
Chapter 13

Representing Women Who Have Experienced Abuse

Sara Foroshani

Public Defender of Marion Co., Inc.

198 Commercial St SE Ste 240

Salem, Oregon 97301-3496

(503) 480-0521

sforoshani@pdmarion.org

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The following Word files are available in the Chapter 13 supplemental folder in the material Dropbox:

- Notice of Intent to Rely Upon Defense of Use of Physical Force in Defense Person (Sup Mat 1 - Notice of SD)
 - Notice of Intent to Rely Upon Defense of Choice of Evils (Sup Mat 2 - Notice of COE)
 - Defense Special Jury Instruction, Physical Injuries (Sup Mat 3 - PHYSICAL INJURIES - Special JI)
 - Defendant’s Motion in Limine (Sup Mat 4 - Motion in Limine)
 - Defendant’s Motion to Admit Prior False Allegations (Sup Mat 5 - Motion to admit prior false allegations)
 - Excerpt of cross-examination on complaining witness/abusive boyfriend (Sup Mat 6 - examination examples of abusive partner and client Cross on complaining witness - Hutson)
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I. Client Contact

A. Charged Crimes - DV, Drugs, Property, Murder, etc.

B. Building Trust, Eliminating Shame

C. DV Abuse, Sex Trafficked - How to Spot it?

1. Discovery/Photos

2. Conversations/Listening

3. Pay Attention to Details

4. Mental Health Professionals

5. Victim Advocates/Experts

D. How to Get Information and Ask the Uncomfortable Questions

1. Consult with Experts/Mental Health Professionals/Victim Advocates

2. Use Rumble Questions

3. Eliminate Shame when Asking Questions

4. Solicit a "Hand-Holder"

Rumble Questions to Learn the Story:

- I'm curious about
- Tell me more ...
- I'm wondering ...
- Help me understand ...
- Walk me through ...
- Tell me why this is important to you...
- Tell me why this doesn't work for you...

II. Preparing with Experts

A. Victim Advocates Can Be Our Friends

B. Doctors/Evaluators Assessing Our Clients

III. Mitigation/Negotiation

A. Trauma/Pro-Social Treatment

B. Explain Collateral Consequences

THIS IS MITIGATION

ORS 137.090 Considerations in determining aggravation or mitigation.

(2) In determining mitigation the court may consider:

(b) Whether the defendant committed the crime while under duress, compulsion, direction or pressure from another person who has:

(A) Committed acts of domestic violence, as defined in ORS 107.705, against the defendant; or

(B) Committed acts of abuse as a family or household member of the defendant, as those terms are defined in ORS 107.705, against the defendant; or

(C) Use force, intimidation, fraud or coercion to cause the defendant to engage or attempt to engage, in commercial sex act.



Sara Foroshani

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RE: [REDACTED]

[REDACTED] has been in our program since [REDACTED]. Engedi Refuge is a restorative program for women who have survived sexual exploitation and trafficking. Engedi has a 3 Phase program model. Phase One is 6 months of stabilization. Phase Two is 4-6 months and includes community reintegration and Phase Three focuses on Spiritual development and is our lengthiest phase at 8-10 months.

[REDACTED] is currently in Phase One, which offers an array of classes that include Addiction Education, Codependency, Life Skills & Interpersonal Development. Engedi also offers Case Management, Art & Equine therapy, as well as individual and group trauma therapy.

Phase Two offers additional classes in Codependency and Relapse Prevention, budgeting and employment readiness. When in Phase Two, [REDACTED] will meet every week with a mentor.

[REDACTED] successfully completed an inpatient drug and alcohol rehabilitation program Prosperity Wellness and has submitted to weekly random urine analysis which have all returned negative for all substances.

If you have any questions, please contact me anytime.

Jill LeVasseur
Director Client Support
360-922-7600
engedi.advocate@gmail.com

Example of General Process of Evaluation:

1. Expert/Evaluator reviews of discovery;
2. Expert/Evaluator conducts diagnostic interviews with client;
3. Expert/Evaluator administers Personality Assessment Inventory, Millon Clinical Multiaxial Inventory-IV, Inventory of Altered Self-Capacities, Trauma Symptom Inventory-2, and the Severity of Violence Against Women Scale; and.
4. Expert/Evaluator reviews collateral information provided by defense counsel:
 - a. Defense investigation;
 - b. Medical records;
 - c. Mental health records;
 - d. School records;
 - e. DHS records;
 - f. Mental health records; and
 - g. So on and so on...

IV. Litigation

A. State's Theory of Case?

1. Voluntary act with Required Mental State
2. Aid & Abet Theory

B. Defense Theory/Raising Defenses

1. Self-Defense
2. Choice of Evils
3. Duress
4. Didn't Happen? Being Set Up?
5. Taking the Fall

C. Motion Practice

C. Motion for Judgment of Acquittal

1. Domestic Violence Element
2. Mental State
3. Aid & Abet
4. Other Ideas?

D. Jury Instructions

E. Examinations

1. Limiting Cops Testifying as Experts
2. Get Our Experts on the Stand
3. Cross the Complaining Witness
4. Client Testifying

F. Client Preparation

Fighting Against the “Constituting Domestic Violence” Element:

ORS 135.230(3): “domestic violence” means abuse between family or household members.

