

No.

IN THE SUPREME COURT OF THE UNITED STATES

PABLO GUTIERREZ, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The trial court recognized Mr. Gutierrez only spoke Spanish and appointed an interpreter for him—but the interpreter was prohibited from translating evidence admitted at trial.

At trial, the State presented as part of its case recorded interviews as the evidence against Mr. Gutierrez. These recorded interviews were in English. The State placed the recordings into evidence and the recordings were played to the jury. Pursuant to an administrative order the interpreter did not translate the recordings for Mr. Gutierrez.

It has been recognized the use of an interpreter is necessary to effectuate the due process and other rights guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution.

This Court has not decided what degree of interpretive assistance is constitutionally required for non-English speaking defendants.

The question presented is:

Whether Petitioner was deprived of his rights to due process and confrontation under the Sixth and Fourteenth Amendments, where the interpreter was prohibited from translating recordings played to the jury during the State's case against him?

RELATED PROCEEDINGS

The proceeding listed below is directly related to the above-captioned case in this Court:

Gutierrez v. State, 394 So. 3d 1131 (Fla. 4th DCA 2024).

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PETITION FOR A WRIT OF CERTIORARI

Pablo Gutierrez, respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida in this case.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal is reported as *Gutierrez v. State*, 394 So. 3d 1131 (Fla. 4th DCA 2024) (table). It is reprinted in the appendix. 1a.

JURISDICTION

Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences on August 8, 2024. 1a. The court denied Petitioner's motion for rehearing and certification on October 14, 2024. 2a.

The Florida Supreme Court is "a court of limited jurisdiction," *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (citation omitted). Specifically, it has no jurisdiction to review district court of appeal decisions entered without written opinion. *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006). Hence, Petitioner could not seek review in that court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND RULE PROVISIONS

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Section 1 of the Fourteenth Amendment of the United States Constitution provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

15th Judicial Circuit Administrative Order number 2.506-1/14, subsection 11 provides:

“Staff interpreters shall not translate audio or video recordings during court proceedings”

STATEMENT OF THE CASE

Petitioner, Pablo Gutierrez, was charged by Amended Information with three counts of sexual battery on a person less than 12 years of age and two counts of lewd and lascivious molestation.

The State filed a notice of child hearsay evidence. This evidence was in the form of three hours of recordings of interviews the alleged victims. A hearing was held. The recordings were not played at the hearing. The lower court entered an order ruling the child hearsay to be admissible.

A jury trial was held. An interpreter was appointed by the trial court to translate for Gutierrez at trial.

The live witnesses testified to various allegations and that the perpetrator was someone named Don Pablo. None of the live witnesses identified Mr. Gutierrez as Don Pablo.

A major part of the prosecution's evidence was four exhibits (State's Exhibits 1, 5,6, and 9) which included recorded interviews of the alleged victims. In one of the recorded interviews it was alleged that Mr. Gutierrez was called Don Pablo by one of the children. The recorded interviews were in English.

During the playing of the recordings to the jury the interpreter was not translating the recordings for Mr. Gutierrez. 3a. Defense counsel stated that the recordings needed to be translated for Mr. Gutierrez because they were admitted as child hearsay and were substantive evidence. When the trial court asked the interpreter about not translating the exhibits, the interpreter stated that videos or audios do not get translated. 3a. The trial court stated the following regarding interpreters not translating recordings in court:

THE COURT: Please be seated. Administrative Order number 2.506-114, subsection 11 specifically says staff interpreters **shall not translate audio or video recordings during Court proceedings**. This is signed by then Chief Judge Colbath in 2014.

3a.

Defense counsel acknowledged the order but stated, “By not having a translation of this being played in Court, Mr. Gutierrez for all intents and purposes absent from a material critical stage of the evidence presentation.” 3a. Defense counsel continued that Mr. Gutierrez had no knowledge of English and it was antiquated not to allow him access to some three-and-a-half hours of evidence 3a. The trial court responded, “-- that’s the administrative order” and Defense counsel replied, “The issue is that he has an affirmative

right to be present for the presentation of evidence against him in a trial. He is not present when he cannot understand the proceedings”. 4a. Defense counsel stated these were constitutional issues. 4a. The trial court repeatedly emphasized that the lack of translation was by administrative order by the Chief Judge in 2014. The trial court told defense counsel she had her appeal and had made a record as to the constitutional violations 4a. The recordings were continued to be played to the jury.

