

## Legal Updates

What would happen if a police officer being investigated for a crime administratively is ordered to answer questions about the incident, but lies to the administrative investigators about what happened? I understand the officer can decline to cooperate in the criminal investigation and the two investigations must be kept separate, but if he chooses to lie during the administrative investigation is there a problem?

### Court limits Garrity immunity

The Garrity decision provided for the protection of an officer who is ordered to cooperate during an administrative investigation. Under Garrity any statements made by an officer during the administrative investigation were precluded from being used in a criminal trial. In a criminal investigation the officer has the right to remain silent to avoid self-incrimination, but during an administrative investigation the officer can be ordered to cooperate and give a statement. In the event the officer lies he could be administratively disciplined for lying during the investigation, but whether or not he was able to be prosecuted for lying remained unclear.

At issue, until the current Court of Appeals decision, was whether lies told during an administrative investigation could result in prosecution.

In the United States v. Veal, the U. S. Eleventh Court of Appeals ruled lying during the administrative investigation is a crime separate from the investigation. For the first time the court explicitly ruled on the admissibility of an officer's false statements during the administrative investigation in a criminal trial.

The case in question occurred in Miami and began with an informant alerting police to a contract hit on Camacho, an officer in the

Street Narcotic Unit. Officers in the unit were notified of the contract hit and knew the house where the planned hit had originated. Officers from the Street Narcotic Unit, including Camacho, went to the home which was the residence of Leonardo Mercado. Camacho went into Mercado's home and was followed inside shortly after by the other officers. A short while later additional officers and an ambulance were requested.

The first officer to arrive was told she could "get her kick in" after being told Mercado had put out a contract on Camacho. Mercado died at the scene from his beating. Later investigation linked some of the officers' shoes to imprints on the body. Unbeknownst to the officers, Camacho was photographed leaving the house with no damage to his shirt; however later in a Lieutenant's office an evidence technician photographed his shirt which now had a torn pocket and sleeve.

Homicide investigators were informed Camacho was involved in Mercado's death. The other officers denied any physical contact with the victim and claimed the reason they went to the home was because Camacho had observed drug activity there. They also gave statements to investigators claiming Mercado was on the floor when they entered the residence and did not admit to being in the Lieutenant's office with Camacho prior to the now damaged shirt being photographed.

The FBI worked with Miami homicide on the Mercado death investigation ultimately leading to federal civil rights charges against the officers. Defense attorneys for the officers objected to the use of their statements under the Garrity decision. The officers' statements were suppressed and the men were later acquitted of conspiracy with the remaining charges resulting in a hung jury.

In 1993, four of the officers were again indicted by a Federal Grand Jury on a

variety of charges, including knowingly misleading state investigators regarding the facts of the case. Three of the defendants were convicted of knowingly misleading investigators and appealed based on the Garrity decision. The Appellate Court determined Garrity does not give an officer the right to lie, but rather if he does, the lie is itself a separate criminal act.

The court said in part: “Although an accused may not be forced to choose between incriminating himself and losing his job under Garrity, neither Garrity nor the Fifth Amendment prohibits prosecution and punishment for false statements or other crimes committed during the making of Garrity protected statements. Giving a false statement is an independent criminal act that occurs when the individual makes the false statement; it is separate from the events to which the statements relate....We agree...Garrity insulated statements regarding past events under investigation must be truthful to avoid future prosecution for such crimes as perjury and obstruction of justice.”

United States v. Veal  
United States Court of Appeals  
11<sup>th</sup> Circuit Court

CFInsider comments: This is a Federal Court of Appeals decision directly applying only to the 11<sup>th</sup> Circuit's courts; however other Circuits may consider the wisdom of the 11<sup>th</sup> Circuit's finding in deciding their own cases. Until the issue is addressed by the United States Supreme Court there may still be some variations in how the lower courts make their decisions across the Circuits. However, it does seem reasonable when an officer lies during a formal proceeding he is likely committing another crime and can be held responsible for his false statements or actions in an attempt to conceal his past crimes.