

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0102**

State of Minnesota,
Respondent,

vs.

Irving Augusto Borjas-Vazquez,
Appellant.

**Filed December 28, 2020
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-18-29643

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Rory P. Durkin, Giancola-Durkin, P.A., Anoka, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

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

WORKE, Judge

Appellant challenges his conviction for first-degree criminal sexual conduct, arguing that the district court erred by not releasing the backup audio recording of his jury trial and abused its discretion by denying a continuance of his sentencing. We affirm.

FACTS

Appellant Irving Augusto Borjas-Vazquez (AKA Cesar Carlos Borjas-Lopez) grew up in Mexico but has lived in the United States for approximately 15 years. In December 2018, he was charged with two counts of first-degree criminal sexual conduct for repeated acts of sexual penetration committed against his 12-year-old niece. Borjas-Vazquez was represented at his jury trial by bilingual Spanish-speaking counsel, and the district court appointed two interpreters. On July 17, 2019, a jury found Borjas-Vazquez guilty as charged, and his sentencing was scheduled for September 6, 2019.

On or about July 31, 2019, Borjas-Vazquez retained new counsel and moved for a new trial, claiming that the interpretation at his trial was incorrect. In an affidavit, Borjas-Vazquez's counsel asserted that Borjas-Vazquez's wife, who testified at trial, "described the interpreters as having confusion among themselves," which led to her not understanding questions and doubting her answers. Borjas-Vazquez also claimed that "the interpreters were not using the proper word[s] and he could not understand much of what went on." Borjas-Vazquez claimed that he expressed his concerns to his trial attorney, but nothing was done. Borjas-Vazquez requested a continuance of his sentencing to review the transcript. The district court granted his request and continued sentencing to November 1, 2019.

At sentencing, Borjas-Vazquez's attorney stated that he received the transcript in early October and read through it. Because Borjas-Vasquez remained concerned regarding the interpretation at trial, his attorney requested another continuance and an order from the district court to obtain a "copy of the audio from the entire trial," so he could listen to it

with an interpreter “to flesh out whether or not we have problems with the interpretation.” The prosecutor, who prosecuted the case at trial, replied that during trial the interpreters made sure that the proceedings “were translated as best as possible.” The district court stated that, based on the rules of court access, it did not have authority to release the backup audio recording of the trial. It then described its understanding of what occurred at trial:

[D]efense counsel were both fluent in Spanish and English; [and] the court provided two interpreters for the entire trial who interpreted for [Borjas-Vazquez] and for each witness who chose to testify in Spanish. Those two interpreters, who, of course, I was paying most attention to while witnesses were testifying in Spanish, frequently helped each other, checked with each other, consulted when they felt they needed to to make sure they were providing consistent interpretation. For example, there was a lot of reference to the salon, S-A-L-O-N, and calling that the living room, I think, because that’s a word in Spanish that can be interpreted in multiple ways so the interpreters were giving consistent interpretation of phrases that could be put into English in different ways.

None of the witnesses, including [Borjas-Vazquez] and his wife . . . ever said they were confused by the interpretation during their testimony. And . . . no one ever raised it on the record. I believe it’s accurate that I did not do my due diligence at the beginning of the trial itself to make sure that [Borjas-Vazquez] could understand each of the interpreters; however, I would expect that that would have been stated immediately if there was ever an interpreter who he could not understand. I expect the attorneys would have told me if they could not understand the interpreters, and it would have been obvious to us while the witnesses were testifying in Spanish. Again, there was no confusion about interpretation during the Spanish-speaking witnesses, including [Borjas-Vazquez]’s wife and [Borjas-Vazquez] himself.

The district court denied Borjas-Vazquez’s request for a continuance and sentenced him to 144 months in prison. This appeal followed.

DECISION

Backup audio recording

Borjas-Vazquez first argues that the district court erred by concluding that he was not allowed access to the backup audio recording of his jury trial to identify interpretation errors. In denying Borjas-Vazquez's request for access to the backup audio recording, the district court relied on Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 3. The interpretation of court rules presents a question of law reviewed de novo. *Lennartson v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, 662 N.W.2d 125, 129 (Minn. 2003). This court interprets court rules in accordance with the rules of grammar and gives words and phrases their common and approved usage. *State v. Dahlin*, 753 N.W.2d 300, 306 (Minn. 2008). When the language of a rule is plain and unambiguous, an appellate court must interpret the rule in accordance with its plain language. *See id.* at 305.

Based on its plain and unambiguous language, we conclude that the district court correctly applied the rule. Rule 4 allows for only the release of a transcript of a hearing, not the recording itself. *See* Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 3(a), (d) (stating that recordings of proceedings in district court are intended to assist in the preparation of a transcript; “[t]he transcript, and not the recording, is the official record of the proceedings” and “the contents of the recording shall be disseminated by transcript only”). Thus, distribution of the contents may be done only by transcript.

The rule also governs playback of a recording. *Id.* at subd. 3(c). It is allowed in only three situations: “(1) during the proceeding . . . at the direction of the court; (2) by authorized operators of the recording equipment . . . official court reporter or other

authorized reporting service employee for the purpose of creating a transcript . . . ; and (3) at the direction of the court for the use of the court.” *Id.* None of these situations cover Borjas-Vazquez’s request for playback to detect possible irregularities in translation.

