Court of Appeals Cause Number 01-24-00761-CR
Trial Court Cause Number 23-CCR-232185

IN THE COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

THE STATE OF TEXAS
Appellee

v.

YOELI ARAUS GARCIA

Appellant

ON APPEAL FROM THE COUNTY COURT AT LAW NO. 3 FORT BEND COUNTY, TEXAS

BRIEF OF YOELI ARAUS GARCIA, APPELLANT

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ORAL ARGUMENT REQUESTED

DESIGNATION OF PARTIES

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APPELLEE……State of Texas

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Tex. R. App. P. 38.1(e), Appellant respectfully requests oral argument in this case to assist the Court in determining and understanding relevant portions of the record related to this case and to assist the Court in clarifying important factual and legal matters related to this case.

STATEMENT OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to Tex. Const. art. V §6, as an appeal from the decision of the County Court at Law Number Three, Fort Bend County, Texas.

ISSUES PRESENTED FOR REVIEW

I. THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING OFFICER GARCIA TO INTERPRET SPANISH STATEMENTS MADE BY YOELI ARAUS GARCIA BEFORE AND DURING HIS INVESTIGATION AT TRIAL.

a. STANDARD OF REVIEW

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i. FOREIGN DOCUMENTS

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STATEMENT OF THE CASE

Course of Proceedings

Yoeli Araus Garcia was charged with Theft of Property >=$750<$2,500 on May 23, 2023. C.R. Vol. 1, p. 6.

Yoeli Araus Garcia was found guilty by a jury of Theft of Property greater than or equal to $750.00 less than $2,500.00 as charged in the information on September 25, 2024. C.R. Vol, 1, p. 23.; R.R. Vol. 3, p. 194.

The trial court filed a Certification of Defendant's Right to Appeal. C.R. Vol. 1, P. 27.

The defendant was sentenced to community supervision for a period of fifteen months. C.R. Vol. 1, p. 29.

The trial court signed and entered the Judgment on August 30, 2024. C.R. Vol. 1, p. 35.

Defendant filed a Notice of Appeal on September 26, 2024. C.R. Vol. 1, p. 36.

Statement of Facts

The jury was empaneled and sworn. R.R. Vol. 2, p. 89. The State presented its case in chief, which included testimony from three witnesses, Michaella Harris, Christopher Caston, and Jesse Garcia. R.R. Vol. 3, p. 3.

During Officer Jesse Garcia's testimony, the State offered State's Exhibit 7 into evidence, which is his body camera recording of the investigation conducted in the loss prevention office at Walmart. R.R. Vol. 3, p. 108. Defense Counsel objected to the State's Exhibit 7 on the grounds that contained hearsay and a foreign language, and the State did not comply with the rules of evidence for using a foreign language exhibit at trial. R.R. Vol. 3, p. 109.

Outside the presence of the jury, Defense Counsel explained to the Court that the exhibit was riddled with hearsay because there were many people in the room. A Walmart employee speaks on the recording, a man who retrieved the children speaks on the recording, and the codefendant speaks on the recording. None of the individuals speaking on the recording were present as witnesses at trial. R.R. Vol. 3, p. 109. Defense Counsel argued that Ms. Harris narrates the entire video, which is not subject to cross-examination since she did not testify at trial. Defense Counsel argues that the people speaking in the video repeat what others have stated who are not present in the video.

Also, Counsel argues that the additional problem with the recording is that people in the video are very obviously using broken Spanish to communicate with the defendant, and they are interpreting the defendant's responses. She explained the problem is that there are Walmart employees, loss prevention officers, and police officers speaking very ***broken***, ***unintelligible*** Spanish, and then explaining what they believe the defendant's response is. R.R. Vol. 3, p. 110. Defense Counsel further stated during the objection to State's Exhibit 7, "I don't think that this officer is the same because I have viewed the video and…my Spanish isn't good enough to interpret either, so I am not passing judgment." R.R. Vol. 3, p. 113. She further argued, "…there are so many people in the room using broken Spanish and interpreting what my client and the codefendant are saying, and they obviously don't have the skills necessary to accurately interpret." *Id*.

