IN THE SUPREME COURT
OF THE UNITED STATES
October Term 2021

CASE NO: _____

Eleventh Circuit United States Court of Appeals
Case No. 20-12315

(Northern District of Florida No. 3:19-cr-00150-TKW-1)

WILLIAM KEITH WATSON

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETTION FOR A WRIT OF CERTIORARI to the
UNITED STATES COURT OF APPEALS for the ELEVENTH CIRCUIT
With Incorporated Appendix

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Question Presented

This petition arises from the affirmance of William Keith Watson's judgment of conviction and sentence to a term of 63 months' incarceration following a guilty plea to possession of a firearm and ammunition by a convicted felon, preserving the right to challenge on appeal, the denial of his motion to suppress:

Whether in the exercise of its supervisory jurisdiction over the United States Courts, this Court should correct the correctable injustice that occurred when the Eleventh Circuit in its opinion affirmed Watson's motion to suppress drugs and a firearm and ammunition, while completely ignoring, overlooking, failing to consider, or even to mention the documented fact that a deputy changed his testimony under oath at the suppression hearing in federal court nine days after giving a sworn deposition in related Florida state court proceedings, when he gave different and conflicting testimony as to a material matter regarding the initial stop and frisk?

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PETITION FOR WRIT OF CERTIORARI

Petitioner William Keith Watson respectfully petitions this Honorable Court for a Writ of Certiorari to the United States Court of Appeals, Eleventh Circuit, addressed to the unjust and erroneous decision affirming his conviction and sentence, and affirming the denial of his motion to suppress on grounds that the seizure of a firearm and ammunition was the fruit of an illegal detention, frisk, and arrest where a law enforcement officer gave contradictory testimony under oath.

PARTIES TO THE PROCEEDINGS

Petitioner was the defendant in the Northern District of Florida, and the appellant in the Eleventh Circuit Court of Appeals. The United States was the plaintiff, prosecution, and appellee, and is the respondent to this Petition.

OPINION BELOW

This petition arises from an eight-page, nonpublished decision of the Eleventh Circuit entered on April 27, 2021, in Appeal No. 20-12315, affirming William Keith Watson's judgment of conviction and sentence following the denial of his motion to suppress. An appeal to the Eleventh Circuit Court of Appeals was timely filed from the final judgment of conviction and sentence of the Northern District of Florida, Case No. 3:19-cr-00150-TKW-1.

Copies of the judgment of the district court, the appellate decision, and the Eleventh Circuit's order denying the timely-filed petition for rehearing are in the Appendix at the end of this Petition.

STATEMENT OF JURISDICTION

Final judgment was entered in the Northern District of Florida on May 20, 2020. The district court had jurisdiction pursuant to 18 U.S.C. §3231. A notice of appeal was timely filed under FRAP 4(b). The Eleventh Circuit had jurisdiction over the appeal under 28 U.S.C. §1291.

Subject matter jurisdiction is conferred under Supreme Court Rule 10(a). The appellate decision was entered on April 27, 2021. Mr. Watson

timely filed a petition for rehearing that was denied by order of June 4, 2021. This Petition is timely filed timely pursuant to Supreme Court Rule 13.1, together with the Orders of Court entered on March 19, 2020 and on July 19, 2021, pursuant to the Covid Pandemic.

CONSTITUTIONAL PROVISIONS

The United States Constitution

Fourth Amendment

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

Fifth Amendment

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury … nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law…

STATEMENT OF THE CASE

Course of Proceedings, Disposition in the Courts Below, And Relevant Facts

A grand jury in the Northern District of Florida indicted William Watson, the petitioner, for possessing a firearm and ammunition in his car, knowing that he previously was convicted of multiple felonies in violation of 18 U.S.C. Sections 922(g)(1) and 924(a)(2). Mr. Watson was adjudicated guilty of possessing a firearm and ammunition as a convicted felon.

Watson filed a motion to suppress the firearm and ammunition arguing that the seizure was the fruit of an illegal detention, frisk, and resulting arrest because Deputy Levier lacked reasonable suspicion to frisk him for weapons, acted in bad faith, and that Watson had the right to resist by "knocking" Deputy Levier's hand away.

The government responded that the deputies had reasonable suspicion to detain Watson, arguing that the totality of the circumstances justified a frisk; the seizure of the firearm was justified as a search pursuant to probable cause and the automobile exception to the warrant requirement as well as a search incident to arrest, and that the firearm and ammunition inevitably

would have been discovered because the car was unregistered, and a search was required before it was towed from the scene.

There was a hearing in the district court on Watson's motion. Deputy Tifft, Deputy Levier, William Watson, and Brittany Smith all testified. The government introduced the 911 call report into evidence. The court denied the motion, ruling that the motion focused on the "original detention." The court further determined that there was "no dispute that the search that discovered the gun was a lawful search if the original detention was lawful." The district court found that the officers were able to articulate a reasonable suspicion that a crime had been committed, because the call they received reported what seemed to be a domestic dispute.

The district court also found that because the deputies responded to a potential domestic incident, when Deputy Levier saw a bulge in Watson's pocket, and saw that Watson was "animated," there was reasonable suspicion to frisk him. And because Deputy Levier "was battered" while frisking Watson there was probable cause to arrest Watson. Accordingly, the court found, there was no dispute that the discovery of the gun was lawful. The district court found the deputies to be more credible than Watson and Smith and it accepted their version of the events.

Watson pleaded guilty and reserved his right to appeal the denial of the motion to suppress. The district court sentenced him to 63 months in prison to run concurrently with any sentence to be imposed in the state court, and to be followed by 3 years' supervised releasee.

The Relevant Facts

The facts related by the Eleventh Circuit in its slip opinion on pages 2-3, are the following: A bystander called 911 to report that she saw a man (Watson) push a woman (Smith) out of a vehicle by a gas station; and said that the man was yelling in the woman's face. Santa Rosa County, Florida Deputies Tifft and Levier responded to the scene. Deputy Tifft arrived first and he spoke with Brittany Smith. Two minutes later Deputy Levier arrived and spoke to Watson "for a brief moment" before Watson started walking toward the gas station "to go to the bathroom." Both deputies told Watson to return to the back of his car, which he did.

While Watson was standing near the back of his car, Deputy Levier noticed a bulge in Watson's pocket and frisked him for weapons. When Deputy Levier squeezed the object creating the bulge, Watson slapped the deputy's hand resulting in Watson's arrest for battery on a law enforcement officer.

Watson testified that his hand came down and in contact with the officer's hand that was inside his pocket, but in the opinion the court used the word "slapped."

Pursuant to his search of Watson's pocket Deputy Levier found a cigarette box containing methamphetamine, heroin and cigarettes. Deputy Levier and a third deputy, Swindell, attempted to place Watson in a squad car. Watson "went limp" causing the deputies to carry him. Watson head-butted Deputy Swindell .

Once Watson was in the squad car, Deputies Levier and Tifft looked into Watson's open car window and saw a gun sticking out from between the driver's seat and the center console. Deputy Levier seized the gun, and discovered that it was loaded. The car was unregistered. It was towed from the gas station and was impounded.

William Watson presently is in the custody of the Florida Department of Corrections, with a presumptive release date in March 2028.

Watson's arguments on appeal were the following: (1) the district court clearly erred and misapplied the law to the facts when it denied his motion to suppress physical evidence seized without a warrant from an auto-

mobile in which Watson had a possessory interest; and (2) the warrantless seizure of property was the fruit of an illegal detention, frisk, and arrest.

Watson was detained when Deputies Tifft and/or Levier said he could not go to the bathroom and had to stay by the car. That was detention. There was contradictory sworn testimony from one of the deputies about the details of what occurred.

On deposition in Watson's state case, Deputy Tifft testified under oath that he ran a check on Watson and learned that he had no outstanding warrants. But under oath in federal court Deputy Tifft testified that he did not run a check, and he did not recall saying on deposition that he did.

A recording of that portion of the deposition then was played during the hearing on motion to suppress in federal court. Nonetheless, the court found that the deputy was credible, and that William Watson and Brittany Smith were not. Watson said that Deputy Tifft frisked him before Deputy Levier arrived; but Tifft testified at the suppression hearing that he did not.

