

246 S.W.3d 698, *; 2007 Tex. App. LEXIS 6540, **

AUDREY R. LINTON, Appellant, v. THE STATE OF TEXAS, Appellee.

NUMBER 13-05-00668-CR

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS CHRISTI - EDINBURG

246 S.W.3d 698; 2007 Tex. App. LEXIS 6540

August 16, 2007, Opinion Delivered
August 16, 2007, Opinion Filed

NOTICE: Publish. TEX. R. APP. P. 47.2(b).

SUBSEQUENT HISTORY: Rehearing denied by **Linton** v. SOT, 2008 Tex. App. LEXIS 2338 (Tex. App. Corpus Christi, Feb. 14, 2008)

Petition for discretionary review granted by In re **Linton**, 2008 Tex. Crim. App. LEXIS 649 (Tex. Crim. App., May 14, 2008)

PRIOR HISTORY: [**1]

On appeal from the County Court at Law No 4 of Montgomery County, Texas.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant challenged a decision from the County Court at Law No 4 of Montgomery County, Texas, which convicted her of driving while intoxicated under Tex. Penal Code Ann. § 49.04 (2006).

OVERVIEW: Defendant was **deaf**, and she had never learned to read or write the English language. At trial, defendant was having difficulty understanding. She was provided with two interpreters, one of which sat with her at the defense table and explained things to her during trial breaks. She was convicted, and this appeal followed. In reversing, the appellate court determined that defendant's right to confront and cross-examine witnesses under U.S. Const. amends. VI, XIV and Tex. Const. art. I, § 10 had been violated. Interpreters for **deaf** defendants were appointed under Tex. Code Crim. Proc. Ann. art. 38.31 (Supp. 2006). The trial court had an obligation to fashion a remedy suitable to overcome defendant's disability. The appointment of an additional interpreter to sit at the defense table was not sufficient to provide defendant with the minimum understanding necessary because more than just a post hoc understanding of the trial proceedings was required. In addition, the transliteration provided was also inadequate because it did not account for defendant's low level comprehension of the English language. It was noted that the trial court refused to provide a **deaf**-relay interpreter.

OUTCOME: The decision was reversed, and the case was remanded for a new trial.

CORE TERMS: interpreter, deaf, transliteration, sign language, comprehension, accommodation, disability, communicate, vocabulary, courtroom, lip, interpreting, trial proceedings, hearing impairment, spoken, skills, appointed, suppress, low level, simultaneous, appointment, comprehend, suitable, expert testimony, right to confront, unable to understand, break down, own defense, finger-spelling, cross-examine

LEXISNEXIS(R) HEADNOTES

Evidence > Competency > Interpreters

HN1 See Tex. Code Crim. Proc. Ann. art. 38.31 (Supp. 2006).



Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Right to Confrontation
Evidence > Competency > Interpreters

HN2 Tex. Code Crim. Proc. Ann. art. 38.31 (Supp. 2006) implements the constitutional right to confrontation, which includes the right to have trial proceedings presented in a way that the accused can understand. The Texas Constitution requires that a defendant sufficiently understand the proceedings against him to be able to assist in his own defense. See Tex. Const. art. I, § 10. Ensuring that the defendant has that minimum understanding is primarily the task of the trial judge. If a hearing impaired defendant is unable to understand sign language, the court has an obligation to fashion a remedy suitable to overcome the defendant's disability.

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > General Overview
Evidence > Competency > Interpreters

HN3 The Texas Constitution requires that a defendant sufficiently understand the proceedings against him to be able to assist in his own defense. Surely, the Constitution contemplates more than just a post hoc understanding of trial proceedings. A defendant's inability to simultaneously understand testimony being given would undoubtedly limit an attorney's effectiveness, especially on cross-examination. To be sure, being able to observe but not comprehend the very process that has placed a criminal defendant's freedom in jeopardy is quite troubling. Thus, for the Court of Appeals of Texas, Thirteenth District, Corpus Christi - Edinburg, in dealing with a **deaf** defendant, the true measurement of "understanding" must occur at the time live testimony is given.

[*699] Opinion by Chief Justice Valdez

What I'm trying to get clarification, first of all, in our business, there are two ways of rendering the message. One is called transliteration. One is called interpreting. I have to then go on the record and say that this is transliteration than interpreting. And that what they will be videoing will be the approximation of English on the lips and English [**4] and ASL vocabulary, hopefully, at the same time and meaningful. It is not a perfect transliteration. It is not a perfect translation. Okay. And the nature of the beast of transliteration is never going to be as good as interpreting between two languages. So long as that is understood.

On the second day of trial, **Linton** made an oral motion for mistrial based on the competency issue. The trial court agreed to conduct an informal inquiry into the issue of competence during which it permitted two witnesses to be called outside the jury's presence.

Pastor Arthur Craig testified that he had been signing for thirty years and had known **Linton** for eleven or twelve years. He stated that **Linton** does not understand American Sign Language or straight English [*701] coding. He testified that following the first day of the proceedings, **Linton** mentioned to him that she was confused and was not understanding the signs that were being used.

Defense counsel also elicited expert testimony from Jean Andrews, Ph.D. ⁵ Andrews testified that **Linton** reads at a fourth grade level. She further stated that about twenty percent of what had been communicated to **Linton** in the proceedings through the appointed interpreter's [**5] transliteration was finger spelling above **Linton's** level of reading comprehension. She concluded that, given her assessment of **Linton** and her observation of the signing in the courtroom, the delivery of literal transliteration was insufficient for effective communication with **Linton**. Andrews specifically stated that **Linton** had language skills insufficient to enable her to understand and know what was going on in the proceedings and insufficient to enable her to communicate effectively with counsel. She determined that **Linton** would be able to comprehend the proceedings and consult with counsel if the court would provide a **deaf** relay interpreter that would work alongside the hearing interpreter.

