

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,)
) No. 534, 2000
 5.)
)
 PETER MARTINEZ,)
 (ID. No. 9907014649))
)
 Defendant.)

**REPORT OF FINDINGS
UPON REMAND**

This 19th day of November 2001, upon remand from the Supreme Court, it appears that:

1. The defendant was convicted of Assault in the Second Degree¹ and Possession of a Firearm During the Commission of a Felony. In his direct appeal to the Supreme Court, the defendant contends, among other issues, that the Spanish-English interpreter utilized by the police during its investigation, and the interpreter used by the Superior Court during the trial, both inaccurately translated his out-of-court statement and his trial testimony, respectively. The Supreme Court has remanded the matter to this Court to determine (1) whether it complied with the minimum requirements for the use of court interpreters in Delaware trial court proceedings, as set forth in Administrative Directive 107² and *Diaz v. State*,³ and (2) whether the defendant's out-of-court statement, as translated into English by a

¹ A lesser included offense of Attempted Murder in the First Degree.

² Admin. Dir. No. 107, Supr., Court of Delaware (Apr. 4, 1996).

³ Del. Supr., 743 A.2d 1166 (1999).

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Spanish-English speaking police officer, was properly admitted into evidence under *Diaz*.

THE COURT INTERPRETER

2. Administrative Regulation 107 (“the regulation”) imposes the following minimum requirements upon trial courts: (1) qualified court interpreters included on the list maintained by the Administrative Office of the Court (“AOC”), should be used in court proceedings, unless none are willing or available at the time or date of the proceeding in issue; (2) an appropriate oath must be administered to the interpreter at the commencement of the proceeding, an example of which is included in the regulation; (3) the presiding judge should meet with the court interpreter prior to a court proceeding or otherwise insure that the interpreter is familiar with court procedures and legal terminology likely to be used in the proceeding; (4) appropriate notice of the role of the court interpreter should be provided to parties and witnesses in court proceedings in which court interpreters are providing services, an example of which is included in the regulation; and (5) an appropriate explanation of the role of an interpreter should be provided to the jury in trials involving juries, examples of which are included in the regulation.

3. *Diaz*⁴ imposes additional requirements where the jury may include a bilingual juror.⁵ It requires that any bilingual juror be identified and given additional

⁴ *Id.*

⁵ In this case, Spanish and English.

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voir dire to determine whether he or she is proficient in English and will follow the trial judge's instructions to rely upon the court interpreter's translation, as opposed to his or her own personal translation. It also specifically requires that English-only speaking jurors be asked during *voir dire* if the fact that some testimony would be given in a language other than English would influence them in any way.⁶

4. In this case, the court interpreter at the defendant's trial is an employee with the Office of the Public Defender. Her qualifications were discussed in open court prior to the defendant's trial. That discussion has been transcribed and is now part of the record. An affidavit signed by her has also been made a part of the record. In the discussion prior to trial, she stated that she was the head of interpretative services for the Public Defender's office. She grew up in a household which included a Spanish speaking relative. She lived abroad in Chile and Spain for three years. At the time of the defendant's trial she stated that she had interpreted in Superior Court about a hundred times at various proceedings including at least one trial. This Court had previously observed her interpreting for Public Defender client's on a number of occasions. Prior to the defendant's trial, she contacted two qualified court interpreters

⁶ The issue of the police interpreter will be addressed separately at a later point in this report.

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to try to arrange their services for the defendant's trial. One of them had already been retained by the State to interpret for a state witness. The other was unavailable. According to her testimony before trial and her affidavit, no one else was available. She, therefore, translated for the defendant. Prior to the defendant's trial, she had completed the first part of the three-part testing and qualifying procedure for court interpreters. Shortly after the defendant's trial she completed the last two parts of the testing and qualifying procedure and she is now a qualified interpreter on the list maintained by the AOC. On this record I find that there was compliance with the requirement that a qualified court interpreter be used unless none is available.

5. The interpreter was duly sworn.

6. Based upon the interaction among the Court, the court interpreter and counsel prior to trial, I find that there was compliance with the requirement that the Court insure that the court interpreter is familiar with court procedures and legal terminology.

7. The Court did not explain the role of the court interpreter to the defendant. With regard to the jury, in addition to standard *voir dire*, two additional questions were asked specifically relating to the fact that the defendant would have an interpreter. The record of the *voir dire* shows that the jurors were addressed as follows:

The Clerk: Does any member of the panel speak the Spanish language?

Some of the testimony in this case will be given in

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Spanish. Will this fact influence your decision in this case in any way or in any way affect your ability to decide this case fairly and impartially?

The Court: Members of the jury ... [j]ust to be clear on the Spanish, the two questions that related to Spanish speaking, the first one was: Does anyone speak Spanish? If they do, they should come forward.

The second was for those of you, which I am sure is most, who are English speaking: Some of the testimony in this case will be in Spanish. That is, some of the testimony from the witnesses will be in Spanish. There will be an interpreter who will be interpreting, and if any of you are watching you can see it going on plainly before you right here.⁷

If the fact that some of the testimony is going to be in Spanish would in any way influence you in the hearing

⁷ A reference to the fact that the interpreter was interpreting for the defendant as *voir dire* was taking place.

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of this case, then you should come forward.

