

State v. xxxxxxxxxxxxxxxxxxxx
[Case Number]

Expert Witness Report
Ernest Niño-Murcia, Court Interpreter (Spanish)
Certified, National Center for State Courts

My name is Ernest Niño-Murcia, and I am a Certified Court Interpreter (Spanish<>English) as recognized by the states of Iowa, Nebraska, and Missouri. I am proficient in simultaneous, consecutive and sight translation in the judicial field. I am experienced in legal translation and transcription for courts, including translations of court forms, attorney-client correspondence and forensic transcription/translation. I hold a B.A from Brown University in Anthro-Linguistics.

The purpose of this report is to analyze the interpreting provided by the _____ Police Department to the above-named defendant during the interactions depicted in the videos provided. Although the individual acting as interpreter in the videos is not, to my knowledge, an accredited court interpreter, the principles set forth in the Code of Professional Conduct for Judicial Branch Interpreters (Chapter 48 of Iowa Court Rules) will nonetheless serve as a guide to the best practices accepted within the field of legal interpreting.

Effective interpreting as defined by the Judicial Branch Code consists of facilitating communication between parties with differing levels of English proficiency by providing a complete, accurate, and impartial interpretation of all utterances spoken between them. These principles are explained further below, along with an analysis of the breakdowns that occurred during the event in question.

Accuracy and Completeness

An interpreter shall render a complete and accurate interpretation or sight translation by reproducing in the target language the closest natural equivalent of the source language message, without altering, omitting, or adding anything to the meaning of what is stated or written, and without explanation.

Canon 1, Code of Professional Conduct for Judicial Branch Interpreters

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The Judicial Branch’s Code for Intmispronunciationerpreters is unambiguous in the standard set for what should be interpreted between parties: everything that is said between parties- nothing less, nothing more. The performance of the individual acting as interpreter on the videos provided is problematic in this regard because of the sporadic omission of entire pieces of dialogue. After being read the implied consent advisory, the defendant asks, “So . . . what does this mean?” (Transcript page 3, Line 1) An interpreter must communicate that question in its entirety to the officer present. Instead, this individual responds directly to the defendant, asking, “hmm?” and saying nothing further. As such, the officer is never made aware of the defendant’s question before the implied consent form is signed. Likewise, the defendant’s statement that he had, “understood a tiny bit,” (pg. 3, L. 27-28) is not relayed to the officer. The comprehension issues raised by the defendant were not communicated to the officer and as such, could not be addressed.

Language errors also limit the accuracy of the interpretation provided. In the approximately two and a half minutes spent reading the implied consent advisory, thirty-five errors were identified, including mispronunciations, incorrect words (such as the false cognate *intoxicado*, which bears a resemblance to the English word *intoxicated*, but in fact means *poisoned*), and omission of necessary words.

The principles outlined above also preclude interpreters from summarizing or paraphrasing any statements made by the parties, as such an approach inevitably leads to loss of the speaker’s full intended meaning. One such example is found on page 4 of the transcript:

2		Ok, having read through the	Que si quieres tomar el examen	He’s asking if you want to take
3		appropriate implied consent	soplando en el tubo que le va a dar	the test blowing into the tube
4		advisory through the interpreter,	el oficial.	that the officer is going to give
5	O	I hereby request a specimen of		you.
6		your breath for chemical testing		
7		to determine the alcohol or drug		
8		content. I’m asking for a breath		
9		sample into this machine. Will		
10		you take that test?		

Table 1

In addition to the loss of meaning (requesting the specimen and explaining the purpose thereof) that occurs as a result of the summary rendered, the individual acting as interpreter goes beyond

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the officer’s original message by independently introducing the idea of “blowing into the tube,” when no such statement was made by the officer. The challenges this poses relative to norms on impartiality are further explored below.

Impartiality

An interpreter should . . . avoid participation in the proceedings other than as an interpreter. An interpreter should strive for professional detachment.

Comment to Canon 7, Code of Professional Conduct for Judicial Branch Interpreters

As envisioned by the Code, an interpreter should limit themselves to acting as a passive *medium* for communication rather than taking an active role in forming the *message* being communicated. In the videos provided, no such distinction is visible in the performance of the individual acting as interpreter.

	<u>Party</u>	<u>Source Language</u>	<u>Video Interpreter</u>	<u>Translation</u>
1	O	O.K. He’s going to read to you the	¿Lo puede leer?	Can you read it?
2		implied consent advisory.		
3	O	¡O! un momento. [Officer exits]		Oh! One moment.

