

Training Memo: How a Defense Attorney Reads a Domestic Violence-Related Report

Defense attorneys' clients typically provide one of six defenses in domestic violence cases, as discussed below. The defense attorney reviews the evidence, primarily by reading the police report, to assess whether or not the client has a strong, weak, or no case. The defense attorney evaluates the case by looking at the report for evidence that will support the particular defense or evidence that is inconsistent with the claim. Here is a list of common defenses their clients offer and what defense attorneys are looking for when reading police reports.

Regardless of the specific defense the client offers, the defense attorney will ask the following kinds of basic questions in reading the police report:

- Did the 911 tape support or undermine my clients claim?
- Were there other witnesses at the scene? Were they interviewed and did the information they provided support my client's claim?
- How fresh are the victim's wounds?
- What was the victim's apparent emotional state? What was the defendant's apparent emotional state?
- Did the defendant have fresh injuries or did the defendant's clothes show sign of struggle (rips, blood, etc.)?
- Does the defendant have a history of violence against this victim or others?
- Did the defendant make statements inconsistent with this defense?
- Is there physical evidence that undermines defendant's claim, e.g., broken furniture, broken phones, house in disarray, and so forth?
- Are the officer's observations at the scene inconsistent with the defendant's version?
- Are there any signs that either the victim or defendant was high or intoxicated?

In addition to the above questions, the defense attorney will look for additional information depending on which of the following defenses the client has offered:

1. **IT WASN'T ME.** The client offers the "OD defense," as in "...the other dude did it.... She got abused but it wasn't me. It was ..."
 - Was the defendant at the scene or found near the scene?
 - Does the defendant have an alibi?
 - Is there evidence of the defendant's presence at the location of the assault? For example, could the defendant's voice be heard by the 911 operator or a neighbor? Is there physical evidence of the defendant's presence?
2. **SHE LIED.** The client says, "I never hurt her. She made the whole thing up. She's pissed because.... She got those injuries when she...."

- Were the victim's injuries consistent with the defendant's version?
 - Are there inconsistencies between the defendant's version of events and information in the report? For example: the victim has a forehead wound that is bleeding freely; the defendant says she fell in the shower, but there was no blood in or near the bathroom and no signs of clean up.
3. **IT WAS AN ACCIDENT.** The client says, "I never meant to harm or frighten her. ...the hammer slipped out of my hand when I was hanging up a picture..."
- What are the inconsistencies? For example: the hammer is in the kitchen, the picture's two rooms away, and there's no straight path from one to the other; the hammer didn't have blood on it, but the defendant's fist did..
4. **IT WAS SELF-DEFENSE.** The client says, "she snapped on me because.... I only did what I had to protect myself/protect the kids. She was assaulting me...."
- Does the victim admit to using violence?
 - Does the victim say why he/she used violence? Express fear of imminent harm?
 - Did police ask the defendant for his or her account of events?
 - Were the victim's injuries consistent with the defendant's version? In particular, does the victim show injuries that could have been the result of my client defending him\herself?
 - Were the defendant's injuries consistent with the defendant's version? Does he/she show defensive injuries?
 - What are the inconsistencies? For example: the relative size and apparent strength of the victim and defendant; any objects used as weapons; fingerprints on broken objects; hole in the wall is consistent with the defendant's fist or height and not the victim's.
 - Did the defendant make statements inconsistent with a self-defense claim?
5. **IT DOESN'T MATTER WHETHER I DID IT BECAUSE YOU CAN'T PROVE IT.** The client says, "I didn't do it and in any event she won't testify."
- Is the victim's testimony the backbone of the state's case?
 - Did the defendant have injuries; if so, were they defensive only?
 - Did the officer include observations at the scene, such as damage to property, damage to the defendant's and victim's property?
 - Was there physical evidence tending to establish assault by defendant? For example, a broken lamp with the defendant's fingerprints in a pattern consistent with using it as a bludgeon..
 - Did the defendant make any statements at the scene or to investigators?
 - Were there actions/threats by the defendant that might establish forfeiture of the right to confrontation?
6. **I DID IT, BUT HAVE YOU MET HER?** The client says: "I did it, but it's her fault. She's a drug addict, she's mentally ill, she's off her meds, she's bi-polar, she has a violent temper, she starts ragging on the kids, she calls the police for nothing and then I lose a day's

wages ...I just had to keep her in the room because she wouldn't listen to me..."

