



Shoveling the Sidewalk while It's Still Snowing

Investigation and Prosecution of Domestic Violence

Donna Kelly
Sexual Assault and Domestic Violence
Resource Prosecutor
Utah Prosecution Council
Office of the Attorney General

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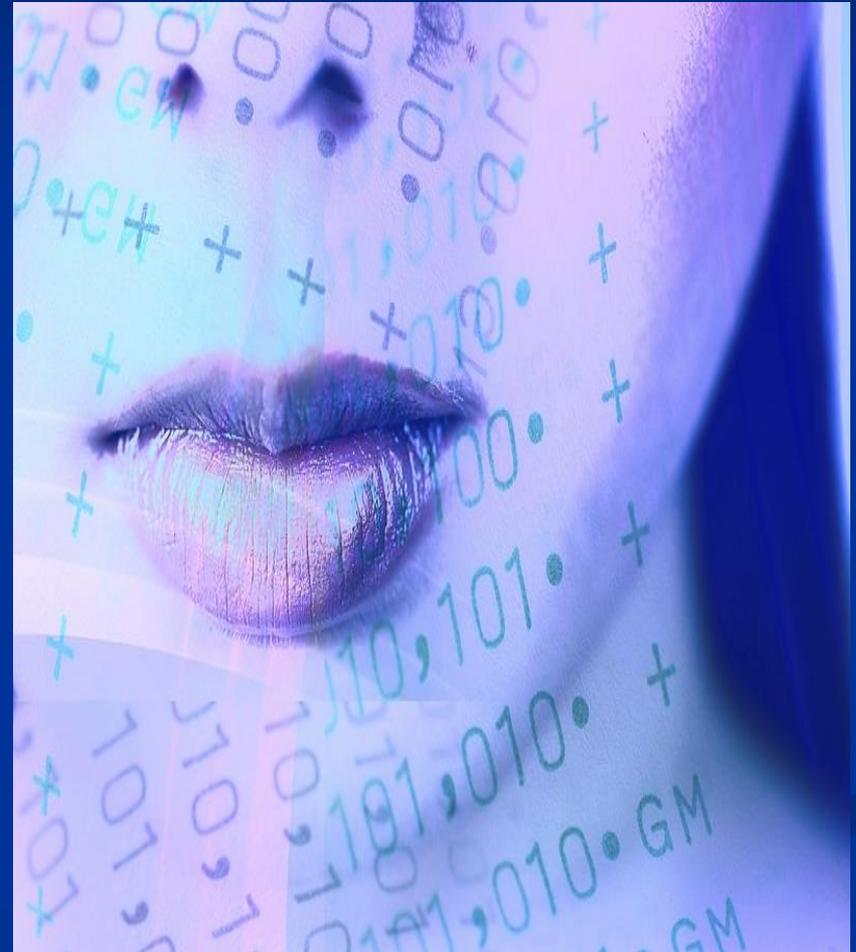
- 2,753 died on September 11, 2001
- 17,400 women have died from Domestic Violence crimes since September 11, 2001 in America



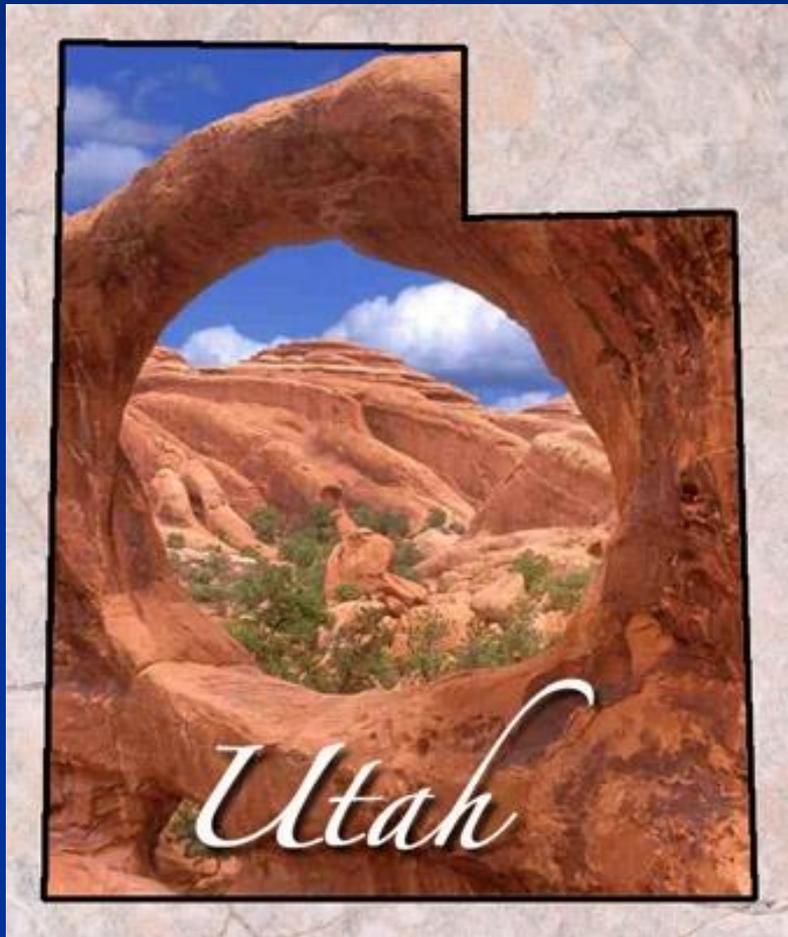
- 3 people died in the Boston Marathon bombing on April 15, 2013
- 3.4 women die EVERY DAY from Domestic Violence crimes in America

