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## Any (Reasonable) Doubt: Evaluating a Criminal Defendant's Motion to Strike a Hearing-Impaired Juror for Cause

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ANY (REASONABLE) DOUBT:  
EVALUATING A CRIMINAL DEFENDANT’S MOTION TO  
STRIKE A HEARING-IMPAIRED JUROR FOR CAUSE

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ABSTRACT

*Currently, Florida has no law governing how courts should handle a motion to strike a hearing-impaired juror for cause in a criminal case. Judges use only their discretion and have no legal precedent to guide balancing the defendant’s constitutional right to a fair trial with the potential juror’s right not to be discriminated against for their hearing impairment. While there is no guiding law for Florida courts in criminal cases, there is law guiding Florida civil cases and other jurisdictions have evaluated this issue. This Note will propose that Florida courts adopt the “any doubt” standard over the “specific evidence” standard in evaluating a defendant’s motion to strike a hearing-impaired juror for cause. The “any doubt” standard allows the trial court to grant the motion to strike so long as there is a reasonable doubt the hearing impairment will prevent the potential juror from fairly and effectively evaluating the evidence presented as the U.S. Constitution requires. This Note will defend the “any doubt” standard through a comparison to the evidentiary hearsay rule and argue that the “any doubt” standard will not result in the categorical ban of hearing-impaired jurors. The “any doubt” standard will fill a current hole in Florida law. It will also give trial courts the guidance to consider all relevant factors in balancing the defendant’s rights to a fair trial and the potential juror’s right not to be discriminated against for a hearing impairment.*

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## I. INTRODUCTION

Sometimes while criminal defense attorneys plead for the life and freedom of their clients, their pleas fall on deaf ears, literally. How does a state balance the rights of criminal defendants to protect their life and freedom with the rights of hearing-impaired jurors<sup>1</sup> to live a life free from discrimination? In *State v. Speer*, a trial court, an appellate court, and the Ohio Supreme Court analyzed this question and returned case decisions with three different answers.<sup>2</sup> In *Speer*, both the defense and prosecution planned to present an audio recording of a 911 tape with the intent to advance arguments about whether the defendant's word choice and tone indicated guilt.<sup>3</sup> Specifically, whether the lack of slurred speech cleared the defendant of an allegation of operating a boat while intoxicated.<sup>4</sup> A potential juror, who eventually became a juror for the trial, had a hearing impairment that left her able to hear voices but unable to clearly discern and distinguish words without reading the speaker's lips.<sup>5</sup> The potential juror could not communicate using sign language.<sup>6</sup> Furthermore, she did not have any suggested accommodations except changing her positioning and placement in the jury box and allowing her to read a transcript of the 911 call audio tape.<sup>7</sup> As explained later in this Note, this proved extremely problematic for the prosecution's argument, and more importantly, the defense's intended rebuttal and evidence against the prosecution's argument.<sup>8</sup> Defense counsel raised a challenge for cause to dismiss the potential juror because of the lack of available accommodations that would guarantee she heard and effectively evaluated the evidence; however, the trial court denied this motion.<sup>9</sup> What followed at the Ohio Court of Appeals and the Ohio Supreme Court was a consensus that the trial court erred, as well as a legal battle over the standard the trial

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1. 42 U.S.C. §12101(a)(1) (2012) (“[P]hysical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, . . .”); 42 U.S.C. § 12101(a)(7) (2012) (“[T]he Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, . . .”); see Mary A. Lynch, *The Application of Equal Protection to Prospective Jurors with Disabilities: Will Batson Cover Disability-Based Strikes?*, 57 ALB. L. REV. 289, 296–99 (1993).

2. *State v. Speer*, 925 N.E.2d 584, 590 (Ohio 2010) (affirming in outcome but reversing the intermediate appellate court’s legal analysis and holding in *State v. Speer*, 904 N.E.2d 956 (Ohio Ct. App. 2008)).

3. *Speer*, 925 N.E.2d at 589.

4. *Id.*

5. *Id.* at 587.

6. *Id.* at 588, 591.

7. *Id.*

8. *Id.* at 589.

9. *Id.*

court should have applied in evaluating whether the potential juror would impede the defendant's constitutional right to a fair trial.<sup>10</sup>

In Florida, there is no state law or precedent providing guidance in this legally delicate scenario. One Florida statute forbids a judge from dismissing a potential juror solely because of a hearing impairment without the potential juror's consent in civil trials.<sup>11</sup> This rule applies unless the court finds that a thorough consideration of the evidence the parties plan to present at trial requires consideration by a juror without a hearing impairment or timely progression of the trial will be considerably affected by the hearing-impaired juror's presence on the jury.<sup>12</sup> But the statute explicitly states that this rule shall not be read to affect a litigant's right to exercise a peremptory challenge.<sup>13</sup> The statute makes no mention of criminal trials.<sup>14</sup> Another Florida statute permits an interpreter joining the jury during deliberations when it is necessary to accommodate a hearing-impaired juror.<sup>15</sup>

In Florida civil courts, if doubt exists over whether a hearing-impaired potential juror can effectively examine the evidence presented, then dismissal is limited.<sup>16</sup> The judge may only dismiss the

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10. *Id.* at 590.

11. FLA. STAT. § 40.013(5) (2018).

12. *Id.*

13. *Id.* A peremptory challenge is a challenge the defendant or prosecutor may raise to object to a prospective juror's selection on the panel. *Hayes v. State*, 94 So. 3d 452, 460 (Fla. 2012). Preemptory challenges are limited, and parties have discretion in how to use these challenges. *Id.* In contrast, a challenge for cause is an unlimited strike and allows for the removal of a prospective juror from the panel on enumerated grounds. *Id.* A challenge for cause should be granted where "any reasonable doubt exists as to whether the juror possesses an impartial state of mind." *Id.* (quoting *Busby v. State*, 984 So. 2d 97, 99 (Fla. 2004)). Whereas the standard for granting a peremptory challenge is anytime a party raises the challenge, so long as the challenge is not used to exclude a potential juror on the basis of race, ethnicity, or gender. *Id.* Further, in *People v. Green*, a New York county court held that a peremptory challenge based on a juror's hearing-impairment and "not on any doubt of the juror's ability to communicate. . . was not rationale and violated the juror's right to equal protection . . ." 561 N.Y.S.2d 130, 133 (County Ct. 1990).

14. *See id.*

15. *Id.* § 90.6063(2). This statute overturned Florida case law as recent as 2008 finding that the exclusion of jurors who required interpreters was valid as a "public necessity." *E.g.*, *Woodel v. State*, 985 So. 2d 524, 529 (Fla. 2008). Florida is not alone in finding that an interpreter's presence in the jury room is permitted. *See, e.g.*, *State v. Pacheco*, 155 P.3d 745, 747 (N.M. 2007) (finding that, where an interpreter was given the interpreter's oath as mandated by state statute to interpret testimony correctly, an interpreter was permitted to interpret for a non-English speaking juror both during the trial and deliberations); *Saunders v. State*, 49 S.W.3d 537, 539–40 (Tex. Ct. App. 2001) (holding that an interpreter's presence during jury deliberations does not impede the criminal defendant's rights to a fair trial and impartial jury).

16. Frequently in civil cases defendants are granted less rights than defendants in criminal cases, and in some actions and cases, civil defendants are not afforded a jury trial. *See e.g.*, Vicki Gordon Kaufman, *The Confinement of Mabel Jones: Is There a Right to Jury Trial in Civil Commitment Proceedings*, 6 Fla. St. U. L. Rev. 103 (1978) (discussing the importance of a jury in civil cases, focusing on involuntary mental health commitment

potential juror without that juror's consent if the judge finds that the hearing impairment will considerably impact the juror's ability to hear the specific evidence presented.<sup>17</sup> This is what this Note refers to as the "specific evidence" standard, which is the appropriate standard for a civil trial; however, it is not an appropriate standard for a criminal trial. In many ways, criminal and civil trials differ. A criminal defendant has significantly more at stake than a civil defendant—particularly, the defendant's life and liberty.<sup>18</sup> Thus, the U.S. Constitution,<sup>19</sup> Florida Constitution,<sup>20</sup> and courts throughout the country routinely and rightfully place significantly higher protections for defendants in criminal court than in civil court.<sup>21</sup> This deference to the rights of criminal defendants should continue into the evaluation over the evidence the defendant needs to present at trial before hearing-impaired potential jurors. To continue this deference to the rights of criminal defendants, Florida should adopt the "any doubt" standard, which requires the court to grant the defendant's motion to strike a hearing-impaired juror for cause if the defense can present any reasonable doubt that the juror could effectively evaluate the evidence and provide the defendant with a fair trial.<sup>22</sup> As this Note will later discuss, an essential part of the "any doubt" standard

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decisions). HEALTH, LEGAL SYSTEMS ACCESS FOR PERSONS WITH HEARING LOSS: AN INSTRUCTOR'S GUIDEBOOK 22 (1st ed. 2010).

17. FLA. STAT. § 40.013(5) (2018).

18. See U.S. CONST. amend. V; U.S. CONST. amend. VI.

19. See U.S. CONST. amend. V; U.S. CONST. amend. VI.

20. The Florida Constitution grants the right to,

In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed.

FLA. CONST. art. 1 § 16(a).

21. See FED. R. EVID. 404(a) (disallowing any party in civil or criminal cases to present character evidence but allowing specific exceptions for a defendant in a criminal case to present evidence of the defendant or alleged victim's pertinent character trait); *Crawford v. Washington*, 541 U.S. 36, 68–69 (2004) (holding that where testimonial statements of an unavailable witness are at issue in a criminal case the Sixth Amendment demands the statements are only admitted if the defendant had a prior opportunity for cross-examination); *Bruton v. United States*, 391 U.S. 123, 137 (1968) (holding that a co-defendant's confession in a joint criminal trial violates the non-confessing defendant's Sixth Amendment Confrontation Clause right because of the substantial risk that the jury, despite the instruction to the contrary, will look into the co-defendant's confession in determining whether the non-confessing defendant is guilty or innocent); *United States v. United States Gypsum Co.*, 438 U.S. 422, 437–38 (1978) (explaining the common law tradition to resolve ambiguity in criminal statutes in favor of lenity towards the defendant).

22. *State v. Speer*, 904 N.E.2d 956, 961 (Ohio Ct. App. 2008), *aff'd*, 925 N.E.2d 584 (Ohio 2010) (affirming in outcome but reversing the intermediate appellate court's legal analysis and holding).

is the reasonableness caveat. A fair trial and jury service are both important parts of America's Constitution and society. The "any doubt" standard best balances ensuring both a defendant's right to a fair trial and the hearing-impaired community's participation and access to jury service.<sup>23</sup>

Whether the defendant has received a fair trial hinges on two constitutional considerations: first, the fairness of the jury selection process, and second, whether the case and evidence presented was fairly evaluated by the jury.<sup>24</sup> This Note will focus on the second consideration, whether the case and evidence presented was fairly evaluated by the jury. This Note will consider the voir dire process,<sup>25</sup> particularly the actions the judge and the lawyer may take to determine whether a potential juror with a hearing impairment can effectively evaluate the evidence and provide the defendant with a fair trial. Additionally, this Note will consider the trial and deliberations process and whether a potential juror's hearing impairment will impact their effective evaluation of the evidence during these trial stages.

After comparing the "specific evidence" with the "any doubt" standard, this Note will advance the conclusion that the "any doubt" standard is preferable because this standard allows trial courts the proper level of discretion necessary to determine whether a hearing impairment will prevent a potential juror from providing the defendant with a fair trial. The "any doubt" standard also allows appellate courts the discretion to evaluate the trial court's decision in whether to grant an defendant's motion to strike a hearing-impaired potential juror for cause.<sup>26</sup> This Note will compare the "any doubt" standard

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23.

It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. . . . [T]he exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government.

Smith v. Texas, 311 U.S. 128, 130 (1940) (footnote omitted) (evaluating whether a Texas grand jury selection scheme violated the Fourteenth Amendment by excluding black jurors); Harold Craig Manson, *Jury Selection: The Courts, The Constitution, and The Deaf*, 11 PAC. L.J. 967, 970 (1980) (arguing against the exclusion of the deaf community from jury service).

24. Manson, *supra* note 24, at 968–69.

25. *Voir Dire*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "voir dire" as "a preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury. Loosely, the term refers to the jury-selection phase of a trial").

26. This Note will deal only with for cause strikes to jurors. Nothing in Florida laws, rules of criminal procedure, or precedent indicates that a hearing-impaired juror may not be stricken in a preemptory challenge. This Note will only analyze situations in which the defendant has attempted to strike a hearing-impaired juror for cause and has already used or plans to use the allotted preemptory strikes on other potential jurors.

to other rules and standards in the judicial process created by legislatures and courts, particularly the general hearsay ban and its numerous exceptions.<sup>27</sup> This Note will ultimately conclude that the “any doubt” standard is the proper standard for courts to determine whether a potential juror’s hearing impairment will impact an defendant’s constitutional right to a fair trial. Further, applying the “any doubt” standard will not result in a categorical ban of hearing-impaired jurors.<sup>28</sup>

## II. THE “SPECIFIC EVIDENCE” STANDARD

In Ohio, courts must excuse a hearing-impaired juror under a challenge for cause in criminal cases when no reasonable accommodation exists that would enable the juror to perceive and evaluate the specific evidence the parties plan to present at trial.<sup>29</sup> In *Speer*, a defendant faced two criminal charges in relation to an accident that occurred while the defendant was allegedly intoxicated and operating a boat.<sup>30</sup> The crux of the State’s and *Speer*’s arguments at trial rested on *Speer*’s speech and tone of voice while making a 911 call.<sup>31</sup> The State planned on encouraging jurors to take *Speer*’s calm tone and demeanor during the call as evidence of his guilt, whereas *Speer* intended to argue he was not intoxicated because his speech on the tape was calm and collected rather than slurred.<sup>32</sup>

Linda Leow-Johannsen, a potential juror, disclosed during voir dire that she suffered from a hearing impairment and, while she could hear voices, she did not understand spoken words unless she read the speaker’s lips.<sup>33</sup> Importantly, Ms. Leow-Johannsen revealed she may miss information if the speaker did not face her or if a party presented

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27. FED. R. EVID. 801-804; FLA. STAT. §§ 90.801, .803–.804 (2018).

28. Notably, Florida does not have a state statute requiring a juror to “speak English.” See FLA. STAT. § 40.01 (listing juror qualifications only as reaching majority age, citizenship of the county calling for jury service, and possessing valid, state issued identification but making no reference to an English-speaking requirement); FLA. STAT. § 40.013 (2019) (listing categories of prospective jurors that may be excused from jury service and making no reference to an English-speaking requirement). As this Note focuses on Florida law, it will not delve into this problematic requirement. For an analysis of the issue and why these state statutes should be changed, see generally Cynthia L. Brown, *A Challenge to the English-Language Requirement of the Juror Qualification Provision of New York’s Judiciary Law*, 39 N.Y.L. SCH. L. REV. 479 (1994); Lynch, *supra* note 1, at 298; Claudia Lopez, *Providing American Sign Language Interpreters to Prevent Deaf-Juror Discrimination*, TRENDS IN STATE COURTS, <https://www.ncsc.org/sitecore/content/microsites/trends/home/Monthly-Trends-Articles/2015/Providing-American-Sign-Language-Interpreters-to-Prevent-Deaf-Juror-Discrimination.aspx> [<https://perma.cc/2NP2-LR5V>].

29. *State v. Speer*, 925 N.E.2d 584, 589 (Ohio 2010).

30. *Id.*

31. *Id.* at 587.

32. *Id.*

33. *Id.*

an audio recording as evidence.<sup>34</sup> Speer motioned to excuse Ms. Leow-Johannsen for cause, citing both parties' reliance on the 911 call recording.<sup>35</sup> The trial court denied the motion, finding proper accommodations were available that would enable Ms. Leow-Johannsen to fully and fairly evaluate the recording.<sup>36</sup> The trial court arranged for Ms. Leow-Johannsen to sit where she had a clear view of the speaking attorneys and witnesses and allowed a reading of the court reporter's transcription of the 911 call recording.<sup>37</sup> The trial court also assured Ms. Leow-Johannsen that she could advise the court at any time if she missed something and the parties would repeat themselves.<sup>38</sup>

At the close of the trial, the jury acquitted Speer of one charge and convicted him of a second charge.<sup>39</sup> Speer appealed and the Ohio Court of Appeals reversed, finding the trial court erred in denying Speer's challenge for cause against Ms. Leow-Johannsen's jury service.<sup>40</sup> The Court of Appeals stated there was no way to determine whether Ms. Leow-Johannsen properly heard and fairly considered all of the testimony and evidence presented, particularly the 911 audio tape and the arguments focusing on Speer's speech and audio clues.<sup>41</sup> The Court of Appeals utilized the "any doubt" standard, holding that if "any doubt exists that a juror can adequately and completely perceive and evaluate all the evidence, whether because of a physical impairment, mental capabilities, or other reason that would interfere with the performance of a juror's duties, the trial court must excuse that juror for cause."<sup>42</sup> The Supreme Court of Ohio agreed with the holding, but reversed the "any doubt" standard and applied the "specific evidence" standard, a narrower standard.<sup>43</sup> The Ohio Supreme Court held that in deciding whether to grant or deny a challenge for cause of a hearing-impaired potential juror on the basis of the hearing impairment, the court must consider the "specific evidence" the parties anticipate introducing at trial and whether the court can provide a reasonable accommodation that will allow the juror to effectively serve on the jury.<sup>44</sup> In making this determination, the Ohio Supreme Court

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34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *State v. Speer*, 904 N.E.2d 956, 960–61 (Ohio Ct. App. 2008), *aff'd*, 925 N.E.2d 584 (Ohio 2010) (affirming in outcome but reversing the intermediate appellate court's legal analysis and holding).

43. *Speer*, 925 N.E.2d at 589–90.

44. *Id.* at 590.



mandates a court balance equal access to jury service with the defendant's right to a fair trial, taking the right to a fair trial as the "predominant concern."<sup>45</sup>

However, a serious issue arises under the "specific evidence" standard if the defendant has a legitimate doubt that the evidence will be adequately evaluated but cannot point to a particular auditory piece of evidence or a witness who is known to speak softly or mutter.<sup>46</sup> Whether a hearing-impaired potential juror may be reasonably accommodated without impairing the defendant's right to a fair trial is a question of fact that turns on the extent of the potential juror's hearing loss,<sup>47</sup> the available accommodations,<sup>48</sup> and the defendant's arguments.<sup>49</sup> As the Wisconsin Court of Appeals stated in *State v. Turner*, the trial court will always have to determine the extent that the hearing impairment will impact the potential juror's ability to evaluate the evidence.<sup>50</sup> The analysis of how the hearing impairment will impact the defendant's right to a fair trial is fact-intensive and deserving of a standard that allows the trial court the

45. *Id.*

46. One example of a time when the defendant may have a reasonable doubt about a potential juror's hearing-impairment impacting a fair trial would constitute hearing-impairments such as Ms. Leow-Johannsen's. Ms. Leow-Johannsen admitted to having a hearing-impairment but did not use any auxiliary aids to improve her hearing, rather she relied only on lip reading. As discussed *infra*, there are numerous auxiliary aids that would render a hearing-impairment irrelevant to a constitutionally fair trial, however the potential juror must utilize those aids, rather than relying on aids such as lip reading, which can be notoriously unreliable or impacted by something as simple as the juror looking away for one second. *Speech Reading*, CENTERS FOR DISEASE CONTROL AND Prevention (last reviewed by publisher Mar. 21, 2019) (when discussing lip reading as a supplement to hearing loss in children, "About 40% of the sounds in the English language can be seen on the lips of a speaker in good conditions . . . . A good speech reader might be able to see only 5 to 5 words in a 12-word sentence."); *Hearing Loss-Lipreading*, BETTER HEALTH CHANNEL: VICTORIA ST. GOV. (last updated Apr. 2017), <https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/hearing-loss-lipreading> [<https://perma.cc/D8WJ-P2CD>] ("Lipreading cannot make up for hearing that has been lost."); *see also* Nicholas A. Altieri et al., *Some Normative Data on Lip-Reading Skills*, J. ACOUSTICAL SOC'Y AM., July 2011, at 2 (conducting a study on non-hearing-impaired college students and finding that "the meal lip-reading score in visual-only sentence recognition was 12.4% correct. . .").

47. *State v. Turner*, 521 N.W.2d 148, 150–51 (Wis. Ct. App. 1994).

48. For example, a juror with only a slight hearing-impairment who reads lips may be fully and effectively accommodated by moving the juror closer to the witness stand, or a juror whose hearing is impaired may utilize the court's auxiliary aids and fully and effectively evaluate and hear everything presented at trial. Manson, *supra* note 24, at 977; *Frequently Asked Questions*, THE EIGHTH JUDICIAL CIRCUIT COURT OF FLORIDA, <https://circuit8.org/jury-faqs/> [<https://perma.cc/44DB-54EN>] (offering accommodations for jurors); *Juror Information*, THE THIRD JUDICIAL CIRCUIT COURT OF FLORIDA, <https://www.jud3.flcourts.org/jurors/> [<https://perma.cc/NWK3-HQ4M>] (offering accommodations for jurors).

49. A court would likely not credit a defendant's arguments that categorically all hearing-impaired jurors violate the United States or Florida's equal protection clauses found in their respective constitution. U.S. CONST. amend. 14; FLA. CONST. art. 1, § 2.

50. *Id.* at 151.

full discretion necessary to evaluate the case, the hearing impairment, and the defendant's arguments about whether any doubt exists.<sup>51</sup>

### III. THE "ANY DOUBT" STANDARD IS THE PROPER TEST FOR DETERMINING IF A HEARING-IMPAIRED POTENTIAL JUROR MAY BE STRICKEN FOR CAUSE DURING VOIR DIRE

Both appellate courts in Ohio were proper in holding that the accommodations made for Ms. Leow-Johannsen were inadequate in providing Speer with a fair trial afforded under the U.S. Constitution.<sup>52</sup> However, the "any doubt" standard is the proper legal standard and the Ohio Supreme Court erred in dismissing it as too broad.<sup>53</sup> The "any doubt" standard allows trial courts the proper amount of discretion necessary to accurately evaluate the potential juror's hearing impairment, the accommodations available, and the defendant's right to a fair trial. Additionally, the "any doubt" standard does so without requiring the court to find a specific piece of evidence a party intends to present that might cause the hearing-impaired juror to ineffectively evaluate and consider.<sup>54</sup> Not every juror will have the same hearing impairment, not every party will present auditory evidence in the same way, and not every accommodation will equally assist every juror with a hearing impairment. The "any doubt" standard gives the trial court room to evaluate the situation under the defendant's challenge for cause to determine the best way to proceed that does not discriminate against the hearing-impaired juror while properly considering and prioritizing the defendant's constitutional right to a fair trial.

When the trial court in *State v. Speer* declined the defendant's challenge for cause of Ms. Leow-Johannsen, the court candidly admitted it could not guarantee that the accommodations provided to Ms. Leow-Johannsen would succeed in assisting her in fully and fairly considering the evidence presented.<sup>55</sup> The Court of Appeals correctly points out that the potential juror did not read sign language, so providing an interpreter was not an effective accommodation.<sup>56</sup> The Court of Appeals suggests in dicta that, had an American Sign Language interpreter been a viable option for Ms. Leow-Johannsen, then the

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51. *Id.*

52. *Speer*, 925 N.E.2d at 590.

53. *Id.*

54. For an example of the application of the any doubt standard, see the appellate court's application of the standard in *State v. Speer*, 904 N.E.2d 956, 960–61 (Ohio Ct. App. 2008), *aff'd*, 925 N.E.2d 584 (Ohio 2010) (affirming in outcome but reversing the intermediate appellate court's legal analysis and holding).

55. *Id.*

56. *Id.* at 960.

reasonable doubt argument would have been weakened because the “interpreter would have ensured that the juror would have been alerted every time someone spoke.”<sup>57</sup>

Ms. Leow-Johannsen presented doubt as a juror because she could not effectively understand auditory evidence if she read lips.<sup>58</sup> If she turned her head, looked down to take a sip of water, or even momentarily shifted her eyes she may not have seen that a speaker started talking and may not have effectively understood the evidence presented because she missed some of it.<sup>59</sup> Ms. Leow-Johannsen presented even more reasonable doubt when the Court of Appeals analyzed the specific evidence offered in the case, the 911 tape.<sup>60</sup> The Court of Appeals found the outcome “even more troubling” under the specific evidence test.<sup>61</sup> While reading the transcription of the 911 call Ms. Leow-Johannsen could not effectively evaluate whether the defendant’s speech was or was not slurred and whether the defendant did or did not sound too calm.<sup>62</sup> Both the State and the defendant’s arguments depended on the jury’s interpretation of the tone, words, inflection, and speech patterns in Speer’s 911 call.<sup>63</sup>

One potential concern about the “any doubt” standard is that it may categorically exclude hearing-impaired persons from jury service.<sup>64</sup> In discussing the “any doubt” standard, the Ohio Court of Appeals in *State v. Speer* specifically noted that, where the evidence presented involves “only the bare meaning of the words,” the potential juror’s hearing impairment will likely have little to no impact on the potential juror’s ability to effectively consider all of the evidence presented.<sup>65</sup> Thus, “if any doubt exists that a juror can adequately and completely perceive and evaluate all the evidence . . . the trial court must excuse that juror for cause.”<sup>66</sup>

This discussion highlights an important check on the “any doubt” standard: the doubt must be reasonable. It is unlikely reasonable doubt will exist as to whether hearing impairment prevents a potential juror from effectively perceiving and evaluating the evidence.<sup>67</sup> For

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57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 961.

61. *Id.*

62. *Id.*

63. *State v. Speer*, 925 N.E.2d 584, 589 (Ohio 2010).

64. This concern was briefly presented by the Ohio Supreme Court in their opinion in *State v. Speer*. *Id.* at 590.

65. *Speer*, 904 N.E.2d at 961, *aff’d*, 925 N.E.2d 584 (Ohio 2010) (affirming in outcome but reversing the intermediate appellate court’s legal analysis and holding).

66. *Speer*, 904 N.E.2d at 961.

67. *See* Manson, *supra* note 24, at 975–78.

example, the Florida Evidence Code requires courts to appoint a qualified interpreter or auxiliary aid for a juror with a hearing impairment.<sup>68</sup> Florida statutes also require that an interpreter take an oath to make a true interpretation.<sup>69</sup> Additionally, when considering appropriate accommodations, the Americans with Disabilities Act requires primary consideration be given to the accommodation requested by the individual with the hearing impairment.<sup>70</sup> Presumably, the hearing-impaired potential juror has a preferred accommodation, is familiar with this accommodation, and has been thriving in life regardless of any hearing impairment.<sup>71</sup> Thus, in many cases the accommodation will likely not be at issue.<sup>72</sup> Rather, it is when doubt exists that goes beyond the defendant arguing generalizations and stereotypes of the hearing-impaired community that the “any doubt” standard would allow striking juror for cause because of a hearing impairment.

In *People v. Guay*, the New York Court of Appeals affirmed the dismissal of a hearing-impaired juror when doubt existed over whether the juror could properly perceive and evaluate the evidence presented.<sup>73</sup> The trial court found doubt existed when the potential juror answered questions incorrectly because he could not properly hear the question and the potential juror’s body language indicated he was not hearing everything said during voir dire.<sup>74</sup> While the court had a specific witness in mind which the potential juror might struggle to hear (a soft-spoken child), the court properly applied the “any doubt” standard and dismissed the juror when a reasonable doubt existed.<sup>75</sup> The potential juror’s difficulty in answering questions during voir dire showed that the court had reason to doubt whether the juror could adequately understand and evaluate any of the testimonial evidence

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68. FLA. STAT. § 90.606 (2018).

69. *Id.* § 90.6063(7). Specifically, the oath requires the interpreter to swear that “he or she will make a true interpretation in an understandable manner to the deaf person . . . and that he or she will repeat the statements of the deaf person in the English language to the best of his or her skill and judgement.” *Id.* This statute additionally requires that where a deaf person’s interpreted statements are privileged, that privilege extends to the interpreter as well. *Id.* An additional protection for both the legitimacy of court proceedings and the accuracy of the participation of the hearing-impaired juror requires that the court and the hearing-impaired person make a “preliminary determination that the interpreter is able to communicate readily with the deaf person and is able to repeat and translate statements to and from the deaf person accurately.” *Id.* § 90.6063(6).

70. FLA. HEALTH, LEGAL SYSTEMS ACCESS FOR PERSONS WITH HEARING LOSS: AN INSTRUCTOR’S GUIDEBOOK 22 (1st ed. 2010).

71. *See id.*

72. *See id.*

73. *People v. Guay*, 959 N.E.2d 504, 506–07 (N.Y. 2011).

74. *Id.* at 507.

75. *Id.* at 509.

to be presented.<sup>76</sup> Additionally, when asked if any accommodations would assist the potential juror, he responded that only moving to the front row of the jury box would help.<sup>77</sup> However, when this accommodation was provided the trial court still found it “readily apparent” that the potential juror was not hearing the questions asked during voir dire.<sup>78</sup> The court did not base its dismissal of the potential juror for cause based on the soft-spoken witness; rather, the court relied on the potential juror’s inability to hear questions presented and the lack of accommodations available to assist the potential juror.<sup>79</sup> Presumably, if the potential juror had an effective accommodation available, either through an interpreter or auxiliary hearing aid, or even if moving the juror to the front of the jury box had been effective, the court would not have granted the defendant’s motion for cause.<sup>80</sup>

On the other hand, in *People v. Guzman*, the New York Court of Appeals found that a prospective juror’s civil right to serve on a jury is conditioned on the individual criminal defendant’s right to a fair trial and the prospective juror’s ability to provide a fair trial.<sup>81</sup> In *Guzman*, a hearing-impaired juror communicated through Signed English rather than American Sign Language.<sup>82</sup> The court found significance in the juror’s ability to communicate through Signed English, which is a literal translation of the English words to signs, rather than American Sign Language, which is more akin to a nonliteral translation to a different language.<sup>83</sup> The court relied on the Signed English and the juror’s ability to read lips to find that the hearing impairment did not render the juror incapable of performing the duties of a juror in a reasonable manner.<sup>84</sup>

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76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 509.

80. *See id.*

81. *People v. Guzman*, 555 N.E.2d 259, 261–62 (N.Y. 1990).

82. *Id.* at 262. For an in-depth analysis on the comparison between American Sign Language and Signed English, see Judy Reilly & Marina L. McIntire, *American Sign Language and Pidgin Sign English: What’s the Difference?*, 27 SIGN LANGUAGE STUDIES 151 (1980). For the purposes of this Note, a hearing-impaired juror requiring a Signed English interpreter and one requiring an American Sign Language interpreter will both be analyzed under the “any doubt” standard. This is because, under Florida Statutes, an interpreter may be interpreted for witnesses who require one for a language barrier as well as a hearing impairment. FLA. STAT. § 905.15 (2018) (“The foreperson shall appoint an interpreter to interpret the testimony of any witness who does not speak the English language well enough to be readily understood. The interpreter must take an oath not to disclose any information coming to his or her knowledge, except on order of the court”).

83. *Guzman*, 555 N.E.2d at 260, 262.

84. *Id.*

The primary function of a juror is to provide a fair trial.<sup>85</sup> As the court in *Guzman* stated, a juror may complete this primary function at minimum by understanding the evidence presented, evaluating the evidence rationally, communicating effectively during deliberations, comprehending the court's instructions, and requiring accommodations that do not interfere with a criminal defendant's constitutional rights at trial.<sup>86</sup> The Court of Appeals found because the juror could speak English fluently, read lips, and communicate effectively in Signed English with an interpreter, the juror was properly admitted to the jury, as he would be just as effective on the jury as a hearing juror.<sup>87</sup> This is unlike *Carrillo v. People*, where a juror's response to questions asked by the parties and the court during voir dire showed he was having trouble hearing the questions resulting in inaccurate answers.<sup>88</sup> Additionally, no accommodations were available to assist the potential juror in effectively evaluating the evidence.<sup>89</sup>

The "any doubt" standard allows trial courts to utilize discretion in evaluating the case before the court and the potential juror in voir dire. It also allows appellate courts to more accurately balance the right of the defendant to a fair trial and the rights of citizens with a hearing impairment to jury service when determining whether a trial court abused its discretion. For example, in *State v. Turner*, the Wisconsin Court of Appeals ordered a new trial when the defendant appealed because two jurors admitted they had not heard all of the testimony presented.<sup>90</sup> Both jurors testified during a voir dire after the trial had commenced that they missed a little testimony and wished they had heard more.<sup>91</sup> One of the two jurors told the court he had not missed so much testimony that he could not reach a fair and impartial verdict.<sup>92</sup> The trial judge felt this testimony was sufficient to guarantee the defendant a fair trial and thus denied the defendant's motion for a mistrial so long as the court utilized an amplification system for the remainder of the trial.<sup>93</sup> The appellate court reversed, finding that, once a juror has not heard material evidence which bears on a defendant's guilt or innocence because of a hearing impairment, prejudice against the defendant must be assumed.<sup>94</sup> The appellate court

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85. *Id.*

86. *Id.* at 261–62.

87. *Id.* at 262.

88. *Carrillo v. People*, 974 P.2d 478, 492 (Colo. 1999).

89. *Id.*

90. *State v. Turner*, 521 N.W.2d 148, 150 (Wis. Ct. App. 1994).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 151; *see also* *Commonwealth v. Brown*, 332 A.2d 828, 832 (Pa. Super. Ct. 1983) (remanding a criminal case for a new trial and assuming prejudice to the defendant where a

reasoned that each juror must not only hear the witness' testimony to evaluate the evidence, but also hear the witness' "[t]onal quality, volume, and speech patterns" to effectively evaluate the witness' credibility.<sup>95</sup> Had the court applied the "any doubt" standard and found that no effective accommodations were available, the defendant's motion to strike for cause, if filed, would have been granted.

#### IV. HEARSAY COMPARISON

Often in courtrooms evidence and witnesses are excluded because of public policy, especially in criminal cases. For example, hearsay evidence,<sup>96</sup> while open to many exceptions and exclusions, generally is excluded because as a matter of public policy the fact-finder cannot sufficiently evaluate the credibility of the declarant when the declarant's statement is spoken by another witness in the courtroom.<sup>97</sup> Courts are concerned with evaluating "the truth of the matter asserted in the statement" when the declarant<sup>98</sup> is not in the courtroom to defend their statement through direct and cross-examination.<sup>99</sup> The U.S. Supreme Court has routinely held that hearsay statements, even when permitted by an exception, must contain adequate "indicia of reliability"<sup>100</sup> and may be excluded where it is not accompanied by "a showing of particularized guarantees of trustworthiness."<sup>101</sup> Really, the general ban on hearsay stems from a public policy exclusion that, in general, one witness coming to court to testify about what another declarant said is not reliable or trustworthy evidence.<sup>102</sup> When

juror was unable to hear questions and where the juror's response to questions was inconclusive to determine whether he heard all of the testimony and evidence presented).

95. *Turner*, 521 N.W.2d at 151.

96. FED. R. EVID. 801(c) (defining hearsay as "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement").

97. GEORGE FISHER, EVIDENCE 376–80 (3d ed. 2013). One scholar has called the hearsay rule "one of our greatest engines for truth." James E. Beaver, *The Residual Hearsay Exception Reconsidered*, 20 FLA. ST. U. L. REV. 787, 788 (1993).

98. FED. R. EVID. 801(c)(2). The "declarant" of a statement is the person who originally made the statement. FED. R. EVID. 801(b).

99. See FISHER *supra* note 100, at 379; Beaver, *supra* note 97, at 787–89.

100. See *Ohio v. Roberts*, 448 U.S. 56, 66 (1980).

101. *Id.*

102. FISHER, *supra* note 100, at 376–80. Although some judges, such as Judge Posner, have called for the elimination of the categorical hearsay exceptions and instead called Federal Rule of Evidence 807 (the residual exception) to "swallow much of Rules 801 through 806." *United States v. Boyce*, 742 F.3d 792, 802 (7th Cir. 2014) (Posner, J., concurring). Judge Posner writes his concurrence advocating that "it is time the law awakened from its dogmatic slumber." *Id.* at 801. See generally Liesa L. Richter, *Posnerian Hearsay: Slaying the Discretion Dragon*, 67 FLA. L. REV. 1861 (2015) (critiquing Judge Posner's suggestion of eliminating the categorical hearsay exceptions and replacing them with the Rule 807 residual exception). For a continuation of this debate, see Justin Sevier, *On Hearsay Dragon-Slaying*, 67 FLA. L. REV. F. 269 (2016) (responding to Richter's previously mentioned article).

evaluating hearsay evidence, the jury cannot evaluate the declarant's verbal and physical cues of credibility because the declarant is not in the courtroom; rather, the witness is testifying as to what the declarant said.<sup>103</sup> Without the declarant speaking in the courtroom, the hearsay rule is concerned with the lack of testing on the evidence by various courtroom tools to ensure credibility. These include declaring the testimony under oath and evaluating the witness' demeanor during direct examination, and credibility during cross-examination.<sup>104</sup>

Despite these concerns, both the Federal Rules of Evidence and the Florida Evidence Code have over thirty exceptions and exclusions to the general ban on hearsay.<sup>105</sup> The types of hearsay evidence permissible despite the general ban were made exceptions and exclusions for two reasons: necessity of the type of hearsay evidence and the indicia of reliability that accompanies this type of evidence more so than other types of hearsay.<sup>106</sup> The exceptions and exclusions reflect a public policy determination that the types of hearsay evidence permitted despite the general ban on hearsay tend to be necessary and trustworthy, despite the hearsay evidence's lack of credibility shown by standard courtroom tools for ensuring credibility.

The concerns brought out by hearsay statements are not perfectly analogous to the concerns regarding hearing-impaired jurors in providing a criminal defendant with a fair trial; however, it is proper to compare the general hearsay exclusion and the "any doubt" standard regarding hearing-impaired jurors sitting on criminal juries. One concern for the "any doubt" standard is that a hearing-impaired juror may lack the ability to pick up verbal credibility clues and other courtroom tools utilized to evaluate witness credibility. The Ohio Supreme Court acknowledged in *State v. Speer* that, depending on the type and extent of the hearing impairment, a potential hearing-impaired juror might not effectively evaluate the evidence's credibility as much as a non-hearing-impaired juror.<sup>107</sup> However, the extent of this risk would turn on the extent of the individual's hearing impairment and the accommodations provided. For example, in *People v. Guzman*, a juror who was reading lips in addition to an interpreter signing English (as opposed to American Sign Language) could evaluate verbal testimony just as effectively, if not more so, than a

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103. FISHER, *supra* note 100, at 379; Beaver, *supra* note 97, at 787–89.

104. FISHER, *supra* note 100, at 377–79.

105. FED. R. EVID. 801(d), 802–803, 804(b); FLA. STAT. §§ 90.801(2), .803, .804(2) (2018). These exceptions and exclusions include a present sense impression or spontaneous statement, an excited utterance, and statements of a then-existing mental, physical, or emotional condition. FED. R. EVID. 803(1)–(3); FLA. STAT. § 90.803(1)–(3) (2018).

106. FISHER, *supra* note 100, at 407.

107. *State v. Speer*, 925 N.E.2d 584, 589 (Ohio 2010).



non-hearing-impaired juror.<sup>108</sup> The court reasoned the juror could effectively evaluate the evidence because the signer could convey the speaker's testimony through inflections in sign and the hearing impairment would not prevent the juror from watching the witness' body language and reading the witness' lips during testimony.<sup>109</sup> A hearing impairment would not prevent a potential juror from reading the body language of a witness and evaluating the witness' mannerisms on direct and cross-examination. While courts have held that the credibility of a witness is determined by more than just the witness' words, verbal and visual credibility clues are not uniformly utilized by every factfinder and are not essential or even routinely accurate in evaluating credibility.<sup>110</sup>

These concerns are alleviated because interpreters can incorporate tone and inflection into their interpretation.<sup>111</sup> During witness testimony, the interpreter can provide exact terminology, pausing, inflection, and emphasis as the witness testifies. Even concerts for heavy metal music provide interpreters who interpret the show by doing more than just signing the lyrics.<sup>112</sup> Interpreters who sign music know that signing is about more than merely conveying the lyrics; it is about conveying the feel for the music, the tone of the song, and the layers of musical instruments and melodies that go into the music.<sup>113</sup> Thus, it is possible for sign language interpreters, both in American Sign Language and in Signed English, to show the speaker's tone and inflection through their interpretation. If a witness says, "I was not holding that bag" they might emphasize "NOT" or "THAT" and the sentence would mean different things based on which word was emphasized. For example, the statement "I was NOT holding that bag" shows the witness is strongly denying that they were holding the bag, whereas the statement "I was not holding THAT bag" shows the witness might admit to holding a different bag, but not the specific bag at issue. Each version of the sentence carries a different connotation and meaning, which the interpreter can convey to the hearing-impaired juror through the manner and method used to interpret the sentence.

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108. *People v. Guzman*, 555 N.E. 259, 262 (N.Y. 1990).

109. *Id.*

110. *See, e.g., State v. Turner*, 521 N.W.2d 148, 151 (Wis. Ct. App. 1994); *Breunig v. Am. Family Ins. Co.*, 173 N.W.2d 619, 626–27 (Wis. 1970); *see Elizabeth F. Loftus, Reconstructing Memory: The Incredible Eyewitness*, 15 JURIMETRICS J. 188, 188–93 (1975); Paul Ekman & Maureen O'Sullivan, *Who Can Catch a Liar?*, 46 AM. PSYCHOL. ASS'N 913, 913–14, 920 (1991); Manson, *supra* note 24, at 976–77.

111. *Interpreting Resources*, REGISTRY INTERPRETERS FOR DEAF, INC., <https://rid.org/about-rid/about-interpreting/> [<https://perma.cc/QY62-5Z2R>].

112. Kaelyn Forde, *Sign Language Interpreter Slays at a Heavy Metal Concert*, GOOD MORNING AM. (July 18, 2018), <https://www.goodmorningamerica.com/culture/story/sign-language-interpreter-slays-heavy-metal-concert-56646939> [<https://perma.cc/D9FT-KSEX>].

113. *Id.*

The presence of an interpreter throughout the trial and jury deliberations can ensure that a hearing-impaired juror can fairly and effectively consider all of the evidence presented through a translation. Additionally, through a translation that includes inflections, tone, and other verbal credibility clues. This would alleviate concerns that the “any doubt” standard would result in the general ban of the hearing-impaired from jury service. As with hearsay evidence, even with a standard that allows trial courts more discretion, the discretion would not result in the categorical ban of hearing-impaired jurors. The hearsay ban is a large categorical ban; but, when accompanied by public policy considerations, the exceptions and exclusions, and the allowance of trustworthy and necessary evidence, the hearsay ban is not the categorical ban one would think when first learning about it. Similarly, allowing trial courts discretion to truly evaluate the potential juror’s hearing impairment, the accommodations available, and the defendant’s specific motion will not result in a categorical ban of hearing-impaired jurors.

#### V. JUROR RELIANCE ON VERBAL AND VISUAL CREDIBILITY CLUES

Some courts have denied a hearing-impaired potential juror from jury service because of a concern that the hearing impairment will prevent the potential juror from evaluating verbal and visual credibility clues.<sup>114</sup> As stated above, a qualified interpreter for either American Sign Language or Signed English can interpret not only the literal language but also verbal credibility clues such as tone and inflection.<sup>115</sup> There is no evidence conclusively proving that an understanding of verbal credibility clues such as tone and inflection actually leads jurors to the truth more than an objective evaluation of the testimony presented.<sup>116</sup> In fact, studies suggest that visual credibility clues, such as the witness’ physical demeanor and presentation, play as much if not a greater role in a juror’s evaluation of the evidence than verbal credibility clues.<sup>117</sup> A U.S. District Court in Arkansas reasoned that striking a deaf juror for cause was allowed partially because the hearing-impaired juror would need to constantly keep her eyes on the interpreter and, thus, would not see the body language of the attorneys or witnesses.<sup>118</sup> This conclusion ignores simple solutions the court could implement to allow a hearing-

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114. *E.g.*, *Eckstein v. Kirby*, 452 F. Supp. 1235, 1242–43 (E.D. Ark. 1978).

115. *Supra* Part VI.

116. *Manson*, *supra* note 24, at 977.

117. *Id.* (citing H. KALVEN & H. SIESEL, *THE AMERICAN JURY* 382–83 (1966)).

118. *Eckstein*, 452 F. Supp. at 1242.

impaired juror to see both the interpreter and the testifying witness, such as positioning the interpreter near the witness so that both are in the juror's line of vision during the testimony.

Additionally, with the advancement of social science studies, courts have begun to alter old perceptions of how witnesses and juries operate. For example, in *State v. Guilbert*, the Connecticut Supreme Court overruled two previous cases that found expert witness testimony on the fallacy of eyewitness identification was inadmissible.<sup>119</sup> The court identified eight scientifically valid propositions that were counter-intuitive about the reliability of eyewitness identification testimony, including the common false assumption that the more confident a witness is in their identification, the more accurate it is.<sup>120</sup> This holding was in tension with an earlier U.S. Supreme Court's holding in *Neil v. Biggers*, which identified the level of confidence displayed by the witness as one of five factors that indicate the credibility of an eyewitness.<sup>121</sup> These visual clues relied on by the *Eckstein* court are not a reliable and accurate measure for a juror to use in determining credibility, especially considering the advancements made in the interpretation profession.<sup>122</sup>

A defendant's objection to a potential juror with a hearing impairment because the hearing impairment could prevent the juror from hearing verbal credibility clues, or the interpreter could prevent the juror from seeing visual credibility clues would not survive under the "any doubt" standard. The "any doubt" standard does not literally mean "any possible doubt"; rather, it refers to any reasonable doubt. Defense counsel's strike for cause would not survive the trial court's scrutiny if the attorney advanced an argument that hearing-impaired jurors categorically cannot effectively evaluate the evidence presented because of a lack of ability to evaluate verbal and visual credibility clues.<sup>123</sup> As the Ohio Court of Appeals stated in their opinion in *State*

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119. *State v. Guilbert*, 49 A.3d 705, 712 (Conn. 2012) (overturning *State v. Kemp*, 507 A.2d 1987 (1986) and *State v. McClendon*, 730 A.2d 1107 (1999)).

120. *Id.* at 732.

121. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). The *Neil* Court identified five factors for courts to consider when determining the likelihood of witness misidentification: The opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation. *Id.* The *Guilbert* Court utilized social science studies to find a basis for going against the long-held belief that the higher an eyewitness' confidence in their identification is the higher likelihood that the identification is accurate. *Guilbert*, 49 A.3d at 732.

122. See Loftus, *supra* note 113, at 188-93; Ekman & O'Sullivan, *supra* note 113, at 913; *Interpreting Resources*, *supra* note 114.

123. See *State v. Speer*, 904 N.E.2d 956, 960-61 (Ohio Ct. App. 2008), *aff'd*, 925 N.E.2d 584 (Ohio 2010) (affirming in outcome but reversing the intermediate appellate court's legal analysis and holding). In fact, such arguments could be easily defeated should the opposing prosecutor respond with arguments similar to those advanced in Part V of this Note.

*v. Speer*, where the evidence in a case involves only the “bare meaning” of words, a juror’s hearing impairment might have no prejudice at all on the juror’s ability to evaluate the evidence presented.<sup>124</sup>

## VI. CONCLUSION

A defendant in a criminal case is and should be afforded greater protection at trial than a defendant in a civil case. The constitutional right of an defendant to a fair trial includes the right to a fair and effective consideration of the evidence by the trier of fact.<sup>125</sup> When a potential juror is hearing-impaired and the defendant raises a motion to strike for cause, the trial court needs discretion to properly evaluate the extent of the hearing impairment, the available accommodations, and whether the defendant is correct in alleging that doubt exists over the juror’s ability to fairly and effectively consider the evidence presented at trial. The “any doubt” standard gives trial courts this discretion, and the “specific evidence” standard narrows this discretion to an unworkable degree in some cases. It is not often the case that a hearing impairment will prevent the potential juror from fairly and effectively evaluating the evidence presented. Typically, an interpreter, auxiliary systems, hearing aids, and other accommodations will allow a hearing-impaired juror to have absolutely no issue in evaluating the evidence. The world and courts have moved past the outdated views of hearing impairments the court in *Eckstein v. Kirby* expressed, and states, such as Florida, provide accommodations for jurors and allow interpreters into jury deliberations so that all jurors may effectively communicate.<sup>126</sup> While courts may express hesitation similar to the justifications with the general ban on hearsay evidence, those concerns are alleviated by the advancement in technology benefitting the hearing-impaired, the growth of the sign language interpretation profession, and the discretion allowed to trial courts by the “any doubt” standard. Thus, Florida courts and legislators need to adopt the “any doubt” standard to allow trial courts the necessary discretion in evaluating whether to grant or deny a criminal defendant’s motion to strike a hearing-impaired potential juror for cause.

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124. *Speer*, 904 N.E.2d at 961.

125. See *Speer*, 925 N.E.2d at 569; Manson, *supra* note 23, at 968-69, 975-76.

126. *Eckstein v. Kirby*, 452 F. Supp. 1235, 1242 (E.D. Ark. 1978); FLA. STAT. §§ 90.6063(2), 40.013(5) (2018).