ORS 135.230(4): “family or household members” means any of the following:

- (a) spouses.
- (b) Former spouses.
- (c) Adult persons related by blood or marriage.
- (d) Persons cohabiting with each other.
- (e) Persons who have cohabited with each other or who have been involved in a sexually intimate relationship.
- (f) Unmarried parents of minor children.

Use this for MJOA, if applicable:

State v. McKarge, 265 Or App 399 (2014): In this case, there is no evidence in the record that defendant and S were “family or household members,” as defined by ORS 135.230(4), at the time of defendant's assault of S. There is no evidence that they were spouses, former spouses, adult persons related by blood or marriage, persons who were cohabiting with each other, persons who had cohabited with each other, persons who had been in a sexually intimate relationship, or the unmarried parents of a minor child.

Fighting Against the Aid & Abet Theory:

ORS 161.155:

A person is criminally liable for the conduct of another person constituting a crime if:

(1) The person is made criminally liable by the statute defining the crime; or

(2) With the intent to promote or facilitate the commission of the crime the person:

(a) Solicits or commands such other person to commit the crime; or

(b) Aid or abets or agrees or attempts to aid or abet such other person in planning or committing the crime; or

(c) Having a legal duty to prevent the commission of the crime, fails to make an effort the person is legally required to make.

UCrJI No. 1052

AID OR ABET

A person aids or abets another person in the commission of a crime if the person:

(1) With the intent to promote or make easier the commission of the crime,

(2) Encourages, procures, advises, or assists, by act or advice, the planning or commission of the crime.

Use these for MJOA or special jury instructions, if applicable:

State v. Jackson, 64 Or App 667 (1983): Mere presence at the scene of the crime is insufficient evidence upon which to base a conviction

State v. Lopez-Minjarez, 350 Or 576 (2011): Knowledge of Someone committing a crime does not mean the person intended to aid & abet that crime → the statute requires specific intent: the intent to promote or facilitate the commission of the crime committed by another. The statute also has a conduct element with that requisite intent, the person must assist, agree to assist, or attempt to assist in either the planning or commission of the crime committed by another.

Excerpt on cross-examination of arresting police officer

Now I am going to ask you some questions about evidence gathering:

You are trained to ask about injuries

And trained to gather evidence about those injuries

Document them

By taking photographs

And writing down the details of the injuries

Based on your training & experience sometimes victims leave defensive wounds on their assailants

You are trained a bite mark can be a defensive wound.

You are also trained that when someone punches or hits another person, they may have swollen hands?

Or some sort of indication – such as an abrasion?

You did not take any photographs of W's hands.

You did not take any photographs of Ms. H's hands.

In fact, you did not take any photographs of Ms. H period.

You had information about Ms. H reportedly having a bloody nose.

In your police report you noted that she cleaned up before you spoke to her.

But in your report you didn't note that you looked for any bloody clothes, towels, paper towels, toilet paper in the restroom

Or in the bedroom

Or in the Jeep

Or anywhere really.

Reviewing your continued training, since 1997 you have taken 136 continued education DPSST courses

These courses range from ½ hour to 24 hour courses

Out of the 136 courses since 1997 you have only taken three DV related courses.

One 8-hour course in 1999, One 8-hour course in 2000, and a 6-hour course in 2016.

Get Officer's DPSST Records/Trainings Records Here for Free:

http://dpsstnet.state.or.us/PublicInquiry_CJ/smsGoPerson.aspx

Getting our experts on the stand:

State v. Woodbury, 289 Or App 109 (2017): We conclude that those experiences qualified Bevan to testify whether defendant's behavior in the FST video was consistent with the behavior she has observed in TBI patients over her career. As noted, under OEC 702, an expert may be qualified by "knowledge, skill, experience, training *or* education." (Emphasis added.) Therefore, the fact that Bevan has not received training or education specific to TBI does not mean that she is not an expert on particular topics relating to TBI. Rather, Bevan's knowledge and experience working with patients with TBI qualified her as an expert on the behavior such individuals exhibit. That is, her regular interaction with TBI patients gave her "specialized knowledge" regarding their symptoms and mannerisms. *See* OEC 702. And, given that those are matters beyond the common experience of lay jurors, Bevan's testimony would assist the jury "to understand the evidence or to determine a fact in issue," *i.e.*, whether the symptoms that defendant exhibited on the FST recording were characteristic of TBI patients as defendant and his mother claimed. Accordingly, the trial court erred by not allowing Bevan to testify that, based on her experience with people with TBI, defendant's behavior on the FST video was consistent with the behavior of someone with TBI.

