

Third District Court of Appeal

State of Florida

Opinion filed July 8, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-845
Lower Tribunal No. 16-1372

Ernesto Santisteban,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Marisa Tinkler Mendez, Judge.

The Law Offices of Jeffrey S. Weiner, P.A., and Jeffrey S. Weiner, Annabelle H. Nahra Nadler, Diego Weiner and Yisel Villar, for appellant.

Ashley Moody, Attorney General, and Ivy R. Ginsberg, Assistant Attorney General, for appellee.

Before FERNANDEZ, LINDSEY and GORDO, JJ.

GORDO, J.

Ernesto Santisteban appeals his conviction and sentence after a jury found him guilty of organized scheme to defraud. Santisteban argues that the trial court violated his due process rights because it did not, at the outset of the proceedings, inquire whether he needed the services of an interpreter.¹ The court had communicated with Santisteban exclusively in English throughout the entire course of the proceedings, but at the time he decided to testify, he requested the assistance of an interpreter. Up until that point, Santisteban never requested an interpreter or informed his counsel that he required an interpreter, and he insisted that he understood everything that occurred in English. The following exchange took place:

DEFENDANT: I only have one petition. I understand the English, and read well and write well English. My primary language is not English, is Spanish and I rather to testify in Spanish, if you don't mind.

COURT: Well, that's interesting to hear now, towards the end of the trial, that you're asking for an interpreter, when I've spoken with you—

DEFENDANT: No, no, I'm fine with English, but sometimes there is certain word in the English that you may misuse and can be interpreted by the jury—

COURT: This wasn't brought up at any point.

So here's my concern, counsel. I'm hearing this now for the first time. We've been in trial for three days. And the trial is conducted in English, as everyone knows. It was never brought to my attention. There's been no interpreter here throughout the entire proceedings. And

¹ We affirm the remaining issues raised on appeal without further discussion.

now suddenly to bring an interpreter here—it doesn't matter.

DEFENDANT: I don't need it.

COURT: What matters is, the appearance, frankly, because we haven't had an interpreter the whole time to be sitting with your client to interpret to make sure that he very clearly understands all the English and understood my questions, particularly under oath that I asked of him in English. This comes as a big surprise to me.

DEFENSE COUNSEL: Your honor, he informed me of this last night, that he wanted to have an interpreter.

So when we first started, he did say he didn't need an interpreter.

Last night, he brought it up to me: "I feel more comfortable giving my answers in Spanish, because I have a better grasp and have them translate it in English", so that's what I can represent to the Court.

....

COURT: You're concerned about what's been happening in this trial for the last three days?

DEFENDANT: No, I'm very comfortable in this.

....

COURT: He said that he's not—are you concerned? Did you understand everything that was going on in this trial for the last three days?

DEFENDANT: No, no, no, I'm not concerned about understanding what's going on with the trial. I understand everything.

My concern is, when I speak English, maybe I use or I misuse any word that I'm not supposed to say. That's my concern, the meaning of the word, not the—

COURT: There's been English spoken here the whole time, okay?

I'm asking you, sir, are you telling me now that all of the words that have been spoken here, that there's any question or concern—

DEFENDANT: No, no.

COURT: —about the meaning of any of those words?

DEFENDANT: Not at all. I have no concern about that. I'm concerned about my language.

COURT: It raises a very interesting question, because I understand you perfectly.

After this extensive colloquy, the court was assured that Santisteban understood everything that occurred in the trial. Santisteban then testified with the assistance of an interpreter.

Santisteban never objected to the trial court's failure to determine the need for a Spanish interpreter at any time throughout the trial proceedings. For the first time on appeal, Santisteban claims that he was essentially tried in absentia and deprived of due process because he did not have an interpreter present for the whole trial. “[T]he failure to object to error, even constitutional error, results in a waiver of appellate review” unless there was fundamental error. D’Oleo-Valdez v. State, 531 So. 2d 1347, 1348 (Fla. 1988) (citing Sanford v. Rubin, 237 So. 2d 134 (Fla. 1970)). “An error is fundamental when it goes to the foundation of the case or the merits of the cause of action and is equivalent to a denial of due process.” J.B. v.

State, 705 So. 2d 1376, 1378 (Fla. 1998) (citing State v. Johnson, 616 So. 2d 1, 3 (Fla. 1993)). We glean no such error on this record as Santisteban unequivocally stated that he understood everything that occurred in the trial and the trial court provided an interpreter to translate his testimony. See Pierre v. State, 597 So. 2d 853 (Fla. 3d DCA 1992); Larias v. State, 528 So. 2d 944 (Fla. 3d DCA 1988).

We write further to address Santisteban's request that this Court promulgate a rule "that all trial judges in this District inquire of every defendant and their attorney, at the earliest judicial proceeding, whether the defendant requires the assistance of an interpreter." Santisteban proposes that due process in the courts within the Third District Court of Appeal requires trial courts to inquire of every defendant and their attorney regarding a defendant's understanding of the English language and the need for the services of an interpreter. He argues this is so even where there is no request by the defendant or defense counsel for an interpreter and where the defendant understands and communicates with the court in English.

It is well established that "[a] non-English speaking defendant has the right to an interpreter, a right grounded on due process and confrontation considerations of the Constitution." Benitez v. State, 57 So. 3d 939, 940 (Fla. 3d DCA 2011) (quoting Cadet v. State, 809 So. 2d 43, 45 (Fla. 4th DCA 2002)). "Once the trial court is aware that an accused has difficulty with the English language, the court should determine whether a defendant understands English sufficiently to aid in his defense,

much as the court has a duty to determine whether a defendant is mentally competent.” Id. at 941 (quoting Cadet, 809 So. 2d at 45). In the absence of any indication to the court that there may be a genuine language barrier, we decline Santisteban’s invitation to espouse a categorical rule requiring trial courts within the Third District to inquire of every defendant regarding the need for an interpreter.

Affirmed.