STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Berkeley County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-001184

THE STATE,

Respondent,

v.

WILTON Q. GREENE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly appointed an interpreter for the victim after finding her qualified following extensive voir dire in accordance with the statute governing the use of interpreters in criminal proceedings.

STATEMENT OF THE CASE

A Berkeley County Grand Jury indicted Appellant for armed robbery and kidnapping. (R.* Indictments.) On May 20-23, 2013, Appellant proceeded to trial before a jury. Chad Shelton, Esquire, and David Schwacke, Esquire, represented Appellant, and Adrian G. Dejeu, Esquire, and Bryan Alfaro, Esquire, represented the State. The jury found Appellant guilty on both charges. (Tr. 255.) The Honorable J.C. Nicholson, Jr., sentenced him to twenty years' imprisonment on each charge, to be served concurrently. (Sentencing Tr. 12.)

On May 28, 2013, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

On May 22, 2012, at approximately 10:15 a.m., Appellant approached Bing Zhang (Victim) at a gas station and asked him for a ride to McDonald's. (Tr. 81, line 16-Tr. 82, line 5.) Victim agreed to give Appellant a ride and they left the gas station. (Tr. 82, lines 5-9.) After Victim drove through the first traffic light, Appellant pulled a knife on him and told him to go to Victim's bank. (Tr. 83, lines 7-9; Tr. 84, lines 2-9.) Victim told him he did not have a bank account and offered him all the money he had, which was approximately twenty dollars. (Tr. 83, lines 14-19.) Appellant then asked for Victim's wallet and Victim gave him the wallet, which contained no money but had his identification inside. (Tr. 83, lines 19-23; Tr. 85, lines 2-6.) As Appellant continued to hold the knife on him, Victim began looking for a police car nearby. (Tr. 85, lines 11-17.) As he stopped at a red light, Victim noticed a stopped police car. (Tr. 85, lines 19-23.) When the light turned green, Victim drove toward the police car honking his horn. (Tr. 85, lines 24-25; Tr. 134, lines 6-18.) He opened his window and told the police officer he was being robbed. (Tr. 86, lines 6-7.) At that point, Appellant jumped out of the car and ran. (Tr. 86, lines 8-9; Tr. 135, lines 1-4.) The officer chased Appellant in his patrol vehicle, eventually cutting him off in a parking lot and catching him. (Tr. 86, line 14; Tr. 135, lines 15-19; Tr. 135, lines 10-19; Tr. 138, line 2-Tr. 140, line 8.) Appellant was arrested and proceeded to trial on charges of armed robbery and kidnapping. (Tr. 140, line 22-141, line 7; R.* Indictments.)

At trial, Victim testified Appellant came from across the street while he was at a gas station and asked him for a ride. (Tr. 82, 1-23.) Once Appellant was in the car, he held a knife on Victim and demanded he drive to his bank. (Tr. 83, lines 7-10.) Victim told Appellant he had no bank account and gave him the only money he had,

approximately twenty dollars, and his wallet containing his identification. (Tr. 83, lines 12-23.) Victim told him to keep the money but asked for his ID back. (Tr. 85, lines 7-10.) Victim testified he was able to attract the attention of a police officer by driving directly toward the patrol vehicle, honking his horn, rolling down the window, and telling the officer somebody robbed him. (Tr. 85, line 22-Tr. 86, line 7.) He testified Appellant jumped out of the car and ran, but he saw the police catch Appellant. (Tr. 86, lines 8-14.)