Tifft said that he was dispatched to investigate a report of an argument and a woman being pushed out of a car. The woman testified that it was a verbal argument, not physical. Tifft spoke with both parties initially. He asked for identification and ran a warrants check. There were no outstanding

warrants for either.

Brittany Smith said that it was a verbal argument. Watson said that he was patted-down by Deputy Tifft, after which Watson asked to go to the bathroom. Tifft said he could. Watson went to his car, got his property off the trunk and headed to the bathroom in the store when Deputy Levier arrived.

With nothing more than the dispatcher's report, Deputy Levier immediately detained Watson without investigation and without receiving information from Deputy Tifft that he was told that there was no physical altercation.

The deputies may have had a right to investigate, but not to detain Watson. Deputy Levier detained Watson when there was no reasonable suspicion from the totality of the circumstances, no hunch, and no specific articulable reason to believe that Watson had committed or was in the process of committing a crime.

Under the totality of these circumstances the deputies had no reasonable suspicion to stop or detain Watson. As a result, there was no legal *Terry* stop and no legal frisk. Nothing from the totality of the circumstances suggested that Watson was armed and dangerous. The fire-

arm and ammunition found inside the car should have been suppressed because there was no legal detention, frisk, or arrest. Those items were seized without a warrant and were the fruit of an illegal detention.

It is well to note that in his written narrative of the events, the third officer at the scene, Deputy Swindell reported that Watson brought his hand down on top of his pocket. In his deposition in the state court proceedings with the state assistant public defender, assistant state attorney, and a representative from the Federal Public Defender‘s Office present, Deputy Swindell testified under oath that when Deputy Levier patted Watson’s right side, Watson “became very upset and immediately grabbed his front right pocket….” **When asked if he observed Mr. Watson hit deputy Levier at any time, Deputy Swindell responded no**.

Deputy Swindell stated in his deposition that Watson began yelling and pulling away. Applying common sense to this information tells us that reacting by pulling away from someone who is illegally putting their hand in your pocket is not against the law and does not constitute Battery on a Law Enforcement Officer.

REASONS FOR GRANTING THE WRIT

In the exercise of its supervisory jurisdiction over the United States Courts, this Court should correct the correctable injustice that occurred when the Eleventh Circuit in its opinion affirmed Watson's motion to suppress drugs and a firearm and ammunition, while completely ignoring, overlooking, failing to consider, or even to mention the documented fact that a deputy changed his testimony under oath at the suppression hearing in federal court nine days after giving a sworn deposition in related Florida state court proceedings, and gave different and conflicting testimony as to a material matter regarding the initial stop and frisk?

The Eleventh Circuit affirmed the denial of Watson's motion to suppress in violation of his Fourth and Fifth Amendment rights to due process and against unreasonable search and seizure. Note that Deputy Levier's "training and experience" was mentioned at least four times. He had been on the job for about one year.

Deputy Levier said that he noticed a bulge in Watson's pocket that appeared to be consistent with a cigarette pack containing a baggie of meth-amphetamine. How is it humanly possible for anyone to observe a bulge in a trouser pocket, and find it consistent with a pack or box of cigarettes that contained a baggie with methamphetamine? Did the deputy have x-ray vision, a crystal ball, or ESP? Assuming that the bulge justified a pat-down under *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (*per curiam*), then the

conclusion is ineluctable that a bulge consistent with a box of cigarettes (similar to a deck of cards), is different than a bulge from a gun.

Levier claimed that his "training and experience" led him to believe that Watson might "run away." He later claimed that he reasonably believed that his safety or that of others was threatened. Those were inconsistent claims. A man who was running away would not pose a threat to the deputy's safety. Either Watson presented a threat, or he was going to flee, not both.

The decision to tow the car was made because the car allegedly was involved in the commission of a crime; but Watson's arrest was for alleged battery on a law enforcement officer. There was no way Watson was involved in an alleged battery on an officer. "The [original] complaint was that a man was hitting a woman." That did not happen. The initial report was that the woman may have been pushed. When Deputy Tifft arrived, Brittany Smith informed him that nothing physical had occurred. Tifft ran their names and determined that neither had outstanding warrants.

Deputy Levier believed from the bulge in Watson's right front pocket, that Watson might be armed. Yet the bulge was a cigarette box/package, which is inconsistent with a bulge from a weapon. Inside Watson's right

front pants pocket Deputy Levier felt a cigarette box with a hard crystallized substance sticking out of the top. It strains credulity that he could ascertain in such great detail that there was "a hard crystallized substance sticking out of the top" unless and until the deputy actually reached into the pocket and manipulated the cigarette pack, which he nearly admitted to in the state court deposition.

The opinion states that Watson "…slapped Deputy Levier's hand and said, 'that's just my cigarettes.'" Watson testified that the deputy reached inside the pocket and Watson brought his hand down on top of his pocket, not on the deputy's hand.

The opinion states that Deputy Levier walked over to the car where Watson had been, looked inside, and saw the butt of a gun sticking up. Yet in their incident reports, no deputy, Tifft, Levier, nor Swindell, mentioned a gun in "plain view" in the car. In fact, Deputy Tifft's report stated:

> During an inventory search of the vehicle a small silver container and two Suboxon films were located on the floorboard of the trunk…Also next to the driver's seat a Bersa Thunder 380 pistol was located…

The call-history log **does not mention a gun until 14 minutes after Watson was transported from the scene**.

Contrary to the finding in the panel decision, the district court clearly erred in finding Deputy Tifft to be credible. His testimony under oath in the federal hearing as to a relevant and material matter, was different than his testimony under oath on deposition in the state proceedings. It was Deputy Levier who admitted to squeezing or manipulating the "the bulge" in Watson's pocket.

Accordingly, the Eleventh Circuit reversibly erred in affirming the district court's factual finding that it accepted and credited testimony of a deputy who knowingly testified at the suppression hearing that he did not obtain Watson's name and run a warrants-check, when nine days earlier he testified under oath on deposition in the presence of a Florida public defender, an assistant state attorney, and a representative from the Federal Public Defender's Office, that yes, he did obtain that information, and that Watson had no warrants. On deposition the deputy testified that he recalled clearly and in great detail running Watson's name because Watson had no identification on his person, but instead, provided date of birth and Social Security number.

At the hearing on motion to suppress in federal court, after Deputy Tifft testified to the contrary, a recording of the deposition was played. In

spite of documented inconsistencies in testimony as to matters crucial to the resolution of the motion to suppress, the district court found this witness to be credible.

Deputy Levier's detention of Watson was justified by the articulable facts including the report that Watson had just committed a battery. Deputy Tifft already had been informed by Brittany Smith that she had not been physically battered; and there were no marks on Brittany Smith to support an allegation of battery.

Of course, in *Terry v. Ohio*, 392 U.S. 1 (1968), this Court held that an officer may conduct a limited search of a person's outer clothing for a weapon. It is and has been Mr. Watson's position from the outset that Deputy Levier went far beyond a permissible *Terry* stop when he ran his hand inside Watson's pocket and squeezed the pack of cigarettes.

Deputy **Tifft** ran Watson's name and it came back clean, no warrants. Deputy **TIFFT** spoke with Brittany Smith and was told that no violence occurred; and Deputy **TIFFT** told Watson that he could go to the restroom. No further detention or intrusion was necessary from that point forward. Therefore, the subsequent detention and frisk by Deputy Levier was a viola-

tion of Watson's Fourth Amendment rights. *Illinois v. Wardlow*, 528 U.S. 119, 123-24 (2000) states that:

> … nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.

The fact that Tifft and Levier agreed that Watson returned to the car when told to do so, shows that there was no "evasive" element of his behavior. This Court has held that nervousness alone is not enough to give "articulable suspicion" or "probable cause," yet that was mentioned in the decision of the Eleventh Circuit.

Although the district court found Watson to not be credible, the record, shows that it was the deputy who changed his testimony under oath, and was caught doing so. Levier admitted to doing more than a pat-down of outer clothing, going so far as to put his hand in Watson's pocket and squeezing the cigarette pack in the pocket. This detention was illegal and led to the discovery of evidence they would never have been seen if Levier acted in good faith.

