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THE NATION

Judges Want a Convicted Killer Freed; D.A. Unmoved

By Henry Weinstein

Over the last 14 months, five federal judges have ruled that Thomas Lee Goldstein, a 54-year-old former Marine imprisoned 24 years for murder, was wrongly convicted, largely on the word of an unreliable jailhouse informant.

Yet even after a Dec. 4 ruling by the U.S. 9th Circuit Court of Appeals that Goldstein should be released without bail, he remains in custody of Los Angeles County officials.

Rather than release the inmate, state officials turned him over to county jailers, who technically are not covered by the court order. County prosecutors say they plan to try Goldstein again. They have not released him despite efforts by Federal Public Defender Sean K. Kennedy — who represented Goldstein before the 9th Circuit — to have the state held in contempt of court.

Goldstein, whose case will be considered again at a hearing today, has maintained all along that he is innocent. The ruling that he did not get a fair trial is a stark reminder of a scandal that long ago faded from the headlines: the widespread misuse of jailhouse informants by Los Angeles County prosecutors in the 1970s and '80s.

Goldstein was a student at Long Beach City College with a minor criminal record (two convictions for drunkenness and one for disturbing the peace) when John McGinest was killed on a Long Beach street, hit by four pellets from a shotgun about 10:20 p.m. Nov. 3, 1979. Goldstein, who lived in a rented garage near the murder scene, was arrested two weeks later.

The gun was never found by police. Nor did they discover whether any money was missing, although they

suggested that robbery was the motive for the killing. No fingerprints, blood or other physical evidence was found to link the murder or the victim to Goldstein.

Instead, according to the judges who have reviewed the case, the prosecution rested on the statements of two problematic witnesses, both now dead. One was a jailhouse informant who, in 10 cases over more than a decade, including seven murders, testified that people had confessed to crimes while sharing cells with him.

Prosecutors have until Monday to formally state their intention to retry Goldstein, who received a sentence of 27 years to life. Under the 9th Circuit's ruling, if he isn't retried, he goes free.

The district attorney's office has declined to comment on his case in the meantime.

Timothy Browne, the deputy D.A. who prosecuted Goldstein in 1980, is retired. He said he had little recollection of the case.

The jailhouse informant was Edward Floyd Fink, a heroin user who in 1980 already had three prior felony convictions. During his lengthy criminal career, Fink was eventually arrested at least 35 times between 1969 and 1991.

He told police — and testified in court — that Goldstein had confessed to the murder when they were held briefly in the same cell in the Long Beach city jail. Fink said that McGinest owed Goldstein money and that Goldstein shot him after they got into an argument about it.

At a preliminary hearing and then at trial, prosecutors listened silently as Fink told his story, said he was not receiving any benefit in return for his testimony, and added that he had never gotten any breaks for his testimony in prior cases.

That testimony was enough to put Goldstein in prison and keep him there for more than two decades. But in 1998, he went to federal court, arguing that prosecutors had violated his constitutional rights.

It was not until 2002 that a judge

finished reviewing the case, but when he did, he concluded that Goldstein was correct. There was strong evidence that Fink had struck a deal with prosecutors — that for his testimony, authorities would drop a petty-theft charge and get Fink a lighter sentence on a grand-theft charge.

Prosecutors' failure to tell the defense about that deal denied Goldstein a fair trial, Chief U.S. Magistrate Judge Robert N. Block said.

In his November 2002 findings on the case, Block added that Fink's testimony "fits the profile of the dishonest jailhouse informant." He cited a lengthy grand jury investigation in 1990 that documented the widespread use by prosecutors of false testimony from jailhouse informants in Los Angeles County during the late 1970s and '80s.

The D.A.'s office at the time had "failed to fulfill the ethical responsibilities required of a public prosecutor," the grand jury report said. The scandal led to a dramatic reduction in the use of such informants.

U.S. District Judge Dickran M. Tevzorian later reviewed the case and upheld Block's findings. When the state appealed, 9th Circuit Judges Betty B. Fletcher, Jerome Farris and Kim M. Wardlaw unanimously agreed with Block. Tevzorian was appointed to the bench by President Reagan, Fletcher and Farris by President Carter and Wardlaw by President Clinton.

Deputy Atty. Gen. William H. Davis Jr., who defended the Goldstein conviction on appeal, contended that "Fink's testimony was corroborated in essential respects."

