

RENDERED: MARCH 7, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001190-MR

JOSE ISABEL VELEZ-MARTINEZ

APPELLANT

v. APPEAL FROM CARROLL CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 05-CR-00087

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; KNOPF,¹ SENIOR JUDGE.
DIXON, JUDGE: Appellant, Isabel Velez-Martinez, was convicted in the Carroll Circuit Court of first-degree criminal mischief, operating a vehicle under the influence, driving without insurance, and operating a motor vehicle without a license. He was sentenced on May 28, 2006, to a total of four years imprisonment and a fine of \$1,000. Appellant appeals to this Court as a matter of right. Finding no error, we affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky constitution and Kentucky Revised Statutes (KRS) 21.580.

On October 31, 2005, Appellant, a Mexican National, drove his vehicle into the concrete wall of a Prestonsville gas station. Appellant fled the scene but was thereafter apprehended by police. When Appellant was removed from the vehicle, he was unsteady on his feet, glassy-eyed and smelled of alcohol. Appellant admitted to officers that he owned the vehicle, but claimed that another individual, "Roberto," had driven the car into the concrete wall while Appellant was inside the gas station. Appellant alleged that when he returned to his vehicle, "Roberto" was gone. Nevertheless, two witnesses identified Appellant as driving the vehicle when it struck the wall.

Appellant's only claim on appeal is that the trial court erred by failing to adhere to the requirements for court-appointed interpreters as provided by Amended Order 2004-3 of the Supreme Court regarding Amendments to the Rules of Administrative Procedure, Part IX (Procedures for Appointment of Interpreters). *See generally Romero v. Administrative Office of the Courts*, 157 S.W.3d 638 (Ky. 2005). Specifically, Appellant argues that the trial court violated Section 6 (Team Interpreting Requirements), which provides:

(1) When interpretation for two or more hours is required without breaks, a team of two interpreters should be appointed. Additional two-person teams may be required if more than one person requires services at the same time.

(2) Team members should rotate every thirty minutes to enhance accuracy and prevent fatigue.

Appellant, who does not speak English, argues that the appointment of only one interpreter during his "lengthy" trial denied him a meaningful opportunity to participate in his defense and resulted in an unreliable verdict.

Appellant concedes that this issue was not properly preserved for appellate review. He nonetheless urges this Court to review the allegation for palpable error under RCr 10.26. Further, although Appellant admits that the interpreter did a good job throughout the trial, he assigns structural error to the trial court's failure to follow proper procedure.

RCr 10.26 provides, in pertinent part, "A palpable error which affects the substantial rights of a party may be considered ... by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that *manifest injustice* has resulted from the error." (Emphasis added). See also *Partin v. Commonwealth*, 918 S.W.2d 219 (Ky. 1996). To show manifest injustice, the reviewing court must find, upon a consideration of the whole case, a substantial possibility that the result would have been different but for the alleged error. *Partin, supra*, at 224; *Jackson v. Commonwealth*, 717 S.W.2d 511 (Ky. App. 1986). Palpable error "must involve prejudice more

egregious than that occurring in reversible error”

Ernst v. Commonwealth, 160 S.W.3d 744, 758 (Ky. 2005).

We find that Appellant suffered no manifest injustice in this case as there is no substantial possibility that the result would have been any different. Although Appellant characterizes his trial as lengthy, the record establishes that the proceeding lasted only one day. Further, because the record is a written transcript, we are unable to determine the length of time the interpreter was required to perform her services without a break. It is clear, however, that the trial court granted numerous breaks and recesses throughout the day. And other than one instance where the interpreter requested that the trial judge slow down while speaking, there is no indication that the interpreter was ever fatigued or was denied a request for a break.

We would note that Section 6 of Amended Order 2004-3 provides that a team of interpreters should be appointed if interpretation is required for two or more hours without interruption. The use of the term “should” rather than “shall” suggests that this provision is a recommendation. Thus, we cannot conclude that a failure to follow the recommended procedure constitutes an automatic or structural error.² Even

² In *Roblero v. Commonwealth*, 2005-SC-000301-MR (October 19, 2006) (Unpublished), the Kentucky Supreme Court addressed a similar issue, noting that “Appellant provides no case law, and we have found none, to support the notion that alleged defects in interpretation services provided to a Spanish-speaking defendant rise to the level of structural error.”

Appellant concedes that the interpreter did a satisfactory job in performing her services.

Finally, the evidence against Appellant was overwhelming. Several eyewitnesses identified Appellant as the driver of the vehicle that hit the concrete wall. Therefore, there is no possibility, much less a substantial possibility, that the result would have been any different had Appellant been appointed two interpreters. *Partin, supra*. See also *Ramsey v. Commonwealth*, 157 S.W.3d 194, 199 (Ky. 2005).

The judgment and sentence of the Carroll Circuit Court are affirmed.

ALL CONCUR.

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