STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILTON Q. GREENE,

APPELLANT

APPELLATE CASE NO. 2013-001184

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Violating Appellant's state and federal constitutional rights to a fair trial, the trial judge erred in appointing a teacher from the local high school to act as an interpreter where the teacher 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.

STATEMENT OF THE CASE

On April 17, 2013, a Berkeley County Grand Jury indicted Appellant for armed robbery (2013-GS-08-755) and kidnapping (2013-GS-08-756). R. 197. The prosecution called the case for trial before the Honorable J.C. Nicholson, Jr., and a jury on May 20, 2013. R. 1. Adrian G. Dejeu and Bryan Alfaro represented the state, and Chad D. Shelton and David Schwacke represented Appellant. R. 2. The jury convicted Appellant as charged. R. 156, lines 2-9.[1] Judge Nicholson sentenced Appellant to twenty years' imprisonment for armed robbery and twenty years' imprisonment for kidnapping, which were to be served concurrently. R. 180, lines 16-23.

Appellant filed a timely notice of appeal. This brief follows.

[1] The verdict was received by the Honorable Roger M. Young because Judge Nicholson had an appointment. R. 151, line 22 – R. 152, line 6; R. 157, line 20 – R. 158, line 2; R. 171, lines 5-7.

STATEMENT OF THE FACTS

Bing Zhang was the star witness for the prosecution in the case against Appellant. Zhang claimed that on May 22, 2012, a man approached him in the parking lot of a gas station asking for a ride to McDonald's. Zhang agreed, and the two left the gas station in Zhang's car. Almost immediately after leaving the gas station, the man allegedly pulled a knife on Zhang and instructed him to drive to Zhang's bank. R. 9, line 16 – R. 10, line 10; R. 11, lines 5-13. When Zhang said he had no bank account, the man disbelieved him. Zhang then gave the man all the money he had on him – approximately $20. R. 11, lines 16-20. Zhang also gave the man his wallet, which contained no money. R. 11, lines 21-23. During this interaction, Zhang was looking for the police. While stopped at a red light, Zhang saw a police car stopped nearby and quickly turned left to get nearer the police car. Zhang drove to the middle of the road and pressed his horn. R. 13, lines 15-25.

Zhang opened his window and yelled that someone had robbed him. The man ran, and the police chased. R. 14, lines 6-11. Zhang followed the police and observed the officer catch the man. R. 14, lines 12-14. The police returned Zhang's wallet and its contents to him shortly after catching the man. R. 15, line 20 – R. 16, line 1.

Although Zhang testified on direct examination without the aid of an interpreter and with very little trouble communicating, the trial judge decided to appoint an interpreter shortly after the initiation of cross-examination. During the initial part of the cross-examination without an interpreter, Zhang claimed he had never given other people rides. R. 19, lines 9-10. When Appellant tried to impeach him with his audio-recorded statement to police, in which he stated he had given rides to other people, Zhang's ability to testify suddenly changed. When Appellant asked questions, Zhang did not answer, but asked

questions in return. R. 19, line 1 – R. 20, line 22. When Appellant asked if Zhang could read English because Appellant planned to impeach him with a transcript of his statement to police, Zhang answered: "Just a little bit maybe." R. 21, lines 2-3. When Appellant gave Zhang the transcript to read, Zhang claimed he could not read it. R. 22, lines 11-20. Thereafter, the judge sua sponte stopped the proceedings. R. 22, line 23 – R. 23, line 1.

The judge inquired of the prosecutor concerning the availability of an interpreter. The prosecutor informed the court he had no interpreter available. R. 23, lines 10-12. The judge instructed the solicitor to read the transcript to Zhang in English during a break. The judge opined: "I don't think he understands what anybody is even asking him." R. 23, line 16 – R. 25, line 5. Later, the judge elaborated that he was "concerned about having observed Mr. Zhang's ability to understand the English language and respond as far as his ability in communicate through the English language." He stopped the trial "to see if the state could find an interpreter." R. 25, line 21 – R. 26, line 3. When the break ended, the judge announced that the prosecutor had found an interpreter. R. 26, lines 3-5.

