

RESEARCH NOTES

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The Concept of Lie and Its Identification in Criminal Proceedings

El concepto de mentira y su identificación en el proceso penal

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Summary

In today's Russian environment, special attention in the work of preliminary investigation agencies is paid to the development and implementation of the latest methods and techniques for countering criminal behaviour. Essential to the timely and rapid detection of a crime and to the objective and comprehensive investigation of criminal cases is the high professionalism of the staff of preliminary investigation agencies, as well as their skills and abilities in practical work, which are undoubtedly based on scientific research on ways to identify criminal acts, expose guilty persons and prevent them from evading punishment. One form of counteracting the investigation of a criminal case is the giving of false testimony by subjects of criminal proceedings during questioning and face-to-face confrontation. This paper presents the theoretical basis for the diagnosis of lies, reveals the concept of lies, its main types, tactical features of the recognition of lies in the production of individual investigative actions; it also considers the problem of evaluating the truthfulness of testimony taking into account the features of personality of a person.

Keywords: forensics; criminal proceedings; lie; overcoming lie, diagnosis of lie, types of lies

Resumen

En el entorno ruso actual, se presta especial atención en el trabajo de las agencias de investigación preliminar al desarrollo e implementación de los últimos métodos y técnicas para contrarrestar el comportamiento delictivo. Para la detección oportuna y rápida de un delito y para la investigación objetiva e integral de los casos penales es fundamental la alta profesionalidad del personal de las agencias de investigación preliminar, así como sus habilidades y habilidades en el trabajo práctico, que sin duda se basan en la investigación científica. sobre las formas de identificar los actos delictivos, exponer a los culpables y evitar que eludan el castigo. Una forma de contrarrestar la investigación de un caso penal es el testimonio falso de los sujetos del proceso penal durante el interrogatorio y el enfrentamiento cara a cara. Este artículo presenta las bases teóricas para el diagnóstico de mentiras, revela el concepto de mentira, sus principales tipos, rasgos tácticos del reconocimiento de mentiras en la producción de acciones investigativas individuales; también considera el problema de evaluar la veracidad de un testimonio teniendo en cuenta los rasgos de personalidad de una persona.

Palabras llave: forense; procedimientos criminales; mentira; superación de mentiras, diagnóstico de mentiras, tipos de mentiras

Introduction

The term "lie" in itself is a word which is well-known and familiar to every modern person. According to the statement of Hans Gross, the "father" of forensic science, it is the fight against lies that constitutes the bulk of the forensic science work (Gross, 1918). In the course of a preliminary investigation, it cannot be ruled out that the tasks of diagnosing lies, as well as the use of tactical-psychological methods of overcoming them, will be solved.

False testimony is not uncommon in practice; it hinders the establishment of the truth in a case, makes it difficult to collect evidence and expose those responsible in a criminal case. The essence of false testimony lies in its negative social and legal colouring and requires law enforcement agencies to react appropriately, namely, to apply knowledge of both psychology and criminal tactics.

Methods

The research methodology is expressed by systematic, structural-functional, structural-logical, descriptive, institutional and also dialectical methods of scientific cognition, collection and analysis of scientific and practical material.

Results and Discussion

Research into the phenomenon of lies underlies several special sciences such as philosophy, sociology, psychology, psychophysiology and a number of others. The problem of the definition of lies, how to recognize them and how to overcome them, as well as the problem of distinguishing lies from other related concepts, can therefore be regarded as interdisciplinary.

The origins of the study devoted to the phenomenon of lies can be traced back to the works of foreign scholars in the field of psychology. German psychologist and psychotechnician Otto Lipman, a specialist in legal psychology, defines lying as "a willful act aimed at results" (Lipmann & Adam, 1929). He points out that there are certain bowls of scales in human consciousness where there are true notions on their one half and false notions on the other half and there is always some struggle between them. When a person lies, this struggle is won by a set of false notions at the expense of certain goals and intentions. When a person tells the truth, the scales outweigh the set of true notions due to moral notions and notions of consequences.

German psychologist and philosopher William Lewis Stern, the teacher of O. Lipman, defined a lie less categorically: a lie is "a conscious incorrect statement that serves to achieve certain goals through deceit" (Stern, 1922). He emphasises three features by which a lie is defined: 1) consciousness - a person knows that his or her statement is untrue; 2) the intention to deceive another person is mandatory; 3) the person pursues certain motives and goals by communicating false information, in particular, he or she seeks to benefit from or avoid the negative consequences of the situation.

