

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-471

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES
(REPORT NO. 2007-02) and STANDARD JURY INSTRUCTIONS
IN CIVIL CASES REPORT RE; PROPOSED INSTRUCTION 2.11

The follow are comments and suggestions regarding the above-captioned draft instruction as published in *The Florida Bar News*, July 15, 2007.

- The second sentence in the first paragraph is inaccurate. The jurors have not been given "a transcript of the recording". They have been given a transcript of an English translation of the recording. Thus, the second and fourth sentences can be combined.
- Re the clause reading "You should not rely in any way on any knowledge you may have of the language spoken on the recording": This clause makes the instruction sound like something out of Lewis Carroll. I agree with of the relevant comments in the Minutes appended to the Report of the Committee on Standard Jury Instructions (Civil)¹:

¹ See http://www.floridasupremecourt.org/decisions/probin/sc07-471_ReportCivil.pdf

The only instruction regarding the competence of the interpreter is instruction 2.11, but it is internally inconsistent. The instruction directs jurors not to rely on their own knowledge of the language. However, in every other aspect of case, jurors are allowed to rely on their own life experiences. . . .

[I]n South Florida, Spanish-speaking jurors are active listeners who will not easily disregard their own understanding of Spanish testimony. The actual evidence before the jury is the foreign language. . . .

(Emphasis added.) In short, the instruction asks jurors to engage in an absurd exercise or to be intellectually dishonest. Furthermore, if a juror's knowledge of the source and target languages tells him or her that the translator got it wrong, he or she will apply little weight to the "knowledge, training, and experience of the translator," no matter how stellar the qualification testimony sounds.

I don't know what the solution to this issue is, but I believe the Committee needs to reconsider the instruction. To the extent that these comments have validity, the corresponding criminal instruction likewise needs to be revised.

- **Draft instruction reflecting my suggestions:**

You are about to listen to a tape recording in ~~(~~(language used~~)~~). Each of you has been given a transcript of an English translation of the recording. The transcripts were provided to you [by the State] [the defendant] so that you could

consider the content of the recordings. ~~The transcript is an English translation of the foreign language tape recording.~~

Whether a transcript is an accurate translation, in whole or in part, is for you to decide. In considering whether a transcript accurately describes the meaning of a conversation, you should consider the testimony presented to you regarding how, and by whom, the transcript was made. You may consider the knowledge, training, and experience of the translator, as well as the nature of the conversation and the reasonableness of the translation in light of all the evidence in the case. ~~You should not rely in any way on any knowledge you may have of the language spoken on the recording; your~~ *[work on this.]*

Your consideration of the transcripts should be based on the evidence introduced in the trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing has been served on Scott D. Makar, Chair of the Supreme Court Committee on Standard Jury Instructions in Civil Cases, Office of General Counsel, 117 West Duval Street, Suite 490, Jacksonville, FL 32202 on this the _____ day of July 2007 by U.S. Mail.

By:

Jay Thomas
Florida Bar Number 11455
Second District Court of Appeal
P.O. Box 327
Lakeland, Florida 33802
(863) 499-2290
Fax: (863) 413-2649
thomasj@flcourts.org