Defense Counsel argued, "I still object because even…if we watch that video you will see that even when it is time to Mirandize the defendant…Officer Garcia has to use some type of recording on his phone to play Spanish Miranda Warnings. He cannot recite them. R.R. Vol. 3, p. 116. "And Judge, the reason…he used the translator service or device is because he is not able to do it." R.R. Vol. 3, p. 117. "And Judge, I would, again, challenge his credential to interpret in this Court because it is very important apparent from the recording…that he is unable to even do the Miranda Warnings in Spanish. He uses either a recording on his

phone or something. It is a recording that just plays on his phone to do anything more than just a simple word or two…I would object that he is not meeting the same criteria that the First Court of Appeals has described in the cases where they allowed an officer to serve as an interpreter." R.R. Vol. 3, p. 121.

The State suggested that the interpreter assigned to the defendant be made available to interpret if opposing counsel has genuine concerns about the accuracy of the translation. R.R. Vol. 3, p. 124. Defense Counsel highlighted the logistical issues if the interpreter has to interpret even witness testimony to the defendant, stating that the interpreter can't testify and simultaneously interpret for my client. R.R. Vol. 3, p. 125.

The Court stated, "We do have another translator." Defense Counsel replied, "But even with that, I still have my remaining objections that the interpretations offered by other parties inside of the room on the recording are still not in compliance with 1009." R.R. Vol. 3, p. 125.

The judge stated, "So, what I am going to do in this matter is, I am going to permit the first where the officer comes in and takes the evidence down. I am not going to let that—where the other person is speaking, because she is not here and the fact is that you can obviously subpoena her, but she is not here. So, I am going to let that officer—the portion up to where the officer is speaking to Ms. Harris, without the portion of the other person speaking." R.R. Vol. 3, pgs. 127-128.

Defense Counsel asked, "And Judge, I am not clear on what…is being admitted." R.R. Vol. 3, pgs. 128-129.

The court replied, "So the first—up until the second person speaks. I believe it is the person at the cash register or cashier. Is it the cashier that speaks? The lady with the longer hair? So up until her speaking, I will permit that in. And then, if you want to somehow mute her or redact her portion. And then, have Ms. Harris continue on, you can. But the other—I don't hear any of the background stuff. I know that there is people speaking but I am not picking it up. And obviously it ends when Ms. Harris and the Miranda." R.R. Vol. 3, p. 129.

The State responded that a lot of the hearsay statements Defense Counsel complained of are party-opponent statements or present sense impressions and that their noncompliance with Texas Rule of Evidence 1009(e) was not required because translations can be admitted through live testimony at trial. R.R. Vol. 3, p. 111.

The State described a First Court of Appeals case, *Castrejon v. State*, wherein an officer was permitted to translate an audio for the court just based on her own understanding. *Id*.

Defense Counsel argued that the First Court of Appeals case offered by the State was distinguishable from the facts of this case because in *Castrejon*, the officer took college classes in Spanish. R.R. Vol. 3, p. 113.

Similarly, the caselaw presented to the court by Defense Counsel revealed that in *Benjume v. State*, where the appellate courts upheld an officer's ability to interpret in court, the officer in question testified he was a native Spanish speaker and had passed a Spanish proficiency test administered by the police department. R.R. Vol. 3, p. 115. *Benjume v. State*, No. 01-22-00492-CR, 2024 WL 1774234 (Tex. App. Apr. 25, 2024), petition for discretionary review refused (Sept. 4, 2024).

Defense Counsel reminded the Court that the officer's interpretation in this case was not the only interpretation at issue, because there were so many interpretations going on in the loss prevention office. R.R. Vol. 3, p. 113. Also, in the present case, the State could not establish that Officer Garcia had any formal education or training in Spanish, was a native Spanish speaker, nor had he taken or passed a Spanish proficiency test. R.R. Vol. 3, p. 115. Further, Officer Garcia had to play a Spanish recording of the Miranda warnings to the defendant because he was unable to read or recite them in Spanish. R.R. Vol. 3, pgs. 116-117.

