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Case Name: [Jose Medrano Garcia v. The State of Texas](#)

- OFFENSE: Sexual Assault
- COUNTY: Brazoria
- COURT OF APPEALS: Houston [14th] 2002
- C/A CITATION: Unpublished
- C/A RESULT: Conviction Affirmed
- CCA. CASE No. PD-0489-03
- DATE OF OPINION: March 24, 2004
- DISPOSITION: Court of Appeals Reversed VOTE: 7-2-0
- OPINION: Keasler, J.
- TRIAL COURT: 23rd D/C; Hon. Robert May
- LAWYERS: Jeri Yenne (Defense); John J. Davis (State)

 **206 Trial Courts / Appointment of an Interpreter:** Appellant does not speak English. His jury trial had mostly English-speaking witnesses and court personnel, and the proceedings were not translated. He did not affirmatively waive his right to translation and was apparently unaware of that right. The record reflects that, although there were interpreters present, and the court may have believed it had appointed an interpreter, he “did not receive simultaneous translation of the witnesses’ testimony.” In an unpublished “memorandum” opinion, the Court of Appeals concluded that Appellant “had a translator available but did not make use of her,” and as a result, the trial court did not err in failing to appoint a second interpreter.

Holding: The Sixth Amendment to the Constitution guarantees an accused in a criminal prosecution the right to be confronted with the witnesses against him. We have previously acknowledged that providing an interpreter to an accused who does not understand English is required by the Confrontation Clause. In this case, the record reflects that at trial the judge was aware that Appellant needed a translator. The pretrial proceedings were translated for Appellant. Defense counsel discussed Appellant’s language difficulty during voir dire. Appellant himself testified that he had been unable to understand the complainant’s testimony. And the judge admitted on the record that at “some point” during the trial he had become aware that the proceedings were not being translated for Appellant. Since the judge was aware that Appellant had difficulty understanding English, the judge was required to ensure that the trial proceedings were translated into a language which Appellant could understand, absent an effective waiver by Appellant. And Appellant did not knowingly or voluntarily waive his right to an interpreter. Appellant’s Sixth Amendment right to confront the witnesses against him was violated.

Concurring / Dissenting Opinions: Judge Keller delivered a concurring opinion in which was joined by Judge Womack. She argued that the right to an interpreter should be treated like competency to stand trial. She would hold that the trial court has no duty to inquire about the defendant’s ability to understand English

until the issue is raised in some fashion,(2) once the issue is raised, the defendant must prove by a preponderance of the evidence his need for the proceedings to be interpreted and the court should permit the State to question the defendant's attorney concerning the defendant's ability to understand the English language (the privilege would be waived for the limited purpose of resolving the language proficiency question), and (3) If it is shown that an interpreter is needed, one should be provided unless the defendant knowingly and intelligently waives such.

Comment: ([David A. Schulman](#)) Regarding Judge Keller's concurrence, I think this is pretty much what the law is at this time - I'm just not sure of the "waiver" concept, when it comes to an interpreter. Judge Keasler cites [State v. Natividad](#), 526 P.2d 730 (Ariz. 1974), part of which said that "being present at a trial without understanding the language of the witnesses "would be as though a defendant were forced to observe the proceedings from a soundproof booth or seated out of 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." If we ever see a true waiver of interpreter situation, we should be questioning the competency of a person who chooses to "observe the proceedings from a soundproof booth."