

Supreme Court of Florida

No. SC05-1961

**IN RE: STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES (NO. 2005-7)**

No. SC05-1999

**IN RE: STANDARD JURY INSTRUCTIONS
IN CIVIL CASES (NO. 2005-01)**

[September 7, 2006]

PER CURIAM.

We have for consideration proposed new jury instructions for use in civil or criminal cases in which the services of an interpreter or translator are used. We have jurisdiction. See art. V, § 2(a), Fla. Const.

These cases came to the Court as two separate reports, one proposing new jury instructions for criminal cases (SC05-1961), and the other proposing new jury instructions for civil cases (SC05-1999). We consolidate these cases.

BACKGROUND

In 2002, the Court authorized for publication and use several new and amended jury instructions proposed by the Supreme Court Committee on Standard Jury Instructions in Criminal Cases (Criminal Committee). See Standard Jury Instructions in Criminal Cases—Submission 2001-1, 824 So. 2d 881 (Fla. 2002). Among the proposals was a new jury instruction governing the use of transcripts when a recorded conversation in English is introduced into evidence. The Court made several changes to the proposals based on some of the comments received but made no changes to the proposed instruction governing the use of transcripts, which became instruction 2.6. Id. at 900.

The Court referred concerns raised by two commentators to the Criminal Committee for consideration. One of these had suggested that a jury instruction governing the use of conversations recorded in a foreign language and transcripts of the English translations of those conversations was necessary. The comment cited to United States v. Valencia, 957 F.2d 1189 (5th Cir.), cert. denied, 506 U.S. 889 (1992), for the proposition that it is permissible for the English translation to be introduced into evidence while the foreign language recording is excluded.

The Court instructed the Criminal Committee to draft instructions for publication for comment. The Supreme Court Committee on Standard Jury Instructions in Civil Cases (Civil Committee) was also asked to consider the issue and to submit proposed civil jury instructions.

On October 3, 2005, the Civil Committee filed Report No. 05-01, proposing new instructions for use in civil cases in which an interpreter or translator is used. The Civil Committee submitted two versions. One version instructed the jury to rely exclusively on the official English translation in their deliberations, and the other version instructed the jury about what to do in the event a juror disagrees with the official English interpretation. Both versions had a preliminary instruction; an instruction to be given immediately before a foreign language witness testifies explaining the need for an interpreter; an oath to be given to the interpreter; an instruction to be given after the interpreter and witness have been sworn but before the questioning of the witness begins; and a final instruction. The second version had one additional instruction that instructed bilingual or multilingual jurors about what to do if they questioned the accuracy of the English translation of the testimony. After submission, the proposed instructions were published for comment in The Florida Bar News. No comments were received.

On October 26, 2005, the Criminal Committee filed Report No. 2005-07, proposing five new instructions for use in criminal cases in which an interpreter or

translator is used: (1) preliminary instructions (instruction 2.8); (2) instructions for use during trial (instruction 2.9); (3) instructions for use when a transcript of a recording in a foreign language is used and the accuracy of the transcript is not in dispute (instruction 2.10); (4) instructions for use when a transcript of a recording in a foreign language is used and the accuracy of the transcript is in dispute (instruction 2.11); and (5) closing instructions (instruction 2.12).

After submission, the proposed criminal instructions were published for comment in The Florida Bar News. One comment, from the Florida Association of Criminal Defense Lawyers (the FACDL), was received. The FACDL proposed three changes to the proposed instructions: (1) the paragraph instructing jurors about what to do if they disagreed with the English interpretation or translation should be included in all of the proposed instructions; (2) the word “may” should be changed to the word “must” in the paragraph instructing jurors to notify the court if they disagreed with the English interpretation or translation; and (3) jurors should be instructed to pass a note to the bailiff instead of raising their hands to alert the court to the fact that they disagreed with the English interpretation or translation. In its response, the Criminal Committee agreed with the FACDL that the paragraph should be added to all of the instructions. It suggested that “may” be replaced with “should” instead of “must.” It explained that it had opted to instruct

jurors to raise their hands because it did not want to affect a judge's discretion as to whether to allow jurors to take notes.

With regard to the instructions proposed by the Criminal Committee, we authorize the use and publication of instruction 2.12 (Closing Instructions) as this instruction was proposed, without change. We authorize the use and publication of instructions 2.8 (Preliminary Instructions), 2.9 (Instructions During Trial), and 2.10 (Transcript—Accuracy Not in Dispute), with minor revisions. In these instances, we add the paragraph instructing jurors to raise their hands to signal the court that they disagreed with the English interpretation or translation to all of the instructions and to change the word “may” to “should.”

We decline to authorize instruction 2.11 (Transcript—Accuracy in Dispute) for use and publication pending further study and reports from both the Criminal and Civil Committees. We are especially interested in the issue of whether the court or the jury should be responsible for deciding which translation of foreign language testimony is correct when the parties disagree.

We authorize these same instructions, also excluding instruction 2.11, for publication and use in civil cases. However, the instructions will be numbered as shown in the appendix for inclusion in the published standard jury instructions in civil cases.

Upon consideration of the committees' reports, the comments filed, and the arguments presented during oral argument, we hereby authorize the publication and use of the instructions as set forth in the appendix attached to this opinion. In doing so, we express no opinion on the correctness of the instructions and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions or contesting the legal correctness of the instructions. We further caution all interested parties that any notes and comments associated with the instructions reflect only the opinion of the committees and are not necessarily indicative of the views of this Court as to their correctness or applicability. The instructions as set forth in the appendix shall be effective when this opinion becomes final.

It is so ordered.

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, and CANTERO, JJ., concur.