Defense counsel began cross-examination by asking Victim about his immigration status. (Tr. 89, line 13-Tr. 90, line 13.) Victim asked defense counsel to repeat some of his questions because he could not understand them. (Tr. 89, lines 21-24; Tr. 90, line 14-17.) When defense counsel asked about his statement to police, the trial judge suggested Victim be given time to read the transcript of the statement. (Tr. 94, lines 4-17.) However, Victim informed the trial judge he could not read it. (Tr. 94, lines 18-21.) At that point, the trial judge sent the jury out and suggested someone read the transcript to Victim. (Tr. 95, lines 1-18.) The trial judge also stated, "I'm not trying to interfere with your cross-examination. My concern is I don't think he understands what anybody is asking him, okay." (Tr. 95, lines 19-20.) The trial judge commented, "I'm sure we couldn't find a Mandarin interpreter on short notice I'm sure. Solicitor, I'm going to take a break. Read the English to him and then I'll let him continue his cross okay." (Tr. 96, lines 7-10.) After the break, an off-the-record conference in chambers, and an off-the-record bench conference, the following exchange took place:

> The Court: All right. For the record the court stopped the trial during the middle of the cross-examination by defendant's attorney because the court was concerned about having observed [Victim]'s ability to understand the English language and respond as far as his ability in communicating through the English language. And I stopped the testimony and asked to see if the State could

find an interpreter. And I understand the State has found an interpreter[;] is that correct?

[The State]: Yes, Your Honor.

The Court: Would you bring her around please and let me ask her some questions.

(Tr. 97, line 21-Tr. 98, line 7.)

The trial judge then began extensive voir dire with the potential interpreter, Xu Na. He asked her where she was employed, what dialect of Chinese she spoke, and whether she was able to communicate with Victim in Chinese. (Tr. 98, lines 9-20.) She responded that she was a teacher of Mandarin Chinese at Berkeley High School. (Tr. 98, lines 11-14.) She took a few minutes to talk to Victim in Chinese to ascertain whether she could interpret for him. (Tr. 99, lines 9-24.) After conferring with Victim, Na reported to the trial court that she and Victim could understand what each was saying to the other in Chinese. (Tr. 99, line 25-Tr. 100, line 10.) At that time, the trial judge swore Na in as an interpreter. (Tr. 100, lines 11-19.) The following exchange took place:

The Court: Let me put on the record I think I put very briefly on the record that the court on its own initiative stopped the testimony and raised the issue of whether [Victim]—I think he has—I think he can communicate in simple English language. But the court was of the opinion that anything other than very simple sentences and simple words he was not able to interpret.

And the court talked to the attorneys and the Interpreter has been found and the court finds that the Interpreter is competent to interpret for the court and the jury as well as the attorneys involved.

...

[The State]: The State believes that because—based on Your Honor's request that the clarity of an Interpreter might be beneficial that the court has inquired correctly as to her qualifications as well as her ability to effective[ly] translate the remainder of this witness's cross-examination and his redirect.

(Tr. 100, line 24-Tr. 102, line 2.)

Appellant then objected to bringing in an interpreter at that point in the proceedings and moved for a mistrial. (Tr. 102, lines 6-23.) Specifically, he argued "the State should have realized during their preparation with the witness that an Interpreter was necessary, that they failed to do so and that the court . . . should not be correcting their error." (Tr. 102, lines 16-19.) In addition, Appellant argued the woman who was brought in to act as an interpreter "has not yet been certified or demonstrated to the court that she is in fact able to adequately state to the court and to the jury an actual verbatim recital of what the witness will be testifying to . . . ." (Tr. 103, lines 1-6.) At that point, the trial judge asked if there was anything else Appellant would like for him to ask her or if there was anything Appellant would like to ask her about her ability to interpret. (Tr. 103, lines 11-14.) He pointed out:

> But she has had a conversation with the defendant and she tells me that she understands what he is saying. He understands her and she said under oath that she will do it correctly and truthfully. Now what else would you like for the court to ask her or I'll give you an opportunity to ask any questions you would like to ask of her about her ability to interpret pursuant to your motion.

(Tr. 103, lines 17-24.) Appellant did not conduct voir dire of the interpreter, even though the trial judge offered him the opportunity to do so.

