

GEORGIA



Family Violence Newsletter



Governor's Office for

Children and Families

>>> OUR MISSION

The goal of PAC's Domestic Violence and Sexual Assault Program is to effectively assist and be a resource to prosecutors, law enforcement and victim advocates across Georgia, and to improve the effective adjudication of domestic and sexual violence cases and to reduce such crimes across our state.

>>> CONTENTS



Domestic Violence affects more individuals than just the intimate partner subject to the abuse. Domestic Violence infects the entire family, especially the children.

feature articles

The Multiple Impact of Domestic Violence 2

Legal Updates 5

2013 Legislative Summaries 6



Don't forget to visit our Training Web page to register for our domestic violence-related conferences and training courses.

A PUBLICATION OF THE PROSECUTING ATTORNEYS' COUNCIL OF GEORGIA DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAM

Prosecuting Attorneys' Council New Domestic Violence and Sexual Assault Program

By Lalaine Briones, Domestic Violence and Sexual Assault Resource Prosecutor, Prosecuting Attorneys' Council of Georgia

Statistics compiled by the Georgia Domestic Violence Fatality Review Committee reveal that in 2012, approximately 128 Georgians died as a result of Domestic Violence-related homicide. DeKalb County had the most homicides with a total of 11, followed by Fulton County with 10, Richmond County with 9, Gwinnett and Cobb Counties with 7, Muscogee with 6 and Clayton County with 5. The study found that firearms continue to be the leading weapon used by batterers to murder their domestic partner. Georgia is ranked 10th in the Nation for the rate at which men kill women in single-victim, domestic violence-related homicides. According to the Centers for Disease Control in Atlanta, Georgia, on average, 24 people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States. Those numbers total 12 million men and women over the course of one year. The CDC study also showed that more than 1 million women are raped in a year and over 6 million men and women are the victims of stalking in a year. The results of the study clearly demonstrate that domestic violence, sexual assault and stalking are closely intertwined and widespread.

In Georgia, "Family Violence," also known as Domestic Violence, is defined as: "the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household: (1) Any felony; or (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass. The term family violence shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention." When one contemplates the topic of Domestic Violence the first

image that comes to mind is usually that of a man physically battering a woman. However, as many of us are acutely aware, Domestic Violence encompasses conduct far beyond that. The assaults can involve sexual abuse, emotional abuse, economic abuse, psychological abuse, child abuse and acts of violence against family pets. Domestic Violence can also occur between same sex partners, bisexuals, transgendered persons, and those who identify as questioning.

Traditionally, Domestic Violence is thought to be physical abuse such as hitting, slapping, shoving, grabbing, pinching, biting, hair pulling and other physical acts of violence. Physical abuse can also include denying a partner medical care or forcing alcohol and/or drug use upon him or her. Batterers also use sexual abuse as a way to demean and exert power and control over their intimate partner. Sexual abuse involves coercing or attempting to coerce any sexual contact or behavior without consent. Sexual abuse includes, but is certainly not limited to, marital rape, attacks on sexual parts of the body, forcing sex after physical violence has occurred, or treating one in a sexually demeaning manner. Domestic Violence also includes Emotional Abuse which involves undermining an individual's sense of self-worth or self-esteem. The hallmarks of this form of abuse are constant criticism, diminishing one's abilities or accomplishments, name calling, undermining the victim's relationship with his or her children and blaming the victim for everything negative that occurs. To exert power, control and foster a feeling of dependence, the batterer will exercise Economic Abuse. This form of abuse is demonstrated by making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one from attending school to further one's education, or forbidding one from working. It can also include withhold-

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ing child support. Lastly, an individual can be the victim of Psychological Abuse. This form of abuse can involve causing fear by intimidation; the batterer threatening physical harm to her or himself, the victim, the victim's children, or the victim's family or friends; injuring, killing or giving away a pet; destroying property; and forcing isolation from family, friends, or school and/or work colleagues.

Domestic Violence affects more individuals than just the intimate partner subject to the abuse. Domestic Violence infects the entire family, especially the children. Between 2004 and 2012, there were 1,203 deaths in Georgia related to Domestic Abuse. Of those deaths, 18% were witnessed by children. Consistent exposure to violence in the home not only predisposes children to numerous social and physical problems, but also teaches them that violence is a normal way of life, therefore, increasing their risk of becoming either victims or abusers as adults. Moreover, there is a common link between Domestic Violence and child abuse. A study conducted by UNICEF found that among victims of child abuse, 40 per cent reported domestic violence in the home. The study also found that children who were exposed to violence in the home were 15 times more likely to be physically and/or sexually assaulted than the national average. Children are the forgotten victims of domestic violence.

As written earlier, Georgia has the misfortune of being ranked 10th nationally for the rate at which men kill women in domestic violence-related deaths. Georgia has ranked in the top 20 in this category for the 13 years the study has been conducted and in the top 10 for seven of those years. Recognizing the magnitude and impact of Domestic Violence in the State, the Governor's Office for Children and Families awarded a grant to the Prosecuting Attorneys' Council of Georgia. The grant provides much needed funding to train law enforcement officers, prosecutors, and victim advocates to more effectively respond to and prosecute crimes of domestic and sexual violence. The training is designed to improve the effective adjudication of domestic and sexual violence cases and effectuate the reduction of such crimes across our state.

