IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO. 2011-35204-CFAES

STATE OF FLORIDA,

v.

DAVID ALAN BEAUPREZ,

Defendant.
_____/

ORDER

The facts are simple enough. The Daytona Beach Police Department received an anonymous tip of drug activity at the home of the defendant. Two officers knocked at the door and were greeted by the defendant's elderly mother. An officer told her they were there because of a "911 disconnect" and asked permission to enter the home to insure the safety of the inhabitants. She permitted their entry. A pellet gun was observed by the officer in plain view on a piece of furniture. The mother noticed the officer's observation. She told him it was a pellet gun and permitted him to inspect it. He did so and then turned his attention elsewhere. The officer testified that he asked if he could search further and the mother gave her consent. The mother testified that he did not ask for permission to search further, and specifically did not ask before opening a drawer in the piece of furniture. The drugs at the heart of the present case were found in the drawer. No impeachment of the mother was attempted.

The parties agree that the search of the drawer was illegal if it was conducted without the consent of the mother. They also agree that the law actually permitted the police to lie to the defendant's mother to gain access to the home. The defendant argues, though, that the police officer has significantly damaged his own credibility by telling this lie. He urges the court to believe his mother – not the police officer – regarding the purported consent to search. If the court finds his mother to be the more credible of the two, the evidence must be suppressed.

In recent decades the courts of our nation have been compelled to address the admissibility of evidence acquired by law enforcement in a variety of perplexing situations. Some of the most baffling are those cases in which law enforcement has resorted to dishonesty in the course of its investigation. Of course, the long-established exclusionary rule requires that a trial court suppress the admissibility of evidence which has been gained by a means outside certain constitutional bounds. The constitutional parameters have been established in an evolving series of opinions rendered by virtually every appellate court in the land.

The uninitiated are often astonished to learn that the police may lie to a suspect in the course of an interview to enhance the opportunity to gain a confession. Courts have held that it does not violate the Constitution for the officer to tell almost any tale to deceive the suspect. In many instances law enforcement may use others to perpetuate the falsehood without sanction.

Many are also surprised to learn that the police may craft totally false and elaborate scenarios designed solely to place citizens in a position where the citizens may act in accord with their propensity to commit a crime. Officers, collaborators, and informants may participate in schemes that bring the opportunity to commit a crime to the citizen's doorstep to test his resolve and arrest him if he fails.

It leaves many scratching their heads to discover that the police may come without probable cause to the door of one's home and tell an outrageous lie to gain access to the home without legal ramifications. The state is free to use the bounty of the intrusion to prosecute the homeowner and her guests for crimes discovered in the course of this journey into the heretofore private sanctum of the home. The practice has evolved into a police procedure called the "knock and talk", which was utilized in the instant case. In their quest to cross the citizen's threshold, the police need only create a sufficiently frightening, tempting, or threatening lie to trick the citizen into opening her door. Once inside, the government is free to make arrests based upon criminal conduct observed in plain sight and may gain permission to further search the person and property of the citizen.

Many have unsuccessfully argued in the course of this evolution in the law that in permitting, and thereby encouraging, dishonest conduct by the police we have corrupted not only our police, but also our communities. While it is certainly true that these techniques are very successful in arresting some lawbreakers, there may be a standard to which our society and our government should aspire that is loftier than simple expediency. Dishonesty is seldom without consequences for any of us. When the government lies to its citizens, though, the consequences are dire. What of the societal costs incurred when officers of the law offend law-abiding citizens by lying to them? Or the costs of teaching and encouraging young officers to be dishonest in their work for the sake of enhancing their arrest rates? Or the costs suffered when naturally enthusiastic officers who are taught to be dishonest in one "investigative" realm come to appreciate that dishonesty "works " just as well when it is not legally permitted? When a "white lie" told for legally permissible reasons morphs into the "white lie" told for noble, but illegal, reasons? What are the costs of alienating those growing segments of the community where "knock and talk" sessions are more likely to become a standard practice? Or the costs incurred when police come before the court, time after time, employing deceitful law enforcement practice? What are the costs of teaching the community that law enforcement officers, whom ideally deserve the trust of the citizen, cannot be trusted to tell the simple truth? That no one is wearing the white hat anymore? That the ends justify the means? That the virtue of honesty is essential in our families and individual lives, but that same virtue is optional for the executive branch of our government in the exercise of its police powers? A nation founded on the notions

we find in our Constitution is surely better than this. But, the law is the law, after all. A trial court is bound to follow it.

In a suppression hearing the court is first called upon to make an assessment of the facts. In determining the facts it is essential to determine which testimony is more reliable; more likely to be true. Most often, it is the word of the officer and the word of the defendant that are in conflict. For centuries it has been integral to our system of jurisprudence that a person's propensity for telling the truth is, at least to some extent, discernable by examining his brushes with truth and dishonesty in the past. One who has lied in the past, it is suggested, cannot be trusted in the present. Vigorous cross-examination is an important part of trial for that very reason. The finder of fact in the courtroom, it is said, deserves to know the character of a witness as it pertains to his relationship with falsehoods in the past to better understand the likelihood of his truthfulness in the present. A liar, after all, is a liar. Frankly, it is much easier to wholeheartedly endorse this concept than it is to warm up to the notion that law enforcement officers are permitted to lie to citizens in the course of pursuing justice.

Accordingly, the state prevails on legal grounds on the issue of the prevaricating conduct of the officer. Sad as it may be, the officer may lie to the defendant's mother to gain access to her home - access that would not otherwise have been permitted by a court. A search warrant never would have been granted by a judge in this case because of the total lack of probable cause.

The state does not prevail, however, on the purely factual issue of credibility. The mother of the defendant was not shown in any manner to be a person unlikely to tell the truth. The officer, on the other hand, clearly lied to gain access to her home. A person who admits his lie in the opening seconds of his testimony before the court cannot be heard moments later to say that his first lie was his only lie. Culling the lies from the truth in the testimony of a single witness is, indeed, an exercise in futility. This court suggests that none of us has the ability to parse the truth that well, and it would be intellectually dishonest to even tread that path. As discussed above, there is a significant sacrifice by the state when it relies upon dishonest police conduct at the base of its prosecution. Once the character or reputation of any witness has been damaged, it is difficult to reconstruct, in whole or in part. As we all know, a little boy may falsely call "wolf" only so many times before no one listens. A simple statement, it is hoped, that does not fall upon deaf ears in the law enforcement community.

One is tangentially reminded of the story of the man who offered a woman one million dollars for sex. She agreed, which led him to ask if she would agree for ten dollars. She angrily asked: "What do you think I am?" He replied: "We know what you are. We are just haggling over price." It is embarrassing, at best, in this or any other case to be haggling over the degree or extent of truthfulness in the testimony of an officer of law. We shame ourselves when we entertain the notion.

Based upon the foregoing, the motion to suppress by the defendant is hereby granted.

DONE AND ORDERED in Chambers at Daytona Beach, Volusia County, Florida, this 17th day of January, 2012.

JOSEPH G. WILL
CIRCUIT JUDGE

Copies to:

David Cromartie, Assistant State Attorney
Scott Swain, Assistant Public Defender