- Did the arrest report leave the prosecutor with a he said/she said?
- Is there corroborating evidence that should have been collected?

7. **I DID IT BUT THE POLICE MESSED UP.** The client says, "they can't get me, because..."

- Officers conducted a custodial interrogation and there was no Scales tape.
- Officers conducted a custodial interrogation without a Miranda warning or with an incorrect Miranda warning.
- The request for counsel was not honored.
- Police questioned the defendant after the right to remain silent was invoked.
- Police lacked probable cause for a search.
- The incident did not include any exigent circumstances allowing a search without a warrant.
- The officer jumped to conclusions: e.g., did not ask the suspect for an account of events before making the arrest; did not do a good self-defense determination, etc.
- The incident involved physical evidence that officers did not collect and properly inventory.
- There were witnesses at the scene who officers did not question.
- The police report does not describe the incident in any detail with supporting observations.

Training Memo: Gone-on-Arrival (GOA) Cases

Domestic violence incidents where the suspect leaves the scene before police arrive often involve dangerous suspects hoping to evade consequences for their actions.¹ When an officer makes a determination that probable cause exists for an arrest, but the suspect is not present, the officer should search for the suspect.

Officers should obtain the following information:

- Suspect's name, date of birth, and physical description, including clothing
- Suspect's means and direction of travel
- Description of the suspect's vehicle if applicable
- Where the suspect might have gone
- Where the suspect stays when not with the victim
- Whether the suspect has ever interfered with the victim's attempts to seek help

Officers shall take the following action:

- Search for the suspect on the premises.
- Search for the suspect in the immediate area and where suspect might have fled.
- Issue a pick-up and hold.
- Encourage the victim to call 911 if suspect returns.
- Provide information to the victim about restraining orders, advocacy services, and shelter.
- Offer to transport the victim/arrange for transport to a shelter /medical facility if needed.

In those cases in which the **suspect was not arrested** on scene, prosecutors find it helpful to the case for the investigator to attempt to interview the suspect in order to commit the suspect to a story or a defense. Primary consideration for the victim's safety must be taken into account prior to doing so. Potential danger factors to consider include: (1) a suspect who is unaware that the police were called, (2) a suspect who is gang-affiliated, (3) a victim who is unaware of the possibility the suspect could be interviewed several days or weeks after the crime, and (4) a suspect who has made prior threats or acts of suicide, homicide or taking the children. When a decision is made to interview a suspect, inform the victim that the suspect may be interviewed within the next two weeks or so. If the suspect has a violent history, conduct the interview as soon as possible. Conduct the interview in person, for victim safety as well as to assess the suspect's reactions and truthfulness.

If the case has been submitted to prosecutors for consideration and if the **case has been declined**, notify the victim of the prosecutor's decision.²

¹ An estimated 42-66% of suspects are "gone on arrival" (Klein, 2008). In the Quincy study of a proactive court model, "those offenders who left the scene had twice the number of past criminal charges and twice the recidivism rate of those present when police arrived" (Buzawa, et al., 2000). See Blueprint Chapter 9, Endnotes, for complete citations.

Training Memo: 911 Attention to Violence

Why is it important for call takers to pay explicit attention to and document violence in domestic abuse–related calls to 911?

Domestic violence is the most common form of violence in our society. It has a huge impact on our schools, neighborhoods, prison population, child protection system, hospitals, mental health institutions, and every human service agency in our communities. Sit at any 911 console and the reality of that statement jumps out. Call takers and dispatchers play a key role in how cases enter the criminal justice system for resolution. A well-organized criminal justice system can reduce by half the homicides and serious assaults in our families. The Blueprint is one of the country's most ambitious efforts to continue a thirty-year effort to eradicate this social problem.