Borjas-Vazquez argues that because “[t]he transcript was carefully reviewed for irregularities and possible translation issues” and “none” were found, the only option is to review the audio recording for “errors and misinterpretation.” He claims that in denying his request for the backup audio recording, the district court prevented him from obtaining a record of sufficient completeness to permit proper consideration of his claims. But that is a misrepresentation. His issue on appeal is that the district court should have allowed access to the backup audio recording to allow him to find possible irregularities *in order to raise a claim*; he does not raise an issue on appeal that required the audio recording to assist in consideration of a claim. Thus, the recording would not assist this court in properly considering a claim; rather, his counsel would use it to find a potential claim to raise.

Further, while he argues that the recording will provide a sufficiently complete record for the review of his claims, the record on appeal consists of “[t]he documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any.” Minn. R. Civ. App. P. 110.01. Thus, the transcript alone would provide a sufficiently complete record for review.

Moreover, Borjas-Vazquez fails to provide any framework for potential claims that the audio recording would reveal. In an affidavit, his attorney asserted that Borjas-Vazquez’s wife stated that the interpretations were inadequate, and she doubted the accuracy of her answers. But if Borjas-Vazquez’s wife was confused, she and Borjas-

Vazquez's attorney could have reviewed her testimony in the transcript and found specific areas of confusion. Yet he provides no specific example.

Further, in his affidavit, Borjas-Vazquez's attorney asserted that Borjas-Vazquez has only a "remedial understanding" of English and was "confused and dismayed" by what happened at his trial, especially during his testimony, when the interpreters communicated in a confusing manner. But, again, Borjas-Vazquez fails to point to anything that caused confusion. And during his presentence investigation (PSI), he did not state that there was confusion in the interpretation during his testimony. Instead, he stated, "The jury heard my version. They heard what I had to say and they already found me guilty and I said what I had to say." Thus, he admitted that he told the jury his version, but they did not believe him; he did not indicate that he was found guilty because the interpreters confused him while he was testifying.

Finally, Borjas-Vazquez claims that possible errors in translation denied him a fair trial. But he has the "burden of proving on appeal that the interpretation was inadequate." *State v. Montalvo*, 324 N.W.2d 650, 652 (Minn. 1982); *see also State v. Mitjans*, 408 N.W.2d 824, 832 (Minn. 1987) (stating that in addressing a claim that errors in translation denied a defendant a fair trial, this court considers whether the translation was "on the whole adequate and accurate").

Borjas-Vazquez retained new counsel following his jury trial; thus, his new attorney was not present at trial. But the prosecutor was present at trial. She stated that during trial there were "numerous times" when the interpreters had conversations with Borjas-Vazquez in Spanish. She stated that the transcript would show "the level of detail [Borjas-

Vazquez]’s trial counsel had regarding interpretation during the trial,” and that exceptional care was taken to ensure that “the proceedings were communicated to [Borjas-Vazquez] and he understood them.”

The district court stated that Borjas-Vazquez’s trial counsel was fluent in Spanish and English, there were two interpreters for the entire trial who frequently helped each other, and the interpreters consulted to ensure they provided consistent interpretation. The district court further stated that none of the witnesses ever stated that they were confused, and it expected that any concerns would have been addressed on the record. Based on this record,¹ the prosecutor and district court experienced a jury trial that had translations that were on the whole adequate and accurate, and Borjas-Vazquez failed to show that the translation was not adequate and accurate. Accordingly, the district court properly denied Borjas-Vazquez’s request for access to the backup audio recording of his jury trial.

Continuance

Borjas-Vazquez also argues that the district court abused its discretion by denying his request for a second continuance of his sentencing. This court reviews a district court’s denial of a motion for a continuance for an abuse of discretion. *State v. Rainer*, 411 N.W.2d 490, 495 (Minn. 1987). This court considers the circumstances that existed in the district court when it made its ruling. *State v. Turnipseed*, 297 N.W.2d 308, 311 (Minn. 1980).

¹ We rely on the prosecutor’s and the district court’s statements regarding what occurred at trial because we have no transcript of the jury trial to review. *See* Minn. R. Civ. App. P. 110.02, subd. 1 (stating it is appellant’s duty to provide transcript).

Borjas-Vazquez argues that the district court should have granted him a continuance because his attorney “had just received and gone through the over 900 pages of transcript,” and it is difficult to arrange a visit to the jail with counsel and an interpreter.

Here, the jury found Borjas-Vazquez guilty on July 17, 2019, and his sentencing was scheduled for September 6, 2019. In late July, Borjas-Vazquez retained new counsel and moved for a continuance in order to review the trial transcript. The district court granted a continuance and rescheduled sentencing to November 1, 2019. At the rescheduled hearing, Borjas-Vazquez’s counsel stated that he received a copy of the transcript “just after the first week of October.” The transcript was “carefully reviewed for irregularities and possible translation issues.” After finding no issues with the transcript, Borjas-Vazquez requested a continuance to attempt to obtain the backup audio recording of his jury trial. Because the district court properly denied Borjas-Vazquez’s request for access to the backup audio recording, another continuance was unnecessary in order to obtain access to the recording.

Finally, although Borjas-Vazquez asserts that the state will not be prejudiced by a continuance, when the district court denied the request, it stated that “it’s been months now and to orally request it today for the first time is not timely given that it’s the second time we’re set for sentencing.” Thus, the district court noted that it was untimely and that could prejudice the state when there is an interest in the finality of cases. The district court did not abuse its discretion by denying Borjas-Vazquez’s request for a continuance.

Affirmed.