ALICE CRAIG

My name is Alice Craig and I am professor at the University of Kansas School of Law and a supervising attorney for the Paul E. Wilson Project for Innocence. The Project in a law school clinic that receives applications from incarcerated persons claiming they are innocent. When we evaluate potential innocence cases, those involving jailhouse witnesses raise a red flag. The credibility of jail house witness is always an issue because the witness is motivated by self-interest and the desire to receive a benefit, generally a reduced sentence, for providing the information. Jail house witnesses are not witnesses with first-hand knowledge, but only supply information they allegedly heard from the defendant while they were incarcerated together. These conversations are not recorded and cannot be verified. Generally, the argument is that the information could only come from the defendant so it must be reliable, but this is often not the case. The goal of any justice system should be to only provide reliable information to a jury. Jail house witness testimony is generally the least reliable. Through my testimony, I would like to provide two case summaries demonstrating the problematic use of witness and the practical problems for both the defense counsel and the prosecution that HB 2455 will help resolve.

Case Summary 1:

I reviewed a 2016 Sedgwick County murder conviction based in significant part on testimony from a serial jailhouse witness named Ronald Rudisill. For the past 15 years, Rudisill has been in a continuous cycle of: getting arrested for serious, and often violent, crimes, making deals with the state or federal government to testify against other individuals in exchange for a lighter sentence, getting out of jail, and then committing more crimes.

In the case I reviewed, information provided by Rudisill was used to increase charges against the defendant from second degree to premeditated first degree murder. The only source of premeditation evidence offered by the State came from Rudisill. The State gave defense counsel Rudisill's Pre-Sentence Investigation report (PSI) which listed Rudisill's actual convictions. Defense counsel received information about one federal case in which Rudisill testified. This information was provided to counsel because the Assistant U.S. Attorney who used Rudisill as a witness in the past, was testifying as a credibility witness for Rudisill in the

homicide trial. This AUSA only provided information specific to Mr. Rudisill's agreement with the federal government in one case. What was not provided to defense counsel was information on Rudisill's numerous prior plea deals where cases were dismissed, or charges reduced, in exchange for his testimony.

In reviewing this conviction, we uncovered Rudisill's long rap sheet as a jailhouse witness. Originally, he served 10 years for a rape conviction in Leavenworth County and was released on parole in 2005. Over the next 15 years we found that Rudisill was arrested 18 times and charged with 16 cases. Nine cases were resolved with plea agreements, seven cases were dismissed by the State, and three arrests were never charged, likely in exchange for his testimony in other cases. Rudisill's charges ranged from multiple counts of aggravated robbery, aggravated assault, aggravated burglary, criminal threat, felon in possession, forgery, and obstruction.

Pertinent to the case in Sedgwick County, in October 2010, Rudisill was charged with a level three person felony for an aggravated robbery with a weapon, in Wyandotte County. In January 2011, he was charged with criminal threat with intent to terrorize in Leavenworth County. Once arrested he had his attorney contact the U.S. Attorney's office to provide information about a series of bank robberies that occurred in the area. Mr. Rudisill was the driver in at least one of these robberies, but was never charged in federal court. Rudisill was facing 18 years in prison for the aggravated robbery, but after he cooperated with federal prosecutors in the bank robbery case, the charges were dropped to a level 7 attempted robbery and Rudisill received a dispositional departure to probation. This was the second time his cooperation with the U.S. Attorney's Office resulted in a reduced state sentence.

In 2013, Rudisill was charged with the criminal use of a financial card in Sedgwick County, and as part of the plea agreement, Rudisill requested a departure sentence to probation, even though these charges violated his probation in the above Wyandotte County case. Rudisill was in jail for the probation violation and failed to appear at his sentencing hearing in Sedgwick County. This failure to appear at sentencing put his departure motion was in jeopardy. After being arrested on the Sedgwick County bench warrant, and while in the Sedgwick County jail awaiting sentencing, Rudisill used the same playbook and claimed that he heard our client confess to murder. Rudisill contacted detectives and the information from Rudisill was used by the State to amend the charges from second degree to the greater offense of first degree

premeditated murder. Although Rudisill's alleged jail house conversation could not be verified, the defendant was convicted of the greater charge. Beyond the one federal case, defense counsel did not have any information on prior testimony by Rudisill, or the numerous plea deals for information. This is likely because it occurred in a different county. Because much of the benefit Rudisill received for supplying information resulted in uncharged or dismissed charges, the information was not contained in Rudisill's PSI. All of this evidence should have been disclosed to defense counsel at our client's trial as required by long-standing United States Supreme Court in *Giglio v. U.S.*, 405 US 150 (1972).

Out of jail again, Rudisill continued committing serious and violent crimes. Since his testimony in the Sedgwick County case, he was charged with Attempted Burglary and Criminal Damage in November 2016; Aggravated assault with a deadly weapon in November 2017; Disorderly conduct and brawling in August 2018; and Aggravated robbery in October 2018.

