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Support

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Objectives

Guide the jury's response to evidence, from jury selection through closing argument.

Conduct an experience-based voir dire.

Employ themes that place the evidence in the context of common experience.

Recreate the reality of the crime in direct examination of the victim.

Identify and work with experts to prepare a case for trial.

Educate judges and juries about victim behavior

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Small Groups

- Groups 1 and 4: Direct examination of Eva Adams as a participating witness
- Groups 2 and 5: Cross-examination of Eva Adams as a recanting witness
- Groups 3 and 6: Cross-examination of defendant Anthony Adams

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Demonstrations

Groups 1, 2, and 3 will present their examinations

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Preparation

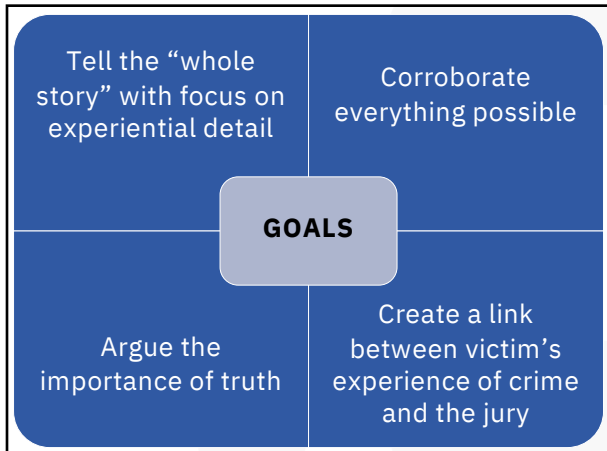
Encapsulate the evidence in a theme and introducing it during jury selection.

Turn perceived challenges into strengths.

Keep the focus on the offender.

Establish a connection between the jury and the evidence.

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Reality

Victims may:

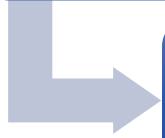
- Remain with or fear leaving the offender
- Minimize assault / self-blame
- Be unable to disclose or delay disclosure
- Remain engaged in the investigation or prosecution or disengage from process
- Request dismissal of charges
- Recant
- Testify for the offender

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Defining the Issues

It's not:

What did the victim do?



It is:

What did the accused do?

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Preparing for Jury Selection

Laying the Foundation for the Victim's Testimony

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Jury Selection

Educate Jury

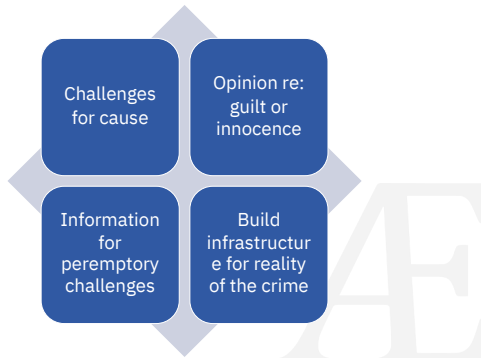
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Connect with Jury



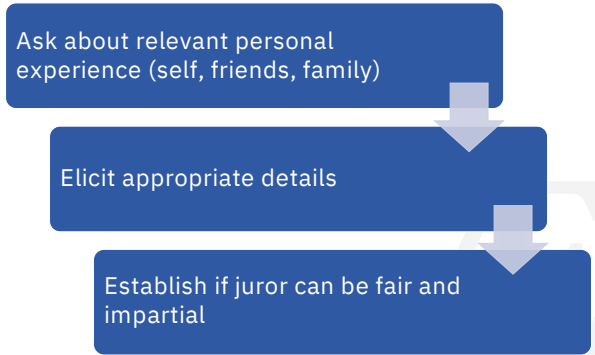
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Voir Dire: to Speak the Truth



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Framework: Experiential Questions



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Experiential Questions

- Personal experience: impact of trauma, delayed disclosure, trust in relationship, consent, need for an expert
- Others?
- Elicit details with sensitivity
- Lay the foundation for the victim's testimony