Xu Na appeared before the court as the proposed interpreter. She informed the Court that she taught Mandarin Chinese at Berkeley High. When the judge inquired what dialect of Chinese she spoke, she answered that "it doesn't matter in Chinese." R. 26, lines 9-17. The judge explained he wanted her to "interpret the question as given in English by the attorneys to [Zhang] in his dialect of Chinese." R. 26, lines 23-25. Then, she was to let Zhang respond. If Zhang had to respond in Chinese, that was fine. R. 27, lines 2-4. The judge then gave Na an opportunity to converse with Zhang in Chinese. R. 27, lines 10-18. Zhang informed the judge he understood what was transpiring. R. 27, lines 20-23. After speaking with Zhang, Na informed the court that she understood what had happened to him.

R. 28, lines 2-3. She also stated the two could understand each other. R. 28, lines 4-10. Thereafter, the judge swore Na in as an interpreter. The oath required Na "to interpret correctly and to interpret to Mr. Zhang everything that is said in English, convert it to Chinese to him, and then correctly interpret from him back to English for the court and the jury and the lawyers." R. 28, lines 13-19.

After doing so, the judge noted that Zhang could "communicate in simple English language." However, the judge "was of the opinion that anything other than very simple sentences and simple words he was not able to interpret." R. 29, lines 2-5. The judge found Na "competent to interpret." R. 29, lines 6-10. The prosecution responded that Zhang had been responsive on direct to the questions asked; however, the prosecution did not object to the qualifications of Na or to Na interpreting for Zhang during the remainder of cross-examination and the entirety of re-direct. R. 29, line 11 – R. 30, line 2.

Appellant, on the other hand, objected to Na's qualifications and moved for a mistrial based upon the use of an interpreter during the middle of cross-examination. Appellant noted the prosecution should have realized that an interpreter was necessary during its preparation of the case. Appellant argued the court should not correct the state's error. Thus, Appellant argued a mistrial was appropriate. R. 30, lines 6-23. Appellant further argued Na was not qualified to act as an interpreter because she had not demonstrated an ability to give "an actual verbatim recital" of what the witness will say. R. 30, line 25 – R. 31, line 6. Appellant noted Na was not a certified interpreter and that one was available the following day. Appellant explained there had been no demonstration of Na's ability to translate what Zhang was saying and communicate that to the jury and the court. R. 32, lines 6-19.

In response to this objection, the judge engaged in an additional colloquy with Na and Zhang. He explained that he would ask questions of Zhang in English and that Na must ask those questions of Zhang in Chinese and get his response. R. 33, lines 1-4. When the judge asked Na to tell Zhang that his responses could be in English or Chinese, Na required the judge to repeat his request. R. 33, lines 1-7. The following then transpired:

> The Court: My question for you to ask him is does he understand that he can respond in English to your Chinese questions or he can respond in Chinese.
>
> Interpreter: Okay.
>
> [Whereupon, interpreter and witness confer]
>
> Interpreter: He said Chinese.

R. 33, lines 13-18. Recognizing that the answer was not responsive to the judge's yes-or-no question, the judge attempts to clean it up by asking, "Which does he prefer respond in Chinese or respond in English? Ask him that?" The interpreter responded: "Chinese." R. 33, lines 19-21.

The judge then asked a series of questions for the interpreter to ask to Zhang in Chinese and relate back in English. After learning of the Chinese province where Zhang was born – Fujian, the judge followed up by asking for the physical location of the province. The interpreter failed to ask Zhang, but offered her own answer to the question. The judge had to instruct the interpreter to ask Zhang. R. 33, line 25 – R. 34, line 10. When the judge asked the interpreter to explain that if Zhang did not know an answer, he should respond that he did not know, the interpreter conferred with Zhang, but then had the judge repeat the instruction. R. 34, line 24 – R. 35, line 9. During this exchange, the judge admonished Na:

"When you're interpreting what I need you to do is don't have a little conversation with him just interpret what he says." R. 36, lines 1-9.

