



## DWI Mock Trial – TZD 2017

October 26, 2017 – St. Paul, MN

### Your Presenters

- David Bernstein, Prosecutor – City of Minneapolis
- Joe Van Thomme, Prosecutor – Eckberg Lammers, P.C.
- The Honorable Greg Galler – Washington County
- Lt. Don Marose – Minnesota State Patrol
- Trooper Daniil Poptelecan – Minnesota State Patrol



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## What We Will Cover

- The Best Witness (AKA “P.E.T.”)
- Direct Examination
- The Judge’s Perspective
- Questions

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## *State v. Vankirk*

- Officer (DRE) receives driving complaint of vehicle “all over the road”
- Vehicle located and stopped
- Impairment clues observed in during DRE
- Statements given by suspect
- Blood sample taken



## THE BEST WITNESS

### “P.E.T.”

- PREPARE
- ENGAGE
- TEACH

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## THE BEST WITNESS - PREPARE

### Three Questions to Consider

- 1. Did you do your homework for court?
- 2. Do you know why you're testifying?
- 3. Have you talked with your prosecutor?

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## TIPS FOR BEING PREPARED

### Three Tips

- 1. Review your evidence.
  - Testify from memory (not memorization)
  - Review ALL of your evidence
- 2. Know Your Role.
  - Understanding your role in the process will help you anticipate issues
  - Practice your answers! (Seriously.)
- 3. Be Punctual. (Seriously.)

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## THE BEST WITNESS IS PREPARED

- How did he show the judge that he is prepared?
- Did the judge find out that he is not prepared?
- Is there certain information he knew verbatim?



## THE BEST WITNESS - ENGAGE

### Three Questions to Consider

- 1. What does your body language say?
- 2. Are you answering the question asked?
- 3. Do you have an “active memory?”

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## TIPS FOR BEING ENGAGED

### Three Tips

- 1. Credibility.
  - Don't be evasive.
- 2. Professionalism.
  - Judges/jurors pay attention to demeanor and attitude.
  - No arguing!
- 3. Impartiality.
  - Don't volunteer information.

From: *The Effects of Testimony Training on Law Enforcement Officer Self-Assessment of Testimony Skills*, Erica L. Baer, Florida Gulf Coast University; Brodsky, S.L., Neal, T.M.S., Cramer, R.J., & Ziemke, M.H. (2009). Credibility in the Courtroom: How Likeable Should an Expert Witness Be? *Journal of the American Academy of Psychiatry and Law*, 37, 525-532.

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## THE BEST WITNESS IS ENGAGED

- 1. Did he appear credible?
- 2. Did he appear professional?
- 3. Impartial or trustworthy?

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## THE BEST WITNESS - TEACH

### Three Questions to Consider

- 1. How can you teach the jury?
- 2. How can you/should you talk to the jury?
- 3. How can you be a confident expert without being cocky?

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## TIPS FOR BEING A GOOD TEACHER

### Three Tips

- 1. Educate.
  - Be able to demonstrate technical topics, your actions, your training/experience.
- 2. Talk Good.
  - Judges/jurors pay attention to demeanor and attitude.
  - No arguing!
- 3. Be confident.
  - Don't volunteer information.
  - Most jurors want to trust officers.

From: *Courtroom Testimony*, Bench and Bar, Winter 2009 Issue.

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## THE BEST WITNESS IS A TEACHER

- 1. Was he able to “teach” his testimony?
- 2. Use plain but effective language?
- 3. Confident or cocky?

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## THE BEST WITNESS

### The Judge's Perspective

**DO:**

- Answer what you know.
- Listen to the question asked.
- Review your reports/videos before court.
- Be respectful and truthful.

**DO NOT:**

- Add extra information.
- Keep talking after objections.
- Have a dog in the fight.
- Lie on the stand. Ever.

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## QUESTIONS?

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#### CONTACT INFORMATION:

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