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Mendez v. State, 2011 Ark. 536 (Copy citation)

Supreme Court of Arkansas
December 15, 2011, Opinion Delivered
No. CR10-1241

Reporter: 2011 Ark. 536 | 2011 Ark. LEXIS 608

JOSE LUIS MENDEZ, APPELLANT v. STATE OF ARKANSAS, APPELLEE

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Subsequent History: Rehearing denied by Mendez v. State, 2012 Ark. LEXIS 30 (Ark., Jan. 19, 2012)

Prior History: APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT, NO. CR2009-792-1. HON. WILLIAM A. STOREY, JUDGE.

Disposition: REVERSED AND REMANDED.

Core Terms

translation, accuracy, genuine, circuit court, trial court

Case Summary

Procedural Posture

Defendant appealed a judgment by the Washington County Circuit Court (Arkansas) that convicted him of rape, attempted murder, aggravated residential burglary, and aggravated assault; defendant, who spoke only Spanish, claimed that the circuit court erred in admitting the State's translation of a statement he gave to the police in Spanish because it was not prepared by a qualified certified translator as required by Ark. R. Evid. 1009 (2011).

Overview

After defendant's girlfriend was assaulted and the police were called, defendant was arrested. An interview was conducted in Spanish and recorded. During the trial, the circuit court admitted the State's translation prepared by an employee of the prosecutor's office who had taken and failed the translator's qualification exam, into evidence. Defendant offered a translation performed by a state-certified translator. The disputed statement came after defendant was asked if he tried to kill the victim. The State's translator translated defendant's answer as "I did that." Defendant's translator translated defendant's response as "I didn't do that." The circuit court admitted both translations, concluding that the question of which version to credit was a matter for the jury. The state supreme court found, inter alia, that the only question was whether the State's translator's translation should have been admitted. Not only was he uncertified, he had taken and failed the certification exam. Accordingly, pursuant to Rule 1009(h), the introduction of the unqualified translation of defendant's statement as an admission of guilt should not have been admitted.

Outcome

The judgment was reversed, and the matter was remanded for further proceedings.

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Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Evidence

HNI The Supreme Court of Arkansas reviews evidentiary rulings under an abuse of discretion standard, and does not reverse absent a manifest abuse of that discretion and a showing of prejudice. Shepardize - Narrow by this Headnote

Governments > Courts > Rule Application & Interpretation
Governments > Legislation > Interpretation

About this Document

Legal Issue Trail

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HN2 The Supreme Court of Arkansas construes court rules using the same canons of construction as are used to construe statutes. [Shepardize - Narrow by this Headnote](#)

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HN3 The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. [Shepardize - Narrow by this Headnote](#)

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HN4 When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction, and the analysis need go no further. [Shepardize - Narrow by this Headnote](#)

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HN5 The Supreme Court of Arkansas reviews issues of statutory construction de novo as it is for the Court to decide what a statute means. [Shepardize - Narrow by this Headnote](#)

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HN6 The Supreme Court of Arkansas is not bound by the decision of a trial court; however, in the absence of a showing that the trial court erred in its interpretation of the law, that interpretation will be accepted as correct on appeal. [Shepardize - Narrow by this Headnote](#)

Evidence > ... > [Documentary Evidence](#) > [Transcripts & Translations](#) > [Translations](#)

HN7 See [Ark. R. Evid. 1009](#) (2011). [Shepardize - Narrow by this Headnote](#)

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Evidence > [General Overview](#)
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HN8 The Supreme Court of Arkansas reviews the interpretation of a rule of evidence de novo. [Shepardize - Narrow by this Headnote](#)

Evidence > ... > [Documentary Evidence](#) > [Transcripts & Translations](#) > [Translations](#)

HN9 [Ark. R. Evid. 1009\(a\)](#) (2011) provides that a translation of a foreign-language transcription shall be admissible upon the affidavit of a "qualified translator," as defined in paragraph 1009(h). Thus, the plain language of the rule unambiguously states that a transcription is admissible so long as the statement is otherwise admissible under the Arkansas Rules of Evidence, and a "qualified translator" submits an affidavit attesting to the accuracy of the transcription. The rule goes on to address what happens when a party objects to the accuracy of the translation or offers a conflicting translation. [Shepardize - Narrow by this Headnote](#)

Evidence > ... > [Documentary Evidence](#) > [Transcripts & Translations](#) > [Translations](#)

