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The News Journal
Aug 20, 2011

Ruling sidesteps issue of providing translators

WILMINGTON -- Earlier this month, a Spanish-speaking man facing felony charges in Sussex County was told by the court that he would not be provided with an interpreter.

The man's attorney, the Delaware American Civil Liberties Union and other legal experts charged that this denial of a translator -- to a man facing a possible lengthy prison sentence -- violates the U.S. Constitution.

On Friday, the court backed off somewhat by finding the defendant -- 32-year-old Jose Cruz-Arano -- was indigent and, therefore, qualified for a translator, while also allowing him to keep his privately retained attorney. This sidestepped the larger issue of whether Delaware courts must provide a translator for all non-English speaking defendants, rich or poor, in criminal cases.

The issue began in an Aug. 1 letter to Cruz-Arano's attorney from Superior Court Judge E. Scott Bradley. The judge wrote to attorney Edward Gill, "I have been advised that I do not have the authority to authorize payment for interpreters and/or translators for defendants with privately retained attorneys and that there is no money in the budget for the payment of interpreters and/or translators in these circumstances."

Superior Court President Judge James T. Vaughn Jr., in a brief statement, backed Bradley's ruling this week and implied that, under Delaware law, it was out of the court's hands.

"There are no state funds appropriated to pay for interpreters for defendants who are not indigent. A defendant who is represented by privately retained counsel is not considered indigent," Vaughn wrote.

However, Vaughn said that Delaware Chief Justice Myron Steele would be meeting with Gov. Jack Markell on Monday -- the same day Cruz-Arano was originally set to go to trial -- "to discuss to what extent state policy should extend state funds beyond what is constitutionally required."

Markell spokesman Brian Selander said the governor increased funding this year for translator services by 28 percent.

"It does not appear that the budget restricts the court's ability to decide how or to whom those translators are assigned," he said.

Issue still unsettled

Following the letter, the ACLU filed a motion supporting Cruz-Arano's request for a translator, and Gill filed an additional motion seeking to have the criminal charges dismissed if the court was unwilling or unable to provide a translator.

"A trial cannot be fair if the person accused of a crime does not understand the accusations and evidence being presented against him," said Delaware ACLU Executive Director Kathleen MacRae. "Due process of law, equal access to justice and the right to meaningful participation in one's own defense are bedrock constitutional principles that are being disregarded by the Delaware court system if this trial proceeds without an interpreter."

Attorney John S. Malik, who has had several non-English-speaking clients, said an interpreter is always provided for such a defendant in federal court -- even for private meetings outside court between the defendant and counsel -- whether the client is indigent or not.

Malik said he would expect the same would be provided for an American in a non-English-speaking nation who is arrested and faces incarceration.

Associate Professor Jules Epstein at Widener University School of Law, said the way he understands the law, he did not think it was a close call.

"It is the court's obligation to ensure that a person brought before it can understand what is transpiring," he said. "Rich or poor, if the defendant does not speak English, the court is to provide an interpreter."

And an Aug. 16 memo provided by Gill from the U.S. Department of Justice Civil Rights Division makes a similar argument.

The five-page document, signed by Assistant Attorney General Thomas E. Perez and addressed to "Chief Justice/State Court Administrator," states, "The Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP [limited English proficiency] persons is a form of national origin discrimination prohibited by Title VI regulations. ... The federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules."

On Friday, in a hearing on Gill's motion to dismiss the criminal charges, Sussex County Superior Court Resident Judge T. Henley Graves ruled that Cruz-Arano is indigent -- despite having hired a private attorney -- and assigned the Public Defender's Office to represent him and provide a translator for criminal proceedings.

At the same time, Gill remains with the case. "I'm still the defense attorney," Gill said Friday, adding that a public defender will now apparently be sitting at the defense table with him when the case goes to trial.

"I think that the judge's ruling is in the best interest of Mr. Cruz-Arano," said MacRae after the ruling on Friday. "However, it does not address the underlying issue of the state's responsibility and obligation to provide translation services in general."

Trial postponed

Graves also postponed the criminal prosecution against Cruz-Arano. A new date has not yet been set for the trial.

"I've been doing this for 30 years, and it is a new one on me," Gill said.

Cruz-Arano is charged with 16 counts of fourth-degree rape, one count of continuous sexual abuse of a child and one count of felony endangering the welfare of a child.

The most serious charge, endangering the welfare of a child, carries a minimum sentence of two years and a maximum sentence of 25 years.

Each count of fourth-degree rape carries a possible sentence of up to 15 years in prison, and the continuous sexual abuse charge carries a possible sentence of up to two years in prison.

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