Appellant argued "we've had no demonstration that she is able to follow up with one requirement that she be able to not only translate what he's saying but communicate it to the court and to the jury." (Tr. 104, lines 14-18.) In response, the trial court stated: "What I'm going to do for the record I'm going to ask you some questions to ask [Victim] and I want you to ask him that question in Chinese and get his response. But

before I do that I would like for you to tell him that his response can be in English if he so chooses or his response can be in Chinese to you. Would you explain that to him please, ma'am." (Tr. 105, lines 1-7.)

The trial judge proceeded to ask questions of Victim through the interpreter, including where he was born and details about his family. (Tr. 105, line 23-Tr. 108, line 9.) During the exchange between the interpreter and Victim, the trial judge reminded the interpreter that she need not have conversation with Victim but rather just needed to interpret what he said. (Tr. 108, lines 1-4.) He specifically asked the interpreter, "What I'm going to do is have you sit by him and the attorney will ask the question, you'll tell him what the question is in Chinese let him respond in Chinese and then you tell the attorney, the jury, and the court reporter what his response was. Do you think you can do that?" (Tr. 108, lines 13-18.) He then asked Na questions about how long she had been teaching and whether she had interpreted in court before. (Tr. 108, line 20-Tr. 109, line 10.) Na answered that she had been an English teacher in China for almost nine years before coming to the United States in July 2012 to teach Mandarin Chinese. (Tr. 108, line 23-Tr. 109, line 3.) She had not interpreted in court before, but she had interpreted some papers for school in China. (Tr. 109, lines 4-10.) After making those inquiries, the following exchange took place:

> The Court: All right. The court makes a finding she is qualified as an Interpreter and the court is not going to require a State certified Interpreter and we're going to proceed with this Interpreter. Your motion to find her non-qualified is denied. Your motion for – anything else you want to tell me before I rule on your mistrial?
>
> [Appellant]: Well, Your Honor, if I could just revisit just briefly . . . her qualifications.
>
> The Court: --yes, sir. I'll be glad for you to.

> [Appellant]: Just to put on the record again our objection to her being qualified. As you have observed there were a number of conversations that went back and forth between them that were not translated to us. They were having a colloquy among themselves and it happened on at least five different questions. And because of that unless our court reporter has suddenly become competent in Mandarin Chinese there would be an absence in the record of the exact conversation.
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> . . .
>
> The Court: Well, I think I have instructed her what to do. She's never done it before. I think I have told her don't have the conversation with him. Interpret what he says, interpret what the lawyer says and I think she understands that and she's willing to do that. I agree with you and I viewed that as a problem but I think I have corrected it and she's agreed to do it properly.

(Tr. 109, line 11-Tr. 110, line 17.) The trial court then noted Appellant's objection and asked him if he wanted to put anything else on the record regarding his mistrial motion, which he declined. (Tr. 110, line 18-Tr. 111, line 1.) At that time, the State responded to Appellant's motion, arguing the trial judge made the appropriate inquiries and instructed the interpreter on the proper manner in which to conduct the interpretation. (Tr. 111, lines 2-8.) Furthermore, the State defended its decision to conduct direct examination without an interpreter, pointing out that Victim was responsive to the questions asked. (Tr. 111, lines 9-25.) Appellant then argued that because the State had examined Victim without the benefit of an interpreter, Victim's remaining testimony should proceed in the same manner. (Tr. 112, lines 14-17.) The trial court denied the mistrial motion, stating:

> Let me put on the record that during the first portion of trial the witness, [Victim,] was responsive to simple questions on direct and the attorney summarized questions and asked a simple question – summarized testimony and asked a simple question and [Victim] did appear to understand. However, during the course of the testimony

> the court became concerned about the ability of the defendant to express himself completely and his limited ability of understanding the English language and interpreting the questions.
>
> So the court sua sponte stopped the trial and discussed the matter with the attorneys and ultimately an Interpreter has been brought in to the court by the State at the court's request. The court finds that the State has done no wrong in initially calling the witness. It was the court's decision in an effort to make [sic] hopefully allow that testimony to be clear to the jury, the court, and everyone else.
>
> And under Rule 611 the court shall exercise reasonable control over the mode and order of presenting evidence. And under Rule 611 the court took this step to bring an Interpreter into the trial at this time to assist the triers of the [sic] fact in making a determination in listening to the testimony and be fully appraised of the testimony based upon the interpretation by the Interpreter. And the motion for mistrial is denied.

