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## TACTICAL AND PSYCHOLOGICAL BASES OF NEUTRALIZATION OF COUNTERACTION TO THE INVESTIGATION OF A CRIMINAL OFFENSE DURING AN INVESTIGATIVE EXPERIMENT

**Abstract.** The purpose of the article is to develop tactical and psychological bases for meeting the suspect's opposition, incl. false testimony, while conducting an investigative experiment and elaborating tactical recommendations for overcoming such opposition. **Research methods.** The work is based on general scientific and special methods of scientific knowledge. **Results.** The behavior of a suspect during an investigative experiment on checking his testimony at the scene is subject to the laws of psychology. A significant factor determining the behavior of a suspect is the psychological impact of the environment. The latter can cause changes in the suspect's behavior, both positive and negative. Personal presence at the crime scene results in strong emotional feelings in the suspect that can complicate and even make it impossible to continue the investigative (search) action. The paper studies the refusal of a suspect to participate in the verification of testimony at the crime scene as well as former testimony at various stages of the investigative (search) activity. The risk of refusal exists both before starting the investigative action and in the course of its implementation.

**Conclusions.** The author draws attention to the fact that the participation of a suspect in an investigative experiment must be voluntary. Therefore, the effectiveness of an investigative (search) action depends on the suspect's position, his desire to take part in demonstration actions, and give explanations. The paper focuses on the role of the protective dominant as a factor that significantly affects the suspect's behavior. The protective dominant determines the features driving the suspect's behavior when verifying his testimony at the crime scene, among which the author highlights the mental state. During the investigative experiment, the suspect may have various mental states: fear, frustration, stress, and so on. In this regard, it is advisable to opt for observing the suspect's behavior. To reduce the risk that the suspect will refuse to participate in the investigative action, it is proposed to conduct an investigative experiment and verify testimony at the crime scene immediately after receiving it.

**Key words:** counteraction, investigative action, verification of testimony at crime scene, mental state, protective dominant, self-incrimination, psychological impact.

### 1. Introduction

The priority tasks of criminal proceedings are to improve the efficiency of investigating criminal offenses. At the same time, modern crime takes more dangerous organized forms. Thus, there is a problem of combating counteraction from persons who try to hinder the investigator in solving the investigation tasks.

One of the ways to meet the opposition to the investigation is to reveal false testimony. The modern stage of the evolution of criminalistics is characterized by the transition from the study of counteraction to the investigation as a phenomenon to the creation of a system

of methods, techniques, and means for overcoming and neutralizing it. The latter is the subject matter of investigative tactics. According to Prof. V. Yu. Shepitko, one of the areas of counteraction tactics is tactical means of meeting perjuries and exposing false testimony (Shepitko (2010), p. 167; Shepitko (2021), p. 180; Shepitko (2020), p. 177).

One of the effective procedural ways of exposing false testimony is an investigative experiment, in particular, in the form of checking the suspect's testimony at the crime scene. In the practice of investigation, there often arises the need to check information or

the investigative version based on the evidence. An investigative experiment belongs to a group of so-called “check” investigative actions. The verification of testimony at the scene is a specific kind of investigative experiment. On-scene verification is the process of comparing information obtained during interrogation and (or) ideal traces of memory with the tangible ambience of the crime scene through the narrative, demonstration, and explanations of the person whose testimony is being verified to reveal his awareness of the data being verified or refined, as well as to hold new factual data.

The feasibility of using the patterns of the suspect's behavior when conducting an investigative experiment to overcome counteraction to the investigation remains poorly studied. Some literary sources have only dealt with individual psychological aspects of the investigative (search) action. At the same time, the problem under consideration has been highly analyzed in terms of interrogation, face-to-face confrontation, and search (Large Ukrainian legal encyclopedia, p. 689-692).

## **2. Psychological patterns of the suspect's behavior**

The participation of the suspect in an investigative experiment must be voluntary. Therefore, the effectiveness of an investigative action largely depends on the suspect's position and his desire to participate in the verification of testimony at the scene. The psychology of the suspect can be used to: 1) diagnose his position, 2) predict his behavior, 3) choose the appropriate psychological impact, and 4) evaluate the information received.

