

STATE OF MICHIGAN  
IN THE SUPREME COURT

Supreme Court No. 133142  
Court of Appeals No. 271579  
Macomb Circuit Court No. 05-4049-FC

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

vs.

MARY ANN MCBRIDE,  
Defendant-Appellant,

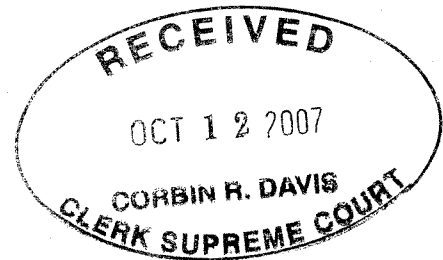
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**AMICUS CURIAE BRIEF OF MICHIGAN ASSOCIATION OF DEAF and HARD  
OF HEARING**

**TABLE OF CONTENTS**

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|                                 |    |
|---------------------------------|----|
| TABLE OF CONTENTS               | i  |
| TABLE OF AUTHORITIES            | ii |
| INTRODUCTION                    | 1  |
| STATEMENT OF QUESTIONS POSED    | 1  |
| STATEMENT OF FACTS              | 2  |
| ARGUMENT                        | 3  |
| CONCLUSION AND RELIEF REQUESTED | 6  |

**TABLE OF AUTHORITIES**

**CASES**

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*Miranda v Arizona* 384 US 436; 86 SCt 1602; 16 L.Ed.2d 694 (1966) ..... 3, 5

**STATUTES**

MCL 393.501 et. seq. .... 3

**MISCELLANEOUS**

Vernon, Raifman, Greenburg & Montiero, *Forensic Pretrial Police Interviews of Deaf Suspects: Avoiding Legal Pitfalls (2001)*..... 5

Twersky-Glasner, *Miranda Warnings and Deaf Suspects: It Is Not Just A Matter Of Translation*, 5 Crim L Bulletin 3 (2006) ..... 5

## **INTRODUCTION**

The Michigan Association of Deaf and Hard of Hearing (MADHH) is a statewide non profit organization whose objective, among others, is to represent the interests and needs of deaf and hard of hearing people. In addition the MADHH attempts to make the general hearing public aware of the special needs and abilities of Deaf and hard of hearing people.

MADHH in this brief attempts to assist the Court in understanding the special needs of the deaf and hard of hearing. In the criminal justice system Deaf and hard of hearing people are frequently granted less rights and treated as second class citizens as a result of the immense lack of understanding and knowledge among the hearing population.

## **QUESTION POSED**

**DO DEAF AND HEARING IMPAIRED SUSPECTS HAVE THE SAME COMPREHENSION AS HEARING DEFENDANTS?**

## STATEMENT OF FACTS

Ms. McBride (McBride) was arrested and charged with open murder. (Court of Appeals Opinion p. 1) She was transported to Roseville Police Department where it was learned she was Deaf and an interpreter was found to assist with the police communicating with her. ( Id.) The interpreter's location in the interrogation room was such that much of her signing to McBride can not be viewed. During the hearing an expert on behalf of McBride explained how American Sign Language (ASL) is not a word for word interpretation but rather a concept interpretation. (Court of Appeals Opinion p4).

The Trial Court ruled the "confession" inadmissible finding McBride did not "knowingly and intelligently" waive her *Miranda* rights. The Court of Appeals affirmed the trial court finding that the trial court did not commit reversible error in finding that McBride did not waive her rights in a knowing and intelligent manner. The People seek leave to appeal that ruling to this Court.

The MADHH submits this brief to assist the Court in understanding those issues directly related to the hard of hearing and Deaf communities in situations such as the one presented here.

## ARGUMENT

### I. DEAF AND HEARING IMPAIRED SUSPECTS DO NOT HAVE THE SAME COMPREHENSION AS HEARING DEFENDANTS

Since 1965, Linguist have recognized that American Sign Language (ASL) is a separate and distinct language from Signed Exact English, and is not as previously and erroneously thought: as a pantomime, a poor substitute for spoken speech. Now ASL is recognized as a language with its own syntax, morphology, and structure. As noted by the Court of Appeals in its decision the persons communicating with ASL are not communicating word for word and body movements, i.e head nodding, may signify an understanding with what is being signed and not agreement with the concept or question.

