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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

No. 29

CHARO N. ALLEN,

Respondent.

20 Eagle Street
Albany, New York
March 25, 2021

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 29, the People of the
3 State of New York v. Charo N. Allen.

4 Counsel?

5 MS. TAN: Yes, good morning, Your Honors. My
6 name is Lauren Tan, appearing counsel to Mr. Timothy D.
7 Sini, District Attorney of Suffolk County and appellant in
8 this case.

9 Your Honor, we are requesting two minutes
10 rebuttal.

11 CHIEF JUDGE DIFIORE: Two minutes?

12 MS. TAN: Yes.

13 CHIEF JUDGE DIFIORE: Yeah.

14 MS. TAN: Your Honor, in this case there is no
15 hearsay defect, and here is why. The witness in this case
16 had the supporting deposition read to her in her native
17 language, and she swore to the truth of it, and she signed
18 it under oath. So therefore, she has adopted, essentially,
19 the factual allegations asserted in the supporting
20 deposition. So in this situation, there is no hearsay
21 defect at all.

22 And the court also erred - - - the trial court
23 also erred in requesting that we had filed a - - - the
24 witnesses' affidavit in her native language and a
25 verification of her native language as part of the



1 pleadings here, which is also incorrect, Your Honor.

2 As Mr. Andersen mentioned, the CPLR 2101(b)
3 essentially requires all papers filed in New York State to
4 be in English, which is what was done in this case. Now,
5 in the event if you were to file an affidavit on exhibit in
6 a foreign language, then you have to provide the English
7 translation with the affidavit of translation. But in this
8 case, every paper filed, including the accusatory
9 instrument and the supporting deposition, was in English.
10 Therefore, that statute did not apply to this case.

11 Your Honor, furthermore, the Appellate Term also,
12 I believe, incorrectly ruled that the affidavit of
13 translation is required in this case as well. As stated
14 earlier, our supporting deposition was facially sufficient,
15 and it provided factual allegations for the charges. And
16 the affidavit of translation is not necessary for pleading
17 requirement; that is, it's not something that's recognized
18 under the CPL pleading statute. It is not a subordinate
19 position. It is - - - it's not - - - it doesn't provide
20 any factual allegations of an evidentiary character.
21 Therefore, even if the court had required it, there's
22 really no filing mechanism for this piece of paper as well.

23 And therefore, we believe that the Appellate
24 Division - - - the Appellate Term's decision in affirming
25 dismissal should be reversed because there is no hearsay



1 defect and the affidavit of translation is not a required
2 document to be filed for pleadings.

3 CHIEF JUDGE DIFIORE: Counsel, on a motion to
4 dismiss, what would constitute sufficient factual indicia
5 that a witness didn't understand the content of her
6 statement in order to require and prompt a hearing by the
7 court? Give me an example. What would the allegation - -
8 -

9 MS. TAN: Okay. So given that the - - - the new
10 discovery statute we have now, we have to - - - as
11 prosecutors, we have to provide contact information for the
12 complainant or the witness. So under those circumstances,
13 defense counsel can easily interview the witness with his
14 own detective or investigator or interpreter and see - - -
15 and have them maybe compare the supporting deposition, see
16 if it's actually accurate and to what they actually had
17 conveyed to the translator. So that's one way of creating
18 factual allegations in - - - in that sense.

19 JUDGE FAHEY: Counselor?

20 MS. TAN: Yes.

21 JUDGE FAHEY: Would you agree here that the
22 hearsay defect in this did appear on the face of the
23 accusatory instrument in Allen?

24 MS. TAN: The hear - - - the hearsay defect?

25 JUDGE FAHEY: Yes.



1 MS. TAN: No, Your Honor, we don't believe
2 there's a hearsay defect.

3 JUDGE FAHEY: Oh, okay. How about the People had
4 the certificate of translation; that was valid, right? But
5 - - -

6 MS. TAN: Yes.

7 JUDGE FAHEY: - - - after that, didn't they
8 subsequently have to either make a motion to amend the
9 accusatory instrument or file a separate superseding
10 accusatory instrument?

