

IN THE MUNICIPAL COURT OF APPEALS  
OF THE CITY OF EL PASO, TEXAS

OLIVIA BEAL,  
Appellant,

vs.

STATE OF TEXAS,  
Appellee.

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No. 06-MCA-3110

OPINION

Appellant appeals her conviction in Municipal Court for a speeding offense. A fine of \$100.00 was assessed.

Appellant has submitted to this Court a Brief in Spanish which has been translated into English pursuant to this Court's Rules.

Appellant first contends that there was no construction going on at the time she was cited, but she was not cited for speeding in a construction zone so her first point of error is overruled.

Secondly, Appellant contends there was no sign indicating the speed zone in effect at the location where she was cited, but that determination, like all other factual issues raised by Appellant, must be resolved by the Trial Court, and not this Court. There is no record before this Court, but even if one had been before this Court, those points would only have raised factual disputes and the Trial Court must resolve those issues. This Court has no authority to second guess those factual determinations if supported by sufficient evidence.

Appellant's third point of error claims she was denied an interpreter to translate for her because her English was not good. The right to have trial proceedings interpreted to the accused in a language she can understand is a part of a constitutional right to confrontation. Baltierra v. State, 586 S.W.2d, 553 (Tex. Crim. App. 1979).

The appointment of an interpreter is controlled by Art. 38.30 of Tx. Code Crim. Proc.. That article, Subsection (a), states as follows:

When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him.

No written motion for the appointment of an interpreter was filed by Appellant. Without the benefit of a record, she claims that when she appeared before the Judge she asked her to please speak in Spanish. That oral request may be sufficient in Municipal Court to constitute a motion for the appointment of an interpreter. Art. 38.30, Tex. Code Crim. Proc. and case law further allow the Court, on its own motion, to appoint an interpreter if the Court determines that the person does not understand and speak the English language.

Interesting enough, the styled case in this area relating to the appointment of an interpreter arose out of a conviction for theft of property valued over \$5.00 but less than \$20.00 originating in El Paso County. The defendant in that case was a Mexican national and the Court noted that certain points of error had been raised by Appellant, but chose not to reach those issues because they recognized "undersigned fundamental error" that dictated their disposition of the case. In short, they held that the record clearly supported the fact that Appellant did not speak or understand the English language sufficiently to protect her right of confrontation under the provisions of the 6<sup>th</sup> Amendment of the Constitution of the United States and in Article 1 Section 10 of the Bill of Rights in the Constitution of Texas. The Court recognized the unique bicultural nature of our State in stating as follows:

"We know that in this State, especially along the Rio Grande border, our citizenship is comprised of Latin Americans who speak and understand only the Spanish language. These citizens, as well as nationals of the Republic of Mexico when brought before the Courts of this State charged with crimes against the Laws of this State are entitled to be tried according to the Constitution and Laws of this State. This, of necessity, means they are entitled to be confronted by the witnesses under the same conditions as applied

to all others. Equal justice so requires. The constitutional right of confrontation means something more than merely bringing the accused and the witness face to face; it embodies and carries with it the valuable right of cross examination of the witnesses.”

The Court then also recognized that the Trial Court when confronted with a situation where a person may not fully understand the English language to the extent that they can understand the proceedings, assist their defense, and effectively confront witnesses against them, that it is necessary for the Court, in the exercise of its discretion, to make inquiry to ascertain whether an accused person’s rights would be safeguarded in the absence of an interpreter. Clearly, the Court in Baltierra, stated the right to an interpreter raises constitutional concerns, and the Court must inquire as to a person’s ability to understand the English language sufficient to safeguard his rights in criminal trial proceedings.

On the other hand, even if a motion is made to appoint an interpreter, no appointment is necessary if the Court determines that the accused can speak and understand the English language. Salas v. State, 385 S.W.2d 859 (Tx. Cr. App. 1965) Ex Parte Marez 464 S.W.2d 866 (Tx. Cr. App. 1971), Pointer v. Texas, 380 U.S. 400, 85 S. Ct. 1065, 13 L.ED. 2d 923 (1965) , and Diaz v. State, 491 S.W.2d 166 (Tex. Cr. App. 1973).