The totality of the circumstances did not indicate that Watson was armed and dangerous. A frisk was not warranted. Levier saw a bulge in the pocket, but a bulge alone does not necessarily provide sufficient reason to

conduct a frisk. *See, for example, United State v. Hunter,* 291 F.3d 1302 (11th Cir. 2002), where the Eleventh Circuit found that the factors to consider in looking at the totality of the circumstances, include matters such as whether the incident was in a high-crime area, late at night, or other overall circumstances, not just the seeing a bulge that did not look like a gun.

One need only review and analyze the transcript of the hearing on the motion to suppress to realize that the district court reversibly erred. Deputy Tifft testified that he did not park directly in front of Watson's car but Watson says he did. Otherwise, the entrance and exit to the parking lot would have been completely blocked. He also testified that the complaint alleged that a male was "actively hitting" a female; but that is not what the complaint alleged. The deputy obviously "embellished" his testimony.

Deputy Tifft said that he arrived in two minutes or less. Actually the facts showed it was two minutes and 36 seconds when Levier reported "on scene;" and he may have reported as he was approaching Stuckey's in his vehicle, rather than when he actually made contact with Watson. Tifft testified that the gun was seized after Watson was arrested and transported. Watson was transported some 14 minutes later, but the initial written report said that it was found later during the inventory

search. Deputy Tift also testified that Watson's car was not facing toward the exit. Every other witness testified that it was facing the exit. The district court did not credit Brittany Smith's testimony because, he said, she was the only one who said the encounter took place away from the building.

Deputy Tifft testified that he made contact with Ms. Smith first and had no contact with Watson who was at the vehicle. In order for this to be accurate, taking into account where he parked, he would have had to walk past Watson to make contact with Brittany because he testified that he made contact with her near the building.

Deputy Tifft claimed that he ran a check on Brittany Smith while talking to her. If he had time to do that, then why did the court not believe that he also ran a check on Watson? If there was time for one check, there was time to do two, neither of which appear in the call history. The call-log reflects nothing for eleven and-a-half minutes.

Deputy Tifft testified that Levier found a gun "in plain view," a legal term of art. His probable cause affidavit says the gun was found during the inventory search of the vehicle.

Deputy Tifft testified that the car door was open. If so it would have impeded traffic entering and exiting the parking lot. The car was blocking

the exit side of the entrance/exit to the parking lot. Deputy Tifft testified on deposition nine days earlier, that he ran Watson's name to check for warrants. At the suppression hearing, he denied that he ran the name to check for warrants. When pressed on the issue in federal court, he repeatedly claimed "I can't recall."

Deputy Tifft then claimed that he did not learn that the dispute was verbal and not physical until later. However, he testified that Brittany Smith told him that these things upon initial contact with her. According to the call history log, Deputy Swindell arrived on the scene 24 seconds after Deputy Levier's arrival. But his narrative begins with him exiting his vehicle and observing Tifft talking to Brittany Smith, and Levier having Watson in position for a pat-down, noting that Watson had items in his hand.

Deputy Swindell's version of events was probably the most accurate. If both Levier and Tifft said that Watson walked toward the store where Tifft was, and Levier then testified that he met Watson "part way" as he was returning to frisk Watson, all in 24 seconds, then how could Levier possibly have had time for his "training and experience" to alert him that Watson might flee and also lead him to believe that Watson might be armed and dangerous?

Unfortunately for Mr. Watson, and for this Court to have benefit of a complete record of events, Deputy Swindell was not called as a witness at the suppression hearing but was the most senior deputy at the scene and a veteran of the Department. His version was likely the most consistent with Watson's and Brittany Smith's. Ms. Smith testified that once Deputy Levier arrived, everything happened "very rapid[ly.]"

Watson also contends that since Tifft ran his name and allowed him to walk back to the car and obtain his items, Deputy Levier's detention and frisk was an illegal detention. Everything found or seized as a result of Levier's contact with Watson was inadmissible as fruit of the poisonous tree.

"Battery on a Law Enforcement Officer" Is Unfounded As The Factual Basis to Justify the District Court's Erroneous Denial Of The Motion To Suppress Evidence

In the opinion the Eleventh Circuit uses "Battery on a Law Enforcement Officer" as the "factual basis" to uphold the district court's erroneous denial of Mr. Watson's motion to suppress the evidence. It appears that the opinion overlooks and fails to consider certain matters of fact on the record, or law in reaching that conclusion.

It was not established that Watson committed a Battery upon Deputy Levier. Watson testified that he placed his hand on top of his pocket. Brittany Smith testified that Watson never hit Deputy Levier. In both his written narrative of the events, and in his deposition in the state proceedings, Deputy Swindell, the third law enforcement officer at the scene, clearly wrote and testified that Watson immediately brought his hand down on top of his pocket. On these facts, had a battery been committed, it only would have occurred because Deputy Levier's hand was inside Mr. Watson's pocket when Watson brought his hand down on top of his pocket. It is difficult to imagine how this was construed as Watson "intentionally touching or striking another."

Nonetheless the Eleventh Circuit focused on the Battery on a Law Enforcement Officer charge. The officers were Florida State officers, not federal agents. In a Florida case (albeit with different charges), the circumstances that initially resulted in police contact and then subsequent events are similar to this case. The reasoning and the law in the decision of the Florida Second District Court of Appeal in *Brown v. State,* 298 So.3d 716 (Fla. 2d DCA 2020), are fully applicable here. to this case.

In *Brown*, defendant appealed following denial of a motion for judgment of acquittal at trial. The Florida Second District Court of Appeal found that deputies responded to a call for a "disturbance," but they lacked reasonable suspicion to justify a detention. That ruling applies here.

Watson was found with an illegal substance and a firearm in the car. He filed a motion to suppress. At the conclusion of trial, Brown was convicted of Battery on a Law Enforcement Officer and Resisting Arrest with Violence both of which were reversed by the Florida Second District Court of Appeal where facts showed that Brown gave his identification to the first officer to arrive just as William Watson and Brittany Smith did. Shortly thereafter a second officer arrived and claimed that he was concerned for the safety of himself and fellow officers, again which is precisely what happened in Watson's case.

The Eleventh Circuit agreed that the officers had "articulable facts" to believe that a battery had occurred based on the 911 call and the information relayed over the radio by the dispatcher. But without first conferring with the bystander who called 911 to corroborate her information, it was no more reliable than an anonymous tip, which has been found to be insufficient to support probable cause.

We know of course, that this Court found in *Alabama v. White*, 496 U.S. 325, 332 (1990), that an anonymous tip was sufficient to justify an investigative tip that led to a consensual search of a vehicle which uncovered marijuana. But in *White*, there were extensive, predictive details regarding the suspect's appearance, automobile, time of departure, and route included in the tip that allowed the police to test the informant's knowledge and credibility. *White*, *supra*, 496 U.S. 331-32.

In contrast, however, in a subsequent case, this Court held that an **anonymous tip did not provide sufficient corroborating detail to justify an investigative stop and frisk** on a public street when the tip consisted entirely of a statement that an African American youth standing at a bus stop, wearing a plaid shirt, was carrying a gun. That case was *Florida v. J.L.*, 529 U.S. 266, 271-72 (2000).

In *Baptiste v. Florida*, 995 So.2d 285, 292 (Fla. 2008), the Florida Supreme Court held that "An anonymous tipster who approached the officers after the defendant was seized could not be deemed a citizen informant." **Florida courts have long held that knowledge gained after the fact cannot be used to support reasonable suspicion of criminal activity**.

Additionally, *Fuentes v. State*, 24 So.3d 1231 (Fla. 4th DCA 2009), also is applicable. In *Fuentes*, officers were responding to an anonymous tip of an alleged domestic violence incident. The Florida Fourth District Court of Appeal held that an officer lacked reasonable suspicion of criminal activity when she conducted an investigatory stop. The facts known to the officer at the time of the stop were not indicative of criminal activity. The officer observed a female driver and a male passenger in a rental truck as described by a "tipster," but did not corroborate the identification with any criminal behavior. She did not see the couple physically attacking each other or otherwise engaging in illegal or suspicious activity.

In *State v. Evans*, 692 So.2d 216 (Fla. 4th DCA 1997), the Florida Fourth District Court of Appeal found that because an anonymous tipster's basis of knowledge and veracity are typically unknown, **the tips they provide justify a stop only once they are sufficiently corroborated by police officers**. *Evans,* citing *Alabama v. White, supra,* 496 U.S. at 329 fn.2.

