

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Romeo Vasquez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 29, 2021

Court of Appeals Case No.
21A-CR-1033

Appeal from the Marion Superior
Court

The Hon. Sheila Carlisle, Judge
The Hon. Stanley Kroh,
Magistrate

Trial Court Cause No.
49D29-2010-F5-32316

Bradford, Chief Judge.

Case Summary

[1] In October of 2020, Romeo Vasquez was living with E.L. at 53 North Sherman Drive in Indianapolis. On the morning of the 17th, Vasquez and E.L. argued in the backyard, and Vasquez struck E.L., who happened to be pregnant at the time. The State charged Vasquez with Level 5 felony battery resulting in injury to a pregnant woman, Class A misdemeanor domestic battery, and Class A misdemeanor battery resulting in bodily injury. Before E.L. testified at Vasquez’s trial, two interpreters of her first language were found to be unsatisfactory, so she proceeded with a Spanish to English translator. Vasquez contends that the trial court violated his right to confront the witnesses against him by allowing the use of the Spanish to English interpreter. Finding that the translator reasonably conveyed the intent or the idea of the thoughts spoken by E.L., we affirm.

Facts and Procedural History

[2] Between 9:30 and 11:00 a.m. on October 17, 2020, Alexander Kaufman was in the backyard of his Indianapolis home and noticed Vasquez and E.L. arguing next door. Kaufman saw Vasquez strike E.L. “hard” with a closed fist once in the head and twice to the lower abdomen. Tr. Vol. II p. 170. Kaufman testified that E.L. “[c]ringed like in a blocking style” when Vasquez first struck her. Tr. Vol. II p. 170. Police arrived after Kaufman called 911 and took Vasquez into custody. On October 21, 2020, the State charged Vasquez with Level 5 felony battery resulting in injury to a pregnant woman, Class A misdemeanor domestic battery, and Class A misdemeanor battery resulting in bodily injury.

- [3] Vasquez’s jury trial was held on April 29, 2021. E.L.’s first language is the Nicaraguan indigenous language Mam, although she has at least some proficiency with Spanish and English. The trial court had requested that E.L. be provided a Mam to Spanish interpreter through an organization known as LUNA, and the original plan was for E.L.’s testimony to be translated from Mam to Spanish before another interpreter translated E.L.’s testimony from Spanish to English. E.L.’s first Mam interpreter appeared by telephone but proved to be unusable. The parties and the trial court agreed to attempt to proceed with a second Mam to Spanish interpreter, who also appeared by phone. Initially, E.L. indicated that she understood the second interpreter, but it was soon established that she was, in fact, able to understand very little. The Spanish to English interpreter spoke to E.L. again, and afterward, told the trial court, “[y]es, she understands[.]” Tr. Vol. II p. 159.
- [4] At the start of E.L.’s testimony, the trial court addressed the Mam interpreter and asked her to instruct E.L. to raise her right hand to be sworn in. E.L., speaking English, asked, “[w]hat did she say?” Tr. Vol. II p. 184. The trial court told the interpreter to “repeat again what [...] the interpretation that I just—of what I said to administer the oath.” Tr. Vol. II p. 184. E.L. responded, “I didn’t understand.” Tr. Vol. II p. 184. At that point, the Spanish to English interpreter interjected, “I can’t make out what the witness is saying to me in any dialect.” Tr. Vol. II p. pp. 184–85. One of the interpreters then confirmed that, “[s]he’s saying, Judge, that she does not understand.” Tr. Vol. II p. 185.

- [5] After asking the Mam interpreter to stand by on the line, the trial court discussed the interpretation issue with the parties. The prosecutor requested that trial proceed with E.L.'s testimony being translated from Spanish to English. The prosecutor noted that "[t]he deposition was conducted in Spanish. She's here because we've been communicating with her in Spanish. We sat in her living room and prepared her for this jury in Spanish." Tr. Vol. II p. 185. Vasquez objected on the grounds that E.L. had previously appeared to have difficulty understanding questions asked in Spanish during her deposition. The objection was ultimately overruled, and the trial court ordered E.L. to proceed with a Spanish to English translator.
- [6] On direct examination, E.L. was asked to identify Vasquez by pointing to him but initially declined to do so because she was "scared." Tr. Vol. II p. 188. The prosecutor asked a series of questions about whether E.L. could describe what Vasquez was wearing and at which end of the defense table Vasquez was seated. To this last question, E.L. responded, "No. I don't know." Tr. Vol. II p. 189. The prosecutor asked E.L. once again to "[p]lease point to Romeo." Tr. Vol. II p. 189. In response, E.L. said, "[h]e's right there" and gestured in Vasquez's direction. Tr. Vol. II p. 189.
- [7] The remainder of E.L.'s direct examination proceeded without incident. With the aid of her Spanish to English interpreter, E.L. testified that she and Vasquez had been dating on October 17, 2020, she had been pregnant with Vasquez's child on that date, and she had discussed the pregnancy with Vasquez. E.L. also testified that she and Vasquez had become involved in an argument and

that Vasquez had struck her during the argument. E.L. confirmed that the blows from Vasquez had caused her pain.

[8] On cross-examination, E.L. seemed to have difficulty understanding some of the questions. When Vasquez’s trial counsel asked E.L. “[h]ow far along in the pregnancy were you” on October 17th, 2020, E.L. responded, “I don’t know.” Tr. Vol. II p. 192. Counsel then asked E.L., “When are you due?”, to which E.L. again responded, “I don’t know,” before clarifying that she was “eight months” pregnant at trial. Tr. Vol. II p. 192.

[9] Vasquez requested a mistrial, arguing that the problem with the interpreter “boils down to a confrontation issue” because, while he conceded he had “no reason to think that [his] questions and the answers weren’t being translated accurately,” he could not “tell if the spirit of the question matches the spirit of the answer,” which he argued meant that he was unable to “effectively cross-examine” a witness with whom he was not “on the same page[.]” Tr. Vol. II p. 201. Vasquez’s counsel cited multiple examples of testimony E.L. provided during her deposition, including one exchange where E.L. supposedly stated that she “was pregnant before [she] met Romeo” and “was already pregnant.” Tr. Vol. II p. 201. Counsel argued that these “nine or ten lines of the deposition” demonstrated that E.L. had “issues with time, when things happened, the order of things happening.” Tr. Vol. II p. 201.

[10] The interpreter explained to the trial court that she noticed E.L. had difficulty understanding certain verb tenses in the questions asked. Spanish, she stated, contains “a wide variety of tenses, way more than English,” which could be

problematic to E.L. Tr. Vol. II p. 203. As an example, the interpreter said, “it got my attention where the question was, [w]ere you hit, or [d]id he make contact with you that day, which is a specific past” tense, and E.L.’s “answer was in the imperfect tense.” Tr. Vol. II p. 203. The interpreter stated, “based also in my experience of speaking with that Spanish, when other people from different coastal dialects from different regions, that perhaps there is a break in the tense in the understanding of the chronological timeline.” Tr. Vol. II p. 203. After the trial court denied Vasquez’s request for a mistrial, the interpreter made the following suggestion:

If I—from—from my own little field, if we can—if we could give the questions without the double negatives or without two options in the same question ... then we don’t know what the no or the yes as to the first part or the second part. So that would be one thing. And also I don’t know—I’m not an attorney, but from the language perspective, if you can lower the register a little bit. Like putting it perhaps in a—easier, perhaps will be better understood.

Tr. Vol. II p. 204.

[11] Following the conclusion of the hearing on the mistrial motion, a second Spanish to English interpreter stepped in to translate for E.L. Vasquez’s attorney proceeded with his cross-examination of E.L.:

Q. All right. [E.L.], on October 17, 2020 how many times did Romeo hit you?

THE INTERPRETER: The interpreter is not completely sure. May I ask for clarification?

THE COURT: Yes.

A. Two.

Q. He hit you two times that day?

A. Yes.

Q. Where on your body?

A. On my face.

Q. Both times?

A. Yes.

Q. And your testimony today is that you are eight months pregnant; is that right?

A. Yes.

Q. Do you remember talking to Detective Kermon on the phone.

A. Yes.

Q. Do you remember telling Detective Kermon that you were six months pregnant?

A. Yes.

Q. And you had that conversation just a few days after this incident happened; right?

A. Yes.

MR. JARED: I have no other questions, Your Honor.

Tr. Vol. II pp. 208–09.

[12] The jurors, who had not been in the courtroom for the hearing on the mistrial motion, provided questions for E.L. following Vasquez’s cross-examination. At first, the trial court asked E.L. “on what date did you find out you were pregnant,” but E.L. stated, “I didn’t understand.” Tr. Vol. II p. 210. The trial court attempted to rephrase the question, but E.L.’s interpreter was unable to understand her answer due to the volume of E.L.’s response. The trial court asked again, “[w]hen did you learn that you were with a child, that you are going to have a baby?” Tr. Vol. II p. 211. E.L. clarified, “[t]his one?”, Tr. Vol.

II p. 211, but her interpreter was again unable to understand her response and suggested switching back to the original Spanish to English translator.

Eventually, E.L. testified that she learned she was pregnant when she “went to the doctor,” and that she went to the doctor when she “was four months.” Tr. Vol. II p. 211. E.L. testified that she did not remember when that doctor’s appointment occurred. The trial court followed up by asking, “[w]hen does [E.L.] plan to have her child?”, to which E.L. replied, “[h]e’s eight months now.” Tr. Vol. II p. 212. For the last question, the trial court asked, “when, if you did, did you inform the defendant you were pregnant?” Tr. Vol. II 212. E.L. replied, “[i]t was a month,” and said that she “didn’t understand” when the trial court asked her to clarify “a month from when?” Tr. Vol. II p. 212.

[13] Vasquez’s attorney asked E.L. several follow-up questions related to her responses to the juror questions. Tr. Vol. II p. 212. Specifically, counsel asked, “Do you mean you told Mr. Vasquez you were pregnant one month before October 17th?” Tr. Vol. II p. 212. E.L. responded, “[y]es” to that question. Tr. Vol. II p. 212. Counsel then asked, “So in September of 2020, you knew you were pregnant” and “you told Romeo you were pregnant?” Tr. Vol. II p. 212. E.L. answered “[y]es” to both of these questions as well. Tr. Vol. II p. 212.

[14] Kaufman identified Vasquez in open court, testified that he had seen him strike E.L. on October 17, 2020, and identified a photograph of E.L. as being of the woman he had seen Vasquez strike. Kaufman indicated that the weather had been “nice” that day and that he had had a clear view of the persons arguing

next door. Tr. Vol. II p. 166. Indianapolis Metropolitan Police Officer Steven Sanchez, who responded to the scene of the fight, testified that E.L. had had marks on her neck and a mark on her right cheek. The jury found Vasquez guilty as charged, and the trial court entered judgment of conviction on Level 5 felony battery of a pregnant woman causing injury. On May 21, 2021, the trial court sentenced Vasquez to three years of incarceration with 289 days executed and 806 suspended, 545 of those to be served on probation.

Discussion and Decision

[15] Vasquez contends that the trial court abused its discretion in allowing E.L.’s testimony with the Spanish to English interpreter, arguing that the interpreter was inadequate to ensure protection of his right to confront the witnesses against him. It should be noted at the outset that the only uncorroborated elements of the crime for which Vasquez was convicted were that E.L. was pregnant at the time of Vasquez’s battery and that Vasquez was aware of her pregnancy.¹ To the extent appropriate, we will focus our analysis on those elements.² That said, the due process clause of the Fourteenth Amendment

¹ Indiana Code section 35-42-2-1 provides, in part, that “a person who knowingly or intentionally [...] touches another person in a rude, insolent, or angry manner [commits] a Level 5 felony if [...]the offense results in bodily injury to a pregnant woman if the person knew of the pregnancy.” Ind. Code § 35-42-2-1(c)(1), -1(g)(3).

² It is well-settled that even “[t]he improper admission of evidence is harmless error when the erroneously admitted evidence is merely cumulative of other evidence before the trier of fact.” *Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017), *trans. denied*. Here, E.L.’s testimony tended to prove that she and Vasquez had fought on October 17, 2020, he had struck her causing her pain, and she was pregnant at the time, almost all of which was merely cumulative of evidence. Kaufman testified that he had clearly seen Vasquez strike E.L., causing her to “cringe” and assume a defensive posture, while Officer Sanchez testified that he had seen marks on E.L. consistent with her having been struck.

guarantees a non-English speaking indigent criminal defendant an interpreter to translate court proceedings. *Martinez Chavez v. State*, 534 N.E.2d 731, 736–37 (Ind. 1989). Interpreters play a critical role in safeguarding the fundamental fairness of criminal trials. *Ponce v. State*, 9 N.E.3d 1265, 1272 (Ind. 2014). When being used to interpret testimony, “[a]n interpreter must give the witness the precise form and tenor of each question propounded, and [...] in like manner translate the precise expressions of the witness.” *Diaz v. State*, 934 N.E.2d 1089, 1095 (Ind. Ct. App. 2010) (citing *People v. Cunningham*, 546 N.W.2d 715, 716 (Mich. Ct. App. 1996)). “A limitation on cross-examination preventing a defendant from placing before the jury facts from which bias, prejudice, or lack of credibility of a prosecution witness might be inferred constitutes denial of the constitutional right of confrontation.” *Cunningham*, 546 N.W.2d at 717.

[16] A trial court’s ruling on a request for a translator is reviewed for an abuse of discretion. *Gado v. State*, 882 N.E.2d 827, 830 (Ind. Ct. App. 2008); *Nur v. State*, 869 N.E.2d 472, 480 (Ind. Ct. App. 2007), *trans. denied*. The trial court’s decisions regarding interpreters receive considerable deference, and we can affirm on any basis apparent in the record. *Stahl v. State*, 686 N.E.2d 89, 91 (Ind. 1997); *Benham v. State*, 637 N.E.2d 133, 138 (Ind. 1994). We have long recognized that trial courts are in the best position to weigh evidence and make credibility determinations, and we will not second-guess those judgments on appeal. *Moshenek v. State*, 868 N.E.2d 419, 424 (Ind. 2007). Consequently, Vasquez will only prevail on his claim if he can establish that the trial court’s

decision to allow E.L. to testify using a Spanish to English interpreter was contrary to the facts and circumstances before it. *Bennett v. State*, 119 N.E.3d 1057, 1058 (Ind. 2019); *State v. Thakar*, 82 N.E.3d 257, 259 (Ind. 2017).

[17] When the accuracy of a translation is at issue, “the basic constitutional inquiry” is “whether any inadequacy in the interpretation made the trial fundamentally unfair.” *U.S. v. Leiva*, 821 F.3d 808, 820 (7th Cir. 2016). A defendant is deprived of due process when what is told to him is incomprehensible or the accuracy and scope of a translation at a trial is subject to grave doubt. *Ponce*, 9 N.E.3d at 1268. Isolated inaccuracies, omissions, interruptions, or other “hiccups” in translations fall short of the mark necessary to show “grave doubt.” *U.S. v. Garcia*, 948 F.3d 789, 802 (7th Cir. 2020); *Diaz*, 934 N.E.2d at 1095. So long as an interpreter is able to “reasonably convey[] the intent or the idea of the thought spoken,” the requirements of fundamental fairness are met. *U.S. v. Gonzalez*, 319 F.3d 291, 296 (7th Cir. 2003).

[18] Under the circumstances of this case, Vasquez has failed to carry his burden to establish that his trial was fundamentally unfair. While the interpreter undoubtedly had some difficulty communicating with E.L., this difficulty did not amount to a denial of Vasquez’s right to confront her. As laid out more fully in the facts, after two Mam to English interpreters were tried and found unsatisfactory, it was decided to use a Spanish to English interpreter, which had already been done for E.L.’s deposition. E.L.’s direct examination proceeded without any apparent difficulty, during which she identified Vasquez and

testified that he had struck her on October 17, 2020; she had been pregnant at the time; and she had discussed the pregnancy with him.

[19] On cross-examination, Vasquez began by asking E.L. several questions regarding her pregnancy, some of which she appeared not to fully understand. E.L. did testify, however, that she was eight months pregnant at trial; that she had been pregnant on October 17, 2020; and that she had discussed the pregnancy with Vasquez. When Vasquez asked E.L. about the potential for special treatment in immigration court for victims of domestic abuse and how long it took police to arrive on October 17, 2020, she seemed to have difficulty understanding some of the questions as well, which led to a sidebar with the trial court, counsel, and the interpreter.

[20] During the sidebar, the interpreter indicated that, although she was not 100 percent confident that she was effectively communicating with E.L., she did not think anything was missing from her interpretation, nor had she added anything to what E.L. had said. The interpreter opined that E.L. had “limited understanding of the Spanish” and that “[q]uestions are asked sometimes in a higher register than what a layperson can understand,” referring to the “sophistication of the language, the vocabulary.” Tr. Vol. II p. 198.

[21] At this point, Vasquez requested a hearing outside the presence of the jury, during which he noted some instances of what appeared to be problems during E.L.’s deposition. The State responded that it has communicated with E.L. in Spanish on “numerous occasions” and that the issues that had arisen in her deposition were “cleaned up” when questions were rephrased. Tr. Vol. II p.

202. After the interpreter suggested that some of the difficulty might be due to the wide variety of tenses in Spanish, Vasquez moved for a mistrial. The trial court denied Vasquez's motion for mistrial and admonished the jury to disregard the conversation it had had with the interpreter during the sidebar, after which Vasquez continued his cross-examination. E.L. clarified that Vasquez had struck her twice on October 17, 2020, and that she was eight months pregnant at trial.

[22] Although Spanish is not E.L.'s first language, we cannot say that the use of a Spanish to English interpreter here was unreasonable, given that the State and her counsel had been communicating with E.L. in Spanish throughout the case, two Mam interpreters had proven to be unsatisfactory, and the Spanish to English interpreter had verified that E.L. could understand her. Moreover, the record indicates that Vasquez was able to effectively explore inconsistent statements from E.L. regarding her pregnancy and residence, asking whether she had told a detective that she was six months pregnant a few days after October 17, 2020, and did not live with Vasquez at 53 North Sherman Drive at the time. Finally, the trial court was in the best position to observe E.L.'s interactions with the interpreter and gauge her level of comprehension, confusion, etc., far better than we can from a cold record. Because a fair reading of the record is that the translator reasonably conveyed the intent or idea of the thoughts spoken by E.L., we affirm. *See Gonzalez*, 319 F.3d at 296.

[23] We affirm the judgment of the trial court.

Robb, J., and Altice, J., concur.