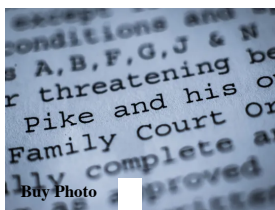


Domestic violence: How an 'and' instead of an 'or' let man avoid court sanction

Jess Aloe, Burlington Free Press

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(Photo: RYAN MERCER/FREE PRESS)

But for a conjunction, Amanda Pike might have left the Burlington courthouse last month feeling a sense of justice, not defeat.

A clerical error turned an "or" into an "and" in a court order, and a judge found that to be crucial in denying Pike the relief she sought from the father of her children.

For Essex resident Pike, this was the latest in a series of frustrations that she said have been piling up for her since she turned to the criminal justice system to get justice.

She is hardly alone.

Participating in the prosecution process can be a daunting experience for victims, who face an obstacle course of complicated legal precedent determining what evidence can be brought up.

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Amanda Pike says that, as a victim of domestic abuse, she did everything right. She tried to work with the justice system in Vermont and did everything she could to cooperate, something both police and prosecutors say is one of the biggest challenges in going after domestic abuse cases. But in the end, after months of effort, a typo in court paperwork derailed her process. And that, she says, just felt like more abuse. (Photo: RYAN MERCER/FREE PRESS)

Victims face judges and jurors who might hold their own ideas about how domestic violence victims should behave.

<https://www.burlingtonfreepress.com/story/news/2018/07/10/domestic-violence-how-court-clerks-error-spared-man-court-sanction/724919002/>

And they are questioned by defense attorneys who in defending their clients might attack a victim's motives and credibility.

Amanda Pike has faced nearly all of these obstacles.

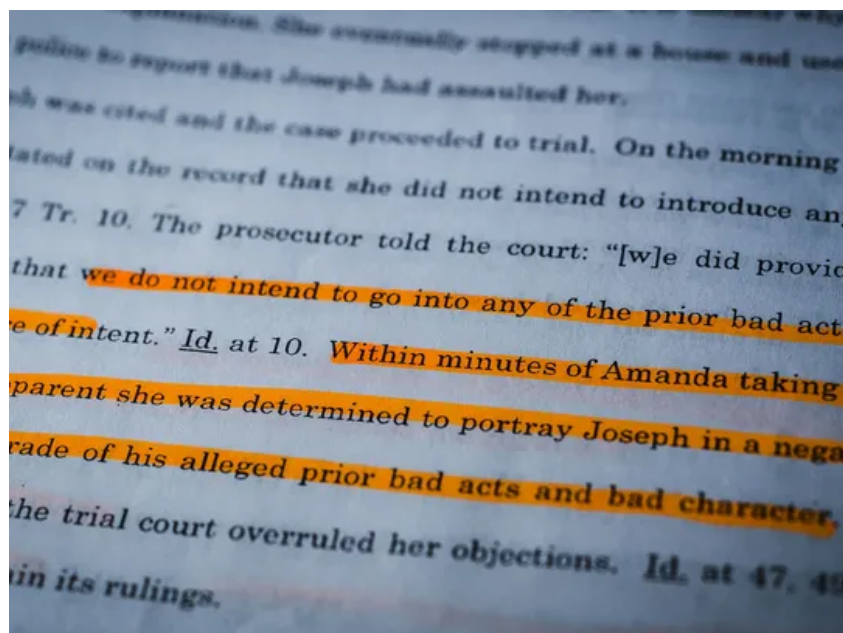
On the stand last month, Pike described the father of her two small children screaming in her face last January in front of the home where he lived.

She told the judge that Joseph Casey, her ex-partner, had slammed the door and threw their sons' belongings outside, hitting her.

A prosecutor argued this behavior violated Casey's probation for a 2017 unlawful mischief conviction stemming from an incident involving Pike. No threatening or violent behavior around Pike and the children, a judge had ordered.

Casey denied it.

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Joseph Casey's defense lawyers have appealed his conviction and sentence for unlawful mischief to the State Supreme Court, arguing that Amanda Pike's testimony introduced evidence of his past history improperly, denying him the right to a fair trial. (Photo: RYAN MERCER/FREE PRESS)

On the stand, he offered his own version of what happened: Pike had been angry while he had stayed calm. He had not meant to throw their children's backpacks at her, he had just tossed them out the door.

Her word against his.