11 MS. TAN: No, Your Honor, we disagree with the
12 Appellate Term's decision that this affidavit of
13 translation wasn't filed properly because the - - - as I
14 mentioned, the affidavit of translation is not in a
15 supporting position. And under the filed mechanisms
16 provided - - -

17 JUDGE FAHEY: Wait, but isn't the argument that
18 it affected the factual allegations?

19 MS. TAN: I'm sorry, Your - - -

20 JUDGE FAHEY: Isn't the argument that it affected
21 the factual allegations, so therefore either you file a
22 superseding accusatory instrument, or you can't go forward
23 on it, because under Hardy you can't amend the factual
24 portion of the complaint or the information.

25 MS. TAN: Oh, yes, Your Honor. The affidavit of



1 translation is not making an amendment to the factual part.
2 There's nothing incorrect regarding the facts of the
3 supporting deposition as in Hardy. So that's not really on
4 point.

5 And also the amendment statute, 170.35(1)
6 specifically asks for providing supporting documents to
7 amend if there's a facial defect. Like we stated, there
8 was no facial defect in this case. And even if you were to
9 submit additional documents, it has to be a supporting
10 deposition or a type of supporting deposition which is not
11 - - - an affidavit of translation is not a supporting
12 deposition within the definition of, I believe, 100.20. So
13 therefore the CPL doesn't really provide any mechanism, or
14 any mechanism at all to file something like this. The fact
15 that we had submitted an affidavit of translation in our
16 motion papers, I believe, is sufficient enough to give the
17 defense - - -

18 JUDGE FAHEY: And let me ask one last thing.

19 MS. TAN: Yes.

20 JUDGE FAHEY: Am I right that here that the court
21 allowed - - - adjourned itself and allowed the People, if
22 they wanted to, to file a superseding information?

23 MS. TAN: Yes, and the court's decision did allow
24 us to file superseding - - -

25 JUDGE FAHEY: Was when ever filed?



1 MS. TAN: No, but it's not - - -

2 JUDGE FAHEY: Why not?

3 MS. TAN: Your Honor, it's because the court's
4 decision, you can't parse out the decision just for the
5 superseding. Her decision specifically requests for filing
6 of a superseding information with an affidavit in the
7 witness' native language, and a verification in her native
8 language, and then English translation of that - - - of
9 that document, and then the affidavit of translation. So
10 there was a lot of steps that we had to comply with. So
11 it's not as simple as just filing a superseding
12 information.

13 JUDGE FAHEY: Um-hum.

14 MS. TAN: We would have done that if it was just
15 filing a superseding information with an affidavit of
16 translation. We already have the affidavit of translation.
17 But it's all the extra documents that she's requesting us
18 to file in furtherance for pleading, which is not required
19 in the criminal procedure law, which is why we did not file
20 in this case and sought leave to - - -

21 JUDGE FAHEY: This is also an instance where the
22 court required compliance with 2101(b), wasn't it?

23 MS. TAN: Yes, and we had - - - as I stated
24 earlier, I believe the trial court had completely
25 misconstrued the statute 2101(b).



1 JUDGE FAHEY: Um-hum.

2 MS. TAN: We had - - - we did comply with
3 2101(b). In fact, that our supporting papers alone, with
4 the accusatory instrument, was filed in the English
5 language as - - - as required in that statute. And no
6 affidavit or exhibit were attached to our accusatory
7 instrument that was in a foreign language. So therefore
8 the court took the second part of the statute and
9 misconstrued it and required us to file these extra foreign
10 language documents that we do not simply have.

11 JUDGE FAHEY: And your point is that because here
12 the police officer did the translation and - - - and the
13 victim signed the affidavit; is that right?

14 MS. TAN: Well, the the witness had orally
15 communicated to the officer - - -

16 JUDGE FAHEY: Right.

17 MS. TAN: - - - which then was translated.

18 JUDGE FAHEY: He translated it - - -

19 MS. TAN: Right - - -

20 JUDGE FAHEY: - - - and she signed it.

21 MS. TAN: There was - - -

22 JUDGE FAHEY: He read it to her and she signed
23 it, right?

24 MS. TAN: And then she read - - - he read it back
25 to her, and then she signed it under oath. There was no -



1 - - I just want to make this perfectly clear; there was no
2 written foreign language document anywhere. It was not
3 created; it was not generated. So for her - - - for the
4 court to request this from us, we would have to generate a
5 specific document for pleadings, which is not required.
6 And that's assuming this witness can actually write in her
7 native language because, just because you can speak a
8 dialect doesn't mean you can actually put it in written
9 form.

