



PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Hudson Region
Mary J. Ciancimino
Deputy Public Defender
438 Summit Avenue, 5th Floor
Jersey City, New Jersey 07306
Tel. 201-795-8922 · Fax 201-795-8966

JOSEPH E. KRAKORA
Public Defender

Christopher M. Godin
Assistant Deputy Public Defender
Christopher.Godin@opd.nj.gov
Attorney ID No. 219862016

Of Counsel and
On the Letter Brief

**LETTER BRIEF IN SUPPORT OF DEFENDANT-APPELLANT’S
MOTION FOR EMERGENT RELIEF**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.
INDICTMENT NO. 19-12-01268

STATE OF NEW JERSEY, : **CRIMINAL ACTION**

Plaintiff-Respondent, : On Appeal From an Interlocutory Order
v. : of the Superior Court of New Jersey,
 : Law Division, Hudson County.

OSCAR JURACAN-JURACAN, : Sat Below: Hon. Angelo Servidio, J.S.C.

Defendant-Appellant. :

DEFENDANT IS CONFINED

Honorable Judges:

This letter is submitted in lieu of a formal brief pursuant to Rule 2:6-2.

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Trial Court Order Denying Motion for In-person Interpretation
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PRELIMINARY STATEMENT

Approximately 450,000 people worldwide speak a native Central American language called Kaqchikel. The Defendant, Oscar Juracan-Juracan, is one of them. Kaqchikel was the primary language spoken in his home as a child and as an adult. If he were fluent in Spanish, or Arabic, or American Sign Language, the Hudson Vicinage easily would have provided him with in-person interpretation services for his upcoming trial. Unfortunately for him, Kaqchikel is far less common than those languages, and therefore, court certified interpreters are more difficult to find. The interpreter retained for his February 6th trial resides on the west coast.

As a result, the trial court has determined that providing Mr. Juracan-Juracan with in-person interpretation for his trial on first-degree charges was not “financially feasible.” That ruling ignored the concerns of the Kaqchikel interpreter himself who warned that virtual and in-person interpretation are “simply not the same.” It also ignored twenty years of AOC Directives requiring in-person interpretation absent an “emergent matter.” Finally, it ignored a constellation of constitutional rights that will be burdened if Mr. Juracan-Juracan is forced to stand trial without adequate—that is, in-person—interpretation.

Mr. Juracan-Juracan has a right to in-person interpretation at his upcoming trial. If the State of New Jersey can afford to incarcerate him, possibly for decades, it can afford to ensure he fully understands the proceedings that determine his fate.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

Mr. Juracan-Juracan is charged in connection with a sexual assault alleged to have occurred in North Bergen in 2019. He was arrested on June 4, 2019, and has been detained since that date. The Hudson County Grand Jury ultimately returned Indictment No. 19-12-1268, charging Mr. Juracan-Juracan two counts of first-degree aggravated sexual assault in violation of N.J.S.A. 2C:14-2a(3), one count of second-degree burglary in violation of N.J.S.A. 2C:18-2a(1), and one count of third-degree terroristic threats in violation of N.J.S.A. 2C:12-3a.

Over the past four years, Mr. Juracan-Juracan has had many court dates, most of them pertaining to a pretrial hearing dealing with the admissibility of his custodial interrogation in Spanish, a language he does not speak fluently. (Da 9) Providing adequate interpretation services for these hearings has been challenging.

Despite its best efforts, the Criminal Division was unable to find an interpreter capable of translating directly between Kaqchikel and English. Thus, for every court proceeding, two sets of interpreters are used: one interprets between Kaqchikel and Spanish, and another interprets between Spanish and English. This process is further complicated by the fact that the Kaqchikel interpreter retained by the court resides

¹ Because the facts and procedural history are closely related, they are combined for the Court's convenience.

on the west coast. As a result, for every pretrial hearing and status conference in this case, the Kaqchikel interpreter has appeared remotely.

As a courtesy to the trial court, defense counsel did not object to the use of remote interpretation for pretrial court events. However, defense counsel was always under the impression that, at any eventual trial, a Kaqchikel would appear in-person. (Da 9) This impression was, at least in part, due to the Kaqchikel interpreter indicating on the record he would only be comfortable interpreting for a jury trial if he was permitted to appear in person. (Da 9)

On January 19, 2023, the trial court informed defense counsel and the prosecutor that the Kaqchikel interpreter would be appearing virtually at trial. (Da 9) The next day, on January 20, 2023, defense counsel filed a motion requesting in-person interpretation services. (Da 7-8) The State did not oppose this application. (T11:7) The trial court heard the motion on January 24, 2023. Mr. Juracan-Juracan was present, and the Kaqchikel interpreter appeared virtually. The proceedings had to be interrupted several times due to technical issues. (T4:18; T6:10; T7:6)

At oral argument, the State indicated that it took no position on the motion. (T11:7) Nevertheless, the trial court denied the unopposed defense motion, noting that in-person interpretation services were not “financially feasible.” (T11:1)

Defense counsel filed an application requesting emergent relief from the trial court's order on January 25, 2023. This Court granted permission to file an emergent motion later that day.