Since the defendant was not specifically addressed concerning the role of the court interpreter, it would appear that there may not have been compliance with the requirement that appropriate notice of the role of the court reporter be given to parties and witnesses. At trial it appeared that defense counsel had given the defendant some instructions concerning the use of the interpreter. For example, at the commencement of the defendant's direct examination, his counsel reminded Mr. Martinez of instructions concerning how to testify with the assistance of the interpreter.⁸ The defendant's complaint does not appear to be one involving any misunderstanding or confusion over the proper role of the interpreter. His complaint is that the interpreter did not translate correctly. I am satisfied that under all the circumstances of the case the defendant was aware that the role of the interpreter was to interpret accurately the questions he was asked and the answers he gave, as well as to interpret the proceedings for him generally, and that any error arising from the failure of the Court to address the defendant concerning the role of an interpreter was harmless. With regard to the jury, the above quoted portion of the record concerning jury *voir dire* does not appear to comply fully with the regulation's requirement that the jury be instructed concerning the role of the interpreter as reflected in the regulation's examples. I am satisfied, however, that the *voir dire* questions posed to the jury were sufficient to ascertain any bias against the defendant based on his lack of proficiency

⁸ Transcript, Page Volume C, Page 12.

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in the English language, and to convey to the jurors that they must not allow the fact that he testified through an interpreter to influence them in any way.⁹ Any error relating to the manner in which the jury was addressed concerning the role of the interpreter was harmless.

10. No one came forward in response to the question whether any member of the jury spoke Spanish. Therefore, the *Diaz* requirement that any bilingual jurors be identified was satisfied, and, it appearing that there were no such jurors, further inquiry on that issue was not needed. The specific requirement of *Diaz* that jurors be asked whether the fact that some testimony would be given in a language other than English would influence them in any way was satisfied.

THE DEFENDANT'S OUT-OF-COURT STATEMENT

⁹ It is also noted that one person from the jury panel, who was excused, did come forward in response to *voir dire* and indicated that she could not impartially sit on a trial involving an Hispanic person.

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11. Under *Diaz*, before an English translation of a witness' out-of-court statement in Spanish is admitted into evidence, a defendant is "entitled to have an independent judicial determination made with regard to the interpreter's proficiency in Spanish, understanding of the role of an interpreter, and knowledge of the ethical issues related to court interpretation."¹⁰

12. In this case the out-of-court statement is the defendant's own statement to the police made shortly after the incident which led to his arrest. The English translation of the defendant's statement was performed by State Police officer George Camacho. The following facts were developed during his testimony. Spanish is his primary language. He was born in Puerto Rico in a Spanish speaking family. He moved to New York City at age three where his family continued to speak Spanish in the home. Although his family speaks English in the home now, he still has relatives with whom he communicates in Spanish. Among his other duties as a state police officer, he teaches "Spanish survival" to other law enforcement officers. "Spanish survivor" refers to teaching English speaking law enforcement officers enough basic Spanish to enable them, hopefully, to be able to communicate with a Spanish speaking person. He had previously acted as a translator for the state police.

13. In this case he was contacted by Officer Gordon Bowers expressly for the

¹⁰ *Diaz*, 743 A.2d at 1183.

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purpose of acting as a translator to enable Officer Bowers to question the defendant.

Upon arriving at the scene, Officer Comacho found that the defendant spoke the same Puerto Rican dialect as he did. He had no difficulty communicating with the defendant. On this record, I find that Officer Comacho was proficient in both Spanish and English.

14. The defendant was given his Miranda warnings with Officer Comacho acting as interpreter. The questioning proceeded with Officer Bowers stating the questions, Officer Comacho translating them into Spanish for the defendant, the defendant stating his answers, and Officer Comacho translating the answers into English for Officer Bowers. On direct examination, the Officer testified that he accurately conveyed the questions to the defendant and accurately conveyed the defendant's answers to Officer Bowers.¹¹ In response to questions posed during cross examination, Officer Comacho testified that he was acting as an interpreter, not an interrogator, and that he didn't ask the defendant any questions apart from the questions posed by Officer Bowers which he translated.¹² He also testified that he translated to the best of his ability with no thought of interrogative techniques, strategy or the like.¹³ At another point in the cross-examination, he testified that he

¹¹ Transcript, Volume B, Page 99.

¹² Transcript, Volume B, Page 117.

¹³ Transcript, Volume B, Page 120.

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wasn't adding or taking anything away from the questions or the answers.¹⁴ Based upon Officer Comacho's testimony and his demeanor,¹⁵ I find that he understood the role of an interpreter, to-wit: to translate accurately the questions posed to the defendant and the defendant's answers to those questions without adding to, omitting from or summarizing those questions and answers.

15. I also find that Officer Comacho was knowledgeable in pertinent ethical issues related to court interpretation. Although he may not have been aware of the Court Interpreters' Code of Professional Responsibility by name, he understood that his role was to interpret the questions and answers accurately and completely, without alteration, omission or addition. I also find that, notwithstanding the fact that he was a state police officer, he understood that his interpreting must be done impartially without bias for or against the defendant or the State. The officer was aware of and displayed a due appreciation for the legal significance of the translation that he was performing, including the fact that the out-of-court statement, which began with the giving of Miranda warnings, may be offered into evidence at any criminal trial, under oath. I conclude that the defendant's out-of-court statement, as translated into English by Officer Comacho, was properly admitted into evidence.

¹⁴ Transcript, Volume B, Page 121.

¹⁵ I recall his testimony.

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16. WHEREFORE, the Prothonotary is directed to deliver this report on remand to the Clerk of the Supreme Court forthwith.

IT IS SO ORDERED.

Resident Judge

oc: Prothonotary
cc: Delaware Supreme Court
Stephen R. Welch, Jr., Esq.
Lloyd A. Schmid, Jr., Esq.