

Caselaw

Selected Cases on Legal Interpreting

by Ron A. Mamiya, Judge

Right to or Need for Interpreter

State v. Lopez, 74 Wn.App. 264, 872 P.2d 1131 (Div I 1994), State v. Mendez, 56 Wn.App. 458, 784 P.2d 168 (Div. I 1989), State v. Woo Won Choi, 55 Wn. App. 895, 781 P.2d 505 (Div. I 1989). The trial court's failure to appoint an interpreter for a limited English speaking defendant will be upheld if counsel failed to request an interpreter or advised the court that the defendant spoke sufficient English to participate in the proceedings.

State v. Woo Won Choi, 55 Wn.App 895 (1989). No right to an interpreter if defendant's language skills are adequate to understand trial proceedings and present his defense. The trial court need not inquire directly of the defendant nor engage in interpreter waiver colloquy until court has determined that an interpreter is necessary; court may rely on counsel's representation that the interpreter is not necessary.

State v. Mendez, 56 Wn.App. 458, 784 P.2d 168 (Div. I 1989). Trial court has no affirmative duty to appoint an interpreter where defendant's lack of fluency or facility in English is not apparent.

State v. Serrano, 95 Wn.App.700 (1999). No constitutional right to a "certified" interpreter thus issue may not be raised for the first time on appeal. The trial court's only inquiry was whether the interpreter was "certified or qualified". Defense did not object at the trial level and record does not indicate the interpreter was incompetent.

State v. Harris, 97 Wn.App. 647 (1999). Hearing impaired probationer was not entitled to a sign interpreter at meetings with his probation officer when he can communicate in writing; RCW 2.42.120(3) requiring sign interpreters at court-ordered treatment programs, unconstitutionally violates one-subject rule.

State v. Nemitz, 105 Wn.App.205, 19 P.3d 480 (2001) The purpose of the interpreter statute is to provide interpreters for defendants, witnesses, and others compelled to appear. It does not cover jurors because, if it did, it would nullify the provision of [RCW 2.36.070\(4\)](#), requiring English proficiency as a condition for jury service.

Non-English Speaking Defendant's Right to a Complete Interpretation of the Proceedings

Tomayo-Reyes v. Keeney, 926 F.2d 1492 (9th Cir. 1991), rev'd on other grounds, 504U.S.1 (1992). If the interpreter failed to translate the mens rea elements of the charge on the state guilty plea form, and interpreted 'manslaughter' as 'less than murder,' the defendant has established a basis for overturning his nolo contendere plea.

State v. Gonzales-Morales, 138 Wn. 2d 374, 979 P.2d 826 (1999). Defendant's 6th amendment right to assistance of counsel was not violated by the court's 'borrowing' of Spanish interpreter to interpret a State witness' testimony, as long as the defendant's ability to understand the proceedings and communicate with counsel was unimpaired (the

court allowed the defendant to interrupt the proceedings at any time to consult privately with counsel through the interpreter).

State v. Bell, 57 Wn.App. 447 (1990). Where no evidence of personal interest in outcome, wrongdoing or untrustworthiness, use of a police victim advocate as an interpreter for the victim is within the sound discretion of the court. State v. Boulet, 5 Wn.2d 654 (1940).

Failure to Swear In Interpreter

State v. Sengxay, 80 Wn.App 11(1995). Failure to swear interpreter is not error absent objection.

Attorney Client Privilege

State v. Aquino-Cervantes, 88 Wn. App. 699, 945 P.2d 767 (Div II 1997). Trial court erred in allowing interpreter to testify regarding defendants demeanor during attorney-client conversations. Communications and observations by interpreter during confidential attorney-client interviews are not admissible. Interpreters' testimony regarding their in-court observations of the defendant were permissible, except for privileged communications. (Issue of allowing hearing interpreter to be witness during same hearing despite prohibition of Code of Conduct, GR 11.1, was not addressed.)

Good Cause for Appointing an Uncertified Interpreter under RCW 2.43

State v. Pham, 75 Wn. App. 626, 879 P.2d 321 (Div III 1994). The trial court properly concluded that the circumstances of this case, involving a Vietnamese-speaking child rape victim, constituted good cause for appointing an uncertified female interpreter to interpret her testimony even though a male certified interpreter was present in court. A defendant has the constitutional right to a 'competent' interpreter, but not necessarily to a certified interpreter. RCW 2/43/030(1)(b) allowing use of an uncertified interpreters for good cause when "services of certified interpreters are not reasonably available", in not exclusive.

Trial Court Must Satisfy Itself On The Record That The Interpreter Is Qualified

State v. Teshome, 122 Wn.App. 705, 94 P.3d 1004(2004), review denied, 153 Wn.2d 1028 (2005). [RCW 2.43.030\(2\)](#) does not merely require a qualified interpreter - it requires the appointing authority to satisfy itself on the record that the proposed interpreter is qualified.

Trial Counsel Must Preserve Record of Deficient Interpreting

State v. Serrano, 95 Wn. App. 700, 977 P.2d 47 (Div. III 1999). Since defense counsel did not object to the court's appointment of a qualified rather than a certified interpreter at trial, the defendant may not raise the issue on appeal for the first time unless the error was of constitutional magnitude. The defendant failed to prove his trial counsel was ineffective for not objecting to the uncertified Spanish interpreter, because nothing in the record suggests the interpreter was incompetent or that the defendant did not really speak Spanish.