BELL, J., concurs in part and dissents in part with an opinion.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS

BELL, J., concurring in part and dissenting in part.

I concur with the majority opinion in all aspects except I would authorize instruction 2.11 (Transcript—Accuracy in Dispute) for use and publication. I believe the Criminal Jury Instructions Committee has adequately studied the matter

and made a reasonable proposal that will provide appropriate guidance for trial courts.

Two Cases

Original Proceeding – Florida Rules of Standard Jury Instructions in Criminal Cases
and Original Proceeding – Florida Rules of Standard Jury Instructions in Civil Cases

The Honorable Terry David Terrell, Chair, Supreme Court Committee on Standard Jury Instructions in Criminal Cases, First Judicial Circuit, Pensacola, Florida, and the Honorable Dedee S. Costello, Past-Chair, Fourteenth Judicial Circuit, Panama City, Florida; Scott D. Makar, Chair, Supreme Court Committee on Standard Jury Instructions in Civil Cases, Jacksonville, Florida, Tracy Raffles Gunn, Vice-Chair, of Fowler, White, Boggs, Banker, P.A., Tampa, Florida, and the Honorable Terry P. Lewis, Chair, Interpreter Subcommittee, Second Judicial Circuit, Tallahassee, Florida,

for Petitioners

Paula S. Saunders, Co-Chair, FACDL Amicus Curiae Committee, Office of the Public Defender, Second Judicial Circuit, and Michael Ufferman, P.A., Co-Chair, Tallahassee, Florida,

for Opponents

APPENDIX

CRIMINAL JURY INSTRUCTIONS

2.8 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION

PRELIMINARY INSTRUCTIONS

[Language used] may be used during this trial.

The evidence you are to consider is only that provided through the official court [interpreters] [translators]. Although some of you may know [language used], it is important that all jurors consider the same evidence. Therefore, you must accept the English [interpretation] [translation]. You must disregard any different meaning.

If, however, during the testimony there is a question as to the accuracy of the English interpretation, you should bring this matter to my attention immediately by raising your hand. You should not ask your question or make any comment about the interpretation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

Comment

This instruction should be given as part of the preliminary instructions to the jury. See *United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998); *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Cir. 1995).

2.9 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION

INSTRUCTIONS DURING TRIAL

Introduction and Oath to Interpreter

The law requires that the court appoint a qualified interpreter to assist a witness who does not readily speak or understand the English language in testifying. The interpreter does not work for either side in this case. [He] [She] is completely neutral in the matter and is here solely to assist us in communicating with the witness. [He] [She] will repeat only what is said and will not add, omit, or summarize anything. The interpreter in this case is (insert name of interpreter). The oath will now be administered to the interpreter.

Oath to Interpreter

Do you solemnly swear or affirm that you will make a true interpretation to the witness of all questions or statements made to [him] [her] in a language which that person understands, and interpret the witness's statements into the English language, to the best of your abilities, So Help You God.

Foreign Language Testimony

You are about to hear testimony of a witness who will be testifying in [language used]. This witness will testify through the official court interpreter. Although some of you may know [language used], it is important that all jurors consider the same evidence. Therefore, you must accept the English translation of the witness's testimony. You must disregard any different meaning.

If, however, during the testimony there is a question as to the accuracy of the English interpretation, you should bring this matter to my attention immediately by raising your hand. You should not ask your question or make any comment about the interpretation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

Comment

This instruction should be given to the jury immediately before the testimony of a witness who will be testifying through the services of an official court interpreter. *Cf. United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998) (jury properly instructed that it must accept translation of foreign language tape-recording where the accuracy of the translation is not in issue); *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Cir. 1995).

**2.10 JURY TO BE GUIDED BY OFFICIAL ENGLISH
TRANSLATION/INTERPRETATION**

**TRANSCRIPT OF RECORDING IN FOREIGN LANGUAGE
(ACCURACY NOT IN DISPUTE)**

You are about to listen to a tape recording in [language used]. Each of you has been given a transcript of the recording which has been admitted into evidence. The transcript is a translation of the foreign language tape recording.

Although some of you may know [language used], it is important that all jurors consider the same evidence. Therefore, you must accept the English translation contained in the transcript and disregard any different meaning.

If, however, during the testimony there is a question as to the accuracy of the English translation, you should bring this matter to my attention immediately by raising your hand. You should not ask your question or make any comment about the translation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English translation as provided by the court interpreter and disregard any other contrary translation.

Comment

This instruction is appropriate immediately prior to the jury hearing a tape-recorded conversation in a foreign language if the accuracy of the translation is not an issue. See, e.g., *United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998); *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Cir. 1995).

2.12 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION

CLOSING INSTRUCTIONS

[Language used] has been used during this trial.

The evidence you are to consider is only that provided through the official court [interpreters] [translators]. Although some of you may know [language used], it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English [interpretation] [translation]. You must disregard any different meaning.

If, during the testimony there was a question as to the accuracy of the English interpretation and steps were taken to resolve any discrepancies and despite these efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

Comment

See United States v. Franco, 136 F.3d 622, 626 (9th Cir. 1998); *United States v. Rrapi*, 175 F.3d 742, 748 (9th Cir. 1999); *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Cir. 1995).

CIVIL JURY INSTRUCTIONS

1.9 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION

PRELIMINARY INSTRUCTIONS

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The evidence you are to consider is only that provided through the official court [interpreters] [translators]. Although some of you may know [language used], it is important that all jurors consider the same evidence. Therefore, you must accept the English [interpretation] [translation]. You must disregard any different meaning.

If, however, during the testimony there is a question as to the accuracy of the English interpretation, you should bring this matter to my attention immediately by raising your hand. You should not ask your question or make any comment about the interpretation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

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