



Ohio Attorney General's Law Enforcement Bulletin



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Three Quick Tips to Improve Your Court Testimony

Testifying in court is one of your duties as a law enforcement officer. Some officers love it; some hate it. But either way, you should know how to do it right. Here are three quick tips you can use to improve your testimony.

Tip 1: Prepare, Prepare, Prepare

The first thing to do before taking the stand is talk to your prosecutor. The prosecutor should tell you about how he or she will prove the case and how you fit into that proof. Without a doubt, you will be one of the most important witnesses at the trial, if not *the* most important witness. Review your case file with the prosecutor. This review can also prevent arguments in court about your case file, especially if there are missing or inconsistent documents. It will allow the prosecutor to know beforehand that there may be an issue.

You will also want to prepare on your own. That means reading over your files, looking at evidence collected, reviewing dash camera footage, or rereading witness statements. This probably seems obvious. But remember, you may have to speak mostly from memory while you are on the stand. The review will also give you a boost of confidence during cross-examination and more credibility before a judge or jury.

Tip 2: Credibility = Truthfulness

The most important thing to do while on the stand is to be truthful and credible. This means more than just being honest. It is also the *way* you speak to the jury or judge, your manner and presence in court, and how you treat those around you.

Think about it this way: When you stop a suspect, what have you been trained to look for to determine if the suspect is telling you the truth? If the person is speaking too fast, fidgeting, won't make eye contact, repeats answers or seems uncertain, what is your impression? Perhaps he is not telling you the truth. Juries and judges will be doing the same thing when judging your verbal and nonverbal actions as you testify. You might be nervous because you've never testified before (just like a suspect might be nervous because they've never talked to a cop before), but the jury might take it as you having something to hide.

So, remember to maintain eye contact with the jury or the judge. It is a natural human reaction to believe that someone who won't make eye contact with you is lying or uncertain. By making eye contact, you are establishing your confidence in your testimony. You should also speak clearly and slowly so everyone can understand you.

Matt Donahue, chief of the Attorney General's Special Prosecutions Section, recalled a law enforcement witness who did a particularly good job of gaining credibility with the jury.

"There is one guy in particular who worked undercover. He would show up in a suit and tie that was pressed and dry cleaned. His long hair was pulled neatly back. He would sit tall on the stand and intently listen, nod his head, turn to the jurors or judge to explain what happened in response to the question. I would ask him to explain his background. He would answer with a complete background and highlight the parts of his background that helped the case or explained his testimony. He was very clear about what happened in the case and had a very professional demeanor on the stand."

Tip 3: Everyone Must Understand

The third tip is to understand the question being asked and make sure the jury or judge understands your answer. This tip really has two parts.

First, you have to make sure the question is clear to you. Attorneys can, intentionally or unintentionally, ask confusing questions. If you don't understand what information they're asking for, don't guess. Just ask them to clarify or repeat the question.

The second part of understanding the question is to understand why it is being asked. For example, understand why the defense is asking you about other suspects or why the prosecutor is asking you about the defendant's fingerprints on the murder weapon. While it is your job to state the facts, it is the job of the attorney to use those facts to lead the jury or judge to his or her conclusion. Typically, it's a defense attorney's job to challenge your credibility through leading questions. So you should precisely answer the exact question asked. By contrast, a prosecutor will typically be encouraging you to tell the jury a story and to engage the jury by asking you open-ended questions. So you may want to give fuller explanation. This skill will come with more practice on the stand and by establishing a relationship with your prosecutor.

Another common mistake is confronting the attorneys, especially if they misstate a fact or your own statement. Remember that you are the holder of the information. The defense attorney was not there, nor was the prosecutor, judge, or jury. While you don't want the defense attorney to put words in your mouth, you also can't afford to come off as confrontational. By understanding the line of questions and the path the attorney is trying to lead your facts, you may be able to head off confrontation by keeping your answers very short. It is the job of your prosecutor to protect your credibility and help you reclaim it if something goes wrong on cross-examination.

