

Training Memo: How a Prosecutor Reads a Domestic Violence-Related Report

Adapted from *Domestic Violence: The Law Enforcement Response*, a training curriculum from The Domestic Abuse Intervention Project, Duluth, MN (218) 722-2781 (www.theduluthmodel.org)

BACKGROUND INFORMATION	
INFORMATION	PURPOSE: A prosecutor needs...
<ul style="list-style-type: none"> • Time of incident • Time of dispatch • Time of first contact with victim 	<p>...the time of the incident and the time the officer arrived to determine whether the intervening time is brief enough that the victim may still legally be considered to be “under the stress or excitement of the event.” If so, these may be non-testimonial statements and that may allow the prosecutor at trial to ask the officer to testify to any excited utterances or spontaneous statements the victim made.</p>
<ul style="list-style-type: none"> • Location of incident 	<p>...the city and county where the incident occurred to be documented in order to prove that a particular court has jurisdiction over the matter.</p>
<ul style="list-style-type: none"> • Relationship between victim and suspect 	<p>...the relationship between the victim and suspect documented in order to charge and prove a domestic abuse crime or to label other crimes as ones that occurred within the context of domestic abuse; and to argue for admission of evidence as part of the “history of the relationship.”</p>

WITNESSES AND WITNESS STATEMENTS	
INFORMATION	PURPOSE: A prosecutor needs...
<ul style="list-style-type: none"> • Name, birth date and contact information 	<p>...to know who was present during the event in order to identify witnesses to the elements of the crime charged, which the prosecutor must prove at trial.</p> <p>The prosecutor needs their names and birthdates in order to run criminal history checks and thereby prepare for a defense strategy of attacking witness credibility, which can be done by impeaching witnesses with certified copies of their criminal convictions.</p> <p>The prosecutor also needs witness contact information to reach them in order to prepare for trial and send subpoenas for the trial itself. For victims who may move or change phones for safety reasons, contact information also includes a person who will know how to reach the victim.</p>

WITNESSES AND WITNESS STATEMENTS (cont.)

INFORMATION	PURPOSE: A prosecutor needs...
<ul style="list-style-type: none"> Emotional state of victims and their children 	<p>...documentation of the complainant’s emotional state to determine if he/she appeared to be “under the stress or excitement of the event.” If so, this may allow the trial prosecutor to ask the officer to testify to the victim’s excited utterances or spontaneous statements. The prosecutor needs documentation of what the officer observed (e.g., “She was crying and wringing her hands. When she spoke, her lower lip quivered and her voice trembled.”); not just documentation of the officer’s opinion (“She seemed upset.”).</p> <p>This documentation also helps a jury picture what it was like during the event, as opposed to seeing only how witnesses behave in court.</p>
<ul style="list-style-type: none"> Emotional state of suspects 	<p>...documentation of the suspect’s emotional state in order to be prepared to show intent at trial, show motivation (e.g., jealousy) at trial, counter any defenses (e.g., accident) at trial, or counter any mitigation (e.g., remorse) offered at sentencing.</p>
<ul style="list-style-type: none"> Alcohol or drug impairment of the parties 	<p>...to know if and how a person was impaired by alcohol or drugs. Impairment can affect witnesses’ perceptions and thus their credibility at trial.</p> <p>Under certain circumstances, alcohol or drug impairment may provide somewhat of a defense for the suspect (e.g., he/she admits causing the injury, but says it was an accident or he/she was too intoxicated to form specific intent, etc.).</p> <p>Any impairment should be noted so that a prosecutor is aware of it before trial. Simply saying that both parties were drinking does not help. Was the officer able to obtain a coherent statement? If not and the person was unable to track the questions, the prosecutor needs to know that.</p> <p>The absence of alcohol or drug impairment can be helpful in countering defenses. While the officer is not expected to note the absence of impairment (“victim not drunk”), if the officer has a practice of noting impairment, he/she can testify that the absence of any information about drug/alcohol means there were no signs of impairment observed.</p>

WITNESSES AND WITNESS STATEMENTS (cont.)

