



ANS/PAAM TV

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**DOMESTIC VIOLENCE:
Legal Strategies to
OVERCOME Challenges**

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Recognizing the Distinction

What is DV under the CRIMINAL LAW:

MCL 750.81(2) . . . An individual who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has a child in common, or resident or former resident of his or her household, or an individual with whom he or she has an intimate relationship . . .

Recognizing the Distinction

What is Domestic Violence in REALITY (BATTERING context):

A pattern of physical, sexual, emotional, and/or financial abuse, perpetrated with the intent and result of establishing and maintaining control over an intimate partner.

REALITY OF DOMESTIC VIOLENCE

TACTICS

- Using coercion & threats
- Using intimidation
- Using emotional abuse
- Using isolation
- Minimizing, denying, blaming
- Using children
- Using male privilege
- Using economic abuse

REALITY OF DOMESTIC VIOLENCE

Why doesn't she just leave?

- May not be safer
- Believes batterer will
- Fear
- Economic reasons
- Love
- Nowhere to go
- Children- Custody - Danger issues change
- Family and community pressure
- Lack of confidence in the system
- Immigration issues
- Religion/forgiveness

REALITY OF DOMESTIC VIOLENCE
IT'S WHAT MAKES IT DIFFICULT

What, or Who do Victims Blame?

- Self
- Alcohol or drug use
- Violent childhood
- Stress
- Unemployment
- Racism
- Batterer's family
- Batterer's social circle the same

REALITY OF DOMESTIC VIOLENCE
IT'S WHAT MAKES IT DIFFICULT

How does the abuse feel to the victim?

- Not sure when the next abuse will occur
- Constantly walking on eggshells
- Crazy
- Alone
- Optimistic batterer will change
- Hopeful that this was the last incident of abuse

REALITY OF DOMESTIC VIOLENCE
IT'S WHAT MAKES IT DIFFICULT

VICTIMS
ARE MOST IN DANGER
WHEN THEY LEAVE

REALITY OF DOMESTIC VIOLENCE
IT'S WHAT MAKES IT DIFFICULT

Barriers to protection

Survival strategies

REALITY OF DOMESTIC VIOLENCE
WE CAN FACE THESE CHALLENGES

Recanting

Inconsistencies

Failing to show up

Requests to have charges dropped

"WAS SHE STUCK IN HER SILENCE?" -Claire Kaplan

REALITY OF DOMESTIC VIOLENCE
IT'S WHAT MAKES IT DIFFICULT

In the legal context –
the police are good at
responding to individual incidents,
but the law really isn't set up to
deal with the broader social
context of Domestic Violence, the
"bigger picture".

WHY DO OFFENDERS BATTER?

Because they can,
Because they thought it was a good idea
Because it's effective
Because they want what they want, when they want it
To stop her from doing something, to get her to do something, LIKE NOT COMING TO COURT, OR RECANTING!!

Battering is instrumental, strategic, and purposeful behavior designed to bring about an outcome.

YOU MUST CONSIDER ALL EVIDENCE

- Prior bad acts
- Statements made to officers
- Letters to victim or children
- Phone calls/Texts from jail
- PPO petitions and PPO orders*
- Forfeiter by wrongdoing evidence

LEGAL STRATEGIES
HELPING US OVERCOME DV CHALLENGES

Case law, statues, and Rules of Evidence allow us to put the "bigger picture" in front of the jury:

1. Excited Utterance
2. Statements to Law Enforcement
3. Other acts evidence
4. Forfeiture by wrongdoing

THE LAW

HEARSAY: NOT ADMISSIBLE

MRE 801(c): "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Basically, out-of-court statements offered to prove the truth of the "content of the statement".

THE LAW

EXCEPTION TO HEARSAY

EXCITED UTTERANCES

MRE 803(2)
Statements relating to a startling event or condition made while the declarant is under the stress of excitement caused by the event or condition are NOT hearsay.

Unavailability of the declarant is immaterial, BUT excited utterances are still being challenged in court under CRAWFORD.

**EXCITED UTTERANCES MADE TO POLICE,
WHEN THE VICTIM IS UNAVAILABLE**

Defense is challenging excited utterances made to police when declarant (the victim) is unavailable at exam or trial.

Crawford says that if the statement's **primary purpose** is "**testimonial**" ie. Made to establish or prove past events potentially relevant to a later criminal prosecution; then they violate the defendant's right to confrontation- his right to cross examine the witnesses brought against him, and are inadmissible.

If the statement's primary purpose is "non-testimonial" ie. Made to enable police assistance to meet an ongoing emergency, then it is admissible.

STATEMENTS TO LAW ENFORCEMENT

MCLA 769.27c

STATEMENTS TO LAW ENFORCEMENT
DESCRIBING INFLICTION OR THREAT OF
PHYSICAL INJURY

OTHER ACTS EVIDENCE

MCLA 769.27b or MRE
404(b)

Defendant's motive, intent,
scheme, plan, system in doing an
act, may be proved by other
victims

Other Acts Evidence

MCL 768.27b allows for what previously would have been
inadmissible propensity evidence in Domestic Violence cases.
See Pattison, 276 Mich. App 613, 619; 741 N.W.2d 558 (2007).

Overview to Admit Other Acts

- Difficult issue for judges, not just prosecutors!
- Common behavior or plan or scheme must be testified to in detail.
- Must be careful to balance prejudice vs. probative value.
- Prior bad acts, if described in certain detail with a clear and concise record of proof, can serve as highly probative information in Domestic Violence cases

Forfeiture by Wrongdoing

MRE 804(b)(6): Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness. Statement by declarant made unavailable by opponent. A statement offered against a party that has engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness

Forfeiture by Wrongdoing Case Law

Giles v California, 554 U.S. 128 S.Ct. 2678, 2684; 171 L.Ed.2d 488 (2008).

**Forfeiture by Wrongdoing
trumps Confrontation Clause**

When . . . Defendant's
own behavior caused
the victim's absence
from court.

**REMEMBER THESE TOOLS &
LEGAL STRATEGIES
TO ASSIST YOU WITH DV CHALLENGES**

1. Statements to Law Enforcement
2. Excited Utterance
3. Other acts evidence
4. Forfeiture by wrongdoing

**LEGAL STRATEGIES
HELPING US OVERCOME DV CHALLENGES**

DOMESTIC VIOLENCE:
course of conduct crime

WHERE
pattern of behavior is relevant!!

**LEGAL STRATEGIES
HELPING US OVERCOME DV
CHALLENGES:
EVIDENCE
BASED
PROSECUTION**

WHAT WE CAN DO?

UTILIZE these legal tools to
make our case!
Present the bigger picture to
the judge/jury.

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