The Court reviewed the video outside of the presence of the jury. R.R. Vol. 3, p. 117. While the video was playing, Defense Counsel pointed out the portion of Ms. Harris' testimony, wherein she relayed to Officer Garcia what she believed was said in Spanish. The trial court responded, "I will sustain that objection." R.R. Vol. 3, p. 118. The trial court directed the State to "cut that portion". *Id*.

The State explained that it would need to redact the rest of the audio and requested the court to allow them to play the first part of the video that is allowed and submit the exhibit into evidence at a later time, once they had an opportunity to actually redact the rest of the audio. R.R. Vol. 3, p. 128.

Defense Counsel requested the court to clarify the ruling, and the court stated that Ms. Herrerra's statements would be redacted along with the Officer's Miranda. Further, the court clarified that the audio would be redacted from where Ms. Herrera starts speaking and that everything after the Miranda warning recording would be redacted. R.R. Vol. 3, p. 130.

The court requested the court reporter toward the bench by saying, "Ashley, come here." Defense Counsel then asked the court, whether the other objections were overruled, and the court said yes. R.R. Vol. 3, p. 132.

The State began to play its proposed State's Exhibit 7 in the presence of the jury. R.R. Vol. 3, p. 132. As the video continued to play in open court, Defense Counsel said "Stop", the court exclaimed "Stop, stop!" R.R. Vol. 3, p. 133. The court then stated, "That is all stricken. Everything after—it changed?" "Everything is stricken after that particular point." R.R. Vol. 3, p. 134.

The State said, "If it is easier, we can just roll without this portion. There is another portion which you did agree to. So, if anything, we will stay within the

confides of that but we will just hold off on the rest of this portion." R.R. Vol. 3, p. 134.

Defense counsel asked the court to clarify that this exhibit had not yet been admitted into evidence, to which the court replied, "Not yet." *Id*. Defense Counsel stated, …I think I stated this before, but I am objecting to anything that is not admitted being published to the jury." R.R. Vol. 3, p. 135.

The State then claimed that the parties had reached an agreement to play the video, to which Defense Counsel replied, "It was not agreed to. It was ordered—or allowed by the Court. It was not agreed to." *Id*. To which the court replied, "On the record. All of this is, yes."

The State then continued to play the recording, and the court asked, "Did the numbering change? Is that what it is?" R.R. Vol. 3, pgs. 135-136. Defense Counsel agreed that the timing on the recording the State was playing during the trial seemed different than the recording that was previewed outside the presence of the jury. The court agreed and said, "yes, my recollection is that it started at 9:50:00 as well. And also, the other portion my notes state that it started at 17:20:00. So, it seems like something has changed on the times." R.R. Vol. 3, p. 136.

The State said, "I will call it my bad, Your Honor. I started at that portion I was already in because I anticipated the objectionable portion would have come in later. So, that is on the State's fault…" R.R. Vol. 3, p. 136.

Defense Counsel objected again to anything being published that is not admitted and requested that the State admit their exhibit before publishing. R.R. Vol. 3, pgs. 136-137.

The Court asked the State if they were going to "at some point" admit this into evidence, to which they replied yes, so the court allowed them to continue publishing the recording to the jury. R.R. Vol. 3, p. 137.

Officer Garcia resumed his testimony, and the State asked him to interpret the defendant's response to his question from Spanish to English. Defense Counsel objected to Officer Garcia serving as an interpreter or translator. R.R. Vol. 3, p. 139. The court stated, "I am going to permit it." R.R. Vol. 3, p. 139.

The State repeated the question before the officer could answer the first question and asked, "After you Mirandized the suspect you asked her a question. Can you please tell us what you asked her?" The State then asked "And what was her response?" R.R. Vol. 3, p. 140.

Defense Counsel objected again, and stated, "Objection, Your Honor. I will object to him interpreting what statement may or may not have been made by my client. And I am also objecting to hearsay and calls for speculation, he doesn't know what she said…this officer is not qualified to interpret in this courtroom, and I am objecting to him doing so." R.R. Vol. 3, p. 140. The trial court overruled the objection. R.R. Vol. 3, p. 141.

The officer testified that the defendant told him she understood her rights. Defense Counsel requested a running objection to any interpretations made by this officer, and the court granted that request. R.R. Vol. 3, p. 141. The judge acknowledged the running objection on the record when Defense Counsel pointed out, again, that the time stamps were an issue. R.R. Vol. 3, p. 142.