Domestic Violence in America

- Every 9 seconds in the US a woman is assaulted .
- Domestic violence is **the leading cause of injury** to women—more than car accidents, muggings, and rapes *combined*.
- The costs of intimate partner violence in the US alone exceed \$5.8 billion per year.



Domestic Violence in Utah



- 40% of all homicides in Utah are DV homicides.
- More than 3,000 victims enter shelters to escape DV every year.
- In Utah, there are about 175,000 intimate partner-related physical and sexual assaults each year.

The Good News!

Law enforcement
intervention in DV
makes a difference!

Department of Justice Studies:
Felson, Ackerman and Gallagher
2,564 cases in 2005
Police involvement is a strong
deterrent to re-abuse

Andrew Klein 2008

“Arrest should be the default
position for law enforcement
where there is PC for a DV crime.”

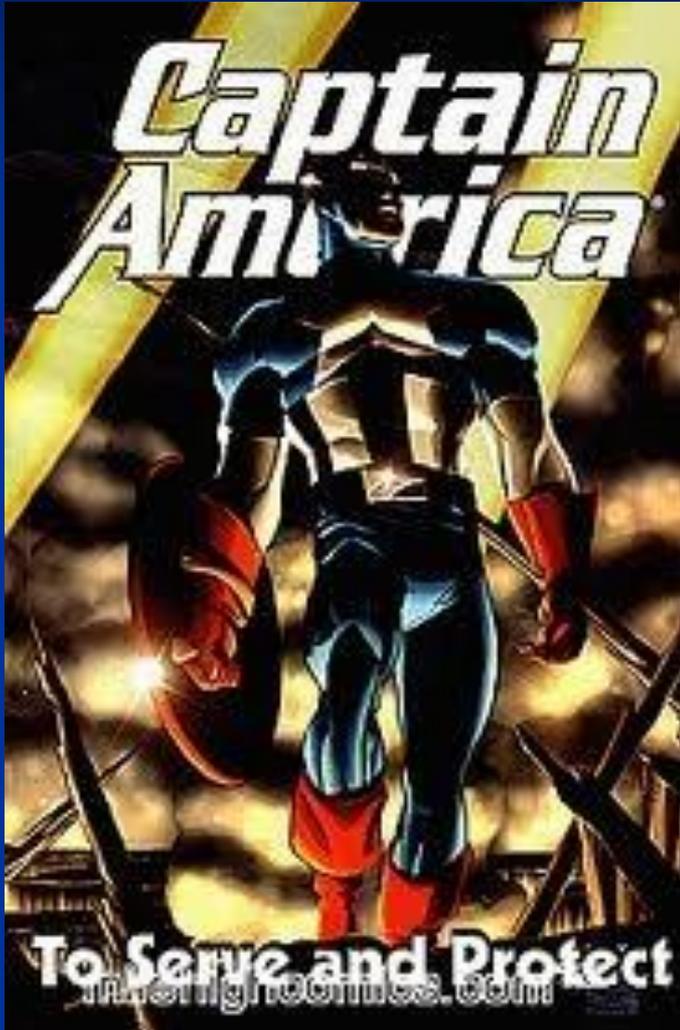


More Good News!