10 JUDGE RIVERA: But lots of affidavits are
11 actually written by someone else, and what the person takes
12 an oath to is that everything in that statement is correct,
13 right?

14 MS. TAN: Um-hum. Yes, Your Honor, I do agree
15 with you, but we would have the same situation. If it's
16 not a statement written by the complainant herself, we will
17 always have this issue about the accuracy of the
18 translation. So the fact that the witness - - -

19 JUDGE RIVERA: But shouldn't your office be
20 worried about that? Don't you want to make sure that you
21 have the correct statement, that it is accurate?

22 MS. TAN: Well, Your Honor, the supporting
23 document - - -

24 JUDGE RIVERA: I mean, I would think this is not
25 a problem because of course you're not going to go about



1 the business of having someone interview a witness, a
2 plaintiff, who doesn't know the language, might be saying
3 that the person has said something which in fact they have
4 not said, may have misunderstood a - - - an actual word
5 that is consequential, right? I mean, I would assume
6 you're already doing that. So it's just a matter of
7 putting it on paper.

8 MS. TAN: I'm sorry, Your - - - I'm - - -

9 JUDGE RIVERA: Well, I'm saying I assume - - -

10 MS. TAN: Um-hum.

11 JUDGE RIVERA: - - - that your office, because
12 you're going through this exercise, is only allowing
13 translators to do this because they can in fact translate
14 because they have the skill set. It is a skill set.

15 MS. TAN: Right.

16 JUDGE RIVERA: Not everybody can do this.

17 MS. TAN: Right.

18 JUDGE RIVERA: Right?

19 MS. TAN: I'm sorry, I - - -

20 JUDGE RIVERA: So then all you have to do is
21 explain the basis for their ability. That's all it is,
22 right? How is that a heavy lift is what I'm saying to you.

23 MS. TAN: Well, Your Honor, the officer's ability
24 to translate was provided in this - - - in the affidavit of
25 translation. He did indicate that he can speak - - -



1 JUDGE RIVERA: What did he say?

2 MS. TAN: That he understands the English and the
3 Spanish language.

4 JUDGE RIVERA: Um-hum.

5 MS. TAN: I believe that's sufficient on its own.

6 JUDGE RIVERA: Just merely understanding? I
7 mean, that actually would not get you a certificate in any
8 place that certifies people to actually do this work that
9 we're describing, this task.

10 MS. TAN: Your Honor - - -

11 JUDGE RIVERA: I understand - - - I mean, I
12 understand French. I took French in high school. No one
13 should let me translate for someone who speaks French into
14 English.

15 MS. TAN: Well, Your Honor, I think I want to
16 address - - - in this supporting deposition that was filed
17 for the court, the content of the factual allegations were
18 read back to the complainant. So it's this document that's
19 being offered to provide the factual allegations which she
20 had understood before she signed and swore under oath.
21 That alone is sufficient for the pleadings. Any further
22 inquiry as to the factual allegations really is a matter
23 that's reserved for trial, which we have seen on many
24 occasions, where the witness' statements are being used as
25 tools for cross-examination. And it's routinely done. So



1 it should not be different here just because now - - -

2 JUDGE RIVERA: Well, it is the only kind of
3 defect, right, it's the only defect that applies in a
4 situation where a defendant is facing prosecution based, at
5 least in part, by allegations from someone who doesn't
6 speak English, correct?

7 MS. TAN: Well, I don't necessary think it's a
8 defect. If - - - if the supporting - - - that document - -
9 - if the allegations in the supporting documents have been
10 read to the complainant and she understood what she's
11 signing, essentially, that's - - - she's adopting all - - -

12 JUDGE RIVERA: Well, you're saying you could - -
13 -

14 MS. TAN: I don't understand - - -

15 JUDGE RIVERA: - - - explore the problem later,
16 and all I'm saying it's the only kind of challenge - - -
17 let me put it that way - - - for - - - for a defendant that
18 exists for only this category of defendant, a defendant who
19 is facing allegations, a prosecution that's, in part, based
20 on allegations by someone who doesn't speak English, right?

