



Cite as: 2009 (4) AELE Mo. L. J. 501

ISSN 1935-0007

Special Articles Section - April 2009

Domestic Violence and the Reluctant Victim

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Police officers respond to a home for violent domestic dispute. Upon arrival, they meet with Sara who is visibly upset, crying, bleeding from the mouth, with bruising over her left eye. She tells the officers that her husband Mike came home drunk. He began yelling at her for no apparent reason. The two began to argue and Mike punches her twice in the face. Causing her eye to swell and mouth to bleed. Sara tells the officers that this type of behavior has occurred numerous times before. She states that she is fed up and, this time, she decided to call the police. Mike is arrested and charged with domestic assault.

Three months later the case is in court. To the officer's surprise and dismay, Sara tells the prosecutor that the entire thing was a big misunderstanding. She states that the police over-reacted; she states that the police exaggerated what she said; she says that Mike didn't mean to strike her, it was just an accident. She tells the prosecutor that she wants the charges dismissed.

The above scenario is one that is all too familiar to the average police officer. The victim calls the police and insists that an arrest be made, only to change her story several months down the road. Notwithstanding the fact that the victim in a domestic dispute has elected not to pursue charges, officers should understand that because of a few recent United States Supreme Court cases, a successful prosecution of the abuser is still possible.

❖ **Why the Victim Stays**

Many police officers ask the question, “Why should I bother to arrest if the victim is going to go back to him anyway?” This type of thinking could lead one to believe that the victim is asking to be abused, however nothing could be further from the truth. We must ensure that officers understand that their work is not in vain when it comes to investigating and arresting domestic abusers.

The reasons that women stay with abusive partners are complex and multifaceted, and a number of theories attempt to explain the dynamics involved in battering. It is important that police officers understand the rationale of a victim in remaining. This can assist them in being more empathetic and appreciative of what the victim is enduring.

❖ **The Cycle Theory of Violence**

Dr. Lenore E. Walker, an authority on the subject of domestic violence, developed the Cycle Theory of Violence. Her theory explains the dynamics involved in the relationship between the abuser and the victim. She references three primary stages that occur in this type of relationship, which are: The Tension-Building Phase, The Acute Battering Phase, and The Loving Respite Phase.

In the *Tension-Building Phase*, a series of minor incidents occur. The victim accepts the abusiveness by blaming the abuser’s actions on herself. She denies that the abuse is occurring for she rationalizes that she somehow did something wrong to deserve the battering incidents. She may even blame the incidents on outside occurrences, such as her husband had a bad day at work. She tends to minimize their severity.

The battered woman has a certain amount of control over the battering in this phase, for she is often successful at controlling the frequency and severity of these incidents by simply doing what she can to please her husband and keep his world as tranquil as possible. All in all, phase one usually lasts anywhere from several months to several years.

In the *Acute Battering Phase*, the worst injuries may occur, and the abuser’s wife may be left severely beaten. The abuser essentially becomes out of control. In fact, the abuser becomes so out of control that he often leaves this phase with no understanding of what he has done.

In the *Loving Respite Phase*, after the most serious harm has been done during the acute battering phase, the battered woman enters this, which is characterized by extremely loving and contrite behavior on the part of the abuser. Knowing that his actions were intolerable, the abuser attempts to make up for his abusive actions by conveying his contriteness.

This phase is commonly called the “honeymoon phase.” He may beg for forgiveness and promise never to abuse again; moreover, he believes that he will never abuse again, even though his cycle of violence is likely to recur over and over again. He may shower her with gifts, so many in fact, that he cannot even afford to pay for them in an attempt to show how sorry he is for his actions. He is, in essence, trying to create the feeling of a honeymoon.

Primarily it is during the Acute Battering Phase that the police are called to the home. The tension has built and has led to a violent outburst. The victim, child, or maybe even a neighbor calls the police in fear for the victim’s safety. During this phase the victim is very much on board; the victim relays to all who will listen that she/he is fed up with the abuse and is ready to press charges. However, it isn’t until several months later that the case makes its way to the court system. By then, the Loving Respite Phase has set in, and the victim is ready to forgive in hopes for a better relationship.

❖ **The Stockholm Syndrome**

This is a phenomenon that occurs when persons who are held as hostages, captives, or prisoners of war begin to identify with their captors. These victims are isolated, mistreated, and in fear for their lives. They become helpless, confined to the area they are ordered to stay in, and dependent on their captors to supply everything they need to survive. They begin to develop positive feelings for their captors. The syndrome was named after an incident in Stockholm, Sweden, in which four bank employees were held hostage in the bank’s vault for 131 hours by two perpetrators. When the victims were finally freed, they expressed gratitude toward the offenders for sparing their lives.

