

Commonwealth of Pennsylvania v. Jaylen Akhmedova, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch,
Civil Action No. 395-2013

HEADNOTES

Criminal law – Defendant’s Right to a Language Interpreter; Defendant’s right to remand case to Preliminary Hearing Stage

Defendant’s Right to an Interpreter – Generally:

1. Pursuant to 42 Pa. C.S.A. § 4412(a), “upon request . . . that a principal party in interest or witness has a limited ability to speak or understand English, then a certified interpreter shall be appointed.” The named Defendant in the case is a “principal party in interest.” § 4402. Whether the Defendant has a “limited ability to speak or understand English” depends on if it is shown that she “speaks exclusively or primarily a language other than English and is unable to sufficiently speak and understand English, so as to fully participate and be understood in a judicial proceeding.” 204 Pa. Code § 102 (m).
2. For the Court to appoint an interpreter, the Defendant must show that (1) English is not her first language, and (2) she is *unable to sufficiently speak and understand* English, and thus she cannot *fully* participate and be understood in a judicial proceeding.
3. Because it is undisputed that Russian is Defendant’s first language, not English, this first requirement is met. Whether an interpreter should be appointed for the Defendant going forward is a factual inquiry.

Determination of whether Interpreter should be Appointed – Factual Question:

1. Generally, “the determination of whether an interpreter is warranted in a particular case is within the sound discretion of the [trial] court.” Commonwealth v. Wallace, 641 A.2d 321, 324 (Pa. Super. 1994). Once a Court has “been put on notice that the defendant has difficulty understanding or speaking the English language, it must make unmistakably clear to him that he has a right to have a competent translator assist him, at state expense if need be.” In re Garcia, 984 A.2d 506, 511 (Pa. Super. 2009).
2. Once the Court is aware of the issue, it must conduct the factual inquiry into whether an interpreter should be appointed for the defendant. This Court held an omnibus hearing on January 9, 2014, to determine whether a Russian interpreter should be appointed.

Determination: Defendant is entitled to the use of an Interpreter going forward:

1. Here, the Defendant is entitled to have an interpreter going forward. Russian is the Defendant’s first language. The Defendant testified in Russian at the omnibus hearing, and her interpreter translated her testimony. Regarding the preliminary hearing, she stated that she did not fully understand what was going on because she had not been in trouble with the law before. She indicated that she had trouble with the English language, although the Court notes several words which were overheard in English. The Defendant stated that she had no trouble understanding “basic English” but had trouble with “legal terms.”
2. There are various constitutional concerns which are implicated by disallowing the use of an interpreter. A Defendant’s failure to understand the proceedings due to the language impediment “may deny him his right to confront witnesses against him, his right to consult with his attorney, or his right to be present at his own trial.” Commonwealth v. Wallace, 641 A.2d 321, 324 (Pa. Super. 1994).
3. Therefore, the Court having been put on notice of Defendant’s legal entitlement to an interpreter, and in the interest of protecting her constitutional rights, the Court finds that the Defendant is entitled to a Russian interpreter in all proceedings going forward.

Determination: Defendant is not entitled to have case remanded to preliminary hearing stage:

1. Although the Defendant may have an interpreter for the proceedings going forward, she is not entitled to have her case remanded to the preliminary hearing stage.
2. The case law requires the trial court to determine whether an interpreter should be appointed for the case going forward. See Wallace, 641 A.2d at 325 (“If it becomes apparent that an interpreter is necessary during the trial, the court should, on its own motion or on motion of a party, make an interpreter available.”). The purpose underlying the determination of whether an interpreter should be appointed is to ensure that the Defendant’s rights are protected. As with that determination, the question of whether the case should be remanded must be answered “in view of the important rights involved” and considering “all relevant factors in its initial determination of need.” Id.
3. Based on the testimony presented at the omnibus hearing, the Court finds that the Defense failed to establish that any difficulty with the English language mandated that the case be remanded to the preliminary stage. The testimony presented by the Commonwealth was credible, namely, that the Defendant did appear to comprehend the nature of the proceedings at her preliminary hearing. Nothing in the applicable case law requires the case be remanded. The majority of cases discuss a defendant’s ability to meaningfully participate at trial.

4. Additionally, while a Defendant may be entitled to an interpreter based on a difficulty with the English language, claiming to have difficulty understanding legal terminology is not itself a reason to remand the case to its beginning stages. Most lay persons have at least some difficulty understanding legal jargon regardless of their native language. The Defendant will have the benefit of an interpreter going forward, such that at trial she may present and hear testimony in her native tongue, thereby ensuring that her constitutional rights are protected.