21 MS. TAN: No, it could also be under
22 circumstances where it's an English witness as well.

23 JUDGE RIVERA: Where it's what? I'm sorry.

24 MS. TAN: English literate witness as well.

25 We've had challenges before where counsel may have



1 interviewed the victim, whether it's a domestic violence
2 case or not, and they're claiming that the victim now
3 didn't say this or that's not what she said, that's not
4 what she meant.

5 JUDGE RIVERA: Um-hum.

6 MS. TAN: That - - - those issues have been
7 raised on - - -

8 JUDGE RIVERA: Well, not what she meant is about
9 interpretive, not sort of the actual, literal words, right?
10 That's a little bit different, right?

11 MS. TAN: Right.

12 JUDGE RIVERA: I may write something, and you may
13 view that that means X when I intended it to mean Y. But
14 the words on the paper are the words on the paper.

15 MS. TAN: Right. But if you have - - - if you
16 have a non-English literate witness who cannot read
17 English, an accurate translation is not going to cure that
18 alleged defect because she still hasn't read the statement.
19 And the witness in our supporting deposition had that
20 statement read to her. Providing an affidavit of
21 translation is just another statement saying it was
22 translated, which already was said in our supporting
23 deposition.

24 So if the real issue has to do with whether or
25 not the complainant actually understood what she had signed



1 her name under oath, which carries criminal liabilities,
2 should this instrument be false, an affidavit of
3 translation is not going to cure that.

4 However, as Mr. Andersen did mention earlier, the
5 court could require the complainant come into court and do
6 a verification in court to ask her or him, this supporting
7 deposition, were you writing this statement? Do you
8 understand it? Is this your signature? Are you swearing
9 under oath? That way if there's a legitimate concern as to
10 - - -

11 JUDGE RIVERA: You think that makes more sense
12 than just having the affidavit in the language where she's
13 swearing, right?

14 MS. TAN: She's - - -

15 JUDGE RIVERA: In her own language, you think
16 that that's the better process? You think that - - -

17 MS. TAN: To have the affidavit of translate - -
18 - I'm sorry.

19 JUDGE RIVERA: Well, to do a 2101(b) seems to
20 address in the civil context.

21 MS. TAN: Right, so you're asking me she would
22 have - - -

23 JUDGE RIVERA: The affidavit is generated in the
24 language of the person who is signing it.

25 MS. TAN: Okay. I don't think that's a



1 requirement.

2 JUDGE RIVERA: As opposed to calling people into
3 court and having them say what they could have said on a
4 piece of paper in their own language.

5 MS. TAN: Right, but - - -

6 JUDGE RIVERA: I mean, you're going to translate
7 either way, right? So you're going to translate in court,
8 you're going to translate it on paper, same thing.

9 MS. TAN: Right, but there is no requirement in
10 the CPL for - - -

11 JUDGE RIVERA: Okay. So that's the - - -

12 MS. TAN: - - - a foreign language document.

13 JUDGE RIVERA: - - - core argument which I
14 understand.

15 MS. TAN: Right.

16 JUDGE RIVERA: Okay.

17 CHIEF JUDGE DIFIORE: Thank you, counsel.

18 MS. TAN: Yes.

19 CHIEF JUDGE DIFIORE: Thank you.

20 Counsel?

21 MS. MILANI: Good afternoon. May it please the
22 court. Felice Milani for the respondent, Ms. Allen. May
23 I proceed?

24 CHIEF JUDGE DIFIORE: You may.

25 MS. MILANI: In 1987, this court decided People



1 v. Alejandro, relying on the natural meaning of both CPL
2 140 and 115. I would suggest that, by affirming this case,
3 we would continue to be relying on the natural and obvious
4 meaning of CPL 140 and 115. To comply with these statutes
5 in Ms. Allen's case, for sufficient information for
6 menacing in this case, every element must be established by
7 nonhearsay allegations.

8 The prosecutors in these cases, the appellants,
9 continue to assert that merely using a translator does not
10 make the statement hearsay. But how do we know that every
11 element is correctly stated and alleged by the complainant?
12 Can we defend - - - as a defendant, can we defend our
13 clients against the right crime with confidence? This goes
14 to the core fundamental rights that all of our clients
15 face, especially in misdemeanor cases where they're not
16 presented to a grand jury to verify.