- Specialized prosecution units with victim advocates have increased successful prosecution rates, especially:
- Fast tracking cases
- Increased victim contact
- Reduced victim vulnerability

Officer's duties on a DV call in Utah



Officer who responds to a DV call SHALL (77-36-2.1):

- Use all reasonable means to **PROTECT THE VICTIM** and prevent further violence (including remaining on scene)
- Confiscate weapon(s) involved
- Make medical treatment AND emergency housing/shelter arrangements for victim and any child
- Provide standby protection while victim removes essential personal effects
- Provide written notice of victim's rights and services

“Use all reasonable means”

State vs. Comer, Utah Supreme Court 2002

- 9-1-1 call from citizen informant of a “family fight”
 - Woman came out of residence then abruptly ran back inside
 - Officers entered home without a warrant
- The officers had probable cause to believe a domestic violence offense had been, or was being, committed in the home, and that is “one of the most potentially dangerous, volatile arrest situations confronting police. The woman’s “somewhat sudden and unexplained retreat into the house” could reasonably have indicated to the officers that any of a number of scenarios might be about to occur, each of which would cause an officer to reasonably believe there was no time to get a warrant and/or that his presence was necessary to prevent physical harm to persons or the destruction of evidence. We therefore conclude that exigent circumstances existed, justifying the officers' warrantless entry into the home.

“Use all reasonable means”

State vs. Vallasenor-Meza, Court of Appeals 2005

9-1-1 report that Defendant was
“beating the crap out of my sister.”

Police arrived and Defendant acted
suspiciously and admitted there had
been a fight, but claimed victim was
no longer there.

Police went in residence and
searched for victim.

The officers legitimately feared for the
safety of the victim and were justified in
their concern and actions.

“Defendant argues that the officers
should have secured a warrant once he
agreed to come outside. This argument,
however, is misguided, as it ignores the
purpose of the exigent circumstances
exception to the warrant requirement.
The officers reasonably believed that they
did not have time to get a warrant
because the victim was potentially inside
the residence injured or unconscious, and
that their immediate intervention was
necessary.”

Officer's duties to Arrest at Scene

- Where probable cause exists for DV or Protective Order Violation, officer SHALL arrest without warrant or issue a citation. (77-36-2.2)
- Officer MUST arrest and NOT CITE if :
 - 1) PC to believe there will be continued violence against alleged victim;
 - 2) There is serious bodily injury;
 - 3) A weapon was used;
 - 4) There is a violation of a protective order.



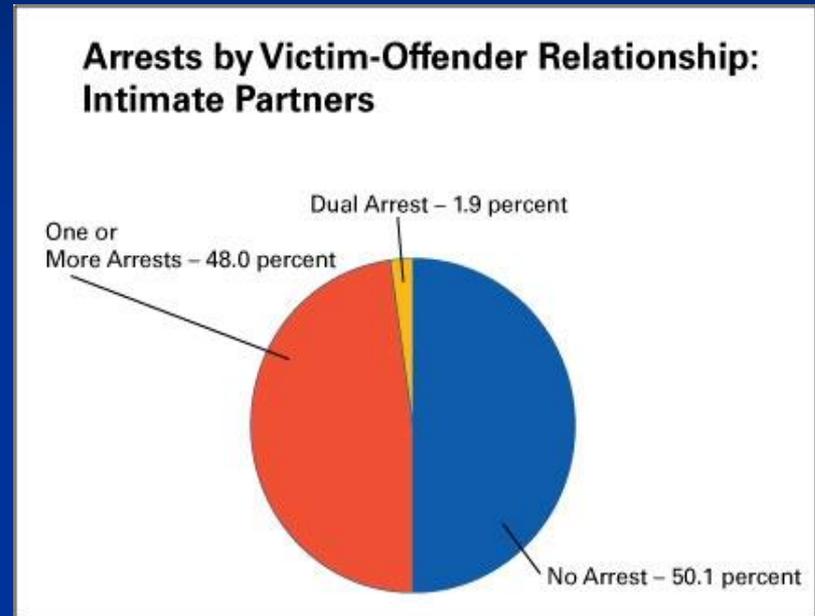
If there is no arrest at scene

- Officer SHALL write detailed report.
- Officer SHALL notify victim of right to initiate criminal case AND of the importance of preserving evidence.
- Victim may contact prosecutor.



Dual Arrests are discouraged!

- Can't threaten to arrest everybody in order to discourage another report or to get them to settle down
- If officer arrests two or more parties, SHALL submit a detailed report explaining why



Duty to Determine “Predominant Aggressor”



Officer SHALL determine the PA by considering:
Any prior complaints of DV;
Compare severity of injuries of the parties;
Likelihood of future injury to each of the parties; and
Whether one party acted in self-defense.

