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Court of Appeals
Division II
State of Washington
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No. 50421-9-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

BINIAM YIRGALEM GEBREMARIEM, Appellant.

Appeal from the Superior Court of Lewis County
The Honorable James Lawler
No. 16-1-00637-21

REPLY BRIEF OF APPELLANT BINIAM GEBREMARIEM

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I. ARGUMENT

1. Gebremariem's Constitutional Rights to Due Process and to Confront Witnesses Were Violated When the Trial Court Improperly Denied Him a Certified or Qualified Interpreter.

The State argues that Gebremariem waived the issue of not having an interpreter but not arguing that it was unconstitutional and not continuing to object after the court denied him an interpreter; and, therefore, this Court may only address the issue if it finds that the lack of an interpreter raises a manifest constitutional error.

a. *Gebremariem's Did Object to the Denial of His Right to a Qualified Interpreter.*

Gebremariem did object, repeatedly, that the interpreter was not qualified. However, after he was held in contempt and jailed for his objections and refusal to proceed without an interpreter, he proceeded without an interpreter and without further objection. Furthermore, the interpreters that were provided were not qualified under the rules as discussed in appellant's brief and appeared telephonically. Under these circumstances, he was forced to proceed without an interpreter. Therefore, he did object and did not waive the error. This Court should review the denial of an interpreter for an interpreter is reviewed for abuse of discretion. *State v. Gonzales-Morales*, 138 Wash.2d 374, 381-82, 979 P.2d 826 (1999). For the reasons stated in the appellant's brief, the trial

court abused its discretion and this matter should be reversed and remanded for a new trial.

b. *The Denial of the Right to an Interpreter is a Manifest Constitutional Error.*

As argued above, Gebremariem did object; therefore, this Court should review the denial of the right to an interpreter for abuse of discretion. However, if this Court finds that the issue was not properly preserved, this Court should consider the error because it is a manifest constitutional error. RAP 2.5(a).

A defendant has a constitutional right to an interpreter. *Gonzales-Morales*, 138 Wash.2d at 379; U.S. CONST. amend. V, VI, XIV; WASH. CONST. Art. I, §§ 3, 22. The State concedes this point. Brief of Resp. at 18. However, the State argues that the error was not manifest because Gebremariem was not prejudiced. Brief of Resp. at 19.

Gebremariem was prejudiced because he was denied the use of an interpreter when English was not his first language. Although he can speak English, it is clear from the record that it is not his first language and there were language barriers during the trial. The prejudice is compounded because Gebremariem was proceeding pro se and without the assistance of standby counsel. Furthermore, he waived his right to counsel and his right to a jury trial without the assistance of an interpreter, and as

was argued in appellant's brief, it appears there was some confusion regarding both of those waivers.

While discussing the waiver of his right to counsel, he repeatedly answered "I'm present" when asked if he wanted to represent himself and then, "I'm here, yeah. I'm present, sir, yeah. I present, yeah." RP 11-17-16 at 4-5. When asked about whether he was familiar with the rules of evidence and how to try a case, he said, "I'm familiar. If not, I will request some -- I will just -- yeah, I'll request some other person to just help me with finding the process. But I'm confident to defend myself." RP 11-17-16 at 7. And, "I mean, I would like to have one [an attorney], but I would like to know what kind of lawyer I'm using with this building. So I will just go get one attorney which is licensed, the one that I know." RP 1-19-17 at 5-6.

While discussing the waiver of right to a jury trial, without an interpreter, Gebremariem said, "I don't understand. I understand you're the judge – ," RP 2-9-17 at 21, "would like to be by the judge," "I got to have my freedom, you know," RP 2-9-17 at 21, and, "That's why I choose that because the judge [unintelligible] freedom." RP 2-27-17 at 9-10; CP 104.

Gebremariem did not understand his important constitutional rights to counsel and a jury trial and waived them without an interpreter. He also represented himself at trial, without an interpreter, when English was

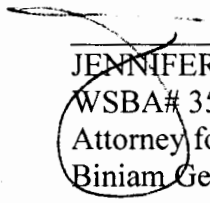
clearly not his first language and there was a language barrier. For these reasons, he was prejudiced and the result may have been different if he had an interpreter. Therefore, the denial of an interpreter was a manifest constitutional error and this matter should be reversed and remanded for a new trial.

II. CONCLUSION

In conclusion, the trial court erred by denying Gebremariem his constitutional right to an interpreter. Therefore, this matter should be reversed and remanded for a new trial, if this court does not reverse and dismiss for insufficient evidence for the other reasons stated in appellant's opening brief..

Dated this 19th day of December, 2017.

Respectfully Submitted,



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STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, vs. BINIAM GEBREMARIEM, Appellant.	)))))))))	NO. 50421-9-II CERTIFICATE OF SERVICE

The undersigned certifies that on this day correct copies of this appellant's reply brief were delivered electronically to the following:

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The undersigned certifies that on this day correct copies of this appellant's brief were delivered by U.S. mail to the following:

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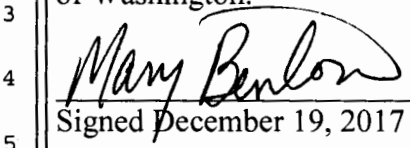
This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington.



Signed December 19, 2017 at Tacoma, Washington.

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