OEC 702 Testimony by Experts:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

OEC 703 Bases of Opinion Testimony by Experts:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

******The rule indicates that an expert may base an opinion on data from three sources:

- (1) Personal observation;
- (2) Testimony of other witnesses – the expert learns what the other witnesses say in one of two ways (a) counsel poses hypothetical question which contains the essential facts drawn from other testimony or (b) expert may attend and listen to the other witnesses; and
- (3) Data that have been made known to the expert outside of court and other than by expert's own perception.

**OEC 703 Bases of Opinion Testimony by Experts –
Personal Observation**

****Excerpt of direct examination on Dr. Grounds (expert) using “personal observation” following an evaluation report, which was provided to the state:**

Abusive bf/co-d:

Who was Ms. D’s most recent significant other?

-Mr. K

How much older is he than her?

-10 years

Based on Ms. D’s account, do you have an opinion about Mr. K’s behavior toward Ms. D? (P9 of report)

What is that opinion?

-Severely abusive towards Ms. D is consistent with clinical and forensic experience and with relevant research regarding domestically violent men.

Based on Ms. D’s account, do you have an opinion about Mr. K level of control over Ms. D?

-Controlled virtually all aspects of Ms. D’s s life and behavior during their relationship?

How?

-Kept tabs on her almost constantly

-required to accompany him in whatever he was doing

- not allowed to see other people
- lost friends
- isolated
- limited her time to see her terminally ill mother (call repeatedly/wait for her in car)

Did you find any other controlling or threatening behavior from Mr. K towards Ms. D?

- co-d checked up on her constantly
- monitored her phone calls and texts
- prevented her from doing things that she wished to do – working, seeing friends, or autonomous decision-making
- demanded obedience
- enforce demands with nonverbal, verbal, and physical threats
- no financial independence
- extreme violent behavior

Can you explain these extreme violent behaviors? (p10 of report)

- pulled her hair
- broke her phone
- dragged her down a drive way
- shoved her
- hit her
- punched her
- drive her to the woods, put his hand over her mouth to prevent her from yelling or screaming and restrict her ability to breath
- hit her at least two times a week
- Once intentionally stomped on her foot and broke her toe

OEC 703 Bases of Opinion Testimony by Experts – Hypothetically

****Example of direct examination on domestic violence advocate expert using “hypothetically”:**

Good afternoon, Ms. Downing.

You are here today as a defense expert witness because I asked you to testify objectively?

Are you getting paid for today’s testimony?

I would like to ask you about your qualifications.

Your Honor, may I approach?

Ms. Downing, I’m going to hand you defense exhibit _____. Is this curriculum vitae?

Your Honor, I move to admit defense exhibit _____.

Thank you.

Ms. Downing, what do you do for a living?

What’s your experience in this field?

How long have you been doing this?

What's your background in education?

Have you testified as an expert for the prosecution as an expert witness about the impact of a person's history of experienced violence and victimization specific to domestic violent dynamics?

***Your honor, I move for Ms. Downing to be qualified & testify as an expert witness about the impact of a person's history of experienced violence and victimization.*

Ms. Downing, hypothetically, would a victim of domestic violence deny being abused over an extended period of time? Why?

Hypothetically, would a victim of domestic violence not report incidents of abuse to the police? Why?

Hypothetically, would a victim of domestic violence cover up for their abuser? Why?

Hypothetically, would a victim of domestic violence do this by cleaning up their bloody face or hiding their bruises? Why?

Hypothetically, would a victim of domestic violence change their bloody clothes? Why?

Hypothetically, would a victim of domestic violence stay in a violent relationship? Why?

Hypothetically, would a victim of domestic violence take photos of their injuries to keep them? Why?

Hypothetically, are bite marks and scratch marks consistent with defensive wounds? Why?

How do you see with this with bite marks.

What are defensive wounds?

Hypothetically, would a victim of domestic violence be suggested to drink alcohol at direction of their abuser? Why?

Hypothetically, would a victim of domestic violence be convinced that they are “crazy.” Why?

Hypothetically, is it common for a victim of domestic violence to blame themselves?

Why?

Hypothetically, is it common for a victim of domestic violence to minimize the violence they endure?

Why?

Hypothetically, is it common in domestic violent dynamics for the victim to be accused of cheating or being unfaithful?

Why?

Can you provide insight to the jury about any patterns

V. What to Look For - Why Police Make the Wrong Arrest

Resources:

National Clearinghouse for Defense of Battered Women

<https://www.ncdbw.org>

The Center for Hope & Safety (Willamette Valley)

<https://www.mvwcs.com>

Safety Compass

<https://www.safetycompass.org>

Oregon Coalition Against Domestic & Sexual Violence
(Portland, Or)

<https://www.ocadsv.org>

Domestic Violence Resource Center (Beaverton, Or)

<http://www.dvrc-or.org>

Marta's House (Klamath Falls, Or)

<https://martashouse.org>

Clackamas Women's Services (Clackamas, Or)

<http://www.dvrc-or.org>

WomenSpace (Eugene, Or)

<https://www.womenspaceinc.org>

Criminal Justice Commission – Prison usage

<https://www.oregon.gov/CJC/SAC/Pages/jri-prison.aspx>