HN10 [Ark. R. Evid. 1009\(a\)](#) (2011) determines when a translation is admissible, and it plainly bases admission on the submission of the affidavit of a "qualified translator" under paragraph (h). To be a qualified translator, an interpreter must satisfy the requirements set forth in the Supreme Court of Arkansas's decision in [In re Certification for Foreign Language Interpreters in Arkansas Courts](#), 338 Ark. App'x 827 (1999) (per curiam) and Administrative Order Number 11. [Ark. R. Evid. 1009\(h\)](#). [Shepardize - Narrow by this Headnote](#)

Evidence > ... > [Documentary Evidence](#) > [Transcripts & Translations](#) > [Translations](#)

HN11 [Ark. R. Evid. 1009\(d\)](#) (2011) provides that in the event conflicting translations are served under [Rule 1009](#), a court shall determine whether a genuine issue of material fact exists. The only way that such a conflicting translation can be admitted is under paragraph (a). [Shepardize - Narrow by this Headnote](#)

Evidence > ... > [Documentary Evidence](#) > [Transcripts & Translations](#) > [Translations](#)

HN12 To offer a competing translation, the translation must pass the admissibility standard set forth in [Ark. R. Evid. 1009\(a\)](#) (2011). Only where two qualified translations are offered does a court determine whether there is a genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact. [Shepardize - Narrow by this Headnote](#)

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HN13 Where the evidence of guilt is overwhelming and an error is slight, an appellate court can declare that the error was harmless and affirm. [Shepardize - Narrow by this Headnote](#)

Counsel: For Appellant: Herbert Charles Southern.

• For Appellee: Attorney General.

Judges: KAREN R. BAKER, Associate Justice.

Opinion by: KAREN R. BAKER

Opinion

KAREN R. BAKER, Associate Justice

A Washington County jury found appellant Jose Luis Mendez guilty of rape, attempted murder, aggravated residential burglary, and aggravated assault and sentenced him to a total of sixty years' imprisonment. Appellant, who speaks only Spanish, asserts that the circuit court erred in admitting the State's translation of a statement he gave to the police in Spanish because it was not prepared by a **qualified** certified translator as required by Arkansas Rule of Evidence 1009 (2010). The circuit court ruled that the statement was admissible and that the translator's certification went to the weight, rather than the admissibility, of the statement. The court of appeals certified this case, and we accepted certification because the issues raised are novel and significant and involve the interpretation of a rule of evidence. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(b)(1), (4), and (6) (2011). We reverse and remand.

On May 13, 2009, Irma Guervara was assaulted. She **testified** at trial that she awoke that day to find her former boyfriend, appellant, in her apartment straddling and choking her. [2] She **stated** that appellant choked her until she lost consciousness and that when she awoke, appellant was gone and she was badly injured. She went to the apartment manager for help, and he called the police.

After an investigation, the police arrested appellant, and Detective Jared Pena interviewed him. The interview was conducted in Spanish and recorded. During the trial, the circuit court admitted the State's translation prepared by Joseph Thomas, an employee of the prosecutor's office who had taken and failed the translator's qualification exam, into evidence. Appellant offered into evidence a translation performed by Nicholas Durand, a state-certified translator. The salient difference between the two translations concerns an alleged admission from appellant that he grabbed Guervara's neck that appears in Thomas's translation and not in Durand's translation. The disputed statement came after Detective Pena asked appellant, "Did you try and kill her?" Appellant responded by asking why he would kill her. Detective Pena responded, "Grabbing her by the neck?" Thomas translated appellant's response as "I did that." Durand translated appellant's response as "I didn't do that." Thomas **testified** at trial that he did not believe the usage of "I did that" is particularly awkward. Durand **testified** at trial that he is a certified **interpreter** for the State of Arkansas. He **stated** that appellant's usage of the phrase that Thomas translated as "I did that" seemed awkward; so, he looked to alternative usages of that sentence structure elsewhere in appellant's statement to conclude that appellant did not admit to grabbing Guervara's neck. The circuit court admitted both translations, concluding that the question of which version to credit was a matter for the jury.

[3] On appeal, appellant contends that the circuit court should have disallowed the State's translation because a translator who was not certified under the provisions of Arkansas Rule of Evidence 1009(a) provided the translation. The State argues that nothing in the rule precludes the admission of a translation provided by a nonqualified translator. Alternately, the State asserts that any error in admitting the evidence was harmless error.