Lastly, make sure the jury or judge understands your answer. That means you should speak in short sentences, avoid "cop jargon" and acronyms, and look at the jurors to see if they understand you. The jurors may completely miss an important detail because they do not understand law enforcement terms and in most cases cannot ask you for clarification. For instance, when a prosecutor asks you a question, don't say, "At 1930 hours we got a BOLO from the SO for a code 29 suspect." Instead, say, "At 7:30 p.m., we were advised by the sheriff's office to be on the lookout for a burglary suspect."

Testifying in court is an important skill. For more information on building your confidence and updating your skills in testifying, the [Ohio Peace Officer Training Academy](#) offers several classes, including a Testifying in Court Boot Camp course, scheduled in July, or Testifying in Court Boot Camp — Expert Witness, slated in August.

More Resources

- [“On the Spot: Testifying in Court for Law Enforcement Officers,”](#) *FBI Law Enforcement Bulletin*, October 2006
- [“How to Testify in Court,”](#) *Police* magazine, April 1, 2006
- [“Are You Ready to Testify?”](#) PoliceOne.com, October 23, 2007

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Case 1: Search and Seizure (Warrantless Searches): *State of Ohio v. Harper*

Question: If you don't follow proper protocol when conducting an impound inventory, have you performed a warrantless search?

Quick Answer: Yes. If you don't follow standard operating procedure for an inventory, a court may throw out any evidence you found.

[*State v. Harper*](#), Ninth Appellate District, Medina County, Feb. 3, 2014

Facts: An Ohio State Highway Patrol trooper stopped a vehicle for a minor traffic violation and learned the driver, Isha Harper, had an outstanding warrant. The trooper requested assistance, placed Harper under arrest, and arranged for a tow truck to transport the vehicle to an impound lot. Before the tow truck arrived, the troopers performed a routine inventory search of the vehicle and discovered two kilos of cocaine in the trunk. Although the troopers had been filling out the inventory form, they stopped doing so after discovering the cocaine, despite Ohio State Highway Patrol policy that requires a trooper to complete the inventory even after finding contraband. Harper argued that the failure to properly complete the inventory made it a warrantless search. The court agreed and suppressed the evidence.

Importance: Inventory searches allow law enforcement to search a car without a warrant. But when an inventory is not done properly, the search is no good. Even small errors, like improperly filling out a routine inventory form, can make the difference between a significant drug arrest and an everyday traffic ticket. If you're the one conducting the inventory, make sure you follow the rules to a T.

Keep in Mind: An inventory search is an administrative procedure done to protect the arrestee's property; to protect law enforcement officers from claims of lost, stolen, or damaged property; and to protect officers from danger. Not only might a botched inventory render the evidence inadmissible, you also might subject yourself to suspicion if property is lost or damaged or even risk injury if something dangerous is overlooked.

More on Search and Seizure: Warrantless Searches

Emergency entrance. Responding to a call from a concerned citizen, you pull up to a house just as a woman is exiting. The woman quickly locks the door after seeing you and begins to walk away. You notice that she has blood on her hands. When she removes her sweater at your request, she reveals cuts on her arms. Meanwhile, your partner observes a man exit the back door of the house with blood on his hands. Neither one explains the blood. Fearing there may be injured people inside, you enter

the house. Inside is a marijuana grow operation. Can you get the marijuana into evidence even though you didn't have a warrant? Yes, you can do so based on the emergency aid exception to the warrant requirement. The court in *Methvin* said the blood on both people, the hasty locking of the door, and the unwillingness to answer questions were sufficient to create a reasonable belief that someone might be inside the house who needed help. That reasonable belief created an emergency aid situation, which allowed the officers to seize contraband found inside. [State v. Methvin](#), Fifth Appellate District, Richland County, Feb. 10, 2014