To facilitate the grant-funded training, the Prosecuting Attorneys' Council of Georgia has added a Domestic Violence and Sexual Assault Resource Prosecutor to its staff using a portion of the grant monies. The Domestic Violence and Sexual Assault Resource Prosecutor's role is to provide assistance in prosecution of cases involving Domestic Violence, Sexual Assault, Commercial Sexual Exploitation of Children and Crimes Against Children. Such assistance includes providing legal advice, preparing briefs and other pleadings, acting as associate counsel in cases, and assisting in procuring expert witnesses for District Attorneys and Solicitors-General. Another important responsibility is the training of prosecutors, victim advocates and law enforcement officers in effectively investigating and prosecuting these types of offenses. 

The Multiple Impact of Domestic Violence

The following is text from a story reprinted from the Georgia Domestic Violence Fatality Review 2012 Annual Report. The story was written and edited by "Kate" a survivor of domestic violence. Her story is particularly poignant in that it explains the dynamics of Domestic Violence and demonstrates the sweeping scope of its effect on the family as a whole.*

In the Beginning

John* and I were married for over 20 years; we dated for five years before getting married. We knew many of the same people during college but did not become friends until after graduation. A few months later, we went on our first date. During our third year of dating, John left the state for job training and I stayed behind to continue working in my career field. We saw each other about once a month and our relationship remained solid. I was in love with John and we made plans to marry after he finished training.

Everything was good between us at first. He was loving, devoted, extremely smart and focused on succeeding in his career. However, looking back, I can see he had a controlling side. I did not view this as a huge red flag at the time as I attributed this behavior to his Type-A personality; most of the time, John seemed kind and generous to friends, family, and strangers. As our relationship developed, I started to see warning signs including some controlling behavior and emotional neediness. One day, John told me he had been in an argument with his father and became so angry he nearly hit him. This was a shock to me because I grew up in a family that showed respect for one another and I had never witnessed violence. Through the years, I also learned John's mother emotionally abused him and his siblings by showing favoritism towards some of the children and not the others. I attributed John's negative behavior to his dysfunctional family life. I felt that, perhaps, I could change some of his behavior by showing him love and having him spend time with my close-knit family. Unfortunately, it cost me years and almost my life to learn that you can change NO ONE but yourself.

Hints of Trouble: Red Flags

I began to notice John would get jealous when I talked with other men (especially his friends). He also became jealous if I spent too much time with friends or family. It became increasingly apparent that he wanted my attention at all times. After we were married and had children, John was jealous of the maternal relationship I had with our children. I explained to him that because he was gone so much with his job, he needed to spend time at home bonding with his children. He did not seem to understand this and his relationship with the kids grew more strained as they grew older. John seemed to have more pent-up anger as the years went on. I started to feel like I was always walking a balance beam around him. When I would try to discuss this, he would get agitated and turn it into an argument. I soon realized it was easier to just appease him. I noticed the kids' demeanor change as well as my own when John arrived home because we never knew what type of mood he would be in.

Growing Pattern of Abuses

In the last couple of years of our marriage, the abuse slowly escalated to physical violence. It started with John throwing the TV remote at me and grabbing my arm. The first time he struck me and threw me to the ground, he looked into my eyes and said, "If you tell ANYONE about this, you are DEAD," He not only raped me on many occasions, he sodomized me in ways that were meant to hurt and demean me. John would even sexually assault me after beating me until I was bleeding, bruised, and broken. (For further discussion on sexual abuse, see page 36). He also made me call him "God" and would often use objects besides his fists or feet to beat me. He would call these objects "his friends."

The growing emotional, physical and sexual abuse made me feel like my head was spinning. What was I doing that made him so angry? I felt if I could just make his life less stressful, perhaps he would return to the person I fell in love with years ago. I could sometimes calm him down and make him feel better, but other times no matter what I said or did, it did not help the situation. He had a great career and a wife and kids who were always there for him. I hoped if we kept showing our love and support for him, things would get better.

I finally came to the realization that I was never going to be able to help John and the best thing for me and the children would be to get out of the marriage — but it was too late.

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Little by little, John started to isolate me from my friends and family. For example, throughout my adult life, my father and I talked on the phone every Sunday morning at 8am. In the last few months before his arrest, John forbade me to continue this tradition and I had to make up excuses to my dad as to why I didn't call him. John would also get extremely angry if I talked with friends or neighbors when I picked up the children from school. He would time me when I went to the grocery store or ran other errands and constantly checked my cell phone. He would get angry with the children if they wanted to go with me to run errands or sit next to me at restaurants or at home.

John also abused our dog. We got her when she was a puppy and began training her with an electronic collar for the invisible fence. He did not use the collar as intended, but instead would shock her on a whim whenever he felt like it. If our dog did not respond to his commands, he would kick and scream at her. John only allowed her in certain areas of the house. One time, the dog came into a room she was not allowed into and John threw her down the stairs. I tried to stop John, but the more I tried to protect our dog, the angrier he got. On numerous occasions he threatened to kill her. I was so afraid that someday he would actually get mad enough to carry out this threat, I considered finding a safe home for her and telling John she ran away. Luckily for us, our sweet dog is still with us and is healthy and happy.

Survival Tactics

So it began for me, the horrible months and months of knowing we had to get out. The violence had become so intense. The verbal abuse and emotional trauma worsened with each passing week and the physical and sexual abuse turned to torture.

This was no longer just a husband and father turned bad, but a monster.

When the violence began, John would at times seem remorseful for physically abusing me. However, as the abuse became more frequent and more torture-like in nature, he seemed to enjoy the pain and suffering he inflicted on me. I felt so alone and isolated but knew I couldn't leave or tell anyone. I would reschedule appointments as I was always afraid someone might notice bruises or other injuries. I would only go to appointments if my injuries were well hidden.

