Saint Paul, Minnesota; and
Kathleen A. Kusz, Nobles County Attorney, Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. Use of a foreign language interpreter to translate statements by appellant from Spanish to English does not implicate the Confrontation Clause, U.S. Const. amend. VI.

2. Because appellant was the declarant of the statements translated by the foreign language interpreter, the statements are not hearsay under Minn. R. Evid. 801(d)(2)(A).

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

This case presents the questions of whether the admission of statements made by appellant using a foreign language interpreter violates the Confrontation Clause of the United States Constitution and hearsay rules. Because we conclude that the Confrontation Clause is not violated and the statements are not subject to the hearsay rules, we affirm the decision of the court of appeals.

FACTS

In May 2016, the State charged appellant Cesar Rosario Lopez-Ramos with one count of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) (2018).[1] Several days earlier, a county child protection worker contacted police regarding the possible sexual abuse of a 12-year-old female. During the subsequent investigation, the victim and her parents identified Lopez-Ramos as the only suspect.

Police officers made contact with Lopez-Ramos, and he agreed to provide a statement. An officer transported Lopez-Ramos to the county law enforcement center.[2] In

[1] Specifically, Lopez-Ramos was charged with the sexual penetration of a victim under 13 years of age when he was more than 36 months older than the victim.

[2] There is no indication that Lopez-Ramos was placed under arrest at the time of the interview by the law enforcement officer. But the officer read Lopez-Ramos his *Miranda* rights before starting the voluntary interview. Based on the circumstances, we assume without deciding that the interview was a custodial interrogation.

an interview room, the officer started the recording system[3] and called the AT&T LanguageLine, a foreign language translation service.[4] The officer requested a Spanish interpreter.[5] Once a Spanish interpreter was on the line, the officer used the speaker function on the telephone to conduct an interview in sequential interpretation, meaning that the officer asked a question in English, the interpreter translated the question from English to Spanish, Lopez-Ramos responded in Spanish, and the interpreter translated the response from Spanish to English. During the interview, Lopez-Ramos admitted to the officer that he had sexual intercourse with the victim on one occasion.

The case proceeded to a jury trial. During a conference on the first morning of the trial, Lopez-Ramos told the district court that he intended to object to the admission of his translated statements. Lopez-Ramos argued that the admission of the translated statements into evidence would violate the Sixth Amendment's Confrontation Clause and Minnesota's hearsay rules because the State was not going to call the interpreter to testify during the trial.

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[3] The law enforcement center utilizes a recording system called WatchGuard that records digital video and audio in its interview rooms.

[4] The officer testified that he uses the AT&T LanguageLine on a regular basis, but gave no further information about the service. According to the website, the AT&T LanguageLine provides interpreting services to government agencies across the country, including police/fire, schools, social services, and courts. *See* LanguageLine Solutions, *Government Interpreting*, https://www.languageline.com/industries/government-interpreting (last viewed May 28, 2019) [opinion attachment].

[5] Lopez-Ramos's native language is Mam, a Mayan language spoken in Guatemala. Lopez-Ramos's second language is Spanish. His ability to speak and understand English is limited.

The district court asked the State to make a foundational offer of proof regarding the interpreter used to translate the statements made by Lopez-Ramos from Spanish to English. The State explained that the interpreter's identification and physical location were never verified, primarily because Lopez-Ramos never formally challenged the accuracy of the translation. The district court concluded that the interpreter was acting as a "language conduit" during the interview, meaning that the statements were attributable to Lopez-Ramos as the declarant. The district court held that the admission of the translated statements did not violate the Confrontation Clause or hearsay rules, and therefore overruled the objection by Lopez-Ramos.

During the jury trial, the officer testified that Lopez-Ramos responded directly to the translated questions and never requested clarification from the interpreter. The officer told the jury that Lopez-Ramos admitted during the interview to having sexual intercourse with the victim.

The video recording of the interview was admitted into evidence and played for the jury. The video shows that Lopez-Ramos was able to fully participate in the interview and he never expressed any confusion or stated that he did not understand the questions asked by the officer and translated by the interpreter.[6]

[6] The jury was provided with a transcript of the interview while the video was played in open court. The transcript contained only the officer's statements in English and the English translation of Lopez-Ramos's statements. The district court instructed the jury that the transcript was provided to assist with their understanding of the interview, but the recording itself was the actual evidence. The transcript was not admitted into evidence.

The victim testified during the trial that Lopez-Ramos sexually penetrated her. Lopez-Ramos testified in his own defense and denied having any sexual contact with the victim.[7] Lopez-Ramos told the jury that during the police interview, he was intoxicated and did not understand some of the questions asked by the officer.

The jury found Lopez-Ramos guilty of first-degree criminal sexual conduct. The district court convicted Lopez-Ramos of that offense and sentenced him to 144 months in prison.

Lopez-Ramos appealed his conviction, arguing that the admission of his translated statements violated the Confrontation Clause and hearsay rules. In a published opinion, the court of appeals upheld the district court's ruling that the admission of the interpreter's translated statements did not violate the Confrontation Clause or hearsay rules. *State v. Lopez-Ramos*, 913 N.W.2d 695, 699 (Minn. App. 2018). The court of appeals held that "when the state seeks to admit into evidence a criminal defendant's admissions made through an interpreter, upon a Confrontation Clause or hearsay objection a district court must determine as a preliminary matter whether the interpreter's translation can fairly be attributable to the defendant, or whether the interpreter is a separate declarant." *Id.* at 708. The court of appeals addressed four factors: (1) which party supplied the interpreter, (2) whether the interpreter had any motive to mislead or distort, (3) the interpreter's qualifications, and (4) whether actions taken subsequent to the conversation were consistent with the statements as translated. *Id.* Applying the factors, the court of appeals

[7] During the trial, Lopez-Ramos testified using certified Spanish interpreters.

determined that the interpreter's translated statements were attributable to Lopez-Ramos as the declarant. *Id.* at 709. Therefore, the court of appeals concluded that no Confrontation Clause violation occurred and the statements were admissible over the hearsay objection as admissions by a party-opponent under Minn. R. Evid. 801(d)(2)(A). 913 N.W.2d at 709–10.