Watch for Batterer Manipulation!



Batterers will often attempt to manipulate police to gain an advantage, portraying themselves as “one of the boys”

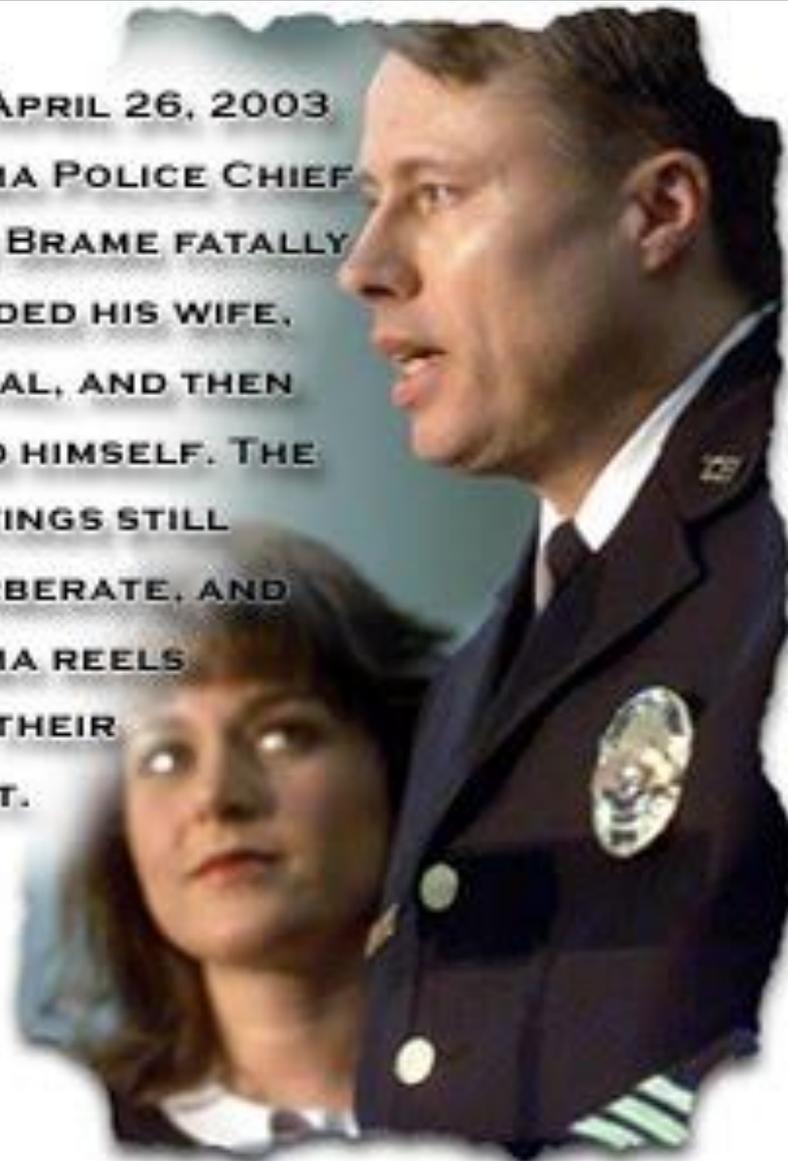
“She was just being a bitch.”

“She just went psycho on me!”

“You know how women get once a month.”

