

No. 46563-9-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

VLADIMIR BELOUSOV,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR CLARK COUNTY

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court denied Vladimir Belousov his right to be present, to assist counsel, and to a fair trial.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The Sixth Amendment and Article I, section 22, guarantee a person the right to present at trial and to assist in his defense with counsel. Where an accused person is a non-English speaking or limited-English speaking person and is not provided an interpreter, these rights are denied. Where Mr. Belousov went without an interpreter during significant portions of trial, was he denied his right to be present and to assist counsel?

C. STATEMENT OF THE CASE

Mr. Belousov had a two-day jury trial on a single count of first degree child molestation. Because he speaks Russian, an interpreter was appointed to assist Mr. Belousov during trial. *See e.g.* RP 13.

Natalyz Alyayeva, the mother of the alleged victim V.A., was one of two witnesses to testify she was present during the alleged events. RP 75-97. V.A. was the other. Because she speaks Russian, an interpreter provided an English translation of Ms. Alyayeva's testimony for the courtroom. RP 74-75.

Ms. Alyayeva testified she was present at the time of the alleged incident and in the room when it occurred. RP 80. By the best account, Ms. Alyayeva did not contact police for at least several weeks, and perhaps months, after the event occurred. RP 86. In the midst of Ms. Alyayeva's testimony, the interpreter assisting Mr. Belousov ceased interpreting for him and left counsel table. RP 83. The court concluded the interpreter was unnecessary because Ms. Alyayeva was testifying in Russian and thus Mr. Belousov did not require an interpreter. *Id.*

A jury convicted Mr. Belousov as charged. CP 36-37.

D. ARGUMENT

The lack an interpreter to assist Mr. Belousov during significant portions of his trial violated the Sixth Amendment and Article I, section 22.

a. *The constitutional rights to be present and assist counsel at trial require courts appoint interpreters to assist non-English speaking defendants throughout trial.*

Article I, section 22 provides in relevant part:

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel [and] to meet the witnesses against him face to face

The Sixth Amendment offers a similar guarantee:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury

to be confronted with the witnesses against him . . . and to have the assistance of counsel for his defense.

“The right of a defendant in a criminal case to have an interpreter is based upon the Sixth Amendment constitutional right to confront witnesses and the right inherent in a fair trial to be present at one’s own trial.” *State v. Gonzales-Morales*, 138 Wn.2d 374, 379, 979 P.2d 826 (1999). RCW 2.43.010 requires appointment of interpreter to:

. . . secure the rights, constitutional or otherwise, of persons who, because of a non-English speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

One of the fundamental aspects of the right to be present is the “ability to communicate with . . . counsel.” *Illinois v. Allen*, 397 U.S. 337, 344, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970); *State v. Finch*, 137 Wn.2d 792, 845, 975 P.2d 967 (1999). Explanation of what that right entails comes from cases discussing the minimal requirements of competency to stand trial. To be found competent, a person must have ability to consult with his attorney “with a reasonable degree of rational understanding,” *Dusky v. United States*, 362 U.S. 402, 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960). The requisite ability is the capacity for ‘reasoned choice’ among the alternatives available to him.” *Godinez v.*

Moran, 509 U.S. 389, 397, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993).

At bottom, what is demanded is that a defendant has “sufficient competence to take part in a criminal proceeding and to make the necessary decisions throughout its course.” *Moran*, 509 U.S. at 403 (Kennedy, J., concurring).

Where a non-English speaking person does not have the assistance of an interpreter, he is denied the right to be present and the ability to assist counsel in violation of the Sixth Amendment. *U. S. ex rel. Negron v. New York*, 434 F.2d 386, 389 (2d Cir. 1970).

b. *Without the aid of an interpreter during the significant portion, Mr. Belousov was left without the means to understand the proceedings to assist counsel and was denied a fair trial.*

During the course of the testimony of a critical state witness, the interpreter assisting Mr. Belousov ceased interpreting and left counsel table. 1RP 83. The court stated “the witness is speaking in Russian so . . . her comments don’t need to be interpreted.” *Id.* That the witness was testifying in Russian is not the end of the inquiry. The prosecutor was not asking his questions in Russian, and no interpreter was translating those questions for Mr. Belousov.

Without the benefit of an interpreter, Mr. Belousov heard:

A: I don’t remember

....

A: I don't know exactly, right now, because a lot of time lapsed.

....

A: Yes.

....

A: Yes.

....

A: Yes.

....

A: Yes.

....

A: At first - - at first, I didn't know about everything and then someone - - and then someone told me I need to report it and I made a decision to report it and then latter I stepped on a rusty nail and was busy with the - - puncture wound.