We granted Lopez-Ramos's petition for review.

ANALYSIS

On appeal, Lopez-Ramos argues that the admission of his translated statements violates the Confrontation Clause. He also contends that his translated statements are inadmissible hearsay evidence. *See* Minn. R. Evid. 802 ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court or by the Legislature."). We consider each issue in turn.[8]

I.

We turn first to the argument by Lopez-Ramos that the admission of the video recording of his interview and the officer's testimony regarding his statements violated the Confrontation Clause of the Sixth Amendment to the United States Constitution. The Confrontation Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy

[8] Although Lopez-Ramos challenged the admissibility of his interpreted statement, he made no objection to the accuracy or foundational reliability of the translation. Accordingly, there is no question before us as to the accuracy or reliability of the translation. When a defendant does object to the foundational reliability of a translated statement, the district court must engage in the necessary analysis to determine whether the translation included any material errors. *See, e.g., State v. Lee*, 494 N.W.2d 475, 481 (Minn. 1992). That analysis is unnecessary here.

the right … to be confronted with the witnesses against him." U.S. Const. amend. VI. The United States Supreme Court has recognized that "the principal evil at which the Confrontation Clause was directed" was the use of *ex parte* or one-sided "examinations as evidence against the accused." *Crawford v. Washington*, 541 U.S. 36, 50 (2004). The Supreme Court stated that the Confrontation Clause must be viewed with a historical focus, including its common-law heritage. *See id.* The common law did not allow the admission of testimonial out-of-court statements by a witness who did not appear at trial unless the witness was unavailable to testify and the defendant had a prior opportunity to cross-examine the witness.[9] *See id.* at 49–50, 53–54. In other words, the primary objective behind the adoption of the Confrontation Clause was to regulate the admission of testimonial hearsay by witnesses against the defendant.

Prior to *Crawford*, the Supreme Court observed that its case law "has been largely consistent with" the original text and meaning of the Confrontation Clause. *See id.* at 57. An aberration occurred in *Ohio v. Roberts*, 448 U.S. 56 (1980), when the Supreme Court

[9] The dissent discusses a historical impetus for the Confrontation Clause, the 1603 trial of Sir Walter Raleigh, and suggests that "the exact same circumstances are present" in this case. The dissent is not correct. The Raleigh trial involved the admission of a statement made by an alleged accomplice to the crime, Lord Cobham, someone who was clearly a witness against Raleigh. *See Crawford*, 541 U.S. at 44 (discussing the Raleigh trial). Raleigh objected to the admission of the statement and demanded that his accomplice be called as a witness and subjected to cross-examination. *See id*. The facts of the present case are entirely distinguishable. In this case, the statements admitted during the trial were not made by a criminal accomplice of Lopez-Ramos. He acted alone during the commission of his crime. Moreover, Lopez-Ramos did not object to the accuracy of his statements or the foundation for their admission. Instead, he simply argued that the Confrontation Clause and hearsay rules prohibited the admission of his translated statements.

departed from historical principle and allowed the admission of testimonial hearsay based upon a finding of reliability only. *See Crawford*, 541 U.S. at 60; *Roberts*, 448 U.S. at 66. But in *Crawford*, the Supreme Court discarded the "unpredictable and inconsistent" reliability principle espoused in *Roberts* and returned to the original text and meaning of the Confrontation Clause. *See* 541 U.S. at 66, 68 n.10.

In *Crawford*, the government charged the defendant with assault and attempted murder for stabbing a man who allegedly sexually assaulted his wife. *Id.* at 38–40. The defendant argued that the stabbing was done in self-defense. *Id.* at 40. The government sought the admission of statements made by the defendant's wife to police officers regarding the stabbing because the wife's statements refuted the defendant's self-defense claim. *Id.* Even though the wife did not appear or testify during the trial, her statements to the police were admitted into evidence and used against him, and the jury found the defendant guilty. *Id.* at 40–41.

The Supreme Court held that the admission of the wife's statements to police violated the Confrontation Clause. *Id.* at 68–69. The Supreme Court abandoned the reliability analysis set forth in *Roberts, see id.* at 67, and returned to the original text of the Confrontation Clause, noting that the clause specifically applies to "witnesses against the accused—in other words, those who bear testimony," *id.* at 51 (internal quotation marks omitted) (citation omitted). The Supreme Court observed that "[a]n accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not," and the text of the Confrontation Clause "reflects an especially acute concern with [the] specific type of out-of-court

statement." *Id.* In applying the Confrontation Clause to the facts of *Crawford*, the Supreme Court concluded that the defendant had a right to confront his wife about her statements to police officers that arguably defeated his self-defense claim. *See id.* at 68–69. In other words, the defendant had a constitutional right to confront a witness who made testimonial statements that were admitted against the defendant.

