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With or Without You; Domestic-Violence Prosecution No Longer Needs Victim's Testimony

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The barrel of the .40-caliber Beretta felt cold against her temple, and when Magda Lynn Hays heard her boyfriend allegedly pull the trigger, she knew it was over.

"You know how they say your whole life flashes before you? That really happens," she said.

Luckily for Hays, the gun wasn't loaded right, and police arrested her boyfriend before he could do much more. Hays' boyfriend disputed her version of events when he was interviewed by police. He said he didn't touch her and she gave herself a black eye.

Efforts to reach him were unsuccessful, and he is not being named for that reason.

After reviewing the case, prosecutors sided with Hays, who wants him in prison.

Even so, Hays is reluctant to testify against her boyfriend. Her instinct is to hide.

Her response is typical of people who say they've been abused.

That's why Bonneville County prosecutors aren't relying on domestic violence victims such as Hays anymore to convict abusers. Prosecutors are treating the cases like other heinous crimes: They're using photos, fingerprints and medical records instead of just victims to prove their case.

Bonneville County experimented with this "evidence-based" prosecution technique with just a few cases in 2000. Now – five years later – it's used in virtually all the 200-plus domestic violence cases Bonneville County prosecutors and cops handle each year.

Prosecutors now pursue charges whenever they think they can get a conviction using evidence – no matter what a victim wants.

"In the old days, police officers counseled the batterer to walk around the block and cool off," said Bonneville County Prosecutor Dane Watkins Jr. "We'd drop the case if the victim wanted us to."

That “victim-driven” strategy relied on traumatized people who didn’t want to be in court. They recanted testimony or blamed themselves. A lot of abusers walked free.

That led to a cycle of more violence and tough choices for victims, said Teena McBride, executive director of the Domestic Violence Intervention Center in Idaho Falls. Victims could get a loved one in trouble or probably endure more beatings.

By using evidence-based prosecution, prosecutors take pressure off victims on deciding how to handle the case, she said.

This technique is changing the way cops collect evidence and work with families in Bonneville, Bannock and Boise counties as well as in other counties in Idaho and across the United States. Prosecutors no longer tell an abusive husband to take a walk; they treat almost every incident as a crime scene.

For Hays, it’s one less thing to worry about.

“If I had to stay here, keep going to court ... I don’t know if I’d make it,” she said a few days after he was arrested “He almost took my life. I’ll talk about it – I want people to know my story if it helps them – but I can’t relive it right there, right in the courtroom, right in front of him.”

She won’t have to.

No place to go

Even though he allegedly punched her, pushed her, kicked her, broke her nose, put a gun to her head and told her she was worthless, Hays said she still loved her boyfriend.

“He had me convinced I was worth nothing and had no place to go,” she said.

Hays met her boyfriend two years ago, but the abuse didn’t start until they lived together in Idaho Falls.

He drank and ordered her around. Orders turned to slaps, which turned to punches.

Hays told herself it was a phase and believed her boyfriend when he said she deserved it.

Not until cops arrested her boyfriend on April 30 did she realize it might not be her fault.

At the scene, officers immediately began collecting evidence.

This case hasn’t gone to trial yet, so prosecutors can’t talk about what they have. But in most domestic violence, officers may collect:

- Photos of shattered windows, smashed furniture, blood and other signs of a fight

- 911 call recording
- Pictures of wounds
- Medical records
- Weapons that may have been used

Prosecutors sort through evidence, interview witnesses and file charges if they think they can get a conviction. Otherwise, the case dies and charges are dropped.

Victims don't have much say – it's all based on evidence.

That's what happened in Hays' case.

Prosecutors decided they had enough evidence to charge her boyfriend with aggravated assault and domestic battery. It wouldn't have mattered if she recanted her testimony or changed her mind about pressing charges, though her help would probably make the prosecutor's job easier.

The 'Broken Windows' theory

Evidence-based prosecution was developed out of desperation.

It's thought to have started in San Diego, Calif., in the mid-1980s. The murder rate was skyrocketing, and nothing seemed to slow it, so city prosecutors changed their strategy to something based on the "Broken Windows" theory.

The theory, popularized by a 1982 article in the Atlantic Monthly, holds that minor disorder in a neighborhood – broken windows, litter, graffiti, vagrancy – signals to lawbreakers that no one is watching and that they can get away with committing crimes.

Another version holds that those who commit minor crimes, if undeterred, will go on to more severe crimes. The adult armed robber was once a shoplifter who never got caught and became more ambitious. By the "Broken Windows" theory, people should be punished severely for minor offenses and neighborhoods should be fixed quickly.

Most murders are thought to follow a similar cycle. They start with a few slaps that lead to punching and fighting that progress to shootings or stabbings.

San Diego prosecutors figured they could break the cycle by punishing abusers and getting them treatment early. But to do this, they had to prosecute domestic violence cases differently and collect evidence like they did for more heinous crimes.

"It was an entirely new way of looking at domestic violence," said Timothy Campen, a San Diego prosecutor who pioneered the method. "It meant domestic violence became a public offense. It meant nobody could get away with hitting someone up, even if it happened behind closed doors."

The strategy apparently has worked. The number of murders has dropped from 30 a year in the 80's to zero so far this year, according to the San Diego prosecutor's office.

That has led cities such as Idaho Falls to try it.

Watkins believes it is working even though it's hard to be sure. There are so few murders here it's hard to say if our rate has changed much.

Hays still has mixed feelings about it all.

At times, she feels guilty about calling the cops. Other times, she's glad she escaped alive.

"His family hates me, I'm alone and I'm not sure what to do," she said.

At least she won't have to keep appearing in court.

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