

## ***MOTION TO SUPPRESS PREPARATION***

A suppression motion is where the defense attorney challenges:

- Illegally seized evidence
- Improperly obtained confessions
- Results of chemical tests administered to determine blood alcohol content
- Whether police had probable cause to make a traffic stop or arrest

A motion to suppress hearing is a court appearance where both sides argue about whether evidence gathered or seized against a defendant should be excluded and not be able to use in court because the defendant's constitutional rights were violated by the police.

At the Motion to Suppress hearing, the DA has the burden of showing that any evidence obtained by law enforcement was done lawfully and constitutionally. The DA must prove that the officer had reasonable articulable suspicion to stop and detain the defendant or probable cause to arrest the defendant.

If evidence was seized the DA must show that such evidence was seized under reasonable circumstances based upon current law

The Motion to Suppress hearing is done in open court and the judge, not a jury, is the finder of fact and law. Initially, the judge will ask both the prosecution and defense to give opening remarks to the court. After opening remarks, the prosecution will present evidence through testimony of witnesses. Police officers who were involved in the arrest and/or search will testify. The Defense Attorney will have the opportunity to cross examine each of the Police witnesses on the facts and circumstances of each case.

After the prosecution rests its case, the defense attorney will have the opportunity to put up witnesses as well. Most times defense attorneys will advise the defendant not to testify, because of the defendant's right against self-incrimination.

Once the defense has rested its case, both the defense attorney and DA will present closing arguments based on the facts and evidence presented at the hearing and the current law. The defense attorney will argue that evidence should not be admitted at the upcoming trial. The DA will argue for the introduction and use all of the evidence to prosecute the defendant during the pending trial.

Once closing arguments are over, the judge will analyze the testimony and evidence to rule on the issues. In cases where witness testimony is in conflict the judge will make "a finding of Fact" regarding who they believe and no reviewing court can disturb that finding unless such is found to be clearly erroneous. The judge has the option to deliver the ruling at the hearing or

the judge may issue a ruling later, over time, after further review of the facts and circumstances from the evidence and testimony and its application to the law.

### ***Key Points for Officer Preparation***

- 1. Know your case:*** Read and study your report in order that you may testify in a truthful, accurate and thorough manner. Review any video or digital recordings prior to the hearing.
- 2. Schedule a pre-hearing meeting with your DA:*** Take the time before the hearing to discuss the facts and circumstances of your case and the reasons that justified your actions.
- 3. Insure you have plenty of rest and dress in a professional fashion***
- 4. Look at the Judge when you testify and speak in clear unambiguous terms:*** Do not use slang or jargon, describe issues and articulate facts and circumstances in an objective manner.
- 5. Do not let the defense attorney make you angry.***
- 6. Do not let the defense attorney put words in your mouth or attempt to contradict or change your testimony.***
- 7. Articulate why you thought or did what you did and “paint a picture” through your words for the judge.***
- 8. If you don’t know then say you don’t know***
- 9. Remember to tell your story in a very “specific and objective” context from the witness stand.***
- 10. Stick to the facts and circumstances in the case***