When John first started to physically assault me, he would beat me in areas I could cover with clothing. Towards the last few months, he did not seem to care any longer and made me come up with excuses, even to our children, as to why I had bruises on my eyes, face, or hands. I knew that if I was to ever seek medical help for my injuries and didn't have a convincing enough story as to why I had these injuries, John would kill me. I desperately wanted

to figure out how to get my children, our dog, and myself out of this situation, but knew there was not a good way out. We were trapped either way.

I felt my life was in danger and I wanted to make sure someone would be able to put the story together and rescue my children if something happened to me. I began secretly documenting the abuse by taking photos of my injuries and noting the date and description of what happened. I kept the photos in a safe deposit box. I only did this occasionally as one time, while printing out pictures at home, John forgot something on his way to work and returned to the house unexpectedly. I scrambled to hide the pictures, as I knew my life would end if he saw them. It was emotionally painful and made me physically ill to document what my husband was doing to me; he was supposed to be the one person who should always protect me and our children.

While trying to come up with an escape plan, I made sure I gave a neighbor, my best friend and my sister each other's contact information. I also gave my neighbor the extra key to the safe deposit box. I was careful not to give them too much information, as I knew I would be killed if someone confronted him and their life could possibly be in danger, as well. There were a couple of instances where I thought, perhaps, in a moment of weakness, that I may have not sounded convincing enough when assuring my best friend and sister that I was okay. During one phone conversation, my sister asked if she should come for a visit, and I told her, "not yet." Those words seemed so strange to my sister but I had convinced her there was just a lot of stress with work and raising teenage kids and things were bound to get better.

With a broken and battered body, I knew I was running out of time. There were days (although few and far between) when John would seem like his old self, and then, all of a sudden, he would snap for no reason. In the weeks before the final incident, he forced me into signing over the house to him and removed my name from our checking and savings accounts. While he was away from the house on work trips, he would assign me tasks to complete that did not allow me to sleep much. He would often call or text in the middle of the night to make sure I was awake and working on whatever he instructed me to do. He told me he was plotting ways to get rid of me if I did not obey.

I learned about the local domestic violence program, or "shelter", about one year before the final incident. I do not remember exactly how I learned of it but I know I either saw it in the newspaper or found it on the Internet. I kept the information in a folder marked "school" at work. Later, I put the hotline number in my phone as a distributor's number for work. I felt afraid to call the hotline number. I did not know if my information would be kept confidential or if they were obligated to call the police. I felt helpless and did not think they could really help with our situation.

The weekend before John's arrest, I thought I had a plan. I came up with a story that was not

true, but I was hoping John would believe me and stop the abuse. I told him I had talked to a battered women's shelter worker and told her what was going on. I told him if I did not call the worker back on Monday, the shelter would know the abuse was still taking place. This plan totally backfired on me. He threw me to the ground, sat on my chest and choked me. I believe the only reason I lived through that night was because I convinced him to stop choking me so I could show him the number I was supposed to call was fake. It was actually a pre-paid cell phone I had bought. I lived through the night, but just barely.

I knew my days were numbered. If I took the kids and left, he would hunt us down and, without a doubt, kill me and most likely the kids as well. If I stayed, I knew my broken body was not going to be able to withstand much more. On the night of John's arrest, he had taken me to our basement — he beat me while I begged for mercy. He received a call on his cell phone and instructed me to wait in the basement bedroom for him. He stayed in the other room and took his phone call. After a few minutes, John came out into the hallway while still on the phone and stared at me before going back into the room. Something clicked for me at that moment: He knew he could control me from 5,000 miles away, so why did he feel compelled to make sure I was still waiting in that bedroom? I knew then I was probably not going to survive the night and had to escape NOW and take my chances — even without a plan.

Escape with Great Risk

Barefoot and with broken bones and a battered body, I left the room, grabbed a cordless phone and then limped upstairs to rescue the children. I found my daughter upstairs, showed her a bruise and said, "We have to go." My daughter grabbed my hand and we headed for my son's room. Through the bathroom door, I heard his shower going. I knew I had to get out of the house and call 911 to survive and, at this point, we were running out of time — we still needed to make it back downstairs and out of the house before John came up from the basement. As painful as it was to leave him, I was confident John would not physically hurt our son.

My daughter and I escaped out the front door and were able to make it to a neighbor's house where we called 911. When the police and fire department arrived, John had realized we were no longer in the house. He locked the front door and had our son lie to the police when they called the house. John instructed him to say they were at the grocery store and not in the house. These were excruciatingly long minutes for me. The fire department was trying to get me to go to the hospital, as they were very concerned about the extent of my injuries.

However, I was not about to go anywhere until I knew my son was safe.

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Because there was a gun in the house, the police were not sure if they had a hostage situation on their hands and had to proceed with caution. After what seemed like an eternity, the officers were able to obtain a house key from a neighbor and get my son out safely. John was arrested on the scene.

Safe but Terrified Still

Because of the extent of my injuries, I was taken to a trauma hospital and admitted under an alias for my protection. The head trauma doctor, nurse and the Assistant District Attorney all said they had never seen someone survive such horrific domestic violence injuries. Over the next few months, I had numerous surgeries, daily wound care, and physical therapy. I was unable to drive for months and felt so fortunate that family and friends swooped in to help me and the children. The whole community was in shock and offered their assistance. My friends' spouses were appalled and embarrassed that a man they knew could commit such heinous acts.

I'm not sure how I would have made it without the love and support of family, friends, and the community.

My family and friends who came from out of state were so impressed with the caring support offered by the police, District Attorney's office, neighbors, friends, and even total strangers.

