

Prosecution's Process of DV/SA Cases From Start to Close

Gertrude Lee
Deputy District Attorney
11th Judicial District Div. II

The Prosecutor's Role

- o "The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done..."
- o Berger v. United States, 295 U.S. 78, 88 (1935).

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From Start to Finish

- o Pre-Trial
 - o Investigation and Charging
 - o Trial preparation
 - o Plea offers and agreements
- o Trial
 - o Jury trial versus bench trial
- o Post-Trial
 - o Appeal Issues
 - o Probation Violations

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 - o Probation Violations
- Victim's Rights**

Victim's Rights

- o **Constitutional (Art. II, Section 24)**
 - o Arson resulting in bodily injury
 - o Aggravated arson
 - o Aggravated assault
 - o Aggravated battery
 - o Dangerous use of explosives
 - o Negligent use of a deadly weapon
 - o Murder
 - o Voluntary manslaughter
 - o Involuntary manslaughter
 - o Kidnapping
 - o Criminal sexual penetration
 - o Criminal sexual contact of a minor
 - o Homicide by vehicle
 - o Great bodily injury by vehicle
 - o Abandonment or abuse of a child

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 - o Great bodily injury by vehicle
 - o Abandonment or abuse of a child
- o Negligent arson
- o Armed robbery
- o Stalking or aggravated stalking
- o Aggravated assault against a household member
- o Assault against a household member with intent to commit a violence felony
- o Battery against a household member
- o Aggravated battery against a household member

Victim's Rights

- o To be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process
- o Timely disposition of the case
- o Be reasonably protected from the accused through-out the criminal justice process
- o Notification of court proceedings
- o Attend all public court proceedings the accused has the right to attend
- o Confer with the prosecution
- o Make a statement to the court at sentencing and at any post-sentencing hearings for the accused
- o Restitution from the person convicted of the criminal offense that caused the victim's loss or injury
- o Information about the conviction, sentencing, imprisonment, escape or release of the accused
- o [prosecuting attorney contact victim's employer]
- o [prompt receipt of evidence belonging to the victim]
- o [information regarding earned meritorious deductions]

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Victim's Rights

- o Exercising statutory rights:
 - o Reported the crime w/in 5 days of its occurrence;
 - o Provides the DA with current and updated contact information; AND
 - o Fully cooperates with and fully responds to the reasonable requests of law enforcement and DA's

Pre-Trial

- o INVESTIGATION AND CHARGING
 - o On-Call District Attorney
 - o Answering law enforcement legal questions and warrant review
 - o Sexual Assault → DART Team
 - o DA Victim Advocate

Pre-Trial

- o Trial Preparation
 - o Misdemeanor versus Felony cases
 - o Misdemeanor → 6 month rule
 - o Felony → preliminary hearing and trial within one year
 - o Finding victims
 - o Meeting with victims
 - o Gathering the evidence
 - o Pre-trial motions

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Pre-Trial

- o Finding and Meeting with Victims
 - o FACT: many victims of domestic violence eventually become uncooperative or recant
 - o FACT: the road to trial is a difficult process for victims of DV/SA
- o Victims are usually essential/necessary witnesses → Confrontation Clause/Crawford
- o Evidence and Victim Advocate support
 - o Photographs

Photographs



Pre-Trial

- o Finding and Meeting with Victims
 - o FACT: many victims of domestic violence eventually become uncooperative or recant
- o Evidence and Victim Advocate support
 - o Photographs
 - o 911

Pre-Trial

- o Finding and Meeting with Victims
 - o FACT: many victims of domestic violence eventually become uncooperative or recant
- o Evidence and Victim Advocate support
 - o Photographs
 - o 911
 - o Hand written witness statements

STATE POLICE DEPARTMENT
Middletown, CT

DATE: 10/11/11

NAME: [REDACTED] [REDACTED] [REDACTED]

MAILING ADDRESS: [REDACTED] [REDACTED] [REDACTED]

RESIDENTIAL ADDRESS: [REDACTED] [REDACTED] [REDACTED]

OFFICE OF EMPLOYMENT: [REDACTED] CELL PHONE: [REDACTED]

HOME PHONE: [REDACTED]

[REDACTED] 10/11/11 [REDACTED]

Pre-Trial Motions

- o Motion in Limine
 - o These are used to get a decision from the court, before trial, about certain pieces of evidence
 - o E.g.
 - o Motion in limine to admit 911
 - o Motion in limine to admit Defendant's hand written apology letter

Pre-Trial Motions

- o Motion in Limine
 - o They can also be used to ask the court to keep certain items or information from coming before a jury
 - o E.g.
 - o Rape Shield Motion
 - o Irrelevant character evidence

Pre-Trial Motions

- o Responding to Defense Motions
 - o Motion to dismiss
 - o Lack of jurisdiction, discovery, due process, failure to collect evidence, failure to preserve evidence, etc.
 - o Motion to suppress
 - o Involuntary confessions, *Miranda*, bad arrests, etc.
 - o Motion to exclude
 - o Evidence, witnesses, scientific testimony (*Daubert*), etc.

