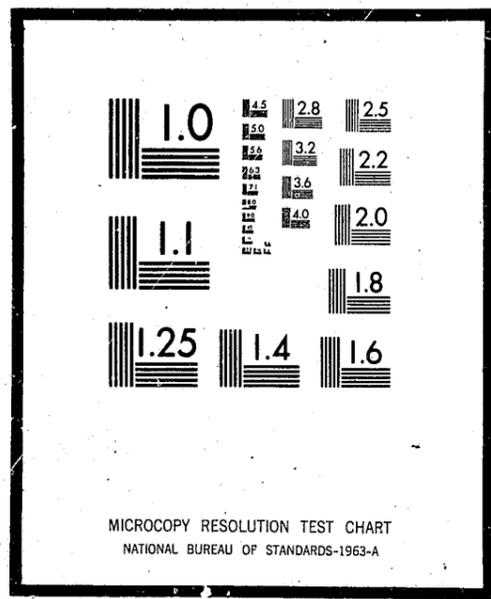


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U.S. DEPARTMENT OF JUSTICE
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NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

Date filmed

1/27/76

SOUTH CAROLINA LAW ENFORCEMENT ETV TRAINING PROGRAM



17

RULES OF EVIDENCE

PART III

prepared by SOUTH CAROLINA LAW ENFORCEMENT DIVISION • in cooperation with SOUTH CAROLINA EDUCATIONAL TELEVISION NETWORK

RULES OF EVIDENCE,

PART III 3



BY:
Assistant Attorney General
(South Carolina)
Hon. Joseph C. Coleman

Sponsored by:

South Carolina Law Enforcement Division

In co-operation with

South Carolina Educational Television Network

Endorsed by:

South Carolina Governor Robert E. McNair
South Carolina Sheriffs' Association
South Carolina Law Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina F.B.I. National Academy Associates
South Carolina Southern Police Institute Associates

PROGRAM OBJECTIVE:

This material will present information relative to Rules of Evidence.



LECTURE OUTLINE:

1. IS THERE ANY LEGAL RESTRICTION ON THE NUMBER OF WITNESSES WHICH MAY APPEAR IN A TRIAL FOR EITHER THE PROSECUTION OR THE DEFENDANT?

A. No.

(1) The judge should and usually does instruct the jury that they may believe one witness as against many or many against one.

OBSERVATION: It is highly probable that in many cases the testimony of a single witness may be more potent than the accumulated testimony of many.

2. CAN A WIFE TESTIFY AGAINST HER HUSBAND?

A. Yes. A wife may testify against her husband if she wishes (regardless of what the husband desires).

OBSERVATION 1: Generally, she is not compelled to do so.

OBSERVATION 2: The same rule involves the testimony of the husband against the wife.

3. IS IT LEGAL FOR A LAWYER, PRIEST, PASTOR OR RABBI TO DIVULGE INFORMATION TO A JURY GIVEN TO HIM BY A DEFENDANT?

A. No. This is considered privileged communication.

4. IS A DEFENDANT QUALIFIED TO TESTIFY IN HIS OWN BEHALF?

A. Yes. However, he cannot be forced to take the witness stand.

OBSERVATION: Should a defendant fail to take the witness stand, the prosecution cannot comment to the jury on that fact.

5. ARE THERE THINGS WHICH A LAWYER MIGHT DO ON CROSS-EXAMINATION OF A WITNESS IN ORDER TO CAST DOUBT ON HIS TESTIMONY?



A. Yes.

(1) He might weaken the witness's testimony by having him admit contradictory statements during his testimony, or at some previous time.

(2) Believability could be weakened by having the witness admit that he did lie in a previous case.

(3) Believability could be weakened by having the witness admit he had been convicted in the past of a crime involving moral turpitude.

(4) Believability could be weakened by showing that the witness has some physical defects in sight or hearing which would have prevented witness from seeing or hearing clearly that to which he is testifying.

(5) Believability could be weakened by bringing out the fact that the witness lacks a religious belief that would demand that the truth be spoken.

OBSERVATION: If it were shown that the witness was a communist, it would be common knowledge that the witness had no regard for the truth. (This could be brought out on cross-examination.)