Table 2

In this excerpt, the statement made by the officer is not interpreted to the defendant. The individual acting as interpreter instead questions the defendant on his own, absent any instruction to do so by the officer.

This episode demonstrates the dual roles played by this individual in the videos recorded: While ostensibly acting as interpreter, he also intermittently steps out of that role to act as an active participant in the events. After consenting to the breath test, the defendant asks (in Spanish), “Do I have to sign the paper or something?” (pg. 3 L. 12-13). This question is not interpreted to the officer present, and is instead answered by the interpreter himself, replying (in Spanish), “He’s going to/” (pg. 3 L. 14). The interpreter is cut off by the officer, who has moved on to instructing the defendant to sign the form without the benefit of knowing what the defendant has asked. Likewise, as seen in the first video file, when the defendant states that he is nervous and cannot perform the heel-toe walk, the individual acting as interpreter responds, “What do you

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mean no?” When the defendant again states that he is nervous, the interpreter himself responds again, saying (emphasis noted), “You *can* walk. Nine floors¹.” In a later test, when the defendant is asked to count standing on one foot, it is the interpreter who advises the defendant on how far to lift his foot off of the ground and that he must count for himself- independent of any statements from the officer present.

Conclusion

If we accept that an interpreter’s duty is to facilitate communication between parties across a language barrier by offering a complete and accurate rendering of what is said by all parties, the individual acting as interpreter in the videos provided cannot be said to have succeeded. On numerous occasions, entire utterances are not interpreted for the benefit of either the defendant or the officer present, including the defendant’s request for an explanation about the implied consent advisory and his statement that he has understood little of what was said. Even when an attempt is made to convey some part of the officer’s message in the instances documented above, elements of the officer’s intended meaning are stripped away by paraphrasing or supplemented with the interpreter’s own questions and opinions. By instructing/questioning the defendant on his own at times, this individual steps out of the role of interpreter and takes on the role of bilingual participant in the events depicted. The overall effect is one of further erecting rather than dismantling barriers to communication.

¹ Interpreter incorrectly says *pisos* (floors) instead of the similar-sounding *pasos* (paces or steps).

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Transcript Key/Notes

(ui) = Unintelligible

[] = Translator’s notes

/ = Interrupted speech

Parties

O- Officer

VI- Video Interpreter

D- Defendant

	<u>Party</u>	<u>Source Language</u>	<u>Video Interpreter</u>	<u>Translation</u>
1	O	O.K. He’s going to read to you the	¿Lo puede leer? ⁱ	Can you read it?
2		implied consent advisory.		
3	O	¡O! un momento. [Officer exits]		Oh! One moment.
4	D	(ui)		
5	[Officer returns, hands something to Defendant]			
6	D	Thank you.		
7	VI		La ley de consentimiento requiere	The consent law requires that
8			que el oficial de la policía le informe	the police officer inform the
9			a la persona de ⁱⁱ lo siguiente: el	person of the following: refusal to
10			rehusarse de ⁱⁱⁱ dar un muestra de ^{iv}	give a urine or blood or urine
11			espécimen de orina o sangre u	specimen sample for chemical
12			orina para prueba ^v química le	test will result in revocation of
13			resultara ^{vi} en la revocación de su	your privilege to operate a motor
14			privigilio ^{vii} de operar un vejículo ^{viii} de	vehicle for one year if this
15			de motor por un año si este	privilege has not been revoked
16			privigilio ^{ix} no ha sido revocado por	for refusing to give a urine test
17			negarse a dar una prueba de orina	or because of the law regarding
18			u ^x por la ley de manejar	driving poisoned in the previous
19			intoxicado ^{xi} en los doce años	twelve years, or two years if you
20			anteriores, u ^{xii} dos años si usted	have one or more revocations
21			tiene una o más revocaciones por lo	for the latter.
			Antes mencionado	

ⁱ Speech not interpreted, addition of new information

ⁱⁱ Incorrect word

ⁱⁱⁱ Incorrect word

^{iv} Missing words

^v Incorrect word

^{vi} mispronunciation

^{vii} mispronunciation

^{viii} mispronunciation

^{ix} mispronunciation

^x mispronunciation

^{xi} Incorrect word

^{xii} mispronunciation