If you want out, you gotta let us in. A pedestrian is struck and killed by a car. Witnesses notice the right side of the windshield and right front fender are damaged. The driver seems frightened and shocked, telling the witnesses he thinks he struck a deer or that someone threw something at his windshield. You arrest the driver for operating his motor vehicle under the influence. The driver is on probation, so you call his parole officer, who sets up a blood sample draw. Is the blood sample admissible without a warrant? Yes. The court in *Maschke* admitted the sample without a warrant because one of the conditions of Maschke's probation was an obligation to submit to drug and alcohol testing, so a warrant was not necessary. Find out if parolees in your area have similar requirements. [State of Ohio v. Maschke](#), Fifth Appellate District, Morrow County, Jan. 27, 2014

Case 2: Proper Protocol (Scope of Warrants): *State of Ohio v. Zwick*

Question: If you get a warrant to search computers for child pornography but only find instant message chat logs detailing sexual activity with a minor, do those logs fall under the scope of your warrant?

Quick Answer: Maybe. Because the instant message chat logs detailing sexual activity with a minor were found on the computer, and a computer is normally where electronic pornography would be stored, seizing the chat records could have been within the scope of the warrant.

[State of Ohio v. Zwick](#), Second Appellate District, Miami County, Jan. 24, 2014

Facts: An undercover detective, posing as a single father, responded to an ad on Craigslist posted by Jason Zwick. It read, "Taboo? Incest? Two Brothers or Dad and Son?" The detective received a response from Zwick, who was using the screen name "hotjock01." During the online exchange, Zwick said he had contacted a father who allowed Zwick to meet and engage in anal sex with his son. Zwick asked the detective if he would allow him to engage in anal and oral sex with his sons. Over the weeks that the undercover detective and Zwick chatted, Beavercreek Police Officer Christopher Unroe found Zwick's address and linked it to hotjock01. Unroe obtained a warrant to search Zwick's computer for evidence of child pornography based on his experience that individuals who engage in Zwick's behavior are also likely to view and keep child pornography. No pornography was found during the search, but police did uncover chat logs between Zwick and others detailing sexual activity with minors. Zwick argued that the chat logs should not be allowed in because they were outside the scope of a warrant to search for child pornography. The court disagreed on technical grounds, but this case highlights the complexities for computer searches.

Importance: Officers cannot exceed the scope of the search warrant. For instance, a warrant to seize a stolen car cannot be used to search a suspect's medicine cabinet. But a warrant to search a computer is like a warrant to search a house: Once you're inside, you can seize evidence of any

crime that falls within the scope of the warrant or in plain view.

Keep in Mind: This case was decided on a specific rule used in appellate courts, but it does outline some things to consider when writing and executing a child pornography search warrant. Are you asking for text information in the warrant, or are you just asking for images? When you do the forensic search, are you finding evidence in “plain view” that is not specifically referenced in the warrant? If you think so, remember that you’ll have to be able to explain the whole process to a judge.

Conducting undercover operations online poses a number of legal and technical issues. Consider attending an [Ohio Peace Officer Training Academy](#) course, in which you can learn how to create a profile, where to conduct searches, and how to make certain any evidence you seize can be used against the suspect. The course, Undercover Online Investigations, is free and will be held in April and September.

More on Proper Protocol

Who’s Who, Round Two: Your department arrests Bob on an outstanding warrant. During booking, it’s discovered that the warrant was actually meant for the Bob’s childhood friend Joe, who illegally used Bob’s name. Bob is released later that day and files a police report detailing the mistake and accusing Joe of identity theft. Almost a month later, on routine patrol, you run Bob’s vehicle registration through LEADS, where it is still erroneously linked to the first-degree felony arrest warrant for Joe. You arrest and search Bob, finding two small bags of meth and ecstasy in his pants pocket. Bob explains the warrant confusion, but you don’t attempt to verify his claim or identity. Are the drugs admissible? No, according to the court in *Scott*. Evidence obtained under an invalid warrant may be admissible if the officer had an honest belief that the warrant was good. However, when the warrant is known to be faulty, law enforcement may not continue to use the erroneous warrant to obtain evidence. If a subject claims the warrant is meant for someone else, take a few minutes to double check. If you arrest someone under a warrant and find it contains a mistake, tell someone who can fix the error so it doesn’t happen twice. [State of Ohio v. Scott](#), Eighth Appellate District, Cuyahoga County, Feb. 6, 2014

