

# Good essay about the laws of evidence

[Law](#), [Evidence](#)



## **Criminal Law**

Blond (2009, p. 164) stated that the best evidence rule expresses a preference for the use of original documents, instead of using reproductions. This has been known as the original document rule. The best of evidence rule only applies if it is being offered to produce the contents of evidence presented in court. The proponent of the writing seeks to prove its contents and that the writing is closely related to a material issue. In order to comply with the best evidence rule, the proponent of the evidence should produce the original document. If the producing the original is not possible, it must be shown that the original writing is unavailable despite reasonable efforts; and that the party who offers such evidence is not responsible for the unavailability (Blond, 2009).

The best evidence rule implemented into the U. S. court system requires the use of the original of a writing to prove its content rather than testimony recounting its contents or a copy of the writing. The rationale behind the application of the best evidence rules is to minimize the possibility of misinterpretation that could occur if the production of the original writing were not required to prove its contents (Mendez, 2006). Whenever a proponent offers a writing in evidence, the proponent must also present enough evidence to permit the judge to find that the writing is what the proponent claims it to be (Mendez, 2006).

In the case of *Olmstead v. United States*, the Supreme Court ruled that the use of wiretapped private telephone conversations as evidence which were obtained by police officers without obtaining judicial approval cannot be considered a violation of the rights of the defendant guaranteed under the

Fourth and Fifth Amendments. Such ruling was later reversed in the case of *Katz v. United States*.

In the case of *Katz vs. United States*, the Supreme Court held that the new concept of electronic surveillance violates the constitution if there is a violation of a reasonable expectation of privacy. As a result, there trespassing is no longer necessary on the part of the law enforcement agencies. Such activities take place when the police fail to observe a reasonable expectance of privacy which is equivalent to electronic surveillance that was achieved with or without physical trespassing of the act of wiretapping. In this particular case, the court decided that planting a listening device by the police inside the vehicle of the defendant is a violation of the right to privacy protected by the Fourth Amendment. In fact, the act of the police is a blatant transgression of the reasonable expectance of privacy, which can be in the form of electronic surveillance, regardless of the fact that there was an actual wiretapping or physical trespassing. When the defendant *Katz* made use of the public telephone booth and is engaged in a conversation and the police force placed electronic listening device on the booth, it has already violated the person's right to privacy. The Court stated that there was a violation of the Fourth Amendment by installing an electronic and listening device outside the telephone booth to record the conversation made by *Katz*. The act of tracking and recording the telephone conversations of *Katz* in a public telephone must satisfy the reasonableness test provided by the Fourth Amendment, unless it does not cause interference with the legitimate requirements of the members of the law enforcement.

On the other hand, the case of *Nardone v. U. S.*, 308 U. S. 338 (1939), the Supreme Court ruled that where evidence is obtained in violation of Fourth and Fifth Amendments, the use of evidence that was presented by the prosecution should not be allowed. Otherwise, the trial court will permit the very methods that are inconsistent with ethical standards and destroys the personal liberty of the defendant. Furthermore, it was held that the defendant shall carry the burden of proving that such evidence was illegally used by the prosecution to build the case against him. The prosecution must be given the opportunity to present that use of evidence bears an independent origin.

In the case of *Goldman v. U. S.*, 316 U. S. 129 (1942), the Supreme Court ruled that the use of the detectaphone by federal agents cannot amount to a violation of the Fourth Amendment. This ruling should be differentiated from the *Olmstead* case, since such case involved the tapping of telephone wires, where the court considered the fact that while using a telephone, the speaker is able to project the defendant's voice beyond the comforts of his home or office. Hence, there is an assumption of risk that the defendant's conversation can be intercepted. In the case of *Goldman*, the defendant was speaking in his own office, and he has the intention to confine the conversation within the four walls of the room. Thus, there was no intention that the conversation can go beyond the walls of his room and there is no assumption that he had taken the risk of another person using a detector in the adjacent room.

In the case of *Berger v. New York*, 388 U. S. 41 (1967), the Supreme Court held that there was a violation of the Fourth Amendment since there was

lack of sufficient judicial supervision and absence of protective procedures committed by the federal officers. Furthermore, it was held that conversations are guaranteed under the Fourth Amendment, especially when there was an electronic device that was used to record the conversation. Such activity constitutes a search that is defined under the Constitution. Such decision ruling upheld the decision in *Katz v. United States*, where it was decided by the Supreme Court that the defendant hold a reasonable expectation of privacy when he was engaged in a conversation inside a public phone booth, since it is a protected right under the Fourth Amendment.

The current status of wiretapping restrictions changed since there are circumstances when the law must generally allows that the arresting officers perform a search even without a warrant to lawfully conduct a search on the premises. The arresting officers may conduct a broader search of any evidence provided that there was probable cause that will justify the search. The objective of the Fourth Amendment is to protect the searches provided under the Constitution. Such act is not intended to delay the arresting officers to search and recover the fruits of the crime.

Girard (2011) states that the evidence derived from wire-tapping should be collected, marked and packaged properly in order to preserve the evidence. The police officers should be able to seal the evidence to preserve the evidence. Aside from this, the police officers who discovered the evidence should take notes, including documenting the recovery location, the time and date when it was recovered or received. It must also bear the description of the item, condition of the item and any unusual markings or

alterations of the item that was derived from wire-tapping. An inventory list of all the evidence collected must be made (Girard, 2011). It is necessary to prepare the chain-of-custody documentation. Finally, it is important to consider the best method to transport the evidence.

The fruit of the poisonous tree is a legal term used the U. S. to refer to any evidence that has been illegally obtained. The rationale of such legal concept is that when the source of the evidence or evidence itself is corrupted or tainted, it is presumed that anything which is obtained from the tree will result to tainted evidence o considered as a “poisonous fruit”.

In the event that the original evidence cannot be located, the outcome of the case is that the court should allow secondary evidence after providing valid reasons why the originals cannot be presented. However, the secondary evidence should be faithful reproductions of the original conversation. If the duplicate copies of the conversations are barely audible and poor copies, then there is likelihood that the case will be dismissed. The best evidence rule expresses a preference for the use of original documents, instead of using reproductions. However, these reproductions should be the exact copies of the original document. Since the issue in this case involves the contents of the recorded phone conversations, the best of evidence rule will apply.

## References

Blond, N. C. (2009). Evidence. New York: Aspen Publishers.

Girard, James (2011). Criminalistics: Forensic Science, Crime and Terrorism.

Sudbury, MA:

Jones and Bartlett.

Mendez, M. A. (2006). VI. Authentication and the Best and Secondary Evidence Rules. *University Of San Francisco Law Review*, 41(1), 1-44.