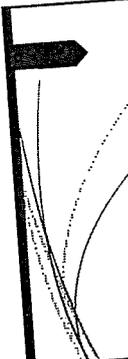




Elder Abuse Prosecution

Tips, Myths, and Dementia

By: Margarita Veřkanov, DDA (N ©)
Shasta County District Attorney's Office



Why is Elder Abuse Prosecution Important?

Elder Abuse Incidence

~~FOR EVERY REPORT OF ABUSE...~~

FOR EVERY REPORT OF ABUSE...

23.5 CASES GO UNREPORTED



Source: Alameda County, California Department for the Aging, 2011. Elder Abuse and Neglect: A National Study of Adult Protective Teams



Why is Elder Abuse Prosecution Important?



- The same study from New York in 2011 broke down the different types of abuse
- Physical Abuse – 20x more acts of physical elder abuse occurs than what is actually reported to agencies within the elder abuse system
- Our population is aging at a rapid rate:
 - Every single day in the USA, the number of people turning 65 years old is **10,000**
 - By 2010, there were 114,000 Americans 100 years of age and older.
 - It is estimated that by 2020, there will be 241,000 Americans 100 years of age and older.
- Despite progress in the field, funding for Elder Justice is 1% of the funding attributed to child and family welfare... *simply not enough resources.*
- Much of it is underreported...

Why is Elder Abuse so underreported?

- Elder abuse victims are some of our most vulnerable victims
- Fears of many seniors – being put in a home, etc.
- Feelings of shame and embarrassment – losing money, raising child
- Concern that exposure will lead to loss of independence
- Could be accompanied by threats
- Deny victimization to protect children/loved ones (majority are family members)
- Perceived as a failed parent
- Fear of abandonment/retaliation
- Love for the Defendant (very similar to a Domestic Violence situation)



DEFINITIONS

Penal Code Section 368 is your friend!

PENAL CODE SECTION 368 Definitions

- Penal Code Section 368(a) defines an "Elder" as an individual 65 years old
- Penal Code Section 368(h) defines a "dependent adult" as:
 - Age: 18-64
 - Physical or mental limitation which restricts his/her ability to carry out normal activities or to protect his/her rights, OR
 - A patient who is admitted at a 24-hour health facility, as defined in HS 1250, 1250.2, and 1250.3

Penal Code Section 368(a) – Legislative Intent

- (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

Penal Code Section 368(b)(1) – Physical and/or Mental Elder Abuse

- (b) (1) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the person or health to be placed in a situation in which his or her elder or dependent adult is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.
- WOBBLER
- Focus on: "under the circumstances that could cause GBI..." → FELONY

Penal Code Section 368(b)(2) – Enhancements

- (2) If, in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:
 - (A) Three years if the victim is under 70 years of age.
 - (B) Five years if the victim is 70 years of age or older.
- (3) If, in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:
 - (A) Five years if the victim is under 70 years of age.
 - (B) Seven years if the victim is 70 years of age or older.

Penal Code Section 368(c) – Misdemeanor Elder Abuse

- (c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.
- 6 month maximum in county jail...BUT...

Penal Code Section 243.25 – Misdemeanor Elder Abuse

- When a battery is committed against the person of an elder or a dependent adult as defined in Section 368, with knowledge that he or she is an elder or a dependent adult, the offense shall be punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.
- One Year Maximum in County Jail
- However, PC 368 looks better on a RAP/CLETS sheet...



Penal Code Section 368(d) – Financial Elder Abuse

- (d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, larceny, or fraud, or who violates Section 530.5 providing identify theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:
 - (1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (b) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).
 - (2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

Penal Code Section 368(e) - Caretaker Elder Abuse

- (e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:
 - (1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).
 - (2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

Penal Code Section 368(f) - False Imprisonment of an Elder (Elder Abuse)

- (f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.
- This is an 1170(h) crime, so typically PC 368(b)(1) will be used, in order to make the crime State Prison eligible.



Penal Code Section 368(l) - Elder Abuse & Criminal Protective Orders (CPO)

- (l) Upon conviction for a violation of subdivision (b), (c), (d), (e), or (f), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.