6. ARE TRICKY QUESTIONS PERMITTED BY THE DEFENDANT'S ATTORNEY?

A. Yes, they are permitted and care and caution are recommended before an answer is given.

EXAMPLE 1: Question, "Are you still beating your wife?"
Answer, "I have never beaten my wife."

EXAMPLE 2: Question, "Please answer the question 'yes' or 'no'."
Answer, "Please rephrase the question or permit me to answer it in my own way."

EXAMPLE 3: Question, "Do you have any interest in the case?"
Answer, "No" (provided you do not have any interest, and, if you do have an interest in the case, a statement should be made as to what your interest is.)

EXAMPLE 4: Question, "Have you discussed the facts of this case with anyone?" Answer, "Yes, I have discussed it with the superiors in my department." (Note the natural impulse would have been to say "No".)

7. ARE THERE SOME GENERAL RULES THAT A POLICE OFFICER MIGHT FOLLOW WHILE ON THE WITNESS STAND?



A. Yes.

- (1) Answer only the questions asked.
- (2) Do not volunteer any information.

EXAMPLE: Question, "Do you know the defendant?"
Answer, "Yes." (Be sure not to elaborate to the extent of reciting prejudicial information.)

OBSERVATION: Prejudicial information can easily cause a mistrial as well as characterizing the witness as a "smart alec".

8. CAN ILLEGALLY OBTAINED EVIDENCE BE ADMITTED INTO COURT?

A. No.

(1) Evidence obtained by officers as a result of a bare "information and belief" search warrant cannot be used.

9. DOES THE NAME OF AN INFORMER HAVE TO APPEAR IN AN AFFIDAVIT ON WHICH A SEARCH WARRANT IS BASED?

A. No. (There must be enough information in the affidavit so that the magistrate, recorder or judge can determine that there was reasonable grounds for him to believe that a law was being violated.)

EXAMPLES OF WHAT SHOULD BE COVERED WHEN THE INFORMER'S NAME IS NOT LISTED IN AFFIDAVIT:

(1) The length of time that the informer has been known to the person signing the affidavit.

(2) Whether or not the informer has given information in the past.

(3) Whether or not past information has proven reliable.

(4) Actually what the informer saw, heard, or knows which leads him to believe that a law was or is being violated.

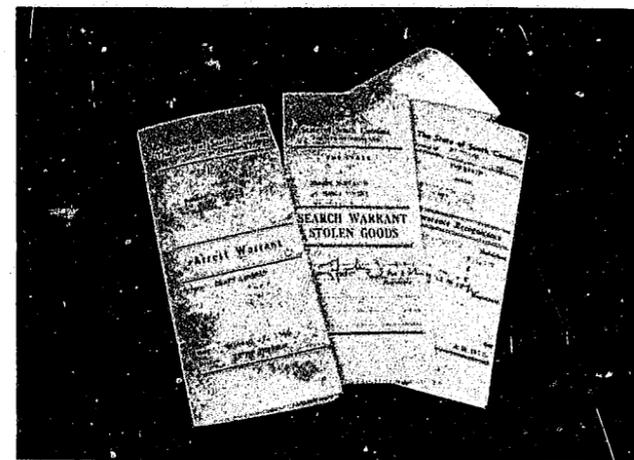
OBSERVATION: An example of a typical "information and belief" type of warrant based on information from an informer which was held to be unsatisfactory is, "I have information from a reliable source that heavy traffic went in and out of the yard of Jane Doe." An illustration of what would have been better to have said is: "My information comes from an informer whom I have known for several years. He has given me similar information many times in the past, and such information has, generally, proven to be reliable. My informer has told me that heavy traffic has been seen going rapidly in and out of the yard of Jane Doe during the past few days, no car staying for very long. Jane Doe is a known bootlegger, having been convicted of violation of the liquor law numerous times in the past."

10. IS IT ADVISABLE FOR A POLICE DEPARTMENT TO KEEP CONFIDENTIAL RECORDS ON INFORMATION FURNISHED BY INDIVIDUAL INFORMERS?

A. Yes. This is done to support positions in affidavits as to the reliability of previously furnished information by an informer. Dates and substance of information are very important.

OBSERVATION: Any member of the department familiar with its records could furnish this information to the court.

