

## Lies Told by the Defendant (Going Only to Credit)

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### Commentary

In *R v Smart* [\[2023\] QCA 222](#), Boddice J (with whom Dalton and Flanagan JJA agreed) outlined the law in this area as follows (citations and footnotes omitted):

[84] As was observed by the majority in *Edwards v The Queen*, the telling of a lie would ordinarily merely affect the credit of a witness who tells it. However, a lie told by an accused may go further. In limited circumstances, the telling of a lie by an accused may constitute evidence, as it amounts to conduct which is inconsistent with innocence and an implied admission of guilt. The majority cautioned:

“But not every lie told by an accused provides evidence probative of guilt. It is only if the accused is telling a lie because he perceives that the truth is inconsistent with his innocence that the telling of the lie may constitute evidence against him. In other words, in telling the lie the accused must be acting as if he were guilty. It must be a lie which an innocent person would not tell. That is why the lie must be deliberate. Telling an untruth inadvertently cannot be indicative of guilt. And the lie must relate to a material issue because the telling of it must be explicable only on the basis that the truth would implicate the accused in the offence with which he is charged. It must be for that reason that he tells the lie.”

[85] The requirement that the lie relates to a material issue necessitates that the lie be precisely identified, as should the circumstances and events relied upon to constitute an admission against interest. Further, a jury must be instructed that they may take the lie “into account only if they are satisfied, having regard to those circumstances and events, that it reveals a knowledge of the offence or some aspect of it and that it was told because the accused knew that the truth of the matter about which he lied would implicate him in the offence ... because of ‘a realization of guilt and a fear of the truth’”.

[86] As McMurdo JA explained in *R v SCL* [\[2017\] 2 Qd R 401](#) at 417 [61]:

“It was what (if anything) the lie itself revealed about the appellant’s mind which was critical. Did the lie reveal a consciousness by the appellant of his guilt? It could do so only if it revealed a knowledge of the offence or some aspect of it and a fear that the truth of the matter would implicate him. As Callaway JA (with the agreement of the other members of the Court) said in *R v Kondstandopoulos*:

‘It is the combination of knowledge and fear that evinces guilt.’”

If the evidence against a defendant includes a lie told by the defendant, then a trial judge must decide whether the lie is relevant to the defendant's credit only, or whether it is available as evidence of a defendant's guilt.

A lie which may be treated as evidence of guilt (conceptualised as an *admission* by conduct: an admission in the sense that it reveals a consciousness of guilt) is often described as an *Edwards Lie* – referring to the case of *Edwards v The Queen* ([1993](#) [178 CLR 193](#)). If the prosecution wishes to use the lie in this way, then an Edwards direction (see chapter 40) is required. See also *R v Sheppard* ([2010](#) [QCA 342](#)); cf *R v Lacey & Lacey* ([2011](#) [QCA 386](#) at [81], [83] and [153]).

Where a defendant's lie could *only* be relevant to their credit, juries may need to be warned against reasoning that because the defendant told a lie about something, that may be used as evidence of their guilt of the offence – see *Zoneff v The Queen* ([2000](#) [200 CLR 234](#)).

In *R v SDU* ([2022](#) [QCA 176](#)), Henry J at [19] explained that *Zoneff* suggested a direction which may be given as a *safeguard* against misunderstanding in cases where there is a risk of the jury inferring guilt from lies which are relevant only to the credit of a defendant's account. But a direction in the terms suggested in *Zoneff* is only apt where there exists such a risk. It is not required merely because it is suggested that something a defendant has said should be rejected as untrue.

This chapter is concerned with lies relevant to credit only. See chapter 40 for cases in which the prosecution seeks to use a defendant's lie as evidence of guilt.

The suggested direction for “credit lies” is an adaptation of the suggested direction in *Zoneff v The Queen* ([2000](#) [200 CLR 234](#) at 245 [23]). The direction has been modified to take into account the observations of the Court of Appeal in *R v Sheppard* ([2010](#) [QCA 342](#)).

The suggested direction deliberately avoids any suggestion that it is for the jury to decide what significance the lies have in relation to the issues in the case to avoid the possibility that the lies will be used impermissibly: See *Dhanhoa v The Queen* ([2003](#) [217 CLR 1](#)).

The last paragraph of the suggested direction is taken from *Chevathen & Dorrick v The Queen* ([2001](#)) [122 A Crim R 441](#) at [28]-[32].

For an example of a direction suggested by the Court of Appeal where the appellant was intoxicated at the time of the subject event, see *R v Frank* ([2010](#)) [QCA 150](#) at [43]. See also *R v Scott* ([2011](#)) [QCA 343](#).

The suggested direction is intended to avoid the risk of the jury engaging in an inappropriate process of reasoning in relation to lies by the defendant. The direction is not appropriate in relation to lies by a complainant: *OKS v Western Australia* ([2019](#)) [HCA 10](#) at [19].

### **Suggested Direction**

**You have heard questions [or have heard submissions from the prosecution] which attribute lies to the defendant.**

**You must decide whether he was telling lies and, if so, whether he was doing that deliberately.**

**If you conclude that the defendant deliberately told lies, that is relevant only to his credibility. It is for you to decide whether those suggested lies in fact affect his credibility.**

**However, do not follow a process of reasoning to the effect that, because the defendant lied about something, then that is evidence of guilt.**

[If desirable: **The mere fact that the defendant tells a lie is not in itself evidence of guilt. A defendant may lie for many reasons, for example: to bolster a true defence, to protect someone else, to conceal disgraceful conduct of his, short of the commission of the offence, or out of panic or confusion. If you think that there is, or may be, some innocent explanation for his lies, then you should take no notice of them.**]