

---

# DOMESTIC VIOLENCE CASES WITHOUT A “VICTIM” & BATTERED SPOUSE SYNDROME

CHRIS HATLEY (SPRINGFIELD TRIAL) AND PATTY POE (ST. LOUIS CITY TRIAL)



# ALL THINGS DOMESTIC

- What is an “evidence based” prosecution and how do you attack it?
- What is Battered Spouse Syndrome and how do you pursue this defense?

## NO VICTIM? HOW IS THE STATE DOING THIS?

- First off, they are now being trained from the onset to prepare the case as if the complaining witness will never appear.
- For example, in addition to her official duties, Stephanie is also a certified instructor at the Springfield Police Academy and is also responsible, specifically, for teaching "Evidence-Based: Investigating and Prosecuting Domestic Violence Cases Without the Victim" to the Springfield Police Department Academy and the Drury Law Enforcement Academy.
- Recent series of articles in the KC Star where the PA laments the entire notion of the right to confrontation

## UNCLEAN HANDS

- Has the state even personally served the witness? Have they even had contact?
- Have they asked for a writ of body attachment?
- If it's a felony, have they asked for a warrant under Rule 33.12?
- State shouldn't be allowed to back door evidence when they haven't made reasonable attempts to produce the complaining witness.

# UNAVAILABLE WITNESSES

- What about preliminary hearings? *State v. Aaron*, allowing unavailable witness's preliminary hearing testimony to be read to the jury does not violate defendant's right to cross-examination, even without full discovery.
- Burden on state to show the witness is unavailable to testify and that we had a prior opportunity to cross-exam.
- 25.16 a witness is unavailable if:
  - 1. dead
  - 2. unable to attend or testify because of sickness or infirmity
  - 3. has invoked testimonial privilege or other refusal to testify not produced by the action of the state, or
  - 4. is otherwise unavailable and the state has made a good faith effort to obtain the presence of the witness at the hearing or trial, but has been unable to procure the attendance of the witness.

# DEPOSITIONS TO PRESERVE TESTIMONY

- Supreme Court Rule 25.14
- Must file a motion to preserve deposition (does not apply to the defendant or the spouse of defendant)
- Court orders deposition as being necessary to preserve testimony
- Order shall require the defendant to attend the deposition personally or waive that right in writing or in open court

## TYPICAL FACT PATTERNS

- “Excited utterances” to the cops
- 911 calls
- Third party eye witness
- Photos plus admissions
- *Corpus delicti*; the term is used in the context of criminal law to describe the prosecutor's burden of proving that a crime was committed by *someone*, independent from a defendant's extrajudicial statements.

## 911 CALLS

- You need to get them
- You need to listen to them
- When were they made in connection to the allegation?
- At the same time? Or made later on?
- What is the demeanor of the caller?
- Are they frantic, hysterical, etc.?
- Be prepared for the standard  
“excited utterance” response from the state



## EXCITED UTTERANCES

- Object to hearsay
- Are they really excited utterances?
- “The excited utterance exception to the hearsay rule depends on a startling or unusual occurrence sufficient to overcome normal reflection such that the ensuing declaration is a spontaneous reaction to the startling event.” *Bynote v. National Super Markets, Inc.*, 891 S.W.2d 117, 122 (Mo. banc 1995).
- Among the factors to be considered in determining whether an excited utterance exists are [1] the time between the startling event and the declaration, [2] whether the declaration is in response to a question, [3] whether the declaration is self-serving, and [4] the declarant's physical and mental condition at the time of the declaration. While no one factor necessarily results in automatic exclusion, all should be considered in determining whether the declaration was the result of reflective thought.

# HEARSAY & CONFRONTATION

- Remember to fight it on both fronts. The State has to overcome the hearsay and confrontation objections.
- Object to confrontation under Article I, Section 18(a) & 6<sup>th</sup> Amendment
- Standard state argument will be that confrontation is not implicated because the statements were not testimonial.
- “Statements are nontestimonial 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.” *Davis v. Washington*, 547 U.S. 813 (2006)

# CONFRONTATION CONTINUED

- *State v. Cooper*, 509 S.W.2d 854 (2017)
- Good analysis of differences
- What is the primary purpose of the officer?
- Ongoing emergency vs. investigation of a possible crime
- What IS happening vs. What HAPPENED
- “Applying such an objective view here causes us to conclude that the primary purpose of Officer Rogers's interrogation of Victim was not to assist in an ongoing emergency (at that point, Defendant (the only suspect) had been identified at the scene, questioned by Officer Lightwine, and arrested) but, instead, to investigate a possible crime. Further, Officer Rogers expressly admitted that he asked Victim about “what *had* happened” (emphasis added) for the purpose of gathering information to be used in a criminal prosecution.”