Lopez-Ramos relies on *Crawford* and argues that the translated statements he made to the police are like the statements made by the defendant's wife to the police in *Crawford*. We disagree. The statements at issue in *Crawford* were undoubtedly made by a third party—the defendant's wife. This case does not involve a third-party declarant whose testimony is offered against the defendant. The statements at issue here were made by the defendant himself in Spanish and then translated into English by a foreign language interpreter.[10] The facts of this case then are materially different from those presented in *Crawford.*

But the bedrock principle of *Crawford* still controls and compels the result that we reach. As the Supreme Court noted, the Confrontation Clause specifically applies to "*witnesses against the accused*—in other words, those who bear testimony." *Crawford,*

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[10] The State argues that our analysis in *Miller v. Lathrop*, 52 N.W. 274, 274 (Minn. 1892) (describing an interpreter as the "agent" of the party for whom the interpreter is translating), is dispositive of the question presented here. *Miller* was a civil action to recover possession of personal property, and the plaintiff spoke Polish but made statements to the defendant using an interpreter. *Id.* We determined that the interpreter's statements were "not in the nature of hearsay" because "[w]hen two persons voluntarily agree upon a third to act as interpreter between them, the latter is to be regarded as the agent of each to translate and communicate what he says to the other, so that such other has a right to rely on the communication so made to him." *Id. Miller* is not dispositive because the question presented in that civil case did not implicate the Confrontation Clause.

541 U.S. at 51 (emphasis added) (internal quotation marks omitted) (citation omitted). The Supreme Court observed that the Confrontation Clause "reflects an especially acute concern" with statements made by a witness or "[a]n accuser who makes a formal statement to government officers." *Id.*

This case requires that we apply the underlying principle of *Crawford* to the role of a foreign language interpreter. The function of an interpreter is to convert a statement from one language to another, processing the linguistics in order to allow parties to understand one another. The role of the interpreter is not to provide or vary content; the role of the interpreter is to relay what the defendant said in another language. In this way, an interpreter is not a witness against the defendant. *See United States v. Solorio*, 669 F.3d 943, 951 (9th Cir. 2012) (concluding that the Confrontation Clause was not violated when an interpreter translated in-court statements of a government informant because the defendant had an opportunity to cross-examine the informant and "[t]he interpreters, who only translated [the informant's] in-court statements, were not themselves witnesses who testified against [the defendant]."). The interpreter is simply the vehicle for conversion or translation of language. To be sure, the role of an interpreter can be fulfilled by a machine or someone using a foreign language dictionary to look up each word for the proper conversion. If a machine or foreign language dictionary is used for the translation, there would be no suggestion that either served as a witness against the declarant. The statement

would still be attributable to the declarant as his or her own statement. The interpreter simply makes the language-conversion process more efficient and effective.[11]

The use of interpreters has become an important part of our criminal justice system. For example, under Minnesota law, when the police arrest someone who, because of difficulty speaking or understanding English, "cannot fully understand the proceedings or any charges," Minn. Stat. § 611.31 (2018), the police "shall obtain an interpreter at the earliest possible time," Minn. Stat. § 611.32, subd. 2 (2018). Section 611.32 requires that the police communicate with the arrested person "with the assistance of the interpreter." *Id.* And the interpreter must "take an oath, to make to the best of the interpreter's skill and judgment a true interpretation." Minn. Stat. § 611.33, subd. 2 (2018). We have recognized that "[t]he obvious purpose of the oath requirement in such a situation is to impress upon the interpreter that he is legally obliged to interpret fairly and accurately." *State v. Mitjans*, 408 N.W.2d 824, 829 (Minn. 1987);[12] *cf.* Code of Prof'l Responsibility for Interpreters in

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[11] The dissent poses a hypothetical suggesting that if Lopez-Ramos and the police officer were seated in different rooms and an individual went between rooms repeating the statements made by Lopez-Ramos, the individual or "conduit" would be required to testify regarding the truth and accuracy of the statements he or she relayed to the officer. The obvious flaw with the hypothetical is that it does not recognize the difference between the function of an interpreter and the function of a witness who is offering testimony against the accused. The hypothetical therefore is not relevant or applicable to the facts of this case.

[12] In *Mitjans*, a defendant made statements in Spanish to a Spanish-speaking police officer, who translated the statements into English to another officer. 408 N.W.2d at 826-27. In analyzing the defendant's challenge to the admission of this statement, we declined to directly answer the question of whether the interpreter or the defendant was the declarant of the statements, but noted that "under the agency theory of admissibility, the case for admission of the defendant's statements in a criminal prosecution is certainly stronger if the interpreter on whose interpretation the witness relies is the defendant's own

the Minn. State Court Sys. Canon 1 (requiring that interpreters provide "a complete and accurate interpretation . . . without altering, omitting, or adding anything to the meaning of what is stated or written").

Mindful of the role played by a foreign language interpreter and centering our analysis on the text of the Confrontation Clause, we conclude that use of an interpreter to translate a statement from one language to another does not implicate the Confrontation Clause. The Confrontation Clause is not implicated because the act of processing the statement from one language to another does not transform the interpreter into a witness against the defendant.

The result we reach is consistent with the result reached in the majority of courts that have considered the question to date. These courts have sided with the Ninth Circuit's conclusion in *Nazemian v. United States*, 948 F.2d 522 (9th Cir. 1991), that the Confrontation Clause is not violated by the admission of translated statements. *Id*. at 526-28. *See* Kimberly J. Winbush, Annotation, *Application of Confrontation Clause Rule to*

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interpreter or an independent interpreter appointed to assist the defendant rather than one employed as a police officer." *See id.* at 830–31.