All I have to do is dot the I’s. You pull over a driver for failure to use his turn signal. After addressing the driver, you perform a breathalyzer test and the driver blows over the limit. You’ve been certified to use the breathalyzer, but you still haven’t completed your in-service course for this particular model. Are the test results admissible? The court in *Drake* said yes. Even though state regulations require completion of in-service training, the fact that the officer held a valid permit to administer the test was sufficient to ensure an accurate administration. [State of Ohio v. Drake](#), Fifth Appellate District, Knox County, Feb. 12, 2014

Case 3: Search and Seizure (Reasonable Suspicion): *State of Ohio v. Robinson*

Question: When you stop someone based on an unreliable tip, can you use evidence from the stop to get a search warrant for the driver’s house?

Quick Answer: No. You can only stop a car if you have reasonable suspicion, and reasonable suspicion can't be based on an unreliable tip. If the stop is no good, you can't use evidence found during the stop to get a warrant. Anything the warrant turns up is "fruit of the poisonous tree."

State v. Robinson, Ninth Appellate District, Summit County, Feb. 19, 2014

Facts: Akron police got a call that a recently arrested individual had some information about suspected drug dealer, Rayshawn Robinson. The detective spoke to the informant, who told him where Robinson lived and that he owned red and black SUVs. Officers visited the address and saw the SUVs. The detective then had the informant set up a drug buy at the local Taco Bell. Officers monitoring Robinson's residence watched as the black SUV left and headed downtown, but instead of turning left toward the Taco Bell, the SUV turned right. Officers could not determine whether the occupants matched the description given by the informant. When the SUV returned home, officers arrested the occupants and searched the vehicle, finding a BB gun, a scale, and \$600 cash. During the search, the passenger told officers that she had 4.5 grams of crack in her bra. Based on the informant's tip, the evidence found in the SUV, and the passenger's admission, the detective obtained a search warrant for the residence, where he found 38 grams of crack, weapons, ammunition, and a large amount of cash. Robinson argued that the evidence seized at the residence should be thrown out because the warrant was not supported by probable cause. The court agreed.

Importance: Law enforcement can't use evidence resulting from methods found in violation of the Constitution. When a warrant is based on a stop, and the stop was based on a tip, the tip has to be reliable or all of the evidence — from both the stop and the warrant — is tainted. Tips are less reliable when they come from criminals, arrestees, or those who haven't provided tips in the past. The informant in this case was all three. Because the tip in this case wasn't reliable, there was no reasonable suspicion to stop and search the SUV. Without the evidence from the SUV stop, there was no probable cause to issue a warrant. Without a valid warrant, the search of the apartment was no good, and the evidence seized could not be admitted at trial.

Keep in Mind: When someone with no track record of informing offers a tip, it's best to do everything you can to corroborate the tip before acting on it. If you can't corroborate an unreliable tip, performing a warrantless stop is unconstitutional.

More on Search and Seizure: Reasonable Suspicion

(Un)obstructed Justice: While on patrol, you see a vehicle with a license plate partially obstructed by a tinted plate cover and a trailer hitch. You follow the vehicle for several blocks in an attempt to read the plate. When you are unsuccessful, you stop the vehicle. You walk to the back of the vehicle to read the license plate while your partner questions the driver. You end up arresting the driver for driving his mother's car with a suspended license. Based on policy, the car must be towed. To prepare for towing, you inventory the vehicle and find a bag containing crack cocaine in the passenger side map pocket. At trial, the driver argues that the rear license plate was not obstructed and that, therefore, you had no reason to stop him and ask for his driver's license. He shows the judge photos. Is the seizure of the crack still good? No, according to the *Jones* court. The court found Jones' testimony and the pictures of the plate proved that the plate was not obstructed and, as a result, that officers did not have reasonable suspicion to justify the stop. If you don't have evidence to support your reasonable suspicion, the evidence might get tossed, and the suspect might walk. **State v. Jones**, Eighth Appellate District, Cuyahoga County, Feb. 13, 2014