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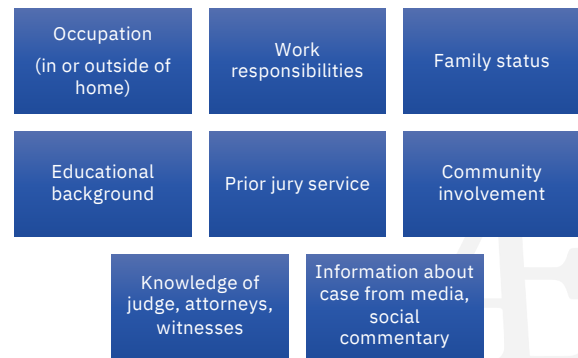
Juror Questionnaires

- Some courts allow individual voir dire by attorneys, while others conduct voir dire from the bench
- Some jurisdictions send basic questions along with juror summons and may provide to parties
- Questionnaires can shorten time during jury selection, while maximizing counsel's time for preparation

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Key Information

Juror Questionnaires



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Composition of Questionnaire

In addition to basic questions:

- Nature of crime and ability to assess and discuss evidence
- Prior victimization or knowledge of family member or close friend's victimization
- Prior accusation or knowledge of family member or close friend's accusation

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Considering Juror Questionnaires

- Attorneys have opportunity to prepare and identify any issues with any panelist
- Provides opportunities for interviews on sensitive information in open court, but outside presence of rest of panel
- Are part of the public record, but not livestreamed and usually require court's permission to access

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Composition of Questionnaire

- List of potential witnesses who may be called at trial
- Acquaintance or relationship with any potential witness
- Concern with credibility of any particular group of witnesses, e.g., law enforcement
- Knowledge or information about the case from any source
- Opportunity for panelist to request separate interview outside presence of panel but in open court

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Strategy

Defense may request separate interviews with some victims in open court but outside presence of other panelists, regardless of request of panelist

Consider objecting to request for separate interview, unless panelist requests separate interview or there is need for more restrictive setting

Panelist's answers to voir dire questions in a public setting may provide other panelists a better understanding of domestic violence

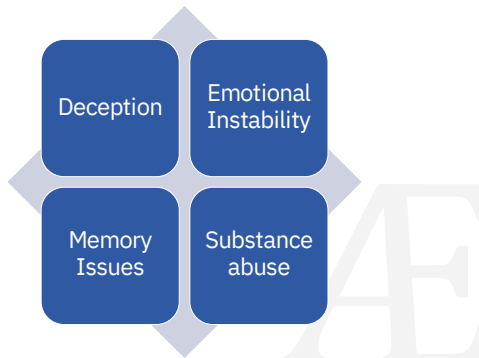
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Trial Strategy

1	Recreate reality of the crime during direct examination of victim
2	Focus on themes of fear, betrayal and breach of trust, isolation
3	Inquire about history of domestic violence / sexual assault
4	Maintain focus on offender and how offender caused trauma
5	Demonstrate impact of history of abuse or assault

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Offenders create or aggravate symptoms.



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Themes

Plan ahead but be flexible

Make short, succinct, and consistent with theory

Incorporate into voir dire by crafting questions using carefully selected words

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Offender-Focused Themes

On that day he became a stranger she never knew

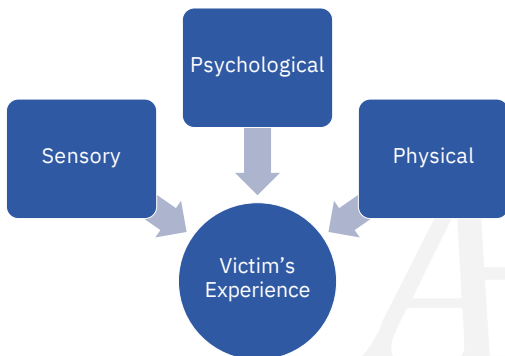
He attacked every vulnerability

He had absolute control and she had no options

He did not need a weapon because he had the impact of shock

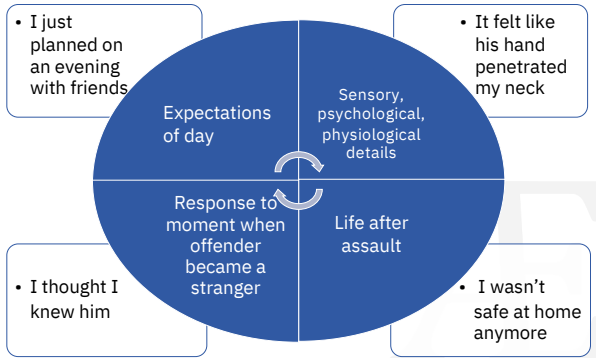
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Presenting Evidence