Domestic violence cases often come down to that, prosecutors say, opening the door for a victim's credibility to be put on trial along with her alleged abuser.

But not this time.

This time, the decision came down to a mistaken conjunction in court records, an "and" that was supposed to be an "or."

This time, Judge Nancy Waples seized on a point of agreement: The couple's children were inside the house during the altercation outside.

Because of that "and", both Pike and her children had to be present for the probation condition to apply, Waples ruled. So, no violation had occurred.

"This is exactly why women don't follow through," Pike said after the hearing, before leaving the courthouse too upset to talk further.

A pattern of frustration

"I don't even know who to call to ask how this clarification gets fixed," Pike said in an interview a few days after the hearing. "I don't know whether I want to do that or not because I feel hopeless and defeated by the court system."

Chittenden County State's Attorney Sarah George's office has filed motions to fix the clerical error and reconsider.

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Amanda Pike says that, as a victim of domestic abuse, she did everything right. She tried to work with the justice system in Vermont and did everything she could to cooperate, something both police and prosecutors say is one of the biggest challenges in going after domestic abuse cases. But in the end, after months of effort, a typo in court paperwork derailed her process. And that, she says, just felt like more abuse. (Photo: RYAN MERCER/FREE PRESS)

But Pike's frustration at the hearing started well before the judge issued her ruling.

It began, she said, in the hallway outside the courtroom, when she met with prosecutor Sally Adams and was told she would not be able to bring up certain facts about Casey's past and character.

Domestic violence is a pattern, not one isolated incident, said Margo Lindauer, who runs the Domestic Violence Institute at Northeastern University's law school.

But the criminal justice system puts people on trial for specific incidents, not patterns of behavior. So a man like Casey wasn't on trial for domestic violence -- he was on trial for one incident that happened in the recent past.

"That's really, really challenging, particularly for criminal cases," Lindauer said.

The rules of evidence are very narrow, and prosecutors must prove their case beyond a reasonable doubt. Talking about past behavior could be considered too prejudicial to a defendant.

"That is in stark contrast to what we know about domestic violence -- that it is a pattern," Lindauer said.

Multiple cases

Very few criminal cases in Vermont ever get heard in front of a jury. But Casey's did.

He was charged in 2016 with domestic assault, reckless endangerment, and unlawful mischief. Pike said that Casey grabbed the wheel of her car while she was driving with their children, and then punched her car. Casey denied it; he said Pike tried to run him over.

A jury found him not guilty of domestic assault or reckless endangerment when they heard the case in 2017, but convicted him of unlawful mischief.

Casey had been charged with domestic assault three times during his relationship with Pike before the 2016 incident.

Each time, he pleaded guilty to a lesser charge of simple assault, according to court papers.

The court ordered him to go to DV Solutions, a domestic abuse intervention program, after one of those convictions.

Yet, according to the court record, he was thrown out of the program because he told program coordinators that he only accepted the plea to avoid the possibility of jail time.

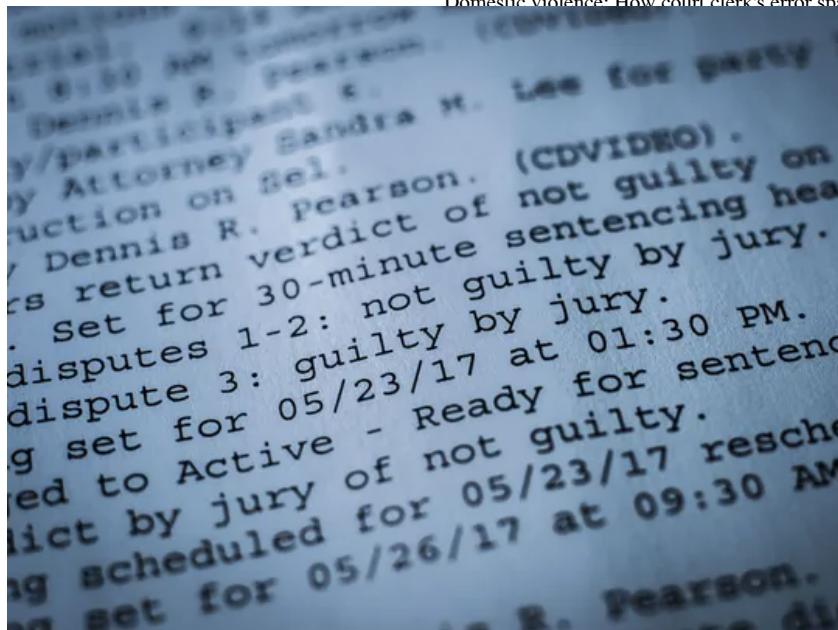
The thin tightrope prosecutors walk when it comes to the rules of evidence is apparent in this case.

