

WITNESSES

The Missing Pieces in Domestic Violence Investigations

OBJECTIVES

The presenter will discuss the importance of corroborating information.

The presenter will share insight on the impact of person witnesses.

The presenter will share insight on the impact of electronic witnesses.

Circumstantial Evidence

Proof of facts offered as evidence from which other facts may be inferred.

Example: Witness sees someone walk into a house angry.
 Minutes later they hear screaming and crashing.
 A person walks out with blood on their shirt.

Evidence that points to a conclusion, even if nobody directly saw or heard the actual event.

Evidence that points to a conclusion based on the totality of the circumstances.

Effective Investigations Require a Mindset Change

Antiquated ideologies for not investigating/prosecuting should no longer be accepted.

- No witness = a weak case
- He said / She said
- Witness ID is limited to only direct eyewitnesses

Similar to homicide investigations, domestic violence cases can often be thoroughly investigated even without victim participation.

Many domestic violence cases don't lack witnesses.

- They lack investigators who know where to look.
- They lack investigators willing to look.

Thorough is as thorough does.

Investigators should look beyond the basic elements of the offense and identify evidence of fear, power and control, and ongoing danger.

Investigations should deepen beyond the probable cause standard and be viewed through a lens of proving a case beyond reasonable doubt.

Domestic violence crimes are patterned. Investigations should include analyzing information for patterns of behavior.

Always look for prior reports.

What you document today can have an impact on future events.

“Domestic violence isn’t an incident – it’s a pattern. And if we only investigate the moment, we miss the danger.” – Erik Threlkeld

Investigations can be strengthened through

- Context witnesses
- Relationship witnesses
- Behavior witnesses
- Indirect corroboration witnesses
- Post-Offense witnesses
- Timeline witnesses
- Digital/Electronic witnesses

Witnesses are people who observed:

- Fear
- Injuries
- Demeanor
- Disclosures
- Coercive Control
- Isolation
- Stalking
- Threats
- Offender Admissions
- Timeline Behavior
- Manipulation
- Electronic Communication
- Behavioral Changes
- Consciousness of Guilt
- Escalation

Investigations become stronger when investigators stop merely asking, “Who saw the assault?” but rather to ask, “Who holds pieces of the story?”

Witnesses help us overcome

- Recantation
- Reluctance to participate
- Fragmented recall
- Minimal / No visible injury
- Delayed Reporting
- Jury Misconceptions
- “Mutual Combat” narratives
- Lack of offender admissions

Corroboration does not require an eyewitness account.

Corroboration should be sought to support

- Evidence of the crime
- Evidence of the family relationship
- Evidence of truthful statements
- Evidence of untruthful statements

Traditional Witnesses include

- Children
- Relatives
- Neighbors
- Friends
- Co-Workers
- Bystanders

These are important, but their accounts can often be incomplete.

Witnesses may

- Minimize
- Misinterpret
- Intervene poorly
- Only see fragments

Fragments are still valuable.

Witnesses may not know what they know.

Relationship Witnesses

May have knowledge of:

- Prior disclosures
- Fear statements
- Injury explanations
- Isolation tactics
- Monitoring behaviors
- Financial abuse
- Threats
- Strangulation history
- Escalating patterns

They can help a jury/judge understand

- Why she was afraid
- Why she didn't leave
- Why she minimized

Patterned evidence + Contextual evidence helps view behaviors through a trauma-informed lens.

Witnesses should ask about behaviors before, during, and after an event.

911 callers are commonly overlooked.

Third-Party Uninvolved witnesses can hold added value due to the lack of their prior involvement/knowledge.

- Anonymous caller
- Neighbor
- Passerby

Relational witnesses may have greater insight but also have greater emotions.

- Family
- Friends
- Children

Pay attention to:

- Witness fear
- Trauma
- Loyalty conflicts
- Minimization
- Community dynamics
- Cultural barriers

Pay attention to:

- Excited utterances
- Real-time perception
- Tony & urgency

These can increase the potential for admissibility.

Witnesses must be kept separate – sight & sound so they can provide independent accounts.

The three priorities upon arrival are:

- Calm the chaos
- Preserve integrity
- Safety

Be sure to identify all the parties, even those who left prior to police arrival.

Interpreters

Should include

- Professional interpreters
- Other staff members fluent in the language

Children should NEVER be used as interpreters.

Child forensic interviews should be the standard for speaking with juveniles.
Investigators should assess for trauma and safety.

Interviewing

Interviews should capture the experience of witnesses.

Investigators should listen for corroboration of the elements of the offense:

- A person
- At a place
- At a location
- Committed a criminal act
- Establishing the family relationship

They should also listen corroboration of

- Fear
- Danger
- Power & Control

Suggested prompts and cues:

- “What drew your attention that something was going on?”
- “Tell me about your decision to call 911.”
- “Tell me about what you heard, saw, smelled, etc.”
- “Tell me about his/her words.”
- “Tell me what you remember when X happened.”
- “What did you think was happening or going to happen?”
- “How did that make you feel?”

- “Tell me more about that.”
- “What are you not able to forget?”
- “What was the most difficult part of your experience?”
- “What is something we haven’t discussed that is important for me to know?”
- “What questions do you have for me?”

Common Mistakes

- Asking incident-focused questions
- Ignoring context
- Failing to re-interview
- Leading questions
- Dismissing “small” details
- Treating as irrelevant if they didn’t observe violence
- Not fully exploring what they know
- Not clarifying confusing language

Don’t forget to be a human.

Listen to learn, not to prove.

If you’re not clear what happened, ask more questions.

Stay curious.

Electronic Witnesses

The interview is NOT the investigation. It’s one component. – Russ Strand

Even though digital communications are the most common, they are also the most commonly overlooked.

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| • Text messages | • Social media |
| • Email | • Video & photos |
| • Voice messages | • Jail calls |

These give direct insight into the abuse.

They often hold evidentiary value.

Behavioral evidence can include:

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| • Repeated calling | • Threat escalation |
| • Harassment patterns | • Forced communication |
| • Monitoring | |

Device and location evidence – Electronic witnesses don’t forget, minimize, or become intimidated.

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| • GPS | • Surveillance video |
| • Vehicle data | • Smart devices |
| • Doorbell cameras | • Phone extraction |

There can be challenges to secure this information. Don't shy away from obtaining subpoenas and search warrants just because a case is not considered a major crime.

Electronic Evidence

- Survives recantation
- Captures tone
- Demonstrates coercive control
- Reveals consciousnesses of guilt
- Preserves offender admissions

Summary

Homicide investigations expect and accept

- Circumstantial evidence
- Fragmented timelines
- Indirect witnesses
- Offender minimization
- Victim silence

Non-fatal investigations should expect and accept the same.

One witness may not prove the case.

Multiple witnesses may reveal the truth.

Witnesses can tell the story when the survivor is not in a place to do so.

They can support her when she is!

Too often:

- Verbal disclosures become the entire case
- A survivor's "cooperation" becomes confused with proof
- Investigators stop at "uncooperative"

A living victim should not reduce the quality of an investigation.

Investigators must stop searching for the perfect witness and start identifying the missing pieces.

Investigators must work harder. Survivors deserve safety and offender accountability.

"Do the best you can until you know better. Then when you know better, do better." – Maya Angelou



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