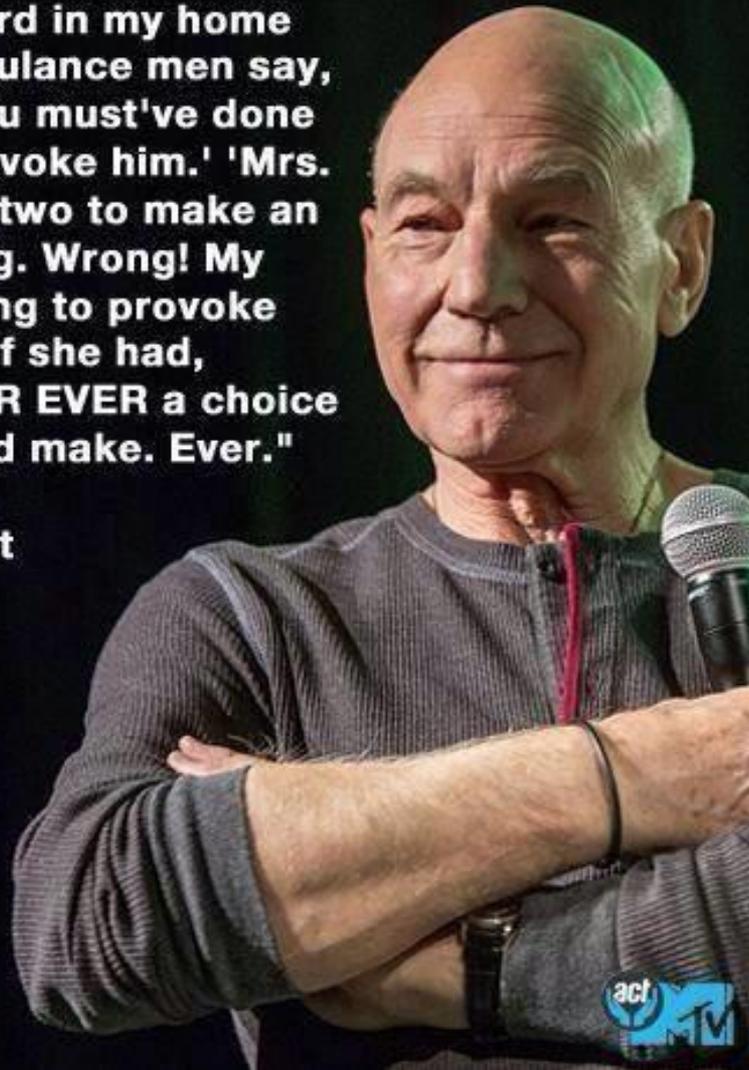
“I was just trying to help her.”

ON APRIL 26, 2003
TACOMA POLICE CHIEF
DAVID BRAME FATALLY
WOUNDED HIS WIFE,
CRYSTAL, AND THEN
KILLED HIMSELF. THE
SHOOTINGS STILL
REVERBERATE, AND
TACOMA REELS
FROM THEIR
IMPACT.



"As a child, I heard in my home doctors and ambulance men say, 'Mrs. Stewart, you must've done something to provoke him.' 'Mrs. Stewart, it takes two to make an argument.' Wrong. Wrong! My mother did nothing to provoke that -- and even if she had, violence is NEVER EVER a choice that a man should make. Ever."

-- Patrick Stewart



Lack of Victim Participation



Why???

Fear? Love? Shame?

Loyalty? Money? Family
pressure? Kids?

Answer:

It Doesn't Matter!!!

We need to do our jobs!

Victim Behavior

- Studies are consistent and clear:
- The majority of Domestic Violence victims have PTSD
- Some studies say 90 per cent



PTSD Behaviors

- Feeling emotionally numb
- Difficulty sleeping
- Upsetting dreams/thoughts
- Intrusive flashbacks
- Sense of hopelessness
- Difficulty concentrating
- Irritability/Anger
- Guilt/Shame
- Self destructive behaviors
- Difficulty making decisions

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- **Difficulty making decisions**

Victims' Coping Mechanisms



Victims often think they
can control it.

But they can't.



Bulletproofing DV Cases



■ El Paso Project

- 24 hour decision on filing DV case
 - Recording at scene
 - 9-1-1 call
 - Officer report
 - Criminal histories of parties



Bulletproofing DV Cases

Evidence available to prosecutor –
Admissible regardless of victim participation:

<i>9-1-1 recording</i>	2 %	Victim Photo	17 %
Crime Scene Photo	16 %	Physical Evidence	8 %
Weapons seized	11 %	Medical evaluation	9 %
Witness interviews	37 %	Suspects statements	18 %

Can be increased: Recorded hearsay statements!



Bulletproofing DV Cases

“It is what it is.”

“It is what we make it.”

** An opportunity for us to
create admissible evidence **

International Chiefs of Police
DV Model Policy (June 2006):