The factors affecting the formation of the suspect's position and his behavior should be taken into account. The psychological literature singles out the following: a) the suspect's mental state; b) motives that guide him in performing certain actions; c) unfavorable conditions for the suspect due to his evident role in crime commission; d) influence on the suspect by others (Ratinov (1967), pp. 196–217, 272–285; Glazyrin (1983) p. 293–299).

The suspect's mental state is characterized by the supremacy of a defensive (protective) dominant. In psychology, a dominant means the temporarily predominant reflection system, which determines the work of nerve centers at the moment and thereby takes a bearing of behavior. The defensive dominant determines the focus of the suspect's mental activity and forms special mechanisms of his psychological protection. Psychological literature interprets psychological protection as a specific regulatory system of personality stabilization aimed at eliminating or minimizing anxiety associated with conflict consciousness

(Large Ukrainian legal encyclopedia, p. 321). According to the author, when checking testimony at the scene, one should regard the possible influence of the psychological mechanism of repression. Repression refers to neutralization, non-acceptance, and rejection of information that contradicts some personally significant attitudes of the subject. Thus, there are particular requirements for the communication form between the investigator and the suspect while checking testimony at the scene. V.L. Vasyliiev believes that regardless of the severity of the committed crime, the investigator is obliged to treat the suspect as an individual equal to other participants in the investigative action. It is inadmissible for the investigator to express irritation, contempt for the suspect, skeptical remarks, etc. No matter how audacious the suspect may be, the investigator must remain restrained and balanced (Vasil 'ev (2000), p. 472–473).

The protective dominant identifies the features driving the suspect's behavior when checking his testimony at the scene, namely: 1) his mental state; 2) his desire to avoid responsibility; 3) interest in the investigation course; 4) the suspect's tendency to exaggerate the investigator's informational “armament”; 5) the tendency to adapt his justifying position (Glazyrin (1983), p. 293–299). Psychological literature highlights the need to take into account the mental state of the person whose testimony is being checked (Ratinov, Efimova (1988), pp. 15–20). A mental state is a holistic characteristic of mental activity stable over a specific time segment, which conveys the peculiarity of mental processes depending on the reflection of reality, previous condition, and mental properties of an individual (Large Ukrainian legal encyclopedia, p. 781).

During an investigative experiment, there is a wide amplitude of mental states. The suspect may feel, for instance, fear, frustration, stress, etc. (Ratinov, Efimova (1988), p. 15–20). It is worth mentioning that the suspect's mental state may affect his refusal to participate in checking testimony at the scene or of former testimony. Psychological literature interprets fear as a negative mental state that occurs under circumstances when an individual has a motive and a conscious goal to quit the situation associated with the influence of an external stimulus but is forced to get into it for external reasons (Large Ukrainian legal encyclopedia, p. 784). In checking testimony at the scene, both a person involved and not involved in the crime commission may experience fear. Fear not only shackles memory but also hampers the entire human psyche and intellectual activity. It can suppress the will, moral self-control and critical abilities,

prevent the correct assessment of the situation, make a person more inclined to undesirable influences. In verifying testimony at the scene, it is possible to diagnose a mental state, which, in the author's opinion, is relevant.

During the verification of testimony at the scene, a person who repeatedly visits the crime scene is subject to the psychological impact of the surrounding environment (Konovalova (1997), p. 110–115). Consequently, he may have a specific change in his mental state when perceiving the places which keep evidence exposing him. Psychological literature always highlights the need to monitor the suspect's behavior when checking testimony at the scene (Glazyrin (1983), p. 134). In particular, it is about such features of an external manifestation of the state as confidence in the choice of movement direction, the display of objects, a sudden change in the movement direction, speed, stop, etc. The significance of the observation method in the testimony's verification at the scene resides in the fact that it allows the investigator to effectively control the suspect's behavior and maintain an optimal mode of communication, contributes to the choice of appropriate tactical techniques and their systems. Observation helps to identify the suspect's position, reveal whether he conceals information crucial to the investigation. Thus, in terms of conducting the investigative action, the observation method assists the investigator in finding material evidence. There are known cases in investigative practice when observation facilitated to find material evidence the location of which the suspects tried to hide from the investigation while checking testimony at the scene (Drobyniak (2000), pp. 12 (24%)

The protective dominant makes the perpetrator seek to carry out specific actions which, according to his calculations, should help him to avoid exposing the crime and hence evade responsibility (Ratinov (1967), p. 196). This can explain the suspect's refusal to participate in the testimony's verification at the scene and provision of false testimony during the interrogation.