Elder Abuse – Statute of Limitations

- Penal Code Section 801.6 –
 - ANY 368 prosecution for physical abuse or neglect
 - 5 YEARS
- Penal Code Section 803(e)(1) –
 - FELONY 368 financial
 - 4 YEARS from the date of discovery or from the date the crime was committed



Penal Code Section 1048(b)(2) – Statutory Priority for Trial

- ... all criminal actions in which a person who was 70 years of age or older at the time of the alleged offense... was a witness to, or is the victim of, the alleged offense... shall be given precedence over all other criminal actions in the order of trial... the trial shall be commenced within 30 days after arraignment...
- This also applies to dependent adults
- Legislature is silent as to how it applies to individuals between the ages of 65-69, but may be worth an argument, considering the legislative intent.
 - (stay tuned on People v. Stephanie Hall – Margarita's case)



ELDER ABUSE MYTHS & TIPS

Elder Abuse Prosecution Myths and Tips on how to combat them

(Special shout out & thanks to San Diego DDA Paul Greenwood)

MYTH # 1 – Elderly People make terrible witnesses

- Many automatically assume that because someone is an elder, they are automatically forgetful... (remember what they say about assumption).
- In actuality, it does not matter what age you are, we are forgetful
 - (i.e. what did you have for dinner Monday night of last week?)
- Avoid stereotyping seniors
 - Typical stereotypes: forgetful, senile, longwinded, grumpy, disabled, fragile
- By not automatically assuming the worst, we can get to know our victims. Many of them are able to testify quite well. AND they make for GREAT jury appeal...

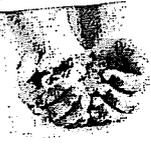


Myth #2 – If an elderly victim refuses to provide information, then nothing can be done

- Remember, look at this similar to a domestic violence charge... 
- What other key witnesses are?
- There are ways to break through the victim's wall of silence?
 - Use our victim advocates – Barbara Davis is the bomb.com and is assigned to elder abuse
 - Investigators can build rapport
 - Utilize APS (Adult Protective Services) – they may have useful information regarding the victim or his/her past.
- Ultimately do not give up – whether or not the victim wants to prosecute is not our concern. We CAN convict even without the assistance of the victim (i.e. 99.9% of DV cases ← disclaimer: not an actual fact)

Myth #3 – If an elderly victim gives the money voluntarily, it is not a crime

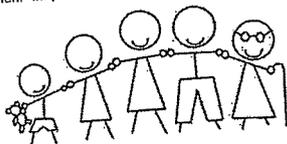
- NOT JUST A CIVIL MATTER
- Things are not always as how they first appear
- There are times when the apparent voluntariness has been diluted by fraud, undue influence, or by exploiting the mental limitations of the victim.





MYTH #4 – A Power of Attorney does not provide a license to steal and plunder

- Most Defendants are family members
- A family member who is the suspect... accelerated inheritance is NOT a good defense!
- DO NOT use the argument "they will inherit anyways, so whatever."



MYTH #5 – If a victim is deceased before we discover the theft, we cannot prosecute

- This is simply wrong.
- You can treat these cases like you would a murder
- There are some situations in which we do not need the victim to prosecute
 - You can still prove a theft happened even if the victim is deceased
 - Perjury, for example, does not require victim testimony.
- Also, do not look at these cases as "they are dead anyways" or "they will die soon."
 - That is simply unacceptable.



MYTH #6 – Any case where the elderly victim is involved in a home repair is not criminal

- NOT always a civil matter
- Questions we should be asking:
 - Is the "contractor" licensed
 - Are there other victims out there?
 - Did he get the money up front?
 - What services were promised?
 - What services were completed and/or delivered.
- FACT: A contractor is only allowed to receive a 10% or \$1,000 down payment, whichever is less.



Myth #7 – Suspects of Elder Abuse crimes never call 911



- ▶ Always, always, always request 911 calls.
- ▶ You never know what you will hear – demeanor, facts, or even the defendant in the background stating "you're dead... you're fucking dead."
- ▶ Unfortunately, dispatchers need training when it comes to elder abuse because they too have the same stereotypes.
- ▶ Also, always subpoena PARAMEDICS and FIREMEN:
 - ▶ Find out who the paramedics and firemen were who contacted the victim first
 - ▶ They are there to do the first evaluation and many elders know that they are only there to help.
 - ▶ Sometimes have amazing info, and let's be real... GREAT jury appeal.

