

## Appendix 3I

**Training Memo—How a Defense Attorney Reads a Domestic Violence–Related Police Report**

Defense attorneys' clients typically provide one of six defenses in domestic violence cases, as discussed below. The defense attorney reviews the evidence, primarily by reading the police report, to assess whether or not the client has a strong, weak, or no case. The defense attorney evaluates the case by looking at the report for evidence that will support the particular defense or evidence that is inconsistent with the claim. Here is a list of common defenses their clients offer and what defense attorneys are looking for when reading police reports.

Regardless of the specific defense the client offers, the defense attorney will ask the following kinds of basic questions in reading the police report:

- Did the 911 tape support or undermine my clients claim?
- Were there other witnesses at the scene? Were they interviewed and did the information they provided support my client's claim?
- How fresh are the victim's wounds?
- What was the victim's apparent emotional state? What was the defendant's apparent emotional state?
- Did the defendant have fresh injuries or did the defendant's clothes show sign of struggle (rips, blood, etc.)?
- Does the defendant have a history of violence against this victim or others?
- Did the defendant make statements inconsistent with this defense?
- Is there physical evidence that undermines defendant's claim, e.g., broken furniture, broken phones, house in disarray, and so forth?
- Are the officer's observations at the scene inconsistent with the defendant's version?
- Are there any signs that either the victim or defendant was high or intoxicated?

In addition to the above questions, the defense attorney will look for additional information depending on which of the following defenses the client has offered:

1. **IT WASN'T ME.** The client offers the "OD defense," as in "...the other dude did it.... She got abused but it wasn't me. It was ..."

- Was the defendant at the scene or found near the scene?
  - Does the defendant have an alibi?
  - Is there evidence of the defendant's presence at the location of the assault? For example, could the defendant's voice be heard by the 911 operator or a neighbor? Is there physical evidence of the defendant's presence?
2. **SHE LIED.** The client says, "I never hurt her. She made the whole thing up. She's pissed because.... She got those injuries when she...."
- Were the victim's injuries consistent with the defendant's version?
  - Are there inconsistencies between the defendant's version of events and information in the report? For example: the victim has a forehead wound that is bleeding freely; the defendant says she fell in the shower, but there was no blood in or near the bathroom and no signs of clean up.
3. **IT WAS AN ACCIDENT.** The client says, "I never meant to harm or frighten her....the hammer slipped out of my hand when I was hanging up a picture..."
- What are the inconsistencies? For example: the hammer is in the kitchen, the picture's two rooms away, and there's no straight path from one to the other; the hammer didn't have blood on it, but the defendant's fist did.
4. **IT WAS SELF-DEFENSE.** The client says, "she snapped on me because.... I only did what I had to protect myself/protect the kids. She was assaulting me...."
- Does the victim admit to using violence?
  - Does the victim say why he/she used violence? Express fear of imminent harm?
  - Did police ask the defendant for his or her account of events?
  - Were the victim's injuries consistent with the defendant's version? In particular, does the victim show injuries that could have been the result of my client defending him\herself?
  - Were the defendant's injuries consistent with the defendant's version? Does he/she show defensive injuries?
  - What are the inconsistencies? For example: the relative size and apparent strength of the victim and defendant; any objects used as

weapons; fingerprints on broken objects; hole in the wall is consistent with the defendant's fist or height and not the victim's.

- Did the defendant make statements inconsistent with a self-defense claim?

**5. IT DOESN'T MATTER WHETHER I DID IT BECAUSE YOU CAN'T PROVE IT.** The client says, "I didn't do it and in any event she won't testify."

- Is the victim's testimony the backbone of the state's case?
- Did the defendant have injuries; if so, were they defensive only?
- Did the officer include observations at the scene, such as damage to property, damage to the defendant's and victim's property?
- Was there physical evidence tending to establish assault by defendant? For example, a broken lamp with the defendant's fingerprints in a pattern consistent with using it as a bludgeon..
- Did the defendant make any statements at the scene or to investigators?
- Were there actions/threats by the defendant that might establish forfeiture of the right to confrontation?

**6. I DID IT, BUT HAVE YOU MET HER?** The client says: "I did it, but it's her fault. She's a drug addict, she's mentally ill, she's off her meds, she's bi-polar, she has a violent temper, she starts ragging on the kids, she calls the police for nothing and then I lose a day's wages ....I just had to keep her in the room because she wouldn't listen to me...."

- Did the arrest report leave the prosecutor with a he said/she said?
- Is there corroborating evidence that should have been collected?

**7. I DID IT BUT THE POLICE MESSED UP.** The client says, "they can't get me, because..."

- Officers conducted a custodial interrogation and there was no Scales tape.
- Officers conducted a custodial interrogation without a Miranda warning or with an incorrect Miranda warning.
- The request for counsel was not honored.
- Police questioned the defendant after the right to remain silent was invoked.

- Police lacked probable cause for a search.
- The incident did not include any exigent circumstances allowing a search without a warrant.
- The officer jumped to conclusions: e.g., did not ask the suspect for an account of events before making the arrest; did not do a good self-defense determination, etc.
- The incident involved physical evidence that officers did not collect and properly inventory.
- There were witnesses at the scene who officers did not question.
- The police report does not describe the incident in any detail with supporting observations.