Upon further inquiry by the judge, Na stated she had been an English teacher in China for nine years. R. 36, lines 20-25. At the time of the trial, Na had been in the United States for less than a year, having arrived in July 2012. Starting in August 2012, Na had been teaching Mandarin Chinese to students. R. 37, lines 1-3. Na candidly admitted she had never interpreted in court. R. 37, lines 4-6. When the judge inquired if Na had ever interpreted any type of formal proceedings, Na responded, "In China I have interpreted some papers, just for school not - - yes." R. 37, lines 7-10.

Elaborating on the objection, Appellant noted:

> As you 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.

R. 37, line 23 – R. 38, line 6.

The judge again found that Na was "qualified as an interpreter." Therefore, the judge did not require a certified interpreter for the proceedings although one was available the following day. He denied Appellant's motion to find Na not qualified as an interpreter. R. 37, lines 11-17. The judge determined he had resolved any problems by instructing the interpreter on what to do and explained the problem was a result of the interpreter never having done it before. R. 38, lines 11-17.

Concerning the motion for mistrial, the prosecution explained that in preparing for trial, the prosecutor had communicated with Zhang without the use of an interpreter and without difficulty. The prosecutor also explained that during direct examination, questions

were asked in English, and responses were given in English. Zhang's responses were responsive to the questions asked demonstrating understanding on Zhang's part to the English questions asked. R. 39, line 4 – R. 40, line 5.

The judge agreed that Zhang had been asked questions in English and was responsive in English. The judge emphasized the questions were "simple" and that Zhang "did appear to understand." The judge, however, was "concerned about the ability of the defendant [sic] to express himself completely and his limited ability of understanding the English language and interpreting the questions." Due to this concern, the judge requested an interpreter. He determined the prosecutor had not erred in failing to provide an interpreter initially. Citing Rule 611, SCRE, the judge stated that he had required an interpreter to assist the jury "in making a determination in listening to the testimony and be fully appraised of the testimony based upon the interpretation by the interpreter." Therefore, he denied the motion for mistrial. R. 40, line 20 – R. 41, line 21.

Before the cross-examination resumed, the judge again admonished Na not to have a private conversation with Zhang, but to interpret what was being said to him and interpret his response. Na informed the judge that she would prefer the attorney to say a sentence or two and then allow her to interpret. R. 42, line 12 – R. 43, line 8.

During the remainder of cross-examination, the interpreter failed to understand the question: "And at some point in time he gets money from him?" The interpreter asked how to explain getting the money. R. 50, lines 9-13. Then, Zhang responded multiple times without the use of an interpreter as noted by the court reporter's lack of notation "Through Interpreter." R. 53, lines 2-6; R. 53, line 10 – R. 54, line 24; R. 56, lines 1-6. When the interpreter was involved again, confusion reigned. The interpreter was not aware of the

prosecutor's name and had defense counsel repeat it several times. The interpreter also thought the questions were directed to the interpreter personally, instead of Zhang. R. 55, lines 4-13. The interpreter even interjected her belief that Zhang did not understand a question based on the way he had answered a question. R. 56, lines 15-19.

ARGUMENT

Violating Appellant's state and federal constitutional rights to a fair trial, the trial judge erred in appointing a teacher from the local high school to act as an interpreter where the teacher 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.

"[W]henever a party, witness or victim in a criminal legal proceeding does not sufficiently understand or speak the English language to comprehend the proceeding or to testify, the court must appoint a certified or otherwise qualified interpreter to interpret the proceedings to the party or victim or to interpret the testimony of the witness." S.C. Code Ann. § 17-1-50(B)(1). A certified interpreter is "an interpreter who meets the standards contained in [section 17-1-50(A)(4)] and is certified by the administrative office of the United States courts, by the office of the administrator for the state courts, or by a nationally recognized professional organization." S.C. Code Ann. § 17-1-50(A)(1). A qualified interpreter is a person who is at least eighteen years of age, is not a family member of a party or a witness, is not a party confined to an institution, and "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 non-English speaking person, or from the language of that person into spoken English." S.C. Code Ann. § 17-1-50(A)(4). Although the statute requires maintenance of a centralized list of certified and otherwise qualified interpreters by Court Administration, the statute permits the use of a qualified interpreter who is not on the list as long as the "interpreter meets the requirements of [section 17-1-50(A)(4)] and submits

a sworn affidavit to the court specifying his qualifications or submits to voir dire by the court." S.C. Code Ann. § 17-1-50(D).[2]