Myth #8 – Elderly people die from natural causes

- ▶ Do not just automatically assume that every death is due to natural causes.
- ▶ Many deaths go covered for years because of that very reason.
- ▶ Important to have an Elder Death Review Team... although I don't think our county has one ("hint, hint, nudge, nudge")
- ▶ Lessons to learn from... Dr. Harold Shipman
 - ▶ Recent case in the news involving a doctor in England who was overdosing his patients on morphine, and adding himself to their will.
 - ▶ Over the past 18 years, committed over 350 murders
 - ▶ Benefited financially and was never caught



Myth #9 – The "Anyway" Excuse

- ▶ "There are more important cases out there..."
 - ▶ "We don't have the resources..."
 - ▶ "The victim is going to die anyway..."
 - ▶ "The Defendant was going to inherit anyway..."
 - ▶ "Oh this is just a weird family dynamic..."
- ▶ DO NOT ALLOW YOURSELF TO FALL INTO THIS MINDSET. It is easy considering our work load and the true lack of resources, but these are our most vulnerable victims and they deserve to have their final years filled with dignity and justice.



Myth #10 – We don't have jurisdiction... the crime did not occur here.

- Always look deeper into the report than just face value.
- For example:
 - In San Diego they had a Publisher's Clearing House Scam. Telephone calls were made depriving individuals of \$41,000. Although the individuals were not in San Diego, the phone call was made in San Diego. The courts found that that met the jurisdiction hurdle.



Wound Identification

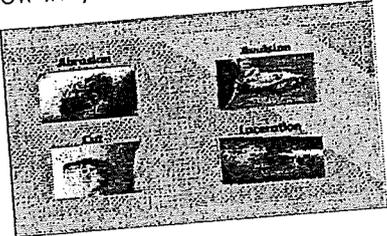
Definitions and Combating the "Bruise Easy" Defense

[Special shout-out and thanks to California Clinical Forensic Medical Training Center]

Forensic Marker: Wound Identification

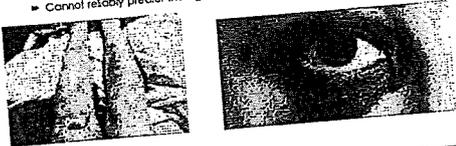
- ABRASION**
 - Caused by the rubbing or scraping the skin or mucous membrane.
- AVULSION**
 - The tearing away of a structure or part.
- CUT**
 - Made by a sharp instrument or object.
 - A cut that is deeper than it is wide is called a "stab wound."
- LACERATION**
 - Produced by the tearing of body tissue, often from blunt impact.

How they look like...



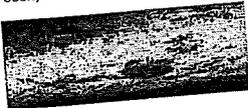
Forensic Marker: BRUISE

- **Bruise or Contusion**
 - Caused by blunt force trauma or squeezing. Traumatic injury of tissue without breakage of skin, blood accumulates in the surrounding tissue producing pain, swelling, tenderness, and discoloration.
 - Cannot reliably predict the age of a bruise by its color.



Forensic Marker: Ecchymosis

- Typically from an underlying medical condition.
- A hemorrhagic spot or blotch in the skin or mucous membrane form in a non-elevated, round, or irregular blue or purplish patch.
- Often do not hurt and are flat.
- In the elderly, these are often found on arms and hands. Discoloration from a bruise can be pulled by gravity downward. This discoloration is ecchymosis while the discoloration at the point of impact is the bruise.



Typically, most bruises are inflicted...

