

## THE BLUESHEETS

### EVIDENCE BASED DOMESTIC VIOLENCE

It's ten hours into a twelve hour shift. It may be a Wednesday, but it's actually your Friday. It has been dark for several hours. It's the time of the night when activity is at a crawl. It's a quiet that gives a false sense of security and belief that this will be the shift were you actually get to leave work on time. It is then that the call comes over the radio. It's a pierce in the darkness that cuts like a knife. The location is familiar. You have been there many times. Sometimes weeks go by without being called out to this residence.

SO, HOW DO YOU GO ABOUT PROVING A VICTIM CRIME WITHOUT A VICTIM? IT ALL COMES DOWN THE NIGHT OF THE INVESTIGATION. 80 TO 90 PERCENT OF THE INVESTIGATION MUST BE DONE THE NIGHT OF THE INVESTIGATION IN ORDER TO SUCCESSFULLY PROVE A "VICTIM LESS" DOMESTIC VIOLENCE CASE.

Other times, you go out hourly. Many arrests have been made but the calls never seem to stop. You know that a response is required but there is a reluctance to do so. But with a sigh, you call in to dispatch and head over to the "domestic in progress."

It is a scenario familiar to every law enforcement officer who has ever worked the streets. From small towns to large cities, a

"domestic in progress" is a call that is both common and despised. It is understandable to question this relationship. You find yourself thinking, "Why won't she leave him?" "Doesn't she know that he will eventually kill her?" "Every time I arrest him, she says that it's the last time she will take him back. Why does she lie to me?" "It is such a waste of time to arrest him. I don't even know why I bother."

So the question remains, "What can I do to make this victim finally go through with the prosecution of her abuser?" The short answer is...nothing. (Do not stop reading. There is a point, I promise). Well, nothing additional. As an officer, you are already doing all that you can do to support the victim making the decision to leave the perpetrator. By responding to the call, treating the victim with respect and going through the tireless motions that are involved in responding to a domestic violence situation. The heartbreaking truth is that a victim will not leave an abuser until she is ready. Statistically, a victim is abused seven times before she even calls the police. Some victims never leave. And sometimes, they are killed at the hand of their abusers.

I am not a mind reader. But if I had to guess what you are thinking after reading the last paragraph, it would be something along the lines of, "So, why am I even responding to these calls?" Or, "If I can't convince her to leave, what purpose is there to me serving and protecting the victims that won't take the steps to protect themselves?" But there is hope. The most important work you will do in a domestic

violence investigation takes place at the time of response. By investigating a domestic violence case thoroughly and appropriately, there is a substantially better chance that a criminal charge will result in a disposition that does not end with a dismissal.

So the questions remains, “how can a criminal case go forward if the victim doesn’t want to participate?” The answer – accept that she won’t. Then investigate accordingly. Each time, all the time. A commonly posed question in this situation is, I don’t have to do the extra work that it takes to prove the case without her, right? Wrong. Domestic violence is a fickle mistress. No matter how much the logical mind knows not to return, the heart wants what it wants. Domestic violence is different than any other crime. How often do you worry about a victim of a carjacking seeking out the thief to make sure that he is not mad? It is as ridiculous as it sounds. Unfortunately, when you mix love and violence, logic goes out the window.

So, how do you go about proving a victim crime without a victim? It all comes down the night of the investigation. 80 to 90 percent of the investigation must be done the night of the investigation in order to successfully prove a “victim less” domestic violence case. This type of prosecution also referred to as “evidence based prosecution,” has always been possible. However, it is only recently that the criminal process has shifted focus from emphasizing victim participation and put it on evidence collection. By focusing on the factors that are within the control of the law enforcement officer, the unpredictable nature of domestic violence investigation starts to chip away, making these cases easier to prove and dispose of without a dismissal.

A complete and thorough investigation is the key to a successful evidence based prosecution. There are four areas of importance when it comes to domestic violence prosecution. Those areas are (1) Evidence Collection, (2) Report Writing, (3) Speaking with the Victim, (4) Interacting with the Defendant.

When it comes to evidence collection, the more the merrier. Corroboration is the key. Jurors

want that “CSI” moment, tangible evidence to hold and discuss during deliberation. During the initial call and investigation, look for evidence of the crime. Anything from broken objects, torn clothing and weapons help to bring the case to life in a courtroom. Taking pictures of the scene also helps to bring the reality of the violence to a jury. Take more pictures than you think will be necessary. Document *the* entire scene. This includes, but is not limited to, every room where the violence occurred and/or words were exchanged. This will assist the prosecutor throughout the prosecution of the case. Particularly when a victim doesn’t participate, pictures will aid in telling the story that she is not ready or wanting to tell.