Every practitioner touching a domestic violence case is organized through the Blueprint to link up with every other practitioner acting to protect victims and hold offenders accountable. The Blueprint presents a key shift in case processing. This shift is characterized by (1) a collective effort to make the full scope of violence and abuse transparent to each practitioner and (2) policies and procedures that direct practitioners to adjust their interventions based on the context and severity of abuse occurring in a case. Training at every level of intervention will help practitioners recognize the known lethality and risk factors in these cases. This approach is intended to avoid a one-size-fits-all response to people with very different circumstances and needs. It seeks to move away from responding to one individual incident at a time in cases involving a history and pattern of violence and abuse.

What is involved?

The “Blueprint Approach” begins with the call taker and dispatcher. By listening to each caller, asking appropriate questions, and transmitting critical information about the nature of the emergency and events at the scene to officers, the 911 center ensures that the response begins with attention to the full scope of violence, to connecting the caller with help and to connecting responding officers and others with the information they need to provide that help. The 911 protocols and related response cards have been designed to guide a process that requires call takers to develop and relay as much information as the caller's immediate safety, the 911 center's call volume, and time allow. This means that call takers must be prepared to help the caller focus, calm down, and describe exactly what is happening, i.e., describe who is doing what to whom, and how.

The following chart summarizes and illustrates the kind of information about the violence and possible danger that call takers should document as they link the caller to the responding officer and eventually to the entire criminal justice system.

<p align="center">Caller to 911 ⇔ Call Taker ⇔ Dispatcher ⇔ Patrol Officer What is happening that creates the need for police intervention?</p>		
Information that responding officers need:	Examples of specific information from call takers and dispatchers that best meets that need:	
	WRITE THIS:	NOT THIS:
[1] <u>Specific</u> information and <u>details</u> about the level of violence that is occurring or the threats being made	<i>man pulled woman out of car by her hair, woman screaming</i> <i>former husband is saying he will burn down the house before letting her have it...he is throwing things out of the garage</i> <i>caller said "he slugged me in the back and backhanded me in the face"</i>	"male female fighting physical" "verbal but now escalating" "woman says he hit her"
[2] <u>Specific</u> information and <u>details</u> about the caller's level of fear and concern and that of people in background	<i>caller crying, short of breath difficult time talking sounds afraid</i> <i>caller is the victim's mother and "she says he may kill her...he's threatened to bury her and the children" OR "he says he will take the car and leave her penniless"</i>	"caller upset" "mother called in worrying about daughter"
	ASK THIS:	NOT THIS:
[3] <u>Specific</u> information and <u>details</u> about weapons and their involvement in the situation	<i>What weapons are in the house and where are they?</i> <i>Have any weapons been used or has he/she threatened to use one?</i> <i>Does the suspect carry a weapon? Does he/she have one now?</i> <i>Has he/she used a weapon or threatened anyone in the past with a weapon? What kind?</i> <i>Has he/she ever threatened to use a weapon against a police officer?</i> <i>Has he/she fought with police in the past?</i>	"Are there any weapons?"
<p>Communicating and documenting this kind specific, detailed information accomplishes the following:</p> <ul style="list-style-type: none"> • Helps 911 and officer determine the response priority according to severity and urgency. • Helps officer make a determination if forced entry is appropriate in cases where no one comes to the door. • Helps officer recognize when a victim is too afraid to speak freely about what is happening. • May help officer recognize signs of strangulation. • Contributes to an officer's overall impressions of the situations and parties' accounts of events. • Helps officers decide if the call is not in fact a domestic assault call. 		

Training Memo: Implications of the *Crawford* Decision and Forfeiture by Wrongdoing for Police Response to Domestic Violence

Crawford and Davis decisions

In 2004 the United States Supreme Court issued a decision in *Crawford v. Washington* that made significant changes in how a prosecutor can use statements from a victim if the victim is not able to testify at a trial.¹ Few victims are in a position to simply walk into a courtroom and say, “This is what happened. This is what he did and how he did it.” Such a move could result in far more harmful consequences that significantly outweigh the value of the help the victim might receive from a conviction. As a result, many victims do not appear at trial to testify. While prosecutors can still get a victim’s statements to police and others admitted into evidence and heard by the jury, *Crawford* made admission of this type of evidence harder.

