

IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS
CRIMINAL DEPARTMENT

STATE OF KANSAS,)
Plaintiff,)
vs.)
ADAM LONGORIA,)
Defendant.)

Case No. 10 CR 231

BARTON COUNTY PRO
CLERK OF THE DISTRICT COURT

2010 SEP 13 A 10:53

FILED MK

MOTION TO PRECLUDE CREATION OF SNITCH TESTIMONY

COMES NOW the Defendant and moves this Court pursuant to the 4th, 5th, 6th, 8th, and 14th Amendments of the United States Constitution and the corollary provision of the Kansas Bill of Rights to take measures to ensure that no jailhouse snitches or other suspect informants are created in this case to manufacture evidence for the state. In support of this motion, the Defendant states:

1. Mr. Longoria has no intention of talking to anyone but his attorneys about the facts of this case. He invokes his constitutional right to remain silent and for a lawyer to be present if he is approached by any party acting in the interest of the State, either openly or surreptitiously.

See Edwards v. Arizona, 451 U.S. 477, 484-5, 101 S. Ct. 1880 (1981) (when accused invokes his right to counsel, the state may not even approach the suspect to initiate interrogation).

2. Any person who, after prior agreement with law enforcement authorities, approaches Mr. Longoria to speak about the facts of this case is doing so in contravention of his right to counsel. *See United States v. Henry*, 447 U.S. 264, 100 S. Ct. 2183, 65 L. Ed. 2d 115 (1980)

(when government sent informant into defendant's cell with directive to listen to any discussions

about charged crime, resulting statement was inadmissible as violation of Sixth Amendment); State v. McCorgary, 218 Kan. 358, 543 P.2d 952 (1975) (same).

3. Should snitches with no prior directive from state authorities offer to testify regarding any purported conversations with Mr. Longoria about the facts of this case, this Court should carefully scrutinize the proposed testimony. As Presiding Justice Strubhar of the Oklahoma Court of Criminal Appeals noted, “we must take certain precautions to ensure that a citizen is not convicted on the testimony of an unreliable professional jailhouse informant, or snitch, who routinely trades dubious information for favors. The use of such untrustworthy witnesses carries considerable costs, especially in death penalty cases where the stakes are the highest.” Dodd v. State, 993 P.2d 778, 785 (Ok. 2000) (Strubhar, P.J., specially concurring).

4. First, this Court should consider whether the testimony is even trustworthy enough to go before a jury. The Mississippi Supreme Court has warned that,

we strongly question the reliability of testimony which was given in exchange for a reduced sentence. The testimony of jail-house informants, or ‘snitches’, is becoming an increasing problem in this state, as well as throughout the American criminal justice system. The present case is one of many across the nation where the truthfulness of the informant has been called into question. Informants...are offering evidence against their fellow inmates in exchange for reduced sentences. In the process of reaping their benefit, they are manipulating the system by helping to convict innocent citizens.”

McNeal v. State, 551 So.2d 151, 158 (Ms. 1989); *See also* D’Agostino v. State, 107 Nev. 1001, 823 P.2d 283, 284 (Nv. 1992) (“A legally unsophisticated jury has little knowledge as to the types of pressures and inducements that jail inmates are under to ‘cooperate’ with the state and to say anything that is ‘helpful’ to the state’s case. It is up to the trial judge to see that there are sufficient assurances of reliability prior to admitting the kind of amorphous testimony presented to keep this kind of unreliable evidence out of the hands of the jury.”)

5. Should this Court find the snitch's testimony admissible, it must permit the defense discovery which ensures an adequate cross-examination. This discovery, provided to the defense prior to trial and with enough time to assure meaningful investigation, should include at least the following:

- a) the complete criminal history of the informant;
- b) any deal, promise, inducement, or benefit which has been or will be offered to the informant;
- c) the specific statements allegedly made by the defendant and the time, place, and manner of their disclosure;
- d) all other cases in which the informant testified or offered statements against an individual;
- e) whether the informant has at any time recanted or withdrawn their statement or testimony; and
- f) all other information relevant to the informant's credibility.

See Dodd v. State, 993 P.2d 778 (requiring the listed discovery before a snitch testifies).

WHEREFORE, the Defendant respectfully requests this Court to enact the above protective measures to guard against the corrosive effect on snitch testimony, and to take all other measures that the Court deems just and appropriate.

Respectfully Submitted,



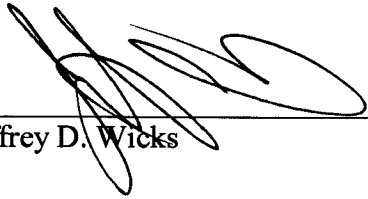
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2010 a true and correct copy of the foregoing Motion was sent via U.S. mail, properly addressed and postage prepaid to:

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Judge Hannelore Kitts
Barton County Courthouse
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Great Bend, Kansas 67530



Jeffrey D. Wicks