

RESOLUTION 03-11-2007

DIGEST

Prevention of Wrongful Convictions: Informant Testimony

Adds California Penal Code section 1111.5 to require the corroboration of testimony proffered by in-custody informants in criminal cases.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds California Penal Code section 1111.5 to require the corroboration of testimony proffered by in-custody informants in criminal cases. This resolution should be approved in principle because jailhouse informant testimony is inherently untrustworthy and unreliable.

Requiring corroboration of in-custody informant testimony will advance the interests of justice. Currently, the only corroboration requirement relates to the testimony of one accomplice against another. (Pen. Code, § 1111.) Since the source of such a statement is inherently untrustworthy, section 1111 requires some independent proof, albeit slight, in order to support a conviction.

Testimony offered by in-custody informants, however, is even less reliable than that offered by accomplices. Accomplice testimony is viewed as trustworthy because it tends to inculcate both the purported declarant and the accomplice. In contrast, informant testimony only inculcates the purported declarant. There are currently no safeguards in place to ensure that the proffered statement was even made at all.

False informant testimony has been identified as the leading cause of wrongful convictions in U.S. capital cases. Northwestern University School of Law, Center on Wrongful Convictions, *The Snitch System: How Snitch Testimony Sent Randy Steidl and Other Innocent Americans to Death Row*, p. 3 (2005). A bill similar to this resolution, Senate Bill No. 609 (2007-2008 Reg. Sess.), has been introduced in the Legislature. This additional reliability measure would be an important step in safeguarding the rights of criminal defendants.

TEXT OF RESOLUTION

RESOLVED that the Conference of the Delegates of California Bar Associations urges the California Senate and Assembly to pass S.B. 609 [Romero] (requiring the corroboration of testimony by in-custody informants) which incorporates into legislation the reform measures recommended by the California Commission on the Fair Administration of Justice (“CCFAJ”) regarding in-custody informant testimony issued November 20, 2006, <http://www.ccfaj.org/documents/reports/jailhouse/official/Official%20Report.pdf>, and provides

as follows:

SB 609, as introduced, Romero. Criminal procedure: informants.

The people of the State of California do enact as follows:

SECTION 1. Section 1111.5 is added to the Penal Code, to read:

1111.5. (a) A jury or judge may not convict a defendant, find a special circumstance true, or use a fact in aggravation based on the uncorroborated testimony of an in-custody informant. The testimony of an in-custody informant shall be corroborated by other evidence that independently tends to connect the defendant with the commission of the offense, the special circumstance, or the evidence offered in aggravation to which the in-custody informant testifies. Corroboration is not sufficient if it merely shows the commission of the offense or the special circumstance or the circumstance in aggravation. Corroboration of an in-custody informant shall not be provided by the testimony of another in-custody informant.

(b) As used in this section, "in-custody informant" means a person, other than a codefendant, percipient witness, accomplice, or coconspirator, whose testimony is based on statements allegedly made by the defendant while both the defendant and the informant were held in within a city or county jail, state penal institution, or correctional institution. Nothing in this section limits or changes the requirements for corroboration of accomplice testimony pursuant to Section 1111.

RESOLVED FURTHER that the Conference of Delegates of California Bar Associations urges the Governor to sign such legislation into law.

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: At present, California law does not directly require the corroboration of the testimony of in-custody informants.

The only corroboration requirement in California law is the requirement of corroboration of accomplice testimony in Penal Code section 1111: "A conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." Courts use CALCRIM No. 335 to instruct juries of the accomplice corroboration requirement. The instruction requires supporting evidence independent of the accomplice's testimony, but adds: "Supporting evidence, however, may be slight. It does not need to be enough, by itself, to prove that the defendant is guilty of the charged crime, and it does not need to support every fact . . . about which the accomplice testified." The instruction also states that accomplices may not corroborate each other: "The evidence needed to support the testimony of one accomplice cannot be provided by the testimony of another accomplice."

At its hearings, the CCFAJ was informed that seventeen other states now require the corroboration of testimony by in-custody informants. The CCFAJ considered whether California should have a similar statutory requirement, and concluded that the testimony of in-custody

informants potentially presents even greater risks than the testimony of accomplices, who are incriminating themselves as well as the defendant. Using the language of the accomplice corroboration requirement, however, would not address the frequent use of in-custody informants in death penalty cases to prove special circumstances or provide evidence for aggravation of the penalty. In such cases, there will invariably be some supporting evidence tending to connect the defendant to the commission of the crime. The jury should be instructed that a finding of a special circumstance, or a finding of a circumstance of aggravation, may not be based solely upon the uncorroborated testimony of an informant, and the corroboration should independently tend to connect the defendant with the special circumstance or circumstance of aggravation. And just as with accomplices, in-custody informants should not be permitted to corroborate each other. The jury should not be instructed that corroborating evidence “may be slight.”

S.B. 609 adds Penal Code section 1111.5 to: (a) prohibit uncorroborated testimony from an in-custody informant to serve as the basis for a conviction, a finding that a special circumstance is true, or a fact in aggravation; (b) require independent corroboration of an in-custody informant’s testimony by evidence that independently connects the defendant to the commission of the offense, the special circumstance or the circumstance in aggravation; and (c) require the independent evidence not be provided by the testimony of another in-custody informant.

This Resolution: Would establish a corroboration requirement for testimony by in-custody informants.

The Problem: The use of testimony from in-custody informants is among the three most prevalent factors in the wrongful convictions of death row inmates.

IMPACT STATEMENT:

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

AUTHOR AND/OR PERMANENT CONTACT: Frank Z. Leidman, Law Offices of Frank Z. Leidman, 473 Jackson Street, Third Floor, San Francisco, CA 94111, Cellular Telephone: (415) 308-1590; Email: Frank@LeidmanLaw.com

RESPONSIBLE FLOOR DELEGATE: Frank Z. Leidman