JURY TRIAL

- o Voir Dire (Jury Selection)
- o Opening Statements
- o State's case-in-chief (witnesses)
- o Directed Verdict
- o Defense case-in-chief (NOT REQUIRED)
- o Directed Verdict
- o Closing Arguments
- o Jury Instructions
- o Jury Deliberation & Decision

Post-Trial

- o Appeal
- o Habeas Corpus Proceedings
- o Probation Violation

CASE STUDY: State v. Van E. Begay

- o Date of Incident: May 2011 to October 2011
- o Victims: 3 sisters all under the age of 13
- o 11 Counts of Criminal Sexual Penetration in the 1st Degree
- o 14 Counts of Criminal Sexual Contact of a Minor in the 2nd Degree
- o Where: Ft. Wingate BIA Employee Housing, McKinley County NM

State v. Van E. Begay

- o Court of Appeals
 - o Notice of Appeal April 2012
 - o Unpublished Court of Appeals Decision April 2013
 - o Upholding District Court's dismissal

- o State appeals to the New Mexico Supreme Court
 - o June 25, 2015 - Overruled case law & remanded the case back to the District Court for trial

State v. Van E. Begay

- o DOI: May 2011 to October 2011
- o Criminal Complaint: File January 2012
- o Arrest warrant served: January 2012
- o Preliminary Hearing: February 2012
- o Motion to Dismiss- Jurisdiction: February 2012
- o Dismissed: April 2012
- o REOPENED FOR TRIAL: October 2015

State v. Van E. Begay

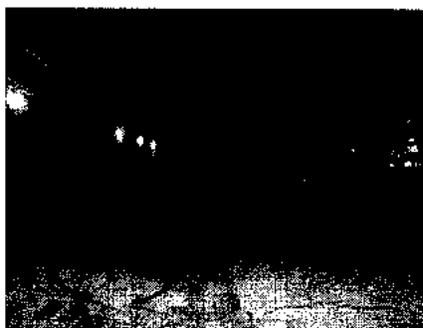
- o Motion to Suppress Statement - Nov 2015
 - o Hearing on Suppression - March 2016
 - o Motion to Suppress Denied
 - o Witness interviews - March 2016
 - o Change of Plea - April 2016
 - o Sentencing - June 2016
- o Defendant sentenced to 10 years in prison

CASE STUDY:

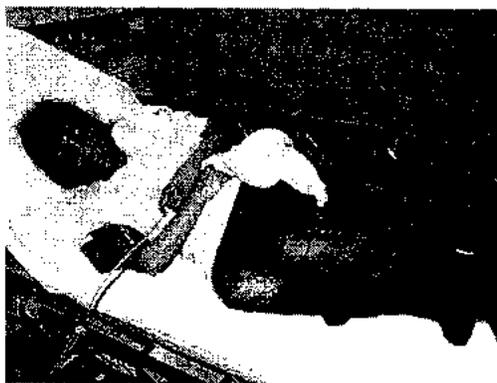
State v. Frederick Hudson

- o January 2011
- o Defendant was charged with:
 - o Kidnapping (1st Degree felony)
 - o Aggravated Battery Against a Household Member (Great Bodily Harm)
 - o Aggravated Assault Against a Household Member (Deadly Weapon)
 - o Interference with Communications

State v. Frederick Hudson



State v. Frederick Hudson



State v. Frederick Hudson



State v. Frederick Hudson



State v. Frederick Hudson

- o Date of Incident → January 2011
- o Criminal Complaint Filed → March 2011
- o Defendant arrested → April 2011
- o Preliminary Hearing → May 2011
- o Jury Trial → April 2012
 - o Three days
- o The Verdict?

State v. Frederick Hudson

- o GUILTY
 - o Aggravated Battery Against a Household Member (Great Bodily Harm)
- o NOT GUILTY
 - o Aggravated Assault Against a Household Member
 - o Interference with Communications
- o MISTRIAL (HUNG JURY)
 - o Kidnapping in the First Degree

State v. Frederick Hudson

What Now?

...justice shall be done...

Gertrude Lee

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