

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MIGUEL HERNANDEZ,

Defendant-Appellant.

UNPUBLISHED

April 23, 2002

No. 230901

Wayne Circuit Court

LC No. 00-005703

Before: Holbrook, Jr., and Jansen and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felonious assault, MCL 750.82, and was sentenced, as a second-offense habitual offender, MCL 769.10, to six to forty-eight months' imprisonment. Defendant appeals as of right and we affirm.

Defendant first asserts that he was denied due process because he did not have an interpreter at trial.

Defendant did not raise this issue below, consequently, it is unpreserved. To avoid forfeiture, defendant must show that plain error occurred and that the error affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Generally, this Court reviews a trial court's decision regarding whether to appoint an interpreter for a defendant for an abuse of discretion." *People v Warren (After Remand)*, 200 Mich App 586, 591; 504 NW2d 907 (1993).

MCL 775.19a provides:

If an accused person is about to be examined or tried and it appears to the judge that the person is incapable of adequately understanding the charge or presenting a defense to the charge because of a lack of ability to understand or speak the English language, the inability to adequately communicate by reason of being mute, or because the person suffers from a speech defect or other physical defect which impairs the person in maintaining his or her rights in the case, the judge shall appoint a qualified person to act as an interpreter.

In the present case, defendant never asserted that he could not "adequately understand" any portion of the trial, the charges against him, or his legal rights. The only evidence offered by

defendant to show that he required an interpreter comes from a brief dialogue between himself and the trial court, where defendant stated that he did not understand what the court was saying. However, defendant's comment, when considered in context, simply showed his lack of understanding of the legal circumstances and not his lack of understanding of the English language.

A trial judge has no affirmative duty to establish a defendant's fluency in the English language, when there is no showing that the defendant's understanding is in question. *People v Atsilis*, 60 Mich App 738, 739; 231 NW2d 534 (1975). Because defendant has lived in the United States since he was three years old, has completed school up to the ninth grade, and never showed any indication that an interpreter was needed, there was simply no reason for the trial court to conclude an interpreter was in fact necessary. *Id.* Therefore, the trial court did not abuse its discretion by failing to appoint an interpreter, or examine the need for one.

Defendant next argues that he was prejudiced by the prosecutor's use of leading questions. The trial court has discretion in deciding whether to allow leading questions. *People v Hicks*, 2 Mich App 461, 466; 140 NW2d 572 (1966). In addition, leading questions may be utilized where necessary to develop the witness' testimony. MRE 611(c)(1). Reversal is only warranted where prejudice, or a "pattern of eliciting inadmissible testimony" exists. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001).

Defendant points to three questions that he contends were leading. The first question ("Did [defendant] come around where you and your daughter were?") was objected to and sustained by the trial court. The second question ("At some point you made a decision to go to the police?") was objected to and overruled by the trial court. The third question relating to what the defendant was wearing in court was also objected to and sustained by the trial court. Although defendant states that leading questions can "undermine the trustworthiness" of testimony, he fails to explain how the leading questions in the case at hand prejudiced him. Moreover, the questions were innocuous and the trial court sustained two of the objections in any event. There being no showing of prejudice or a pattern of eliciting inadmissible hearsay, reversal is not required.

Lastly, defendant argues that he received ineffective assistance of trial counsel because of his counsel's failure to inquire into the need for an interpreter. Because defendant did not move for an evidentiary hearing or new trial on this basis below, our review of the issue is limited to the existing record. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). To establish a claim of effective assistance of counsel, defendant must show that counsel's representation fell below an objective standard of reasonableness and that the representation so prejudiced defendant as to deny him a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994).

Because there is no indication on the record that defendant needed the assistance of an interpreter, defense counsel's failure to inquire into the need for an interpreter was not error. Defense counsel's representation did not fall below an objective standard of reasonableness.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder