

COURT OF APPEALS OF VIRGINIA

Present: Judges Bray, Bumgardner and Clements
Argued at Chesapeake, Virginia

MAURICE SAUNDERS

v. Record No. 0975-01-1

OPINION BY
JUDGE RUDOLPH BUMGARDNER, III
APRIL 23, 2002

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH
Dean W. Sword, Jr., Judge

(Nathan A. Chapman; Michael Jerome Massie;
Holley & Massie, P.C., on briefs), for
appellant. Appellant submitting on briefs.

Richard B. Smith, Senior Assistant Attorney
General (Randolph A. Beales, Attorney
General, on brief), for appellee.

The trial court convicted Maurice Saunders of attempted murder, malicious wounding, two counts of robbery, and four related firearms charges. On appeal, he contends the trial court erred in admitting a transcript of the victim's testimony at the preliminary hearing. He argues that the general district court did not comply with Code § 19.2-164¹ when it appointed an

¹ Code § 19.2-164 provides in part,

[i]n any criminal case in which a non-English-speaking person is a victim or witness, an interpreter shall be appointed by the judge of the court in which the case is to be heard An English-speaking person fluent in the language of the country of the . . . victim or a witness shall be appointed by the judge of the court in which

interpreter and that the translations were inaccurate. Finding no error, we affirm.

Two men robbed the victim, Riadh Mejri, at gunpoint while he worked at Valley Food Store. The victim testified through an interpreter at the preliminary hearing, but the victim was murdered before the trial. The victim primarily spoke Arabic but also spoke French having been born in France. A friend of the victim offered to translate Arabic. The defendant objected because of bias, and the district court sustained the objection. The Commonwealth then offered a French interpreter. After speaking with the interpreter, the victim indicated he was comfortable with the interpreter and chose to use her. The district court judge swore the interpreter, who translated for the victim throughout the hearing.

The defendant made no objection in district court to the use of the interpreter or to the accuracy of the translations. He made no objections about the preliminary hearing after the charges were certified to the circuit court. At trial, the Commonwealth introduced the death certificate of the victim and proffered the certified preliminary hearing transcript. The

the case is to be heard, unless such person obtains an interpreter of his own choosing who is approved by the court as being competent. . . . The provisions of this section shall apply in both circuit courts and district courts.

defendant moved to exclude it. The circuit court admitted the transcript.

First, the defendant contends the circuit court erred in admitting the transcript because the district court failed to appoint an interpreter fluent in the language of the witness' country of origin. The defendant complains about decisions made by the district court during the preliminary hearing, not to decisions made by the circuit court. Code § 19.2-164 clearly states the approval and appointment of interpreters is a decision of "the judge of the court in which the case is to be heard." The defendant objected to one interpreter, and the district court sustained that objection. He made no further objection, and the district court approved the French interpreter and proceeded with the preliminary hearing without objection.

The purpose of requiring a contemporaneous objection is to enable the opposing party to respond to the alleged error and to enable the ruling court to take any necessary corrective action. Rule 5A:18; Weidman v. Babcock, 241 Va. 40, 44, 400 S.E.2d 164, 167 (1991). The district court was the only place where corrective action could have cured mistakes made in translating the preliminary hearing. At trial, the circuit court could not adequately address evidentiary rulings made final at the preliminary hearing.

The record of the preliminary hearing does not indicate the district court erred when appointing the interpreter. The defendant contends the district court judge failed to appoint an interpreter fluent in the language of the country of the victim, which the defendant asserts is Arabic. Under the literal interpretation he urges, no one would qualify to translate Arabic. While widely spoken, and the predominant language in many countries, Arabic is not affiliated with a particular county. Arabia is a peninsula. Code § 19.2-164 cannot be read literally because languages frequently do not correlate with national boundaries or identify with a single country: English, German, Spanish. We cannot adopt a statutory interpretation that leads to an illogical result. Earley v. Landsidle, 257 Va. 365, 369, 514 S.E.2d 153, 155 (1999). Ironically, if such a literal interpretation were applied to this case, the district court properly appointed a French interpreter because France was the country of the victim's birth.

Next, we consider the defendant's contention that the circuit court should have excluded the transcript because it was inaccurate.² The judge presiding at the proceedings being

² To the extent the defendant argues the circuit court's admission of the preliminary hearing transcript violated his federal constitutional rights, he did not make this argument to the circuit court and cannot raise it now. West Alexandria Props. v. First Virginia Mortgage, 221 Va. 134, 138, 267 S.E.2d 149, 151 (1980).

transcribed determines "the veracity of the proceedings before him." Stubblefield v. Commonwealth, 10 Va. App. 343, 350, 392 S.E.2d 197, 200 (1990). That judge determines whether "the interpreter is performing . . . her duties satisfactorily" by translating the witness' responses with a "reasonable degree of accuracy." Id. The presiding judge is "in a unique position to observe the activities of the parties and the clarity of understanding that [was] offered by the translated testimony." Id.

The proceedings at the preliminary hearing for this defendant met the requirements of Stubblefield. The presiding judge directed the interpreter to give an accurate, verbatim translation of everything the victim said and instructed her to request the victim to keep his answers short. The record reflects that when the defendant wanted to make certain the victim understood the question, the interpreter clarified both the question and the victim's response. When the defendant objected to an unresponsive answer, the presiding judge sustained the objection.

Contrary to the defendant's assertion that the transcript is "riddled with mistakes," the presiding judge's "admonishments" to the interpreter show that he was discharging his duty to ensure an accurate translation. An interpreter's "difficulty in translating the testimony, without more, is insufficient to rebut the presumption that [s]he has acted

properly." Id. at 350-51, 392 S.E.2d at 200 (citations omitted). By admitting the testimony, the district judge determined the interpreter was performing her duties with a "reasonable degree of accuracy." The record does not reflect that the testimony and incidents of the hearing were inadequately memorialized.³

The prior testimony of a deceased witness is admissible at trial. Shifflett v. Commonwealth, 218 Va. 25, 28-29, 235 S.E.2d 316, 318-19 (1977) (unrecorded prior testimony is admissible at trial). The certified transcript of the preliminary hearing is deemed a correct statement of what occurred at the hearing. Code § 19.2-165.⁴ After finding no significant errors related to the "factualness" of the translation, the circuit court admitted it. The circuit court judge stated, the "transcript . . . as an

³ To the extent the defendant contends the translation was inaccurate, the record provides no means to verify the translation. The transcript records only the English spoken at the preliminary hearing. Without a transcript of the French spoken, we are unable to compare the testimony given in French with its translation into English to determine whether the translation was accurate. See Code § 8.01-406 (authorizing a video transcript of testimony by deaf witnesses for use in verifying the official transcript).

⁴ Code § 19.2-165 provides in part that "[t]he transcript in any case certified by the reporter . . . shall be deemed prima facie a correct statement of the evidence and incidents of trial."

interpretation of a foreign language, is probably about as good as it gets"

When the former testimony carries sufficient indicia of reliability, it provides the trier of fact a satisfactory basis for evaluating the truth of the earlier testimony. Fisher v. Commonwealth, 217 Va. 808, 813, 232 S.E.2d 798, 802 (1977). The fact finder remains the judge of the weight of the evidence and the credibility of the witnesses. In this case, the circuit court judge believed the victim's transcribed testimony, which was corroborated by an eyewitness, and disbelieved the defendant's testimony that he was an innocent bystander.

Upon careful review of the record, we conclude the circuit court did not err in admitting and relying upon the transcript of the victim's testimony at the preliminary hearing.

Affirmed.