CAUSES OF BRUISING
 • Trauma
 • Medication
 • Bleeding disorders

Combating the "Bruising Easy" Defense

- Common Defense: Bruising is caused by medications
- FALSE
 - There is no medication that CAUSES patient to bruise
- Instead, there are medications that may place an individual at risk to bruise or bleed:
 - Aspirin
 - Coumadin (Warfarin)
 - Heparin
 - Plavix
 - Valproic Acide (Depakote)
 - Prednisolone

Combating the "Bruising Easy" Defense

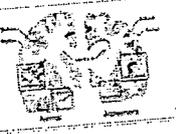
- Additionally...
- There are over 40 common, over the counter vitamins and supplements that can place an individual at possible risk to bleed or bruise more easily, especially if the individual is already taking a medication that is placing him at risk.
- Those dietary supplements are:
 - Bilberry
 - Ginger
 - Garlic
 - Ginkgo Biloba

DEMENTIA

What is it and how do we prosecute cases with dementia victims
 (A huge thanks to Second Wind Dreams and Dr. P.K. Beville)

What is Dementia?

- Dementia is defined as:
 - A chronic or persistent disorder of the mental processes caused by brain disease or injury and marked by memory disorders, personality changes, and impaired reasoning.
- Dementia is an organic disease (physiological disease)
 - The brain is literally dying
 - The brain is simply not there →
 - The hippocampus, however, remains unaffected (what effects long term memory)

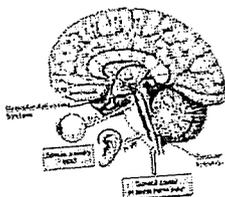


What individuals with dementia experience...

- Individuals with dementia cannot tell us when they are in pain.
 - That part of the brain has simply deteriorated and they can no longer explain those emotions.
 - Instead, we must look for signs: breathing hard, moaning, crying out, facial expressions, tense fidgeting
- Individuals with dementia become very sensitive to noise
 - They are unable to focus on one sound; instead they hear all noises (chatter, AC vents, etc.)
 - They simply cannot adjust to different mental sets.



Reticular Activating System (the main problem)



- Controls sleeping, waking and attention
- Filters and screens out junk
- Allows you to focus on what you value
- Allows you to perceive a threat
- Controls relevant and irrelevant stimuli (knowing how to focus)
- This simply is not working with those who have dementia!

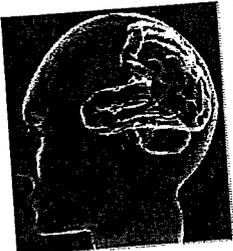
The Dementia Brain

Frontal Lobe
Talks read quickly in same decibel as audio and General instruction memory

Occipital Lobe
"I can't see anything."
"Are these the pants?"
Nothing familiar

Temporal Lobe
"Where does this go?"
Audio and visual confusion

Interference with memory storage response, RAS
Cerebral Cortex
Multi level tasks with secondary process thinking



Limbic System
Taste
Agitated
"I give up"
Parietal Lobe
Removes our ability to get handle information
"I can't get the sheets on and put them in the right place"
Left Hemisphere
Invariable
Poor reasoning (Only moves in the immediate surroundings)
Right Hemisphere
No abstract use of the environment

What to look for...

- Repetitive statements
- Word finding difficulty
- Downward gaze
- Bizarre statements that can be grounded in the truth
- Flat or slow affect
- Vacant look
- Dress is too warm for the season or too little
- Defensive when too many questions are asked



Becoming Dementia Aware...

- Be sensitive to time of day
 - The earlier the better
- Build rapport first
 - Ask long-term questions
 - Get to know them
- Stand directly in front of the person
- Monitor your voice
- Be reassuring
- Cut down on noise
- If needed, find someone they trust to be with you.
- Monitor your Body Language
- Slow Down
- Allow time to process information
- Simply come on a conversation while you investigate or assess the situation.



REMEMBER: Real emotions and feelings... even if they cannot communicate them



vs.



The Virtual Dementia Experience (my personal take-a-way)



- The Virtual Dementia Tour® (VDI) is a scientifically proven method of building a greater understanding of dementia through the use of patented sensory tools and instruction. It is designed to give the participant an up close, hands-on experience that provides critical insight to those caring for dementia. When someone is diagnosed with dementia, it affects everyone. The VDI, used internationally since 2001, helps shed light on some of the seemingly inappropriate and at times difficult behaviors exhibited by those with dementia. Experts agree that education and proper training are the best ways to help the medical community and caregivers provide better care. The Virtual Dementia Tour® assists in this effort by giving an experience that helps us better understand the issues facing the caregiver, the loved one with Alzheimer's and our society at large. Heightening sensitivity through experiencing the VDI allows us to better cope with some of the difficult behaviors exhibited by those with dementia. This increased understanding sets the stage for better care. In an attempt to simulate the behaviors exhibited by dementia, the VDI has been studied from many standpoints. The study below looks at self reports from the participants before and after the VDI experience.