As blessed as I was at the time to have such loving support, each day was still a battle. Not only did I have to concentrate on healing physically and taking care of the children, I was also faced with the unknown of what would happen with the criminal trial. My family and I met with the District Attorney's office and a domestic violence shelter advocate to come up with a plan should John be allowed out on bond before the trial; fortunately, his bond was denied. A jury of his peers convicted him and, because of the heinous, appalling, cruel nature of his crimes, John will spend the rest of his life in prison for his horrific, torturous acts of violence.

A Day in the Life of a Survivor

On top of everything we had been through, our tough journey was far from over. John's company fired him the day of his conviction. As the main breadwinner for the family, we depended on his salary.

We lost our main source of income as well as our medical insurance.

As a domestic violence survivor, there are no benefits as there may be for a spouse who is a widow or widower – no life insurance or medical benefits, just the hard realization that it is now solely up to me to figure out how to pro-

vide for my children and get them through college. With that being said, I realize we still have it better than victims who leave with nothing but the clothes on their backs and those who have to go into hiding for the rest of their lives.

After the trial and sentencing, I still faced the divorce proceedings. Now a convicted felon, John attempted to continue his control by requesting a divorce trial. This meant more attorney fees for me and having to face John once again in court. In the years since his arrest, John is still trying to show his control by filing frivolous lawsuits. Each time this happens, it forces me to hire an attorney to answer these suits. So far, I have spent in excess of \$200,000 on attorney fees.

As domestic abuse survivors go, my children and I are physically safe, but still deal with the emotional side of readjusting our lives. The children have to cope with the emotional scars of what their father did, how he treated them, their mother, and their dog. I have to live with physical and emotional scars that will never go away. I wake up every day knowing someone else may be going through something similar and have vowed to help other domestic violence survivors in any way I can. I must be strong for my children as they give me strength every day. We no longer have the financial stability of a paycheck, medical insurance, or college savings; that money has gone to pay attorneys. There is no guarantee John will ever stop abusing us with the frivolous lawsuits, and there is no way to ever forget what we have endured.

On the positive side, I have learned to never take anything for granted and to enjoy the little things in life. I am blessed to hear my children's laughter and to see them smile and thrive as young adults. I am so grateful to have an opportunity to start a new life. Also, our beloved dog now has free rein throughout the house and even sleeps in the bed with the kids or me. No one should ever have to endure domestic violence and I will fight each day so others will never have to experience "a day in the life of a domestic violence victim."

*Pseudonym used **GFV**

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UPCOMING TRAINING EVENTS

JUNE 7, 2013

Family Violence Training

Georgia Public Safety Training Center
1000 Indian Springs Drive
Forsyth, GA 31029
8:00 AM - 3:30 PM

JUNE 27, 2013

Statewide Office Manager's Meeting

Georgia Public Safety Training Center
1000 Indian Springs Drive
Forsyth, GA 31029
8:00 AM - 3:00 PM or
1:00 PM - 5:00 PM

JUNE 27, 2013

Family Violence Training

Northside Hospital - Cherokee
Conference Center
1130 Bluffs Parkway
Canton, GA 30114
8:00 AM - 3:30 PM

JULY 8, 2013

Family Violence Training

Tift County Courthouse
237 East Second Street
Tifton, GA 31794
8:00 AM - 3:30 PM

JULY 12, 2013

Family Violence Training

Centerville City Hall
300 East Church Street
Centerville, GA 31028
8:00 AM - 3:30 PM

JULY 21-24, 2013

2013 Summer Conference

Jekyll Island Convention Center
75 North Beachview Drive
Jekyll Island, GA 31527

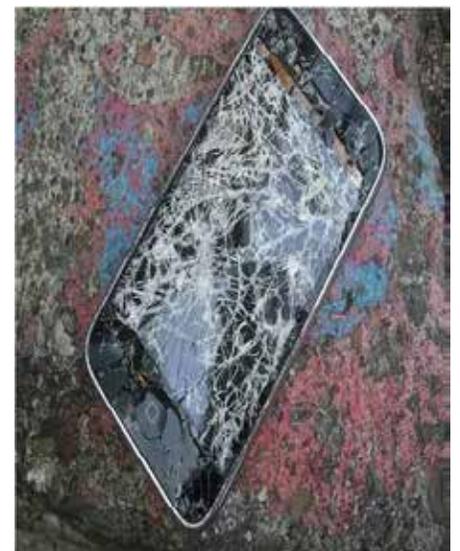
Visit the PAC website to read more about our training events or to register to attend a course www.pacga.org

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fact:

According to the Centers for Disease Control in Atlanta, Georgia, on average, 24 people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States. Those numbers total 12 million men and women over the course of one year.

-Statistics from 2012 Georgia Domestic Violence Fatality Review Annual Report courtesy Georgia Coalition Against Domestic Violence (www.gcadv.org) and Georgia Commission on Family Violence (www.gcfv.org)



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Legal Updates

§ 24-5-503. Husband and wife as witnesses for and against each other in criminal proceedings

a) A husband and wife shall be competent but shall not be compellable to give evidence in any criminal proceeding for or against each other.

(b) The privilege created by subsection (a) of this Code section or by corresponding privileges in paragraph (1) of subsection (a) of Code Section 24-5-501 or subsection (a) of Code Section 24-5-505 shall not apply in proceedings in which:

- (1) The husband or wife is charged with a crime against the person of a child under the age of 18, but such husband or wife shall be compellable to give evidence only on the specific act for which the accused is charged;
- (2) The husband or wife is charged with a crime against his or her spouse;
- (3) The husband or wife is charged with causing physical damage to property belonging to the husband and wife or to their separate property; or
- (4) The alleged crime against his or her current spouse occurred prior to the lawful marriage of the husband and wife.

