

RESOLUTION 09-02-2006

DIGEST

Presumption of Innocence; Definition of Reasonable Doubt

Amends Penal Code section 1096 to clarify the definition for reasonable doubt.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolution found.

Reasons:

This resolution amends Penal Code section 1096 to clarify the definition for reasonable doubt. This resolution should be disapproved because making the proposed changes to the current definition could potentially cause juror confusion and violate due process.

The new criminal jury instructions provided a more detailed definition and explanation of reasonable doubt. The instructions are based directly on Penal Code section 1096 with the primary change in the definition of reasonable doubt stated in the affirmative rather than in the negative.

The “beyond a reasonable doubt” standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor mandates them to define it. (*Victor v. Nebraska* (1999) 511 U.S. 1, 5.) As long as the court instructs the jury on the necessity that the defendant’s guilt be proved beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government’s burden of proof. (*Ibid.*)

The California Legislature has directed that “the court may read to the jury section 1096 of this code, and no further instruction on the subject of the presumption of innocence or defining reasonable doubt need be given.” (*Victor v. Nebraska, supra* 511 U.S. at p. 5.)

When the reasonable doubt instruction was criticized in *People v. Brigham*, (1979) 25 Cal.3rd 283; the court did not think the instruction was unconstitutional but urged the legislature to reconsider its codification. (*Id* at 293.) The California legislature requested the committee on jury instructions of the Los Angeles Superior Court to study alternatives to the definition of “reasonable doubt.” The committee recommended that the legislature retain the statutory definition unmodified. (Assem. Com. Res. on No. 148, (1986) Cal. Stats. 5634.)

The reasonable doubt instruction in Penal Code section 1096 satisfies the Constitution’s due process requirements. The *Victor* court argued that trial courts must avoid defining reasonable doubt so as to lead the jury to convict on a lesser showing than due process requires. The instructions adequately convey to jurors that they should focus exclusively upon the evidence

and that they should only convict if they had an “abiding conviction” of the defendant’s guilt. (*Victor v. Nebraska*, *supra* 511 U.S. at p. 20.)

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar associations recommend that legislation be sponsored to amend Penal Code section 1096 to read as follows:

1 §1096.
2 A defendant in a criminal action is presumed to be innocent unless and until the contrary is
3 proved, and in case of a reasonable doubt whether his or her guilt is satisfactorily shown, he
4 or she is entitled to an acquittal, but the effect of this presumption is only to place upon the
5 state the burden of proving him or her guilty beyond a reasonable doubt. Reasonable doubt
6 is defined as follows: "~~It is not a mere possible doubt; because everything relating to human~~
7 ~~affairs is open to some possible or imaginary doubt.~~ It is that state of the case, which, after
8 the entire comparison and consideration of all the evidence, leaves the minds of jurors in
9 that condition that they cannot say they feel an abiding conviction of the truth of the charge,
10 or, if, having a conviction, it is one which is not stable but one which wavers and vacillates."
11 A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in
12 the evidence or the lack of evidence.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Ventura County Bar Association

STATEMENT OF REASONS

Existing Law: Defines reasonable doubt by stating what it is not and does not explain what may be considered in evaluating whether reasonable doubt exists.

This resolution: Correct those problems by eliminating the negative definition and explaining what reasonable doubt means and what should be considered in evaluating reasonable doubt.

The Problem: Jurors are confused by the reasonable doubt Caljic. The new CALCRIM defines reasonable doubt differently, but this statute may cause the new CALCRIM to be discarded and the old CALJIC 2.90 to resurface.

In accordance with CDCBA rules, VCBA timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

IMPACT STATEMENT

This resolution would not affect any other statute, rule, or law.

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RESPONSIBLE FLOOR DELEGATE: Jay Leiderman

COUNTERARGUMENT

ORANGE COUNTY BAR ASSOCIATION

Resolution 09-02-06 confuses the definition of an already amorphous legal term of art, effectively creating an insurmountable burden of proof in criminal prosecutions. The resolution needlessly strikes the only plain language explaining the burden of proof in criminal prosecutions – beyond a reasonable doubt. In addition, parts of the proposed language obscure the meaning of “reasonable doubt.”

Defining a term by what it is – and what it is not – provides the most thorough explanation. While the proponent criticizes the current language for stating what reasonable doubt is not, the term is better understood in the negative. Practically, criminal defense attorneys often compare (during voir dire or argument) reasonable doubt to lower burdens of proof, such as clear and convincing proof and preponderance of evidence. Illustrating an even higher standard – beyond all possible or imaginary doubt – furthers understanding of beyond a reasonable doubt. Hence the plain language: It is not a mere possible doubt.

The resolution’s author incorrectly contends the current language is improved by adding: “...if, having a conviction, it is one which is not stable but one which wavers and vacillates.” Such language fails to provide any clarity. Rather, the proposal confuses the issue, and, ultimately the jury.

The author contends the new jury instruction (CALCRIM 220: Reasonable) defines “beyond a reasonable doubt” differently than the former instruction (CALJIC 2.90), and in conflict with Penal Code Section 1096. Though the sentence structure of the two instructions differs, the substance is the same. Both state reasonable doubt is not a mere possible doubt and that proof beyond a reasonable doubt involves an abiding conviction of the truth of the charge. Likewise, the language reflects that of the statute. Accordingly, the new jury instruction and statute are not in conflict.

In addition to being concise and comprehensible, the current language is immune from potential constitutional attack. “In only one case has the Supreme Court found a reasonable-doubt instruction to be unconstitutional.” Fluellen v. Walker 41 Fed.Appx. 497, 501, 2002 U.S. App. LEXIS 13642, *referring to* Cage v. Louisiana 498 U.S. 39, 112 L.Ed. 2d 339. The Court declared it unconstitutional to equate reasonable doubt with “grave uncertainty” or “actual substantial doubt” because the terms “suggest a higher degree of doubt.” Id. at 40 – 41. Rather, the Constitution prohibits only those instructions that “effectively shift the burden of proof or suggest a higher quantum of doubt than is required for an acquittal.” Fluellen, 41 Fed.Appx. at

501 *referring to* Victor v. Nebraska 511 U.S. 1, 13-17. The current language clearly complies with the foregoing authorities by indicating an even higher standard exists than that required for acquittal.

Deleting the current language – and inserting the proposed language – will confuse juries. Resolution 09-02-06 serves as a platform for hung juries and not guilty verdicts by attempting to obfuscate a clear definition.