Appearances:

Anthony Miley, *Attorney for Defendant*

Steven Smith, *Franklin County District Attorney's Office*

OPINION

Before Meyers, J.

This Opinion addresses Defendant's motion to remand her case back to the preliminary hearing stage, based on the argument that she should have been provided with an interpreter at her preliminary hearing. The procedural history of this case is as follows.

The Defendant was charged on January 9, 2013 with Driving under the Influence. On February 26, 2013, Defendant appeared for her preliminary hearing on February 26, 2013. Defendant agreed to a waiver of her preliminary hearing and agreed to enter into the ARD program offered by the Commonwealth. Formal arraignment was set for March 27, 2013. Defendant filed a continuance motion, and arraignment was continued to May 1, 2013. Defendant appeared on May 1, 2013 and waived arraignment. The Defendant did not enter into ARD on either date. Defendant was scheduled for Call of the List on June 17, 2013.

On May 2, 2013, Defendant's counsel filed a *Motion to List for Pre-Trial Conference*, indicating that Defendant had subsequently decided not to proceed with the ARD program and instead wanted to go to trial. The Court denied the motion. On May 20, 2013, Defendant's counsel filed a scheduling motion, and this Court set the case for a disposition hearing on June 5, 2013. The Court entered an Order on June 27, 2013, scheduling the case for a pretrial conference on August 21, 2013. The Court held the pretrial conference, after which Defendant's case was set for a bench trial on October 10, 2013.

On the date of Defendant's trial, her counsel advised the Court that Russian was Defendant's first language, and that she desired the use of an interpreter. The Court, being unable to secure an interpreter with such late notice and recognizing the due process concerns raised, continued the case and ordered the Defense to file a motion by October 29, 2013. Defendant filed an Omnibus motion on October 14, 2013, requesting the use of a Russian interpreter and requesting the case be remanded to the preliminary hearing stage. This Court held a hearing on the motion on January 9, 2014. Upon conclusion of the omnibus hearing, the Court ordered briefs. The Commonwealth and the Defense filed their respective briefs on January 17, 2013. This Court finds that the matter is now ready for decision.

FACTS

At the omnibus hearing held on January 9, 2014, the Commonwealth presented testimony from Ms. Burrows, the discovery coordinator at the Franklin County District Attorney's Office. One of her responsibilities is to speak to defendants who appear for their preliminary hearing about the procedural aspects of the hearing.

Ms. Burrows testified that on February 26, 2013 she met the Defendant when she showed up for her preliminary hearing. Ms. Burrows testified that the Defendant engaged her in conversation, in English. The Defendant continuously asked her things like how long the proceeding would take, when someone would come to the lobby to speak to her, etc. Ms. Burrows described the Defendant as being "very loud and very vulgar," and was "using numerous swear words." She stated that the majority of the time it was the Defendant speaking to her and Ms. Burrows listening. The Defendant indicated that she "knew what her rights were," but did not go into further detail. She indicated that she went to college. Ms. Burrows stated that the Defendant "spoke very well in perfect English."

The Commonwealth also presented testimony from Assistant District Attorney David Drumheller. Attorney Drumheller testified that he spoke with the Defendant on the date of her preliminary hearing. Upon speaking with the Defendant, Attorney Drumheller noticed her accent. He then specifically asked her if she needed an interpreter, to

which she replied “No, I understand what you are f***ing saying, I go to college.” She then indicated that she attended college at the University of Maryland and was on the Dean’s List. Attorney Drumheller described the Defendant as “very angry” that she had to be there, and that she had been charged with a crime, and became “indignant” at that time. The Defendant was adamant that no matter what happened, she would go to jail.

Attorney Drumheller testified that he explained to the Defendant what a preliminary hearing was, why she was there that day, and her eligibility for the ARD program. He explained that her eligibility was dependent on her waiving the preliminary hearing. He testified that he explained her rights to her as they applied that day to the preliminary hearing, and to the waiver of the preliminary hearing. He explained that waiver did not mean she was waiving her claim of innocence. Attorney Drumheller indicated that there was never a time where the Defendant appeared to have trouble understanding what he was telling her.