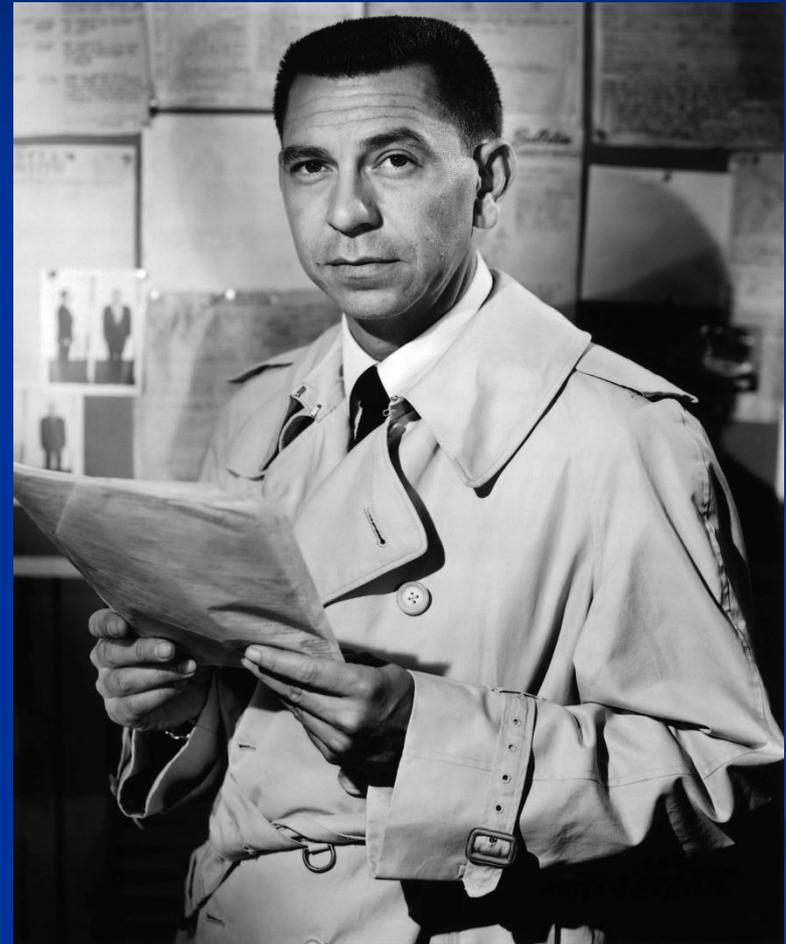
“Use recording devices to
capture statements made by
combatants and witnesses.”





Bulletproofing DV Cases

- FIRST thing to say to victim at the scene:
 - NOTHING.
 - Yes, NOTHING.
- Second thing to say to victim:
 - Are you OK/hurt?
- Third thing to say to victim:
 - What happened?



Using Hearsay Rules to Our Advantage



The hearsay rule is a firm rule excluding out of court statements . . .
. . . with 27 exceptions

- Most common ways to admit hearsay in DV cases:
- Present Sense Impression
- Statement by Party Opponent
- State of Mind
- Existing Mental, Emotional or Physical Condition
- Excited Utterance
- *Are we teaching our officers to watch for these?*

Pictures can tell a story



- Follow Up photos can do more than document injuries –
- They can portray emotions and pain

Photographs of the Scene



Evidence collection – At the Scene

- Don't forget about electronic devices – Old School ways to preserve evidence work, too
- Voice messages
- Text messages



Evidence Collection – At the Scene



- Consider photographing the kids
- AND
- Talk to them!

Evidence Collection – At the Scene



- One picture is worth a thousand words
- But seize the item, too, if possible



Evidence Collection – Follow Up



Gather previous police reports

Gather medical reports

Statements of neighbors, friends, family

Get ALL protective order documents

Follow-up photographs

**** JAIL PHONE CALLS ****

Favorite Jail Call Quotes

- “I’m sorry baby! You know I only hit you when I’m drunk.”
- “You didn’t tell the cops where I took the guns, right?”
- “They can’t prove I broke the window unless you tell them.”
- “Don’t come to court. They will have to dismiss it.”
- “Tell them it wasn’t me.”
- “Then who should I say did it?” “Make something up.”
 - Def: “Hey Baby – how are you?”
 - Victim: “My head really hurts.”
 - Def: “Yeah, I know, my fist hurts from punching you in the head.”

URE 404(b) “Other Acts”

State v. Shickles, 760 P2d 291 (1988)