The video continued to play, and the officer interpreted the defendant's Spanish statements for the jury to be, "She understood her rights, she wanted to speak to me, and that she admitted to stealing." R.R. Vol. 3, p. 142. The officer further stated that she admitted to stealing the stuff that was in the room. R.R. Vol. 3, pgs. 142-143.

The State rested its case without offering State's Exhibit 7 into evidence. R.R. Vol. 3, p. 147. Specifically, the trial court asked, "Does the State have any more witnesses?" To which Mr. O'Brien, on behalf of the State, replied, "No, Judge. At this time the State rests." R.R. Vol. 3, p. 147.

Defense Counsel moved for directed verdict, arguing that the State failed to meet its burden. R.R. Vol. 3, pgs. 148-150. The directed verdict was denied. R.R. Vol. 3, p. 153. In its response to the motion for directed verdict, the State replied, "Judge, there has been put forth plenty of evidence…to equip the jury with the information they need to…make the determination as to whether the dollar amount

has been met…Now that…evidence has been tendered it is up to the jury to discern how much weight that evidence bears." R.R. Vol. 3, pgs. 152-153.

The defense rested and closed. R.R. Vol. 3, p. 153.

SUMMARY OF THE ARGUMENT

The trial court abused its discretion by allowing Officer Garcia to interpret at trial regarding statements the defendant made prior to his arrival on the scene and during his theft investigation in the loss prevention office.

Defense Counsel properly objected to the officer's ability to speak Spanish and pointed out a particular scene in his body worn camera footage where he struggled to speak Spanish without the use of his phone. Defense Counsel objected to the same, and the court observed that the officer could only communicate a word or two of Spanish independently. Defense Counsel complained that Officer Garcia used a Spanish recording of the Miranda Warning to communicate those rights to the defendant in the loss prevention office. Further, Officer Garcia did not claim to have formal education in the Spanish language and he testified that he was not a native Spanish speaker.

The officer in question was not qualified to interpret in Spanish, because he was not a native Spanish speaker, he did not have any formal education in Spanish, and did not pass any departmental exams for Spanish speaking officers.

Further defense counsel informed the court that appointment of an interpreter would not resolve the issue with the officer's interpretation, because the officer also sought to interpret the statements made by the defendant to loss prevention officers prior to Officer Garcia's arrival to the scene.

For the foregoing reasons, this Court should find that the officer lacked the ability to understand and speak the Spanish language, and the trial court abused its discretion by allowing him to testify and interpret the Spanish statements made by Yoeli Araus Garcia on the scene.

Further, the testimony offered by the officer affected the substantial rights of the defendant, because he testified that she waived her Miranda rights and admitted to stealing the merchandise in question at trial.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING OFFICER GARCIA TO INTERPRET SPANISH STATEMENTS MADE BY YOELI ARAUS GARCIA BEFORE AND DURING HIS INVESTIGATION AT TRIAL.

a. STANDARD OF REVIEW

We review a trial court's decision to admit evidence for an abuse of discretion. *Castrejon v. State*, 428 S.W.3d 179 (2014). *Torres v. State,* 71 S.W.3d 758, 760 (Tex.Crim.App.2002).

We will not reverse a trial court's evidentiary ruling unless it falls outside the zone of reasonable disagreement. *Id.* We afford a trial court wide discretion in determining the adequacy of interpretive services. *Linton v. State,* 275 S.W.3d 493, 500 (Tex.Crim.App.2009). The question on appeal is not whether the "best" means of interpretive services were employed but whether the services employed were constitutionally adequate. *Id.* The translation must be "accurate or 'true,' but it need not be perfect." *Flores v. State,* 299 S.W.3d 843, 855 (Tex.App.-El Paso 2009, pet. ref'd) (quoting *Linton,* 275 S.W.3d at 501–02); *see also Peralta v. State,* 338 S.W.3d 598, 604 (Tex.App.-El Paso 2010, no pet.) (holding same).