Perhaps the panel believed that this caller was not an anonymous tipster because she remained in the area; however since neither Deputy Tifft nor Deputy Levier made contact with the 911-caller prior to approaching

William Watson or Brittany Smith, they essentially were acting on the equivalent of an anonymous tip. There was no corroboration of any facts, and therefore the officers lacked reasonable suspicion that criminal activity was happening or had already happened.

Similarly in *Kalnas v. State*, 862 So.2d 860 (Fla. 4th DCA 2003), the Florida Fourth District Court of Appeal held that an investigatory stop of an individual for the purpose of investigating a burglary was invalid. Even though an anonymous tipster in *Kalnas*, detailed information about the crime being committed, and a detailed description of the suspect, the Fourth District held that the stop was not valid because when the police officer arrived on the scene he only was able to verify the innocent details of identification, but "witnessed no other corroborating or illegal or suspicious activity."

The Florida Fifth District Court of Appeal rendered an analogous holding in *Nettles v. State*, 957 So.2d 689 (Fla. 5th DCA 2007), finding that an investigatory stop based on an accurate description from an anonymous tipster alone, and without a corroborating indicator that the suspect was engaged in criminal activity does not form a well-founded suspicion of criminal activity.

Deputy Levier used every available law enforcement catch-phrase in his effort to justify the original pat-down. He said: "He was pacing;" "He was fidgety;" "He looked like he might flee;" "I noticed a large bulge in his pocket."

But reviewing the facts, it is completely natural and understandable that Watson was upset and frustrated. He needed to go to the restroom. He and his girlfriend whom he loved had just had an argument that was serious enough for her to exit the vehicle with her belongings. Watson probably was animated and irritable. What normal person would not be? His behavior easily could be misconstrued as the behaviors that Deputy Levier described to justify Watson's illegal detention.

Being animated and irritable would seem to be normal behavior for any man who had just been in a serious argument with his girlfriend who was threatening to leave him, and who then was approached by police officers Behaviors and emotions arising from the circumstances, relating to matters of the heart, should not have been construed as suspicious or dangerous. The bulge of a cigarette box in the pocket of a man dressed in shorts and a tank top should not remotely be considered consistent with

Pennsylvania v. Mimms, 434 U.S. 106 (1977). In *Mimms*, the bulge was under the suspect's sport jacket at the waistband.

Surely a small rectangular cigarette box should not give a reasonably pru-dent person cause to believe that the person with the cigarette box in his pocket is armed and dangerous. And the testimony that it appeared to be a cigarette box with a baggie of drugs in it is preposterous, unless of course the witness had X-ray vision, which also is preposterous.

The Deputy's Sworn Testimony In His State Deposition Conflicted With His Testimony In The Federal Court Hearing On Motion to Suppress On A Material Matter of Fact

This is not a pleasant or easy issue to discuss, but this is not the first case in which testimony by law enforcement conflicts with other law enforcement testimony under oath, and it is unlikely to be the last. In other appellate cases this Court has reversed the denial of a motion to suppress or indicated its approval of granting such a motion for similar reasons. Apparently here it was overlooked. It is not addressed in the opinion. It is the "elephant in the room." Unfortunately it is real and is documented on the record.

The Eleventh Circuit completely overlooked or simply ignored the fact that Deputy Tifft provided testimony at the suppression hearing in federal court, under oath, that conflicted with his earlier sworn testimony on deposition in state court proceedings.

Unfortunately, this documented contradictory sworn testimony concerned a matter dispositive of the motion to suppress, and probably was intended to be helpful to the prosecution. But it was not truthful. And that is not helpful in deciding how to rule on a motion to suppress.

In spite of the district court's findings and the Elevent Circuit's affirmance, Deputy Tifft was not credible. In the matter of *United States v. Lemond Thomas,* Appeal No. 05-16406, the Eleventh Circuit entered a non-published decision on December 1, 2006. The opinion "…reverse[d] the district court's denial of Thomas' motion to suppress, vacate[d] his convictions, and remand[ed] for a new trial, directing the district court to grant the motion to suppress." "**REVERSED, VACATED, AND REMANDED.**" (All capital letters and bold emphasis in original).

Lemond Thomas was convicted for possession of a firearm by a convicted felon, in violation of 18 U.S.C. Section 922(g) and 18 U.S.C. Section 924(c). The Eleventh Circuit found that the district court committed

clear error in re-adopting the credibility findings in the Report and Recommendation of the Magistrate Judge, and in denying Thomas' motion to suppress.

The opinion recognized that there was conflicting testimony given by law enforcement witnesses; and that the Report and Recommendation reconciled the officers' conflicting testimony, but was prepared without consideration of another witness' testimony. See, Lemond Thomas slip opinion, pages 2 and 3:

> While the court need not reconcile all of the evidence, it needs to do more than re-adopt a report made without the benefit of testimony that substantially undermines the basis of Officer Wagaman's reasonable suspicion.

In the matter of *United States v. Orlin Angelov*, Southern District of Florida No. 07-cr-21009-Judge Gold, Orlin Angelov was charged with possessing a forged, counterfeit, or altered alien registration card and social security card in violation of Title 18 U.S.C., Section 1546(a). The facts showed that Angelov was walking outside the Miami Beach Convention Center, where he was employed by a caterer, trying to find his employee entrance when he notice a police car slowly following him. He was not engaged in any criminal activity when a Miami Beach officer jumped from

his police car, shoved Angelov against a wall, handcuffed him and spread his legs. The officer then searched Angelov. His wallet was removed from his back pocket. Inside the wallet the officer found a resident alien card and social security card which were later found to be counterfeit. Mr. Angelov was dressed in a catering server's uniform and protested that he was an employee and was not trespassing.

According to the U.S. Border Patrol's Report of Investigation the basis for the stop was allegedly a BOLO issued on information from an unnamed tipster that an individual named "Valerie Angeloff" had been terminated from employment at the Convention Center and was asked to leave the property. The Miami Beach officer stated no articulable reason for the stop in his probable cause affidavit, including any mention of the BOLO. In fact the information allegedly contained in the BOLO was false. Angelov was not terminated form employment and was not trespassing.

The officer also failed to mention in his probable cause affidavit that he spoke with two employees who verified that Angelov was an employee. The officer made no clam that his search of Angelov was a "Terry Frisk" for the officer's protection. In fact the search was made after Angelov was handcuffed, and therefore pursuant to an unlawful arrest. In this case, the

motion to suppress was granted and the United States appealed to the Eleventh Circuit, Appeal No. 08-17223. On March 6, 2009, the United States filed an unopposed motion to voluntarily dismiss the appeal with prejudice. An Order of Dismissal was entered on that same day. On March 13, 2009, in the Southern District of Florida, the United States dismissed the indictment. **The lesson to be learned is that motions to suppress should be granted when witnesses lie under oath about the events that occurred**.

Petitioner takes no pleasure in reminding the Court of the sad fact of "testilying," a phrase invented by Harvard Law Professor Alan Dershowitz in the mid-1990's, a phenomenon that still exists in criminal cases. See, "The Police Lie. All the Time. Can Anything Stop Them?" Slate, August 4, 2020. Undoubtedly, the vast majority of law enforcement officers are good officers, but some will "embellish" or lie to support, ensure, or protect a conviction that should not be imposed or upheld. A copy of the Slate article is included in the Appendix at the end of this Petition for the Court's review.

Also included in the Appendix is an article from The Harvard Crimson, April 12, 1995. in which Professor Dershowitz wrote:

> Lawyers and judges encourage cops to tell white lies so that the guilty can be convicted. . . and that while mendacity is not a formal part of

> any officer's education, all officers learn about it . . . Police academies do not teach courses in this [but, i]t's what goes on outside and in the squad cars that I'm worried about.

While he says that "testilying" happens all the time, Professor Dershowitz does not blame police officers:

> Police do the dirty work of the legal system. . . They are the victims. They are the least powerful, least affluent, sometimes the least educated part of the legal system.

They are made to believe that if they are confident in the guilt of a suspect, they should see to it that justice is served, no matter what that means; and "[t]he legal system winks at this type of thing." Police officials disputed Dershowitz's comments.