17 I believe one of the respondents or, you know,
18 one of the prosecutors in this case mentioned having
19 preliminary hearings. Well, we don't - - - they don't do
20 that here. So we need - - - we have these verification
21 requirements for a reason.

22 As this court has often stated, and recently
23 during the arguments in Hardy, the requirements require
24 that there be reasonable cause to believe that a crime was
25 committed on a certain date. We're bringing people into



1 court, arrested for misdemeanor offenses, which could
2 possibly face - - - result in a year in jail on less than
3 verified accusations? How is that constitutional, and how
4 is that supportive of their due process rights?

5 JUDGE GARCIA: Counsel? Counsel? Counsel, up
6 here. Sorry. How - - - it's a different scenario, but how
7 is that different than what happened in Edward B.? I mean,
8 I understand there - - -

9 MS. MILANI: But - - -

10 JUDGE GARCIA: - - - are certain different facts
11 in this case, but generally, how is it different than
12 Edward B., because that's a hearsay problem. That's a case
13 where the complaining witness clearly never read the
14 affirmation, and we said it isn't a facial defect.

15 So if we go with your broad-based, you know, very
16 well-articulated position, wouldn't we really have to be
17 overruling that case, because it doesn't really matter what
18 the hearsay problem is, and we'll accept for a moment this
19 is hearsay, under your view, but isn't - - - isn't that the
20 same, you know, problem that we had in Edward B., and we
21 put a footnote in there saying this isn't a good practice
22 because it does what you're saying, but still we didn't
23 dismiss the information.

24 MS. MILANI: Well, Your Honor, if I'm not
25 mistaken, and I would be the - - - the defense became



1 apparent at trial, or soon before trial, right? There was
2 never a motion made; the prosecutor did not reveal it, I
3 think, until the - - -

4 JUDGE GARCIA: So that - - -

5 MS. MILANI: - - - witness was right on the
6 stand.

7 JUDGE GARCIA: So that is a procedural
8 difference.

9 MS. MILANI: Pardon me?

10 JUDGE GARCIA: That's a procedural difference in
11 your case. It's not a difference - - -

12 MS. MILANI: Right.

13 JUDGE GARCIA: - - - between the underlying
14 problem that you've described, which is somebody could go
15 and be charged in a misdemeanor where they didn't read the
16 complaint or it was in a different language. I mean,
17 that's the same problem; it's just a procedural timing of
18 when you make the objection.

19 MS. MILANI: I agree with you, Your Honor, but
20 that was in 1992, and now in 2021, we have all sorts of new
21 protections for clients who are arrested - - -

22 JUDGE GARCIA: So are you asking us to overrule -
23 - -

24 MS. MILANI: - - - for criminal cases - - -

25 JUDGE GARCIA: - - - Edward B.?



1 MS. MILANI: - - - on certain - - -

2 JUDGE GARCIA: Are you asking us to overrule
3 Edward B.?

4 MS. MILANI: No, Your Honor, because I believe
5 that it is a different situation in conjunction with the
6 new discovery requirements, if that makes any sense. And
7 specifically - - -

8 JUDGE GARCIA: What is - - -

9 MS. MILANI: - - - in our case here, this was
10 apparent from the face of the four corners of the
11 instrument. But now - - - and I believe, as you know, it
12 wasn't mentioned in any of the briefs. My adversary did
13 raise the discovery requirements, and I would suggest, as
14 an answer to one of, I believe, Judge Fahey's question
15 earlier, what do we rely on, well, we rely on the new
16 discovery requirements, we rely on 30 35(a) which now
17 requires that the People say that they have supported each
18 and every allegation with nonhearsay allegations or
19 documents.

20 So I agree that Edward B. could be interpreted
21 differently. However, it also recognizes how procedurally
22 defective something can be if - - - if someone doesn't - -
23 - isn't aware of the accusations against them. And to have
24 to go to court - - - let's say that someone does go to
25 trial - - -



1 JUDGE STEIN: Counsel, can I interrupt you - - -

2 MS. MILANI: - - - and is facing - - -

3 JUDGE STEIN: Counsel, this is Judge Stein. I'm
4 having a little difficulty understanding - - - is it your
5 argument that it's hearsay, or is it your argument that
6 someone can't read - - - that can't read a statement can't
7 verify to its truth, because - - -

8 MS. MILANI: Well - - -

9 JUDGE STEIN: Let me just add to that a little
10 bit because it seems to me that in a matter of Edward B.
11 the court emphasized that the complainant had neither read
12 it nor had it read it to her. So that's not - - - you
13 know, that's not the case here. So I don't understand why
14 we're calling this hearsay as opposed to whether she can
15 state - - - you know, verify its truth.