The defensive dominant and the mechanism of psychological protection can be inherent not only in a guilty person also innocent who wants to defend himself from an unfair accusation (Ratinov (1967), p. 199). Therefore, in the psychological context, the verification of the suspect's testimony cannot be reduced to creating any artificial barriers for him, psychological restrictions for refusing from pretrial testimony given during the interrogation. It is also inadmissible to conduct the investigative action for the psychological fixation of the suspect on the testimony that is true in the investigator's opinion.

### 3. Tactical bases for overcoming the suspect's opposition during an investigative experiment

The investigative practice pays special attention to the fact that suspects tend to change their positions and adapt their justifying position as evidence is presented (Drobyniak (2000), p. 20). Therefore, in verifying the suspect's testimony, the tactics of the investigative action should be primarily aimed at detailing testimony, clarifying its interrelation with the situation and then eliminating contradictions, if they occurred. Such a tactic allows disposing of the untruth in the testimony of the interrogated person gradually and purposefully.

External influence is among the factors affecting the suspect's position (Vasil'ev (2000), p. 29). The considered factor is quite essential when conducting an investigative experiment. No influence on the suspect should be a prerequisite determining the reliability of findings of the investigative action. Thus, before checking testimony at the scene and in the process of its conducting, it is necessary to take measures to prevent the suspect from contacts with unauthorized persons. If there is any suspicion of the latter, the testimony's verification must be carried out immediately.

In the process of analyzing the position of the suspect during the investigative action under study, it is important to keep in mind specific motives for his consent to participate in the verification of testimony at the scene. Psychological literature distinguishes the following: fear of social condemnation, shame of realizing the immorality and illegality of own act, fear of revenge from interested persons, fear of consequences for the suspect's loved ones or separation from them (Ratinov (1967), p. 202). F.V. Glazyrin believes that even in the case of a pronounced readiness of the suspect to participate in the verification of testimony at the scene, it is worthwhile to puzzle out the true motives of such consent in detail (Glazyrin (1983), p. 31).

In the practice of law enforcement agencies, there are cases when suspects, having declared their consent to participate in the verification of testimony at the scene, in the course of the investigative action, show completely different places that are not related to the crime (Drobyniak (2000), pp. 20–24). Consequently, the awareness of the motives guiding the suspect allows the investigator to timely influence the latter in such a way that he changes his false position.

The suspect can also can also pursue the motive to check the reliability of concealment of crime traces and circumstances that may expose him. The investigative practice has

cases when persons suspected of committing particularly serious crimes agreed to check testimony at the scene to try escaping from custody during the investigative action or using the help of their accomplices (Ratinov, Efimova (1988), p. 132). Thus, when checking testimony at the scene, it is necessary to take measures towards the suspect's protection and ensure the safety of all participants in the investigative action.

There is a risk that the suspect may refuse to participate in the verification of testimony at the scene or quit his former testimony. Forensic literature has recommendations for reducing the risk of the suspect's refusal to participate in the investigative action. In addition, some authors propose to check testimony at the scene immediately after obtaining the consent of the interrogated person to take part in it. The timely verification of testimony at the scene is also recommended by investigative practitioners and follows from the analysis of investigative practice (Drobyniak (2000), p. 23; Verdict of the Ivanovo District Court of the Kherson region (2021)). Other recommendations were also offered: establishing and maintaining psychological contact with the suspect by the investigator, considering the motives that guided him while expressing the consent to take part in the verification of testimony at the scene, applying the method of reflective management (Vasil 'ev (2000), p. 472; Glazyrin (1983), pp. 132–133).

In order to reduce the risk of the suspect's refusal to participate in the investigative action or quitting former testimony, it is essential to check it at the scene after receipt. This requirement-recommendation is driven by the fact that the delay in verifying the suspect's testimony at the crime scene makes it impossible to verify the existing and obtain new evidence.

The risk of the suspect's refusal to participate in the verification of testimony at the crime scene also exists during its conduct. The psychological impact of the situation may be the reason for the suspect's refusal to keep participating in the verification of testimony at the scene (Note that forensic literature mainly marks the positive effect of the situation on the interrogated person, who visits the crime scene for a second time (Konovalova (1997), pp. 114–115). In the author's opinion, the perception of the crime scene or its individ-

ual episodes and the narrative of the crime assist the suspect in recollecting not only the circumstances of the event but also the emotions that prevailed in his psyche at the time under study. Therefore, personal presence at the crime scene triggers strong emotions in the suspect, which can complicate and even make it impossible to continue the investigative action. The psychological impact of the scene is a relevant factor that affects the person whose testimony is being verified.