While pictures are worth a thousand words, words can be even more powerful when trying a domestic violence case. With proper and detailed report writing and documentation, a victim can be present in a courtroom even when she does not physically appear to testify. Under most circumstances, out of court statements being repeated by someone who heard them prior to court, that are being offered to prove an aspect of the case, will not be allowed by the judge. However, the Oklahoma Rules of Evidence allow, under the right conditions, for hearsay to be admitted in court. However, evidence collection is the key to assisting the prosecutor in having the avenue to admit this important piece of the puzzle. Examples of these statements are medical records, 911 calls, jail phone calls and excited utterances. Excited utterances are statements made by a witness and/or victim while they are still under the stress of that excitement. It is immensely important to write down the demeanor of the witnesses that are present at the scene of the crime. Whether they are crying, hysterical, shaking, bleeding or even calm, cool and collected. Ask these questions of other witness during the investigation. What did the neighbors hear or see? What did they observe of the scene or witnesses? Just because a witness did not observe the violent act, does not mean that they are not an important part of the story. Whether they heard a loud bang, yelling, or the victim ran to their house after the attack, a case can often be made on this corroborative testimony alone.

In addition to providing possible hearsay evidence, neighbors and family members can also play a key role in proving that the victim and defendant qualify as being in a domestic relationship. Having a witness who can say how the two are related can mean the difference in proving that the domestic crime happened. Also, look for other ways to prove the relationship through evidence such as a marriage certificate, birth certificate, lease and even family photos. Proving the relationship aspect of a domestic violence crime can be an easily forgotten requirement. However, if the responding officer and assigned investigator meticulously detail their reports and investigation, a prosecutor can easily meet this issue head on.

Collecting medical records, jail calls and 911 calls can also be key to a successful prosecution. The medical records pertaining to victims of domestic violence are not subject to the boundaries of HIPPA. Federal law and state law allow for law enforcement to retrieve these records without the need for the approval of the victim. Statements made to medical personnel can be repeated in court by these officials. In addition to statements made to medical personnel, statements made in the jail calls can also be a key to a successful evidence based prosecution. Nine times out of ten, the first person that an abuser will call is his victim. During the majority of these calls, the victim will tell it like it is and the defendant will be apologizing and begging her not to follow up in the prosecution of the case. Including an NCIC is also crucial in assisting the prosecutor in knowing the violent history of the Defendant.

Interacting with the Defendant can be just as important as interacting with witnesses or even the victim. There are times when the perpetrator will be your best source of information. Domestic abusers are cocky and entitled, particularly if they have abused before and not suffered any consequences. They will more than likely admit to the relationship, being at the scene of the abuse

and sometimes, they will even admit to the physical contact. They will almost assuredly down play their involvement. However, locking the defendant into a story can be immensely important. By doing this, the Defendant will not be afforded the opportunity to craft a story with the assistance of his attorney. If at all possible, have the Defendant's story memorialized either by a written statement and/or recorded statement. Miranda requirements still apply. That being said, Defendants will be often be forthcoming in trying to "clear their name" and will often not need be Mirandized. Take note of his demeanor and appearance. Is he disheveled? Does he have bloody knuckles or other injuries? Is he calm? These details can be just as important as documenting other aspects of the scene. Lock the Defendant down any way you can, including how he looks. Taking pictures of both the Defendant and victim will help with this aspect of the investigation.

A full and detailed investigation within the first few hours is crucial in the prosecution of domestic violence. This is truer in the investigation of domestic violence than any other type of crime. By diligently working a case at the forefront, the impact in the community will be noticeable. By being able to prosecute these violent people even when the victim does not want to participate, perpetrators will stay incarcerated longer. Whether that be in the county jail awaiting disposition or in the Department of Corrections awaiting release, officers will spend less time responding over and over to the same location. Prosecutors work with the tools that are brought to them by the cases assigned officer. You would not hand a carpenter a screw driver and tell him to build a house. By relying solely on the victim's participation to determine the success of a case, you are doing just that. By doing a thorough investigation, you will bring the entire toolbox to the table to allow the prosecutor to build the house (or jail cell) needed to hold the Defendant accountable.

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