§ 24-4-404. Character evidence not admissible to prove conduct; exceptions; other crimes

Evidence of other crimes, wrongs, or acts shall not be admissible to prove the character of a person in order to show action in conformity therewith. **It may, however, be admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.** The prosecution in a criminal proceeding shall provide reasonable notice to the defense in advance of trial, unless pre-trial notice is excused by the court upon good cause shown, of the general nature of any such evidence it intends to introduce at trial. Notice shall not be required when the evidence of prior crimes, wrongs, or acts is offered to prove the circumstances immediately surrounding the charged crime, motive, or prior difficulties between the accused and the alleged victim.

Leslie v. State, decided February 4, 2013, 292 Ga. 368

Appellant was convicted of the murder of his ex-girlfriend. Appellant alleged that the trial court erred when it admitted improper character evidence by (a) allowing testimony concerning a similar transaction and by (b) allowing testimony concerning appellant's use of an alias to purchase a pager.

At the time appellant was tried in 2000, similar transaction evidence could be admitted to show the defendant's **bent of mind or course of conduct**, and, when proffered for these purposes, required a lesser degree of similarity

than when proffered for the purpose of identity. *Holloman v. State*, 291 Ga. 338(6) (729 SE2d 344) (2012); *Neal v. State*, 290 Ga. 563(2) (722 SE2d 765) (2012). In cases of domestic violence, prior instances of abuse toward sexual partners "are more generally permitted because there is a logical connection between violent acts against two different persons with whom the accused had a similar emotional or intimate attachment," *Hall v. State*, 287 Ga. 755(2) (699 SE2d 321) (2010). We review the trial court's decision to admit such evidence for an abuse of discretion. *Holloman*, 291 Ga. at 343; *Hall v. State*, 287 Ga. at 757.

The mother of appellant's son (the new girlfriend) testified that appellant was angry because she told the victim that she and appellant had lived together. The trial court found that this evidence was "relevant to show bent of mind, the course of conduct, and **intent** of" and was not being introduced for the purpose of showing appellant's character.

We cannot say the trial court abused its discretion. The evidence revealed a course of conduct in which appellant acted violently toward women with whom he had intimate relationships even after the relationship had ended. Accordingly, this enumerated error cannot be sustained.

Lewis v. State, decided June 18, 2012, 317 Ga. App. 218; 735 S.E.2d 1

Lewis contended that the trial court erred in overruling his objection to a detective's testimony that it was common for victims of domestic violence to change their stories about being abused. After the detective testified to that effect, Lewis objected on the ground that "what other people do or may not do is not relevant and germane to the facts of this particular case." The trial court responded that the detective could not testify based on any particular expertise in the field of domestic violence, but only about her own experiences in handling such cases. The witness then testified that she had handled thousands of domestic violence cases in the previous 15 years and in 99.5 percent of those cases, the victims came in and changed their stories.

Lewis argued that "the obvious purpose of this testimony was to suggest to the jury that the victim's sworn testimony in the courtroom was a lie," and an improper comment on whether the victim was telling the truth. **We agree.** While an expert qualified to testify as an expert in the field of the cycle of domestic violence may be qualified to testify that in such cases, "a victim often will go into denial, minimize the violence which has occurred, and become reluctant to prosecute her partner," *Hawks v. State*, 223 Ga. App. 890, 893(4) (479 SE2d 186) (1996), this witness was not so qualified. "The fact that, in the officer's previous experience, it was not uncommon for domestic violence victims to recant their stories was not relevant to explain either the conduct or the testimony of the victim in the instant case," *Howie v. State*, 281 Ga. App. 730, 732 (637 SE2d 134) (2006).

Nonetheless, considering the facts of this case and the evidence as a whole, including the testimony of the two similar transaction witnesses who apparently recanted or minimized their initial complaints against Lewis for striking them, we find it highly improbable that the challenged testimony contributed to the verdict.

Salazar v. State, decided February 9, 2012, 314 Ga. App. 83; 722 S.E.2d 902

Salazar argued that the trial court committed harmful error in denying her request to cross-examine the victim regarding his immigration status. In November 2009, a month after the incident, the victim received notice that his application for lawful resident status in the United States had been denied because he had prior convictions for simple battery, domestic violence against Salazar. At the time of the trial, the victim was trying to change his immigration status under the federal "Violence Against Women Act" ("VAWA") by asserting that he was a victim of **domestic violence** by Salazar. The trial court sustained the State's objections to some of Salazar's questions on cross-examination of the victim related to the reason his application was denied and whether a conviction against Salazar would bolster the victim's attempt to adjust his immigration status, noting that the victim's application was denied after the incident in the parking lot. Salazar argues on appeal that she should have been allowed to ask the victim about the reason his application was denied to show he was biased against Salazar.

"Within carefully protected legal parameters, the scope of cross-examination lies within the sound discretion of the trial court; this discretion will not be disturbed by an appellate court absent manifest abuse," *State v. Battaaglia*, 221 Ga. App. 283, 284-285(1) (470 SE2d 755) (1996). The trial court in this case allowed Salazar to cross-examine the victim and elicit the following information: that around the time of the parking lot incident he received information from federal immigration officials that they were denying his application to adjust his immigration status; that since then, he had reapplied in order to "fix" his immigration status; that he reapplied under the VAWA about a month before trial; and that under that act, he had to show that he is or has been the victim of domestic violence. Accordingly, Salazar had sufficient evidence to argue to the jury that the victim was lying to improve his immigration status.