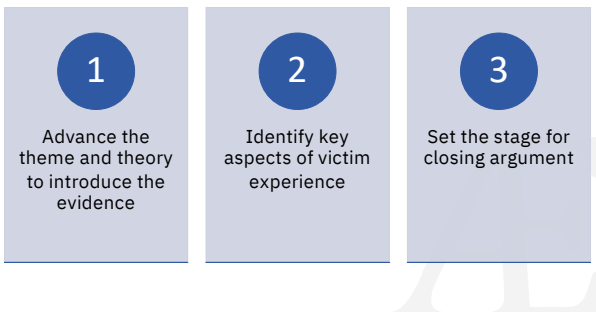
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Trial Perspective: Building the Case



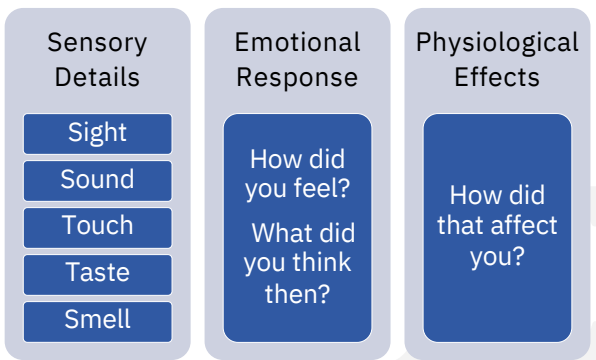
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Opening Statement



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Evidence of Victim's Experience



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Describe Victim's Subsequent Experience

Overcoming fear, threats, and disclosure

Medical examination: process and time involved

Law enforcement interviews

Public testimony

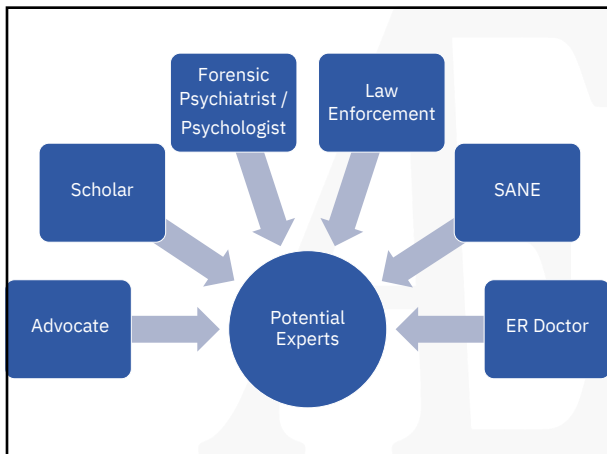
Absence of negative motivation

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Identify the Behavior / Response to Trauma

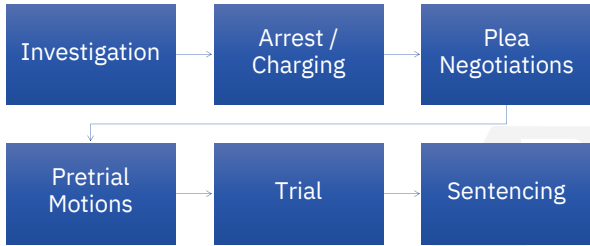
Provide Depth and Context with Expert Testimony

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How could experts help at each stage of a case?



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General Expert

Has not met the victim

Is not diagnosing the victim as a victim

Limited knowledge of the facts in the case

Only educating the judge or jury on victim behavior or response to trauma

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Principles of Admissibility

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Testimony by Expert Witnesses

FRE 702

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

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Evidence-Based Hypotheticals

FRE 703

An expert may base an opinion on **facts or data in the case** that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect

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More than twenty years ago, we recognized that sociologists and psychologists had studied the effects a "sustained pattern of physical and psychological abuse can have on a woman." Writing for the Court, Chief Justice Wilentz noted that "a battering relationship embodies psychological and societal features that are not well understood by lay observers" and that "these features are subject to a large group of myths and stereotypes."