RP at 86-87. A person hearing that would have no idea that in fact Ms. Alyayeva was testifying to when the alleged incident occurred, or that she was testifying about the incident at all.

The full exchange provided:

Q: How long did it take you to report this to police?

A: I don't remember

Q: Do you remember when this incident happened?

A: I don't know exactly, right now, because a lot of time lapsed.

Q: Do you think it was in 2013?

A: Yes.

Q: Do you think it was in the fall?

A: Yes.

Did you meet with the police on October 30th?

A: Yes.

Q: So Does that sound like when this happened?

A: Yes.

Q: Why did you wait three to four weeks to report this to the police?

A: At first - - at first, I didn't know about everything and then someone - - and then someone told me I need to report it and I

made a decision to report it and then latter I stepped on a rusty nail and was busy with the - - puncture wound.

RP at 86-87. Without the benefit of an interpreter, Mr. Belousov heard the first version and could only guess at the actual content of the testimony, never mind his complete inability to assess its reliability or veracity.

The same exercise could be repeated for the remainder of the State's examination of Ms. Alyayeva and the entirety of his attorney's cross-examination. Mr. Belousov was provided only one part of the conversation occurring in the courtroom. Every other person in the room heard the complete conversation. An answer of "yes" or "no" or "I can't remember that" means nothing without the context provided by the question. The credibility, accuracy, reliability and veracity of a witness's testimony can only be measured by first hearing the question asked.

Beyond his inability to know what was being said from the witness stand, Mr. Belousov had no ability to assist counsel throughout that critical portion of trial.

The constitutional right to have the assistance of counsel carries with it a reasonable time for consultation and preparation. Consultation includes not only assistance in trial preparation, but opportunity for private and

continual discussions between defendant and his attorney during the trial.

State v. Hartzog, 96 Wn.2d 383, 402, 635 P.2d 694 (1981) (citing Const. Art. I, § 22). Without an interpreter Mr. Belousov had no opportunity for discussion with counsel. He could not help shape cross-examination without hearing the questions asked. He could not offer his insight on the witness's testimony even if he could understand what was being asked. Mr. Belousov could not ask questions of his attorney regarding the proceedings going on around him. Through a significant portion of the proceedings he faced the "Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment" *State v. Woo Won Choi*, 55 Wn. App. 895, 901, 781 P.2d 505 (1989) (quoting *United States v. Carrion*, 488 F.2d 12, 14 (1st Cir.1973), *cert. denied*, 416 U.S. 907 (1974)).

Without the assistance of an interpreter, Mr. Belousov had no ability to consult with his attorney or assist in his own defense. Mr. Belousov could not make reasoned choices throughout the course of the proceedings when he was denied the ability to know what is happening before him. The interpreter's absence from counsel table violated the Sixth Amendment and Article I, section 22.

c. Mr. Belousov is entitled to a trial at which he can understand the proceedings and assist counsel.

Courts have found even a temporary denial of the right to assist and consult with counsel requires reversal. *State v. Hartwig*, 36 Wn.2d 598, 601, 219 P.2d 564 (1950); *State v. Cory*, 62 Wn.2d 371, 376, 382, P.2d 1019 (1963). Here, without an interpreter, Mr. Belousov was denied the ability to assist counsel through a significant portion of trial.

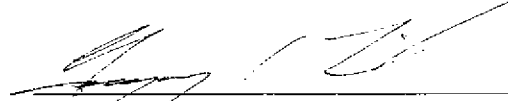
Even under the typical standard for assessing the prejudice of a constitutional violation, reversal is required. An error resulting in the denial of a constitutional right, such as a fair trial, requires reversal unless the State proves beyond a reasonable doubt the misconduct did not contribute to the verdict obtained. *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967). The State cannot demonstrate that the denial of interpreter for Mr. Belousov was harmless beyond a reasonable doubt.

Ms. Alyayeva was a critical witness for the State. She was one of only three people present during the alleged incident. She was the person who reported the allegation to police. Her testimony was critical to the State's ability to prove the event occurred, and if so when. The absence of an interpreter to assist Mr. Belousov cannot be deemed harmless.

E. CONCLUSION

As set forth above, this Court should reverse Mr. Belousov's conviction

Respectfully submitted this 18th day of December, 2014.



GREGORY C. LINK – 25228
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Attorneys for Appellant

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DIVISION TWO**

STATE OF WASHINGTON,)	
)	
Respondent,)	
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v.)	
)	
VLADIMIR BELOUSOV,)	
)	
Appellant.)	

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