In turn, Paul Eckmann, a specialist in the psychology of emotions, interpersonal communication and the psychology of lying recognition, in one of his works "Psychology of lies" defines a lie (while identifying the lie with the deception) as "an act by which one person misleads another by doing so intentionally, without prior notice of his goals and without a clear request from the victim not to reveal the truth" (Ekman, 2018). The author highlights the main forms of lies in his work, indicating that lies can take the form of silence and misrepresentation. Silence, as a form of lying, implies concealing true information, in which a person does not give out false information in return. Misrepresentation (or distortion) implies not only concealing true information, but also that a person reports false information.

Professionals distinguish many kinds of lies. In our view, one of the classifications with a noticeable applied value is the division of active and passive lies. Active lying involves telling the person being questioned the circumstances of a case that are known to be untrue. The passive form of a lie, on the other hand, is simply the concealment of some information about the case by the person being questioned (Polstovalov, 2000). Also of applied importance is the criterion of orientation that stands out in the literature: lies aimed at a false accusation, self-accusation and other false testimony. In turn, the false accusation and self-accusation are divided into full and partial, realistic, which implies a false report on an existing crime, and unrealistic, which regards the unreliability of the very fact of the crime, and other subtypes (Korma & Obratsov, 2014).

Minimising lies in the testimonies of those involved in criminal proceedings is a high priority for the preliminary investigation authorities. Detection of lies involves the work of an investigator (inquirer) directed to establishing the fact of a lie and analysing the already existing false testimony, accordingly. For this purpose, investigators check all possible investigative versions of false testimony and then analyse all the evidence collected in the case and concludes that there is or there is no lie.

The main areas of detection of lies involve the selected forensic tools and methods of lying detection. In turn, forensic means of detecting falsehoods are classified into: technical and forensic (photography, video recording, audio devices, polygraph, and voice analysis devices) and tactical and forensic (tactical techniques, operations and combinations) (Karpenko, 2018).

Correct and thorough analysis of the information received by means of certain technical and forensic means determines the areas of work with the person involved in the investigation. For example, I.V. Makhova notes that "video recording makes it possible to expose the person being interrogated to lies, to record the content of the investigative action in dynamics, and to demonstrate to the court that no psychological or physical violence has been used against those involved in the investigative action" (Mahova, 2015). In our view, the use of video footage is necessary for each investigative action to detect false testimony, as this will provide an evidentiary basis by observing all criminal procedure rules, and will allow a second look at the information obtained in the course of an investigative action, making it possible to analyse the testimony of participants in criminal proceedings and detect inconsistencies.

It should be emphasised that audio recording is also an important technical means of detecting false testimony. Audio files are also distinguished by the accuracy of recording information, while if listening to the testimony, it would be possible to determine the emotional state of the person being questioned, his or her intonation, and to use them for comparison if the testimony changes in the future. Practice shows that the use of audio recording in the course of investigative activities is necessary and makes sense in order to record the testimony of witnesses and victims who are afraid to testify on record for various reasons, as well as to identify contradictions with other evidence.

The use of technical and forensic means in the course of the activities of preliminary investigation bodies is used with the involvement of specialists. It should be noted that the whole variety of technical means is used as a whole, and each of them has a positive effect and helps in recognizing and overcoming lies in criminal proceedings, but it does not exclude the fact that they must be used together with tactical means and methods.

The observation method is also used in the process of detecting false testimony. Observation makes it possible to visualise the emotions and psychological state of the persons involved in the interrogation through communication, or in other investigative activities such as searches, on-site checks and others. This general scientific method is used both in science and in investigation practice. When a lie is discovered during an investigation, the investigator must observe the persons being questioned, because at that point the deceivers will try to watch every word they say and control their behaviour.

Surveillance is applied through visual contact or by using special technical means. In modern practice, the method of using technical means is the most widely used. In order to achieve the most useful result, the observation method must be used with good concentration of the investigator's attention, stability and minimisation of any distractions in the production of individual investigative actions.