Casey appealed the 2017 unlawful mischief conviction to the state Supreme Court. His lawyers have argued that the court erred in allowing Pike to speak about Casey's character and past behavior.

Casey, they said, was deprived of his right to a fair trial by considering improper and unreliable character evidence.

Prosecutors disagree. Pike's testimony, they argued, was meant to show the judge and jury that she was afraid of Casey. It was meant to show why she acted the way she did.

Jessica Brown, who oversees the Chittenden County public defender's office, declined to comment.



Court paperwork from a jury trial, one of the few domestic assault cases to make it to a jury trial. In the State vs. Joseph Casey, he was found not guilty on the domestic assault and reckless endangerment charges, but guilty on unlawful mischief. (Photo: RYAN MERCER/FREE PRESS)

Pike, in an interview, said she wishes judges and juries could look at an abuser's patterns of behavior. There are facts that could have changed outcomes, she said, gesturing to a spread of documents around her.

"There's just not a good enough reason or excuse to justify these cracks through the system," she said.

Victim behavior is complex

Victims also run into judges and juries who may have little comprehension of the true complexity of domestic violence.

"I think the vision they have of a survivor is a white woman in a monogamous relationship who experiences domestic violence once and then immediately leaves," Lindauer said. "That's not what our world looks like."

Victims stay in abusive relationships for many reasons, Lindauer said. They are afraid for their safety, or they are trapped for economic reasons.

Pike said she knew there was something wrong in her relationship. But, she said, she had just had the two children. She was struggling with low self-esteem. She said she felt like she had lost any identity except her identity as a mother to her two babies.

And, she said, she wanted to believe things would change. She wanted to believe things would get better.

"And nobody is wrong for thinking that," she said.

Pike said she felt like she was under attack every time she went on the stand.

The defense lawyers were trying to portray her as a liar, she said, as an angry, irrational mother. She said she had been told not to have an attitude, to simply and calmly answer the questions.

"I had to take more abuse and not even stick up for myself," she said. "I wasn't allowed to have any integrity or dignity."

A victim's behavior often seems antithetical to the charges at hand, according to the state's Center for Crime Victim Services. Reducing the burden testifying places on victims is a main goal for the state-run group, which has proposed increasing the use of expert witnesses to educate juries and judges about domestic violence.

But George said the barrier is money.



Chittenden County State's Attorney Sarah George, wearing a domestic violence awareness ribbon, answers questions at Vermont Superior Court on Friday, Oct. 13, 2017, following the arraignment of Aita Gurung, 34, of Burlington. Gurung was charged with murder over the killing of his wife. (Photo: RYAN MERCER/FREE PRESS)

"I think it would be fantastic to have an expert in every single domestic violence case," George said.

Money to pay expert witnesses, whose fees run \$300 to \$500 an hour, is one of the first expenses to get cut, she said.

Victims on trial

Pike's decision to testify is a brave one, Lindauer said. Many victims decide against participating in the prosecution, concerned about their safety and offered little or no protection by the courts.

Prosecutors are often forced to dismiss domestic assault cases when the victim decides against testifying, George says.

But when they are willing to testify, they might be grilled by defense lawyers who suggest they have alternative motives for coming forward, or that they're not credible, George said.

"It just seems like either way, we struggle to find a jury that can see through that," she said.

Casey's lawyers, in their appeal to the Supreme Court, said Pike was hostile on the stand and that the court refused to control her behavior. She went on a tirade, they wrote.

They had a witness ready to testify about her "difficult personality," but a judge told them he would not consider any testimony that tried to blame her for what happened.

The Supreme Court of Vermont will consider whether Pike's conduct on the stand denied the father of her children his right to a fair trial later this month.

Pike said she is now focused on supporting her children and figuring out how to move on with her life. If the court needs her to testify again, she's willing, she said, but otherwise she feels fed up with the criminal justice system.

"I was one person that did follow through on this whole process the entire time and was defeated terribly in the end," she said.

Contact Jess Aloe at 802-660-1874 or jaloe@freepressmedia.com. Follow her on Twitter @jess_aloe

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