Defense Attorney's Interview through an Incompetent Interpreter is Ineffective Assistance of Counsel

Chacon v. Wood, 36 F.3d 1459 (9th Cir. 1994). In this federal habeas corpus action challenging a Washington state court conviction, the Ninth Circuit vacated the defendant's guilty plea as involuntary on the ground that trial counsel was ineffective because the court interpreter who interpreted pre-trial attorney-client conversations vastly understated the probable sentence the defendant would receive if he pleaded guilty.

Interpreted Confessions are Hearsay

State v. Garcia-Trujillo, 89 Wn. App. 203, 948 P.2d 390 (Div. I 1997), State v. Huynh, 49 Wn. App. 192, 742 P.2d 160 (Div. I 1987), review denied, 109 Wn.2d 1024 (1988), State v. Aquino-Cervantes, 88 En. App 699, 945 P. 2d 767 (Div. II 1997). Foreign language statements interpreted for law enforcement may not be admitted through officers' testimony unless the interpreter was engaged by the non-English speaking party as the party's agent, or the statement is not offered to prove the truth of the matter asserted – that is, the interpreter testifies to what the interpreter asserts the other party said.

Proving an Interpreter is Incompetent

Perez-Lastor v. I.N.S., 208 F. 3d 773 (9th Cir. 2000). Three types of evidence tend to prove an interpretation was incompetent. The first is direct evidence of incorrectly interpreted words that would have been interpreted differently by a more competent interpreter. Second, unresponsive answers to interpreted questions by a witness provide circumstantial evidence of interpretation problems. Third, incompetent interpretation may be established if a witness expressed difficulty in understanding the interpreter's statements.

Tomayo- Reyes v. Keeney, 926 F. 2d 1492, (9th Cir. 1991), rev'd on other grounds, 504 U.S. 1 (1992.) In a habeas corpus action, proof of inadequate interpreting can be established by putting the interpreter on the stand, asking the interpreter questions relevant to the claim, and calling an expert witness. Defense attorney's method of deposing the interpreter was insufficient because the attorney did not ask how he interpreted material phrases and also failed to call an expert witness. The interpretation accuracy issue was remanded by the Court of Appeals for an evidentiary hearing. (This case was reversed by the Supreme Court on separate federal habeas corpus standards grounds.)

Miranda Warnings

State v. Cervantes, 62 Wn. App. 695, 814 P.2d. 1232 (Div. III 1991). Law enforcement's use of co-defendant as interpreter during defendant's custodial interrogation was a reversible violation of due process.

State v. Teran, 71 Wn. App. 668, 862 P.2d 137 (Div III 1993). Even though the translation was not perfect, defendant validly waived his Miranda rights after law enforcement officers played a translated Spanish cassette tape of Miranda warnings and one officer read them to him in Spanish, because the defendant understood that he did not have to talk to law enforcement and that any statement could be used against him.

Court Interpreter Costs Assessments are Unconstitutional

State v. Marintorres, 93 Wn. App. 447, 969 P. 2d 501 (Div. II 1999). Statute authorizing the trial court to order non-English speaking parties to pay costs of the court interpreter violates equal protection, because costs may not be imposed for interpreters appointed for hearing-impaired parties.

Jury Instructions and Interpreter Oath

From Volume 11A: Washington Pattern Jury Instruction - Criminal

WPIC 4.65

The law requires that the court appoint a [certified] [qualified] interpreter to assist a witness who [does not readily speak or understand the English language] [has an impairment of hearing or speech] in testifying. The interpreter in this case is _____.
I will now administer the oath of the interpreter.

NOTE ON USE

This oral instruction is intended for use when an interpreter is needed for a witness. Give the instruction to the jury before the witness or the interpreter is sworn. Use the bracketed material as applicable. If the interpreter is needed for a party throughout the proceedings, the instruction and oath will have to be revised accordingly. Also see Appendix F, Language interpreters in Trials.

NOTE: Appendix F of Volume 11A: Washington Pattern Jury Instruction – Criminal, *Language Interpreters in Trial*, and the *Comment* following **WPIC 4.65**, provides general overviews of court interpreting and are good references for the use of interpreters during court proceedings. Appendix F includes the following:

JURY INSTRUCTION

This can be given as an advance oral instruction:

In this case the (plaintiff) (defendant) is unable to communicate readily in English. The court has appointed a neutral (certified and) qualified interpreter in this case, and has been given an oath to interpret everything truthfully to the best of the interpreter's ability.

OATH--NO. 1

Do you swear or affirm that you will truly interpret these proceedings from English into (target language), and (target language) into English to the best of your skill and judgment? (*Use Oath No. 1 when a litigant needs an interpreter.*)

OATH--NO. 2

Do you swear or affirm that you will truly interpret all questions asked and the answers given English into (target language) into English to the best of your skill and judgment? (*Use Oath No. 2 when only a witness needs an interpreter, i.e., when the rest of the proceedings are in English and the litigants speak English.*)