FOOTNOTES

⁵ The record indicates that Dr. Jean Andrews is the Director of Graduate Programs in **Deaf** Education at Lamar University in B(dreMIM07 Tc 0 T(com)13(p)- S Tc 0.0011 T1/CS0 l.)9l-4(atpi(Gradu)-4(ate Pro[(Tc 0c 0.0021 o1/s02 pp)- S.002ch

^{HN1} ¶ If the court is notified by a party that ^{HN1} [**7] the defendant is **deaf** and will be present at an arraignment, hearing, examining trial, or trial, or that a witness is **deaf** and will be called at a hearing, examining trial, or trial, the court shall appoint a qualified interpreter to interpret the proceedings in any language that the **deaf** person can understand, including but not limited to sign language.

Id.

^{HN2} ¶ Article 38.31 implements the constitutional right to confrontation, which includes the right to have trial proceedings presented in a way that the accused can understand. *Salazar v. State*, 93 S.W.3d 339, 340 [^{HN2}*702] (Tex. App.-Texarkana 2002, pet. ref'd, untimely filed). The Texas Constitution requires that a defendant sufficiently understand the proceedings against him to be able to assist in his own defense. *See* TEX. CONST. art. I, § 10. Ensuring that the defendant has that minimum understanding is primarily the task of the trial judge. *Salazar*, 93 S.W.3d at 341 n.1 (citing *Lincoln v. State*, 999 S.W.2d 806, 806 (Tex. App.-Austin 1999, no pet.)). If a hearing impaired defendant is unable to understand sign language, the court has an obligation to fashion a remedy suitable to overcome the defendant's disability. *Lincoln*, 999 S.W.2d at 809; [^{HN2}*8] *Adams v. State*, 749 S.W.2d 635, 639 (Tex. App.-Houston [1st Dist.] 1988, pet. ref'd). Thus, the focus of our inquiry is whether the trial court took adequate steps to ensure that **Linton** had a minimum understanding of the proceedings.

2. ANALYSIS

As noted above, a trial court has an obligation outside of article 38.31 of the Texas Code of Criminal Procedure to fashion a remedy suitable to overcome a particular defendant's disability. ⁶ *See Lincoln*, 999 S.W.2d at 809. In most instances, a suitable remedy will be readily apparent from the nature of the disability itself. For example, in *Adams*, the court found that the appointment of a stenographer for a **deaf** defendant who neither understood sign language nor read lips, but who had a high proficiency in the English language, would ensure adequate understanding. *Adams*, 749 S.W.2d at 639. In other instances, the remedy will not be as apparent. Under certain circumstances it will be necessary for a trial court to inquire further in order to expose the true nature of the disability. **Linton**, for example, is hearing impaired. Her disability, however, is much more complex. ⁷

FOOTNOTES

⁶ The Attorney General of Texas has opined that article 38.31 obligates a [^{HN2}*9] trial court to explore alternative methods of communication that are

appropriate for each person . . . Such alternative methods may, for instance, include the use of sign language, finger spelling, lip reading, written communication, or stenographers to provide simultaneous transcriptions, or a combination of these methods, depending a person's proficiency in the different systems of communication.

Op. Tex. Att'y. Gen. No. JM-113 (1983).

⁷ Indeed, we distinguish this case from other appellate court decisions that have dealt with the issue of a **deaf** defendant. Each appellate court that has addressed the issue has done so in the context of a **deaf** defendant who has no knowledge of sign language but has the ability to thoroughly read or speak English. *See Salazar v. State*, 93 S.W.3d 339, 341 (Tex. App.-Texarkana 2002, pet.ref'd untimely filed) (defendant was born without one eardrum and was partially **deaf** deaf

Linton

Deaf and hard-of-hearing people are hit particularly hard by the vocabulary of English. The English vocabulary of [**14] an average **deaf** fifteen-year-old is nowhere near that of a hearing nine-year-old and, unlike the vocabulary of the nine-year-old, will probably not improve significantly. Simply put, many **deaf** people do not understand the words we are using, even if the words are put into a visible form by writing or finger-spelling. In fact, many relatively educated **deaf** people will not recognize English words that are known by uneducated, functionally illiterate hearing people. In a word-based adversarial arena like the courtroom, the inability to cope with the vocabulary can be disastrous if the appropriate accommodations are not made.

id. at 856.

Based on the record as provided, and under the circumstances of this case only, we find that the appointment of an additional interpreter to break down concepts during breaks in trial was insufficient to provide **Linton** with a thorough understanding of the proceedings against her. Moreover, given that the English based transliteration did not account for **Linton's** low level comprehension of the English language, we find that the transliteration provided was also inadequate. As one commentator has noted:

Meaningful communication, with or without an interpreter, [**15] requires language and background information with which to share meaning. The **deaf** person with minimal language skills lacks both. Even if the interpreter can find a set of basic signs that the **deaf** person understands, the **deaf** person with minimal language skills may still not understand their meaning in the context of the discussion.

Michele LaVigne & McCay Vernon, *An Interpreter Isn't Enough: Deafness, Language, and Due Process*, 2003 WISC. L. REV. 843, 870-71 (2003).

The trial court was provided a viable option in order to secure **Linton's** understanding of the trial proceedings. Andrews testified that the use of a **deaf**-relay interpreter would provide adequate understanding. Given the complexity of **Linton's**