Thus, in order to detect lies, it must be taken into account that the psychological features of the signs of lying are a combination of speech, behaviour and the emotional component of the person giving the testimony, and these features may indicate either an interaction or counteraction with the preliminary investigation. Thus, E.E. Tsentrov notes that "the experience of emotions is always accompanied by somatic changes in the body" (Tsentrov, 2012).

Different positions have been expressed in the literature on how to record these features and what to understand directly under them. When conducting investigations in order to obtain an objective picture of what has happened, it is important for an investigator to be able to analyse the situation, observe the behaviour of participants in the investigation, seek to obtain reliable information about the circumstances of a criminal case and highlight atypical features in the behaviour of subjects. In this regard, the latest methods are profiling and verification methods (Madyanov et al., 2016).

The verification method (lat. *verus* - "true" and *facere* - "do") implies a method of detecting lies; profiling, in turn, is aimed at using the psychological characteristics of behaviour through the information obtained through verbal or non-verbal communication, and subsequently involves the evaluation and analysis of this data.

As noted earlier, these methods show their effectiveness in that a person experiences certain psychophysiological changes when reporting false information, which causes emotional tension. This can be noticed by an investigator and profiling and verification methods start to work here, as they help to reveal certain signs and reveal false testimony.

Thus, it should be said that the general characteristics of the main areas on detection of lies in criminal proceedings are grounded on basic forensic tools and methods. In order to effectively use forensic tools and methods to achieve the goal of detecting false testimony, an investigator or person conducting the initial inquiry must comply with general legal principles, such as the principle of legality, which implies compliance with the Constitution of the Russian Federation, the Code of Criminal Procedure of the Russian Federation and other legislation, as well as with the professional ethics of the investigator.

Summary

The literature highlights the many tactical and psychological techniques used to recognize and overcome lies. When using them, investigators must take into account personal characteristics of the person being questioned, his or her moral stability, the subject of the questioning, the factual circumstances of the case, which may indicate the possibility of providing false testimony, the existence of evidence that would be appropriate to use to eliminate false testimony, and so on. The choice of methods must be based on investigative planning, flexibility of forensic tools and methods. Methods must be safe and scientifically sound and it is unacceptable to use methods that have not been tested in practice and have low effectiveness. To date, there is no clear answer as to how accurate the signs of lies are, whether they can appear to all people in the same way or whether they have a strong personality. It must be remembered that any external manifestations (both verbal and non-verbal attributes) that allow a conclusion to be drawn about deception in the testimony of a participant in a criminal trial cannot unequivocally and with high precision testify to the falsehood of the information received from that participant. These attributes can only speak of certain psychophysiological processes taking place inside the human body and, accordingly, only make it possible to draw a conclusion that there are prerequisites for a report to be false. Thus, investigators must take into account many different factors when conducting investigations. When conducting investigations, an investigator must be able to observe and analyse the behaviour of those involved in criminal proceedings in order to recognise false statements. Investigators must have not only theoretical knowledge in the field of non-instrumental detection of lies, but also appropriate practical skills and abilities. The newest methods of such activity are profiling and verification methods, which are aimed at analysing and investigating the behaviour of the subject. They also include effective practical recommendations for detecting false testimony.

Conclusions

In conclusion to our study, it is worth saying that many authors point to the need to take into account the specific behaviour of the person being questioned (voice intonation, gesticulation, changes in facial expressions (Pershin & Efimkina, 2007)). Although there are many tactics for detecting lies based on visual observation of the person being questioned in the process, none of them is absolutely reliable or universal. The manifestation of emotions that theoretically testify to a lie is purely individual and cannot be comprehensive and objective, because the same emotions can testify to completely different things. From this point of view, we think that authors who are weak in their argumentation are more inclined to consider certain actions of the interviewee (touching the nose, avoiding eye contact, etc.) as certain identifiers of lies. However, the absence of a universal sign does not lead to the unknowability of lies, but merely makes their diagnosis individual in each case. Proper diagnosis and prediction of the psychological state and value-motivating sphere of the person being questioned, his or her temperament and character makes it possible to assume the line of behaviour of the person being questioned in a particular situation. The recognition and overcoming of lies in testimony remains one of the main tasks of an investigator when conducting investigative actions and preliminary investigations in general.

Scientific research in this area will remain a relevant and popular practice for the foreseeable future.

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