

Domestic Violence Prosecution



Diana Becton, District Attorney
Dana L. Filkowski – Domestic Violence Supervisor

Evidence-Based Prosecution

DA'S FILING STANDARD



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Dana L. Filkowski – Domestic Violence Supervisor

Filing Standard

- Prosecutors are held to a higher standard than imposed on other attorneys because of the unique function they perform in representing the interests, and in exercising the sovereign power, of the state.
 - *People v. Sanchez* (2014) 228 Cal.App.4th 1517.
- We can't file criminal charges or permit such charges to remain pending in the absence of sufficient admissible evidence to support a conviction.
 - CA Bus. & Prof. Code Sec. 6068(c); American Bar Assoc. Criminal Justice Standards, Standard 3-3.9(a).



Filing Standard

- Which means...
 - With the *admissible evidence* identified in the investigation
 - Can we overcome the presumption of innocence
 - And prove the case beyond a reasonable doubt
 - To a unanimous jury of 12 members of this community
 - Considering equities and affirmative defenses



Evidence-Based Prosecution

- Considered a “best practice” nation-wide for domestic violence and sexual assault cases
- If evidence sufficiently supports prosecution, case is filed even if victim is uncooperative / doesn’t want to “press charges”
- If evidence does not, no case filed – even if victim desires prosecution



Evidence-Based Prosecution

- “He-said” / “She-said” cases can’t get filed
 - Presumption of innocence requires not guilty verdict
- Can’t do “bad guy” filings
- **Corroboration** of victim’s statement is critical
- Same standard for homicide
 - Dead victim can’t come tell us what happened but we still prosecute when we have the evidence



Corroboration is Key

- 911 Call
 - Contemporaneous Statement (can hear threats, yelling, crying kids, smashing sounds)
 - Excited Utterances
- Body Cam
 - Emotional, bloody V
 - Crying kids
 - Trashed apartment
 - Angry / scary looking D



Corroboration is Key

- Scene
 - Evidence of struggle
 - Holes in wall
 - Broken furniture, pictures, knick-knacks
 - Blood
- 3d Party Witnesses
 - Kids (CIC)
 - CAD Log!!!!



Corroboration is Key

- CFS
 - You can review file
 - Must file WI 827 petition to use contents in court



Corroboration is Key

- Injuries
 - To V: Photos day of and follow up days later
 - To D: Hands, scratches
 - Medical records
 - Hospital (not Crawford, 1370)
 - AMR (not Crawford, 1370)
- Physical evidence
 - Weapons
 - Bloody or ripped clothing



Corroboration is Key

- Fresh Complaint Witnesses
 - Who does V always run to?
 - Mom, sister, girlfriend
 - D will often apologize / explain / blame
 - Who else did V run to this time?
 - Apartment / hotel manager
 - Good Samaritan
 - Prior consistent / inconsistent stm. Of V
 - Pictures, evolving injuries
 - Take own or emails/texts selfies of injuries



Corroboration is Key

- Prior Victims or Same Victim, Prior Violence
 - 1108 / 1109 / 1101(b)
- Jail Calls
 - Dissuasion
 - 273.6? 166? 136.1?
 - Apologies / blaming

