65,886.

IN THE SUPREME COURT OF FLORIDA

CASE NO.

ALFREDO CHAO,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

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I
STATEMENT OF THE CASE AND FACTS

In the decision sought to be reviewed--Alfredo Chao v. The State of Florida, ___So.2d___ (Fla. 3d DCA 1984) (1984 FLW 1749) (A. 1)--the Court of Appeal, Third District, held that a police detective's testimony recounting translated statements is not hearsay.

The relevant facts of this case are set forth in the district court's opinion. The victim, who was the defendant's girlfriend until shortly before the shooting incident, testified that the defendant shot her intentionally. The defense was that the gun discharged accidentally. The district court acknowledges that the detective's testimony that the interpreter told him the defendant said, in Spanish, that he shot the victim "because he loves her and wants no other man to have her", so obviously undermined the critical accident defense that if the admission of this testimony was error it cannot be considered harmless. (A. 2, n. 1)

The defense preserved any error in the admission of this testimony by timely objection at trial. (A. 3, n. 2)

In holding the detective's testimony as to the interpreter's statements admissible, the district court admits that the decision of the Second District in Rosell v. State, 433 So.2d 1260 (Fla. 1st DCA 1983), rev. denied, 446 So.2d 100 (Fla. 1984), and its own earlier decision in State Farm Mutual Automobile Insurance Co. v. Ganz, 119 So.2d 319 (Fla. 3d DCA 1960), hold otherwise, but concludes that it is "compelled by the lone and unaltered binding authority of Meacham v. State, 45 Fla. 71, 33 So. 983 (1903)

to hold that such testimony is not hearsay." (A. 3)

II
ISSUE ON APPEAL

WHETHER THE DISTRICT COURT'S DECISION DIRECTLY AND EXPRESSLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL, HOLDING THAT A WITNESS'S TESTIMONY AS TO WHAT AN INTERPRETER TOLD HIM SOMEONE ELSE SAID CONSTITUES HEARSAY.

III
ARGUMENT

THE DISTRICT COURT'S DECISION DIRECTLY AND EXPRESSLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL HOLDING THAT A WITNESS'S TESTIMONY AS TO WHAT AN INTERPRETER TOLD HIM SOMEONE ELSE SAID CONSTITUTES INADMISSIBLE HEARSAY.

The instant case is factually indistinguishable from Rosell v. State, supra, which the Third District's opinion in this case cites as suggesting a rule contrary to their holding. (A. 3, n. 3)

In Rosell, as here, the crucial issue was the mental state of the defendants. Rosell and his co-defendant were arrested when their truck, stopped for unrelated reasons, was found to be carrying nine opaque garbage bags of marijuana. Apart from a search issue, their only defense was that they had found the bags so had no knowledge that they contained marijuana.

As in the instant case, the defendants neither spoke nor understood English, only Spanish, and the police officer performing the in-custody interrogation, as here, utilized an interpreter to converse. At trial the defendants testified, as here, as to their mental state. Again as in the instant case, the interpreter was called to testify that she interpreted between the defendants

and the officer but was not questioned as to the substance of the statements she translated. Instead, as in this case, the officer was asked to testify as to what the interpreter told him the defendants said. As in this case, defense counsel objected on hearsay grounds, was overruled, the officer testified that the interpreter told him the defendants made a statement contrary to the knowledge they claimed at trial regarding what was in the bags, and they were convicted.

The Court of Appeal, First District, held the officer's testimony under these circumstances to be hearsay:

> We note that the trial court also erred in admitting, over objection, Deputy Tucker's testimony as to what Mary Aldridge, the interpreter, told him concerning the statements which appellants made to Ms. Aldridge. Deputy Tucker's testimony is clearly hearsay. State Farm Mutual Automobile Insurance Co. v. Ganz, 119 So.2d 319 (Fla. 3d DCA 1960).
>
> Appellee's argument that the testimony is admissible because appellant's adopted the statements is specious. That argument is premised on the assumption that appellants understand English. The evidence in the record that appellants do not understand English is uncontroverted.

433 So.2d 1260, 1263.

The third district's decision in the instant case directly and expressly conflicts with the first district's decision in Rosell. Interestingly, it also directly conflicts with the earlier third district decision cited by Rosell in the excerpt above, State Farm Mutual Automobile Insurance Co. v. Ganz, supra.

There the plaintiff, Ganz, an attorney, alleged that State Farm interfered with certain attorney-client contracts en-

tered into between him and 26 farm workers injured in an automobile-bus accident. State Farm appealed from a judgment in favor of Ganz, contending that the trial court erred in admitting the testimony of Ganz as to what the injured workers told him through the interpreter.

The third district reversed, holding that Ganz's "testimony as to what an interpreter told him someone else said was incompetent as hearsay and should have been excluded." 119 So.2d 319, 321.

The decision in the instant case makes no distinction between our facts and those in Rosell and Ganz except to suggest that in those cases the person whose translated statements are introduced did not select or participate in the selection of the translator. But those cases are indistinguishable from the one at bar. Although the district court seems to be under the impression that Chao had some part in selecting Pedro Mendez as his interpretor for conversing with the police detective, the record is otherwise. In fact, it indicates not only that it was the detective who chose to question Chao through Mendez, but that Chao did not want to speak with the detective at all. (transcript p. 112)

Here the district court simply held that it was "not at liberty to follow" either Rosell or Ganz (A. 3, n. 3) given this Court's ruling in Meacham v. State, supra.

We suggest that the Rosell and Ganz decisions do not "overlook" Meacham and suggest a rule contrary to it, as the

district court concludes (A. 3, n. 3), but that both cases are readily distinguishable from Meacham on their facts, in the same manner that the case at bar is distinguishable:

1. In Meacham the interpreter himself was called as a witness and testified not only that he acted as an interpreter but as to the content of the interpreted statements themselves, and;

2. the witness whose out-of-court statements were translated and testified to by the interpreter spoke English, but "very imperfectly." 33 So. 983.

In Rosell, in Ganz, and in the instant case the interpreter either did not testify at all or testified only as to the fact of interpretation, not to the content of the translated statements themselves, and it was uncontroverted in all that the witness whose statements were translated spoke no English at all.

Thus Henao v. State, ___So.2d___ (Fla. 3d DCA 1984) (1984 FLW DCA 1644), decided by the third district two weeks prior to the case at bar and cited by the court in affirming appellant's conviction (A. 3), may very well be, as the court asserted, controlled by the rule in Meacham. There the interpreter was called and testified, without objection, as to the content of the statements he translated. But here, and in Rosell and in Ganz, the interpreter did not so testify.

In light of the foregoing, we respectfully submit that the decision in this case expressly and directly conflicts with the decision of the district court of appeals for the first district, in holding that the testimony of a witness as to state-

ments made through an interpreter are not hearsay, even when the interpreter does not testify to the statements himself.

In the 81 years since Meacham v. State was decided, many hundreds of thousands of persons whose first language is not English or who do not speak English at all have made Florida their home. This Court should provide clear guidance as to what procedures should be followed when these persons come into contact with our system of justice. Because the instant decision expressly and directly conflicts with the decisions in Rosell v. State and State Farm Mutual Automobile Insurance Co. v. Ganz, supra, it is appropriate for review by this Court.

IV
CONCLUSION

It is respectfully urged that this Court exercise its discretion to resolve the conflicts which appear upon the fact of the district court's decision, and accept jurisdiction to review the instant case.

V
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 13th day of September, 1984 to: Office of Attorney General, 401 N.W. Second Avenue, Miami, Florida 33128.

Respectfully submitted,

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