Case Summary 2:

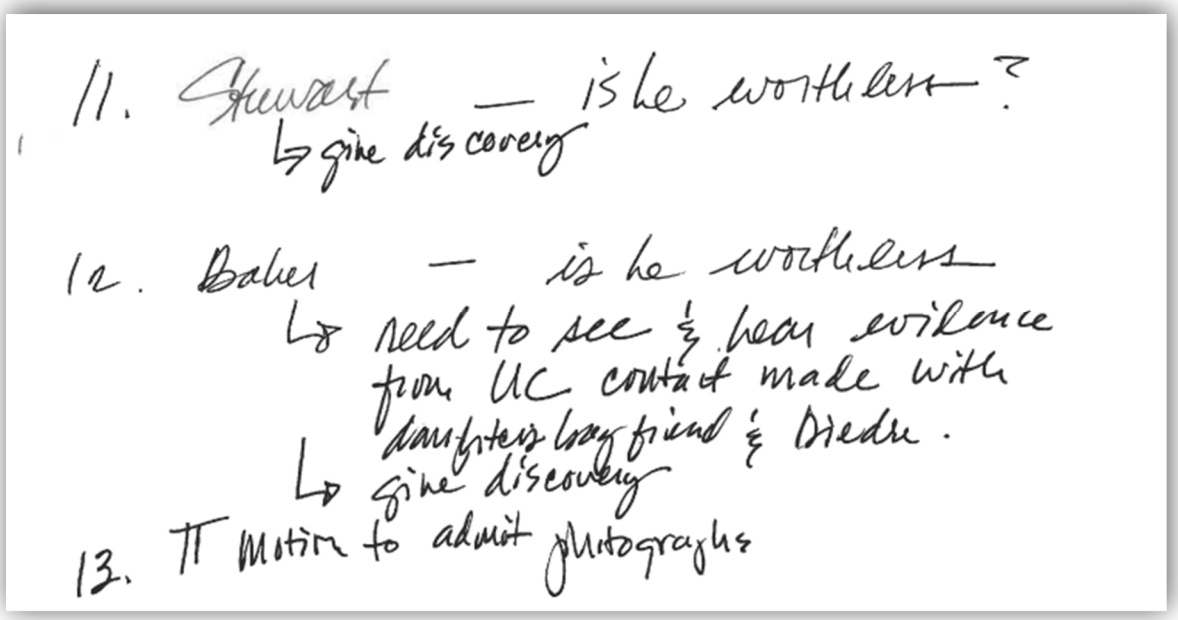
In 2008, Olin Coones was charged with two counts of first degree murder in Wyandotte County. The first trial ended with an acquittal on one count and a mistrial on the second count. Between the first and second trial, the assistant district attorney (ADA) made a concerted effort to obtain testimony from jail house witness. In total, he contacted four jailhouse witness: Darrin Robinson, Phillip Stewart, George Baker, and Robert Rupert. The ADA provided defense counsel with the names of three of the four witness. Only Robert Rupert testified. Mr. Coones was convicted of first degree premeditated murder and is still in custody.

In reviewing the file for an actual innocence claim, the Wyandotte County District Attorney's Office provided our office with work product that it deemed constituted exculpatory information pursuant to *Giglio v. US* and *Brady v. Maryland*, 373 U.S. 83 (1963). The ADA who handled the original case consistently limited the discussions with defense counsel about the jail house witness because he did not want to be required to turn over too much information to the defense. George Baker wore a wire into the jail to talk to Coones and was taken by law enforcement from the jail to talk to the defendant's wife wearing a wire. Baker did not obtain incriminating information. When the issue was raised pre-trial by the defense, the ADA claimed he did not participate in that conduct so he should not be penalized for it.

There are many troubling facts surrounding the witness who did testify against Mr. Coones, Robert Rupert. Mr. Rupert was incarcerated in Butler County. He contacted the Wyandotte County

District Attorney's Office, stating that he could provide information on inmates from Wyandotte County. Our client was then transferred to the Butler County Jail with his legal documents. He was placed in a cell with Rupert for two days, giving Rupert access to court documents. Mr. Coones was returned to the Wyandotte County Jail two days later. Soon after, the ADA contacted the Butler County Attorney's Office to inquire about Rupert and his credibility. The Butler County Assistant Attorney told the Wyandotte County ADA that Rupert was not reliable. Despite this information, the ADA negotiated a deal for Rupert in exchange for his testimony. Although the sentencing court did not follow through with the requested deal for Rupert, Rupert testified against Mr. Coones with goal of receiving a lighter sentence for his testimony. The ADA only provided two of the seven letters written by Rupert to defense counsel, and the information about the agreement between Rupert and the ADA was never turned over to defense counsel.

Finally, a pre-trial "to-do list" in the District Attorney's file, written by the ADA in charge of the case, includes the following:



Although the above-mentioned witnesses did not testify, giving witness discovery calls into question the ADA's ethical use of jail house witness. Again, the information provided by jail house witness is presented to the jury as coming strictly from the defendant. Providing discovery to alleged witness corrupts their testimony.

Practical problem with jail house witness:

Kansas does not have a public database that allows a statewide search for criminal cases of an individual. Kansas does have a system with a user fee that permits a county-by-county search for an individual. That search will provide a case number and general appearance docket for each case. For example, when searching for Rudisill, I could not simply put his name in a database and receive all of his cases throughout the state. I had to guess where he might have convictions and then search each county individually. I started with the counties where I knew he had prior convictions and then I expanded the search to surrounding counties. I was able to find the cases charged and the basic outcome for the case (trial, plea, dismissal), but the appearance docket does not state if a plea deal was given in exchange for testimony. For any information on plea deals, or why a case was dismissed, an attorney must talk to the parties involved in the case. I had to go to each county, request access to the prosecutors file, or contact the prosecutor involved. In many instances, the files did not contain any information on a deals for testimony, or I needed to trust I was being provided with all relevant information. This process is true for prosecutors and defense counsel. And, as defense counsel, the prosecutor for a case in another county is not required to provide me any information about a witness.

Application of HB2544:

HB2544 cures many of the problems associated with jail house witnesses. First, it requires the State to provide information on pending or dismissed criminal charges. The bill provides a repository with the KBI for both prosecution and defense counsel on a witness's prior agreements to testify regardless of county or jurisdiction. This information is not public but accessible when an individual is participating in a case. It is critical for defense counsel to have this information, but it is also an important tool for prosecutors who may be using an unreliable witness.