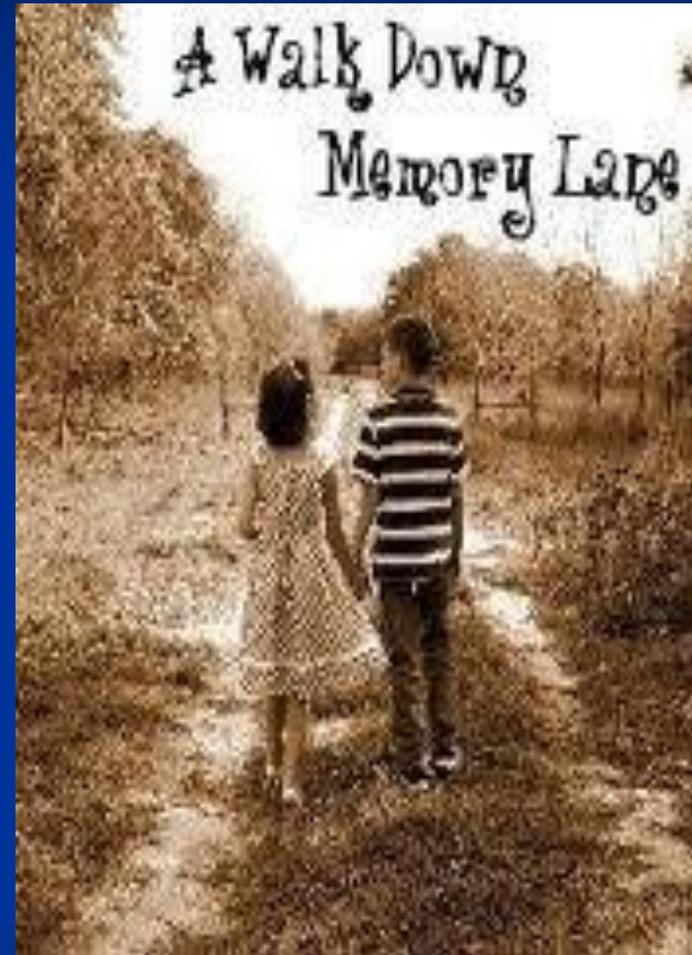
Factors to follow in determining admissibility of 404(b) evidence

State v. Holbert, 61 P3d 291 (2002)

Evidence of prior assaults “helps demonstrate a pattern of DV that goes to prove the specific intent element of intending to inflict injury or terrorize.”

State v. Losee, 283 P3d 1055 (2012)

Holbert cited with approval





- Don't forget URE 403
- “The court may exclude relevant evidence if its probative value is *substantially* outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

Screening Checklist

Office of the District Attorney
Special Victim's Unit
Screening Checklist

<input type="checkbox"/> 404 (a) & (c) Evidence	<input type="checkbox"/> Witness List	<input type="checkbox"/> DCFS Records
<input type="checkbox"/> Police Reports	<input type="checkbox"/> Medical Reports	<input type="checkbox"/> Cocaine Exam/Report
<input type="checkbox"/> CJC Recording(s)	<input type="checkbox"/> 911 Calls	<input type="checkbox"/> Suspect Recording(s)
<input type="checkbox"/> Photos	<input type="checkbox"/> Search Warrants	<input type="checkbox"/> Interview Transcripts
<input type="checkbox"/> Written Affidavit Waiver	<input type="checkbox"/> Written Witness Statements	<input type="checkbox"/> Certified Court Documents

Victim's Date of Birth: _____

Relationship of suspect to victim: _____

Brief description of event(s), including location and times: _____

Physical evidence: _____

Corroborating evidence: _____

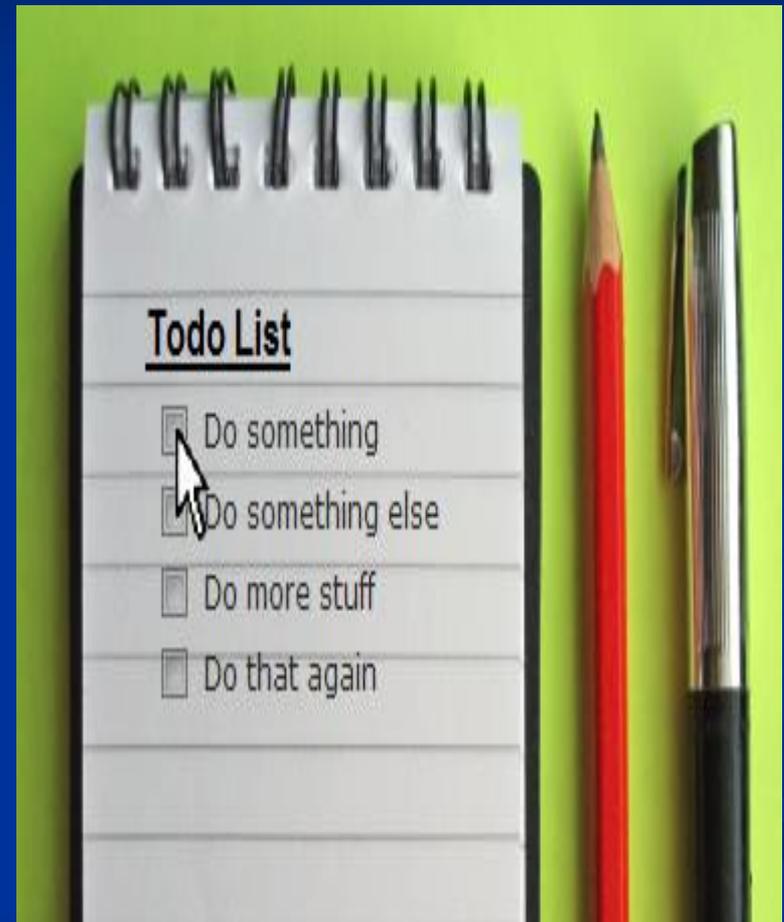
Interview of suspect (if no, please explain): _____