Lopez-Ramos points to our comment in *Mitjans*, 408 N.W.2d at 832, that "[t]ranslation is an art more than a science, and there is no such thing as a perfect translation of a defendant's testimony," as demonstrating the complex nature of foreign language translation and argues that in this case, the interpreter should be designated as the declarant of his translated statements. An important difference in this case, however, is that the interpreter was not a police officer, but an employee of an independent entity. *See id.* at 831 (noting that the statute requires "the appointment of an independent interpreter" and that "prudent police investigators who wish to reduce substantially the risk of subsequent suppression of statements taken from suspects with language handicaps are advised to comply with the statutory requirements . . .").

Interpreter's Translations or Other Statements–Post-Crawford *Cases*, 26 A.L.R.7th Art. 1, § 2 (2017). Reasoning that a generally unbiased and adequately skilled foreign language translator simply serves as a "language conduit," these courts have concluded that the translated statement is considered to be the statement of the original declarant and not the translator. *Id.* Accordingly, the Confrontation Clause is not implicated.[13]

Lopez-Ramos relies on the minority view, citing *United States v. Charles*, 722 F.3d 1319 (11th Cir. 2013), and *Taylor v. State*, 130 A.3d 509 (Md. Ct. Spec. App. 2016). *See* Winbush, *Application of Confrontation Clause Rule*, *supra*, at §§ 2, 7. The *Charles* court held that, because foreign language interpretation involves a concept-to-concept translation

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[13] The language-conduit theory requires a case-by-case determination. Winbush, *Application of Confrontation Clause Rule*, *supra*, at § 2. For example, in *Nazemian*, the Ninth Circuit held that, under certain circumstances, a witness may testify regarding statements made by a defendant through a foreign language interpreter without raising Confrontation Clause concerns because the statements can be properly viewed as the defendant's own statements. *See* 948 F.2d at 527–28. Using the language-conduit or agency theory, the *Nazemian* court created a four-factor test to assess and determine whether an interpreter's statements can be attributed to the defendant as the declarant: (1) which party supplied the interpreter, (2) whether the interpreter had any motive to mislead or distort, (3) the interpreter's qualifications and language skill, and (4) whether actions taken subsequent to the conversation were consistent with the statements as translated. *Id.* at 527. Balancing the factors, the Ninth Circuit in *Nazemian* concluded that the defendant was the declarant of the interpreted statements and the Confrontation Clause did not apply. *Id.* at 528.

In this case, the district court applied the same factors, noting that no evidence was presented suggesting that the translation was inaccurate or that the interpreter had a motive to distort the translation. The district court also noted that although the State procured the interpreter, "it was not an interpreter specifically selected for the defendant." Under these circumstances, the district court concluded that the translated statements could be properly viewed as the statements of Lopez-Ramos and not the statements of the interpreter. The *Nazemian* factors may be helpful in a given case, but the overriding principle under the Confrontation Clause is whether the interpreter is being asked to be a witness against the defendant. In this case, it is clear that the answer to the question is "no."

and not a word-to-word translation, the statements of the language interpreter and the defendant are not identical. *See* 722 F.3d at 1324, 1327 n.9. And the *Taylor* court held that the reasoning in *Nazemian* was irreconcilable with *Crawford* because the analysis in *Nazemian* depends on analogies to the evidentiary rules and premises the admissibility of an interpreter's statements on assumed reliability. *See* 130 A.3d at 538–39. Both *Charles* and *Taylor* likened the interpreter's translation to the testimony of a third-party witness and held that *Crawford* guaranteed the defendant a right to cross-examination. 722 F.3d at 1328; 130 A.3d at 540. Because the facts of *Crawford* are materially different from cases involving an interpreter, the underlying logic of decisions in cases like *Charles* and *Taylor* is unpersuasive.

Finally, in urging us to conclude that the admission of his translated statement violates the Confrontation Clause, Lopez-Ramos relies on *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), and *State v. Caulfield*, 722 N.W.2d 304 (Minn. 2006). In *Bullcoming* and *Melendez-Diaz*, the Supreme Court held that the admission of forensic laboratory reports into evidence without calling the laboratory analyst who prepared the report to testify violated the Confrontation Clause. *See* 564 U.S. at 663; 557 U.S. at 311. The focus of the holdings in *Bullcoming* and *Melendez-Diaz* was the ability of the defense to verify the accuracy of the work by the analyst and the test result included in the report.

These cases are distinguishable because, unlike a forensic laboratory analyst, a foreign language interpreter simply converts information from one language to another language without adding content. *Compare Bullcoming*, 564 U.S. at 659–60 (rejecting the

argument that an analyst was a " 'mere scrivener' " because the analyst "reported more than a machine-generated number"). Moreover, a lab analyst is obviously a witness who bears testimony against the defendant. A laboratory analyst must input knowledge and content in order to take a biological sample and generate a report on the sample, including a definitive test result. The test result is then offered as evidence against the defendant. As the Court noted in *Bullcoming*, the forensic laboratory analyst did more than a simple conversion of the information from one format to another; instead, the analyst certified and verified the controls for accuracy and followed protocols to reach a definitive test result. *See* 564 U.S. at 659–60.