When police officers understand the basic points of *Crawford* and take care to thoroughly and accurately document statements that occur before an official interview or statement is made, prosecutors are far more likely to get crucial statements admitted into evidence.

The *Crawford* decision held that in order to satisfy the Confrontation Clause of the Sixth Amendment of the U.S. Constitution (i.e., the accused has the right to confront the accuser in court), a testimonial statement may not be admitted unless the statement is subject to cross examination.² The U.S. Supreme Court did not completely define what a testimonial statement is; it indicated, however, that **testimonial** statements are made in a formal setting or in circumstances in which the person making the statement, reasonably believed that the statement would be used later in trial.³

Two years later, the Supreme Court in *Davis v. Washington* refined the standard for admissibility. The Court held that statements are **non-testimonial** if they are made in the course of police interrogation when the primary purpose of that interrogation is to meet an ongoing emergency. For example, statements made under the following circumstances are non-testimonial: questions asked by a 911 operator to specifically help respond to an emergency, and interactions between officers and witnesses and suspects as the officers initially secure a scene and offer emergency help. A prosecutor will argue that the testimonial portion of any statement began when the primary purpose of an officer’s questioning was to determine if a crime had been committed. As long as officers are responding to emergency conditions and not engaging in interrogation to establish or prove events relevant to a criminal proceeding, the testimony may still be considered by the court as admissible.⁴ In other words, statements made in the course of providing information to officials during an ongoing emergency are non-testimonial, while statements made in order to prove that certain events occurred are testimonial.

¹ 541 U.S. 36 (2004)

² If the declarant is unavailable for trial, testimonial statements may be admitted if the defendant had a prior opportunity to cross-examine the declarant. *Crawford* 541 U.S. at 68.

³ *Crawford*, at 51-54.

⁴ *Davis v. Washington*, 126 S. Ct. 2266 (2006)

Doctrine of forfeiture by wrongdoing

Both the *Crawford* and *Davis* decisions recognize the doctrine of forfeiture by wrongdoing. If the defendant obtains the absence of the witness by wrongdoing, the defendant forfeits the constitutional right to confrontation and the constitutional objection to hearsay statements. In domestic violence cases, the victim/witness is especially vulnerable to threats and intimidation. The *Crawford* and *Davis* decisions, by making the live testimony of the victim at trial even more important than it had been, also increased the significance of the doctrine of forfeiture by wrongdoing.

Recently the U.S. Supreme Court held in *Giles v. California*, 554 U.S. -----, 128 S. Ct. 2678 (2008), that unconfronted testimony is not admissible under the forfeiture doctrine without a showing that the defendant intended to prevent a witness from testifying. The Court noted that acts of domestic violence are often intended to dissuade a victim from resorting to outside help, and that a defendant's prior abuse or threats of abuse, intended to dissuade a victim from resorting to outside help, would be highly relevant to determining the intent of a defendant's subsequent act causing the witness's absence, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify.

When police officers take care to inquire about and document a defendant's threats to the victim for seeking help, prosecutors are more likely to be able to successfully introduce evidence under the forfeiture by wrongdoing doctrine. If a defendant has threatened or coerced a victim so that she or he becomes unavailable to testify, the defendant may forfeit the right to confront the victim or witness in court, thereby allowing into evidence the victim's statements to the officer, even if the victim does not appear

Implications for practice

- When responding to a domestic violence call in which harm is immediate or imminent, thoroughly describe the scene and circumstances in your report in specific detail in order to illustrate the urgency of the situation. Include the specific times when the 911 call was placed and when you arrived.
- Be specific about what all witnesses said when you arrived, including the victim.
- Ask specifically whether the defendant has ever made statements to the victim, the victim's children, or the victim's family members threatening harm if the victim seeks help, contacts the police, or participates in the prosecution process. Thoroughly document information regarding any such threats.
- Inquire about and gather letters, voice mails, e-mails, and text messages sent by the defendant both prior and post-arrest that may include threats.
- In collaboration with prosecutors and advocates, follow up with the victim to inquire about post-arrest contact between the defendant and victim and gather evidence of such contact.