11. IS IT THE CONCERN OF A POLICE OFFICER EXECUTING A WARRANT AS TO WHETHER OR NOT IT IS LEGAL?



A. Yes. If the warrant is illegal, then the evidence found cannot be introduced, and efforts go for naught.

OBSERVATION: Note MAPP vs. OHIO says that illegally seized evidence cannot be used, in State or Federal Courts.

(1) If required information for a warrant is not supplied in the affidavit, the judicial officer has no authority to issue the warrant.

(2) This rule applies to all types of crimes.

NOTE: This is not to say that a case will be thrown out merely because some bit or piece of evidence was obtained illegally provided there is other evidence that is sufficient to convict without the use of the improperly obtained evidence.



EXAMPLE: There has been a killing. Several eye-witnesses saw the defendant quarrel with the dead man and then pull out a gun and shoot him. The defendant runs away, taking the gun with him. Following this, police officer, without a search warrant and without permission, enter the home of the defendant and find a gun, later identified as the murder weapon, which belongs to the defendant. The gun cannot be used as evidence in the case, but the testimony of the eye-witnesses can be used to convict the defendant.

12. ARE THERE IMPORTANT THINGS TO REMEMBER ABOUT A SEARCH WITHOUT A SEARCH WARRANT INCIDENT TO AN ARREST?



A. Yes.

(1) The law permits immediate search of an arrested person for the purpose of taking from him any weapon or other things with which he could make his escape or injure the officer.

(2) Search of the inside of the automobile (except locked trunks, luggage, or glove compartments) for valuable articles that might be stolen.

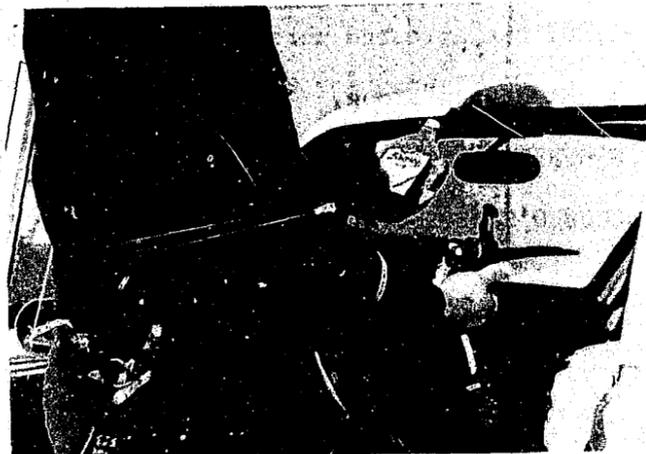
(3) It is the duty of any police officer who has a person under arrest to take ordinary, reasonable steps to see that the property of the arrested person is not left to the mercy of any thief who might happen along.

13. MAY AN OFFICER AFTER ARRESTING AND CONFINING A CHARGED PERSON TAKE THE ACCUSED'S KEYS, UNLOCK HIS CAR AND SEARCH IT LEGALLY?

A. No. This would be construed by the court to be "unreasonable search and seizure."

OBSERVATION: The inside of an automobile may be searched for unprotected articles of value that may be stolen while owner is in jail and unable to protect his property. However, if the car is locked, the contents of this car would be construed to be protected and there would be no justification to search it to see if articles of value were in it.

14. CAN LIQUOR LOCATED UNDER THE FRONT SEAT OF A CAR OR IN THE UNLOCKED GLOVE COMPARTMENT BE SEIZED AND USED IN A DRUNK DRIVING CASE?



A. It depends on when the search was made. If it was made at the scene of arrest and at about the time of arrest, it is all right. If search is made immediately after the defendant is jailed and discovery is a result of a search to protect property-- and not to discover evidence, it is also all right.

NOTE 1: If officers have good reason to believe there is illegal liquor in a locked portion of a car, it would be proper to go to a magistrate or recorder and secure a search warrant.

NOTE 2: If officers do not have a good reason to believe that illegal liquor might be found in a locked portion of a car and then secured a search warrant from a magistrate anyway, then this search warrant would be illegal.



STATEWIDE LAW ENFORCEMENT EDUCATION THROUGH TELEVISION

This training program is made available through the cooperation of the South Carolina Law Enforcement Division, the South Carolina Educational Television Network and the U. S. Department of Justice through funds made available under the Law Enforcement Assistance Act of 1965.

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