The suspect's struggle of opposite motives to participate in the verification of testimony at the scene and their reorientation may take place both in the process of preparation for the investigative action and during its conduct. For this very reason, throughout the verification of testimony at the scene, the investigator must take measures aimed at maintaining the suspect's positive motives for participation in the investigative action. The interaction between the investigator and the suspect in verifying testimony at the scene is characterized by the need for constant control over the behavior of the latter.

**4. Conclusions.** The investigative experiment to verify the suspect's testimony at the scene is marked by the possibility of opposition in the form of false testimony. The investigative (search) action has the following features: 1) complex psychological relationship between the investigator and the suspect; 2) the ability of the investigator to psychologically influence the suspect to obtain the necessary information; 3) the conditionality of the suspect's position and behavior due to the interrogation that preceded testimony verification; 4) mutual reflection between the investigator and the suspect; 5) the possibility of the suspect's effect on the process of obtaining information. The investigator should use the psychology of the suspect while checking his testimony at the scene to overcome opposition of the latter. A thorough examination of the suspect's identity by the investigator is a compulsory condition. When conducting the investigative action, it is worthwhile to pay regard to all factors that somewhat affect the position and behavior of the suspect. To reduce the risk of the suspect's refusal to participate in the investigative (search) action and quitting former testimony, the investigative experiment must be conducted immediately after interrogation.

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## ТАКТИКО-ПСИХОЛОГІЧНІ ОСНОВИ НЕЙТРАЛІЗАЦІЇ ПРОТИДІЇ РОЗСЛІДУВАННЮ КРИМІНАЛЬНОГО ПРАВОПОРУШЕННЯ ПІД ЧАС СЛІДЧОГО ЕКСПЕРИМЕНТУ

**Анотація. Мета.** Розроблення тактико-психологічних основ подолання протидії підозрюваного, зокрема у формі повідомлення неправдивих показань, при проведенні слідчого експерименту та розробці тактичних рекомендацій, спрямованих на подолання такої протидії. **Методи дослідження.** Робота виконана на підставі загальнонаукових та спеціальних методів наукового пізнання. **Результати.** Поведінка підозрюваного під час слідчого експерименту з метою перевірки його показань на місці події підпорядковується законам психології. Істотним чинником, що визначає поведінку підозрюваного, є психологічний вплив оточуючої обстановки. Останній може викликати зміни у поведінці підозрюваного, причому як в позитивному, так і в негативному напрямку. Особиста присутність на місці злочинної події приводить до значних емоційних переживань у підозрюваного, що може ускладнити і навіть унеможливити продовження слідчої (розшукової) дії. У роботі досліджується проблема відмови підозрюваного від участі у перевірці показань на місці, а також від раніше даних показань на різних етапах проведення цієї слідчої (розшукової) дії. Ризик відмови існує як до початку слідчої дії, так і безпосередньо при її проведенні.

**Висновки.** Автором звернуто увагу, що участь підозрюваного у проведенні слідчого експерименту обов'язково має добровільний характер. Тож ефективність слідчої (розшукової) дії залежить від позиції підозрюваного, його бажання брати участь у демонстраційних діях і давати пояснення. В роботі акцентовано увагу на ролі захисної домінанти як чинника, який істотно впливає на поведінку підозрюваного. Захисна домінанта визначає особливості, що зумовлюють поведінку підозрюваного при перевірці його показань на місці, серед яких автор виділяє психічний стан. Під час слідчого експерименту в підозрюваного можуть мати місце різні психічні стани: страх, стрес, фрустрація, тощо. У зв'язку із цим доцільно використовувати спостереження за поведінкою підозрюваного. З метою зниження ризику відмови підозрюваного від участі в цій слідчій дії пропонується проводити слідчий експеримент та перевіряти показання на місці негайно після їх одержання.

**Ключові слова:** протидія, слідча дія, перевірка показань на місці, психічний стан, захисна домінанта, самообмова, психологічний вплив.

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