16 MS. MILANI: That would be my distinction then, I
17 guess. If that makes sense, maybe that would be a better
18 answer for Judge Rivera, because this goes in - - - to the
19 heart of these facts, it goes to the complainant's ability
20 to verify the actual charges and allegations that she's
21 bringing forward. So - - -

22 JUDGE STEIN: Okay. But then - - -

23 MS. MILANI: - - - you know - - -

24 JUDGE STEIN: - - - then would it be impossible
25 for someone who is illiterate, who can't read or write, to



1 ever verify a statement?

2 MS. MILANI: Well, what I will say is this, and I
3 know that the prosecutor, in their argument, did bring that
4 up, that this presupposes that non-English literate
5 witnesses can read and write. Well, no, it doesn't. But
6 you know, the burden is on the prosecution which, you know,
7 in this case is through the police officers, to bring forth
8 a valid case supported by valid accusations.

9 And the normal practice, from where I see
10 everywhere, is to have these police officers write down
11 statements for anyone. So it's their job to - - - to
12 correctly allege each instrument of the crime and take down
13 a witness' accurate statement. So if someone is blind or
14 deaf, you would think that, yes, they would need to have
15 those translated or read. And if someone's illiterate,
16 well, you know what - - -

17 JUDGE STEIN: But isn't that exactly what - - -

18 MS. MILANI: - - - you'll have a fluent English
19 police officer reading those - - -

20 JUDGE STEIN: Counsel?

21 MS. MILANI: - - - words to them.

22 JUDGE STEIN: Counsel?

23 MS. MILANI: And you can be confident that - - -
24 I'm sorry.

25 JUDGE STEIN: Isn't that exactly what they said



1 they did here? You're just questioning how they have to
2 demonstrate that and when that has to take place and whose
3 responsibility it is. And you know, it seems to me you're
4 talking about the - - - the new discovery rules that if
5 you're - - - if you're - - - if you're going to be getting
6 this information that much more quickly, it gives you every
7 opportunity to pursue any questions you may have about its
8 validity which, it seems to me, would be the purpose.

9 MS. MILANI: Well, in - - - in this case it
10 wasn't done exactly and it wasn't done correctly. And our
11 arguments were preserved in the initial motion that the
12 defense counsel made and then in the reply motion. And the
13 written translation here was used to support the accusatory
14 instrument.

15 And if you'll notice, the translation was made by
16 an officer who was not the officer who signed the original
17 complaint. So there are all - - - there's a load of
18 problems here, and I know this court also asked several
19 people about CPLR 2101 and how that could be applicable as
20 - - - other than the language where it stems from that
21 NYCRR 200.3.

22 Well, they have to be nonhearsay allegations,
23 right? And when you look at all of the hearsay exceptions,
24 those are listed in the CPLR, so it's not something that
25 would be too big a leap to require that, to make this



1 document a nonhearsay document and sufficient, that you go
2 to the CPLR and you go to CPLR 2101.

3 JUDGE RIVERA: Counsel, can I just - - -

4 MS. MILANI: And regardless, in this case - - -

5 JUDGE RIVERA: Counsel - - -

6 MS. MILANI: - - - the - - - sorry, go ahead.

7 JUDGE RIVERA: Sorry. This is Judge Rivera. I
8 just want to clarify something. The statement that's made
9 by the officer that they read what? What did they read to
10 her? What did they read?

11 MS. MILANI: They read - - - they alleged to have
12 read - - - it says in the supporting document - - -

13 JUDGE RIVERA: Yeah, go ahead.

14 MS. MILANI: - - - that they had the statement
15 consisting of one page, which is this - - - I'm getting the
16 statement clearly. It's the standard supporting
17 deposition. I could read it all but - - -

18 JUDGE RIVERA: No, no, no.

19 MS. MILANI: - - - I think it's in the record and
20 I don't - - -

21 JUDGE RIVERA: Okay.

22 MS. MILANI: - - - think you'd like me to read
23 the whole thing.

24 JUDGE RIVERA: But it - - - but just to clarify,
25 what that means is the record is that they could not really



1 have read the statement because it's in English, correct?