In contrast to the lab analyst analogy suggested by Lopez-Ramos, a foreign language interpreter is more like a court reporter. Court reporters translate oral communications into a written format, conveying information but not adding content.[14] *See* Minn. Stat. § 486.02 (2018) (stating that "stenographer[s] shall take down all questions in the exact language thereof, and all answers thereto precisely as given by the witness or by the sworn interpreter"). A court reporter is not a witness against the defendant. Rather, court

[14] The purpose of a court reporter is to make a record of what was said during a trial or hearing or deposition, regardless of whether an appeal follows, by converting oral proceedings into a written record. The court reporter does not add content. The same is true for an interpreter, who converts an oral conversation from one language to another. *See, e.g.*, *United States v. Anguloa*, 598 F.2d 1182, 1186 n.5 (9th Cir. 1979) ("An [i]nterpreter really only acts as a transmission belt or telephone. In one ear should come in English and out comes Spanish . . . ." (internal quotation marks omitted)); *People v. Mejia-Mendoza*, 965 P.2d 777, 781 (Colo. 1998) ("The role of an interpreter . . . is to act as a conduit by passing information between two participants, translating their words precisely without adding any of his or her own.").

reporters create a written record of court proceedings. When that record is utilized in future proceedings, calling a court reporter to testify is illogical because the written record does not consist of the court reporter's statements but instead consists of the statements made by the actual declarants in the court proceeding. The same should be true for foreign language interpreters.

If an interpreter fails to interpret accurately or fully, or questions regarding authenticity arise, the proper objection is to a lack of foundation, not violation of the Confrontation Clause.[15] *Cf. State v. Daniels*, 361 N.W.2d 819, 828 (Minn. 1985) (concluding that "[t]he trial court properly excluded . . . photographs for lack of foundation" where the photographs "did not accurately depict the scene"). Notably, in this case, Lopez-Ramos never formally challenged the adequacy or accuracy of his translated statements. *See State v. Sanchez-Diaz*, 683 N.W.2d 824, 835 (Minn. 2004) ("A defendant bears the burden of proving that the translation was inadequate."). Moreover, during the interview, Lopez-Ramos never asked the interpreter for clarification. The officer testified during the jury trial that the responses given by Lopez-Ramos during the interview were consistent with the questions being asked of him. The video shows that Lopez-Ramos was

[15] The reasoning of the dissent appears to be premised primarily on the assumption that "interpreters make mistakes." Indeed, the dissent notes that during the trial in this case, the interpreter translating the testimony of Lopez-Ramos from Spanish to English corrected the translation of one word during Lopez-Ramos's testimony, changing the translated word "drunk" to "fear." Certainly, we cannot assume that the conversion of words from one language to another is always perfect, whether it is done by a human or a machine or a book. Linguistics are complicated, and if concerns exist about the accuracy of the translation, those concerns should be resolved in the context of foundation objections. As explained above, Lopez-Ramos did not raise foundational objections here. Accordingly, no foundational concerns are before us in this case.

able to fully participate in the interview and he never expressed any confusion or stated that he did not understand the questions asked by the officer and translated by the interpreter. And the officer recorded the entire interview, preserving the entire translation for review. *See id.* ("[T]o ensure the admissibility of statements taken with an interpreter, prudent police investigators should comply with the statutory requirements and, additionally, either record the statement and/or reduce it to writing in the defendant's primary language."); *Mitjans*, 408 N.W.2d at 831 (noting that police could "tape-record[] the interrogation of defendant, thereby making an accurate record of what was said").

Ultimately, we conclude that Lopez-Ramos is the declarant of the statements in this case. Use of a foreign language interpreter to convert the statements by Lopez-Ramos from Spanish to English does not implicate the Confrontation Clause because the interpreter is not a witness who bears testimony against Lopez-Ramos. Instead, the interpreter merely converted the statement of Lopez-Ramos from one language to another. The Confrontation Clause "simply has no application because a defendant cannot complain that he was denied the opportunity to confront himself." *United States v. Hieng*, 679 F.3d 1131, 1140 (9th Cir. 2012). We therefore hold that the district court's admission of the translated statements Lopez-Ramos made to the police did not violate the Confrontation Clause.

II.

We turn next to Lopez-Ramos's contention that the admission of his translated statements violates the rule against hearsay. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). Hearsay is generally not

admissible. Minn. R. Evid. 802. But a statement offered against a party that is the party's own statement is not hearsay. Minn. R. Evid. 801(d)(2)(A).

Our holding that Lopez-Ramos was the declarant of his translated statements controls the hearsay analysis. If Lopez-Ramos was the declarant of the statements, and the State offered the statements against him, the statements are not hearsay under Minn. R. Evid. 801(d)(2)(A), and are therefore admissible. Accordingly, we hold that the district court did not abuse its discretion in admitting the translated statements into evidence over the hearsay objection by Lopez-Ramos.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

D I S S E N T

HUDSON, Justice (dissenting).

"The Sixth Amendment . . . prohibits the introduction of testimonial statements by a nontestifying witness, unless the witness is 'unavailable to testify, and the defendant had a prior opportunity for cross-examination.' " *Ohio v. Clark*, ___ U.S. ___, ___ 135 S. Ct. 2173, 2179 (2015) (quoting *Crawford v. Washington*, 541 U.S. 36, 54 (2004)). Because the court's decision contravenes this core tenet of the Sixth Amendment by permitting the State to introduce testimonial statements made by an unidentified interpreter working from an unidentified location without calling that interpreter as a witness, I respectfully dissent.