Salazar also argues that she should have been able to ask the victim about the fact that his application to alter his immigration status had been denied because of his conviction ten years before of simple battery against Salazar. But prior convictions are certainly prejudicial, and the court had to balance that prejudice against the possible value of admitting the evidence to show that the victim was biased and fabricating the current charges, over ten years later, in order to affect his then-pending immigration

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matter. The Court of Appeals declined to hold that the trial court had abused its discretion.

Dean v. State, decided January 26, 2012, 313 Ga. App. 726; 722 S.E.2d 436

Dean argued that the trial court erred by giving a jury instruction requested by the state. The court charged the jury: "Whenever law enforcement responds to an incident in which an act of family violence has been committed, the officer shall not base a decision of whether to arrest and charge a person on specific consent of the victim or on a request by the victim solely or on consideration of the relationship of the parties. No other officer investigating an incident of family violence shall threaten, suggest or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention.

Where complaints of family violence are received from two or more opposing parties, the officer shall evaluate each complaint separately to attempt to determine who was the primary aggressor. If the officer determines one of these parties was the primary physical aggressor, the officer shall not be required to arrest any other person believed to have committed an act of family violence during the incident.

In determining whether a person is the primary physical aggressor, an officer shall consider prior family violence involving either party; the relative severity of the injuries inflicted on each person; the potential for future injury; and whether or not one of the parties acted in self-defense."

The charge was based on O.C.G.A. § 17-4-20.1(a) and (b). The state requested the charge to respond to Dean's cross-examination of Belton, specifically when counsel asked her if she were being prosecuted for hitting Dean with her cane.

Dean argues that the charge was erroneous because it invaded the province of the jury and was not based on the evidence. The charge, he argues, implied that the police had conducted an investigation that led to a determination that Dean was the primary aggressor when there was no evidence of an investigation or such determination.

"Jury charges must be tailored to the evidence presented in the case," *Swain v. State*, 251 Ga. App. 110, 115(2) (552 SE2d 880) (2001). Further, instructions, even though abstractly correct, should not be given unless authorized by the evidence and when such an unauthorized instruction is given, if it should be confusing or misleading to a jury, a new trial will be required. Where the inapplicable instruction authorizes the jury to reach a finding of guilty by a theory not supported by the evidence of record, we cannot say as a matter of law that the charge was neither confusing nor misleading. *Strobbert v. State*, 241 Ga. App. 354, 356(1) (526 SE2d 863) (1999).

We agree that the charge was not based on the

evidence. The state presented no evidence that Dean made a report about the incident, so the portion of the charge discussing "complaints of family violence . . . from two or more opposing parties" is not supported. More importantly, the state did not present any evidence that any law enforcement officer made a determination that Dean was the primary aggressor. Although the officer who took Belton's report at the hospital testified at trial, he did not give any testimony about determining who was the primary aggressor.

We cannot say that it is "highly probable that the error did not contribute to the judgment," *Hammond v. State*, 289 Ga. 142, 144(2) (710 SE2d 124) (2011). Dean's defense was that he acted in self-defense. Belton admitted that she hit Dean with her cane, and two witnesses testified about his injury. And, pursuant to Dean's request, the court charged the jury on self-defense. But the court also charged the jury that a person is not justified in using force if that person was the aggressor. See O.C.G.A. § 16-3-21 (b)(3). Whether a party is the primary aggressor or "merely defending himself is a question of credibility and justification for resolution by the factfinder," *Yarnell v. State*, 300 Ga. App. 591, 592 (685 SE2d 337) (2009). The erroneous jury instruction could have misled the jury to conclude that the police officer did not arrest Belton because he had determined that Dean was the primary aggressor, thereby undermining Dean's claim of self-defense. This instruction was not authorized by the evidence, could have misled the jury, and, consequently, "a new trial is required," *Strobbert*, 241 Ga. App. at 356 (1). Because the evidence was sufficient to support the conviction, the state may retry Dean. *Williamson v. State*, 300 Ga. App. 538 (685 SE2d 784) (2009).

2013 Legislative Summaries

HB 141 - Kidnapping; certain businesses and establishments post a model notice to enable persons who are the subject of human trafficking to obtain help and services; require.

Amends Title 16 Chapter 5 Article 3 (16-5-40 through 16-5-46) Kidnapping, False Imprisonment and Related Offenses.

Adds a new code section 16-5-47 which requires adult entertainment establishments; bars; primary airports; passenger rail or light rail stations; bus stations; truck stops; emergency rooms within general acute care hospitals; urgent care centers; farm labor contractors and day haulers; privately operated job recruitment centers; safety rest areas along interstate highways; hotels and businesses/establishments that offer massage or bodywork services by persons who are not massage therapist to

post notices informing those who are subjects of human trafficking how to obtain help and services.

The notices will be written in English, Spanish and any other language the GBI Director deems appropriate. The notices will be posted either in each public restroom of the facility; or a conspicuous place near the public entrance or in a location in clear view of the public and employees.

The notice must be 8 ½ inches by 11 inches in size and printed in 16 point font in English, Spanish or any other appropriate language determined by the GBI Director.

The notice must state the following:

'Are you or someone you know being sold for sex or made/forced to work for little or no pay and cannot leave? Call the National Human Trafficking Resource Center at 1-888-373-7888 for help. All victims of slavery and human trafficking have rights and are protected by international, federal, and state law.

The hotline is:

- (1) Anonymous and confidential;
- (2) Available 24 hours a day, seven days a week;
- (3) Able to provide help, referral to services, training, and general information;
- (4) Accessible in 170 languages;
- (5) Operated by a nonprofit, nongovernmental organization; and (6) Toll free.'

