

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE RODRIGUEZ,	§	
	§	No. 527, 1999
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Kent County
	§	Cr.A. Nos. IK98-05-0103
Plaintiff Below,	§	through 0108
Appellee.	§	

Submitted: October 21, 2000

Decided: January 18, 2001

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 18th day of January, 2001, upon consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Jose Rodriguez appeals from his conviction, following a jury trial, of three counts of first degree unlawful sexual intercourse, two counts of second degree unlawful sexual contact, and continuous sexual abuse of a child. He argues that the convictions should be reversed because: (i) there was no voir dire to determine whether prospective jurors would be influenced by the fact that some of the witnesses would be testifying in a foreign language; (ii) a letter from Rodriguez to his daughter's mother should not have

been allowed into evidence; and (iii) Rodriguez should have been allowed to interview his son, a witness, without his son's mother being present.

2) In December 1997, shortly before her eighth birthday, Jomara Rodriguez told her older brother, Ozzie, and her mother, Maria Echevaria, that her father, Rodriguez, had sexually assaulted her. Jomara repeated her allegations to a social worker the following day. After a police investigation, Rodriguez was arrested. While Rodriguez was in prison awaiting trial, he wrote a letter to Maria in which he asked her and the children to forgive him. Rodriguez did not mention the alleged sexual assaults, but he repeatedly asked for forgiveness and for help in getting out of prison.

3) Two of the witnesses at trial, Maria and Rodriguez's mother, testified in Spanish with an interpreter. The jurors were not questioned during voir dire about possible bias against such witnesses, but they were instructed at the beginning of the trial that bias "is not allowed," and that the fact that a witness requires an interpreter must not influence them in any way.

4) In *Diaz v. State*, this Court held that, "English-only speaking jurors should be asked during voir dire if the fact that some of the testimony would be given in a language other than English would influence them in any way."¹ The trial court's failure to ask about possible foreign language bias, therefore, constitutes error. *Diaz*, however, was

decided after the trial in this case and Rodriguez did not request any voir dire on this issue.

5) We review Rodriguez's voir dire claim, raised for the first time on appeal, for plain error, which means “[an error] so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”² In this case, only two of the witnesses testified in a foreign language and Maria, the more significant of the two, testified for the State. Thus, if any of the jurors discounted her testimony because it was given in Spanish, Rodriguez suffered no harm. In addition, the jurors were instructed not to be influenced by the fact that a witness testified through an interpreter. Given these circumstances, we find no plain error.

6) Rodriguez also argues that the trial court erred in admitting into evidence his prison letter to Maria. Rodriguez claims that, since the letter makes no reference to the crimes he was charged with, it is irrelevant. If the letter has any minimal relevance, Rodriguez says that its prejudicial effect far outweighs its probative value.

7) Before it was placed in evidence, both the contents of the letter and its meaning had been the subject of extensive testimony. Maria identified the numerous times that

¹ Del. Supr., 743 A.2d 1166, 1173 (1999).

² *Wainwright v. State*, Del. Supr., 504 A.2d 1096, 1100 (1986).

the letter asked forgiveness from her and the children. She also agreed that the letter made no mention of any sexual assault and that Rodriguez appeared to be asking for her help in getting out of prison. Rodriguez testified that the letter asked forgiveness for his having left Maria and the children several years earlier.

8) Since the jury already knew a great deal about the letter from the testimony, we see no basis for an objection to the admission of the letter itself on the ground that it was irrelevant or too prejudicial. The trial court acted well within its discretion in admitting the letter (which was redacted), as the best evidence of Rodriguez's state of mind at the time it was written.

9) Finally, Rodriguez argues that the trial court erred in refusing to order that his son appear for an interview without his mother being present. He offered no authority for his request, which conflicts with the statutory protection afforded to minors in criminal proceedings: "A child victim or witness is entitled to be accompanied, in all proceedings, by a "friend" or other person in whom the child trusts...."³ The fact that Rodriguez could not interview his son alone did not interfere with his ability to prepare or present a defense, and the trial court acted well within its discretion in denying his request.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

³ 11 *Del.C.* § 5134(b).

By the Court:

/s/ Carolyn Berger
Justice