(Tr. 112, line 20-Tr. 113, lines 21.) The trial proceeded, and the trial judge again reminded the interpreter not to have a private conversation with Victim but rather to interpret what is being said to him and what his response is. (Tr. 114, lines 12-15.) Cross-examination resumed with the interpreter, during which the trial court reminded her once more not to have conversations with Victim. (Tr. 118, lines 14-16.)

Next, Officer Shane Judy of the Moncks Corner Police Department testified he was on routine patrol on May 22, 2012, when a car drove straight toward him at a traffic light. (Tr. 133, line 7-Tr. 134, line 18.) Officer Judy exited his patrol vehicle and witnessed the driver of the other vehicle yelling, "He robbed me! He robbed me!" (Tr. 134, line 20-Tr. 135, line 1.) He then saw a black male passenger exit the other vehicle and run. (Tr. 135, lines 1-4.) He testified he got back into his patrol car and followed the suspect until he was able to cut him off in a parking lot. (Tr. 135, lines 10-19.) Officer Judy was able to catch the suspect without ever losing sight of him during the chase. (Tr.

138, lines 2-6.) At one point the suspect tripped and fell, dropping a knife as he went down. (Tr. 139, lines 19-25.) Another deputy assisted Judy in restraining the suspect, while a different officer took the knife into evidence. (Tr. 140, lines 4-18.) In court, Officer Judy identified Appellant as the man he chased and arrested. (Tr. 140, line 22-Tr. 141, line 5.)

Officer Tony Edwards testified that when he arrived on the scene, Officer Judy already had Appellant in custody. (Tr. 149, line 10-Tr. 150, line 4.) Officer Edwards was involved in collection of evidence, including the knife Appellant dropped. (Tr. 150, line 5-Tr. 153, line 7.) Officer Edwards also testified he found Victim's wallet in Appellant's right front pocket and Victim's money, approximately $22, in Appellant's left front pocket and returned them to Victim. (Tr. 152, line 21-Tr. 153, line 17.)

After the State rested, Appellant renewed his argument "that the court improperly authorized an interpreter who was not qualified and that the court failed to grant a mistrial upon the State's self[-]determined failure to use an Interpreter in their direct testimony to begin with." (Tr. 157, lines 20-25.) The trial court again denied the motion for mistrial. (Tr. 158, lines 1-2.)

Appellant testified in his defense that the alleged robbery was actually a drug deal between him and Victim. (Tr. 180, line 8-14.) He explained they made a crack cocaine deal and he took Victim's wallet as collateral because Victim did not have the money to pay for the drugs. (Tr. 180, line 12-19.) Appellant claimed he asked Victim to drop him off by the bank, and Victim told him he had no money but then gave him a five-dollar bill and a couple of ones. (Tr. 181, line 11-Tr. 182, line 8.) He claimed Victim was doing "hits" of the crack while he was driving. (Tr. 180, lines 21-25; Tr. 182, lines 22-25.) After Victim saw the police, Appellant claimed Victim looked at the knife he had in the

car's console and started acting funny. (Tr. 183, lines 6-16.) When Victim reached for the knife, Appellant grabbed it. (Tr. 183, lines 16-18.)

When questioned during cross-examination on whether he told anyone about "this being a drug deal gone bad," Appellant testified he did not tell Officer Judy about it but did tell Detective Michael Roach. (Tr. 198, lines 8-12.) The State called Detective Roach on reply, and Detective Roach testified Appellant made no indication there was a drug deal or they would have followed up on it. (Tr. 219, lines 10-17.)

Ultimately, the jury found Appellant guilty on both charges and the trial court sentenced him to twenty years' for each charge to be served concurrently. (Tr. 255, lines 2-9; Sentencing Tr. 12.)