❖ **Overcoming the Reluctant Victim**

Understanding just these two theories should assist the police officer in understanding that the victim in the domestic violence case is not attacking them for doing their job; they are simply surviving in what has become their reality. Therefore, police officers should not elect to ignore the reluctant victim of the abuse; instead, they should do everything they can to develop a criminal case that can be prosecuted without the aid of the victim.

❖ Collection of Evidence

When responding to the 911 call for help, the officers should carefully note in their report observations they make at the scene.

The officer should note if the home is in such disarray that it appears that an altercation took place; they should note the presence of broken door frames, windows, furniture, etc. The officer should make copious notes regarding any bruising or other injury. If bruising is present, it is imperative that the officer photograph the injuries.

The old phrase, “a picture is worth a thousand words”, couldn’t be more applicable then in a domestic violence case. It is one thing for the victim or witness officer to describe an injury to a judge or jury; it is quite another thing for the judge or jury to see firsthand the exact injury. This can be extremely helpful if a victim, or defendant, attempts to minimize the assault by claiming, “it wasn’t that big of a punch or slap”.

The officer should photograph the crime scene. This is helpful in laying out a clearer picture of what exactly occurred. An abuser could allege that the victim fell into an object, causing the bruising. A photograph of that object without any blood or indications that it has been disturbed in anyway can be crucial in again weakening the abuser’s claim.

If the victim is transported to the hospital, officers should note that in their report and request that both the ambulance report and hospital records be subpoenaed for court. Medical records can be crucial pieces of evidence because they corroborate the fact that an injury has occurred. Although medical records are considered hearsay, most state courts as well as the federal courts allow the records in as an exception to the hearsay rule.

❖ Statements of the Crime

If the police were dispatched to the location by way of a 911 call, the officer should ensure that the 911 tape is preserved as possible evidence for court. Notwithstanding the fact that the 911 taped calls are subject to hearsay and 6th Amendment challenges (discussed below), officers should ensure that the tapes are timely secured for evidence.

Many agencies have policies on how long the 911 tapes are retained; officers should be familiar with their agency’s policy. The 911 call may have been made by either a witness or victim of abuse. Either way, the tapes are invaluable evidence for a prosecutor.

Officers should attempt to secure written statements of victims, witnesses and suspects. In many cases victims can be compelled to testify in court. In the event the victim feigns

memory loss, the written statement may be used to either refresh the victim's recollection of the event, or may come in as substantive evidence.

A statement from the abuser is equally invaluable. Officers should be aware that a lie can be as useful as the truth. An abuser who concocts a statement to cover their crime is locked into that story if they have signed a written statement. The abuser must remember what they told the officer. In many cases, the abuser's statement may corroborate certain portions of a victim's statement.

In some cases an abuser, at a later date, files charges against the victim in an effort to dissuade the victim from pursuing the case. Having a signed statement from the abuser is very helpful for a prosecutor when trying to decide which party is being truthful. In an effort to appear to be the victim, the abuser may exaggerate the event. The abuser may claim that the victim assaulted him/her first; claiming to have left marks and bruises. If these claims are not in the abuser's original statement to the police, it will be easier for a prosecutor to decide on which case to pursue.

In a Maryland domestic violence case, police officers obtained statements from both parties. The male abuser was arrested, and upon his release, he immediately obtained charges against the victim. He alleged that he was assaulted with a dangerous weapon and produced pictures of an injury that he claimed were caused by the victim with the weapon. His story was easily rejected because his original statement to the police contained no allegations of either weapons or an assault.

❖ Hearsay and Constitutional Confrontational Issues

Under the Sixth Amendment of the U.S. Constitution, an accused must have an opportunity to "confront" and cross-examine witnesses. This right is referred to as the "Confrontation Clause". The Confrontation Clause relates to the common law rule preventing the admission of hearsay, that is to say, testimony by one witness as to the statements and observations of another person for the purpose of proving that the statement or observation was accurate. The rationale was that the defendant had no opportunity to challenge the credibility of and cross-examine the person actually making the statements.

Certain exceptions to the hearsay rule have been permitted; for instance, admissions by the defendant are admissible, as are dying declarations. Nevertheless, the Supreme Court has held that the hearsay rule is not exactly the same as the confrontation clause; hearsay may, in some circumstances, be admitted though it is not covered by one of the long-recognized exceptions; for example, prior testimony may sometimes be admitted if the witness is unavailable.

In the 2004 case of [Crawford v. Washington](#), the Supreme Court increased the scope of the confrontation clause in trials. Justice Scalia's opinion made any "testimonial" out-of-court statements inadmissible if the accused did not have the opportunity to cross-examine that accuser.

"Testimonial" becomes a term of art here, meaning any statements that an objectively reasonable person in the declarant's situation would have deemed likely to be used in court. The most common application of this would come after a declarant made a statement to a police officer, and then that officer testifies about that statement at trial.