State v. Townsend, 897 A.2d 316, 327 (N.J., 2006) (internal citations omitted)

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Avoid The Danger Zone

An expert CANNOT:

- Testify about a particular witness's credibility
- Testify as to whether an assault did or did not happen



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Direct Examination of the Victim:

Heartbeat of the Case



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Goals

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Conduct effective examination of victims at trial

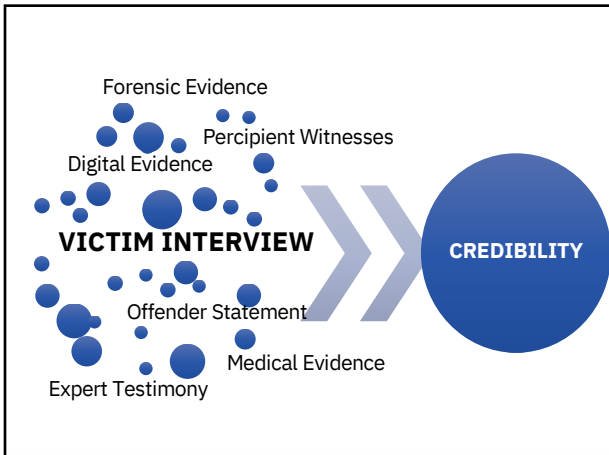
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Demonstrate relationship between domestic violence and/or sexual violence dynamics and victim's testimony

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Draw from the victim's testimony to develop theme and theory of the case.

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Corroborating Evidence

- 911 recordings
- Defendant admissions
- Victim's admissible out-of-court statements
- Direct and secondary witnesses
- Photos
- Officer observations
- Medical evidence
- Body-worn camera recordings

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Corroborate Disclosure and Victim's Testimony

Excited Utterance

- FRE 803(2)

Statement for Purpose of Medical Diagnosis or Treatment

- FRE 803(4)

Recorded Recollection

- FRE 803(5)

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Cross-Examination

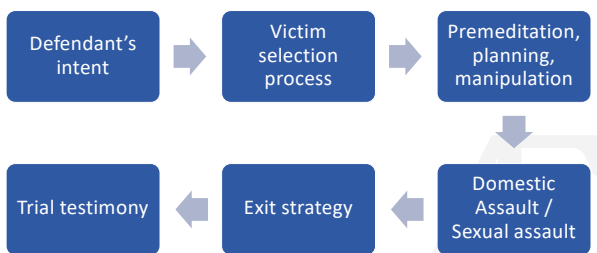
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Cross-Examination of the Defendant



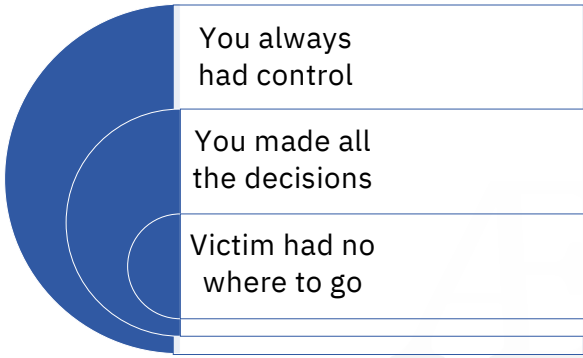
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Scrutinizing Offender Behavior



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Themes for Cross of Defendant






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Content

-  Explain how evidence establishes elements of the crime beyond a reasonable doubt
-  Review jury instructions along with evidence supporting elements of the crime
-  Refer to instructions, testimony, and corroborative evidence establishing credibility

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Closing

- Circle back to *voir dire* and key aspects of victim's response to trauma
- Emphasize offender behavior and impact on the victim's ability to disclose

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Closing, cont'd

- Draw connection between victim minimization/recantation and victim's response to trauma
- Argue reasonable inferences based on trial testimony including expert testimony
- Emphasize evidence establishing offender focus

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Going Forward

Guide the jury's response to the evidence, from jury selection through closing argument.

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