An interpreter and deaf or hard of hearing person do not immediately have a rapport and/or understanding when meeting for the first time. It is crucial that the Deaf person and interpreter meet before any first interpreting assignment for the interpreter to adequately access and establish what the Deaf person's level and communication mode is so they can ensure effective communication. There is no indication that the interpreter and McBride met beforehand at the Roseville Police Department for the issuing of McBride's Miranda rights. This step is so important that it is mandated in the State Law, Deaf Interpreters Act of 1982: Section 3 (4); MCL 393.501 in pertinent part that:

for uses in any action before a court or grand Jury, appointing authority the interpreter shall not be appointed unless both the appointing authority and the deaf person make a preliminary determination that the interpreter is able to readily communicate with the deaf person.

Thus, Deaf people are a cultural minority, and ASL is a different and distinct language, English then becoming a second language, that even with full cognitive functions, and even with full communication access, Deaf and hard of hearing people do not have the same comprehension of concepts as hearing people. People who grow up or exist outside

the mainstream are going to perceive the world differently from the mainstream.

In recent years (beginning as early as 1980 with increased awareness of and acceptance of American Sign Language) it has become clear that one can adopt either of two opposing perspectives when interacting with the Deaf Community. While these perspectives have been given different names or labels by different authors and researchers, the differing perspectives are referred to as the "pathological model" and the "cultural model." The first perspective, at least in some of its extreme manifestations, would seek to deny the very existence of the Deaf Community.

The "pathological" view of Deaf people has also been called the Clinical-Pathological view or the Medical Model. Essentially this view accepts the behaviors and values of people who can hear as "standard" or "the norm" and then focuses on how Deaf people deviate from that norm. This is the perspective that has been traditionally held by a majority of non-deaf professionals who interact with the Deaf Community only on a professional basis. In a sense, this is the "outsider's" view - a view that focuses on how Deaf people are different from non-deaf people and a view that generally perceives those differences negatively. It is also a view that Deaf people have something wrong with them, something that can and must be "fixed." Those who hold a pathological view might define the Deaf Community as:

- a group of people whose hearing loss interferes with the normal reception of speech
- a group of people who have learning and psychological problems due to their hearing loss and their perceived communication difficulties;
- a group of people who are not "normal" because they cannot hear.

It should be fairly easy to see that this view, the "pathological" one, results in paternalistic and oppressive behaviors and attitudes towards Deaf and hard of hearing people. Recently, this way of dealing with Deaf and hard of hearing people, of treating them as incapable of self-determination, has been called "audism" to emphasize the fact that this view shares much with other paternalistic perspectives such as racism, sexism, and anti-semitism. The "pathological" view stands in sharp contrast to the view based on linguistic and sociological research findings which is the cultural view. The cultural view recognizes that there is a complex set of factors that must be considered when examining the Deaf Community. Indeed, it is this very fact that makes defining the Deaf Community a complex task. Those who hold a cultural view might define the Deaf Community as:

1. a group of persons who share a common means of communication (sign language) that provides the basis for group cohesion and identity;
2. a group of persons who share a common language (ASL) and a common culture;
3. those whose primary means of relating to the world is visual and who share a language that is visually received and gesturally produced.

In fact the literature shows that police may wrongly assume that deaf and/or hard of hearing suspects will understand the *Miranda* rights due to the presence of an interpreter or because the warnings are placed before the suspect in written form. See, Vernon, Raifman, Greenberg & Monteiro, *Forensic Pretrial Police Interviews of Deaf Suspects: Avoiding Legal Pitfalls* (2001); Twersky-Glasner *Miranda Warnings and Deaf Suspects: Its Not just a Matter of Translation*, 5 Crim L. Bulletin 3, (2006).

In the matter before this Court the facts establish that Ms. McBride did not fully comprehend her rights and therefore could not have knowingly, intelligently and voluntarily waived the same. Further, the record establishes her request, through the interpreter, for the assistance of counsel.


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**CONCLUSION AND RELIEF SOUGHT**

Based upon the record before this Court Amicus, MADHH, requests this Court to protect the rights of the Deaf defendant here and in the future by denying the Peoples'

Application for leave to Appeal.

Dated: October 11, 2007

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