



When the crime report becomes the crime

It is a noticeable trend. Criminal cases are being filed on officers that not so long ago were only Boards of Rights. It is one thing to have your job placed in jeopardy, but it is completely another to have your freedom placed in jeopardy. And if you lose your freedom, you will surely lose your job.

Because of the national media-inspired war on police, it is now politically expedient for prosecutors to file criminal charges against cops. The most blatant example of this is the prosecutor who filed charges against six officers in Baltimore over the death of Freddie Gray. Fortunately, the criminal justice system cleared the officers, but their lives will never be the same.

Unfortunately, all too often, the head of a prosecutor's office now wants to be able to have a record of filing charges on police officers to satisfy voters. Remember the good ol' days when convicting mass murderers was good press?

The most recent filing on LAPD officers shows a troubling trend on sending officers to face a jury over their report writing. I have often said, especially when talking about shootings, that "accuracy is our most important product." It seems to be coming true that "inaccuracy is the prosecutor's most important product." When that report is wrong, or seems to be wrong, hear *warning bells*. What used to be suspension days, Boards of Rights, civil lawsuits (none of which are good), can now include jail time!

As officers, our focus has always been on knowing the criminal laws related to robbery, burglary, narcotics, weapons, traffic, and so on. We use these laws daily in our enforcement activities. It is time to focus on another set of laws, probably more important because knowing about them will keep officers from exchanging the witness chair in the courtroom for the defendant's chair. These are laws that are directed at you and the procedural things you do every day.

Let's take a theoretical case. You and your partner investigate a T/C and write a traffic report regarding a hit and run investigation. One of the parties complains that the report is not accurate.

The District Attorney believes they have evidence that the report is not only inaccurate, but that you and your partner knew that it was inaccurate.

Let's start with Penal Code section 118.1, False Statements in Crime Reports, which says:

“Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false, whether or not the statement is certified or otherwise expressly reported as true, is guilty of filing a false report punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years. This section shall not apply to the contents of any statement which the peace officer attributes in the report to any other person.”

The first thing that is apparent is that this is a felony. A wobbler, maybe, but a felony nonetheless. The second thing to notice is that it is the turning in (filing) of the report with the agency that completes the crime. It doesn't have to be a certified statement, signed under penalty of perjury, or sworn to. Turning the report in is all that is needed. The argument then turns on whether the statement in the report was knowingly and intentionally made about a material matter. A video, a tape recording, a witness statement that is inconsistent with the report can all be used to characterize a report as deliberately false. Once a decision is made to file charges, you are on the defensive.

A false report leads to a second charge, 182 (a) (5) PC, Obstruction of Justice, which says:

“Criminal conspiracy; (a) If two or more persons conspire: (5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.”

Both you and your partner affix your names to the report. Under case law, it is not necessary that two persons meet together and enter into an explicit or formal agreement to commit a crime, or that this be expressed in words. If in any manner the conspirators tacitly come to a mutual understanding to commit a crime, it is sufficient to constitute a conspiracy. And obstruction of justice is also a felony because the false report is a felony. The prosecutor's theory will be that you and your partner are jointly responsible for the report. So when it was turned in, both of you must have agreed to submit the false statement.

And this is just the report. If you really want to pile on extra charges, wait until it's time to testify under oath. Mistakes or inaccuracies testified to because you are relying on a report that you didn't properly review and is written by a careless partner places you in jeopardy of facing perjury charges. Police work is serious business. It isn't only uses of force that can get you in trouble.

The point of all of this is to remind you that there can be some serious consequences if you do not pay attention to the accuracy of your reports. In the current atmosphere, carelessness can

be catastrophic. If your name is on a report, even if you did not write it, read it and make sure that it is accurate. Look at your digital in-car camera and body-worn camera video before you write your report. There are officers who have faced criminal charges who wished that they had. Don't be one of them.

Be legally careful out there.

Links to various things in this article are at www.warningbells.com.