ARGUMENT

The trial court properly appointed an interpreter for the victim after finding her qualified following extensive voir dire in accordance with the statute governing the use of interpreters in criminal proceedings.

Appellant argues the trial judge erred in appointing Na as an interpreter, contending she was not a certified interpreter and the record failed to disclose she was "otherwise qualified" as an interpreter as required by South Carolina statutory law. Specifically, he claims this violated Appellant's state and federal constitutional rights to a fair trial. To the contrary, the trial judge correctly followed the guidelines of the statute by only finding the interpreter qualified after conducting voir dire. Na teaches Mandarin in Berkeley County and is well-qualified to act as an interpreter. Thus, this Court should affirm his decision and Appellant's conviction and sentence.

The role of an interpreter in a court proceeding is to take a phrase in a language not understood by the court and jury and translate it into the comparable English phrase, such that the jury, attorneys, and court can understand the testimony of a witness. As the Fifth Circuit Court of Appeals pointed out in United States v. Perez, 651 F.2d 268, 272 (5th Cir. 1981), court interpreters "stand somewhere between an expert witness called by the court and the court reporter. As to such persons, the fundamental question is normally one of qualification, not of veracity or fidelity. In absence of special circumstances, the latter qualities are assumed." In another Fifth Circuit case, the court noted that "[a] trial court's decision to appoint an interpreter is reviewed under an abuse of discretion standard." United States v. Ball, 988 F.2d 7, 9 (5th Cir. 1993). In Ball, the main witness was deaf. Defense counsel objected to the State's proposal to allow the witness's wife to act as an interpreter. However, defense counsel offered no alternative.

After giving both parties the opportunity to question the wife regarding her qualifications, the trial court found the two were able to communicate and qualified her as an expert pursuant to Rules 604 and 702 of the Federal Rules of Evidence. Id.

The statute governing the use of an interpreter in a criminal trial is section 17-1-50 of the South Carolina Code. It provides:

> (A)(4) "Qualified interpreter" means a person who:
>
> (a) is eighteen years of age or older;
>
> (b) is not a family member of a party or a witness;
>
> (c) is not a person confined to an institution; and
>
> (d) has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English.
>
> . . .
>
> (D) The Division of Court Administration must maintain a centralized list of certified or otherwise qualified interpreters to interpret the proceedings to a party and testimony of a witness. **A party or a witness is not precluded from using a qualified interpreter who is not on the centralized list as long as the interpreter meets the requirements of subitem (A)(4) and** submits a sworn affidavit to the court specifying his qualifications or **submits to a voir dire by the court.**

S.C. Code Ann. § 17-1-50 (2014) (emphasis added).

Appellant cites Rule 604 of the South Carolina Rules of Evidence, which provides that an "interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation." By extension, he argues the court must qualify an interpreter based on the requirements of

Rule 702, SCRE. He argues three criteria must be met prior to the admission of the interpreter's "expert testimony." First, the trial court must determine that such evidence will assist the jury to understand the evidence or determine a fact in issue. This criterion is easily met, as the "specialized knowledge" that "will assist the trier of fact to understand the evidence or to determine a fact in issue" is Na's specialized knowledge of Mandarin such that she is able to assist the jury in understanding Victim's testimony, which is evidence. Third, the court must determine whether the proposed expert testimony satisfies a reliability threshold for the jury's ultimate consideration. Because an interpreter does not testify regarding her own account of an event, but rather simply translates into English the account of a witness, no reliability threshold applies to the actual account the interpreter relates at trial. Thus, the only way this criterion could apply to an interpreter is that the interpreter herself must be found reliable. Here, the trial judge did not abuse his discretion when he found Na's interpreting skills reliable based on her experience, training, and ability to communicate with Victim.

