

**Domestic Violence Law for Non-  
Lawyers:  
De-Mystifying the Criminal Justice  
Process**

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# DV Criminal Cases

## The Players

- **Law Enforcement**
  - Respond to calls for services, Investigate, Arrest/charge crimes
- **The Prosecutor**
  - Duty is to represent the state and do what is in the interest of justice
- **The Defense Attorney**
  - Duty is to zealously represent the client
- **The Judge**
  - Duty is to remain impartial and ensure procedural integrity

# Law Enforcement

# Law Enforcement

## Scenario #1

While driving through downtown Allentown, a police officer observes a woman sitting on a bench next to the street. She appears to be upset and crying. The officer pulls over at the first opportunity, exits his car and approaches the woman on foot. He says, "Are you okay?" The woman says she is okay, she is just upset because she and her boyfriend just had a fight. The boyfriend then approaches carrying a 12-pack of beer.

1. Does the boyfriend have to provide identification to the officer?
2. Does he have to answer the officer's questions?
3. Is he free to leave?

# Police - Citizen Contact

## CONSENSUAL CONTACT

Informal

No show of  
authority

No restriction of  
movement

Individual free to  
leave

Not a "seizure" of  
the individual  
under the 4<sup>th</sup>  
amendment

# Law Enforcement

## Scenario #1

### Additional Facts

As the officer was passing the bench in his car, he saw physical movement between a man and a woman which he described as a “possible struggle”. The male was not present by the time the officer parked and contacted the female. The male returned a few minutes later carrying the 12-pack of beer.

1. Does the boyfriend have to provide identification to the officer?
2. Does he have to answer the officer’s questions?
3. Is he free to leave?

# Police - Citizen Contact

Fourth Amendment “seizure” of the person

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## INVESTIGATORY DETENTION

Officer must have a reasonable articulable suspicion of illegal conduct (past, present or future)

Detention, not arrest

Limited in scope and duration

# Law Enforcement

## Scenario #1

### Additional Facts

During the investigation, the officer learns the couple were struggling over Carl's credit card because Vicki did not want him to buy beer. Carl got his card and went into a store across the street to buy beer. The officer also observed Carl return to the bench with the beer by crossing the street in the middle of the block.

1. Is Carl free to leave?



# Police - Citizen Contact

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### NON-CUSTODIAL ARREST

Must be supported by probable cause

Temporary detention to issue a ticket

Limited right to search (officer safety, Plain view)

# Probable Cause

- Incapable of precise definition or quantification
- Mixed question of law and fact

**“Probable cause exists when the totality of known facts and circumstances warrant a conclusion by a reasonable person that a crime has been committed and that a particular person has committed that crime.”**

# **Law Enforcement**

## **Scenario #1**

### **Additional Facts**

**Vicky tells the officer that during the struggle over the credit card Carl hit in the head three times with an open hand. The officer observed that Vicki's right earlobe was bleeding around her earring.**

**1. Is the boyfriend free to leave?**

# Police - Citizen Contact

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Limited right to search

### CUSTODIAL ARREST

Must be supported by probable cause

Substantial deprivation of liberty

Greater right to search

Miranda required if interrogated

# **Law Enforcement**

## **Scenario #1**

### **Additional Facts**

**Carl is arrested for assault domestic violence. He is handcuffed, searched and placed in the back of the police car.**

- 1. Can the officer legally search Carl?**
- 2. Does the officer have to now give Carl Miranda warnings?**

# 4th Amendment

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

# Warrantless Search / Seizure

Limited exceptions to the 4<sup>th</sup> Amendment warrant requirement:

- **Exigent Circumstances**
  - Destruction of evidence
- **Emergency Aid**
  - Safety, Medical
- **Public Safety**
  - Public at risk
- **Incident to Arrest**
  - Officer Safety
  - Preservation of evidence
    - Areas within arrestee's immediate control

# Miranda Warning

- **Two circumstances must be present before Miranda Warnings are required:**

- 1. Custody**

- 1. Interrogation**



# Miranda Warning

Is it interrogation?

- “What were you thinking?”
- “Do you realize that you could have seriously hurt someone?”
- “Man, you must be trashed!”
- “You’ll be lucky if the judge ever lets you out of jail!”
- While in the police car, officer holds up a small recorder where suspect can see it.

# Prosecution

# Standards for Prosecutors

## The American Bar Association

The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and and defendants

# Prosecutor's Role

- **Seek Justice, not just convictions**
- **Exercise Discretion**
- **Consider Interests of Victims and Witnesses**
- **Protect the Constitutional Rights of All**

# Domestic Violence Crimes

**Historically, acts of domestic violence were not treated as criminal.**

- Chastisement**
- Rule of thumb**
- It is unrealistic to expect victims to automatically conform to a system designed for crimes committed against strangers.**
- It should not be surprising that DV defendants will exploit the gaps created by the incongruities.**

# Procedural Integrity

- **Parties to the case are able to present all relevant evidence to the judge and the jury.**
- **Information is not improperly restricted by manipulation, intimidation or wrongdoing outside the court process.**

