

Evidenced Based Prosecution of Domestic Violence

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Why do we prosecute without victims?



- Ethical considerations
- Victim safety

Know When to Charge and When to Fold

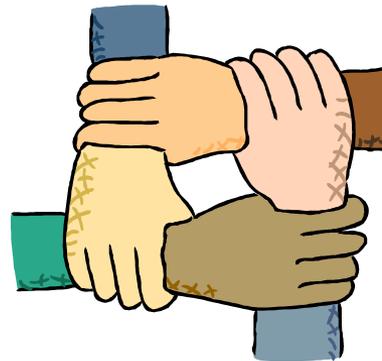
- #1 Consideration = VICTIM SAFETY
- Collateral consequences
 - For victim and batterer
- Sufficiency of evidence
- Victim alienation
- Lethality factors

Effective Tools for Prosecution

- Combined Community Response

- Who are your teammates?

- Law enforcement
 - Medical personnel
 - Advocates
 - Probation
 - Her family/neighbors/friends



- Early contact with the victim
 - That may be YOU!!
 - Early contact = building trust



- Vertical prosecution considerations
 - Maintaining the same prosecutor for the same defendant has advantages (634.20)
- Specialized prosecution

- Training
 - Focused training for law enforcement and prosecutors
 - Free resources online
 - Webinars through MCAA, Family Justice Center, BWJP

- Experts
 - Identify and develop your experts early on
 - Cops, physicians, etc.
- Early resolution
 - Negotiate pleas early on
 - Remember the prosecution may make a speedy trial demand as well as the defense
- Ongoing investigation
 - Abuse does not happen in a vacuum, continue to work the case
 - Jail calls
 - Medical reports
 - Rapport building with the victim

Benefits of Victimless Prosecution

- Victim safety concerns
- Eliminates tampering/intimidation opportunities
- Requires better policing
 - Stronger evidence based cases
 - Training opportunities with law enforcement

Pitfalls of Evidence Based Prosecution

- Jury Perceptions
 - If she doesn't care, why should we
- Ensuring all evidence comes in
 - Anticipate
 - Prepare
 - Research
 - Argue
- Victim concerns
 - Possible alienation

Evaluating the Case

- What evidence do I have left if I don't have the victim?
 - Other witnesses
 - Family members, neighbors, friends
 - Non-testimonial evidence
 - Evidence provided by law enforcement
- Make the decision early
 - Go on the offensive with pretrial motions

Evidence that is NOT Testimonial

- 911 calls



- Statements to medical personnel (1st responders)



- Law enforcement observations



- Excited Utterances
 - How do we prove the statements are excited utterances or responses to an ongoing emergency?

RECORDINGS

TESTIMONY OF LAW ENFORCEMENT

Law Enforcement Testimony

- Photos
 - Can they identify the victim?
 - Lay out the scene
- Recordings
 - Don't forget about the camera
- Physical/forensic evidence
 - Weapon
 - DNA/fingerprints



Other evidence

- Any item that you can see that corroborates her statement (please don't ever ever ever call it a story)
- Prior relationship evidence (634.20)
 - Listen to your recordings, what is she telling you?
- Don't discount the neighbors. 
- Find out who she talks to

Win Your Case Before it Starts

Pretrial Motions

- Relationship Evidence (634.20)
 - This is the scariest evidentiary motion for defense
 - Includes current victim and all prior or subsequent victims (family/household members)
 - Allows for entry of convictions even if defense stipulates
 - Permits testimony of the officer who responded in lieu of the prior victim
 - May also be entered via factual basis/plea of defendant in that prior case

More Pretrial Motions

- Spriegl
 - Any other assaults that are not family/household?
- Impeachment
 - All prior felonies and any prior conviction for crimes of falsity
 - Subject to proper analysis of the court

Getting the Statements In

- 801 Motions (these may only be used if the declarant testifies!!)
 - If you have a victim testifying and it is consistent, then 801(d)(1)(B)
 - If there has been an OFP hearing and she testified there but is now recanting may use this under 801(d)(1)(A)
 - 801(d)(1)(D) allows use of recordings at the scene so long as the declarant testifies

Getting Statements In – No Victim

- 803: Excited Utterance
 - Statement made close in time to the event
 - While declarant still under stress of the event
 - Statement relates to the event
- 807: Residual Exception
 - Meets the spirit of hearsay exceptions
 - Reliable
 - i.e. statement made against her relationship interest

Creative Charging Considerations

- False Imprisonment
- Aggravated Robbery
- Simple Robbery
- Terroristic Threats
- Stalking / Pattern of Stalking
- Tampering
- Child Endangerment

Children and Domestic Cases

- Evidence exists to support the allegations that children subjected to sights and sounds of domestic violence within the home suffer significant and substantial emotional trauma.
- Child endangerment = A parent, legal guardian, or caretaker who endangers the child's person or health by intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death.
Minn.Stat. 609.378 (2013)

Know Your Resources

- **Aequitas** <http://www.aequitasresource.org/>
- **National Family Justice Center Alliance**
<http://www.familyjusticecenter.org/>
- **National Training Institute for Prevention of Strangulation**
<http://www.strangulationtraininginstitute.com/>
- **Battered Women's Justice Project** <http://www.bwjp.org/>
- **MCAA** <http://www.mcaa-mn.org/>
- **Praxis International** <http://www.praxisinternational.org/>
- **Other Prosecuting Agencies**
- **Community Advocates**