<ul style="list-style-type: none"> • Existence of language, communication or cognition barriers 	<p>...to know if there was a barrier to clear communication. Language, communication, or cognition differences can affect the comprehensiveness of the information provided by witnesses and can affect how the court may perceive the quality of the interview if the interviewer has no skill or ability in these areas. Any potential barrier or issue of this type should be noted so that the prosecutor is aware of it before trial. The prosecutor needs to know if there might be a claim that the officer did not get the information correct because the witness did not understand what was being said.</p> <p>This information may also be helpful in explaining to a jury a statement that might otherwise appear to be a prior inconsistent statement.</p>
<ul style="list-style-type: none"> • Connections, if any, between parties and witnesses 	<p>...to know the family ties, friendship, and employment connections of people present. Such relationships can sometimes bias or prejudice a person for or against another. The bias or prejudice of a witness for or against one of the parties is something both the prosecutor and defense attorney are entitled to show at trial.</p> <p>Relationships, such as gang affiliations, can also be called upon to intimidate witnesses. Therefore, such relationships should be documented in police reports so that the prosecutor is aware of them before trial.</p>
<ul style="list-style-type: none"> • Statements by victims and/or witnesses, including children 	<p>...to know who can testify to what at a trial. The more witnesses, the stronger the case. Statements of witnesses other than the victim help a prosecutor corroborate the victim's or suspect's versions of the event and evaluate the strength and seriousness of the case. Such statements can address the number one problem in domestic violence cases: the victim not wanting to testify.</p> <p>If the witnesses are children, their statements may help a prosecutor determine if any intervention in addition to the criminal process is needed.</p> <p>At trial, the prosecutor may be able to use a detailed witness statement to refresh the recollection of a forgetful witness or impeach the testimony of a witness who is testifying differently than his/her statement to police.</p>

WITNESSES AND WITNESS STATEMENTS (cont.)

<ul style="list-style-type: none"> • Statements by suspects 	<p>... the suspect’s account of events. The suspect’s statement to police will commit him/her to a version of events (e.g., who made first physical contact) and to any defenses (e.g., self-defense).</p> <p>The suspect’s statement to police will aid the trial prosecutor in showing intent and motivation (e.g., jealousy), countering any defenses (e.g., accident), or countering any mitigation (e.g., remorse) offered at sentencing. Statements made by the suspect while still at the scene will help the officer to focus the investigation at the scene on observations/evidence that supports or refutes the suspect’s version of events.</p>
<ul style="list-style-type: none"> • Description of visible injuries or physical impairment 	<p>...to know what injuries or signs of impairment the officer observed or asked the victim to describe. The description of the victim’s visible injuries and physical impairment will (a) help determine the charge; (b) help assess heightened risk and thus recommend to the court heightened bail; (c) support requests for restitution for medical care, physical therapy, and lost wages at sentencing; (d) help a prosecutor corroborate the victim’s or suspect’s versions of the event, and help a prosecutor evaluate the strength and seriousness of the case; (e) serve as a back-up to injuries that may not show up in photos; (f) make the violence more real to the court, jury, defendant who tends to minimize the damage, and to a victim who may be reluctant to testify; and, finally, (g) serve as a reminder to the officer testifying in court as to what he or she observed.</p> <p>The prosecutor needs a descriptive account of what the officer observed (e.g., “There was a bleeding cut about two inches long along her right cheekbone” or “She kept rubbing her throat and when she tried to talk, her voice was hoarse. She told me it hurt to talk and that she had difficulty swallowing.”); and not just a summary of the observation, such as “she had a facial laceration.”</p> <p>The description of the injuries can also help to establish whether one of the parties was acting in self-defense.</p>