The August 2020 Slate article describes cases in which citizens were injured or killed during the course of an arrest. The present case of course is about a dispute as to whether or not Watson was subjected to an illegal detention with a pat-down and seizure of items from his person and from his vehicle that should have been suppressed.

But the credibility and truthfulness of the testimony of the officers here is every bit as crucial to the denial of Watson's motion to suppress and the resulting conviction and sentence, as it was in the cases discussed in the Slate article. And here we had clear, direct evidence that the deputy's testi-

mony under oath changed from his sworn testimony nine days earlier.

When objective reality confronts police testimony, it sometimes highlights the possibility that the reality differs from judgmental testimony; and that can place prosecutors, law enforcement officers, and courts in an awkward and unpleasant position.

The Slate article, states on pages 1 and 2 (emphasis in original), that:

> Christopher Parham was grocery shopping for his boss when Henry Daverin, a plainclothes NYPD officer, approached him. Daverin accused Parham of driving recklessly on an illegal scooter without a helmet. A few minutes later Parham was writhing in pain on the sidewalk outside. What happened during those few minutes was ***a matter of dispute.*** The NYPD said that Parham, a Black 19-year-old, had violently resisted arrest. Daverin and his colleagues said that they did not use force against him even though Parham had gruesome Taser burns all across his back.
>
> Then surveillance ***video*** of the episode emerged – and proved - that nearly every detail of the NYPD"s account was false. Parham immediately cooperated with Daverin; he did not resist arrest. Nonetheless, Daverin and his colleagues had assaulted Parham, tackling him to the ground, then Tasing him over and over again. After Parham's attorneys released the video - and his local representatives raised concerns – the district attorney dropped all charges. [Officer] Daverin, who had been named in at least 10 other misconduct lawsuits, was never disciplined, either for brutalizing Parham or for lying about it. Two years later, he remains on the force.
>
> The police reaction to George Floyd's murder, as well as the resulting nationwide protests, introduced many Americans to the fact that law enforcement officers lie. After Officer Derek

Chauvin killed George Floyd, the Minneapolis Police Department issued a statement falsely claiming that Floyd "physically resisted officers" and excluding the fact that Chauvin knelt on Floyd's neck for nearly nine minutes. When Buffalo police officers violently shoved a peaceful 75-year-old man, their department falsely asserted that the victim "tripped and fell" during a "skirmish involving protesters."

This tendency to lie pervades all police work, not just high-profile violence, and has the power to ruin lives. Law enforcement officers lie so frequently – in affidavits, on post-incident paperwork, on the witness stand – that officers have coined a word for it: testilying. Judges and juries generally trust police officers, especially in the absence of footage disproving their testimony….

Defense attorneys around the country believe the practice is ubiquitous; while that belief might seem self-serving, it is borne out by footage captured on smart phones and surveillance cameras. Yet those best positioned to crack down on testilying, police chiefs and prosecutors, have done little or nothing to stop it in most of the country. Prosecutors rely on officer testimony, true or not, to secure convictions, and merely acknowledging the problem would require the government to admit that there is almost never real punishment for police perjury.

Officers have a litany of incentives to lie, but there are two especially powerful motivators. First, most evidence obtained from an illegal search may not be used against the defendant at trial under the Fourth Amendment's exclusionary rule; thus, officers routinely provide false justifications for searching or arresting a civilian. Second, when police break the law, they can (in theory) suffer real consequences, including suspension, dismissal, and civil lawsuits. In many notorious testilying cases, including Parham's, officers blame the victim for their own violent behavior in a bid to justify disproportionate use of

> force. And departments will reward officers whose arrests lead to convictions, with promotions.
>
> * * *
>
> . . . Widespread lying about Fourth Amendment violations is at least as old as the exclusionary rule itself. The Supreme Court applied this rule nationwide in 1961's *Mapp v. Ohio*, [367 U.S. 643 (1961)] preventing state prosecutors from relying upon illegally obtained evidence to secure a conviction.

Conclusion

Based upon the foregoing arguments and authorities, William Keith Watson respectfully prays that this Honorable Court will **grant** its most gracious Writ, will **vacate** the judgment of the Eleventh Circuit and **remand** with instructions to reverse and vacate the conviction and sentence, and thereupon remand to the district court with instructions that the motion to suppress be granted, and that William Watson be discharged forthwith.

Respectfully submitted,

Sheryl J. Lowenthal

Sheryl J. Lowenthal, Atty at Law
CJA Counsel for Petitioner/Appellant
William Keith Watson

Dated October 21, 2021 7,323 Words

North Florida Office: 221 East Government Street Pensacola FL 32502
Tel: 850-912-6710

APPENDIX TO THE PETITION

JUDGMENT AND SENTENCE
US v. William Keith Watson
Northern District of Florida
Case No. 3:19-cr-00150-TKW-1
Entered on May 20, 2020

OPINION AFFIRMING CONVICTON AND SENTENCE
US v. William Keith Watson
Eleventh Circuit United States Court of Appeals
Appeal No. 20-12315
Entered on April 27, 2021

ORDER DENYING TIMELY-FILED
PETITION FOR REHEARING
Entered on June 4, 2021

SLATE, August 4, 2020
"The Police Lie All The Time. Can Anything Stop Them?"

THE HARVARD CRIMSON, April 12, 1995
Article by Adam M. Klienbaum
Professor Alan Dershowitz says his Comments
On Community TV about Police "Testilying"
Were Misconstrued

UNITED STATES DISTRICT COURT
Northern District of Florida

UNITED STATES OF AMERICA
v.
WILLIAM KEITH WATSON

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:19cr150-001-TKW

USM Number: 26725-017

Thomas Keith, AFPD
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Count 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Possession of a Firearm and Ammunition by a Convicted Felon	7/16/2019	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count _____ ☐ ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/14/2020
Date of Imposition of Judgment

T. Kent Wetherell II
Signature of Judge

T. Kent Wetherell II, United States District Judge
Name and Title of Judge

5/20/20
Date

DEFENDANT: WILLIAM KEITH WATSON
CASE NUMBER: 3:19cr150-001/TKW

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 63 months. This 63-month sentence shall be served concurrently to any yet to be imposed term of incarceration in the Santa Rosa County Circuit Court Docket Number 2019CF1398.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal in Bay County Florida or at the institution designated by the Bureau of Prisons

- ☐ by 12:00 Noon on November 1, 2019.
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____ .

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: WILLIAM KEITH WATSON
CASE NUMBER: 3:19cr150-001/TKW

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : 3 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: WILLIAM KEITH WATSON
CASE NUMBER: 3:19cr150-001/TKW

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: WILLIAM KEITH WATSON
CASE NUMBER: 3:19cr150-001/TKW

SPECIAL CONDITIONS OF SUPERVISION

You will be evaluated for substance abuse and referred to treatment as determined necessary through an evaluation process. Treatment is not limited to, but may include, participation in a Cognitive Behavior Therapy program. You will be tested for the presence of illegal controlled substances or alcohol at any time during the term of supervision. You must not use or possess alcohol.

You must be evaluated mental health and referred to treatment as determined necessary through an evaluation process. Treatment is not limited to but may include participation in a Cognitive Behavior Therapy program.

You must submit your person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 1030(e)(1)], other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: WILLIAM KEITH WATSON
CASE NUMBER: 3:19cr150-001/TKW

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 100.00	$	$ Waived	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$ _____	$ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: WILLIAM KEITH WATSON
CASE NUMBER: 3:19cr150-001/TKW

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 100.00 due immediately.

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-12315
Non-Argument Calendar

D.C. Docket No. 3:19-cr-00150-TKW-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM KEITH WATSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(April 27, 2021)

Before JORDAN, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

William Keith Watson appeals his conviction for possessing a firearm and ammunition as a convicted felon. Watson argues that the district court erred in denying his motion to suppress the firearm and ammunition because the seizure was "the fruit of an illegal detention, frisk, and arrest." We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In July 2019, a bystander called 911 and reported that she watched a man "push a female out of [a] vehicle" by a gas station and the man was now "going up in [the female's] face and yelling." Deputies Dalton Tifft and Matthew Levier of the Santa Rosa County, Florida Sheriff's Office responded to the scene. Deputy Tifft arrived first and spoke with the female, Brittany Smith. Two minutes later, Deputy Levier arrived and spoke to Watson "for a brief moment" before Watson started walking towards the gas station "to go to the bathroom." Both deputies asked Watson to return to the back of his car, which he did.