To secure defendants' rights to confront their accusers, the Sixth Amendment generally prohibits the State from admitting "testimonial statements."[1] *Id*. The first task in a Confrontation Clause analysis, therefore, must be to identify the statement in question. As an example, the court states that "Lopez-Ramos admitted to having sexual intercourse with the victim," presumably relying on the statement "We [sic] had intercourse with her." But Lopez-Ramos never said "We had intercourse with her." He said *something* in Spanish, and then an interpreter, appointed and paid by the police, said, "Lopez-Ramos said, 'We had intercourse with her.' "[2]

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[1] The State argues that there has been no determination that the statements in question were testimonial. But "[s]tatements taken by police officers in the course of interrogations are . . . testimonial under even a narrow standard." *Crawford*, 541 U.S. at 52.

[2] Of course, the interpreter did not literally say "Lopez-Ramos said" before rendering each translation. But it was unquestionably implicit in the interpreter's statements. As the State points out in its brief, the interpreter was certainly not claiming to have had

I agree with the court that "a defendant cannot complain that he was denied the opportunity to confront himself." Thus, the State was fully entitled (subject to the Minnesota Rules of Evidence) to admit the Spanish versions of Lopez-Ramos's statements. But Lopez-Ramos's statements in Spanish are not the statements at issue in this case. The statements at issue are the statements—made by the interpreter—purporting to translate what Lopez-Ramos said. But I know of no instance where a court has held that a third-party declarant's testimonial statements to the police—even statements alleging a confession by the defendant—are admissible without affording the defendant an opportunity to cross-examine the declarant. And the reason why is simple: "Testimonial statements of witnesses absent from trial [are admissible] only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." *Crawford*, 541 U.S. at 59.[3] "To be sure, the [Confrontation] Clause's ultimate goal is to

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intercourse with the victim; the interpreter was saying that Lopez-Ramos said he had intercourse with her.

[3] *Crawford* identifies one of "[t]he most notorious instances" of evidence the clause was intended to guard against as the 1603 trial of Sir Walter Raleigh. *Crawford*, 541 U.S. at 44. In that trial, the attorney general read onto the record a declaration by Lord Cobham claiming that "Raleigh and he [were] to meet to confer about the distribution of . . . money" obtained from the King of Spain for the furtherance of sedition. *See Trial of Sir Walter Raleigh*, 1 Jardine's Crim. Tr. 400, 411, 415 (1832). Raleigh demanded "to have [his] accuser brought here face to face to speak," citing statutes that required that, in treason cases, "accusers must be brought in person before the party accused at his arraignment, if they be living." *Id.* at 418. The court refused Raleigh's request, noting the statutes in question had been repealed because "they were found to be inconvenient." *Id.* at 420. Raleigh was subsequently found guilty and sentenced to death. *See id.* at 449, 451.

Of course, Lopez-Ramos was not and cannot be sentenced to death, but the exact same circumstances are present here: a third-party relayed an alleged confession to investigators, the State presented the alleged confession to the jury at Lopez-Ramos's trial,

ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination."[4] *Id.* at 61.

The court sidesteps *Crawford*'s mandate by concluding that the Sixth Amendment does not apply to the interpreter's statements because he was acting as a "language conduit." But this language-conduit theory has no support in our precedent, and is undermined by our analysis in *State v. Caulfield*, 722 N.W.2d 304 (Minn. 2006), and the Supreme Court's subsequent decisions in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), and *Bullcoming v. New Mexico*, 564 U.S. 647 (2011).

Each of these cases involves a similar scenario: The primary evidence against the defendant was a forensic laboratory report. Without calling the analyst who prepared the report, the State offered the report into evidence, the district court received the report, and the defendant was convicted. *Bullcoming*, 564 U.S. at 651; *Melendez-Diaz*, 557 U.S. at 308–09; *Caulfield*, 722 N.W.2d at 306. In each case, the reviewing court concluded that the report was testimonial evidence against the defendant, and if the State wished to offer

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Lopez-Ramos demanded that the State call the interpreter, the judge refused, and Lopez-Ramos was convicted based primarily on the alleged confession.

[4] To this end, the court is incorrect in stating that my disagreement is "premised primarily on the assumption that 'interpreters make mistakes.' " My discussion of interpreter mistakes throughout this opinion is merely intended to rebut the presumption—upon which the court bases much of its analysis—that an interpreter is some sort of infallible translating machine that does not make judgment calls when rendering its translation. But even if the interpreter's reliability was unquestionable, *Crawford* makes clear that Lopez-Ramos would still have the *procedural* right to cross-examine the interpreter. *See Crawford*, 541 U.S. at 61; *see also infra* at D-7–8.

the report into evidence, the Confrontation Clause required the State to call the authoring analyst.[5] *Bullcoming*, 564 U.S. at 652; *Melendez-Diaz*, 557 U.S. at 311; *Caulfield*, 722 N.W.2d at 306–07.

This case closely parallels *Bullcoming*, *Melendez-Diaz*, and *Caulfield*. Here, the primary evidence against Lopez-Ramos was the interpreter's report of what Lopez-Ramos said during his interview. Without calling the interpreter to testify—and without even proffering the interpreter's full name and location—the State offered the interpreter's translations into evidence, the district court admitted the translations, and Lopez-Ramos was convicted. Following *Bullcoming*, *Melendez-Diaz*, and *Caulfield*, Lopez-Ramos's conviction should be reversed because the State did not call the interpreter so that he could be cross-examined about his translations.