Suspect Admissions: _____

The Screening Process

The Prosecutor's To Do List:

- Require submission of ALL police reports.
- Review any recorded interviews.



The Screening Process

❑ Make sure you have a finished investigation before filing

OR

Make sure you know what is missing and you decide that you can proceed without it.



The Screening Process

- ❑ Contact or meet with Victim. Please.
- ❑ Call or Meet with police officer.



The Screening Process



- ❑ Consider going to the crime scene – some things are just more real if you are there
- ❑ Exception: Defendant is a moving crime scene

The Screening Process

Screen close calls or difficult cases with other prosecutors



Charging Decisions



Overcharging vs.
Undercharging



Charging Decisions

Will the numbers of charges allow you to get different evidence admitted?

Will there be a different sentence if multiple charges are filed?

Are there qualitatively different types of criminal activity?

Will multiple charges reflect the seriousness of the case?



Charging Decisions

How will the victim be affected by the number of counts charged?

Is there difficulty in proving each separate charge?

Will the case be easier or harder to resolve?

Which charges will the judge/jury care about the most?

Will jury perceive us as being “fair?”

Working With Victims

“Minutes of skillful support by any sensitive person immediately after the crime can be worth more than hundreds of hours of professional counseling later.”

-- Morton Bard and Dawn Sangrey, “The Crime Victim’s Book”



Things to Say to Victims

“I am worried about you / and your kids.”

“We may not always agree on every issue. And, that’s OK.”

“I will always seek your input before making any important decisions in the case.”

“My job is different from yours. Let me tell you a little bit about my job.”

“What would you like to see happen in this case?”

“Let’s take this case one step at a time.”



PLEA BARGAINING

Yeah, Sure I'm Guilty ... Just Get Me the Hell Away from This Guy!

Plea Negotiations

- Office policies
- Respect victim's right to give input BUT preserve your independence
- Be very clear in communicating with defense
- When should plea offer be changed?



Factors in Making Plea Offer

- Effect of resolution on the victim
- The perpetrator's likelihood to reoffend
- Whether treatment will be effective
- Similar sentences for similarly situated perpetrators



Factors in Making Plea Offer

- The biggest factor of all:
- The strength or weakness of the evidence.



- The best way to resolve a case is to prepare for trial.

Spousal Privilege



State vs. Timmerman 2009

Utah Supreme Court:

“The privilege enables abusers to silence their victims and makes the testifying spouse vulnerable to coercion from the defendant spouse and his attorney.”

Two privileges:

Testimonial Privilege – Article 1, Section 12 Utah Constitution

Only testifying spouse can invoke

Marital Communications Privilege - URE 502

Either spouse can invoke

Privilege does NOT apply in case where there is a crime against a spouse or a child of either spouse

Taking the Reluctant Victim Case to Trial

- State vs. Robert Jones
- 7 Previous DV calls in 3 years (one PIA)
- Defendant came home high on meth and beat girlfriend in the head with his laptop computer and threatened to kill her
- Two small boys present during assault

Taking the Reluctant Victim Case to Trial

State vs. Robert Jones - Audio of 9-1-1 call



What charges could be filed based on 9-1-1 call and officer responding to the scene?

Charges Filed

- Charges filed:
- Aggravated Assault (F3) – weapon used
- Two Counts DV in Presence of Child (MBs)
- No Contact Order requested but not issued

Taking the Reluctant Victim Case to Trial

- Audio of Victim Testimony Part 1



Taking the Reluctant Victim Case to Trial

- Audio of Victim Testimony Part 2



I freed a thousand slaves. I could have freed a thousand more if only they knew they were slaves.

-- Harriet Tubman



- Donna Kelly
- dkelly@Utah.gov
- (801) 366 - 0341 office
- (801) 201 – 4759 cell