Appellant acknowledges the issue in this case is the second criterion, whether the expert's proffered testimony is based upon "knowledge, skill, experience, training, or education." The State agrees with Appellant that this criterion parallels the statute, which already requires the interpreter "has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English." S.C. Code Ann. § 17-1-50 (A)(4)(d) (2014). The cases Appellant cites regarding expert testimony have absolutely no bearing on the case at hand. (Indeed, Appellant makes no argument as to how each case relates to the situation here.) All of

them deal with true expert testimony designed to assist the trier of fact: accident reconstruction, intubation, and crime scene processing. As stated above, an interpreter does not provide any additional evidence based on her own knowledge and skill; rather, she simply translates what a witness (in this case the victim) says on the stand.

Appellant argues the South Carolina Rules of Professional Conduct for Court Interpreters also provide guidance in determining whether one is "otherwise qualified" as required by statute. Specifically, he cites Rule 511 of the South Carolina Appellate Court Rules. While Appellant spends a lot of time explaining what is required by this rule, he never applies it to the situation in this case. Thus, this particular portion of the argument seems to have been abandoned due to his simple explanation of the rule and conclusory statements without the required argument relating it to the case at hand. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding an issue is abandoned where the appellant fails to provide argument or supporting authority).

In any event, the trial judge instructed Na to interpret without holding conversations with Victim, correcting any earlier misunderstandings on her part. After Appellant complained that Na and Victim had too many conversations, the trial judge stated, "I think I have told her don't have the conversation with him. Interpret what he says, interpret what the lawyer says and I think she understands that and she's willing to do that. I agree with you and I viewed that as a problem but I think I have corrected it and she's agreed to do it properly." (Tr. 110, lines 12- 17.) Thus, the trial judge listened to Appellant's complaint, agreed with it, and corrected it.

Appellant also argues the trial judge erred in finding Na "otherwise qualified" under the statute. He claims without support that Na did not possess the skills to enable

her to interpret English and Spanish in a legal setting.[1] However, nowhere in the statute is there a requirement that one can interpret in a legal setting or that one has experience with legal terminology. Rather, all that is required is that the interpreter "has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English." If the Legislature wanted to require the interpreter to have a background in the law, it certainly could have and would have written that requirement into the statute. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the express intent of the legislature."); In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998) (stating that under the plain meaning rule, the court should not alter the meaning of a clear and unambiguous statute); Charleston Cnty. Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993) (stating the cardinal rule of statutory construction is to ascertain and give effect to the intent of the Legislature).

Na fit into the statutory requirements to be qualified as an interpreter. Although the trial court did not ask her age, it was clear through her experience as a teacher that she had to be over eighteen. Further, there was no testimony that she was related to any party or witness. She was obviously not confined to an institution. And, as described above, she had the education and training required. Appellant noted in a footnote in his brief that the South Carolina Judicial Department website states, "Only interpreters who are in

[1] The State assumes Appellant meant Chinese, not Spanish.

our directory may be utilized in our courts." (App. Br. 11, fn. 2.) However, the statute is clear:

> (D) The Division of Court Administration must maintain a centralized list of certified or otherwise qualified interpreters to interpret the proceedings to a party and testimony of a witness. **A party or a witness is not precluded from using a qualified interpreter who is not on the centralized list as long as the interpreter meets the requirements of subitem (A)(4) and** submits a sworn affidavit to the court specifying his qualifications or **submits to a voir dire by the court.**

S.C. Code Ann. § 17-1-50 (2014) (emphasis added). Thus, because Na met the requirements of (A)(4) and submitted to voir dire by the court, she was able to become qualified regardless of not being on a centralized list.

Appellant also took issue with the trial judge having to remind Na to simply interpret what Victim said rather than having conversations with him. However, once the cross-examination actually began, the trial judge only had to remind her once not to have conversations with Victim. (Tr. 118, lines 14-16.) Appellant complains "Na's interjection during the testimony that Victim must not have understood her interpretation because his answer was non-responsive demonstrated her lack of understanding of her role." (App. Br. 17.) Rather than indicate Na did not understand her role as interpreter, the fact that she stopped and told the trial judge when she thought Victim misunderstood the question shows she was trying to make sure the interpretation was accurate. Notably, she did not have a conversation with Victim as the trial judge instructed her not to do, but rather asked the trial judge about it. Additionally, after she did stop and ask if she could explain the question, defense counsel just said, "That's all right. That's all right." (Tr. 128, line 20.)