After the State rested, Mr. Gutierrez was questioned through an interpreter as to whether he would testify 4a. There were some things he did not understand, but ultimately said it was his decision not to testify 4a. Mr. Gutierrez explained:

The reason why I don't want to testify is because I heard their testimony yesterday and I didn't understand that because it was in English and there was no interpreter.

4a. The trial court informed Mr. Gutierrez there was nothing it could change and the appellate court would have to address the problem 4a.

Mr. Gutierrez was found and adjudicated guilty of each count as charged. He was sentenced to life in prison on each count.

Petitioner filed an appeal to Florida's Fourth District Court of

Appeal. He argued that was deprived of his constitutional rights including due process, a fair trial, and other rights guaranteed by the Sixth and Fourteenth Amendments where the interpreter was prohibited from translating recordings played to the jury during the State's case against him.

The district court of appeal affirmed the conviction and sentence without a written opinion. 1a. Subsequently, it denied Petitioner's motion for rehearing and for certification to the state supreme court. 2a.

REASONS FOR GRANTING THE PETITION

PETITIONER, MR. GUTIERREZ, WAS DENIED THE RIGHTS TO DUE PROCESS AND CONFRONTATION UNDER THE SIXTH AND FOURTEENTH AMENDMENTS WHERE THE INTERPRETER DID NOT TRANSLATE RECORDINGS AS THEY WERE INTRODUCED INTO EVIDENCE AND PLAYED TO THE JURY.

This Court has never addressed the question of whether a criminal defendant who does not understand English has a constitutional right to the services of an interpreter

The Constitution does not expressly guarantee the right to an interpreter in criminal cases. However, an interpreter is necessary to give effect to the due process and other rights guaranteed by the Fifth, Sixth and Fourteenth Amendments.

In *Perovich v. United States*, 205 U.S. 86 (1907), the defendant challenged his conviction on the grounds that the trial court had failed to appoint an interpreter when he was testifying. In *Perovich* there was no brief filed by the defendant, and it is not clear what the nature of the legal issue was. The entire discussion was:

Other matters referred to in the assignment of errors require but slight notice. One is that the court erred in refusing to appoint an interpreter when the defendant was testifying. This is a matter largely resting in the discretion of the trial court, and it does not appear from

the answers made by the witness that there was any abuse of such discretion.

Perovich v. U S, 205 U.S. 86, 91 (1907). Regardless, so far as the Court ruled that appointment of an interpreter is discretionary with the judge, the judge in Petitioner's case did not exercise discretion to prohibit translation the court simply obeyed the administrative order.

Petitioner submits to protect a defendant's constitutional rights that at the very least: a trial court must assure that, when the record shows the need for an interpreter, defendants are provided translation services sufficient to make them fully aware of the evidence being presented against them in court.

Unlike in *Perovich*, in this case the trial court recognized Petitioner only spoke Spanish and appointed an interpreter. At trial, the witnesses for the State testified in English and the interpreter translated their testimony for Petitioner. None identified Petitioner as the alleged perpetrator. However, recorded interviews identified Petitioner and went into more details about the alleged offenses. These recorded interviews were in English. The recordings were placed into evidence and played to the jury. Pursuant to an

administrative order the interpreter did not translate the recordings for Petitioner. The Administrative Order number 2.506-1/14, subsection 11 provides that the interpreter “shall not translate audio or video recordings during court proceedings.” 3a.

Later, during a colloquy Petitioner would explain:

The reason why I don’t want to testify is because I heard their testimony yesterday and I didn’t understand that because it was in English and there was no interpreter.

4a. The trial court informed Petitioner there was nothing it could change and the appellate court would have to address the problem

4a. The appellate court did not address the failure to translate the recordings 1a.

Due to the lack of translation, Petitioner was unable to understand the evidence that was presented against him and essentially yielded him absent during a critical stage of the trial. The lack of translation deprived Petitioner of his constitutional rights to due process, a fair trial, equal protection, and confrontation. See *Mendoza v. U.S.*, 755 F.3d 821, 827 (7th Cir. 2014) (“A criminal defendant is denied due process when he is unable to understand the proceedings due to a language difficulty. ” (internal citations omitted))

“The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations”. *Chambers v. Mississippi*, 410 U.S. 284, 294, 295 (1973); *Gonzales v. Zurbrick*, 45 F.2d 934, 937 (6th Cir. 1930) (“The function of an interpreter is an important one. It affects a constitutional right. The right to a hearing is a vain thing if the [party] is not understood.”).