Additionally, Rule 604 of the South Carolina Rules of Evidence provides that "[a]n 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." In light of the Rules' classification of the interpreter as an expert, she must be qualified by the court based upon knowledge, skill, experience, training or education under Rule 702. The qualification of a witness as an expert and the subsequent admission of that witness's opinion testimony are matters within the sound discretion of the trial judge. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); Lee v. Suess, 318 S.C. 283, 285, 457 S.E.2d 344, 345 (1995); Manning v. City of Columbia, 297 S.C. 451, 453, 377 S.E.2d 335, 336-337 (1989); Honea v. Prior, 295 S.C. 526, 530, 369 S.E.2d 846, 849 (Ct. App. 1988). Therefore, an appellate court reviews a trial judge's ruling concerning an expert witness' qualification and the admission of opinion testimony for an abuse of discretion. Strange v. South Carolina Dep't of Highways & Pub. Transp., 307 S.C. 161, 163, 414 S.E.2d 138, 139 (1992); Honea, 295 S.C. at 530; 369 S.E.2d at 849. "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005); see also, Suess, 318 S.C. at 285, 457 S.E.2d at 345. If the ruling is "manifestly arbitrary, unreasonable, or unfair," then the trial court abused his discretion. Id.

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[2] Noteworthy, the South Carolina Judicial Department's website states that "[o]nly interpreters who are in our directory may be utilized in our courts." http://www.sccourts.org/courtreporter/HowtoBecomeCourtInterpreter.cfm (last visited on May 27, 2014).

Rule 702 of the South Carolina Rules of Evidence governs when the admission of expert testimony is appropriate and supplies the bases by which an expert may be qualified to give an opinion. Specifically, the Rule provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. Thus, several criteria must be met prior to the admission of 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. Second, the witness must be qualified as an expert due to experience or training. Third, the trial court must determine whether the proposed expert testimony satisfies a reliability threshold for the jury's ultimate consideration. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

The first criterion requires the trial judge to determine whether the proffered testimony, which is based upon specialized knowledge, will assist the jury in understanding evidence or determining a fact. A matter understood without any specialized knowledge does not require the witness to be qualified as an expert. Additionally, if the testimony will not assist the jury's understanding of a relevant matter, then no expert testimony is needed. See Manning, 297 S.C. at 453-454, 377 S.E.2d at 337 (holding that "[t]o qualify as an expert, a person must have acquired by study or practical experience a special knowledge of a subject matter about which the jury's good judgment and average knowledge is inadequate"); Honea, 295 S.C. at 531, 369 S.E.2d at 849.

The third criterion requires the trial judge to ensure the proffered testimony "meets a reliability threshold for the jury's ultimate consideration." White, 382 S.C. at 270, 676 S.E.2d at 686. As explained by the South Carolina Supreme Court, "[r]eliability is a central

feature of Rule 702 admissibility." Id. Although the factors to be considered for reliability differ depending upon the type of evidence offered, typically, when scientific evidence is offered, the trial court must consider (1) the publications and peer review of the technique, (2) prior application of the method to the type of evidence involved in the case, (3) the quality control procedures used to ensure reliability, and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999). When non-scientific expert testimony is offered, reliability factors similar to those reviewed for scientific expert testimony but tailored to fit the particular evidence offered. White, 382 S.C. at 272, 676 S.E.2d at 687 (listing six factors to consider for dog tracking evidence).