We are not the first court to consider the implications of *Bullcoming* and *Melendez-Diaz* on the admissibility of translator statements. As the court notes, both the Eleventh Circuit and Maryland's intermediate appellate court have applied those cases to reject the language-conduit theory. *See United States v. Charles*, 722 F.3d 1319, 1329–30 (11th Cir. 2013); *Taylor v. State*, 130 A.3d 509, 539–41 (Md. Ct. Spec. App. 2016). Both cases strongly critique the view—wrongfully endorsed by this court's majority—that judges can "make a threshold determination of the interpreter's honesty, proficiency, and methodology *without testimony from the one witness whose testimony could best prove the*

[5] Admitting the report also would not have violated the Confrontation Clause if the authoring analyst was unavailable to testify and the defendant had a pretrial opportunity to cross-examine the analyst. *Bullcoming*, 564 U.S. at 652.

accuracy of the interpretations—the interpreter himself or herself." *Taylor*, 130 A.3d at 539 (emphasis added); *see also Charles*, 722 F.3d at 1327–28.

The court attempts to distinguish these cases, arguing that "[b]ecause we believe the facts of *Crawford* are materially different from cases involving an interpreter, the underlying logic of decisions in cases like *Charles* and *Taylor* is distinguishable." Assuming arguendo that the facts of *Crawford* can be distinguished from translator cases (perhaps because the *Crawford* declarant was a lay witness who saw the substantive events of the crime, whereas translators perform an expert analysis—translation—after the fact), *Charles* and *Taylor* were not based solely on *Crawford*; they rely just as much, if not more, on *Bullcoming* and *Melendez-Diaz*. As I discuss below, the court errs when it concludes that the laboratory analysts of those cases are distinguishable from the translators in *Charles*, *Taylor*, and this case. The logic of *Charles* and *Taylor* is sound, and the court errs in rejecting it.

Turning to *Bullcoming* and *Melendez-Diaz*, the court attempts to distinguish those cases, as well as implicitly *Caulfield*, by arguing that "unlike a forensic laboratory analyst, a foreign language interpreter simply converts information from one language to another without adding content," but in contrast, "[a] laboratory analyst must input knowledge and content in order to take a biological sample and generate a report on the sample, including a definitive test result." But this is an illusory distinction, created by conflating what interpreters aspire to do with what they actually do. In the ideal world imagined by the court, interpreters "simply convert[] information from one language to another without

adding content." In actuality, however, interpreters, like laboratory analysts, often add content and nuance. And also like analysts, interpreters make mistakes.[6]

Indeed, one can draw a parallel between the translation process and between each step of the chemical-analysis process that the court lists. Interpreters must "take a sample" by listening to what the native speaker is saying. In doing so, interpreters, like analysts, may make "errors" in taking the sample if they mishear a word. *See* Roseann Dueñas González et al., *Fundamentals of Court Interpretation: Theory, Policy, and Practice* 576–79 (2d ed. 2012). Next, interpreters must apply their knowledge to the content by determining what English word or phrase most accurately conveys the native speaker's statement. Again, interpreters, like analysts, may make errors in making this determination. *Id.* at 779 ("[I]nterpreter error is inevitable."). Finally, interpreters must report their final result by stating (in English) what their determination is. Like analysts, interpreters may make errors in this report by saying (either intentionally or inadvertently) something other than what they believe to be the most accurate English translation. *Id.* at 637.[7]

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[6] One such example can be found in this very case. At trial, Lopez-Ramos was asked if he remembered telling the investigating officer "that [he] had some incident with [the victim]." The court-appointed interpreter initially translated his response as "Ah, I don't remember it because I was drunk. I was not within my five senses. I was ask—asked—being asked questions that I was not understanding." However, the interpreter subsequently corrected his translation to "I was under fear."

[7] Even this description of the interpretation process is a gross over-simplification. Although no one model of the interpretation process has gained universal acceptance, all reflect a complicated, multi-step process that is considerably more nuanced than the court's facile description of "simply convert[ing] information from one language to another

The flaws in the language-conduit theory also become apparent if one considers what the outcome of this case would be with two minor factual changes. Suppose that, instead of speaking Spanish, Lopez-Ramos spoke English. Assume further that Lopez-Ramos and the officer were in different rooms, with a mutually trusted "conduit" walking back and forth from one room to another, conveying each other's messages. At trial, the State seeks to have the police officer testify that he was told by the conduit that Lopez-Ramos confessed to the crime. Without a doubt, the State would be required to call the conduit in order to admit that testimony. There would be no question that the statement "Lopez-Ramos said, 'We had intercourse with her' " was the conduit's statement, not a statement of Lopez-Ramos, even if the conduit was just conveying what was said without adding content. And Lopez-Ramos would be entitled to challenge the veracity of that statement by cross-examining the conduit.

The court appears to accept as much, not contesting that in such a scenario, the conduit would be a witness against Lopez-Ramos that the State would be required to call if it wished to admit the conveyed statements. But then the court dismisses the hypothetical as unhelpful because "it does not recognize the difference between the function of an interpreter and the function of a witness who is offering testimony against the accused." I am baffled that such a scenario can present a Confrontation Clause issue if Lopez-Ramos and the conduit are speaking English, but that the constitutional problem somehow goes away if Lopez-Ramos speaks Spanish and an interpreter translates into English. Surely, if

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without adding content." *See, e.g.*, González et al., *supra*, at 817–19 (laying out proposed models of the interpretation process).

Lopez-Ramos has the right to confront a translator who only relays statements that are already in English, the need for confrontation increases—not decreases—if the interpreter is required to not only convey the statements, but also undertake the task of translating them from Spanish to English. If the interpreter is, as the court puts it, a "witness who is offering testimony against [Lopez-Ramos]" when conveying English statements, most certainly he retains that role when conveying Spanish statements.

