

Tuesday, October 14, 2008

Can lies be turned on and off?

Bill of Rights (From public domain.) Once a liar always a liar? How many jurors except cops from that maxim when the cop's lie is designed to elicit a confession to a crime? Last week, the District of Columbia Court of Appeals affirmed a conviction following a most egregious police lie to obtain a confession, but warned that the police tactics presented a close call. *Brisbon and Wonson v. U.S.*, __ A.2d. __ (D.C. Oct. 9, 2008). After a killing following shooter(s) firing into a crowd of people, police arrested Ronald Brisbon in neighboring Prince George's County, Maryland, obtained his agreement to be driven to the District of Columbia on his open arrest warrant for the case (rather than contesting extradition), and engaged in idle chatter while providing him a hamburger and driving him to the District of Columbia. Police kept Mr. Brisbon for many hours. He ultimately waived his Miranda rights (do not do that). They told him some truthful information about evidence they found at his home. Then came the cops' lies, as the court relates: "The detectives then began interrogating Brisbon, and, during the first fifteen minutes, Brisbon denied everything. Detective Irving told him that they had searched the house where Brisbon lived with his mother and grandmother and that the police recovered drugs and a shotgun out of his grandmother's house -- which was true -- and that his grandmother had got upset and was rushed to the hospital and that his mother was placed under arrest -- which was false. According to the detectives, Brisbon dropped his head and was quiet for a few seconds, then admitted that he did it, saying that he did not want anyone else to get in trouble. Detectives Irving and Credle insisted that Brisbon give them all of the details of the crime, because a blanket confession would not convince them that he had told the truth. The detectives denied promising Brisbon that confessing would aid his mother or grandmother. The interrogation continued for two hours, until, at around 9:30 p.m., Brisbon consented to a videotaped confession." Brisbon. The Court avoided determining whether Brisbon's confession was voluntary by instead deciding that the admission of his confession into evidence was harmless as to Brisbon: "We recognize that the question of voluntariness in this case is a close one, however, and do not decide it, because we can conclude beyond a reasonable doubt that even if the confession should have been suppressed, its admission was harmless. See *Arizona v. Fulminante*, 499 U.S. 279, 285 (1990) (admission of involuntary confession is trial error subject to harmless error analysis)." Brisbon. Brisbon proceeds to reverse the conviction against Brisbon's co-defendant, Wonson, where the trial court could easily have solved the problem by granting Wonson's rejected motion to sever his trial from Brisbon's. The D.C. Court of Appeals makes clear that Wonson's Constitutional rights were not violated by the playing of Brisbon's confession to the jury with redactions as to Wonson's criminal involvement, because Brisbon waived his Fifth Amendment right to remain silent and proceeded to testify that his confession was coerced and untruthful, and that Wonson had nothing to do with the crime. In making such a conclusion, the Court of Appeals quoted from the Supreme Court: "[W]here a co-defendant takes the stand in his own defense, denies making an alleged out-of-court statement implicating the defendant, and proceeds to testify favorably to the defendant concerning the underlying facts, the defendant has been denied no rights protected by the Sixth and Fourteenth Amendments." *Nelson v. O'Neil*, 402 U.S. 622, 629 (1971)." Brisbon. Over Wonson's objection, the prosecution responded by playing Brisbon's unredacted confession, which implicated Wonson, where otherwise the evidence against Wonson was circumstantial. Based on the playing of Brisbon's unredacted confession, the Court of Appeals reversed Wonson's conviction, unable to find harmless error from this Constitutional violation. The Court of Appeals affirmed Brisbon's conviction, though. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00