**T**

# **Two Questions**

- 1. Can I prosecute this case?**

# Can I?

## Elements and Evidence

- **Elements**
  - The parts of a crime that must be proven beyond a reasonable doubt
  - The defendant
  - In the state of ...
  - At or about the date and place ...
  - Knowingly, recklessly ...
- **Evidence**
  - Witnesses, documents, Expert Witness, Photographs, Objects, Videos

**Is there a reasonable likelihood of success at trial?**



# Two Questions

**1. Can I prosecute this case?**

**1. Should I prosecute this case?**

# The Exercise of Discretion

- **Domestic Violence is:**
  - **Complex** – Power, Reaction, Culture, Emotion
  - **Dynamic** – Not all good or all bad
  - **Historical** – Actions interpreted through past experiences

**CONTEXT MATTERS!**

# Discretion

## Scenario #2

Sheri and Jay are in a relationship and have lived together for two years. On Friday night Jay says he's going to the bar with his buddies. Sheri tries to talk Jay out of going so they can spend time together. Jay tells her to "Get a life" and leaves. Sheri gets angry and kicks her foot through one of Jay's \$800 stereo speakers.

1. Should Sheri be prosecuted?
2. What additional information would you like?

# Discretion

## Scenario #2

### Additional facts

Jay has been arrested twice for domestic violence assault of Sheri. The first case was dismissed when Sheri did not appear for trial. Jay received a deferred sentence offer in the second case which he accepted. He successfully completed the terms of his deferred sentence and the case was dismissed and sealed. Both cases involved alcohol.

1. Do these facts change your decision?

# Discretion

## Scenario #3

Bill and Amy are involved in a loud argument. The neighbors hear a “thump” and call 911. When the police arrive Amy explains that she and Bill were arguing about their nine-year-old daughter and she did not want him to leave so she stood between him and the door. Bill grabbed Amy by the shoulders hard enough to leave marks and pushed her onto a couch before leaving.

1. Should Bill be prosecuted?
2. Should Amy be prosecuted?
3. What else do you want to know?

# Discretion

## Scenario #3

### Additional facts

Approximately six months before this argument their daughter had collapsed on the school playground and died in the ambulance on the way to the hospital of an undiagnosed heart condition. Bill refused to go to counselling and Amy was trying to persuade him when he left. There is no other history of domestic violence.

1. How does this change your analysis?

# Discretion

## Scenario #1 Revisited

### Additional facts

The prosecutor offered Carl a deferred sentence with domestic violence counselling. Carl rejected the offer and the case was set for trial. Vicki was subpoenaed to testify. On the day of trial Vicki did not appear in court.

1. Should the prosecutor request a warrant for Vicki's arrest?
2. Does the judge have to issue a warrant if requested?
3. Can the prosecutor ask the officer to testify about what Vicki told him?

# The Defense Attorney



# The Defense Attorney

- **Defense Attorney Role:**
  - To zealously represent the client within the bounds of the law
  - To ensure that the state (law enforcement and prosecutors) have protected the client's Constitutional rights and followed all the rules
  - To hold the prosecution to its burden
  - To challenge the credibility of witnesses through cross-examination

# The Courts

# 6<sup>th</sup> Amendment Confrontation Clause

“In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him ... “

# The Crawford Challenge

- **Hearsay: An out of court statement offered for the truth of the matter asserted.**
  - Hearsay statements are not admissible in court unless they fall within an exception to the rule (there are 23 of them!).
- **What kind of a statement is it?**
  - **Crawford Primary Purpose Test**
    - Like a witness = Testimonial = Not admissible
    - For some other purpose = nontestimonial = admissible if a hearsay exception

# The Crawford Test

## Scenario #4

Marie calls her sister Anna to ask if Anna will come and pick her up as her husband is getting escalated and Marie is afraid he will become more violent. When Anna picks up Marie she observes bruises on Marie's neck. Marie tells Anna she was "choked" by her husband for calling Anna. Marie does not appear for trial.

- Can Anna testify to what Marie told her?
- What is the primary purpose of Marie's call?
- What is the primary purpose of Marie's statement about being choked?

# The Crawford Test

## Scenario #5

Rose calls 911 and reports that her husband became angry and started breaking things. She also states that her husband left when he realized she was calling the police. When police arrive, Rose is sitting on the porch. She is calm and tells them what happened. With her permission, police enter the house and observe numerous items broken and damaged. Rose does not appear for trial.

1. Are Rose's statements to the police admissible at trial?
2. What is the primary purpose of her statements?

# The Crawford Test

## Scenario #6

Julie calls 911 and says that her husband is trying to get into the house. She also states that there is a protection order in place preventing him from being at the house or making any contact with her. The 911 operator asks Julie where he is right now and Julie says she is not sure but he is no longer banging on the door

1. Are Julie's statements to the 911 operator testimonial or nontestimonial?
2. What is the primary purpose of her statements?

# Protection Orders

## Scenario #7

Randy is arrested after witnesses call the police to report he “chased” his wife, Michelle, out of their apartment. When Michelle got into her car to leave Randy took a landscape brick and smashed the front windshield of Michelle’s car. At Randy’s first court appearance he is advised of the charges and bond is set. Michelle appears in court and asks the judge to “drop” the protection order.

- 1.** Should the judge grant Michelle’s request?
- 2.** What factors should a judge consider before amending a protection order?



**Questions or Comments?**

# Contact Information

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