FUNDAMENTALS OF TRIAL ADVOCACY COURSE

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Phoenix, Arizona

PROSECUTING A DOMESTIC VIOLENCE CASE

Presented by:

JAY CHAPMAN
Assistant Phoenix City Prosecutor

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
1951 West Camelback Road, Suite 202
Phoenix, Arizona 85015

ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR

Prosecuting a Domestic Violence Case

Jay Chapman
City of Phoenix Assistant City Prosecutor

Domestic Violence
A.R.S. Sec. 13-3601

1) Offense

2) Relationship

DV Offenses

- 13-705 Dangerous Crimes Against Children
- 13-1102 thru 13-1105 Negligent Homicide
  Manslaughter
  Second Degree Murder
  First Degree Murder
- 13-1201 Endangerment
- 13-1202 Threatening or Intimidating

DV Offenses

- 13-1203 Assault
- 13-1204 Aggravated Assault
- 13-1302 Custodial Interference
- 13-1303 Unlawful Imprisonment
- 13-1304 Kidnapping

DV Crimes

- 13-1406 Sexual Assault
- 13-1425 Unlawfully Disclosing Images
- 13-1502, 13-1503, 13-1504 Trespass
- 13-1602 Criminal Damage
- 13-2810 Interfering with Judicial Proceedings

DV Crimes

- 13-2904A1,2,3 or 6 Disorderly Conduct
- 13-2910A8 ,9 Animal Cruelty
- 13-2915A Prevent Use of Telephone in an Emergency
- 13-2916 Using an Electronic Communication to Terrify, Intimidate, Threaten or Harass

DV Offenses

- 13-2921, 13-2921.01 Harassment
  Aggravated Harassment
- 13-2923 Stalking
- 13-3019 Secretly Photographing, Videotaping, Filming or Digitally Recording or Viewing
- 13-3601.02 Aggravated Domestic Violence
- 13-3623 Child or Vulnerable Adult Abuse

Relationship

- Marriage or former marriage
- Residing together or did reside together
- Child in common
- Victim or defendant is pregnant by the other

Relationship

- Parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law

- Child who resides or resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or resided in the same household as defendant

- Current or previous romantic or sexual relationship

Cycle of Abuse

1 Tensions Building

Tensions increase, breakdown of communication, victim becomes fearful and feels the need to placate the abuser

2 Incident

Verbal, emotional & physical abuse. Anger, blaming, arguing. Threats. Intimidation.

3 Reconciliation

Abuser apologizes, gives excuses, blames the victim, denies the abuse occured, or says that it wasn't as bad as the victim claims

4 Calm

Incident is "forgotten", no abuse is taking place. The "honeymoon" phase

Intimate Partner Risk Assessment

- Increase in frequency/severity of violence
- Jealous
- Capable of killing/tried to kill
- Pregnant
- Weapon
- Strangled
- Control daily activities
- Forced to have sex
- Drug use
- Threaten people/pets
- Ended relationship
- Significant financial loss/unemployed
- Threatened suicide

Prepare for Trial

- Read the police report & watch body cam video
- Check for additional reports or supplements
- Get photographs, 911 calls, videos, fire reports
- Disclose any evidence ahead of trial
- Confer with victim advocate and communicate with the victim
- Inform witnesses of upcoming trial

Before Trial

- Assume victim may not be present
- Do you have enough evidence without victim testimony?
- EVIDENCE BASED PROSECUTION
  - Admissions by defendant (satisfy corpus?)
  - Video, photos
  - 911 call (Hearsay Exception? Right to Confront?)

Crawford v. Washington 541 U.S. 36

- Defendant has the right to confront the witness if the statement is "testimonial"
- "An accuser who makes a formal statement to government officers bears testimony"
- Defendant's wife made statements to police that were "testimonial"

Davis v. Washington, 547 U.S. 813

- Statements made by a domestic violence victim to a 911 operator
- Non-testimonial when made in the course of police interrogation where the primary purpose is to enable police assistance to meet an ongoing emergency
- Testimonial when there is no ongoing emergency and the primary purpose is to prove past events for later prosecution

Victim Statements Through the Forensic Nurse (Victim Fails to Appear)

- 803(4) Statement Made for Medical Diagnosis or Treatment
- *State v. Hill*, 236 Ariz. 162 (2014)

  -The primary purpose of the emergency room encounter between victim and forensic nurse was medical treatment and not the collection of evidence of a crime, and thus victim's statement to nurse was not testimonial for purposes of the Confrontation Clause

Recanting Victim Appears Impeach under Rule 607

- Officer testimony of victim's statements
- 911 calls
- Audio/Video
- Photos
- Friends/family/stranger

Will the Defendant Testify?