This brief follows.

LEGAL ARGUMENT

POINT I

MR. JURACAN-JURACAN HAS THE RIGHT TO IN-PERSON INTERPRETATION FOR THE DURATION OF HIS TRIAL. (Da 1-12)

“It is a self-evident proposition that a defendant who is unable to speak and understand English has a right to have his trial proceedings translated so as to permit him to participate effectively in his own defense.” State v. Kounelis, 258 N.J. Super. 420, 427 (App. Div. 1992)(internal citation omitted). The trial court's holding that in-person interpretation services would not be “financially feasible” violates that self-evident proposition. (T11:1)

When asked, the Kaqchikel interpreter retained by the trial court explained that virtual interpretation would not allow him to do his job effectively. Specifically, he stated as follows,

Your Honor, as I have said previously, that it is very complicated to do it in such a way to interpret at a distance. It would be the first case for me to do it this way because for me it is complicated, not just because the nature of the case, but the nature of the language. And sometimes you don't hear very well and it is simply not the same.

(T22:23-23:4) The trial court then summarily dismissed these concerns, stating “Understood. Complications, though, can be overcome. And it appears—it’s been my experience that they have been throughout your service to this Court. Thank you.” (T23:10)

Mr. Juracan-Juracan has a right to adequate interpretation at his upcoming trial. Furthermore, he has the right to confer with counsel, in real time. Forcing him to utilize the video equipment will also burden his ability to communicate privately with counsel.

The Kaqchikel interpreter has already warned that the only way he can provide adequate interpretation is if he is in-person. That warning accords with the Judiciary’s longstanding preference for in-person interpretation services, absent an “emergent matter.” Thus, the trial court’s holding that in-person interpretation would not be “financially feasible” not only violates a host of Mr. Juracan-Juracan’s constitutional rights, it also violates nearly twenty years of official Judiciary policy. The trial court’s holding was wrong, and reversal by this Court is warranted.

A. Failure to provide in-person interpretation dilutes every other constitutional right associated with a criminal jury trial.

None of the constitutional rights associated with a criminal jury trial can be enforced if Mr. Juracan-Juracan is not provided adequate interpretation services. See State v. Kounelis, 258 N.J. Super. 420, 427 (App. Div. 1992). The court in Kounelis

held that the failure to provide a defendant with adequate interpretation during his trial “violated his rights under the confrontation and assistance of counsel provisions of our federal and state constitutions, *U.S. Const.* amend. VI; *N.J. Const. of 1947* art. 1, para 10.” *Id.* at 426. For instance, without an understanding of witness testimony, judicial rulings, arguments of counsel, and juror voir dire, among many other critical trial proceedings, it would be impossible for any defendant to make an informed decision about whether to testify on their own behalf.

Consequently, courts have long held that the right to interpretation underpins not just a defendant’s right to participate meaningfully in his own defense, but the right to be present at that trial at all. As the court in Kounelis explained,

A defendant’s inability to spontaneously understand testimony being given would undoubtedly limit his attorney’s effectiveness, especially on cross-examination. It would be as though a defendant were forced to observe the proceedings from a soundproof booth or seated out of the hearing at the rear of the courtroom, being able to observe but not comprehend the criminal processes whereby the state had put his freedom in jeopardy. Such a trial comes close to being invective against an insensible object, *possibly infringing upon the accused’s “basic right to be present in the courtroom at every stage of his trial.”*

258 N.J. Super. at 427 (citing State v. Natividad, 111 Ariz. 191, 194, 526 P.2d 730 (1974))(emphasis added).

To be sure, the trial court’s order in the present case is not quite as burdensome as that of the Kounelis court. However, if Mr. Juracan-Juracan is unable to understand the proceedings because of ineffective interpretation, or is unable to

spontaneously confer with counsel about witness testimony and other parts of the proceedings, then it is difficult to see how he is any better off than if he had never been given an interpreter in the first place.

Finally, although it is true that defense counsel has not objected to virtual interpretation services for pretrial hearings and status conferences, that should not prevent him from receiving in-person interpretation at his trial. Even the most involved pretrial hearing is far less logistically complex than a criminal jury trial. Fewer parties are involved. It is easier to take breaks if there is confusion or a technical problem. There are many opportunities, both before and after such proceedings, for a defendant to confer with counsel.

In sum, even under the best of circumstances, trying to absorb and comprehend all of the events of a criminal jury trial is like drinking from a firehose. The difficulty of this task is even more pronounced for someone unfamiliar with the American legal system, as Mr. Juracan-Juracan, an immigrant from Guatemala with no criminal history is. To force him to stand trial without adequate—that is, in-person—interpretation would hobble his ability to understand and participate meaningfully in his own defense. The trial court’s order must be reversed as a result.