We review complaints about the competency of a person to act as a translator for an abuse of discretion. *Castrejon v. State*, 428 S.W.3d 179, 188 (Tex. App.—Houston [1st Dist.] 2014, no pet.).

b. PRESERVATION OF ERROR

Appellant must object with specificity to the accuracy of any part of the translation. *Castrejon v. State*, 428 S.W.3d 179 (2014)., Tex. R. Evid. 103(a). Error may not be predicated upon trial court ruling admitting evidence unless substantial right of party is affected and timely objection stating the specific ground of objection appears of record. *Id*.

To preserver error for appeal, the appellant must challenge the translation of the Spanish spoken in the conversation, bring specific errors in the translation of the recording to the attention of the trial court. *Id*.

The Court further stated that "When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding,…an interpreter must be sworn to interpret for the person charged or the witness." *Id*. Tex. Code Crim. Proc. Ann. art. 38.30(a) (Vernon Supp. 2013).

In the present case, Defense Counsel objected at trial and argued that the problem with the recording is that people in the video are very obviously using broken Spanish to communicate with the defendant, and they are interpreting the defendant's responses. She explained the problem is that there are Walmart employees, loss prevention officers, and police officers speaking very ***broken, unintelligible*** Spanish, and then explaining what they believe the defendant's response is. R.R. Vol. 3, p. 110. She further argued, "…there are so many people in the room using broken Spanish and interpreting what my client and the codefendant are saying, and they obviously don't have the skills necessary to accurately interpret." *Id*.

Defense Counsel specifically complains of the accuracy of the interpretation and cites specific errors. Defense Counsel argued, "I still object because even…if we watch that video you will see that even when it is time to Mirandize the

defendant…Officer Garcia has to use some type of recording on his phone to play Spanish Miranda Warnings. He cannot recite them. R.R. Vol. 3, p. 116. "And Judge, the reason…he used the translator service or device is because he is not able to do it." R.R. Vol. 3, p. 117. "And Judge, I would, again, challenge his credential to interpret in this Court because it is very important apparent from the recording…that he is unable to even do the Miranda Warnings in Spanish. He uses either a recording on his phone or something. It is a recording that just plays on his phone to do anything more than just a simple word or two…I would object that he is not meeting the same criteria that the First Court of Appeals has described in the cases where they allowed an officer to serve as an interpreter." R.R. Vol. 3, p. 121.

In this case, the appointment of an interpreter to remedy the language barrier would not cure the issues raised by Defense Counsel because the officer also interpreted statements made prior to his arrival on the scene, which were not recorded by his body worn camera. Those statements were incapable of being reviewed by the attorneys or an interpreter since they were not recorded.

The State suggested that the interpreter assigned to the defendant be made available to interpret if opposing counsel has genuine concerns about the accuracy of the translation. R.R. Vol. 3, p. 124. Defense Counsel highlighted the logistical issues if the interpreter has to interpret even witness testimony to the defendant,

stating that the interpreter can't testify and simultaneously interpret for my client. R.R. Vol. 3, p. 125.

The Court stated, "We do have another translator." Defense Counsel replied, "But even with that, I still have my remaining objections that the interpretations offered by other parties inside of the room on the recording are still not in compliance with 1009." R.R. Vol. 3, p. 125. Defense Counsel explained to the trial court that the use of an interpreter for the recording would not remedy the problem that the loss prevention officers and other individuals on the recording were speaking in English and offering those words as interpretations of earlier conversations they had with the defendant prior to the officer's arrival. Officer Garcia was not present at the time the defendant and codefendant made those statements in Spanish to the loss prevention officers, therefore the Spanish statements were not captured on his body worn camera and thus were not recorded or otherwise subject to review.

Defense Counsel objected to the exhibit regardless of whether an interpreter was available, because the Spanish statements allegedly made by the client according to the officers, were not recorded by State's Exhibit 7; so the interpreter would have no way to verify whether the loss prevention officer's statements were accurate interpretations.