The State correctly asserts that HN1 we review evidentiary rulings under an abuse of discretion standard, and we do not reverse absent a manifest abuse of that discretion and a showing of prejudice. *E.g., Morris v. State*, 358 Ark. 455, 193 S.W.3d 243 (2004). However, resolution of the issue on appeal requires this court to interpret Rule 1009 of the Arkansas Rules of Evidence. HN2 We construe court rules using the same canons of construction as are used to construe statutes. *Juris Diction USA, Inc. v. Loislaw.com, Inc.*, 357 Ark. 403, 183 S.W.3d 560 (2004). HN3 The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* HN4 When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction, and the analysis need go no further. *Id.* HN5 We review issues of statutory construction de novo as it is for us to decide what a statute means. *Id.* HN6 We are not bound by the decision of the trial court; however, in the absence of a showing that the trial court erred in its interpretation of the law, that interpretation will be accepted as correct on appeal. *Id.*

Rule 1009 of the Arkansas Rules of Evidence, provides, in relevant part, as follows:

(HN7 a) Translations. A translation of foreign-language documents and recordings, including transcriptions, that is otherwise admissible under the Arkansas Rules of Evidence shall [4] be admissible upon the affidavit of a "qualified translator," as defined in paragraph (h) of this rule[.]

....

(d) Effect of Objections or Conflicting Translations. In the event of conflicting translations under paragraph (a), or if objections to another party's translation are served under paragraph (b), the court shall determine whether there is a genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact.

....

(h) **Qualified** Translator. A "qualified translator" is an **interpreter** satisfying the requirements established by the Arkansas Supreme Court in In Re: Certification for Foreign Language Interpreters in Arkansas Courts, 338 Ark. App'x 827 (1999) and Administrative Order Number 11.

Ark. R. Evid. 1009 (2011).

~~HN8~~ We review the interpretation of the rule of evidence de novo. Looking first at the rule, ~~HN9~~ paragraph (a) provides that a translation of a foreign-language transcription "shall be admissible upon the affidavit of a 'qualified translator,' as defined in paragraph (h) of this rule[.]" Ark. R. Evid. 1009(a). Thus, the plain language of the rule unambiguously **states** that a transcription is admissible so long as the statement is otherwise admissible under the **Arkansas** Rules of Evidence, and a "qualified translator" submits an affidavit attesting to the accuracy of the transcription. The rule goes on to address what happens when a party objects to the accuracy of the translation or offers a conflicting translation.

Here, appellant offered a translation provided by a **qualified** translator. The date of the letter sending Durand's translation is March 22, 2010, and the letter includes Durand's certification. On May 11, 2010, the **State** filed a motion in limine objecting to the use of Durand's translation, specifically objecting to the translation described above as "I didn't do that." At the motion hearing, appellant argued that the best-evidence rule required Durand's **[5]** translation control over Detective Pena's and that the **State's** translation was inadmissible because Thomas was not a **qualified** translator. The **State** argued that Rule 1009 did not preclude admission of Thomas's translation.

On appeal, the **State** contends that the situation in the present case arises under the conflicting-version provision, paragraph (d) of Rule 1009, which provides that the court has the discretion to determine whether there is a genuine issue of fact. We must first look to what the plain language of paragraphs (a) and (h) requires to admit a conflicting translation. ~~HN10~~ Paragraph (a) determines when a translation is admissible, and it plainly bases admission on the submission of the affidavit of a "qualified translator" under paragraph (h). To be a **qualified** translator, an interpreter must satisfy the requirements set forth in this court's decision in *In re Certification for Foreign Language Interpreters in Arkansas Courts*, 338 Ark. App'x 827 (1999) (per curiam) and Administrative Order Number 11. Ark. R. Evid. 1009(h).

Neither party asserts that Durand was not a **qualified** translator or that appellant's offer of his translation was improper or untimely under Rule 1009(a). The only question is whether Thomas's translation should have been admitted. ~~HN11~~ Paragraph (d) provides that in the event conflicting translations are served under Rule 1009, the court shall determine whether a genuine issue of material fact exists. Although the **State** relies on the second part of paragraph (d), the only way that such a conflicting translation can be admitted is under paragraph (a). A plain reading of the rule leads to no other conclusion. ~~HN12~~ To offer a competing translation, the translation must pass the admissibility standard set forth in paragraph (a). Only where two **qualified** translations are offered does the court determine whether there is a **[6]** genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact. See, e.g., *Leal v. State*, 782 S.W.2d 844 (Tex. Crim. App. 1989) (holding that it was error for the trial court to use a party's unsworn translation to aid the jury). Here, not only was the **State's** translator uncertified, he had taken and failed the certification exam. Accordingly, the **State's** translation should not have been admitted.

Although appellant has proved error, ~~HN13~~ where the evidence of guilt is overwhelming and the error is slight, we can declare that the error was harmless and affirm. *Barr v. State*, 336 Ark. 220, 984 S.W.2d 792 (1999). In this case, we cannot say the error was slight where an unqualified translation of appellant's statement was introduced as an admission of guilt; therefore, the introduction of the noncertified translation was not harmless.

Reversed and remanded.