IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502017AP000071AXXXMB
L.T. NO.: 502016MM010736AXXXWB

FELIX LUIS ALVAREZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

Opinion filed: JUN 07 2018

Appeal from the County Court in and for Palm Beach County,
Judge Sheree Cunningham.

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PER CURIAM.

Appellant Felix Luis Alvarez appeals his convictions for Unlawful Sexual Activities Involving Animals and Animal Cruelty. Appellant claims, *inter alia*, the trial court reversibly erred when it admitted testimony recounting the English translation of statements made by Appellant in Spanish to an interpreting, non-testifying officer. We agree. Because we find the error reversible, we decline to address Appellant's other arguments.

On October 15, 2015, Appellant was suspected of having sex with a horse after he was

found laying in the wet grass of a pasture next to a rope and chair. The owner of the horse told officers that the horse appeared to be scared, and subsequent DNA testing revealed the presence of Appellant's non-seminal DNA around the vaginal area of the horse. On August 2, 2016, Palm Beach County Sheriff's Office Deputy Hansen-Morency contacted Appellant for an interview regarding the October 15 incident. Appellant speaks Spanish but Deputy Hansen-Morency does not, so Deputy Hansen-Morency asked another deputy, Deputy Nieves, to act as an interpreter during the interview. After denying the allegations several times, Appellant eventually told Deputy Nieves in Spanish that he remembered having sex with the horse. Deputy Nieves, however, did not testify at trial. Instead, Deputy Hansen-Morency testified, over Appellant's hearsay objections, as to what Deputy Nieves told her Appellant said in Spanish.

The standard of review for admissibility of evidence is abuse of discretion as limited by the rules of evidence. *Hudson v. State*, 992 So. 2d 96, 107 (Fla. 2008). Thus, whether evidence falls within the statutory definition of hearsay, or qualifies for an exception to the hearsay rule, is a question of law that we review *de novo*. *Browne v. State*, 132 So. 3d 312, 316 (Fla. 4th DCA 2014) (citing *Lucas v. State*, 67 So. 3d 332, 335 (Fla. 4th DCA 2011); *Powell v. State*, 99 So. 3d 570, 573 (Fla. 1st DCA 2012)).

The State argues that Appellant's statements to Deputy Nieves were admissible under the "admission" exception to the rule against hearsay. Section 90.803(18)(c), Florida Statutes (2016), provides that a statement offered against a party is admissible as an "admission" of that party if it is made "by a person specifically authorized by the party to make a statement concerning the subject." The Florida Supreme Court explained the circumstances in which an interpreted statement constitutes an admission under this provision in *Chao v. State*, 478 So. 2d 30 (Fla. 1985):

> Under subsection (c) a person can authorize another to speak for him and the admission made can be admitted against the party who authorized the other to speak for him. The person giving the authorization need not, under this subsection, hear the subsequent statement. For this reason an admission specifically authorized to be given through a competent interpreter is like any other admission authorized to be given by an agent and may be testified to by the person to whom the agent gives the statement.

Chao, 478 So. 2d at 32.

In *Chao*, the Florida Supreme Court held that the testimony of a police officer that recounted an interpreted out-of-court statement by the defendant constituted an admission. *Chao*, 478 So. 2d at 32. The court found that, because the defendant had requested his uncle assist him in turning himself in to police, and then proceeded to answer the officer's questions as asked through his interpreting uncle in Spanish, "it [was] obvious that Chao authorized [his uncle] to speak for him" *Id.*

Likewise, in *Herrera v. State*, 532 So. 2d 54 (Fla. 3d DCA 1988), the Third District Court of Appeal held that an undercover police officer's testimony recounting statements made by the defendant in Spanish during a drug transaction, which were interpreted into English by an accomplice, was admissible. The court reasoned that the circumstances clearly indicated that the defendant authorized the accomplice to speak for him because the undercover officer asked the accomplice to interpret the defendant's statements in order to facilitate the sale. *Id.* at 56-57. The court noted that there was no evidence that the accomplice had a motive to distort the translation, since the police officer to whom the statements were directed was undercover. *Id.*

But the record must show that the testimony fits within the exception of section 90.803(18)(c) in order for it to apply. Thus, in *Alarcon v. State*, 814 So. 2d 1180 (Fla. 4th DCA 2002), the Fourth District Court of Appeal overturned an order revoking probation because the record lacked evidence that the interpreter was authorized by the defendant to speak. In that case,

an employee working for the defendant's probation officer interpreted a phone discussion between the defendant and the investigating officer. *Id.* at 1183. In reversing, the court noted that "the evidence did not show that [defendant] either requested the interpreter or accepted him as his agent." *Id.*

In this case, we find that Deputy Nieves was not specifically authorized by Appellant, and accordingly hold that the trial court erred when it ruled that Appellant's statements to Deputy Nieves were admissible through Deputy Hansen-Morency's testimony. Like in *Alarcon*, Appellant's statements were made to law enforcement personnel who were investigating Appellant, and we find no facts in the record to suggest that Appellant requested or accepted Deputy Nieves as his agent. *Chao* and *Herrera* are distinguishable because those cases dealt with statements made to family members or accomplices—i.e., people known to and trusted by the suspect. Interpreters of that class can more readily be viewed as "specifically authorized" than can law enforcement officers investigating the suspect.

We further find the error is not harmless because it allowed the jury to hear evidence that recounted Appellant's confession, which constituted the sole direct evidence that Defendant engaged in sexual conduct with the horse. Without it, the record contains a dearth of evidence to meet the "gratification" element of Unlawful Sexual Activity with Animals and the "torment" element of Animal Cruelty. *See* sections 828.126(2) and 828.12(1), Fla. Stat. (2016), respectively. Accordingly, we REVERSE Appellant's conviction and REMAND this case for a new trial.

FEUER, KELLEY, and COLBATH, JJ., concur.

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Opinion/Decision filed: JUN 07 2018

Appeal from County Court in and for
Palm Beach County, Florida;
Judge Sheree Cunningham

Appealed: April 26, 2017

DATE OF PANEL: APRIL 23, 2018

PANEL JUDGES: FEUER, KELLEY, & COLBATH

AFFIRMED/REVERSED/OTHER: REVERSED AND REMANDED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	DISSENTING: With/Without Opinion	CONCURRING SPECIALLY: With/Without Opinion
_____ DATE: 6/5/18	_____	_____
_____ DATE: 6/6/18	_____	_____
_____ DATE: 6/6/18	_____	_____