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Stopping abusers before they kill; Police, prosecutors say building case without victim's testimony is key

By Tom Groening, The News Staff

The details of Maxine Witham's death were shocking, but police and prosecutors familiar with the Rockport woman were hardly shocked that it had come to this.

Police allege that Witham, 35, was beaten to death by her boyfriend, David Haraden, 48, a day or two before Jan. 4, when she was found dead in a Portland hotel room.

Witham's injuries included brain hemorrhaging, a broken neck and a lacerated liver.

The couple was known to Rockport police because they had arrested and investigated Haraden for domestic abuse before Witham was found dead in the hotel room.

Haraden, who holds a black belt in the martial art tae kwon do, has said he was not responsible for her death. He told Portland police another man committed the crime.

Witham's death – and other recent cases – gives rise to questions about Maine law enforcement's ability to intervene effectively when an apparent serial abuser is on an escalating track of violence.

In 2004, 10 of Maine's 19 homicides were ruled incidents of domestic violence.

That's typical, said Stephen McCausland, spokesman for the state Department of Public Safety. About half the state's murders in 2004 were committed by a family member or a current or former boyfriend or partner of the victim.

Rockport Police Chief Mark Kelley, a 25-year law enforcement veteran, said much has changed in the approach police use in domestic violence cases. When Kelley began his career, police might tell a husband who had struck his wife to go sleep elsewhere for the night, then offer the wife a ride to a family member's home.

Bangor Police Chief Don Winslow agreed that changes have been dramatic.

"We have come light-years ahead from where we were 15 years ago," he said.

Then, he said, “We looked at it as a family matter, not a crime. We’d take him to a brother’s house to sleep it off.”

Not anymore.

If police in Maine have reasonable cause to believe a man has struck a woman – or vice versa – they are mandated to arrest the abuser. Bail commissioners are required to attach, as a condition of release, that the alleged abuser may have no contact with the victim until the defendant is arraigned.

The law requiring arrest has been a huge step forward, say police and prosecutors.

“The community has forced law enforcement to be more responsive,” Winslow said.

Nevertheless, on many occasions the abuser avoids conviction, abuser and victim are reunited, and the patterns of abuse return. Police and prosecutors often are powerless to build a case against the abuser because the victim won’t testify in court.

The reasons victims won’t testify are varied and may escape the understanding of those outside the situation. They are psychological and economic, with the victims fearful of retribution or losing financial support for children, while blaming themselves for the violence.

Stephanie Laite, a victim-witness advocate in the Knox County District Attorney’s Office, estimates that one in 10 victims is willing to testify.

Still, strides have been made in the critical 24 hours after an arrest, when victims often rethink their decision to testify against their abuser. One big step is the addition of detectives assigned exclusively to domestic violence cases.

For eight years, Bangor police have had such an officer. Winslow gives high praise to Detective Catherine Rumsey. According to departmental policy, she will meet with the victim a day or two after the assault and might photograph the bruises that have emerged on her face.

Laite also contacts domestic abuse victims the day after the complaint.

“It’s my job to get them to cooperate,” she said. Laite often has success in persuading a reluctant victim by suggesting that a judge may order substance abuse or anger management counseling rather than jail time.

Mike Middaugh, a sergeant with Waldoboro police, served as Knox County’s first domestic violence coordinator, from 1998 to 2003.

When he started, successful prosecution rates were at 50 percent; when he left, they were at 95 percent.

“We really don’t need the victim,” he said. “It’s an evidence-based case, not witness-based.”

For years, he said, the question asked was why did the victim stay. “And we should be asking, ‘Why do the abusers abuse?’”

If the victim refuses to testify, police and prosecutors have the tools to put abusers behind bars, said Alice Clifford, an assistant district attorney in Penobscot County.

Clifford has achieved many domestic assault convictions without a victim’s cooperation. She even got a conviction when the victim testified for the defense.

Clifford trains police officers in domestic violence investigations at the Maine Criminal Justice Academy in Vassalboro. She tells officers to approach the case assuming the victim won’t cooperate.

“When we do training, we tell them to do it like a murder investigation, where there is no victim available,” Clifford said.

Police on the scene should photograph marks on the victim’s body and on the suspect’s hands; interview children; interview neighbors; and look for such details as pulled-out hair on the floor and broken vases.

“You can build a strong case by taking photographs of the injuries,” Winslow said.

Also admissible in court, if a victim won’t testify, is what is known as an “excited utterance.” If a victim, in the heat of the moment, tells a dispatcher, officer or neighbor that he or she has been assaulted, but later changes the story, the original version is given weight in court.

Clifford tries to negotiate a guilty plea rather than go to court in every case, she said, because it gets an offender a first strike on the record. A third conviction bumps the assault offense up to the level of a felony.

Knox County District Attorney Geoffrey Rushlau said the single most frustrating scenario he faces as a prosecutor in these cases is when police fail to interview the suspect. Often, the suspect will admit the crime while putting his or her spin on it or will tell a story so ridiculous that it nearly equates to a confession.

Also, police should do more than note in their reports that “the room was messy,” Rushlau said, and instead document the overturned furniture or smashed dinnerware.

Police also should interview emergency medical personnel, he said. Often, a victim will tell someone treating them the cause of their injuries.

Clifford also favors creating a state coordinator position on domestic violence. Many committees and task forces have studied the problem, she said, but few recommendations have emerged.

Francine Stark, community response coordinator for Spruce Run, a domestic violence agency in Penobscot County, agreed that the effort by investigating officers is a key part of successfully turning the tide against abusers.

“It’s about law enforcement working hard on these cases,” she said. “It really does come down to having law enforcement approach this like a real investigation. It’s tough – it takes extra time,” and is often difficult if one officer responds to a complaint.

At the same time, Stark gives credit to law enforcement making dramatic improvements from 1980 to 2000.

“It’s like night and day,” she said.

Still, many of those arrested for domestic violence never see the inside of a courtroom.

Rushlau said he would not prosecute a case he knows will be dismissed by a judge, saying such prosecution is ethically wrong and a waste of community resources.

Asked what changes might make it easier to put abusers behind bars sooner, several officials said a change in public attitude is more critical than new laws.

“Society as a whole needs to change how they view this,” said Clifford. People “need to actively report and make sure authorities know if they’ve witnessed things.”

Stark said every community institution – law enforcement, businesses, churches, extended families, schools – needs to adopt a zero-tolerance attitude toward domestic violence.

“Your community has to say to the abuser, ‘Stop it.’”

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