

FOR PUBLICATION

APPEAL NO. 02-005-GA

**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellee,**

v.

**PETER M. DELEON GUERRERO,
Defendant/Appellant.**

CRIMINAL CASE NO. 01-0434-A

OPINION

Cite as: *Commonwealth v. Deleon Guerrero*, 2003 MP 15

Argued on November 15, 2002
Decided October 17, 2003

Attorney for Appellant:
Edward C. Arriola, Esq.
Victorino D. Torres, Intern Counsel
Third Floor Bank of Guam Building
Garapan, Saipan
P.O. Box 501788
Saipan, MP 96950

Attorney for Appellee:
Kevin A. Lynch
Assistant Attorney General
Civic Center Complex
Saipan, MP 96950

BEFORE: DEMAPAN, Chief Justice, CASTRO, Associate Justice, and ATALIG, Justice *Pro Tempore*.

DEMAPAN, Chief Justice:

¶1 Appellant Peter M. Deleon Guerrero, a Chamorro, seeks to overturn his assault and battery conviction on the grounds that the trial court did not allow him and his attorney to use the Chamorro language when conducting his trial and questioning witnesses. Because we have previously held that N.M.I. Const. art. XXII, § 3, in designating three official languages in the Commonwealth, gives litigants a constitutional right to speak Chamorro in judicial proceedings, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The trial court convicted Appellant of assault and battery following a bench trial. Before the trial, Appellant filed a “Notice to Speak Chamorro.” This document gave notice that the Appellant, his attorneys and his witnesses would speak Chamorro exclusively throughout the trial. The trial court denied Appellant’s request and instructed his attorney to proceed in English.

¶3 Appellant now appeals his conviction. Appellant claims that the trial court’s decision that the trial proceed in English instead of Chamorro violated various rights under the Commonwealth Constitution, namely, due process, equal protection and compulsory process for obtaining favorable witnesses. Appellant also contends that the trial court’s decision violates N.M.I. Const. art. XXII, § 3, which provides that the official languages of the Commonwealth are Chamorro, Carolinian and English. The appeal being timely, we have jurisdiction pursuant to N.M.I. Const. art. IV, § 3. After filing his notice of appeal, Appellant filed a Motion to Stay Execution of his sentence in the trial court, which the court denied. Appellant then refiled his Motion in this Court. We stayed the execution of his sentence pending this appeal.

ANALYSIS

¶4 Appellant's first contention is that the trial court's refusal to allow the trial to proceed in Chamorro violates Article XXII, Section 3 of the Commonwealth Constitution, which delineates Chamorro, Carolinian and English as the official languages of the Commonwealth. Since this is a question of constitutional law, we review this issue *de novo*. *Office of the Attorney General v. Rivera*, 3 N.M.I. 436, 441 (1993). Our previous decision in *Jasper v. Quitugua*, App. No. 97-009 (N.M.I. Sup. Ct. Feb. 8, 1999) (Opinion at 5), made clear that native Chamorro-speaking people have a constitutional right to speak Chamorro in court.

¶5 In *Jasper*, we held that because there are three official languages in the Commonwealth, the *pro se* defendant in a tort case, who was allowed by the trial court to make opening and closing statements in Chamorro, should have been allowed to question the witnesses in Chamorro as well. *Id.* Even though the defendant in *Jasper* spoke very good English, he was nonetheless entitled to speak Chamorro because the Commonwealth Constitution lists Chamorro as an official language. *Id.* In fact, the Court in *Jasper* recognized that although usually the decision of whether to hire an interpreter is left to the discretion of the trial court, Chamorro and Carolinian are treated differently because they are official languages. *Id.*

¶6 Therefore, the *Jasper* decision had nothing to do with fundamental fairness or due process. The trial court found that the defendant could speak and understand English well enough to conduct a sufficient defense, and so incorrectly held it was not unfair for him to have to speak English at the trial. Instead, we recognized an absolute right to speak Chamorro in court based on the Constitutional designation of three official languages. The fact that this Court in *Jasper* even mentioned the official language designation showed that the issue was not fundamental fairness because a fairness argument would apply to all foreign languages, not just Chamorro, Carolinian and English.

¶7 *Jasper* is on point here. The trial court below found that Appellant, his attorneys and his witnesses could all speak English well enough to conduct the trial in English. Therefore, the trial court held that it would be perfectly fair for the trial to proceed in English. However, this is not a case about fundamental fairness. This is a case involving Chamorro language, which is treated specially by the Constitution and this Court. Because the Court in *Jasper* approved of conducting trials in Chamorro regardless of whether the litigants can speak English, Appellant should have been allowed to conduct his trial in Chamorro, even though everyone involved spoke English perfectly well. As we laid out in *Jasper*, this decision is not up to the discretion of the trial court.

¶8 Appellee is correct in asserting that the constitutional framers' intent was not to create an absolute right of individuals to demand that government agencies conduct their official business in all three languages. Instead, the intent was that the agencies could choose one or more of the languages in which to carry out its official functions. When proposing that the official languages of the Commonwealth should be Chamorro, Carolinian and English, the Committee on Finance and Other Matters explained that:

The Committee believes that the inclusion of the official languages of the Commonwealth in this new Article would be appropriate as part of its recognition of the culture and traditions of the people of the Commonwealth. The government shall encourage the usage and preservation of the Chamorro and Carolinian languages, where appropriate, in government, schools, and other official functions. Section 3 would permit government agencies to choose, where appropriate, any of the three languages. Section 3 does not confer a right on an individual to have a document be translated at government expense into another one of the official languages. It merely permits a government agency to choose one or more of three languages in which to transact its business.