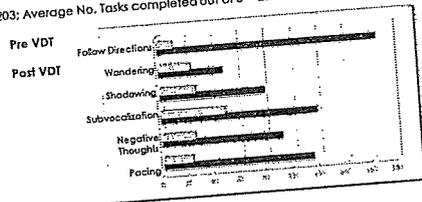
What the Virtual Dementia Tour is...

- The Virtual Dementia Tour® (VDI) is a scientifically proven method of building a greater understanding of dementia through the use of simulated sensory tasks and instruction. It is designed to give the participant an up close, hands-on experience that provides critical insight to those caring for dementia.
- When someone is diagnosed with dementia, it affects everyone. The VDI, used internationally since 2001, helps shed light on some of the seemingly inappropriate and at times difficult behavior exhibited by those with dementia.
- Experts agree that education and proper training are the best ways to help the medical community and caregivers provide better care. The Virtual Dementia Tour® assists in this effort by giving an experience that helps us better understand the issues facing the caregiver, the loved one with Alzheimer's and our society at large.
- Heightening sensitivity through experiencing the VDI allows us to better cope with some of the difficult behaviors exhibited by those with dementia. This increased understanding sets the stage for better care.
- In an attempt to simulate the behaviors exhibited by dementia, the VDI has been studied from many standpoints. The study below looks at self reports from the participants before and after the VDI experience.
- **Alzheimer's Facts**
 - Up to 15 million Americans will be diagnosed with Alzheimer's disease (AD) by 2050.
 - 20-70% of people with AD will exhibit agitated and sometimes violent behaviors. The VDI gives a "feel" for why a person may get agitated and what can be done to lessen the likelihood of agitation. You may have exhibited odd behaviors during the tour. People with dementia are also doing what seems right no matter how strange, destructive and bizarre it may seem.
 - Annually \$26.6 billion in worker productivity is lost due to employees missing work to provide AD care.

VDI Findings



- Self-Reported Behaviors Before & After the Virtual Dementia Tour®
- N=203; Average No. Tasks completed out of 5 = 2.35



VDI Study Conclusions

- **TASKS** - It is likely that you were unable to complete all tasks as they were asked. This helps us understand the pressure we place on those with dementia by expecting them to do everything we ask.
- **SUBVOCAUZATION** - If you were talking to yourself, this means that you were using the sound of your own voice to help you feel more comfortable. This is common with dementia.
- **WANDERING** - A classic behavior of dementia. They are trying to find a place that is familiar to them or they are looking for something they think they have to find.
- **BEHAVIOR PROBLEMS** - Treat most behavior problems in dementia as their way to cope. For example, agitated behavior may mean needs bathroom, too noisy, etc.
- There is a clear delineation of increased understanding of dementia after experiencing the Virtual Dementia Tour®, as evidenced by this study. Clinical observation studies of the VDI also show key behavioral indicators of dementia are exhibited by participants. The reliability and validity of the VDI continues across cultures and over the years.

Remember...

► "How we walk with the broken speaks louder than how we sit with the great."
- Bill Bennot

USEFUL RESOURCES

- **NCEA (National Center of Elder Abuse)**
 - <https://ncea.acl.gov>
- **Elder Justice Initiative**
 - www.elderjustice.gov
 - www.justice.gov/elderjustice
 - Entire section for prosecutors, including webinars and a video series
 - Also, resources available by state (such as AFS and different outreach loc2ified)
- **368+ APP**
 - Elder and Dependent Adult Abuse Guide for CA Law Enforcement
 - App includes: Penal Code 368, Warning Signs, and What to look for
 - Free for a limited time
- **Medical Resources:**
 - UC Irvine - www.laeklerabuse.org
 - USC - www.centeronelderabuse.org