With the issuance of the Crawford decision, widespread confusion and concern swept through the nation's prosecutorial community. The new rule announced in Crawford left open far too many questions and few answers.

One of the bigger questions before the courts was where did 911 taped calls fit in. If 911 calls were considered "testimonial", they were clearly subject to the Crawford requirements, and inadmissible.

❖ Overcoming Hearsay and the Confrontations Clause

911 Calls and Statements Not Subject to Crawford

In [Davis v. Washington](#) and Hammon v. Indiana, the Supreme Court set out to clarify its decision in Crawford. On writ of certiorari to the Supreme Court of Washington, Davis challenged his conviction, arguing that testimony by a 911 operator about a caller identifying him as her assailant was inadmissible hearsay. Additionally, on writ of certiorari to the Supreme Court of Indiana, Hammon challenged his conviction, arguing that a police officer's testimony about statements made by the alleged victim at the crime scene was inadmissible hearsay.

The U.S. Supreme Court consolidated both cases and ruled on both. The two cases required a determination of when statements made to law enforcement personnel during a 911 call or at a crime scene were "testimonial" and thus subject to the requirements of the Sixth Amendment's Confrontation Clause.

Regarding the statement identifying the defendant during the 911 call, the Supreme Court ruled that the statements to the 911 operator were not "testimonial", therefore admissible as evidence. The Court held:

- The 911 call was not designed to establish or prove past facts, but to describe circumstances requiring police assistance.

- The caller spoke about events as they were actually occurring while facing an ongoing emergency, rather than describing past events.
- The elicited statements were necessary to resolve the emergency rather than to investigate events.

Regarding the statements of the alleged victim made in response to an officer's questions in a room away from defendant when there was no immediate threat to her person, the Supreme Court ruled that the statements were "testimonial", making them subject to 6th Amendment protection. The Court held:

- The purpose of the interrogation of the victim was investigatory with an eye bent towards prosecution.
- The statements recounted past events; they did precisely what a witness did on direct examination and were inherently "testimonial."
- The Court declined to relax the requirements in domestic violence cases but pointed out that the right to confrontation could be forfeited by wrongdoing.

Statements are nontestimonial for purposes of the Confrontation Clause when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

The Excited Utterance Exception

An excited utterance is a statement made by a person in response to a startling or shocking event or condition. The statement must be spontaneously made by the person (the declarant) while still under the stress of excitement from the event or condition, and the emergency relating to that event or condition is still on-going. The subject matter and content of the statement must "relate to" the event or condition.

The statement could be a description or explanation, or an opinion or inference. Examples include: "He just punched me in the face", "He threw a chair at me and broke my nose", or "That car came out of nowhere and struck that child". The basis for this hearsay exception is the belief that a statement made under the stress of the event is likely to be trustworthy and unlikely to be premeditated falsehoods.

A police officer who is first on the scene should carefully note all statements made to him/her by the victim. The officer should carefully note if the emergency is still on-going while the statement is being made. E.g., as the officer(s) enter the home, the

physical assault is still continuing, or the suspect has fled to another part of the home and the scene is not safe and secure.

The officer should also note the condition of the victim, both physical and emotional. The physical and emotional observations are crucial in determining whether the declarant/victim was under stress or excitement of the event. The more stressed and excited the declarant/victim, the better the chance that the statement will be found to be an excited utterance.

The Present Sense Impression Exception

A present sense impression is a statement made by a person (declarant) that conveys his or her sense of the state of an event or the condition of something. The statement must be spontaneously made while the person was perceiving (i.e., contemporaneous with) the event or condition, or “immediately thereafter.” The subject matter and content of the statement are limited to descriptions or explanations of the event or condition, therefore opinions, inferences, or conclusions about the event or condition are not present sense impressions. A present sense impression can be a statement by a witness who is describing an ongoing event to a 911-operator. E.g., “There are three guys beating up my neighbor”, or “The bank next door is being robbed right now”. The basis for this exception is the belief that the statement is likely reliable and true, as there is no time for reflection, distortion, or fabrication.

❖ Conclusion

Officers should treat domestic violence calls with caution, utilizing proper officer safety tactics. Recognizing that they are walking into a situation where it has taken years for the victim to elect to get the police and courts involved. Understanding the various dynamics involved in domestic violence cases, police officers should do their best to put together the tightest case possible, notwithstanding the reluctance, or even outright refusal of the victim to cooperate. An officer’s actions in the handling of a domestic case may stave off or prevent an escalation of future acts of violence in the home.

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3. A. D. Carden, Wife abuse and the wife abuser: Review and recommendations. Counseling Psychologist, 22, 539-582 (1994).
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5. 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. Black’s Law Dictionary, 5th Ed.

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AELE Monthly Law Journal

P.O. Box 75401
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E-mail: editor@aele.org
Tel. 1-800-763-2802

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