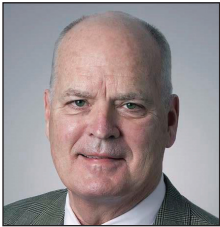


The Unspeakable Comma

by Norman Tabler



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The unspeakable comma has claimed another victim and reminded us once again of the danger of relying on the spoken rather than written word.

All lawyers know that when it comes to *contracts*, it's always wise to put it in writing. As the old saying goes, an oral contract isn't worth the paper it's written on.

But a Louisiana Supreme Court opinion reminds us that the principle applies to criminal law, as well. And in criminal law the difference between the written and spoken word can mean the difference between freedom and prison.

Just ask Warren Demesme of Harvey, La. Demesme was questioned in connection with two sexual assault cases. According to police records, Demesme voluntarily agreed to the two interviews, which were recorded. He was read his Miranda rights, said he understood them, and waived them. The recordings reveal that Demesme admitted to one of the assaults and denied the other.

But before making the admission, Demesme said—and the operative word is *said*—something about a lawyer. The argument over precisely what Demesme said and meant made it all the way up the ladder to the Louisiana Supreme Court.

So precisely what *did* Demesme say? According to the transcript, he said to the police interviewer:

If y'all, this is how I feel, if y'all think I did it. I know that I didn't do it so why don't you just give me a lawyer dog cause this is not what's up.

In the view of the prosecution, Demesme's statement—including the nine words “why don't you just give me a lawyer dog”—was nonsensical or ambiguous or both. After all, there is no such thing as a “lawyer dog.” So asking for a lawyer dog didn't constitute a request for an attorney and therefore didn't require the police to end the interview.

But in the view of the public defender representing Demesme at the trial and appeal levels, the statement was a request for an attorney, requiring an immediate end to the interview and rendering the confession inadmissible. The public defender argued that Demesme was requesting that his interviewer, whom

he addressed with the vernacular *dog* (pronounced *dawg*), provide him with a lawyer.

In other words, Demesme did not say, “Get me a lawyer dog,” which makes no sense. Rather, he said, “Get me a lawyer, Dawg,” which makes perfect sense—at least to Demesme.

So in effect, the case turned on whether there was a comma between *lawyer* and *dog*. If there was, Demesme had requested a *lawyer*. If not, he had spoken gibberish, asking for a *lawyer dog*—something that doesn't exist.

Demesme and his lawyer were in a tough spot because you can't say a comma. You can *write* a comma, but you can't *say* a comma.

And because of the unspoken comma—you might say the *unspeakable* comma—the criminal court district denied the motion to suppress Demesme's admission of sexual assault. When Demesme appealed, the Court of Appeal, Fourth Circuit, Parish Orleans, affirmed. And on petition for *certiorari*, the Louisiana Supreme Court voted 6-to-1 to deny the petition.¹

Justice Scott Crichton wrote a concurring opinion explaining his vote. As he saw it, Demesme's reference to a *lawyer dog* was “ambiguous or equivocal,” and decisions of both the Louisiana and U.S. Supreme Courts² hold that an ambiguous or equivocal reference to an attorney does not constitute invocation of the constitutional right to counsel.

So Demesme's admission that he assaulted one of the victims is admissible in his trial—a trial on charges that could result in a life sentence.

All because of the unspeakable comma. ☹

Endnotes

¹*State of La. v. Demesme*, 2017-KK-954 (La., decided Oct. 31, 2017).

²*State v. Payne*, 833 So.2d 927, 2001-3196 (La. 2002); and *Davis v. United States*, 502 U.S. 452 (U.S. 1994).