Additionally, Appellant argues "Na's claim that dialect does not matter in Chinese is preposterous." (App. Br. 17.) While Appellant's brief is certainly educational regarding the seven modern Chinese dialects, this argument is nonetheless meritless. The trial judge asked her whether she was able to communicate with Victim in Chinese. (Tr. 98, lines 9-20.) She took a few minutes to talk to Victim in Chinese to ascertain whether she could interpret for him. (Tr. 99, lines 9-24.) After conferring with Victim, Na reported to the trial court that she and Victim could understand what each was saying to the other in Chinese. (Tr. 99, line 25-Tr. 100, line 10.) Only then did the trial judge swear Na in as an interpreter. (Tr. 100, lines 11-19.) At that point, the trial judge asked if there was anything else Appellant would like for him to ask her or if there was anything Appellant would like to ask her about her ability to interpret. (Tr. 103, lines 11-14.) Appellant did not ask about the dialect or make any specific objection on that basis. Therefore, this particular portion of his argument is not preserved. See State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

In any event, all that matters under the statute is that the interpreter "has education, training, or experience that enables h[er] to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English." Because the trial judge determined Na and Victim were able to communicate, any alleged issue regarding the particular dialect did not hinder Na's ability to translate.

In Melton v. Olenik, 379 S.C. 45, 54, 664 S.E.2d 487, 492 (Ct. App. 2008), this Court indicated a showing of prejudice was necessary to support a finding that a trial

court abused its discretion in regard to an interpreter issue. Here, even if this Court were to find the trial judge did abuse his discretion in appointing the interpreter, Appellant has made no showing of prejudice. His only allegation that could remotely be seen as prejudice is his argument that the jury was still deadlocked after rehearing Victim's (and Appellant's) testimony and thus required an Allen charge before reaching a unanimous verdict. This certainly does not rise to the level of prejudice found in Melton, where the lack of an interpreter affected Melton's ability to contest the damages due to the limitations of her poor English proficiency.

Finally, even if the trial court did err in appointing an interpreter during cross-examination, any error was harmless in light of the overwhelming evidence of guilt. See State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (quotations and citations omitted) ("The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained."); State v. Bell, 302 S.C. 18, 27, 393 S.E.2d 364, 369 (1990) (finding exclusion of evidence is reversible only where error and prejudice are shown); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.").

Officer Judy testified that Victim stopped his patrol car and told him he was being robbed, and Judy then chased Appellant from the time he jumped out of Victim's car until he caught him, never losing sight of him. Appellant testified the whole encounter was a drug deal and denied he robbed Victim, but the officer he allegedly told this story refuted Appellant's claim. However, nothing related to the interpreter's translation

changed the testimony of Victim, the officers, or Appellant. Thus, the jury was entirely reasonable in its guilty verdict based on the evidence introduced at trial. Therefore, the trial court properly appointed a qualified interpreter in accordance with the statute, and the trial court's decision should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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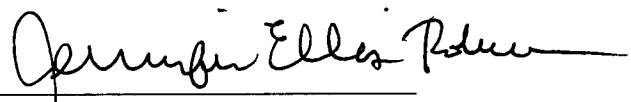
BY: 
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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AUG 13 2014

SC Court of Appeals

Appeal from Berkeley County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-001184

THE STATE,

Respondent,

v.

WILTON Q. GREENE,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

Trial transcript page 219.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: Jennifer Ellis Roberts
Jennifer Ellis Roberts
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(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 13, 2014

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Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 13th day of August, 2014.

ANGELA BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

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August 13, 2014

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Wilton Q. Greene
Appellate Case No. 2013-001184

Dear Ms. Hackett:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services