Of course, the court points out that Lopez-Ramos never challenged the adequacy or accuracy of his translated statements prior to trial. But this is of no moment because the accuracy of the translation is irrelevant under the Confrontation Clause. Indeed, the dissent in *Melendez-Diaz* raised essentially the same argument—that "[w]here . . . the defendant does not even dispute the accuracy of the analyst's work, confrontation adds nothing." 557 U.S. at 340 (Kennedy, J., dissenting). But the Court rejected this argument, reiterating *Crawford*'s holding that regardless of whether there are specific challenges to the veracity of an expert's analysis, "the Constitution *guarantees*" the defendant the right to test the analysis " 'in the crucible of cross-examination.' " *Id.* at 317–18 (majority opinion) (emphasis added) (quoting *Crawford*, 541 U.S. at 61). The same holds true here; regardless of whether Lopez-Ramos challenged the accuracy of the interpreter's translations, the Constitution guarantees him the right to test them via cross-examination.[8]

[8] The court also states that the State did not verify the interpreter's identification and physical location "*because* Lopez-Ramos never challenged the adequacy or accuracy of the translation." In addition to the accuracy of the translation being irrelevant, there is also no evidence to support this causal connection. The State admitted it did not verify the identity or location of the interpreter, but it never offered any explanation to the district court for its failure to do so.

Moreover, it is the *State's* obligation to ensure a fair trial and not Lopez-Ramos's obligation to affirmatively challenge the translations. *See State v. Kindem*, 338 N.W.2d 9, 15 (Minn. 1983) ("[T]he state's obligation was to prove its case in a fair way . . . ."). Indeed, in *Melendez-Diaz*, the state raised precisely the same argument, that the Court "should find no Confrontation Clause violation . . . because [the defendant] had the ability to subpoena the analysts." 557 U.S. at 324. The Court rejected this argument, reasoning that "the Confrontation Clause imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses into court." *Id.* The Supreme Court concluded that the value of the Confrontation Clause is not replaced by a system that permits the state to present its evidence via out-of-court accusations and then wait for the defendant to subpoena the declarants if he so chooses. *Id.* at 324–25.

The court also relies on Minn. Stat. §§ 611.30–.34 (2018) and our Code of Professional Responsibility for Interpreters in the Minnesota State Court System as evidence of the protections native speakers receive against incorrect interpretation. Again, those protections are irrelevant to a Confrontation Clause analysis. But even if they were relevant, Lopez-Ramos did not receive those protections. First, as the court notes, qualified interpreters must "take an oath[] to make to the best of the interpreter's skill and judgment a true interpretation." Minn. Stat. § 611.33, subd. 2. The interpreter in this case took no such oath. After being connected with the interpreter, the interrogating officer asked the interpreter to introduce himself to Lopez-Ramos, read Lopez-Ramos his *Miranda* rights in Spanish (even though his first language was Mam), after which the interpreter immediately began translating interrogation questions and answers.

The court's reliance on our Code of Professional Responsibility for Interpreters is similarly misplaced. Our Code only applies to "persons, agencies and organizations who administer, supervise, use, or deliver interpreting services within the Minnesota state court system." Code of Prof'l Responsibility for Interpreters in the Minn. State Court Sys., Applicability. But the interpreter here was *not* providing interpreting services within the Minnesota state court system. He was providing them to a police department. Nothing in the record suggests that the department had a code of conduct applicable to its interpreters, and even if there was such a code, there is no indication in the record that the interpreter in this case was ever informed of it.[9]

Finally, the court suggests that holding that Lopez-Ramos had the right to confront the interpreter in court would imply that, whenever a transcript of a past proceeding was used, the defendant would have the right to confront the court reporter who prepared the transcript. The court is wrong. Only *testimonial* hearsay is implicated by the Confrontation Clause. *See Crawford*, 541 U.S. at 68 ("Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law . . . ."). A necessary requirement for a statement to be testimonial is that "the 'primary purpose' of the [statement] was to 'creat[e] an out-of-court

[9] Indeed, the paucity of information about this interpreter is startling. The State offered no evidence of who he was beyond his first name and interpreter-identification number, no evidence of where he was located, and most importantly, no evidence of his training or experience. Accordingly, even if the State had called the interpreter, it is likely that the interpreter would not have been allowed to testify under Minn. R. Evid. 702 unless the State laid more foundation as to his qualifications. *See* Minn. R. Evid. 604 ("An interpreter is subject to the provisions of these rules relating to qualification as an expert . . . .").

substitute for trial testimony.' " *Clark*, ___ U.S. at ___, 135 S. Ct. at 2180 (quoting *Michigan v. Bryant*, 562 U.S. 344, 358 (2011)). But the primary purpose of court reporters is not to create a substitute for trial testimony; it is to create an official record of the proceedings to aid in the administration of justice. Therefore, the holding I would reach does not implicate court reporters.

Because: (1) the interpreter is the declarant of the statement, "Lopez-Ramos said, 'We had intercourse with her' "; (2) that statement was testimonial; and (3) the State did not call the interpreter at trial, the district court erred when it denied Lopez-Ramos's motion to suppress the statement. Obviously, the district court's decision to admit the statement was not harmless beyond a reasonable doubt. Accordingly, I would reverse Lopez-Ramos's conviction and remand for a new trial. At such a trial, the State could either offer the live testimony of the AT&T interpreter, or have a different interpreter in the courtroom translate Lopez-Ramos's recorded statement.

LILLEHAUG, Justice (dissenting).

I join in the dissent of Justice Hudson.

THISSEN, Justice (dissenting).

I join in the dissent of Justice Hudson.

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