

EXAMINERS' ANALYSIS OF QUESTION NO. 7

1. Waiver of Interpreter

Waiver is the intentional relinquishment or abandonment of a known right. *People v Carines*, 460 Mich 750, 762 n7 (1999) quoting *United States v Olano*, 507 US 725, 733 (1993); *People v Carter*, 462 Mich 206, 217-218 (2000). A valid waiver consists of "a specific knowledge of the constitutional right and an intentional decision to abandon" its protection. *People v Kammeraad*, 307 Mich App 98, 117 (2014) quoting *People v Buie* (On Remand), 298 Mich App 50, 56-57 (2012)).

Certain constitutional rights must be waived by the defendant personally while some of defendant's rights can be waived by counsel. *Carter*, 462 Mich at 218. In this instance, the defendant was required to voluntarily, knowingly and intelligently, waive his right to have an interpreter assist him at trial.

The court had the obligation to either provide an interpreter for defendant or obtain defendant's "personal, informed waiver." *People v Gonzalez-Raymundo*, 308 Mich App 175, 193 (2014). The court did not appoint an interpreter for defendant and failed to secure defendant's personal and knowing waiver of the interpreter at trial. Counsel cannot waive that right for defendant. *Gonzalez-Raymundo*, 308 Mich App at 187; *People v Sepulveda*, 412 Mich 889 (1981). This was not a valid waiver of defendant's right.

2. Interpreter for Defendant

The defendant did not understand the trial proceedings because he did not speak or understand English. The language barrier, in effect, meant defendant was "effectively absent" from trial. *Cunningham*, 215 Mich App at 654-655. Defendant was impaired from effectively participating in his defense, a violation of due process. *Gonzales-Raymundo*, 308 Mich App at 188.

The lack of an interpreter for defendant at trial also violated defendant's right to "confront witnesses against him." *Gonzalez-Raymundo*, 308 Mich App at 188. Defendant has a constitutional right to confront the witnesses against him. US Const, Am VI; Const 1963, art 1 sec 20; *People v Ho*, 231 Mich App 178, 189 (1998). Defendant's right of confrontation was violated

because he did not understand the testimony presented against him. *People v Cunningham*, 215 Mich App 652, 654-655 (1996). Defendant's rights to due process and confrontation of witnesses against him were both violated.

3. Interpreter for Witnesses

Defendant was also deprived of due process and his right of confrontation by the conduct of the interpreter for the witnesses at trial. *Cunningham*, 215 Mich App at 657; *Gonzales-Raymundo*, 308 Mich App at 188. The interpreter must translate the questions of the lawyers and responses of the witnesses as they occur. *People v Ovalle*, 411 Mich 478, 481-482 (1981); *Cunningham*, 215 Mich App at 654-655. "The translation of each question and answer is required by a defendant's right to due process." *Cunningham*, 215 Mich App at 657. Failure to properly translate is a violation of due process.

Translation may be subject to "occasional lapses" but there must be an adequate translation of the testimony and trial proceedings the same as "someone conversant in English would be privy to hear." *Cunningham*, 215 Mich App at 655. Nonliteral translations run the danger of being inaccurate, inadmissible, or a violation of the confrontation clause. *Id.* at 657.

A defendant has a constitutional right to confront the witnesses against him, which includes the right to cross-examine witnesses against defendant. US Const, Am VI; Const 1963, art 1 sec 20; *Ho*, 231 Mich App at 189. The right of cross examination is not unlimited. It includes the opportunity to demonstrate bias, prejudice or the lack of credibility of a witness against the defendant. *People v Canter*, 197 Mich App 550, 564 (1992); *Cunningham*, 215 Mich App at 657; *People v Adamski*, 198 Mich App 133, 138 (1993). That right is impaired if the witnesses' answers are not accurately translated. *People v Mumford*, 183 Mich App 149, 153 (1990).

The inadequate translation by the interpreter deprived defendant of his right of confrontation on cross examination, and right to participate at trial. *Cunningham*, 215 Mich App at 657.