# BATTERED SPOUSE SYNDROME / INTIMATE PARTNER VIOLENCE

- “Intimate Partner Battering and its Effects”
- Does not apply just to married couples. *State v. Williams*, 787 S.W.2d 308.

## HISTORY OF BWS

- BWS originally coined by Dr. Lenore Walker during the 1970s, ideas based in lab work with dogs and inescapable electric shock – helplessness and passiveness.
- Walker also developed the “cycle of violence” theory which encompasses three stages:
  - 1. Tension Building Phase
  - 2. Acute Battering Incident
  - 3. Loving Contrition

## PURPOSE OF EXPERT TESTIMONY IN THIS AREA

- Assist trier of fact in placing the battered person's behavior into the context which is occurred.
- Rebut the stereotyped assumption of "if the abuse was really that bad, she would have just left."
- Help the trier understand the defendant's perceptions of fear at the time they acted, placing action in context with prior experiences with the defendant's abusive partner.
- Reasonableness of the defendant's beliefs.

## SECTION 563.033

- It is an AFFIRMATIVE DEFENSE, much like self-defense
- Statute requires notice in writing.
- If your client suffers from it, statute says it SHALL be admissible as to the issue of self defense
- Statute does not set any sort of time limit for filing
- BE AWARE that filing of the notice allows the State to have your client evaluated by their own expert

## GETTING YOUR DUCKS IN A ROW

- INVESTIGATE INVESTIGATE INVESTIGATE
- Prior police reports between the partners and of other partners
- Prior medical records
- Talking to family, friends, co workers, etc.
- Does the batterer have an ex-partner who has been abused?
- Digging up as much dirt on the dead person as you can
- Don't get discouraged if there is limited information



## THINGS TO BE CAUTIOUS ABOUT

- Limits of confidentiality of the evaluation and the report.
- Therapist-patient privilege does not apply.

## EXPERT WILL ASK YOUR CLIENT ABOUT

- Prior romantic relationships
- Family history
- Education/occupational history
- Substance abuse
- Trauma history

## AN EXPERT IS AN ABSOLUTE MUST

- Highly specialized field
- Don't just hire your local psych
- Only 4-5 in our database
- They all live out of state
- They all work all over the country
- Give them as much lead time as you possibly can
- Be prepared to spend some money- this shit isn't cheap

- Instead of jurors looking at this under a reasonable person standard, they are instructed:



As used in this instruction, the term "reasonably believe" means a belief based on reasonable grounds, that is, grounds that could lead a reasonable person in the same situation to the same belief. Evidence has been introduced that the defendant, as a result of [*name of victim*]'s prior conduct, was suffering from "battered spouse syndrome." If you believe that defendant was suffering from such syndrome, you must consider how the situation would appear to a person suffering from such syndrome. Thus, in determining whether the defendant's beliefs as to her situation were reasonable, that determination should be based on what an otherwise reasonable person who is suffering from battered spouse syndrome would believe. It does not depend upon whether the belief turned out to be true or false.


## MORE GOOD LANGUAGE

- If you believe that the defendant was suffering from battered spouse syndrome, then in determining whether defendant was reasonable in believing the use of deadly force was necessary to protect herself from (death or serious physical injury) (the commission of [*Insert name of forcible felony.*]), your determination must be based on what an otherwise reasonable person who is suffering from battered spouse syndrome would believe under the situation as it appeared to the defendant.
- Evidence has been introduced that defendant was suffering from battered spouse syndrome. If you believe that defendant was suffering from battered spouse syndrome, then you must consider that in determining who was the initial aggressor in the encounter.

## JEANETTE RIDDLE

- Charged with killing her long time boyfriend with a crowbar
- She tried to kill herself after
- Told medical personal and cops she was not in an abusive relationship
- Cops never once looked into the background of the boyfriend
- If they had....They would have found he was a multiple time felon with priors for domestic assault and child abuse
- Our investigation was frustrating. Where we should have found tons of good stuff, we found little
- Part of the pattern of abuse- Jeanette was cut off from the outside world. She didn't work, wasn't allowed to have friends, barely even saw her own daughters
- Despite a decade of abuse we were only able to find one police report and one ER visit.

- 
- 
- We talked to every family member we could find
  - Found all of her former friends, the ones cut off by this relationship
  - Found the BF's ex wife in California and interviewed her
  - Found orders of protection and police reports from surrounding counties
  - None of this was done by law enforcement
  - Our list of endorsed witnesses was in excess of 25 people

- 
- Once we felt we were ready, we reached out to an expert
  - Dr. Mindy Mechanic- formerly a professor at Cal. St. Fullerton, now consults full time
  - Testifies all over the world, does lots of work for the prosecution in court martial cases
  - She spent two full days with Jeanette, we also brought in other witnesses for her to speak with
  - Final report was 50 pages, single spaced.