According to attorney Drumheller, the Defendant indicated that she did not want to proceed with the ARD program but go forward with the hearing that day, even if ARD could result in a dismissal of the charges. After attorney Drumheller prepared for the preliminary hearing, the parties appeared in front of Magistrate Judge Williams, who spoke with the Defendant to confirm that she understood everything attorney Drumheller had told her. During this time the Defendant appeared to weigh her options, and asked for further clarification, but no more than any other lay person who appears for a preliminary hearing. Attorney Drumheller stated that at that point, she decided to waive the preliminary hearing and go forward with the ARD program. Both Ms. Burrows and attorney Drumheller testified that they have experience with speaking with individuals who do not understand or speak English well. Both described the Defendant as being able to speak and understand English quite well.

The Defense presented testimony from the Defendant, through the use of a Russian interpreter. The Defendant testified that at the time of her preliminary hearing she “didn’t understand what was going on because [she] never had issues with the laws before.” She stated that she didn’t understand exactly who attorney Drumheller was. She stated that she does go to college at the University of Maryland, but is on probation based on her trouble with the English language. She testified that she remembered stating she did not want to do the ARD program, after which she changed her mind. She specifically remembered changing her mind at the time, but indicated that she never wanted to do the ARD program, she just wanted to “explain her situation.” The Defendant testified that she expected she would explain her side, have to attend one or two hearings, and be told guilty or not guilty. She did not think she would have to be in Court every month. She stated that she did not recall being told she had a right to an attorney at her preliminary hearing, nor that she had a right to present evidence or call witnesses. On cross-examination, the Defendant denied that attorney Drumheller advised her of any of the rights she had at the preliminary hearing stage. She stated that she had no trouble understanding “basic English” but had trouble with “legal terms.”

DISCUSSION

The sole issue raised by Defendant in her omnibus motion is whether the Court should remand her case to the preliminary hearing stage based on the fact that she was not provided with a Russian-speaking interpreter at that time. Pursuant to 42 Pa. C.S.A. § 4412(a), “upon request . . . that a principal party in interest or witness has a limited ability to speak or understand English, then a certified interpreter shall be appointed.” As the named defendant in the case, Ms. Akhmedova is a principal party in interest. 42 Pa. C.S.A. § 4402. Whether the Defendant has a “limited ability to speak or understand English” depends on if it is shown that she “speaks exclusively or primarily a language other than English and is unable to sufficiently speak and understand English, so as to fully participate and be understood in a judicial proceeding.” 204 Pa. Code § 102 (m).

Thus, for the Court to appoint an interpreter, the Defendant must show that (1) English is not her first language, and (2) she is *unable to sufficiently speak and understand* English, and thus she cannot *fully* participate and be understood in a judicial proceeding. Because it is undisputed that Russian is Defendant’s first language, not English, this first requirement is met.

As to whether an interpreter should be appointed for the Defendant going forward, this is a factual inquiry. The general rule is that “the determination of whether an interpreter is warranted in a particular case is within the sound discretion of the [trial] court.” Commonwealth v. Wallace, 641 A.2d 321, 324 (Pa. Super. 1994). The case law is clear that once the Court has “been put on notice that the defendant has difficulty understanding or speaking the English language, it must make unmistakably clear to him that he has a right to have a competent translator assist him, at state expense if need be.” In re Garcia, 984 A.2d 506, 511 (Pa. Super. 2009). Once the Court is aware of the issue, it must conduct the factual inquiry into whether an interpreter should be appointed for the defendant. This

Court held an omnibus hearing on January 9, 2014, to determine whether a Russian interpreter should be appointed in this case.

1. Appointment of an Interpreter:

The Court first finds that the Defendant is entitled to have an interpreter going forward. It is undisputed that Defendant's first language is Russian. At the omnibus hearing, the Defendant testified in Russian, and her interpreter translated her testimony. The Defendant indicated that she had trouble with the English language. Regarding the preliminary hearing, she stated that she did not fully understand what was going on because she had not been in trouble with the law before. She denied that the District Attorney explained her rights to her at that time. As part of that testimony, the Court notes that the following words were overheard in English: "U.S. and Maryland," "basic English," "terminology," "probation," "ARD," "preliminary hearing," "guilty," "not guilty." She stated that she had no trouble understanding "basic English" but had trouble with "legal terms."

As this case is set to proceed to trial, this notes the various constitutional issues that are implicated by disallowing the use of an interpreter. See Wallace, 641 A.2d at 324 ("A defendant's ability to use an interpreter encompasses numerous fundamental rights.") Any failure to understand the proceedings due to the language impediment "may deny him his right to confront witnesses against him, his right to consult with his attorney, or his right to be present at his own trial." Id. at 325. Where a defendant who exhibits trouble with the English language elects to testify, "there exists the . . . danger that he will either misunderstand crucial questions or that the jury will misconstrue crucial responses." Id. (internal quotation omitted). Therefore, the Court having been put on notice of Defendant's legal entitlement to an interpreter, and in the interest of protecting her constitutional rights, the Court finds that the Defendant is entitled to a Russian interpreter in all proceedings going forward.