Further, in Flores v. State, 509 S.W.2d 580 (Tex. Cr. App. 1974) the Court reiterated the Constitutional basis of providing an interpreter to an accused but upheld refusal to appoint one for an accused who understood and spoke English but was more fluent in Spanish, concluding that the latter characteristic “does not, in and of itself, make it incumbent upon a Trial Court to appoint an interpreter for an accused who speaks and understands the English language.” So the question is not that a person prefers to speak in Spanish but whether or not they speak and understand the English language adequately to meet the accusations made against them and defend themselves.

The procedural problem in this case is there is no record which this Court can rely upon to determine what information the Trial Court considered to make any of the above determinations. This Court is aware that our Courts of Records Statute require a person such as the Appellant to request that a

record be taken before one is required, and clearly when raising issues on appeal for which a record is necessary to satisfactorily address the point of error, the absence of record makes it impossible for the Appellant Court to do so. Errors relating to whether the evidence is legally or factually sufficient to support the Trial Court's judgment, or questions relating to the admissibility of evidence fall within such category. Others, such as sufficiency of the charging document or complaint, do not. This Court has been unable to find any case that addresses that issue, so for this Court, the matter presents a question of first impression.

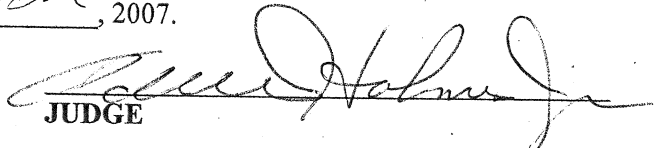
Because this issue raises concerns of a constitutional magnitude, this Court believes that the Trial Court should exercise their discretion cautiously, and appoint interpreters after the Court has made sufficient inquiry into the questions addressed in Baltierra and this Opinion.

This case also presents another excellent reason for trial courts to record the proceedings now that the recording system is in place as this Court has addressed in other cases. Shearman v. State, 06-MCA-3084.

This Court also cautions Trial Judges that although it recognizes that many of our Judges, Prosecutors, Clerks, and Bailiffs, speak both English and Spanish, those persons probably should not act as the interpreter. See Aleman v. State, 957 S.W.2d 592 (Tx. Civ. App. –El Paso) (holding the use of a County Prosecutor as the interpreter did not satisfy Defendant's right to have interpreter appointed). See Baltierra v. State 586 S.W.2d 553 (Tex. Crim. App. 1979) (holding that appointment of defense counsel to serve as interpreter was also insufficient). Clearly, a prosecutor may have ethical conflicts in prosecuting a criminal charge against the defendant and also acting as the interpreter for obvious reasons. In Baltierra, the Court commended the Trial Court for appointing a Spanish speaking attorney to the Defendant and recognized that such was a basic aspect of the right to effective assistance of counsel, but distinguished that constitutional right from the constitutional right of confrontation. The duty to protect a person's constitutional confrontational rights provided in the 6<sup>th</sup> Amendment of the United States Constitution and Article 1, Section 10 of the Texas Constitution, are duties imposed upon the Court.

For the reasons stated, this Court remands this case to the Trial Court for further proceedings, including a more in-depth inquiry as to Appellant's ability to speak and understand the English language, and that a record of those proceedings be made, so in the event of another conviction, the issue can be fully addressed on appeal, if such should ensue.

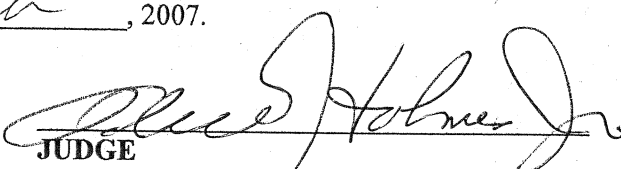
SIGNED on this 8 day of March, 2007.

  
JUDGE

**JUDGMENT**

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the case be reversed and remanded to the Trial Court for re-trial.

SIGNED this 8 day of March, 2007.

  
JUDGE