The second criterion, which is at issue in Appellant's case and parallels the statute, requires that the expert's proffered testimony be based upon "knowledge, skill, experience, training, or education." In order for a witness to be competent to testify as an expert, the "witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony." O'Tuel v. Villani, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995). Qualification as an expert "depends on the particular witness' reference to the subject." Gooding v. St. Francis Xavier Hospital, 326 S.C. 248, 253, 487 S.E.2d 596, 598 (1997); Suess, 318 S.C. at 285, 457 S.E.2d at 346. "'[A]n expert is not limited to any class of persons acting professionally.'" Gooding, 326 S.C. at 253, 487 S.E.2d at 598 (citing Botehlo v. Bycura, 282 S.C. 578, 586, 320 S.E.2d 59, 64 (Ct. App. 1984)). In addition, our courts place no exact requirement regarding how that knowledge or skill must be acquired by the witness. Honea, 295 S.C. at 531, 369 S.E.2d at 849. In fact,

"[e]ven where the problem presented may be one that usually requires some scientific knowledge or training, a person with long experience may testify as an expert although he or she did not pursue a special study of the matter." Id.

In McDill v. Mark's Auto Sales, 367 S.C. 486, 491, 626 S.E.2d 52, 55 (Ct. App. 2006), this Court held the trial judge did not err in refusing to qualify a state trooper as an expert in accident reconstruction. Although the trooper had experience in investigating accidents and took a six-week accident reconstruction course along with updating courses, the trooper was not a member of the Highway Patrol's accident reconstruction team. The trooper did not use any particular reconstructive techniques in making his determination of the car speeds; rather, he relied upon statements from the drivers as to their speeds. The trooper had testified in federal court previously concerning his opinion as to accident investigation, not reconstruction. Id. As this Court noted, "if investigating an accident qualified an officer as an expert in accident causation, then every highway patrolman would qualify as an expert." Id.

On the other hand, in Gooding, 326 S.C. at 252, 487 S.E.2d at 597, the South Carolina Supreme Court held an emergency medical technician (EMT) and paramedic, was qualified to testify as an expert in intubation. The EMT testified that in addition to being a certified paramedic, he had intubated over one hundred patients, and instructed and tested physicians on intubation and extubation procedures. Id. at 251, 487 S.E.2d at 597.

In State v. Ellis, 345 S.C. 175, 177-178, 547 S.E.2d 490, 491 (2001), the Supreme Court held a police officer, who was qualified to testify as an expert in crime scene processing and fingerprint identification exceeded the scope of his expertise when he testified as to his conclusion drawn from the measurements and observations he made. In

Ellis, the victim was found dead as a result of gunshot wounds near his bicycle and a knife. The defendant admitted to shooting the victim, but claimed he acted in self-defense when the victim dropped his bike and approached the defendant with the knife. When the victim refused to stop, the defendant shot the victim. The prosecution's theory of the case was that the defendant shot the victim while the victim remained on the bike. Id. at 176, 547 S.E.2d at 491. The police officer testified that the victim was on his bike when he was shot based upon his measurements and observations of the crime scene. Id. at 177-178, 547 S.E.2d at 491. Further, the Court held the error in allowing the officer to testify was not harmless in light of the defendant's contention that he was acting in self-defense. Id. at 178, 547 S.E.2d at 491. The Court held the prosecutor was free to argue that the evidence supported an inference that the victim was on the bicycle at the time of the shooting, and the jury could have concluded as such, but the officer "was not qualified to give such an 'expert' opinion." Id.

In addition to the statute and the rules govern expert testimony, South Carolina established Rules of Professional Conduct for Court Interpreters, providing guidance in determining whether an individual is "otherwise qualified" as required by the statute. Rule 511, SCACR. The Preamble to the Rule provides that "[a]nyone serving as a court interpreter should be required to understand and abide by the precepts set out in these Rules." The Rule's Applicability section states that "[t]hese Rules shall guide and be binding upon all persons, agencies, and organizations who administer, supervise use of, or deliver interpreting services to the judiciary." Clearly, the Rules apply equally to interpreters deemed "otherwise qualified" and to certified court reporters.

Interpreters are required to render "a complete and accurate interpretation ... without altering, omitting or adding anything to what is stated or written and without explanation or summarization." Rule 1, RPCCI, Rule 511, SCACR. Per the commentary, an interpreter must interpret "[e]very spoken statement, even if it appears non-responsive, obscene, rambling or incoherent." Additionally, "[i]nterpreters should never interject their own words, phrases, or expressions."