2 MS. MILANI: Correct. Correct.

3 JUDGE RIVERA: So it's not really that they read
4 the statement.

5 MS. MILANI: No, so what - - -

6 JUDGE RIVERA: It's that they had - - -

7 MS. MILANI: What the officer wrote a translation

8 - - -

9 JUDGE RIVERA: - - - provided a translation of
10 the statement.

11 MS. MILANI: I mean, the Spanish-speaking
12 complainant spoke in Spanish - - -

13 JUDGE RIVERA: Yes.

14 MS. MILANI: - - - to an individual named Officer
15 Marin.

16 JUDGE RIVERA: Yes.

17 MS. MILANI: Then that officer allegedly
18 translated that Spanish oral statement to an English
19 written statement.

20 JUDGE RIVERA: Okay.

21 MS. MILANI: Okay? After writing the statement
22 in English, that officer then supposedly read the English
23 version, not a Spanish version, an English written version,
24 and translated back into Spanish.

25 JUDGE RIVERA: And - - - and - - -



1 MS. MILANI: And then a different - - -

2 JUDGE RIVERA: And did - - - and did the officer
3 aver that they read the verification also?

4 MS. MILANI: Read the verification - - - is it -
5 - - I mean, it says: "I have had the statement, consisting
6 of one page, read to me in Spanish by Police Officer Marin,
7 and I swear that this is the truth." So - - -

8 JUDGE RIVERA: So but is there any - - -

9 MS. MILANI: So I'm assuming - - -

10 JUDGE RIVERA: - - - thing there that says - - -

11 MS. MILANI: - - - that he read it in Spanish.

12 JUDGE RIVERA: Yeah. But is there anything there
13 that says that they read the verification also?

14 MS. MILANI: No, there is not.

15 JUDGE RIVERA: Okay.

16 MS. MILANI: And also it says in the translation
17 that he understands English and Spanish, but as, I believe,
18 Judge Rivera, you pointed out, that - - - that is not
19 enough. I mean, I also understand Spanish so - - - but I'm
20 not fluent. And I think the requirements say that you need
21 to be fluent.

22 Regardless, this matter could have been cured,
23 but the prosecution simply chose not to follow the law in
24 CPL 170.35(a).

25 CHIEF JUDGE DIFIORE: Thank you, counsel. Thank



1 you, counsel.

2 MS. MILANI: Thank you very much.

3 CHIEF JUDGE DIFIORE: You're welcome.

4 Counsel?

5 MS. TAN: Yes, Your Honor, I just want to follow
6 up that the supporting deposition, the entire one page was
7 read to the witness. It's under the assumption that the -
8 - - the false statements filed here in declaration was read
9 to her too. But if there really was an issue with the
10 verification, as I stated, the court could ask the
11 complainant to come into court and verify her in that - - -
12 in that - - - on that - - -

13 JUDGE RIVERA: But why is that? Why isn't that
14 then within the four corners?

15 MS. TAN: I'm sorry?

16 JUDGE RIVERA: Why do we need to do that? I
17 mean, if the whole argument is the CPL only allows you to
18 look at the four corner - - - CPL has particular rules, our
19 case was very clear, we're looking at the four corners,
20 we're not going beyond them; you look at the four corners,
21 and you say where - - - where does it say that she was
22 informed of the - - - of the penalty and there's a
23 verification. Where - - -

24 MS. TAN: Well - - -

25 JUDGE RIVERA: Where is that?



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MS. TAN: Your Honor, the supporting deposition itself does not specifically have that language, but if you read within the four corners of this document where it says one - - - this statement consisting of one page, this one page has the verification part in there. So - - -

JUDGE RIVERA: But is your position then that the statement is not separate from the verification; it's all one thing?

MS. TAN: Yes. When it says it's a one-page document, it didn't say I just read the statements only. It's the one-page document, which includes everything on this one page. It shouldn't be dissected, like, in segments this way. It should be - - - like you said, it should be read within the four corners of this - - - of this instrument.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MS. TAN: Yes.

CHIEF JUDGE DIFIORE: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the court of Appeals of People of the State of New York v. Charo N. Allen, No. 29 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

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