Considering the foregoing, error was preserved for appeal on this issue.

c. APPLICABLE LAW

i. FOREIGN DOCUMENTS

Rule 1009 of the Texas Rules of Evidence provides that a translation of a foreign-language document is admissible, so long as its proponent serves on all parties the translation, the document being translated, and a qualified translator's affidavit setting forth her qualifications and certifying the translation's accuracy at least 45 days before trial. TEX. R. EVID. 1009(a). But on a party's motion and for good cause, the trial court may alter this deadline. TEX. R. EVID. 1009(f). Moreover, this deadline does not bar a party from offering the testimony of a ***qualified*** translator to translate a foreign-language document. TEX. R. EVID. 1009(e); *Castrejon*, 428 S.W.3d at 184–85. Finally, though Rule 1009 refers to documents, we apply it to translations of foreign-language recordings too. *Castrejon*, 428 S.W.3d at 183–86.

ii. AUDIO RECORDINGS

Article 38.30 provides, in relevant part, "When a motion for appointment of an interpreter is filed by any party ..., an interpreter ***must be sworn*** to interpret for the person charged or the witness. *Any person may be subpoenaed, attached or recognized in any criminal action or proceeding,* to appear before the proper judge or court *to act as interpreter therein, under the same rules and penalties as are provided for witnesses.* In the event that the only available interpreter is not

considered to possess adequate interpreting skills for the particular situation, or the interpreter is not familiar with the use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between the person charged or witness and the appointed interpreter during the proceedings."

TEX.CODE CRIM. PROC. ANN. art. 38.30(a) (*emphasis added*).

The El Paso Court of Appeals has held that when "the interpreter was positively identified, qualified, ***officially sworn***, and subjected to cross-examination, the requirements of Texas Code of Criminal Procedure, Article 38.30 [are] met." *Peralta,* 338 S.W.3d at 605 (citing *Flores,* 299 S.W.3d at 856).

Article 38.30 of the Texas Code of Criminal Procedure generally requires a trial court to appoint and ***swear*** in an interpreter for a witness or defendant who does not understand and speak the English language. TEX. CODE CRIM. PROC. art. 38.30(a).

While this provision does not expressly address involving foreign-language recordings admitted into evidence, the Court of Criminal Appeals has held the safeguards of article 38.30 apply. *Leal v. State*, 782 S.W.2d 844, 849 (Tex. Crim. App. 1989). Therefore, upon request, an interpreter must be sworn to translate a foreign-language recording in conformity with the requirements imposed with respect to witnesses and defendants who do not understand and speak the English language. *Id.* These requirements are rather minimal though Article 38.30 provides

that "[a]ny person" may act as an interpreter, under the same rules and penalties that apply to witnesses, so long as he or she possesses "adequate interpreting skills for the particular situation." TEX. CODE CRIM. PROC. art. 38.30(a). The article does not require an interpreter to be certified or licensed to provide an admissible translation. *Castrejon*, 428 S.W.3d at 188.

In this case, the trial record reflects that Defense Counsel objected to the admission of the State's exhibit 7 on the basis that it was a Spanish language recording wherein Officer Garcia and other interpreted statement made by the defendant both on and off the recording. Defense Counsel argued that the State had complied with the rules of evidence for admission of a Spanish language exhibit at trial.

The trial court refused to admit the State's exhibit without redactions of the audio on the recording.

Here the defense's objection was not only to the use of the exhibit. The defense also objected to the officer's ability to testify and interpret at trial. Particularly, the defense questioned Officer Garcia's ability to speak and understand the Spanish language. The specific portion of the interpretation the defense called to the court's attention was the portion of the recording wherein the officer uses his phone to provide Miranda Warnings to the defendant. Defense Counsel argued that the officer was not able to converse in the Spanish language

other than one or two simple words at a time. The portion of the interpretation that was disputed showed that the officer needed to use either a recording or application on his phone to communicate in Spanish on the scene.

Further, Defense Counsel argued that the exhibit contained audio where third parties, presumably loss prevention officers, were interpreting statements made by the defendant prior to the officer's arrival. Those Spanish language statements were not made on the recording. All the recording contained was the English-speaking loss prevention officer telling the police officer what the defendant stated in Spanish prior to his arrival. The loss prevention officer who interpreted the State's exhibit was not present at trial to testify.

The trial court and the attorneys discussed the possibility of locating an interpreter to remedy the defense's objection, however the defense explained that the use of an interpreter would not remedy the objection to the loss prevention officer interpreting on the recording, because the Spanish language statements interpreted by that officer were not captured on Officer Garcia's body worn camera.