While Watson was standing near the back of his car, Deputy Levier noticed a bulge in Watson's pocket and frisked him for weapons. When Deputy Levier squeezed the object, Watson slapped the deputy's hand, resulting in Watson's arrest for battery on a law enforcement officer. Deputy Levier searched Watson's pocket and found a cigarette box containing methamphetamine, heroine, and cigarettes.

Deputy Levier and a third deputy on scene then attempted to place Watson in a squad car, but Watson "went limp," made the deputies carry him, and then headbutted the third deputy.

After Watson was placed in the squad car, Deputy Levier and Deputy Tifft looked into Watson's open car window and saw a gun sticking out from between the driver's seat and the center console. Deputy Levier seized the gun, which was loaded. Because the car was unregistered, it was towed away from the gas station and impounded.

A few months later, a grand jury indicted Watson for possessing the firearm and ammunition found in his car, knowing that he had been previously convicted of multiple felonies, in violation of 18 U.S.C. sections 922(g)(1) and 924(a)(2).

Watson filed a motion to suppress the firearm and ammunition, arguing that "the seizure was the fruit of an illegal detention, frisk[,] and resulting arrest" because Deputy Levier did not have reasonable suspicion to frisk him for weapons, acted in bad faith, and Watson had the right to resist arrest by "knocking" Deputy Levier's hand away. The government responded that (1) the deputies had reasonable suspicion to detain Watson; (2) the totality of the circumstances justified the frisk; (3) "the seizure of the firearm [was] justified both as a search made pursuant to probable cause and the automobile exception to the warrant requirement as well as a search incident to arrest"; and (4) the firearm and ammunition would have been

inevitably discovered because the car was unregistered and had to be searched before it was towed.

The district court held a hearing on Watson's motion, at which Deputy Tifft, Deputy Levier, Watson, and Ms. Smith all testified. The government also introduced the 911 call history report into evidence. The district court denied the motion, explaining that it focused on the "original detention" because there was "no dispute that the search that discovered the gun was a lawful search if the original detention was lawful." The district court found that "the officers here were able to articulate a reasonable suspicion that a crime had been committed, i.e., some sort of domestic dispute," because "[t]he call that they received reported, in effect, a domestic dispute." The district court also found that because the deputies responded to a "potential domestic incident," and Deputy Levier saw a bulge and Watson was animated, there was reasonable suspicion to frisk Watson. And because Deputy Levier "was battered" while frisking Watson, there was probable cause to arrest Watson, and "from that point forward . . . there [was] really no dispute that the discovery of the gun was lawful." The district court found the deputies' testimony to be "more credible" than Watson's and "accepted" their "version of events."

Watson pleaded guilty and reserved his right to appeal the denial of his motion to suppress. The district court sentenced Watson to sixty-three months' imprisonment, to be followed by three years of supervised release.

STANDARD OF REVIEW

When reviewing the denial of a motion to suppress, we review factual determinations for clear error and the application of the law to those facts de novo. United States v. Jordan, 635 F.3d 1181, 1185 (11th Cir. 2011). When considering a ruling on a suppression motion, we construe all facts in the light most favorable to the prevailing party below. Id. We afford substantial deference to the district court's credibility determinations. United States v. Lewis, 674 F.3d 1298, 1303 (11th Cir. 2012).

DISCUSSION

Watson argues that the gun and ammunition seized from his car must be suppressed because the seizure was "the fruit of an illegal detention, frisk, and arrest." Watson concedes that if the detention, frisk, and arrest were lawful, so was the seizure of his gun and ammunition.

The Fourth Amendment guarantees the right against unreasonable searches and seizures. U.S. Const. amend. IV. But "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." Illinois v. Wardlow, 528 U.S. 119, 123 (2000). "[W]e look to the totality of the circumstances to determine the existence of reasonable suspicion." Jordan, 635 F.3d at 1186. Our task is "to see whether the detaining officer has a particularized and objective basis

for suspecting legal wrongdoing." United States v. Arvizu, 534 U.S. 266, 266 (2002) (quotation marks omitted). In forming reasonable suspicion, officers may "draw on their own experiences and specialized training to make inferences from and deductions about the cumulative information available." Id.

Deputy Levier had reasonable suspicion to detain Watson. Before arriving on scene, Deputy Levier knew that a bystander had reported to the 911 operator that a white man wearing a gray shirt and khaki shorts pushed a woman out of a car. The push, if it happened, was a battery. When Deputy Levier arrived on scene, he saw Watson, a white man wearing a gray shirt and khaki shorts, "pacing" and acting "very fidgety, like he was on some kind of narcotics." When Deputy Levier approached Watson, Watson "kept looking around" like "he was possibly looking for a way to run and flee from the situation." The 911 report and Watson's behavior gave Deputy Levier reasonable suspicion to detain Watson and investigate the reported battery. See United States v. Bruce, 977 F.3d 1112, 1117 (11th Cir. 2020) ("For purposes of a brief investigatory detention" a "911 call giving eyewitness details of a real-time event is reliable enough to credit the caller's account." (quotation marks omitted)); Wardlow, 528 U.S. at 119 ("Nervous, evasive behavior is another pertinent factor in determining reasonable suspicion.").

After the investigatory stop, Deputy Levier lawfully frisked Watson. "Once an officer has legitimately stopped an individual, the officer can frisk the individual

so long as a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." United States v. Hunter, 291 F.3d 1302, 1306 (11th Cir. 2002). While talking to Watson, Deputy Levier "observed a large bulge in his right pocket." Because of the bulge and Watson's "erratic behavior and appearing to want to get out of there," Deputy Levier "felt like [Watson] possibly could be armed" and told Watson he "was going to pat him down" to "make sure he had no weapons on him." Watson said that Deputy Tifft had already frisked him, but Deputy Tifft said that was not true. At that point, Deputy Levier knew that Watson fit the description of a man who the deputy had reason to believe committed a battery, was acting nervous and "fidgety," had a "large bulge" in his pocket, and lied to try to avoid being frisked. That gave Deputy Levier reason to fear for his safety and frisk Watson. See Jordan, 635 F.3d at 1187 (concluding officer could frisk suspect for concealed weapons where suspect was acting "suspiciously defensive" and the officer observed a bulge in suspect's pocket); Hunter, 291 F.3d at 1306 (concluding officer could frisk suspect for concealed weapons where the officer observed "the presence of a visible, suspicious bulge").

After he began the pat down, Deputy Levier had probable cause to arrest Watson for battery on a law enforcement officer. When Deputy Levier frisked Watson's pocket, Watson "slapped" the deputy's hand. Watson argues that he was justified in using force to resist the frisk because "[r]easonable suspicion was so

lacking that Levier could not have been acting in good faith." But, as we already discussed, Deputy Levier had reasonable suspicion to detain and frisk Watson. Therefore, Watson did not have the right to strike Deputy Levier, and when he did, he committed battery on a law enforcement officer, giving Deputy Levier probable cause to arrest him. See Fla. Stat. § 784.03(1)(a)1 ("The offense of battery occurs when a person . . . [a]ctually and intentionally touches or strikes another person against the will of the other."); Fla. Stat. § 784.07(2)(b) ("[K]nowingly committing a[] . . . battery upon a law enforcement officer" is "a felony of the third degree.").

Because Watson was lawfully detained, frisked, and arrested, and he conceded that the search and seizure of the firearm and ammunition were lawful if the stop, pat down, and arrest were lawful, the district court did not err in denying his motion to suppress the gun seized from his car after his arrest.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 04, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-12315-AA
Case Style: USA v. William Watson
District Court Docket No: 3:19-cr-00150-TKW-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: T. L. Searcy, AA/lt
Phone #: (404) 335-6180

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12315-AA

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM KEITH WATSON,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Florida

BEFORE: Before JORDAN, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant William Keith Watson is DENIED.

ORD-41

SLATE
A STORY TO TELL LATER

JURISPRUDENCE

The Police Lie. All the Time. Can Anything Stop Them?

Would the criminal justice system collapse if cops were forced to tell the truth?