2. Remand to Preliminary Hearing:

The Court finds that, although the Defendant may have an interpreter for the proceedings going forward, she is not entitled to have her case remanded to the preliminary hearing stage. Although the Defendant appeared at her preliminary hearing without counsel, she currently has representation. The case law requires the trial court to determine whether an interpreter should be appointed for the case going forward. See Wallace, 641 A.2d at 325 ("If it becomes apparent that an interpreter is necessary during the trial, the court should, on its own motion or on motion of a party, make an interpreter available."). The purpose underlying the determination of whether an interpreter should be appointed is to ensure that the Defendant's rights are protected. As with that determination, the question of whether the case should be remanded must be answered "in view of the important rights involved" and considering "all relevant factors in its initial determination of need." Id.¹

Based on the testimony presented at the omnibus hearing, the Court finds that the Defense failed to establish that any difficulty with the English language mandated that the case be remanded to the preliminary stage. The testimony presented by the Commonwealth was credible, namely, that the Defendant did "appear to comprehend the nature of the proceedings" at her preliminary hearing. Garcia, 984 A.2d at 512. As this Court set out above, the Commonwealth presented substantial testimony regarding the Defendant's ability to speak and understand English at her preliminary hearing. The Court notes the absence of any testimony from the Magisterial District Justice who performed the colloquy regarding the Defendant's waiver of her preliminary hearing, but this is not dispositive. At these early stages, where "no request for an interpreter ha[d] been made and the defendant appear[ed] to comprehend the nature of the proceedings and the charges against [her]," trial courts do not commit an abuse of discretion by "proceeding without appointing an interpreter." Garcia, 984 A.2d at 511. This reasoning can be applied to the issue here, where this Court is granting the Defendant's request for an interpreter, but not her request to remand the case.

Nothing in the applicable case law requires the case be remanded. The majority of the prior cases discuss a defendant's ability to meaningfully participate at trial. See, e.g., Commonwealth v. Pana, 364 A.2d 895, 899 (Pa. 1976) (trial court abused its discretion by denying request to appoint interpreter for Spanish speaking defendant, and thereby "denied him his fundamental right to testify effectively in his own behalf"); Commonwealth v. Romero, 938 A.2d 362 (Pa. 2007) (trial court did not abuse its discretion by denying request for interpreter where counsel testified to defendant's ability to communicate in English). The Court also notes that, while a Defendant may be entitled to an interpreter based on a difficulty with the English language, claiming to have difficulty understanding legal terminology is not itself a reason to remand the case to its beginning stages. Most lay persons have at least

¹ There is not an exhaustive list of "relevant factors," but they include the evidence of the Defendant's ability or inability to speak and understand English, as well as the Defendant's general demeanor. See, e.g., In re Garcia, 984 A.2d 506, 512 (Pa. Super. 2009) ("The demeanor and responses made by [Appellant] evidenced an effort to stymie the proceedings, rather than a genuine inability to comprehend the proceedings.")

some difficulty understanding legal jargon regardless of their native language. See, e.g., Romero, 938 A.2d at 372 (counsel for Spanish speaking defendant testified that “if there was a word or phrase appellant did not understand, counsel would explain it in simpler terms”). The Defendant will have the benefit of an interpreter going forward, such that at trial she may present and hear testimony in her native tongue, thereby ensuring her constitutional rights are protected.

CONCLUSION

For the reasons set forth above, the Court finds that the Defendant is entitled to an interpreter for all proceedings going forward. The Defendant’s case however, shall not be remanded to the preliminary hearing stage.

ORDER OF COURT

AND NOW THIS 11th day of February, 2014, the Court having considered the Defendant’s Omnibus Pretrial Motion, along with the briefs submitted by both parties, and the Court having held a hearing in the matter;

IT IS HEREBY ORDERED that the Defendant’s Motion is **GRANTED** in part and **DENIED** in part. The Defendant is entitled to an interpreter for all proceedings going forward. The Defendant’s case however, shall not be remanded to the preliminary hearing stage. An Opinion in support of this Court’s Order is attached.

Pursuant to the requirements of Pa.R.Crim.P. 114 (B)(1), (2) and (C)(1), (2), the Clerk shall promptly serve this Order or court notice on each party’s attorney, or the party if unrepresented; and shall promptly make docket entries containing the date of receipt in the Clerk’s office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.