Second Northern Marianas Constitutional Convention, *Report to the Convention by the Committee on Finance and Other Matters*, Committee Recommendation No. 43 (1985).

¶9 However, the Court's decision in *Jasper* indicated that the judiciary has chosen to conduct court

proceedings in all three languages. Neither *Jasper* nor this decision creates an individual right to demand that government agencies conduct official business in all three languages. Rather, this principle applies only to court proceedings, as we have chosen to conduct our official business in this way.

¶10 However, in choosing to conduct our business in this way, we hold that in order for the constitutional right to speak Chamorro or Carolinian to apply, the person who wishes to use these languages must be a native speaker of these languages. It would be too costly and time-consuming to allow everyone, regardless of their native language, to speak Chamorro and Carolinian.

¶11 In *Jasper*, we required that adequate notice be given to ensure that arrangements can be made to hire an interpreter. *Jasper*, (Opinion at 5). Here, Appellant gave five days' notice. We find that this is sufficient.

¶12 For the foregoing reasons, we agree with Appellant that he had an absolute right to speak Chamorro during his trial. To hold otherwise would be to undermine Article XXII, Section 3 of the N.M.I. Constitution.

¶12 Next, we turn to Appellant's fundamental fairness arguments, namely, that the trial court's refusal to permit Appellant to conduct his defense and question his witness in Chamorro violated Appellant's rights to due process, equal protection and compulsory process for obtaining favorable witnesses. As we recognized in *Jasper*, the standard of review for this issue is whether the trial court abused its discretion in determining that the trial could proceed in English and that a translator was not necessary. *Id.* (*citing Washington v. Mendez*, 784 P.2d 168, 171 (Wash. Ct. App. 1989)); *see also United States v. Martinez*, 616 F.2d 185, 188 (5th Cir. 1980) ("The use of courtroom interpreters involves a balancing of the defendant's constitutional rights to confrontation and due process against the public's interest in the economical administration of criminal law. That balancing is committed to the sound discretion of the trial

judge, reversible only on a showing of abuse.” (citations omitted)); *United States v. Coronel-Quintana*, 752 F.2d 1284, 1291 (8th Cir. 1985) (“The appointment of an interpreter lies within the sound discretion of the trial judge. Because the decision to appoint an interpreter will likely hinge upon a variety of factors, including the defendant's understanding of the English language, and the complexity of the proceeding, issues, and testimony, the trial court, being in direct contact with the defendant, should be given wide discretion, and this decision should not be disturbed unless the trial court clearly abuses its discretion.” (citations omitted)). Because Appellant has not pointed to any convincing evidence that the trial court’s actions here were an abuse of discretion, we find that the trial court’s refusal to allow the trial and the questioning of witnesses to proceed in Chamorro did not violate Appellant’s rights to due process, equal protection and compulsory process for obtaining favorable witnesses.

¶13 Appellant does not state any reason why he thinks that the trial court’s refusal to allow the entire trial to proceed in Chamorro violates his due process and equal protection rights, even though he makes the flat assertion. Perhaps Appellant was referring to the *Jasper* decision, where the Court stated that the defendant’s contention was that the trial court violated his due process and equal protection rights. However, the Court nevertheless went on to reverse the trial court on grounds that the Commonwealth has three official languages. *Jasper*, (Opinion at 5).

¶14 The fact remains that Appellant has not pointed to anything that illustrates how the trial court has abused its discretion by having the trial proceed in English. The trial court found that Appellant could speak and understand English clearly, and Appellant does not dispute that finding. The trial court further allowed Appellant to use Chamorro phrases during the course of the trial if necessary.

¶15 Appellant does, however, assert at least some general reasons why the refusal to allow Mr. Kaipat to testify in Chamorro was an abuse of discretion. Appellant argues that since Mr. Kaipat’s native tongue

is Chamorro, he is more fluent in Chamorro than English. Appellant also flatly states, with no explanation, that it would have been more appropriate for Mr. Kaipat testify in Chamorro because of the cultural context of the case.

¶16 Yet, Appellant again fails to show how the trial court abused its discretion here. The trial court determined that Mr. Kaipat should testify in English, and, if he had any trouble communicating properly in English, the court would provide a translator. Appellant does not point to any moment in the questioning when Mr. Kaipat had trouble communicating or understanding the questions in English so as to require a translator. As far as we can tell from the transcript, Mr. Kaipat had no trouble speaking and listening in English. However, we cannot review the pace, inflection or tone of voice. This is the precise reason why we must defer to the discretion of the trial court when the decision of whether to use interpreters, in the context of fundamental fairness, is at issue. The trial judge observes the witness firsthand and is in the best position to determine whether an interpreter is necessary.

¶17 Therefore, we find that the trial court did not abuse its discretion and therefore did not violate Appellant's rights to due process, equal protection or compulsory process for obtaining favorable witnesses.

CONCLUSION

¶18 For the foregoing reasons, the Appellant's conviction is **REVERSED** and the case is **REMANDED** for a new trial in accordance with this opinion.

So Ordered this 17th day of October 2003.

/s/

MIGUEL S. DEMAPAN, Chief Justice

/s/

ALEXANDRO C. CASTRO, Associate Justice

/s/

PEDRO M. ATALIG, Justice Pro Tempore