



Questions Of Guilt, Innocence

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The nightmarish saga of the Norfolk Four – the case of four Navy sailors convicted in connection with a 1997 rape and murder in Norfolk – has garnered national attention. The question at the front of everyone's mind is whether Gov. Tim Kaine will issue pardons in the case. Yet another equally important question remains: Why would someone confess to a crime he did not commit?

For me, the answer came nearly a decade ago, when I was prosecuting a grand theft auto case. I had an eyewitness, the police report said – but my witness did not show up at the preliminary hearing and had not returned my calls beforehand. "It's your lucky day," I told the defendant, "I can continue the case and get my eyewitness here, or we can plea bargain the charge today." The defendant proclaimed his innocence, but that meant nothing. They all do.

Thirty minutes later, the defendant pled guilty to petty larceny, with an agreed-upon disposition of 10 days in jail and restitution of the \$250 deductible on the car. All this was just another day, just another case, until the next morning, when I heard from my eyewitness. "No, you idiot," the eyewitness explained, "X didn't take the car, Y did." I looked into it enough to verify that what the eyewitness had said was true, and then set about going through the trouble -- and it was a lot of trouble -- to get the conviction set aside. But why had the defendant pled?

Once back in court to un-convict the defendant, I asked him. "Because you said I was goin' down anyways," he said. And that is when it clicked. The defendant quite sensibly concluded that he was better off being wrongly convicted on a misdemeanor charge with 10 days in jail than being wrongly convicted on a felony charge with a maximum incarceration exposure of 20 years. Unjust? Yes. But unreasonable? No. The defendant was just cutting his losses.

SO WHAT does this story have to do with the Norfolk Four? A lot, actually, because the same dynamics are in play when innocent people falsely confess. What most people do not know, but should, is that it is perfectly legal for the police to lie to a suspect during interrogation about the evidence they have. It happened in the case of the Norfolk Four and it happens all the time. We have your fingerprints. We have an eyewitness. Your friends already dined you out. The real killer in the Norfolk Four case later stated, "Them four people that opened their mouths is stupid." But were they? Or were they just cutting their losses?

Imagine you are innocent, but the evidence is all stacked against you. Living that nightmare, perfectly reasonable persons – particularly those who have been interrogated for several hours -- may well conclude that they can cut their losses by taking responsibility for the crime (which, by the way, is the pitch the police are making). You might as well cut your losses. You are going down anyway. It is hard to believe, but false confessions happen -- and we know they happen because DNA evidence has proven the innocence of a number of people who could not possibly have committed the atrocious crimes to which they confessed.

ALL EYES are on Virginia at this moment in time: Will the governor issue pardons in the Norfolk Four case? The question is a good one, but bigger questions remain about the basic structure of interrogation. Allowing police to lie about the evidence they have works marvelously well. Some 70 percent of those questioned confess to the crime. When those individuals are in fact guilty, that is a good thing. But as the case of the Norfolk Four illustrates, there is a dark side to police deception.

If we are willing to live with that dark side, then perhaps we can at least ameliorate it by videotaping police interrogations so judges and juries alike can see for themselves what the police did to get a confession. As it stands now, those in the courtroom have no idea what went on in the squeal room, and police generally like it that way. A few jurisdictions -- D.C. is an example -- require that interrogations be recorded. But they are few, and Virginia is not currently among them.

Gov. Kaine should pardon these defendants; they have unjustly suffered enough. Yet the real fix requires more than a pardon. It is time we learn more from the Norfolk Four. Corinna Lain, an associate professor at the University of Richmond School of Law and acting associate dean for academic affairs, writes and teaches in the area of criminal procedure. For more information, see www.law.richmond.edu.

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