

Defending Domestic Violence Allegations

Oftentimes, a client comes to us charged with domestic violence or assault and says "My wife/girlfriend is willing to sign an affidavit of non-prosecution (ANP) so it should be easy to get my case dismissed." Unfortunately, it is not that easy at all.

Here's why:

O.J. Simpson was a game-changer in how prosecutors handled domestic violence allegations. Sadly, Nicole Brown Simpson would call the police when she was in danger, but then go down to the district attorney's office and sign an affidavit asking for the State to "drop" the charges. The cycle of domestic violence is typically verbal abuse, physical abuse, apology from abuser with commitment to never do it again, a honeymoon phase followed by yet again more abuse which gets worse over time and never better, and in many cases, ends in death.

It is very difficult for a true victim of domestic violence to leave her abuser. Sometimes the roles are reversed and the woman is the abuser, but for purposes of this article we are talking in terms of the majority of abusive relationships where the man is the abuser. Knowing more today about domestic violence, State prosecutors now look for ways to prove the criminal allegation without bringing the victim to testify if she is unwilling to do so. The intent is to help a true victim of domestic violence who may not be able to help herself. Many victims stay with their abuser out of fear or financial necessity. The District Attorney's office has resources for these women who need not only help in making her escape financially, but mentally and emotionally, as well.

To prove a domestic violence case without the victim testifying at trial, prosecutors will listen to the 911 call, look for statements the victim made to the police at the scene while she was under the influence of the situation (a hearsay exception), review photographs taken of the victim, obtain medical records, if any, and look for statements made to treating medical staff. All of these tools can be used to move forward even when the victim does not want to prosecute.

What if the client is truly innocent? I have tried more domestic violence allegations to a jury than any other offense. Clients come to me and say, "I was just trying to get my keys and leave and she would not let me leave. I just pushed her out of my way." Or, "she called the police out of spite because I was leaving and she did not want me to leave." Or "She was hitting me and I just grabbed her wrists to make her stop." We have also seen false allegations brought against some of our clients because it gave leverage in family court when child custody is at stake. It is important to look at the alleged victim's motive when defending an innocent client.

Regardless, once the police are called, someone is going to jail. Once arrested, the State prosecutor will ask the magistrate judge to enter an emergency protective order that is good for 61 days. The protective order will order the client to stay at least 200 feet away from the place of residence and place of employment of the

alleged victim. This is typically an issue for a client who owns the home in which the alleged victim lives, but now he cannot go home as a result of the protective order.

Needless to say, these types of cases are highly sensitive and they are taken very seriously. Even if the complainant wants to sign an affidavit and “drop charges,” that does not mean the case will get dismissed. It is very important to get the right attorney from the very start, an attorney who handles the defense of domestic allegations regularly. There are far-reaching implications as a result of plea-bargaining domestic violence cases, including loss of gun rights and being labeled as a domestic abuser. An attorney practicing outside their typical realm of law will not know the necessary intricacies that could affect someone for the rest of their life. Undoubtedly, these are expensive cases to defend, but the right attorney is well worth the money. You will be glad you paid for a proper defense.

For more information about JL Carpenter, check out her website www.jlcarpenterlaw.com

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