Law enforcement will notify any business not in compliance with the statute that it has failed to comply. The business will be informed that they have 30 days from receipt of the notice to comply and that if they do not, they are subject to being charged with a violation of the law under this statute. Upon conviction they shall be guilty of a misdemeanor and fined not more than \$500.

Upon a second or subsequent conviction the owner will be guilty of a high and aggravated misdemeanor and punished by a fine not to exceed \$5,000.

This statute becomes effective September 15, 2013. The code section will be repealed in its entirety on January 1, 2019, unless extended by the General Assembly.

HB 156 – Obscenity and Related Offenses; Offenses Related to Minors

Revises subsections (d) and (g) of 16-12-100 Relating to Sexual Exploitation of Children.

(d) is revised as follows: the provisions of subsection (b) will not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses; legitimate medical, scientific or educational activities; or any person who creates or possesses a visual medium depicting only himself or herself engaged in sexually explicit conduct.

(g) is revised to permit misdemeanor punishment under certain circumstances. Violations of paragraphs (1), (3), (5), (6), (7), or (8) of subsection (b) will be a misdemeanor if: 1) the minor was 14 years old at the time the visual medium was created; 2) created with the consent of the minor depicted; 3) visual medium distributed to defendant with the consent of the minor depicted; and 4) defendant was 18 years or younger at time of the offense, and did not involve redistribution of the image or in court's discretion, when prosecutor and defense attorney agree, if the offense involved redistribution it was not for the purpose of harassing, intimidating or embarrassing the minor depicted; or for any commercial purpose.

Amends 16-12-100.1 relating to Electronically Furnishing Obscene Materials to Minors by revising paragraphs (1) and (3) of subsection (a) and subsection (c).

In (a)(1) bulletin board system is defined as a computer data and file service that is accessed wirelessly or by physical connection to store and transmit information. (previously, it read accessed by telephone line).

Adds a new subsection (d) which provides for misdemeanor punishment under certain circumstances.

A person who violates the code section will be guilty of a misdemeanor if:

- 1) The minor receiving the obscene materials is at least 14 years of age; 2) the receipt was with the minor's consent; and 3) the defendant is 18 years or younger.

Amends 16-12-100.2 relating to Computer and Electronic Pornography and Child Exploitation by revising subsections (c), (d) and (e).

Any person convicted of violating (c)(1) under the code section will be guilty of a misdemeanor if: 1) the identifiable child depicted is at least 14 years old at the time the visual depiction was created; 2) the visual depiction was created with the consent of the child; 3) defendant possessed the visual depiction with the consent of said child and 4) the defendant is 18 years old or younger at the time of the offense and did not redistribute the visual depiction; or in the court's discretion, when the prosecutor and defense attorney agree, if the violation involves redistribution it was not for the purpose of harassing, intimidating or embarrassing the child or for any commercial purpose.

The prohibition in paragraph (1) shall not apply to any person who creates or possesses a visual depiction of himself or herself.

Provides a misdemeanor sentence under certain circumstances for violations of (d)(1). If the victim is at least 14 years of age and the defendant is 18 years of age or younger, the defendant will be guilty of a misdemeanor.

Provides a misdemeanor sentence under certain circumstances for violations of (e)(1). If the victim is at least 14 years of age and the

defendant is 18 years of age or younger, the defendant will be guilty of a misdemeanor.

Revises 16-12-105 relating to penalties for 16-12-103 (Selling, Loaning Distributing or Exhibiting Sexually Explicit Photos, Drawings, Films to Minors) and 16-12-104 (Library Exception).

Any person who violates subsection (a) of 16-12-103 is guilty of a misdemeanor if: 1) the minor depicted is at least 14 years of age or older; 2) the items described in subsection (a) of 16-12-103 were furnished or disseminated with the minor's consent; 3) defendant did not redistribute the items; and 4) defendant was 18 years old or younger at the time of the offense.

HB 480 – Persons Allowed in Courtroom When Child Under 16 Testifies Regarding a Sexual Offense

Revises 17-8-54 by adding victim assistance coordinators, victim advocates and victim assistance personnel to the list of individuals who are permitted to remain in the courtroom when a child under 16 years testifies concerning a sexual offense.

SB 86 – Offense of Violating Family Violence Order

Revises 16-5-95 relating to the Offense of Violating Family Violence Order.

Adds a definition section which defines: Civil Family Violence Order; Criminal Family Violence Order and Family Violence.

Makes it a crime to violate a "Civil Family Violence Order" or a "Criminal Family Violence Order". Does away with the terms family violence protective order, temporary protective order, permanent restraining order, and permanent protective order.

Revises 17-4-20 subsection (a) relating to Authorization of Arrests with or without warrants.

Provides that an arrest for a crime can be made without a warrant if: 1) an officer has probable cause to believe that an act of family violence as defined in 19-13-1 has been committed; 2) the officer has probable cause to believe that the offender has violated a criminal violence order as defined in 16-5-95, provided, however, that said officer shall not have any prior or current familial relationship with the alleged victim or offender.

Revises 17-6-1 subparagraph (b)(2)(B) relating to where offenses are bailable.

When an arrest is made by a law enforcement officer without a warrant for an act of family violence or a violation of a criminal family violence order, under 17-4-20, defendant will not be eligible for bail prior to the arresting officer taking the arrested person before a judicial officer pursuant to 17-4-21.

SR 623 – Creates a Committee to Study Ways to Reduce Child Sexual Abuse Through Educating Children, Parents and Other Care Givers Concerning the Topic.