B. Longstanding judiciary policy, in the form of AOC directives and New Jersey Supreme Court orders, require in-person interpretation criminal defendants engaged in jury trials.

Longstanding judiciary policy requires in-person interpretation services absent an “emergent matter.” See Daoud v. Mohammad, 402 N.J. Super. 57, 60 (App. Div. 2008)(citing AOC Directive #3-04, March 22, 2004); see also AOC Directive #01-17, January 10, 2017. (Da 43-44) The purpose of the Language Access Plan contained within Directive #01-17² is to “ensure the Judiciary’s continued compliance with the language access requirements of Title VI of the Civil Rights Act of 1964.” (Da 20) That directive explicitly addresses the limited circumstances in which remote interpreting is considered appropriate. Specifically, Standard 1.8 states as follows,

Remote interpreting services are to be used for emergent matters when an on-site interpreter is not available or for short non-emergent matters of 30 minutes or less. Remote interpreting services shall conform to the Operational Standards for Telephone Interpreting and apply to both telephone and video interpreting.

AOC Directive #01-17, January 10, 2017. (Da 43)

It is self-evident that Mr. Juracan-Juracan’s trial is not an “emergent matter” within the meaning of that directive. The trial has been scheduled for several months,

² Defense counsel only became aware of the existence of Directive #01-17, which superseded Directive #3-04 after the filing of the instant motion. However, the relevant sections of the two directives are nearly identical, and it is asserted the trial court would not have ruled differently if provided the most recent one.

and the trial court has been on notice for years that Mr. Juracan-Juracan requires a Kaqchikel interpreter in order to understand court events. The trial court, in its oral opinion, made almost no attempt at all to explain why this directive should not require in-person interpretation at Mr. Juracan-Juracan's trial. (T12:6)

Finally, in addition to ignoring a nearly two-decade-old AOC directive, the trial court also ignored the most recent order issued by the New Jersey Supreme Court delineating which proceedings may be conducted virtually. That order, signed by Chief Justice Rabner on October 27, 2022, requires that all criminal jury trials be conducted in-person. (Da 15) No exception is mentioned anywhere in that order for interpreters.

If a juror requested to appear virtually for a portion of Mr. Juracan-Juracan's trial, that request would surely be denied. The same would be true for any State witness. It is worth noting that, in trial courts in Hudson County, criminal defendants are routinely denied permission to appear virtually for status conferences. If the Chief Justice's order requires the jurors and witnesses, not to mention judges and prosecutors and defense attorneys to appear in person, then it defies logic to permit an interpreter to appear virtually.

In conclusion, the trial court's order not only violates Mr. Juracan-Juracan's rights under the state and federal constitutions, but also Judiciary policy as stated in

AOC Directives and Supreme Court Orders. The only appropriate remedy is reversal.

POINT II

THE INTERESTS OF JUSTICE REQUIRE IMMEDIATE APPELLATE REVIEW.

Rule 2:2-4 allows the Appellate Division to grant leave to appeal from an interlocutory order when it is in the interests of justice. An appellate court will exercise its discretion to grant leave to appeal “where there is some showing of merit and justice calls for . . . interference in the cause” and “where some grave damage or injustice may be caused by the order below” or the appellate court’s action “will terminate the litigation and thus very substantially conserve the time and expense of the litigants and the courts.” Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div.), certif. denied, 22 N.J. 574 (1956), cert. denied, 53 U.S. 923 (1957).

Here, the interests of justice standard is satisfied because of the trial court’s failure to protect Mr. Juracan-Juracan’s constitutional rights to have court events translated into a language he understands. Should this Court deny Mr. Juracan-Juracan’s motion, and should he be convicted at trial, he will undoubtedly litigate this issue on appeal. The risk that Mr. Juracan-Juracan failed to understand the trial proceedings will necessarily infect every other aspect of appellate review. Because

of his high chance of success on the legal merits of this issue, this Court will be constrained to reverse his conviction.

It would be a great waste of judicial resources to have the State go through an entire trial where there is a known error capable of requiring reversal. And because the appellate process may take years, the new trial at this later date may be jeopardized by failing memory and lost evidence. Further, Mr. Juracan-Juracan will be detained and deprived of his freedom for a longer time before receiving a fair trial. As a result, the interests of justice warrant immediate review of this issue.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Defendant's motion for emergent relief be **GRANTED**.

Respectfully Submitted,

JOSPEH E. KRAKORA
PUBLIC DEFENDER
Attorney for Defendant

BY: /s/Christopher M. Godin
Christopher M. Godin
Assistant Deputy Public Defender
Attorney ID# 219862016

Date: January 27, 2023