

Tuesday, February 19, 2008

Confessions are inadmissible without interpreters' testimony.

Â Bill of Rights.Â (From the public domain.)Â Foreign language interpretation is an art rather than a precise science (which helps explain why the Chevy Nova sold so poorly in Latin America, seeing that "no va" means "no go"). Consequently, it would seem obvious that suspects' statements made through a foreign language interpreter are inadmissible against the suspect at trial if the interpreter does not testify to said statements. Â However, at least in Texas, it appears that some of the intermediate appellate courts are in conflict over this hearsay issue. Texas's Fifth District Court of Appeals properly recognizes as inadmissible hearsay the testimony of a suspect's interpreted statement if the testimony does not come through the interpreter.Â Jose Carmen Saavedra v. Texas, 2008 Tex. App. LEXIS 25 (Tex. App. Dallas Jan. 3, 2008) (unpublished). Â Certainly, to rule otherwise, would severely harm criminal defendants, who must have the right to cross-examine the interpreter, not only as to the interpreter's recollection and understanding, but also as to the interpreter's qualifications, bias, and attention at the time of the interpretation. As a quadrilingual law firm, we know that many people present themselves as interpreters who have no business interpreting. People whoÂ had to struggle to learn a second language often appear to be moreÂ understanding than monolingual people about the criticalÂ need for an interpreter to be someone more than one who speaks two languages fluently. The interpreter must be able toÂ understand andÂ interpretÂ not only words and phrases, but also cultural cues and non-verbal communication. An interpreter can be the most brilliant person in the world, but if the interpreter does not like or care about the person whose words are being interpreted, the interpreter will not apply the sensitivity and deep listening that is needed to provide an accurate interpretation. Moreover, no two master interpreters will provide an interpretation that is exactly alike, and more mistakes will be made with interpreting (converting spoken words in real time) than with translating (converting words through writing them down and having a chance to review and correct the translation). Consequently, it is essential to have an opportunity to cross-examine the interpreter. Â SaavedraÂ Â cites toÂ Durbin v. Hardin, 775 S.W.2d 798 (Tex. App.--Dallas 1989, writ denied), as holding that "a police officer may not testify as to an interpreter'sÂ translation because it violates the hearsay rule."Â Saavedra v. Texas, 2008 Tex. App. LEXIS 25Â Unfortunately, as SaavedraÂ Â points out, the "Houston and Austin courts of appeals ... have adopted the 'language conduit rule,' which allows an officer to testify to an interpreter's translation if it meets certain requirements." Â Seeing that some courts do not require an interpreter's testimony to get interpreted statements into evidence, I plan to check whether this issue has been decided in the jurisdictions where I practice. To date, this only became an issue in one instance, where the prosecutor dismissed a misdemeanor case on the trial date upon recognizing that the interpreting police officer was not available to come to court that day. More common for me is challenging opponents and judges who question my contention about the unreliability ofÂ a bilingual client's (1) alleged waiver of certain rights and (2) alleged confession, in addition to seeing judges and prosecutors wrongfully being dismissive of defendants' requests for an interpreter in court.Â Â Â Thanks to Linda Friedman Ramirez for blogging on this Saavedra case. Jon Katz.

Posted by Jon Katz in Criminal Defense at 19:00