BY MARK JOSEPH STERN

AUG 04, 2020 • 11:51 AM

Police patrol outside of a Manhattan courthouse on Jan. 9, 2015, in New York City. Spencer Platt/Getty Images

Christopher Parham was grocery shopping for his boss when Henry Daverin, a plainclothes NYPD officer, approached him. Daverin accused Parham of driving recklessly on an illegal scooter without a helmet; a few minutes later, Parham was writhing in pain on the sidewalk outside. What happened during those few minutes was a matter of dispute. The NYPD said that Parham, a Black 19-year-old, had violently resisted arrest. Daverin and his colleagues

said that they did not use force against him even though Parham had gruesome Taser burns all across his back.

Then surveillance video of the episode emerged—and proved that nearly every detail of the NYPD's account was false. Parham had immediately cooperated with Daverin; he did not resist arrest. Nonetheless, Daverin and his colleagues had assaulted Parham, tackling him to the ground, then Tasing him over and over again. After Parham's attorneys released the video—and his local representatives raised concerns—the district attorney dropped all charges. Daverin, who had been named in at least 10 other misconduct lawsuits, was never disciplined, either for brutalizing Parham or for lying about it. Two years later, he remains on the force.

The police reaction to George Floyd's murder, as well as the resulting nationwide protests, introduced many Americans to the fact that law enforcement officers lie. After officer Derek Chauvin killed George Floyd, the Minneapolis Police Department issued a statement falsely claiming that Floyd "physically resisted officers" and excluding the fact that Chauvin knelt on Floyd's neck for nearly nine minutes. When Buffalo police officers violently shoved a peaceful 75-year-old man, their department falsely asserted that the victim "tripped and fell" during "a skirmish involving protesters."

This tendency to lie pervades all police work, not just high-profile violence, and it has the power to ruin lives. Law enforcement officers lie so frequently—in affidavits, on post-incident paperwork, on the witness stand—that officers have coined a word for it: testilying. Judges and juries generally trust police officers, especially in the absence of footage disproving their testimony. As courts reopen and convene juries, many of the same officers now confronting protesters in the street will get back on the stand.

Defense attorneys around the country believe the practice is ubiquitous; while that belief might seem self-serving, it is borne out by footage captured on smartphones and surveillance cameras. Yet those best positioned to crack down on testilying, police chiefs and prosecutors, have done little or nothing to stop it in most of the country. Prosecutors rely on officer testimony, true or not, to secure convictions, and merely acknowledging the problem would require the government to admit that there is almost never real punishment for police perjury.

Officers have a litany of incentives to lie, but there are two especially powerful motivators. First, most evidence obtained from an illegal search may not be used against the defendant at trial under the Fourth Amendment's exclusionary rule; thus, officers routinely provide false justifications for searching or arresting a civilian. Second, when police break the law, they can (in theory) suffer real consequences, including suspension, dismissal, and civil

lawsuits. In many notorious testilying cases, including Parham's, officers blame the victim for their own violent behavior in a bid to justify disproportionate use of force. And departments will reward officers whose arrests lead to convictions with promotions.

Two major cities are taking two different approaches to the problem. In New York City, prosecutors keep secret databases of unreliable police officers, though only two boroughs actually prohibit those officers from taking the stand. Without further reforms, however, this approach fails to address the underlying problem: Prosecutors are reluctant to accuse officers of lying in the first place, or to investigate an officer's claims to learn if they align with reality. As a result, an officer who lies convincingly can evade the list indefinitely. In San Francisco, by contrast, District Attorney Chesa Boudin has sought to eradicate the incentives that lead police to lie in the first place. Both cities are witnessing an experiment play out in real time: What happens when the criminal justice system can no longer rely on its enforcers to tell the truth?

The New York Police Department provides a case study in how the criminal justice system rewards lying. One NYPD officer, David Grieco—commonly known as Bullethead—has been sued at least 32 times, costing the city $343,252, for civil rights violations, including excessive force and fabrication of evidence. Yet Grieco was promoted and prosecutors continued to call him to the stand long after a slew of his victims blew the whistle on his violent and lawless behavior. Judges continued to rely on his word to lock up defendants. And Grieco's name did not appear on Brooklyn District Attorney Eric Gonzalez's long-secret list of officers with known credibility problems.

Grieco is a symptom of a much deeper problem. Widespread lying about Fourth Amendment violations is at least as old as the exclusionary rule itself. The Supreme Court applied this rule nationwide in 1961's *Mapp v. Ohio*, preventing state prosecutors from relying upon illegally obtained evidence to secure a conviction. *Mapp* spawned a surge in "dropsy" cases: Rather than admit to an illegal search, police claimed that defendants simply dropped drugs on the ground in front of them, since evidence found in "plain view" can be used at trial. Studies of criminal trials in New York City found that, after *Mapp*, police began lying about arrests to ensure that evidence would be admissible. In the early 1970s, the New York district attorney even told the New York Court of Appeals that, since *Mapp*, officers lied on the stand in a "substantial" number of "dropsy cases." Two decades later, the Mollen Commission—a famous investigation of the NYPD—found that officers routinely engaged in perjury and falsification of records, "the most common form of police corruption."

When NYPD officers are accused of illegal behavior, the department itself usually investigates, then conceals its findings and imposes, at worst, a slap on the wrist, like brief paid leave. Prosecutors could separately investigate, but they have little incentive to question an officer's story: If they *know* an officer is lying, they cannot legally rely on his testimony; if they remain in the dark, they can still use his perjury to clinch a conviction. Moreover, prosecutors and police work together to put defendants behind bars, developing a team mentality that prevents prosecutors from scrutinizing officers' testimony with appropriate skepticism. As long as officers' lies cannot be proved false, prosecutors have little reason to question their account of events. As a New York assistant district attorney told the Mollen Commission: "Taking money is considered dirty, but perjury for the sake of an arrest is accepted. It's become more casual."

Occasionally, the system will catch these lies. Yvette, an Egyptian American who lives in New York City, believes cross-examination of deceitful officers likely secured her acquittal. (Her name has been changed at her request to protect her from retaliation.) In 2017, Yvette witnessed three NYPD officers arresting the owner of a Brooklyn hookah lounge. As the police were detaining him, he handed Yvette his phone and asked her to call his mom. The officers promptly "attacked" her, she told me, severely damaging her knee. When she begged for an ambulance, the officers ignored her. Yvette eventually called one herself and learned at the hospital that the attack tore her ACL. When two officers visited her bedside, she asked if they were going to take her statement. They explained that they were there to arrest her for allegedly attacking the officers at the hookah lounge.

What these officers did not know was that Yvette had recently recovered from multiple surgeries on her knee, one of which resulted in a staph infection. It had been a mere two weeks since Yvette learned how to walk without a cane again. Now the NYPD was accusing her of a violent assault.

At a three-day bench trial, Yvette's public defender, Theodore Hastings, grilled the cops about their account. Two officers claimed that Yvette had attacked them at the exact same time, a physical impossibility. A third alleged that Yvette had run about 500 feet before lunging at the officers.

Yvette herself also testified. "The judge heard my story and understood and felt my pain," she told me. "She saw I really wasn't lying." The judge acquitted Yvette of all charges.

But hoping a judge will vindicate the truth is a luxury most wrongfully accused people cannot afford. Not everyone has a medical record or video footage to prove their account. If an individual goes to trial, they have a right to access the arresting officer's record of misconduct because it could help prove their innocence. But the vast majority of criminal

cases do not go to trial, and until recently, defense attorneys in New York City could not obtain officers' disciplinary records due to a notorious shield called Section 50-A. The state repealed this law in June, and Mayor Bill de Blasio has since promised to publish an online database of police disciplinary records. With New York City's prosecutors still fighting to conceal their do-not-call lists, it will now be left to defense attorneys, activists, and the public to track untrustworthy officers.

Across the country in San Francisco, newly elected District Attorney Chesa Boudin is taking a different approach. Boudin, a former public defender and staunch critic of mass incarceration, confronted testilying head-on. "Police are allowed to lie and get away with it over and over and over again in matters big and small," he told me. "I can think of dozens of examples where police were either able to get away with—or faced no consequences if they were impeached and called out on their dishonesty. When you have a system of that kind of impunity, it snowballs. It teaches, encourages, and enforces bad behavior."