But Block said prosecutors had failed to support that assertion "in any respect." Block noted that another witness "who had no reason to lie" had testified that he was present during Fink's conversations with Goldstein "and heard no 'confession.' "

Evidence presented during the appeals shows that authorities over the years had extensive doubts about Fink's

honesty.

Among the many documents questioning his reliability is a report by a California Department of Corrections counselor named I.B. Benson, who described Fink as a "con man who tends to handle the facts as if they were elastic."

A record from the Orange County district attorney's office called Fink an "unreliable operator." In a 1982 case in which Fink was trying to get lenient treatment in return for testimony that another man, while in his cell, confessed to murder, a Los Angeles deputy district attorney said: "Fink is a Fink."

Although many of those statements came in the years after Goldstein's trial, they could be used to discredit Fink's testimony if prosecutors were to try Goldstein again. Goldstein's current lawyer, Dale M. Rubin, said it "would not satisfy the interests of justice or the law" for Fink's "perjured testimony" to be used again to keep his client in custody.

The second problematic witness in the case, the federal judges concluded, was Loran B. Campbell, who told police he had seen a man carrying a shotgun run past his apartment the night of the murder.

Police investigators were "impermissibly suggestive" when they handed Goldstein's photo to Campbell and asked the witness if Goldstein was the killer, the judges ruled.

Campbell, the only eyewitness against Goldstein at the 1980 trial, first told the police he was "not sure" that Goldstein was the man he had seen carrying a gun the night of the murder. Then, at the preliminary hearing and the trial, he testified that he was positive of his identification.

Twenty years later, Terry L. Rearick, chief investigator for the federal public defender's office, tracked down Campbell in Downey. Campbell signed a sworn declaration saying that "the photo of Mr. Goldstein differed from the person I saw."

"Nonetheless, believing that the police had arrested the right person based on the information told to me about the suspect and believing that the police wanted me to identify the photograph they had selected, I put my doubts aside and tentatively identified the photograph of Mr. Goldstein," he wrote.

Campbell said that before he testified at trial the police "reassured me

they had the right person." He said Long Beach officers told him that Goldstein "had failed a polygraph test" — a statement that was untrue — and that Goldstein had confessed to another person.

"Because the police had convinced me that they had arrested the right person, I put my doubts aside and identified Mr. Goldstein at trial," Campbell said.

He said he "would have come forward on my own except that I assumed" Goldstein "had been released a long time ago."

At a federal court hearing in 2002, about 18 months before he died, Campbell said he had been too "embarrassed" to tell the jury about his doubts and "a little overanxious" to help police.

Davis, the deputy district attorney, said Campbell had concocted his statement in an act of "buyer's remorse" after learning that Goldstein was still in prison.

But Block said Campbell had "no motivation to falsely recant his testimony." The judge wrote, "If Campbell testified truthfully when he identified [Goldstein] as the murderer, he would not now feel remorse upon learning that the murderer was still serving his sentence."

The only reason for Campbell to feel guilty would be "if he knew that he falsely inflated the strength of his identification" when he testified, Block wrote.

Six eyewitnesses to the murder testified — five introduced by the prosecution — but Campbell was the only one who identified Goldstein. In fact, four of the witnesses "described the man as black or Mexican. [Goldstein] is Caucasian," Block wrote. The sixth witness, who did say the killer was Caucasian, was an elderly woman who saw the murderer from above while looking out her window and admitted that she could not see the features of his face, the judge noted.

One prosecution witness, Kate Meighan, testified that she saw the murderer's face from about 60 feet away while he was running past her window for seven to eight seconds. Meighan said she had known Goldstein for some time because she managed the building where he was renting a garage and that he was not the man she had seen.

"Considered collectively," Block wrote, information that prosecutors withheld from the defense about Fink's deal and Campbell's doubts

"unquestionably undermines confidence in the verdict."

In the summary of the case before the preliminary hearing, the deputy D.A. who handled it at the time had written a note that "This case was filed in great haste. Filing officers assure me that it will get stronger."

Wrote Block, in his review of the case: "It did not."

Times Staff Writer

Photo:

Goldstein has served 24 years for murder.

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Descriptors

MURDERS;
MARINE CORPS (U.S.);
PRISONERS;
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