The need of an interpreter not only is needed to ensure due process, but also “as a matter of simple humaneness,” a party “deserve[s] more than to sit in total incomprehension as the trial proceed[s].” *United States ex rel. Negron v. State of New York*, 434 F.2d 386, 390 (2d Cir. 1970). “Otherwise, the adjudication loses its character as a reasoned interaction and becomes an invective against an insensible object.” *Id.* at 389 (internal quotation marks and citation omitted).

One may speculate that Petitioner’s due process rights were protected by a pre-trial hearing and discovery. However, the recordings were never played at the hearing. Also, the Administrative Order prohibits the interpreter from translating the recordings at court proceedings. There is no evidence that in

discovery the recordings were translated for Petitioner. Furthermore, even if at some point recordings had been translated during discovery – it is not known if this occurred years before or if the it involved the same edited or unedited version as was presented at trial. In fact, at trial the jury was instructed they were going to hear an edited version of the recording.

A partial translation of the proceeding does not satisfy due process. *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000)(“[A] competent translation is fundamental to a full and fair hearing” and “an incorrect or incomplete translation is the functional equivalent of no translation,”).

It is clear that even though the right to an interpreter for a non-English speaking defendant is not directly stated in the constitution, an interpreter is needed to protect the defendant’s constitutional rights.

Yet, this Court has not decided what degree of interpretive assistance is constitutionally required for non-English speaking defendants. See *United States v. Deist*, 384 F.2d 889, 901 (2d Cir. 1967) (noting lack of Supreme Court precedent); see also *United States v. Johnson*, 248 F.3d 655, 663 (7th Cir.2001) (noting that the

Supreme Court has not even specifically found a constitutional right to any interpreter). As a result, courts that have recognized a constitutional right to interpretation have refused or hesitated to impose constitutional restrictions on a trial judge's discretion in the use of court interpreters. See, e.g., *Gonzalez v. United States*, 33 F.3d 1047 (9th Cir.1994); *Johnson*, 248 F.3d at 663.

This Court should decide what degree of interpretive assistance is constitutionally required for non-English speaking defendants. This Court should hold there is a constitutional right to an interpreter for criminal defendants like Petitioner to have not only the live testimony translated but also to have recordings in evidence which are played to the jury translated. The Due Process and Confrontation Clauses mandate judicial proceedings be translated into a language understood by the Spanish-speaking Petitioner, so he can exercise his right to defend his case and to know what the accusers are saying against him. The right to an interpreter for confrontation, cross-examination and all judicial proceedings, is indeed, an essential and fundamental requirement for the kind of fair trial which is this country's constitution.

Finally, in light of the finding of erroneous deprivation, that

the trial court violated respondent's Sixth and Fourteenth Amendments rights, the Court must consider whether this error is subject to review for harmless error under *Chapman v. California*, 386 U.S. 18 (1967) or is a structural defect necessitating reversal. Under either review reversal would be necessary.

Where the right to be assisted by a court appointed language interpreter to permit comprehension of the State's evidence is wrongly denied, it is impossible to determine prejudice. The deprivation strikes at fundamental values of our society and undermines the structural integrity of the criminal tribunal itself. That deprivation of the right to an interpreter, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as “structural error.” Those structural defects in the constitution of the trial mechanism defy analysis by “harmless-error” standards. Such reversals of convictions without any showing of prejudice include: *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-151 (2006); *Sullivan v. Louisiana*, 508 U.S. 275 (1993); *Vasquez v. Hillery*, 474 U.S. 254 (1986); *Waller v. Georgia*, 467 U.S. 39, 49, n. 9 (1984); *McKaskle v. Wiggins*, 465 U.S. 168, 177-178, n. 8 (1984); *White v. Maryland*, 373 U.S. 59

(1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963); and *Tumey v. Ohio*, 273 U.S. 510 (1927).

This is one of the very rare cases where deprivation of an interpreter can be seen on the record as it was prejudicial to Petitioner because as he explained he had to make a decision whether to testify based on a lack of knowledge as to what evidence had been presented by the State:

The reason why I don't want to testify is because I heard their testimony yesterday and I didn't understand that because it was in English and there was no interpreter

4a. This is hardly a knowing and intelligent waiver of the right to testify.

In light of the foregoing, this Court should grant the petition, support the due process right of a defendant not to have the evidence made invisible to him due to the lack of translation and to reverse Petitioner's conviction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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