Boudin has minimal control over the SFPD itself. But he has created a robust "do not call" list of officers whom his office will not call to the stand as a witness. Officers who are caught testilying go on the list, as do those who commit other forms of misconduct. Boudin has also mandated careful assessment of charges like assaulting an officer and resisting arrest. "When police use excessive force or brutalize someone," Boudin said, "the most common outcome is that the police arrest the person and ask prosecutors to charge that person with resisting arrest or assaulting an officer." He now requires his staff to review video footage of the incident before filing those charges. "It's not because we think officers are lying most of the time," he said. "We just know that, until we watch video footage, we have no ability to distinguish between a testilying police report to cover up excessive force and legitimate criminal activity of assaulting an officer."

A third reform may have more direct practical consequences for victims of routine testilying designed to avoid the exclusionary rule. Too often, officers find a trivial reason to stop someone, or just make one up, then discover drugs or weapons in the ensuing search. The target of these pretextual stops is usually a person of color. "We know 'driving while black' is a reality for far too many people," Boudin said. "If you have dark skin, you're more likely to get pulled over, more likely to get searched, and more likely to get arrested. You're also more likely to have force used during your arrest than if you're white."

To disincentivize this behavior, Boudin's office stopped charging any contraband case that grew out of a pretextual stop. As an example, he cited searches initiated after a stop for some minor traffic offense. "Our vehicle code makes it possible for police to legally stop any car," Boudin said. "We all know that most drivers do not come to complete stops at stop

signs and most police don't enforce that law most of the time." If the police do pull over a driver for an incomplete stop, and the encounter results in an arrest for possession of drugs or guns, his office will not bring charges.

Ilona Solomon, a San Francisco public defender and former colleague of Boudin's, admires his work but remains skeptical that he has the power to change the city's broken law enforcement apparatus. "There is an entrenched culture in the DA's office that is very resistant to reform," Solomon told me. "Chesa can't fix all the problems immediately, and some things he doesn't have control over."

Still, in his seven months on the job, Boudin has made headway in the face of sustained opposition from the SFPD. Solomon pointed to two recent cases involving the same officer, Robert Gilson. In 2017, a California judge found Gilson had "changed his testimony" regarding a search and arrest, deeming him "not reliable." Yet prosecutors continued to call him to the stand, and judges continued to paper over his inconsistencies.

In one recent case, Gilson stopped a Samoan man who was holding a bag of marijuana, which is legal in California. After a lengthy search, the officer discovered bindles of cocaine. Gilson's reason for the stop shifted: At the time, he said he wanted to search "bulges" in the man's pocket; later, he testified that he sought to determine if the man was holding an illegal amount of marijuana. A judge accepted this reasoning and refused to suppress the cocaine. In another case, Gilson stopped a Black man, justifying the action because the man was jaywalking. After Gilson threatened to strip search the man, he let the officer search him, uncovering a small stash of cocaine. A judge refused to suppress the evidence, crediting Gilson's testimony that he believed the man was concealing drugs due to his worried "demeanor" during the search.

Solomon represented both men. She told Boudin that, in both cases, Gilson had engaged in blatant racial profiling. Boudin agreed and dismissed all charges. Still, Boudin's office could not say whether it had placed Gilson on its "do not call" list, which is not public. The SFPD confirmed Gilson was assigned to field operations but said they could not comment further on personnel matters.

Kate Levine, a Cardozo Law professor and former public defender who studies police accountability, told me she's skeptical that patchwork solutions like a "do not call" list can ever stamp out testilying. Maryanne Kaishian, a public defender in Brooklyn, agreed, noting that it's easy for "clean" officers to conceal the involvement of a known dirty cop by keeping his name off all paperwork. Nor do these lists remove officers' strong incentive to lie: Police are more likely to get promoted if they effect more arrests that result in successful

prosecutions. Promotions come with more prestige and a higher salary. Prosecutors still have an incentive not to question officers' "blue lies."

To end testilying, Levine said, "I would entirely change incentive structures." Officers would be rewarded for reporting on their colleagues' lies and scrutinized when their stories do not line up. They would no longer be able to coordinate their stories before testifying, a common procedure that lets them iron out potential inconsistencies. Nor could they watch bodycam footage before providing their version of events, another perk that's not provided to civilians. Prosecutors would be rewarded for rooting out unconstitutional behavior. Officers who lie, and prosecutors who tolerate them, would be terminated immediately. In short, the system would encourage police officers and prosecutors to focus less on winning cases and more on following the rules, even when a constitutional violation stands in the way of a conviction.

What would happen if a city really tried to eliminate testilying? I posed this question to Bennett Capers, a former federal prosecutor and Fordham Law professor who studies police lies. "In all honesty, I think my initial reaction would be that the system cannot exist without it," he told me. "It would grind to a halt." Capers said that "run of the mill policing would have to change. We are doing about 13 million misdemeanor arrests a year. With a lot of those small crimes, there's fudging. Nobody's paying attention."

Police, in other words, would have to stop arresting so many people for minor crimes. Once cities stopped deploying officers to harass misdemeanants, they could shrink their police force, reducing the number of encounters between cops and civilians. Agencies might then dedicate those resources to investigative and detective work in order to build solid cases against suspects, thereby creating a higher bar for which cases to pursue. Prosecutors would be forced to make a more careful calculation about the risk of bringing a case to trial and drop cases that rested on a search of dubious legality. In the short term, the legitimacy of the entire system might take a hit—though only because its participants confronted the illegitimate basis of so many convictions. Over time, however, the system might regain the legitimacy it lost with a preference for punishment over justice.

"We all wanted to see justice happen," Capers recalled from his time as a prosecutor. "And law enforcement often thinks that, in the interest of justice, the rules get in the way. I'm not aware of ever saying, 'Does this story sound quite right?' We benefited from small lies."

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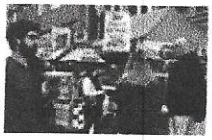

NEWS
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Dershowitz Appears on Community TV

Law Professor Says Comments About Police 'Testilying' Were Misconstrued

By Adam M. Kleinbaum
April 12, 1995

Law School Professor and O.J. Simpson defender Alan M. Dershowitz qualified his previous comments about police engaging in "testilying" yesterday.

In discussing the Simpson trial last week, Dershowitz said that police officers are taught to lie on the witness stand to ensure "a good arrest."

But in an interview on Cambridge Community Television (CCTV) yesterday, Dershowitz said that his comments about this so-called "testilying" were misconstrued.

"It was deliberately blown out of proportion by [the Los Angeles Police Department]," Dershowitz said.

"They distorted the statement, blew it out of proportion and took it out of context," he said.

obtain evidence unlawfully, the court has to turn the prisoner free, even if the prisoner is clearly guilty.

"Lawyers and judges encourage cops to tell white lies so that the guilty can be convicted," he said.

He added that, while mendacity is not a formal part of any officer's education, all officers learn about it.

"[Police academies do not] teach courses in this," Dershowitz said. "It's what goes on outside and in the squad cars that I'm worried about."

Dershowitz explained that while "testilying" happens all the time, he does not blame police officers for it.

"Police do the dirty work of the legal system," he said. "They are the victims. They are the least powerful, least affluent, sometimes the least educated part of the legal system."

Officers are made to believe that if they are confident in the guilt of a suspect, they should see to it that justice is served, he said--no matter what the means.

"The legal system winks at this type of thing," he said.

Dershowitz also said that his stance on "testilying" is not a product of the Simpson trial.

"Even before the O.J. case, I wrote an article saying prosecutors and judges are to blame," he said.

clarify his statement, according to Susan Fleischmann, executive director of CCTV.

"He wanted to defend his position as a defender of police," she said.

Dershowitz himself refused to speak to members of the press.

Frank Pasquarello, the public informationofficer of the Cambridge Police Department, aswell as the host of the television show, said thatthe idea of officers lying in court is foreign tohim.

"It's a concept I've never heard about," saidPasquarello, a veteran of the force.

Although the callers to the interactive showwere few, they generally agreed with Dershowitz.

"If [police officers] go to court, they want towin," said one anonymous caller.

But Dominic Robin Scales, a retired seargent,first class of the Cambridge police force, calledto dispute Dershowitz's claim.

"The thing he said that I resent the most isthat police officers lie on the stand," Scalesesaid. "At no time did we teach officers to lie.

TAGS