

## CRIMINAL JUSTICE TRAINING CASE OF THE WEEK

### Week #63

#### Beyer v. City of Joliet, (3<sup>rd</sup> Dist., No. 3-08-0023, June 2, 2009)

This is a case concerning Statutory Construction. It deals with the Illinois Domestic Violence Act.

**FACTS:** On July 20, 2004, the victim called the police department on multiple occasions reporting that her husband had repeatedly threatened her with physical harm and mentally abused her by verbally reminding her of the presence of guns in the house. Additionally, the victim flagged down a police officer, advised him of the abuse, and asked for assistance. Police officers responded to the victim's calls numerous times during the hours before her death. However, each time they left her home without investigating these complaints or offering assistance to the victim. Furthermore, the victim specifically told the officers that there were weapons in the home, and despite being given unfettered access to the home, they chose not to investigate the presence of those weapons. In the early morning hours of July 21, 2004, the victim's husband shot and killed victim in their home. The administrator of the estate of the victim brought suit against the defendants and alleged that they willfully and wantonly breached their duties under the Illinois Domestic Violence Act (the Act) by repeatedly failing to assist the victim. The defendants moved to dismiss this suit and argued that the victim was not a protected person under the Act because she had not obtained an order of protection against her husband and was in the process of doing so when she was killed. The trial court granted the defendants' motion to dismiss. This appeal followed.

**ISSUE:** The issue in this case was whether or not the victim was a "protected person" under the Act.

**ARGUMENTS:** The defendants argued that the trial court correctly ruled that she was not. Conversely, the plaintiff argued that under the circumstances of this case, the victim was clearly a protected person.

**FINDING:** The appellate court concluded that the victim in this case was, in fact, a protected person under the Act. It therefore reversed the trial court's order granting the defendants' motion to dismiss. Specifically, the appellate court noted that the victim was a person who was abused by a household member. Although the victim never obtained an order of protection against her husband or even took steps to obtain such an order, the victim was still a protected person under the Act based upon the Act's broad definition of a protected person. The appellate court also concluded that conduct of the victim in repeatedly calling the police and flagging down a police car was sufficient, if believed, to prove that she was in need of protection. Finally, the Court found that the alleged conduct of the police in failing to assist the victim was sufficient, if believed, to prove that the police willfully and wantonly breached their duties under the Act. Therefore, the trial court erred in granting the defendants' motion to dismiss.

**COMMENT:** The issue in this case was whether or not the trial court properly granted the defendants' motion to dismiss. The appellate court ruled that it erred in doing so. It is very important to note, however, that the appellate court did not rule that the plaintiff would win this case when and if it goes to trial. Notice that the appellate court in this case specifically noted that the plaintiff's case was sufficient if it was believed by the trier of fact. It is still possible that the defendants could be found not to have violated the Act by the trier of fact. That is if this case ever gets that far. A settlement is always a possibility.

## QUIZ QUESTIONS FOR WEEK #63

**Beyer v. City of Joliet**, (3<sup>rd</sup> Dist., No. 3-08-0023, June 2, 2009)

1. As a general rule, can police officers be held liable for their failure to provide police protection, prevent the commission of a crime, or make an arrest?
  - a. Yes.
  - b. No.
  
2. The Illinois Domestic Violence Act created a special duty for law enforcement officers to assist victims of domestic abuse.
  - a. True.
  - b. False.
  
3. An injured party can recover damages under the Illinois Domestic Violence Act provided that the injured party can establish that he or she is a person in need of protection under the Act, the statutory law enforcement duties owed to him or her were breached by the willful and wanton acts or omissions of law enforcement officers, and such conduct proximately caused plaintiff's injuries.?
  - a. True.
  - b. False.
  
4. In Illinois, do all police officers have a generalized, open-ended duty to protect all citizens from domestic abuse?
  - a. Yes.
  - b. No.

ANSWERS AND EXPLANATIONS TO THESE QUESTIONS WILL BE POSTED NEXT WEEK.

QUESTIONS AND DISCUSSIONS OF THIS CASE AND THESE QUESTIONS CAN BE DIRECTED TO THE FORUM ON THE LAW ENFORCEMENT PAGE OF THIS SITE.

## QUIZ QUESTION ANSWERS AND DISCUSSION FOR WEEK #62

### People v. Harley Hatcher, (5<sup>th</sup> Dist., No. 5-08-0060, June 23, 2009)

1. In Illinois, a person of the age of 17 years and upwards commits the offense of indecent solicitation of a child if the person, with the intent that the offense of aggravated criminal sexual assault, criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse be committed, knowingly solicits a child or one whom he or she believes to be a child to perform an act of sexual penetration or sexual conduct.
  - a. **True.** This is the language found in Section 11-6(a) of the Illinois Criminal Code.
  - b. False.
  
2. For purposes of the offense of the Indecent Solicitation of a Child, "solicit" is defined as meaning "to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, or by advertisement of any kind."
  - a. **True.** This is the definition listed in Section 11-6(b) of the Illinois Criminal Code.
  - b. False.
  
3. In Illinois, in order to commit the offense of Indecent Solicitation of a Child, must the defendant specifically request that the victim perform a sex act?
  - a. Yes.
  - b. **No.** With respect to the offense of Indecent Solicitation of a Child, the definition of the word "solicit" is very broad. A defendant need not actually request that the victim perform a sex act or that the victim allow a sex act to be performed on him or her before this offense may be committed. The words the defendant uses or his or her conduct may be held to be sufficient to constitute an act of solicitation even though the defendant never specifically requested that the victim perform a sex act.
  
4. Can the offense of Indecent Solicitation of a Child be committed even when the "victim" of the solicitation was not actually a child?
  - a. **Yes.** The offense of Indecent Solicitation of a Child can be committed when a defendant solicits a person whom the defendant believes to be a child under 17 years of age. Under these circumstances, the fact the person solicited was, in fact, over 17 years of age is irrelevant. This provision allows undercover police officers to set up "stings" that catch defendants who are attempting to solicit children for illegal purposes.
  - b. No.

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