The trial court permitted Officer Garcia to interpret statements made by the Defendant on the recording, over Defense Counsel's running objection.

Thet trial court should not have allowed Officer Garcia to testify based on the rulings in prior cases because this circumstance is unlike the precedent discussed at trial.

In *Benjume*, the First Court of Appeals held that the trial court did not err by implicitly ruling that the officer had adequate interpreting skills for the situation. In that case, the officer testified that Spanish was his first language, he had passed a departmental Spanish-language proficiency test, and he is the one who interviewed the defendant in Spanish at the scene and at the hospital.

The officer in that case was on the witness stand and under oath when he translated the recordings into English for the jury, and he was subject to cross-examination by defense counsel about the accuracy of his translations. On these facts, the trial court did not abuse its discretion by allowing that officer to translate, rather than appointing and swearing in an interpreter who was licensed or possessed some other professional credentials.

The Court in *Castrejon* upheld the trial court and found that the officer possessed "sufficient skill in translating" Spanish, and "adequate interpreting skills for the particular situation," and was "familiar with the use of slang" in Spanish such that she could render an accurate English translation of the recording of her conversation with appellant. *See Leal,* 782 S.W.2d at 849.

In that case, the Court also held that the appellant failed to show that the trial

court's ruling was erroneous or that it in any way affected his substantial rights, as necessary to establish reversible error on appeal. *See* TEX.R.APP. P. 44.2(b). *Castrejon v. State*, 428 S.W.3d 179, 188 (Tex. App.—Houston [1st Dist.] 2014, no pet.).

In this case, the trial court did not implicitly rule that Officer Garcia was qualified to interpret the defendant's statements from Spanish to English. Rather the trial court particularly questioned the State as to why they needed the recording as an exhibit. Further, the trial court did not swear the officer as an interpreter pursuant to the requirements in the Texas Code of Criminal Procedure 38.30.

In the present case, the court did not only allow Officer Garcia to interpret statements made by the defendant to him, but the trial court allowed Officer Garcia to inform the jury of interpretations made by loss prevention officers prior to his arrival at the loss prevention office. The loss prevention officers spoke to Officer Garcia upon his arrival at the loss prevention office. They told Officer Garcia that both suspects had spoken to them, and they made incriminating statements. The loss prevention officers provided their interpretation of what the suspects stated prior to the officer's arrival. This fact is particularly concerning where the loss prevention officers were not present at trial and sworn to testify, and the statements they interpreted to the officer were not recorded on his body worn camera and thus not subject to review by the defense.

This Court should find that the trial court erred by allowing Officer Garcia to interpret Spanish statements at trial, where the defense complained that the exhibit he interpreted from was inadmissible, made specific objections regarding his ability to speak Spanish, and he was not sworn to interpret. This error affected the substantial rights of Yoeli Garcia, because the officer testified that she admitted to stealing the items alleged in the complaint. Essentially, the testimony that the trial court allowed was an admission of guilt by Yoeli Garcia, which resulted in her conviction and the corresponding punishment.

PRAYER FOR RELIEF

Appellant prays that this Court find that the trial court committed reversible error by allowing Officer Garcia to interpret the Spanish language during trial. Officer Garcia was not qualified to interpret at trial, and he was unable to effectively communicate in Spanish without the use of technology or recordings.

Further, Appellant prays that his Court find that Officer Garcia's training and life experience are dissimilar to other officers who have been permitted to interpret the Spanish language at trial.

Appellant prays that this Court finds her substantial rights to have been affected by this testimony, where Officer Garcia stated that she admitted to stealing in Spanish.

Appellant prays that this Court grant the relief requested herein and reverse the trial court's judgment of conviction.

Appellant prays for all relief to which she may be entitled to in equity and by law. Appellant prays for general relief.

Respectfully Submitted,
/s/ *Jessica Jaramillo-Moreno*
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The undersigned certifies that this document consists of 2,922 words in compliance with the Texas Rule of Appellate Procedure 9.4.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Brief of Appellant has been served on all parties in accordance with Texas Rule of Appellate Procedure 9.5 on February 17, 2025, via electronic file management at:

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