CRIME SCENE	
INFORMATION	PURPOSE: A prosecutor needs...
<ul style="list-style-type: none"> • Pictures taken and physical evidence gathered at the scene or in follow-up investigation 	<p>...photos and physical evidence. Photos of a victim’s visible injuries or damage to property, and physical evidence (e.g., pulled hair, broken picture frames, blood on the floor, etc.) are proof of elements of crimes (e.g., an injury, damage to property over a certain dollar amount, etc.).</p> <p>Photos also provide the prosecutor one of the bases upon which to assess heightened risk and thus recommend to the court heightened bail.</p> <p>Photos and physical evidence can support requests for restitution for medical care and repair or replacement of damaged or stolen property at sentencing.</p> <p>Photos of both the victim’s and the suspect’s injuries and physical impairments will help a prosecutor corroborate the victim’s or suspect’s versions of the event, and help a prosecutor evaluate the strength and seriousness of the case. A victim who has been reluctant to testify may be more ready to testify when looking at photos of the injuries weeks after the event.</p> <p>Finally, photos and physical evidence make the incident more real to a jury.</p> <p>The name of the officer taking the photos or collecting the evidence should be documented, as the prosecutor will need to subpoena that officer to trial in order to lay the foundation for the photos or items to be admitted into evidence (for example: “Did you take this photo? Does it accurately represent Mary Jones’ arm as you observed it that evening?” or, “Did you find the hair that had been pulled from Mary Jones’ head? Did you collect it?”).</p>

GONE ON ARRIVAL (GOA) INFORMATION

INFORMATION	PURPOSE: A prosecutor needs...
<ul style="list-style-type: none"> • Suspect’s possible locations and if suspect was eventually located, where and when this took places 	<p>...information to help prioritize GOA cases. Suspects who avoid arrest and prosecution by fleeing the scene present more danger to victims, who don’t know where the suspect is or when the suspect may accost them again. Research indicates that many will soon reoffend. Prosecutors will prioritize these cases, as well as those involving violence with injury and repeat offenders, for issuing warrants.</p> <p>Additionally, flight can be evidence of guilt. Therefore, details about where the suspect might have gone and where he/she lives or stays when not at the address of the incident could be important clues for investigators and prosecutors to more quickly locate the suspect at well as to provide additional evidence of or additional witnesses to the suspect’s guilt. Where and when the suspect was located may tend to negate a claim that someone else did it.</p>

MEDICAL TREATMENT

INFORMATION	PURPOSE: A prosecutor needs...
<ul style="list-style-type: none"> • At the scene and at the medical facility. NOTE: A medical release without a date and Social Security Number will not be honored by any medical facility. 	<p>...medical records. Medical records of the victim’s injuries and physical impairments help a prosecutor corroborate the victim’s or suspect’s versions of the event and evaluate the strength and seriousness of the case. These records can back up the officer’s description of injury and thus help the prosecutor prove the required element of injury or disprove any defenses the suspect may offer.</p> <p>Medical records of the victim’s injury support requests for restitution for medical care, physical therapy and lost wages at the time of sentencing.</p> <p>Statements for purposes of medical treatment or diagnosis are exceptions to the rule of evidence that prohibits the admission of hearsay statements into evidence. Whether or not the victim participates in the prosecution, a certified copy of her medical record can be admitted into evidence, and a medical responder who interviewed the victim in order to provide treatment or diagnosis can testify to what the victim said. Thus, a prosecutor will need consent from the victim to obtain the record or his/her contact information to obtain consent later. The prosecutor will also need the names and contact information of medical responders.</p>

DANGEROUS SUSPECT ASSESSMENT

INFORMATION	PURPOSE: A prosecutor needs...
<ul style="list-style-type: none"> • Suspect owns or has access to guns • Suspect likely to use weapon against family member or others. • Violence getting more severe or more frequent. How? • Suspect has threatened to kill victim or others. Who? • Victim believes suspect may seriously injure or kill her/him. • Suspect obsessed or is stalking victim. • Separation, OFP, divorce in past 6 months • Suspect appears to be reacting to OFP or divorce in dangerous way. 	<p>...to know the level of danger. An assessment of risk or danger alerts a prosecutor to the level of danger a case presents. Recent separation, for example, is a significant risk factor for homicide and repeat violence. This information will impact, bail-setting, charging, decisions to dismiss, plea negotiations, and sentencing. It is central to the two key questions facing the court: (1) What will it take to stop this person's violence? (2) What will it take to protect this victim?</p> <p>NOTE: This section of the police report will be used by a number of subsequent interveners.</p>

VICTIM NOTIFICATION

INFORMATION	PURPOSE: A prosecutor needs...
<p>Required by law.</p>	