- Prepare as if Defendant will testify
- Defendant should admit to the relationship, being at the scene, injury to the victim
- Don’t need to address every minor point
- Accumulate nuggets to be used in closing to make defendant’s “story” not credible

Closing Argument

- Don’t simply restate the facts, argue
- Make reasonable inferences and connect the dots
- Finish on a high note

DV Misdemeanor Assault Case

Facts

The victim told the officer that she had been drinking with the defendant and they got into an argument over their child. The victim said the defendant punched her in the face 3 times. The officer saw redness and swelling below the victim's eye. The defendant told the officer that there was an argument and the victim pushed him and he pushed her back.

John Smith
1/1/16 11:00 p.m.
300 W. Maple Street

DV 13-1203(A)(1)
V: Jane Smith
Ofc Monroe

D T L J ID

Jane Smith:
child together
drinking w/ the Def
Argue over child
Def punch V face 3 times
Red/Swollen eye
Turned into a black eye
Photos
Called 911

Ofc Monroe:
Def BWE, odor of alcohol, slurred speech
Def "pushed V b/c she pushed him"

Victim Interview

- I represent the State
- Here for an incident that occurred on 1/1/16
- What happened? Clarify details
- Refocus the victim on this incident (Recanting)
- Overview of the process
- Does the victim have questions?

Opening

On 1/1/2016 the defendant and victim were at got into an argument about their child. The defendant lost his temper and punched the victim in the face several times. The victim called 911 and when officers arrived the victim's eye was red and swollen. Several days later the injury turned into a black eye. When the Court makes its decision the State asks that the Court find the defendant guilty of domestic violence assault.

Direct Examination of the Victim

Foundation

- On 1/1/16 at approximately 11:00 p.m. at 300 W. Maple Street were you involved in an incident with John Smith? Is that in the city of Phoenix?

  Do you see him in the courtroom here today? Could you please describe where he is seated and what he is wearing? Let the record reflect that the witness has identified the defendant.

- Relationship?

Victim: “He hit me”

- Who hit you?
- Were you hit with an open hand or closed fist?
- Where on your body were you punched?
- How many times were you punched?
- What did you do next?
- Did you have any injuries?

Photos

- For the record, I am showing Defense Counsel what has been marked as State's #1. Your Honor, may I approach the witness?
- For the record, I am showing the witness what has been marked as State's #1?
- What is this?
- Is it a fair and accurate depiction of your injuries?
- The State moves to admit State's #1 into evidence.

911

- Did you call 911?
- Did you listen to a recording of your 911 call before testifying today?
- Was that your voice on the 911 recording?
- The State moves to admit State's #2, the 911 Affidavit, and play the 911 recording pursuant to A.R.S. Section 13-3989.01.

911 Objections if Victim Not Present

Hearsay:

Present Sense Impression
Excited Utterance

Right to Confront:

Not testimonial under *Crawford*
emergency call was made to get help, not to be later used in court

Call Officer as Witness

or

The State Rests

Refresh Recollection

- Did you write a report regarding this incident?
- Would referring to your report refresh your recollection? For the record, I am showing defense counsel what has been marked as State's #2
- Your honor, may I approach the witness?

Refresh Recollection

- For the record, I am showing the witness what has been marked as State's #2
- What is this?
- Please review your report and when your memory has been refreshed, please place the exhibit face down on the ledge in front of you.

Recorded Recollection
Rule of Evidence 803(5)

- Can you recall fully and accurately without your report?
- Was your report made when it was fresh in your memory?
- Is your report accurate?
- With the Court's permission, please read from your report

Defense Rule 20 Motion

Taking the evidence in the light most favorable to the State, there is substantial evidence to warrant a conviction.

Cross-Examination of Defendant

Def had 2 beers	When did you start drinking? Size of beers? Agree drinking in excess affects ability to recall details?
V arguing w/ him	Very upset w/ V correct?
V pushed him	You pushed the V? Where did you touch the V? 1 hand or 2? Agree V injuries not consistent w/ just a push? You could have walked away?

Call Officer as Rebuttal Witness

or

The State has No Further Witnesses

Closing

The victim was very specific and articulate in her testimony that the defendant punched her 3 times in the face. The victim only had one beer while the defendant was so drunk that he was slurring his speech. This is not a strictly "He said, She said" type case. The photos show injuries to the victim that are consistent with her testimony. The defendant's story of what happened does not make sense and is inconsistent with the photos. The State asks that the Court find the defendant guilty.

Questions?