Concerning an interpreter's competency, the commentary to Rule 2 explains that "[a]cceptance of a case by an interpreter conveys linguistic competency in legal settings." (emphasis added). The commentary to Rule 8, which requires interpreters to assess and report impediments to performance, encourages interpreters "to make inquiries as to the nature of a case whenever possible before accept an assignment" to enable "interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently." Whenever the language and subject matter of a case "is likely to exceed their skills or capabilities," interpreters "should refrain from accepting a case." Along these lines, South Carolina's Judicial Department website refers those interested in being interpreters to the Occupational Outlook Handbook, 2012-2013 Edition. http://www.sccourts.org/courtreporter/HowtoBecomeCourtInterpreter.cfm (last visited May 27, 2014). The Handbook is a product of the United States Department of Labor. It defines legal or judiciary interpreters as individuals who "typically work in courts and other legal settings. ... As a result, they must understand legal terminology. ... Both interpreters and translators must have strong understanding of legal terminology in both languages."

http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-2 (last visited May 27, 2014).

The trial judge erred in finding Na "otherwise qualified" as an interpreter. The statute requires the interpreter to have the "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 non-English speaking person, or from the language of that person into spoken English." S.C. Code Ann. § 17-1-50(A)(4). Na simply did not possess the education, training, or experience to enable her to interpret English and Spanish in a legal setting. Na's only experience was as an educator. For nine years, Na had taught English in China. For less than one year, Na had resided in the United States where Na taught Mandarin Chinese to students. Na had no experience with legal terminology or translating in a legal setting. The judge's repeated instructions to Na to stop having discussions with Zhang and to interpret everything he said and only what the lawyers said displayed Na's lack of understanding of her role. Na's interjection during the testimony that Zhang must not have understood her interpretation because his answer was non-responsive further demonstrated her lack of understanding of her role.

Further, Na's claim that dialect does not matter in Chinese is preposterous. There are seven major modern Chinese dialects, including Mandarin, Wu, Xiang, Gan, Kejia, Min, and Yue. Hongyuan Dong, A History of The Chinese Language, 156 (Routledge 2014). Although it appeared that both Na and Zhang were speaking Mandarin, one of the seven major dialects in Chinese, the inquiry into the dialects should not have ended there as dialect does matter in Chinese. Although there are commonly shared features of the Mandarin

dialects, there remain subgroups exhibiting various distinctions. Id. at 158. Of particular importance to the instant matter is that Zhang was born in the Fujian Province. According to Howard French, "[e]ven by the standards of China's complicated language matrix, Fujian Province stands out for its richness, a dense thicket of tongues laid down by waives of migration over time from central China." In his article, French quoted Zhang Zhenxing, a noted linguist from Fujian at the Chinese Academy of Social Sciences in Beijing: "'We have an expression, that if you drive five miles in Fujian the culture changes, and if you drive ten miles, the language does.'" Zhenxing described the number of dialects in Fujian as "'extraordinary.'" French explained that "[t]o drive a few miles down the road from one village to another is indeed to plunge into a new linguistic universe. Things can be as confusing for someone from the next town as they are for the total outsider." Howard French, Uniting China to Speak Mandarin, the One Official Language: Easier Said Than Done, N.Y. Times, July 10, 2005.

The case before the jury was no easy matter as demonstrated by the jury's struggle over its verdict. The jury asked for the possibility of a lesser-included charge. R. 194. Receiving a negative reply to the initial inquiry, the jury then asked for the testimony of Zhang and Appellant to be replayed. R. 195. After hearing the testimony, the jury wanted the police report and the transcript of Zhang's statement to police. R. 196. Even after the additional clarifications and three votes, the jury was still deadlocked. R. 151, lines 22-25. Thereafter, the judge instructed the jurors pursuant to Allen v. United States, 164 U.S. 492 (1896). R. 152, line 12 – R. 155, line 24. Only then did the jurors return a unanimous verdict.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences in light of the trial court's error in appointing an unqualified court interpreter.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of October, 2014.