

Case Notes by Carla

State v. Moore, 2007 WL 914637 (La.App.1 Cir. 3/28/07)

Keywords Function-based statutes

Mr. Moore was convicted of second degree murder by a jury. He appealed on the basis that he should have been provided an interpreter at all stages of the proceedings against him, specifically he was not provided an interpreter during the interrogation, arraignment and sentencing.

The Louisiana interpreter statute is a function-based statute. Louisiana Revised Statutes §§46:2361, 46:2363; 46:2364 and 15:270 were discussed because they raise the issue of interpretation for deaf persons. §46:2361 sets forth broad state policy on providing communication access to courts, legislative bodies, administrative agencies, licensing commissions, departments and boards of the state and its subdivisions. A key provision, in addition to its breadth, is the suggestion that deaf people cannot communicate in spoken languages and cannot “equally participate in or benefit from” proceedings in these particular settings. Hence, the policy is to provide interpreters for those settings.

§46:2363 requires that any waiver of an ‘interpreter or transliterator’ must be made by the deaf person only, and that a failure to request an interpreter is not a waiver of the right.

§46:2364 deals with who is able to request an interpreter and provides that a party or a witness at any stage is afforded an interpreter to “interpret or transliterate the proceedings to the hearing-impaired person and to interpret or transliterate the hearing-impaired person’s testimony.” This section covers the proceedings function and the witness function of the court interpreter’s job. This section also is not limited to criminal proceedings but specifically refers to civil proceedings and quasi judicial proceedings such as mental health commitments.

The next section, §15:270, is limited to criminal proceedings where the deaf person is accused of a trial and mandates that “he shall have the proceedings of the trial interpreted to him in a language that he can understand.” *Moore*, 2007 WL 914637 at *7. The statute requires that the court interpreter is a qualified interpreter and explains that the “qualification of an interpreter as an expert witness is governed by the Louisiana Code of Evidence.” *Id.* The Code of Evidence states:

B(1) In any case where an interpreter is required to be appointed by the court under this Section, the court shall not commence proceedings until the appointed interpreter is in court. (2) The interpreter appointed in accordance with this Section shall take an oath or affirmation that he will make a true interpretation to the deaf or severely hearing-impaired person accused or being examined of all the proceedings of his case in a language that he understands, and that he will repeat said deaf or severely hearing-impaired person’s answer to the questions to counsel, court or jury, to the best of his skill and judgment. (3) Interpreters appointed in accordance with this Section shall receive for their services an amount to be fixed by the judge presiding. When the travel of the interpreter is necessary, all of the actual

expenses of travel, lodging, and meals incurred by the interpreter in connection with the case in which he is appointed to serve shall be paid at the same rate applicable to state employees. “

Id. at *7. The statute as discussed in this case is unusual as it does not mention the function of the table interpreter, though that function is clearly constitutional in its foundation. It may have been that the issue was not raised by Moore on appeal, and courts are loathe to raise issues not addressed or briefed by the parties. It may be that other sections of the Louisiana Revised Statutes deal with the provision of communication for the function of assisting in one’s defense through access to counsel.

Even though the statute is broad, the court found it did not apply to this hard of hearing man. He was provided with an interpreter at trial, but not for his interrogation and parts of the proceeding. The court found that he did not fit the definition contemplated by the legislature because he could understand and speak English. The court also found that he did not ask for an interpreter even though the waiver provision clearly indicates that a failure to ask is not a waiver. Moreover, the court did not put an obligation on officers to offer the services of an interpreter when they are dealing with a deaf or hard of hearing person during an interrogation. Again, this case may just show that on these facts, this hard of hearing person did not qualify for an interpreter without asking. As we say, bad facts make bad law.