The Committee will be composed of five members:

- (1) The chairperson of the Senate Health and Human Services Committee or his or her designee;
- (2) The chairperson of the Senate Public Safety Committee or his or her designee;
- (3) The chairperson of the Senate Education and Youth Committee or his or her designee;
- (4) An appointee of the President Pro Tempore; and
- (5) An appointee of the President of the Senate.

The Lieutenant Governor shall designate a chairperson from among the appointees. The committee shall meet at the call of the chairperson.

The committee shall undertake a comprehensive study in order to recommend to the legislature policies to adopt, which may include sexual abuse of children that may include age-appropriate curriculum for students in pre-k through twelfth grade; training of school personnel on child sexual abuse; education information to parents or guardians on the warning signs of a child being abused, along with any needed assistance, referral, or resource information; available counseling and resources for students affected by sexual abuse; and emotional and educational support for a child of abuse to continue to be successful in school. The committee shall gather verified and corroborated research on the effectiveness of sexual abuse awareness education to better inform the General Assembly on how to fight child sexual abuse. The study committee shall also take into consideration and recognize current school mandates and consider what financial impact mandated sexual abuse curriculum will have on schools. The committee shall include in its final report its findings and include any recommendations for changes to state law. The committee may conduct its meetings at such places and at such times as it may deem necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this resolution. The members of the committee shall receive the allowances authorized for legislative members of interim legislative committees from the funds appropriated by the Senate but shall receive the same for not more than five days unless additional days are authorized. The committee is directed to make a report of its findings and recommendations, with suggestions for proposed legislation, if any, not later than December 31, 2013. The committee shall stand abolished on December 31, 2013. **GFV**



Don't forget to visit our Training Web page to register for our domestic violence-related conferences and training courses.

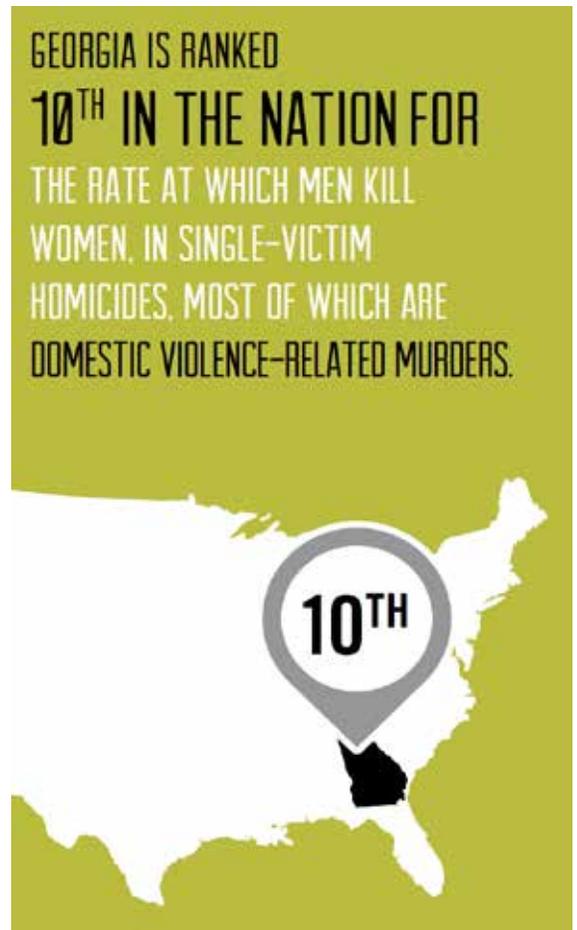
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First Issue of PAC's Family Violence Newsletter

Welcome! This is the first issue of the Georgia Family Violence Newsletter. This newsletter will address a variety of matters affecting prosecution of domestic violence and sexual assault related cases. Upcoming issues will provide information on a variety of matters, such as case law updates; new strategies being used by defense attorneys; and other relevant matters. If you have any suggestions or comments, please contact Lalaine A. Briones at PAC.

This newsletter is a publication of the Prosecuting Attorneys' Council of Georgia and was made possible by a Grant from the Governor's Office for Children and Families. PAC encourages readers to share varying viewpoints on current topics of interest. We invite law enforcement, prosecutors and victim advocates to write an article for publication. The views in this publication are the views of the authors and not necessarily the State of Georgia, PAC or the Council staff. Please send comments or articles to Lalaine Briones at lbriones@pacga.org. [GFV](#)

Recognizing the magnitude and impact of Domestic Violence in the State, the Governor's Office for Children and Families awarded a grant to the Prosecuting Attorneys' Council of Georgia. The grant provides much needed funding to train law enforcement officers, prosecutors, and victim advocates to more effectively respond to and prosecute crimes of domestic and sexual violence. The training is designed to improve the effective adjudication of domestic and sexual violence cases and effectuate the reduction of such crimes across our state.



-Statistics from 2012 Georgia Domestic Violence Fatality Review Annual Report courtesy Georgia Coalition Against Domestic Violence (www.gcadv.org) and Georgia Commission on Family Violence (www.gcfv.org)

GEORGIA Family Violence Newsletter

Prosecuting Attorneys' Council of Georgia
Domestic Violence and Sexual Assault Resource Program
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Governor's Office for
Children and Families

>>> GEORGIA DOMESTIC VIOLENCE AND SEXUAL ASSAULT RESOURCE PROGRAM



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>>> DID YOU KNOW?

In Georgia, "Family Violence" also known as Domestic Violence is defined as: "the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household: (1) Any felony; or (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass. The term "family violence" shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention."

-Statistics from 2012 Georgia Domestic Violence Fatality Review Annual Report courtesy Georgia Coalition Against Domestic Violence (www.gcadv.org) and Georgia Commission on Family Violence (www.gcfv.org)