

Thursday, July 3, 2008

### **When a cop lies.**

Â Bill of RightsÂ (From public domain.)Â How on earth does one lie less by wearing a police badge? Am I the only one who believes that the vast majority of people lie frequently, and go well beyond so-called white lies? If that is true, then there is no reason to believe that cops are any more honest than those in the general population. Â I go one step further to believe that lying permeates police culture more than in the general population. What is the motivation for police to lie? Peer pressure, anyÂ historical culture of lying in the ranks of the department,Â and groupthink are some motivations. Frustration with the exclusionary rule and Miranda are other motivations for cops to lie. An additional motivation is the rationalization that whether or not the suspect committed the crime at hand, certainly the suspect has already been committing and getting away with other crimes. Another motivation is just to get through another workday; sometimes it seems easier in the short run to cut corners around the truth than to invest the extra time to tell the truth. One more motivation can come from the feeling of pressure from higher-ups to increase arrest and conviction statistics to make the department look good, lest heads roll and budgets decline for "too few" arrests and convictions. Â Police wield extraordinary power. They choose whether to arrest, whom to arrest, what accusations to make, and what recommendations to make to the prosecutor.Â With their guns, handcuffs and power of arrest, they are able to intimidate people to talk to them, and sometimes or many times people will lie to the cops to tell them what they think the cops want to hear, only to have the lies to the cops turned against innocent suspects. Unfortunately, power is corruptive on anyone who wields it, and, among other things, can lead to lying. Â Why, then, is it so hard to convince too manyÂ judges not to accept police testimony as the truth any more than one would accept a civilian's testimony as the truth? Once a judge believes a cop at a suppression hearing, no appellate court will overturn that factual finding. How many judges conclude that police have no motivation to lie, particularly when compared to a defendant who might seem to have more to gain from lying than the cops do?Â No motivation to lie? What aboutÂ the motivations listed above?Â Praised be the inventors of video cameras and today's inexpensive ones to show howÂ extensive is police misconduct, from lying to planting evidence to beating suspects (see also hereÂ and here). In that regard, Charm City (Baltimore) is not so charming these days, with video revelations of lying cops, even at the veteran cop level. In the instance of Detective Deryl Turner and Sgt. Allen Adkins -- both veteran police --Â street video cameras impeached their claims of finding drugs in an abandoned bag on the street rather than in a home through a Fourth Amendment violation, and Baltimore's chief drug prosecutor, Antonio Gioia, took the seemingly unusual move of starting his own investigation of the matter rather than waiting for a police investigation. How many defendants were convicted on the testimony of these two police officers, and how many will file post conviction actions as a result? Thanks, Antonio for doing the right thing here, and to his boss and chief prosecutor Patricia Jessamy to the extent that she supported Gioia's investigation and termination of the prosecution that spurred the investigation. Â Elsewhere in Baltimore, security cameras at a bar showed police lied about how they found drugs on a bar patron. Â A problem about lying is that the more it is done, the more it becomes second nature, like taking cookies out of the forbidden cookie jar.Â Prosecutors: Lying by police is too commonÂ just to decide to let the judge or jury sort out who is telling the truth, and to have the defendant feel pressure to plead guilty in the face of the risk that a prosecution witness's lies will be believed by a jury. Lives and liberty are at stake here.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

I agree with you 100%. When many clients tell the circumstances that led to an arrest, they tell the facts as it happened. Many do not know the constitutional significance of the facts they tell. However, the officer has learned just enough law to be able to draft a report in an attempt to guard against a constitutional challenge. I say this to say, when a judge is determining who to believe, that judge should remember that it's the officer who understands the legal significance of what he/she says and thus has the ability to lie about the facts to survive a suppression motion.

Anonymous on Jul 3 2008, 19:30

Thanks, Flester, for your comment.

I wonder if some judges or their law clerks are reading this blog, to get the defense perspective on cops who lie, and their motivations for doing so.

I take it that some prosecutors read this blog, at least to get some insight into the opposition.

Thanks again. Jon

Anonymous on Jul 10 2008, 20:51

Can a police officer be sued for lying under oath?

Anonymous on Sep 21 2008, 03:48